



CITY
OF
DULUTH
**PROCEEDINGS OF THE
CITY COUNCIL
2009**

OFFICIAL PROCEEDINGS

Special meeting of the Duluth City Council held on Monday, January 5, 2009, 6:00 p.m. in the Lake Superior Ballroom, Duluth Entertainment Convention Center, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Cuneo, Fedora, Fosle, Gardner, Krause, Reinert, Stauber and President Gilbert -- 9

Absent: None -- 0

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ELECTION OF OFFICERS

Councilor Gilbert was elected president upon a unanimous vote.

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REPORTS FROM OTHER OFFICERS

09-0105-01 Assessor letters regarding confirmation of assessment rolls levied to defray the assessable portions of:

(a) Contract No. 7097, street preservation, Gearhart, Allegheny and Selkirk streets (assessable amount: \$21,830.02) (09-0020R);

(b) Contract No. 7099, street preservation, Colalillo Drive from 46th to 49th avenues West (assessable amount: \$14,301.51) (09-0021R);

(c) Contract No. 7100, street preservation, Anderson Road from Central Entrance to Trinity Road (assessable amount: \$38,823.49) (09-0018R);

(d) Contract No. 7101, street preservation, Third and Fourth streets from Mesaba to Tenth Avenue West (assessable amount: \$29,633.52) (09-0019R). -- Received

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

RESOLVED, that the proper city officials are authorized to enter into an agreement with The Valuation Group, Inc., for appraisal services anticipated to be needed during 2009 related to various tax court proceedings in the total amount of not to exceed \$20,000, payable from the general fund, Miscellaneous 110-700-1407-5441.

Resolution 09-0006 was unanimously adopted.

Approved January 5, 2009

DON NESS, Mayor

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RESOLVED, that the assessment roll levied to defray the assessable portion of Anderson Road from Central Entrance to Trinity Road is set forth below:

Contract #7100 street preservation; assessable amount - \$38,823.49 to be deposited in Fund 330;

and that this assessment roll is hereby confirmed.

Resolution 09-0018 was unanimously adopted.

Approved January 5, 2009

DON NESS, Mayor

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RESOLVED, that the assessment roll levied to defray the assessable portion of Third and Fourth streets from Mesaba Avenue to Tenth Avenue West is set forth below:

Contract #7101 street preservation; assessable amount - \$29,633.52 to be deposited in Fund 330;

and that this assessment roll is hereby confirmed.

Resolution 09-0019 was unanimously adopted.

Approved January 5, 2009

DON NESS, Mayor

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RESOLVED, that the assessment roll levied to defray the assessable portion of Gearhart, Allegheny and Selkirk streets is set forth below:

Contract #7097 street preservation; assessable amount - \$21,830.02 to be deposited in Fund 330;

and that this assessment roll is hereby confirmed.

Resolution 09-0020 was unanimously adopted.

Approved January 5, 2009

DON NESS, Mayor

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RESOLVED, that the assessment roll levied to defray the assessable portion of Colalillo Drive from 46th to 49th avenues West is set forth below:

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Contract #7099 street preservation; assessable amount - \$14,301.51 to be deposited in Fund 330;
and that this assessment roll is hereby confirmed.

Resolution 09-0021 was unanimously adopted.

Approved January 5, 2009

DON NESS, Mayor

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RESOLVED, that the appointment by Mayor Ness to the parks and recreation commission of Patti Nadeau (commission on disabilities representative) for a term expiring on February 13, 2011, replacing William Flannagan who resigned, is confirmed.

Resolution 09-0013 was unanimously adopted.

Approved January 5, 2009

DON NESS, Mayor

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RESOLVED, that the proposed amendments to the specifications for the civil service classification of bridge operator, which were approved by the civil service board on November 5, 2008, and which are filed with the city clerk as Public Document No. 09-0105-02, are approved. This classification shall remain subject to the city's collective bargaining agreement with its basic unit employees and compensated at Pay Range 27.

Resolution 09-0015 was unanimously adopted.

Approved January 5, 2009

DON NESS, Mayor

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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 November 5, 2008, and which are filed with the city clerk as Public Document No. 09-0105-03, 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 09-0016 was unanimously adopted.

Approved January 5, 2009

DON NESS, Mayor

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RESOLVED, that the proposed amendments to the specifications for the civil service classification of senior engineering technician, which were approved by the civil service board on November 5, 2008, and which are filed with the city clerk as Public Document No. 09-0105-04, 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 09-0017 was unanimously adopted.

Approved January 5, 2009

DON NESS, Mayor

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INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinance was read for the second time:

BY COUNCILOR FEDORA

08-100 - AN ORDINANCE PERTAINING TO BONDING LIMITATIONS, AMENDING CHAPTER 20 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO ADD A NEW ARTICLE III.

Councilor Fedora moved to table the ordinance for a committee meeting on January 12, which motion was seconded and unanimously carried.

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President Gilbert thanked councilors for their support and introduced Mayor Ness.

Mayor Ness presented the 2009 State of the City Address (Public Document No. 09-0105-05.)

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

JEFFREY J. COX, City Clerk

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, January 12, 2009, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: None -- 0

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

09-0112-16 The following communications regarding individuals being considered for appointment to fill the vacant at large city council seat (09-0039R): (a) Edith Hakala; (b) Erik Nelson; (c) Steve Nelson; (d) Roger Wedin. -- Received

09-0112-01 The following communications regarding the proposed agreement with Lake Superior Zoological Society, Inc., for zoo operations (08-0764R): (a) AFSCME, Minnesota Council 5; (b) Dan Ahonen; (c) Bonnie Williams Ambrosi; (d) Paul and Carol Anderson; (e) Mary Arras; (f) Rich Axler; (g) Caroline Beaudin; (h) Diane Beecher; (i) Karina Bite; (j) Mary Bjorklund; (k) Steve and Karen Bonin; (l) Amy Bubacz; (m) Jack Burklund; (n) Denise Bussa; (o) Georgia Clark; (p) Jill Coleman; (q) Sue Doering; (r) E. Donley; (s) Deb Dwyer; (t) Jill Elwood; (u) Mark Estes; (v) Elizabeth Fait; (w) Molly Gaertner; (x) Mindy Gaetz; (y) David Gangeness; (z) Nancy Gangeness; (aa) Christine Good; (bb) Jenni Haburt; (cc) Stacey Harter; (dd) Dee Hedman; (ee) Gerald and Janice Hess; (ff) Cassandra Hill; (gg) Anne Hoeksema; (hh) Rose Hoene; (ii) Dave Holappa; (jj) Becky Holst; (kk) Susan Hovis; (ll) Emily Janzig; (mm) Susan and Larry Jentoft; (nn) Freja and Shelly Johnson; (oo) Darin and Angela Jones; (pp) Meghan Kimber; (qq) Leona Krieg; (rr) Rick, Terri, Dawson and Eve Kriske; (ss) Kara Knowles; (tt) Jim Kurtz; (uu) Jean and Jerry Kwako; (vv) Annie Leusman; (ww) Deb Lumberg; (xx) Angie Lussier; (yy) Angie Maamoun; (zz) Jane Ellen Maddy; (aaa) Ann McIntosh; (bbb) Roger Morris; (ccc) Dianne Naus; (ddd) Stacey Nephew; (eee) Karin Patronas; (fff) Annalisa Peck; (ggg) Lynn Peterson; (hhh) Michael and Kay Peterson; (iii) Marcia Podratz; (jjj) Cindy Pribnow; (kkk) Sarah Rammer; (lll) Ann Reyelts; (mmm) Gretchen Ringdahl; (nnn) Valerie Rother; (ooo) Nancy Saline; (ppp) Rod Saline; (qqq) Anne Munger Sarvela; (rrr) John Senich; (sss) Wayne Shields; (ttt) Krystal Singleton; (uuu) Edward Sink; (vvv) Lorraine Sivak; (www) Tom Skull; (xxx) Kevin Sleen; (yyy) Bill and Carolyn Steele; (zzz) Karla, Mike, Micah and Noah Stevens; (aaaa) Adam Stevenson; (bbbb) Danna Taulbee; (cccc) Ira Teng; (dddd) Polly Hedman Vallie; (eeee) Annie Walchuk; (ffff) Kim and Trent Wickman; (gggg) Shirley Wuchter. -- Received

09-0112-02 The following communications regarding the proposed closures of portions of Eklund Avenue, Ideal Street, Maple Grove Road and Lakeview Avenue (09-0001R; 09-0002R; 09-0003R; 09-0004R): (a) Gary and Sue Berggren; (b) Dennis Birchland; (c) Paul Borrell; (d) Cathy Brown; (e) Jack Burklund; (f) Judith Cherveney; (g) Janet and Michael Corica; (h) Robert Cormier; (i) Denise Davis; (j) Duluth transit authority; (k) Lynn Fena and Jerry Bakke; (l) Robert Fryberger, et al. (70 signatures); (m) Beth Hager; (n) Kirk and Teressa Haglin; (o) Marla Halvorson; (p) Tom Hansen; (q) Robert Huston; (r) Kyle and Anene Jensen; (s) Kathleen Johanson; (t) Ken and Mona Knutson; (u) Mark Knutson; (v) Brett Kolquist; (w) Sue Kolquist; (x) Kelly Kregness; (y) Mike Kruger; (z) Glenn Kulyk; (aa) Karen LaLiberte; (bb) Katie Larson; (cc) George and Kristine Lessard; (dd) Matt Lind; (ee) Lise Lunge-Larsen and Steve Kuross; (ff) Leo McDonnell; (gg) Jill and Eric Miller; (hh) Sharon Mosiniak; (ii) Chad and Kim Oppelt;

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(jj) Michael Orman; (kk) Richard and Anita Paulson; (ll) Annette Reid; (mm) Jack and Joan Setterlund; (nn) Frank and Kristy Stokes; (oo) Beth Storaasli; (pp) Marge Swor; (qq) Dale Sundin; (rr) Sherrie and Troy Tapa; (ss) Janet Tomaino; (tt) Roy Trousdell; (uu) Tracy Vallie; (vv) Elizabeth Wahman; (ww) James and Diane Walsh; (xx) Mark Wick; (yy) Carl Zuck. -- Received

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REPORTS FROM OTHER OFFICERS

09-0112-03 Assessor:

(a) Letter of insufficiency of petition to reclassify Lots 14-17, Block 1, Grant Park Division of Duluth (2900 Piedmont Avenue), from R-1-b to C-1;

(b) Letters of sufficiency of petitions to reclassify:

(1) From R-1 to C-5 property north and east of Sundby Road at 2115 Miller Trunk Highway;

(2) From M-1 to R-3 even numbered Lots 386-400, Block 49, Duluth Proper, Second Division. -- Received

09-0112-15 City Councilor Roger Reinert resignation from the Duluth City Council effective at 11:59 a.m., Tuesday, January 6, 2009. -- Received

09-0112-04 Parks and recreation division manager Lake Superior zoological society minutes of: (a) November 14; (b) December 17, 2008, meetings. -- Received

09-0112-05 Purchasing agent emergency order awarded to Stout Mechanical for steam vault repair in First Avenue East and Superior Street in the amount of \$41,685. -- Received

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REPORTS OF BOARDS AND COMMISSIONS

09-0112-06 American Indian commission minutes of October 20, 2008, meeting. -- Received

09-0112-07 Duluth airport authority minutes of November 18, 2008, meeting. -- Received

09-0112-08 Duluth legacy endowment fund advisory board minutes of October 28, 2008, meeting. -- Received

09-0112-09 Duluth transit authority: (a) Income statement for September 2008; (b) Minutes of October 29, 2008, meeting. -- Received

09-0112-10 Entertainment and convention center authority minutes of: (a) December 19 (regular); (b) December 23 (building committee); (c) December 23, 2008, (regular) meetings. -- Received

09-0112-11 Library board minutes of October 28, 2008, meeting. -- Received

09-0112-12 Parks and recreation commission minutes of November 12, 2008, meeting. -- Received

09-0112-13 Planning commission minutes of November 12, 2008, meeting. -- Received

09-0112-14 Spirit Mountain recreation area authority minutes of November 20, 2008, meeting. -- Received

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REPORT OF COUNCIL COMMITTEES

Councilor Gardner stated that the personnel committee is reporting that the five finalists for the vacant at large city council seat are Gary Eckenberg, Becky Hall, Daniel Hartman, Scott Keenan and Debra Taylor.

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OPPORTUNITY FOR CITIZENS TO BE HEARD

Joel Sipress commented on his concerns for privatizing the gas utility and that the council should “set the bar” very high; review it with a careful eye and demand that the case be made for this action, beyond all possible doubt. He noted that there have been many nationwide examples of reckless privatization, that has been bad for taxpayers and what makes us think a private monopoly will be better for Duluth citizens.

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MOTIONS AND RESOLUTIONS

Councilor Fedora moved to suspend the rules to consider Resolution 09-0025, accepting gift of \$111,574.58 from the estate of Katherine J. Hooey. at this time, which motion was seconded and unanimously carried.

Resolution 09-0025 was adopted as follows:

BE IT RESOLVED, that the city of Duluth hereby accepts a gift of \$111,574.58 from the estate of Katherine J. Hooey to benefit the Lake Superior Zoo, such amount to be deposited in Fund 200, Agency 130, Revenue Source 4660.

BE IT FURTHER RESOLVED, that the council, on behalf of the city, extends its sincere gratitude for this generous gift.

Resolution 09-0025 was unanimously adopted.

Approved January 12, 2009

DON NESS, Mayor

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Councilor Gardner moved to suspend the rules to consider Resolution 09-0039, appointing _____ to fill the vacant at large city council seat, at this time, which motion was seconded and unanimously carried.

The council started balloting based on the procedures established by Resolution 08-0775, adopted on December 15, 2008.

The results of the first balloting were announced as follows:

Councilor Anderson:	Daniel Hartman
Councilor Cuneo:	Gary Eckenberg
Councilor Fedora:	Scott Keenan
Councilor Fosle:	Becky Hall
Councilor Gardner:	Daniel Hartman
Councilor Krause:	Becky Hall
Councilor Stauber:	Becky Hall
President Gilbert:	Deb Taylor

There being no successful candidate receiving a majority of votes, the second balloting commenced.

The results of the second balloting were announced as follows:

Councilor Anderson:	Daniel Hartman
Councilor Cuneo:	Gary Eckenberg
Councilor Fedora:	Becky Hall
Councilor Fosle:	Becky Hall

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Councilor Gardner: Gary Eckenberg
Councilor Krause: Becky Hall
Councilor Stauber: Gary Eckenberg
President Gilbert: Deb Taylor

There being no successful candidate receiving a majority of votes, the third balloting commenced.

The results of the third balloting were announced as follows:

Councilor Anderson: Gary Eckenberg
Councilor Cuneo: Gary Eckenberg
Councilor Fedora: Becky Hall
Councilor Fosle: Becky Hall
Councilor Gardner: Gary Eckenberg
Councilor Krause: Becky Hall
Councilor Stauber: Becky Hall
President Gilbert: Deb Taylor

There being no successful candidate receiving a majority of votes, the fourth balloting commenced.

The results of the fourth balloting were announced as follows:

Councilor Anderson: Gary Eckenberg
Councilor Cuneo: Gary Eckenberg
Councilor Fedora: Becky Hall
Councilor Fosle: Becky Hall
Councilor Gardner: Gary Eckenberg
Councilor Krause: Becky Hall
Councilor Stauber: Becky Hall
President Gilbert: Gary Eckenberg

There being no successful candidate receiving a majority of votes, the fifth balloting commenced.

The results of the fifth balloting were announced as follows:

Councilor Anderson: Gary Eckenberg
Councilor Cuneo: Gary Eckenberg
Councilor Fedora: Becky Hall
Councilor Fosle: Becky Hall
Councilor Gardner: Gary Eckenberg
Councilor Krause: Becky Hall
Councilor Stauber: Becky Hall
President Gilbert: Gary Eckenberg

There being no successful candidate receiving a majority of votes, the sixth balloting commenced.

The results of the sixth balloting were announced as follows:

Councilor Anderson: Gary Eckenberg
Councilor Cuneo: Gary Eckenberg
Councilor Fedora: Becky Hall
Councilor Fosle: Becky Hall

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Councilor Gardner: Gary Eckenberg
Councilor Krause: Becky Hall
Councilor Stauber: Becky Hall
President Gilbert: Gary Eckenberg

There being no successful candidate receiving a majority of votes, the council followed their procedures by asking Becky Hall and Gary Eckenberg two questions.

Becky Hall and Gary Eckenberg responded to the questions of:

(a) What specifically would you do to reach across ideological lines to insure that the work of the council gets done?; and

(b) How do you see the roll of the council as it relates to the mayor and his administration?

The seventh balloting commenced.

The results of the seventh balloting were announced as follows:

Councilor Anderson: Gary Eckenberg
Councilor Cuneo: Gary Eckenberg
Councilor Fedora: Becky Hall
Councilor Fosle: Becky Hall
Councilor Gardner: Gary Eckenberg
Councilor Krause: Becky Hall
Councilor Stauber: Becky Hall
President Gilbert: Gary Eckenberg

Councilor Stauber noted that he felt good with both of these candidates because his top two candidates were both of these individuals and that he will be supporting Mr. Eckenberg in the next balloting.

The eighth balloting commenced.

The results of the eighth balloting were announced as follows:

Councilor Anderson: Gary Eckenberg
Councilor Cuneo: Gary Eckenberg
Councilor Fedora: Becky Hall
Councilor Fosle: Becky Hall
Councilor Gardner: Gary Eckenberg
Councilor Krause: Becky Hall
Councilor Stauber: Gary Eckenberg
President Gilbert: Gary Eckenberg

Councilor Gardner moved to amend the resolution by inserting the name "Gary Eckenberg" into the blanks, which motion was seconded and unanimously carried.

Resolution 09-0039, as amended, was adopted as follows:

BY COUNCILOR GARDNER:

WHEREAS, At Large City Councilor Roger J. Reinert has resigned his city council seat effective January 6, 2009; 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 Gary E. Eckenberg to fill the vacant at large city council seat for the term expiring January 4, 2010, effective immediately.

Resolution 09-0039, as amended, was unanimously adopted.

Approved January 12, 2009

DON NESS, Mayor

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Gary Eckenberg was sworn in as city councilor at large.

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RESOLUTION TABLED

Councilor Anderson moved to remove Resolution 08-0764, authorizing execution of an agreement with Arrowhead Zoological Society, Inc., from the table, which motion was seconded and discussed:

Councilors Fedora and Stauber stated that this resolution has been before the council for over a month and they felt that they have received enough information on this issue to vote at this time.

Councilors Cuneo, Gardner and Krause noted that they: have recently received additional information over the past weekend that needs to be reviewed; would like more time to have questions answered; would like to avoid any unnecessary litigation that might come forth and out of respect for the new councilor to have some time to review the issue.

Chief Administrative Officer Lisa Potswald expressed support for voting on this at this time because the Arrowhead Zoological Society is ready to proceed.

The motion to remove the resolution from the table failed upon the following vote:

Yeas: Councilors Fedora, Fosle and Stauber -- 3

Nays: Councilors Anderson, Cuneo, Eckenberg, Gardner, Krause and President Gilbert -- 6

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At this time, Councilor Eckenberg left his seat.

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

RESOLVED, that pursuant to the Duluth City Charter, Section 30(b), Resolution 08-0742 adopting license, permit and fee charges for 2009 be amended to add the following fee:

Clerk	
License, permit, fee name	2009 Fee
Special prosecutor request fee (to prosecute conflicts of interest)	\$250.00

Resolution 09-0024 was unanimously adopted.

Approved January 12, 2009

DON NESS, Mayor

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

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

(a) On November 5, 2008, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Piedmont Bottle Shop, Inc., d/b/a Piedmont Bottle Shop, 2818 Piedmont Avenue and has submitted its report to the city council of the city of Duluth as Public Document No. 09-0112-17;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on January 12, 2009, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 09-0112-17 regarding any suspension, revocation and/or civil penalty relating to the off sale intoxicating liquor license of Piedmont Bottle Shop, Inc., d/b/a Piedmont Bottle Shop, 2818 Piedmont 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 \$750 civil penalty, and that \$250 of the penalty be stayed for a period of one year and forgiven if the licensee submits proof that its employees have attended an appropriate training course during the one year period; and that \$500 of the penalty be payable within 60 days of final council action.

Resolution 09-0008 was unanimously adopted.

Approved January 12, 2009

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 November 5, 2008, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of JNC Liquors, Inc. d/b/a Wild West Liquor, 318 North Central Avenue and has submitted its report to the city council of the city of Duluth as Public Document No. 09-0112-18;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on January 12, 2009, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 09-0112-18 regarding any suspension, revocation and/or civil penalty relating to the off sale intoxicating liquor license of JNC Liquors, Inc. d/b/a Wild West Liquor 318 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.

Resolution 09-0009 was unanimously adopted.

Approved January 12, 2009

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 November 5, 2008, 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. d/b/a 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. 09-0112-19;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on January 12, 2009, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 09-0112-19 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of Curly's Bar, Inc. d/b/a 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 they city council impose a \$500 civil penalty and that payment of \$250 of the penalty be stayed for a period of one year and be abated if no same or similar violations occur during that one year period, and that payment of \$250 of the penalty be payable within 60 days of final council action.

Resolution 09-0010 was unanimously adopted.

Approved January 12, 2009

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 November 5, 2008, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Bergey's, LLC, d/b/a Bergey's, 2232 West Superior Street, and has submitted its report to the city council of the city of Duluth as Public Document No. 09-0112-20;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on October 13, 2008, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No.09-0112-20 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of Bergey's, LLC, d/b/a Bergey's, 2232 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 Duluth City Council fine the licensee \$500 for the first offense, however that \$250 of the fine be due and payable within 60 days of final council action. The remaining fine amount to be stayed for a period of one year following final council action and be abated if no same or similar violations occur during that one year period.

Resolution 09-0011 was unanimously adopted.

Approved January 12, 2009

DON NESS, Mayor

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BE IT RESOLVED, that the Duluth City Council approves of the Minnesota gambling control board issuing premise permits 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.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Licensee	Gambling site
Community Charities of Minnesota	<ul style="list-style-type: none">• Country Lanes North, 2327 Mt. Shadow Drive• Incline Station, 601 West Superior Street

Resolution 09-0026 was unanimously adopted.
Approved January 12, 2009
DON NESS, Mayor

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RESOLVED, that the reappointment by Mayor Ness of Jim Booth to the housing and redevelopment authority for a term expiring on January 6, 2014, is confirmed.

Resolution 09-0034 was unanimously adopted.
Approved January 12, 2009
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 a portion of a utility easement within the vacated portion of Water Street (FN 08115); 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 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, based on the findings that this is the smallest area required for the building encroachment, would not impact the ability to maintain utilities and there will likely be no negative impacts to the surrounding neighborhood; and

(c) The planning commission, at its December 9, 2008, regular meeting, did approve vacating the petitioned easement; and

(d) That the city council of the city of Duluth approves the vacation of the following and as more particularly described on Public Document No. 09-0112-21: all of that part lying within the southerly 1.00 foot of the utility easement which is bounded on the west by the northerly extension of the west line of Lot 4, Block E, Endion Division of Duluth, and bounded on the east by the southerly extension of the east line of Lot 12, Block 2, Endion Division of Duluth; and

(e) That the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution together with a plat showing that portion of utility easement to be vacated.

Resolution 09-0005 was unanimously adopted.
Approved January 12, 2009
DON NESS, Mayor

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RESOLVED, that:

(a) The proper city officers are hereby authorized to execute an agreement with MXD Development Strategists LTD, of Richmond, British Columbia, Canada, for professional services relating to the development of a market study for the Central Entrance - Miller Hill area, payment not to exceed \$25,000, payable from Fund 110, Agency 130, Organization 1301, Object 5319; and

(b) The city council, at its June 26, 2006, meeting, adopted the comprehensive land use plan; and

(c) The city desires to implement the comprehensive land use plan, which recognized that there were areas of the city where uncertainty about market conditions, ownership patterns or infrastructural capacity was particularly high and that those areas would require additional study to guide possible modifications to the future land use map; and

(d) Central Entrance was one of the areas identified for additional study; and

(e) The Miller Hill business district, anchored by the Miller Hill Mall, is the largest commercial area in the city and a regional retail destination; and

(f) Current changes and improvements to Miller Trunk Highway will result in new traffic patterns and changes to existing land uses in the mall area and the city needs to determine if any new areas that have opened up for development, as well as any changes in market conditions, would require modifications to the future land use map; and

(g) The city put forth a request for proposals for professional services to conduct a market study of the Central Entrance - Miller Hill area; and

(h) The city received proposals from 11 consultants, all of which were reviewed and ranked by city planning staff; and

(i) The three proposals receiving the highest ranking were interviewed by city planning staff who then unanimously recommended MXD Development Strategists LTD due to their extensive experience developing market studies; and

(j) MXD Development Strategists LTD, of Richmond, British Columbia, Canada, has represented that it is qualified and willing to perform the services set forth in its proposal to conduct a market study for the Central Entrance - Miller Hill area as stated in a contract described in Public Document No. 09-0112-22; and

(k) Wherein, upon the completion of the market study, the city will complete the small area plan for the Central Entrance - Miller Hill area.

Resolution 09-0037 was unanimously adopted.

Approved January 12, 2009

DON NESS, Mayor

- - -

BY COUNCILOR FEDORA:

RECITALS:

The Duluth airport authority (DAA) was created by the Minnesota State Legislature on May 22, 1969. The power vested in the authority is referenced in Minnesota Statutes, 1969, Chapter 577; and

The 1945 Minnesota Legislature and governor created the state airports fund to be used to acquire, construct, improve, maintain, and operate airports and other air navigation facilities and to assist municipalities in the acquisition, construction, improvement and maintenance of airports and other air navigation facilities; and

Since the fund was created in 1945, all revenues in the state airports fund have been generated by users of the state aviation system. The revenues consist of airline flight property taxes, aviation fuel tax and aircraft registration tax, and interest on investment of these revenues; and

The 2008 Minnesota Legislature and governor removed \$15,000,000 from the state airports fund to be used for purposes other than those for which the fund was created and maintained; and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

The removal of \$15,000,000 from the state airports fund has resulted in the elimination of fiscal year 2009 state-aid to airports for capital improvements, thereby causing undue hardships to publicly owned airports and the cities, counties and general public they serve throughout Minnesota; and

The DAA at its November 18, 2008, meeting adopted a resolution requesting that the Minnesota State Legislature and the governor of Minnesota restore a portion of the \$15,000,000 to the state airports fund from the general fund in fiscal year (FY) 2009 and appropriate those funds to the Minnesota department of transportation for airport development and assistance, that the balance of the \$15,000,000 be transferred to the state airports fund on July 1, 2009, and that the same amount be appropriated to the Minnesota department of transportation for airport development and assistance over and above the fiscal year base level appropriation of \$14,298,000.

NOW, THEREFORE, BE IT RESOLVED, that the Duluth City Council supports the request of the DAA as set forth in its November 18, 2008, resolution regarding repayment of \$15,000,000 into the state airports fund from the general fund in fiscal year (FY) 2009.

Resolution 09-0022 was unanimously adopted.

Approved January 12, 2009

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. 09-0112-23, with Duluth-Superior Public Access Community Television, Inc., (PACT) for providing cablecasting, training, production and administrative services in 2009 relating to public access television in the net amount of \$162,000, to be paid from General Fund 110, Agency 700, Organization 1414, Object 5441.

Resolution 09-0036 was unanimously adopted.

Approved January 12, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Hawkins, Inc., dba Hawkins Water Treatment Group - Superior, for the purchase and delivery of 145 tons of liquid hydrofluorosilicic acid in accordance with specifications and the vendor's low bid of \$108,025 plus sales tax of \$7,021.63 for a combined total of \$115,046.63, terms net 30, FOB destination, payable from the Water Fund 510, Agency 500, Organization 1955 and Object 5216-03.

Resolution 09-0030 was unanimously adopted.

Approved January 12, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Airgas Specialty Products for the purchase and delivery of 40,000 pounds of liquid anhydrous ammonia in accordance with specifications and the vendor's bid of \$31,200 plus sales tax of \$2,028, for a combined total of \$33,228, terms net 30, FOB destination, payable from the Water Fund 510, Agency 500, Organization 1955, Object 5216-01.

Resolution 09-0031 was unanimously adopted.

Approved January 12, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Hawkins, Inc., dba Hawkins Water Treatment Group - Superior, for the purchase and delivery of 55 tons of liquid chlorine in accordance with specifications and the vendor's low bid of \$25,025 plus sales tax of \$1,626.63, for a combined total of \$26,651.63, terms net 30, FOB destination, payable from the Water Fund 510, Agency 500, Organization 1955, Object 5216-02.

Resolution 09-0032 was unanimously adopted.

Approved January 12, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Thunder Bay Chemicals, Ltd., for the purchase and delivery of 150,000 gallons of liquid aluminum sulfate in accordance with specifications and the vendor's low bid of \$161,850 plus sales tax of \$10,520.25, for a combined total of \$172,370.25, terms net 30, FOB destination, payable from the Water Fund 510, Agency 500, Organization 1955, Object 5216-04.

Resolution 09-0033 was unanimously adopted.

Approved January 12, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Univar USA, Inc., for the purchase and delivery of 100,000 gallons of caustic soda in accordance with specifications and the vendor's low bid of \$350,730 plus sales tax of \$22,797.45, for a combined total of \$373,527.45, terms net 30, FOB destination, payable from the Water Fund 510, Agency 500, Organization 1955, Object 5216-05.

Resolution 09-0035 was unanimously adopted.

Approved January 12, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to accept an amendment to grant Contract 2008-NGTF-00429/6300-2654, a copy of which is on file in the office of the city clerk as Public Document No. 09-0112-24, from the state of Minnesota, commissioner of public safety, office of justice programs, for the purpose of supporting the operations of the Lake Superior drug and gang task force, increasing the amount accepted thereunder to \$670,000, said funds to be deposited in Fund 215, Agency 200, Organization 2260, Revenue Source 4210-02, and authorizing said officials to execute all documents necessary thereto.

Resolution 09-0038 was unanimously adopted.

Approved January 12, 2009

DON NESS, Mayor

- - -

The following resolutions were also considered:

Resolution 09-0023, authorizing the issuance and providing for the sale of general obligation utilities revenue bonds, was introduced by President Gilbert for discussion.

Councilor Stauber expressed his concerns that the financial situation the city is in is because the city is continuously borrowing and the retiree health issue. He felt that by opposing this resolution, the city council would have the opportunity to say no, and yes to pay-as-you-go.

Resolution 09-0023 was adopted as follows:

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 \$1,655,000 general obligation utilities revenue bonds, Series 2009A, pursuant to ordinance Nos. 9946 and 9947, adopted November 24, 2008, Minnesota Statutes, Chapter 475, and Section 115.46 and 444.075, and Section 55 of the Home Rule Charter of the city for the payment of the costs of improvements to the municipal water and sewer utilities (the bonds);

(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. 09-0112-25. 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 09-0023 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Fedora, Fosle, Gardner, Krause and President Gilbert -- 7

Nays: Councilor Stauber -- 1

Absent: Councilor Eckenberg -- 1

Approved January 12, 2009

DON NESS, Mayor

- - -

At this time, Councilor Eckenberg returned to his seat.

- - -

Resolution 09-0027, to accept grants and enroll in the national citizen survey program at a cost not to exceed \$11,600, was introduced by President Gilbert for discussion.

Councilor Krause felt that: given the financial position of the city, maybe this money should not be spent to find out what citizens are thinking; the council and administration receive extensive e-mails on a daily basis about citizens' concerns and issues and there is a more prudent way to expend funds.

Resolution 09-0027 was adopted as follows:

RESOLVED, that the proper city officials are hereby authorized to accept a \$2,000 grant from LISC and a \$2,000 grant from SMDC Health System to be used to pay a portion of the cost of the city enrolling in the national citizen survey program.

BE IT FURTHER 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. 09-0112-27, with the national citizen survey program for survey tool development

and administration services in an amount not to exceed \$11,600, payable from Fund 110, Department 700, Division 1408, Object 5441.

Resolution 09-0027 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Stauber and President Gilbert -- 8

Nays: Councilor Krause -- 1

Approved January 12, 2009

DON NESS, Mayor

- - -

Resolution 09-0014, adding an initiative to support revisions to the state of Minnesota Electrical Code requirements for sump pump installation to the city's legislative agenda for 2009, was introduced by Councilor Fedora for discussion.

Fire Chief John Strongitharm reviewed the nature of this request in not requiring a separate electrical panel for sump pumps in multiple housing units.

Councilor Krause noted that he worked in the electrical industry for 25 years and the National Electrical Code supports safety and thus we should not be supporting this change.

Councilor Stauber moved to table the resolution for more information, which motion was seconded and carried unanimously.

- - -

Resolution 09-0028, by Councilor Stauber, rescinding Resolution 08-0396 and requesting the administration allow parking along Morley Parkway from Snively Road to Leicester Avenue, was introduced for discussion.

Councilor Stauber noted that the statement of purpose should not have a statement debating the issue and he reviewed the history on this issue and how notice was not previously sent out regarding making this street a no parking zone. He requested support for this resolution and then the administration can proceed to properly notify the affected property owners of the intent of make this street no parking.

Cindy Voigt, city engineer, and Gunnar Johnson, city attorney, responded to councilor questions.

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

- - -

Resolution 09-0042, by councilors Stauber, Fedora and Gardner, urging the administration to resolve the handling of the personnel issue specific to administrative leave with pay, was introduced for discussion.

Councilor Krause expressed his concerns that: the Charter states the council does not have an administrative role; the council does not have knowledge of the details and thus should not be involved and investigations involving financial matters can easily go on for a very long time.

Councilors Stauber, Fedora and Gardner felt that this has gone on long enough and should be resolved, and by dragging this out, it does more harm to the city, the council and the employees involved.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Councilor Krause moved to table the resolution to see if there could be a closed session of the council in which the council could receive a report, which motion was seconded and failed upon the following vote:

Yeas: Councilors Eckenberg and Krause -- 2

Nays: Councilors Anderson, Cuneo, Fedora, Fosle, Gardner, Stauber and President Gilbert -- 7

Resolution 09-0042 was adopted as follows:

BY COUNCILORS STAUBER, FEDORA AND GARDNER:

WHEREAS, a senior female employee has been on paid administrative leave since October 3, 2008, without explanation to the council or public; and

WHEREAS, the League of Minnesota Cities recognizes that leave with pay on short notice is usually reserved for employees that may become disruptive to the work environment or may tamper with evidence needed for an investigation, and such leave should be accompanied by written notification of the reason and the duration; and

WHEREAS, the employee has now been off work for over three months, and the council is concerned that based on the length of the investigation, the administration may have been overzealous in it's decision to abruptly remove this employee from duty, and may have failed to have significant cause for such action, and may be continuing to investigate in an attempt to find something to justify the removal; and

WHEREAS, the council recognizes that in a just employment system, timely and fair personnel actions are expected and the current action is damaging the morale of this and other city employees and decreased morale leads to reduced productivity; and

WHEREAS, the employee has been responsible for city finances for a significant period of time prior to the leave and currently the city is seeking to hire a full time chief financial officer, encompassing duties of which she had been performing; and

WHEREAS, the employee continues to receive full pay and benefits without providing any service to the citizens of Duluth.

RESOLVED, that the city council urges the administration take immediate steps to resolve this issue.

Resolution 09-0042 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Stauber and President Gilbert -- 8

Nays: Councilor Krause -- 1

Approved January 12, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute an agreement, substantially the same as that on file with the city clerk as Public Document No. 09-0112-26, with Maki and Overom, Chartered, under which that firm will provide legal services related to a gaming matter, at a cost to the city not to exceed \$10,000, which shall be payable from Fund 110, Department 700, Division 1407, Object 5441.

Resolution 09-0007 was unanimously adopted.

Approved January 12, 2009

DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Resolution 09-0001, ordering the removal of the existing temporary closure of Eklund Avenue at Swan Lake Road and denying the permanent closure of the southbound lane of Eklund Avenue, Ideal Street west of Foster Street and eastbound Maple Grove Road east of Joshua Avenue, and Resolution 09-0002, ordering the permanent closure of the southbound lane of Eklund Avenue at Swan Lake Road, Ideal Street west of Foster Street and eastbound Maple Grove Road east of Joshua Avenue, were introduced by Councilor Cuneo for discussion.

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

Charlie Rouse, Matthew DeNoyer, Tom Szutis, Sharon Mosiniak, David Udd, Keith Haglin, Peggy Haglin, James Armstrong, Christy Stokes, Nathan Bipes, Rich Paulson, Melinda Hansen, Pat Huston, Curtis Lindbeck, Darrell Tapa, Damon Anderson, Brenda Anderson and Tony Tarvers expressed support for removing the barricades, opening up the roadway and/or the improvements to Joshua Avenue for the reasons of: if it is not opened, it would create an unnecessary chaos; 500 cars in one day came off of Swan Lake Road on to Eklund Avenue this past summer; individuals are turning around in private drive ways; the temporary closures have been a failure; the closures were only intended to be temporary; residents will have to drive a much longer way to get around in the neighborhood or to the mall area; blockades are not fair to anyone; making a roadway surface improvement and then blocking it does not make sense; drivers will find other short cuts with more barricades; Joshua Avenue needs to be improved; one barricade is bad enough, but three is inconceivable; this issue has been around since 1979; Joshua Avenue needs to go through to Arrowhead Road and residents know the areas that need safe driving versus cut through traffic which does not drive as safely.

Cheryl Hill felt: this needs to be a rethought, these two options are not the best and people speed around the barriers.

Jim Booth supported not adding any further blockades and leaving the existing one in place until Joshua Avenue can be improved and extended to Arrowhead Road.

Mary Moffett expressed support for the closures, for reasons of: the so-called "traffic clearing devices," not a "blockade" does decrease the traffic cutting through; the traffic count reports show a reduction in traffic; where the main arteries should be used is a transportation issue and it is for the public safety and good to have these closures.

Ms. Voigt and Mayor Ness answered councilor questions and reviewed details of possible improvements, funding and time lines.

Councilor Krause moved to amend Resolution 09-0001 as follows:

- (a) In the first sentence, replace the word "remove" with the word "maintain";
- (b) Delete the second sentence of the resolution,

which motion died for a lack of a second.

Councilors discussed at length the merits of the options presented.

Resolution 09-0001 was adopted as follows:

RESOLVED, that the city council of the city of Duluth hereby directs that the public works and utilities department remove the existing closure at Eklund Avenue and Swan Lake Road. Further, the city council denies the permanent closure of the following streets: the southbound lane of Eklund Avenue at Swan Lake Road, Ideal Street west of Foster Street and eastbound Maple Grove Road east of Joshua Avenue.

Resolution 09-0001 was unanimously adopted.

Approved January 12, 2009

DON NESS, Mayor

- - -

Resolution 09-0002 failed unanimously (Public Document No. 09-0112-28).

- - -

Resolution 09-0003, ordering the removal of the temporary closure of the northbound lane of Lakeview Drive and denying the permanent closure thereof, and Resolution 09-0004, ordering the permanent closure of the northbound lane of Lakeview Drive at Snively Road, were introduced by Councilor Cuneo for discussion.

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

Bob Fryberger, Gary Black, Jackie Black, Kathleen Dwan, Kjell Peterson, Dan Glisczinski, Joanne Fay, Cindy Carver Carlson, Debbie Dylla, Beth Storaasli, Mark Knutson, Lise Lunge-Larsen and Mark Dylla supported the permanent closure for the reasons of: the temporary closure, which had council support, has been very effective; 81.25 percent of the residents of Lakeview Drive support this closure; this road is only 18 feet wide; there is only a sidewalk on one side of the street; the temporary closure has been a profound safety improvement; this should be considered as separate and distinct from the previous street closure issue; prior to the temporary closure, there were many accidents; when other major surrounding roads were done, it was done with the intent of keeping the residential streets safer and there are five entrances to this neighborhood, so this is the only exit that is being requested to be closed.

Larry LeBlanc, Lynn Fena and Alex LeBlanc supported the removal of the temporary closure, for the reasons of: some residents have over a mile to drive to get to the exit onto Snively Road; the closure onto Snively and the limited right hand turn from Snively were intended as temporary; there are policy decisions that need to be made regarding the closure of streets versus having residents make that decision; when streets are improved, consideration should be given as to what the obligation to the public is; it is not wise after a street is improved, to have it closed and those living in a neighborhood should not have to pay for a street that cannot be used.

Councilors discussed the issue at length.

Mayor Ness felt that there are unique aspects with this street that should be taken into consideration with the closure to this street.

Councilors Fedora and Stauber opposed Resolution 09-0004 for the reasons of: one of the major reasons for the temporary closure was the traffic from East High School, which shortly will not be an issue; everyone would want their "cut-through" street to be blocked off; streets are public and should not be blocked off; if there are enforcement or traffic issues, they can be dealt with through other means and the lower part of Lakeview should be one way going north, to prevent the south bound through traffic.

- - -

At this time, 11:00 p.m., Councilor Eckenberg moved to suspend the rules to continue the meeting until 11:10 p.m., which motion was seconded and unanimously carried.

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Resolution 09-0003 failed upon the following vote (Public Document No. 09-0112-29):

Yeas: Councilors Fedora, Fosle and Stauber -- 3

Nays: Councilors Anderson, Cuneo, Eckenberg, Gardner, Krause and President Gilbert -- 6

- - -

Resolution 09-0004 as adopted as follows:

RESOLVED, that the city council directs the public works and utilities department to physically close the northbound lane of Lakeview Drive at Snively Road, the exact location and design to be determined by appropriate city personnel. Improvements to be funded from the Permanent Improvement Fund 0411, with final approval of a construction contract therefor by resolution.

Resolution 09-0004 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Gardner, Krause and President Gilbert -- 6

Nays: Councilors Fedora, Fosle and Stauber -- 3

Approved January 12, 2009

DON NESS, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinance was read for the first time:

INTRODUCED BY COUNCILOR STAUBER

09-001 - AN ORDINANCE AUTHORIZING CONVEYANCE BACK TO THE STATE OF MINNESOTA OF 80 ACRES OF PROPERTY KNOWN AS THE BAYVIEW FOREST PARK AND AUTHORIZING A MEMORANDUM OF UNDERSTANDING WITH THE PROCTOR SCHOOL DISTRICT REGARDING THE USE OF THE PROPERTY.

- - -

The meeting was adjourned at 11:02 p.m.

JEFFREY J. COX, City Clerk

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, January 26, 2009, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Absent: None -- 0

- - -

ELECTION OF OFFICERS

Councilor Anderson was elected vice president of the city council for 2009 upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Gardner and President Gilbert -- 6

Nays: Councilors Fosle, Krause and Stauber -- 3

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

09-0126-11 Norshor Experience, Inc., by Randall Tigue, attorney, communication regarding their on sale intoxicating liquor license (09-0012R). -- Received

09-0126-10 Roger Parsons communication regarding the proposed agreement with Bentleyville Tour of Lights, Inc. (09-0062R). -- Received

09-0126-01 The following communications regarding the proposed vacation of alleyways within a block bounded by Arrowhead Road, Humes Avenue, Cleveland Street and Kenwood Avenue (09-0070R and 09-0071R): (a) Stanley Beckman; (b) Britman Corporation; (c) Aaron Brockman; (d) Barbara Brooks; (e) D&C Letourneau Enterprises; (f) Don Letourneau; (g) John Devich; (h) Duluth Teacher's Credit Union; (i) Mary B. Gallegos; (j) Lisa Herstad; (k) Donald Michels; (l) Sharon Nelson; (m) Valerie Patterson; (n) Todd Rothe; (o) Lawrence Schubert; (p) James Splan; (q) Lisa Tepsa; (r) Forrest Vodden; (s) Steve Wehvila; (t) Marlene and Larry Zwak. -- Received

09-0126-12 The following communications regarding the proposed vacation of West Fourth Street between 44th Avenue West and 45th Avenue West (Independent School District #709) (09-0069R): (a) Donald Bergman; (b) Sherie Johnson; (c) Patty Langlee. -- Received

09-0126-02 The following communications regarding the proposed agreement with Lake Superior Zoological Society, Inc., for zoo operations (08-0764R): (a) Karina Bite; (b) Mary Beth Bujold; (c) Melissa Colt; (d) Ronald Franzen; (e) Gregg Haug; (f) Christine and John Johanson; (g) Kim Kramer; (h) Trisha Meints; (i) Georgia A. Miller; (j) Roger Morris; (k) Dave Orman; (l) Becki Peterson; (m) Gail and Jim Reynolds; (n) Liz Schwartz; (o) Marcia Semerau; (p) Agatha Standley; (q) Randy and Cathy Sylvester; (r) Pete Willemsen; (s) Katie Winkler. -- Received

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REPORTS FROM THE ADMINISTRATION

09-0126-03 Mayor order of appointment of Jeff Anderson as acting mayor. -- Received

- - -

REPORTS FROM OTHER OFFICERS

09-0126-04 Clerk applications to the Minnesota gambling control board for exemption from lawful gambling licenses (raffles) from Lincoln Park Business Group on: (a) June 20; (b) October 15, 2009. -- Received

- - -

REPORTS OF BOARDS AND COMMISSIONS

09-0126-05 Charter commission minutes of October 8, 2008, meeting. -- Received

09-0126-06 Duluth legacy endowment fund advisory board minutes of November 20, 2008, meeting. -- Received

09-0126-07 Entertainment and convention center authority minutes of January 12, 2009, building committee meeting. -- Received

09-0126-08 Planning commission minutes of December 9, 2008, meeting. -- Received

09-0126-09 Seaway Port authority minutes of: (a) May 22; (b) July 24; (c) October 2; (d) November 6; (e) December 10, 2008, meetings. -- Received

- - -

At this time, 7:08 p.m., the public hearing regarding the issuance of capital improvement bonds and reallocation of \$80,000 of proceeds of general obligation capital improvement bonds, Series 2007C, was called to order.

No one from the public spoke on this issue.

At this time, 7:10 p.m., the public hearing was closed and the regular order of business was resumed.

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RESOLUTIONS TABLED

Councilor Fedora moved to remove Resolution 08-0757, amending Resolution 89-0323 establishing the Duluth economic development authority, said amendment related to the executive director and other DEDA personnel, introduced by former President Reinert and Councilor Fedora, from the table, which motion was seconded and unanimously carried.

Councilor Fedora moved to withdraw the resolution from the agenda, which motion was seconded and unanimously carried.

- - -

Councilor Stauber moved to remove Resolution 09-0028, rescinding Resolution 08-0396 and requesting the administration allow parking along Morley Parkway from Snively Road to Leicester Avenue, from the table, which motion was seconded and unanimously carried.

Councilor Stauber moved to withdraw the resolution from the agenda, which motion was seconded and unanimously carried.

- - -

Councilor Eckenberg moved to remove Resolution 09-0014, adding an initiative to support revisions to the state of Minnesota Electrical Code requirements for sump pump installation to the city's legislative agenda for 2009, introduced by Councilor Fedora, from the table, which motion was seconded and unanimously carried.

Councilor Krause encouraged the councilors to vote against this resolution for the safety of the citizens.

Resolution 09-0014 failed upon the following vote (Public Document No. 09-0126-13):

Yeas: Councilors Anderson, Cuneo, Eckenberg and Fosle -- 4

Nays: Councilors Fedora, Gardner, Krause, Stauber and President Gilbert -- 5

- - -

Councilor Anderson moved to remove Resolution 08-0764, authorizing execution of an agreement with Arrowhead Zoological Society, Inc., from the table, which motion was seconded and unanimously carried.

The rules were suspended upon a unanimous vote to hear from a speaker on the resolution.

Dan Monroe urged the council keep the zoo open as it is a community investment for the children and the city needs to take care of the animals. He stated that the employees are hardworking and dedicated and should be the workers taking care of the animals since they have the experience to take care of the ones that are old.

Councilors Cuneo and Gardner stated that there are three components to this decision on the zoo: one is the management of the zoo, the second is finances and third is how the city transitions the employees who work there now in a respectful way. The councilors both said that funding the zoo from tourism taxes is a good step, and that the current split management of the zoo is not working and can lead to the deterioration of the zoo and thanked the zoological society for stepping up to take over the management of the zoo. Councilors Cuneo and Gardner added, however, that the transition with the current employees into the new management structure is a problem and the city should honor the contract with the city employees and owes it to the dedicated employees to allow them to be a part of the decision and transition making process which is not happening now.

Chief Administrative Officer Lisa Potswald reviewed that the administration met in June with representatives of city staff, the unions and a facilitator to discuss how to move forward were but unable to come to any agreement. She continued by saying that there have been a couple of meetings with employees to discuss what the options and alternatives are for moving forward with the zoological society being the manager of the zoo. Ms. Potswald stated that the administration has consistently said that all employees will continue to have jobs and the employees have been told about the positions they will be placed in while following the union contracts, and have offered the employees that have 21 or more years working with the city that the city would bridge them into retirement.

Mayor Ness emphasized that one of the core issues between the society and the city is that the society cannot manage city union employees which would require the city to be on site managing those employees.

Resolution 08-0764 was adopted as follows:

RESOLVED, that the proper city officers are hereby authorized to execute an agreement with the Arrowhead Zoological Society, Inc., under which the Arrowhead Zoological Society, Inc., would take over the operations of the Lake Superior Zoological Gardens, which agreement is on

file in the office of the city clerk as Public Document No. 09-0126-14; payment by the city will be made from Fund 200, Agency 130.

Resolution 08-0764 was adopted upon the following vote:

Yeas: Councilors Eckenberg, Fedora, Fosle, Krause, Stauber and President Gilbert -- 6

Nays: Councilors Anderson, Cuneo and Gardner -- 3

Approved January 26, 2009

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

RESOLVED, that the Duluth News Tribune is hereby designated as the official newspaper of the city of Duluth for the year 2009 and that city officials are authorized to contract with the Duluth News Tribune for publishing the proceedings of the Duluth City Council and other legal advertising as needed for an estimated annual cost of \$31,000, based on the vendor's rate of \$.25 per line (\$2.50 per column inch) and the previous year's estimate, terms net 30, and payable from various funds, agencies, organizations and objects.

Resolution 09-0044 was unanimously adopted.

Approved January 26, 2009

DON NESS, Mayor

- - -

RESOLVED, that Contract #19944 with Minnesota Elevator, Inc., is hereby extended for one year through December 31, 2009, for monthly maintenance and upgrade of city elevators according to code, for a total amount of \$29,419.40, terms net 30, payable from various funds, agencies, organizations and objects.

Resolution 09-0045 was unanimously adopted.

Approved January 26, 2009

DON NESS, Mayor

- - -

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

(a) On December 3, 2008, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Mallow Enterprises, Inc. (Big Bottle Shop), 2401 West Superior Street, and has submitted its report to the city council of the city of Duluth as Public Document No. 09-0126-15;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on January 26, 2009, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 09-0126-15 regarding any suspension, revocation and/or civil penalty relating to the off sale intoxicating liquor license of Mallow Enterprises, Inc. (Big Bottle Shop), 2401 West Superior Street, are adopted.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the Duluth City Council fine the licensee \$500 for the first offense, however that \$250 of the fine be due and payable within 30 days of final council action. The remaining fine amount to be stayed for a period of one year following final council action and be abated if no same or similar violations occur during that one year period.

Resolution 09-0065 was unanimously adopted.

Approved January 26, 2009

DON NESS, Mayor

- - -

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

(a) On December 3, 2008, 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 (Sportsmen's Liquor), 3404 Grand Avenue, and has submitted its report to the city council of the city of Duluth as Public Document No. 09-0126-16;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on January 26, 2009, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 09-0126-16 regarding any suspension, revocation and/or civil penalty relating to the off sale intoxicating liquor license of Golden Eagle Liquors, LLC (Sportsmen's Liquor), 3404 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 Duluth City Council fine the licensee \$500 for the first offense, however that \$250 of the fine be due and payable within 30 days of final council action. The remaining fine amount to be stayed for a period of one year following final council action and be abated if no same or similar violations occur during that one year period.

Resolution 09-0066 was unanimously adopted.

Approved January 26, 2009

DON NESS, Mayor

- - -

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

(a) On December 3, 2008, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Mitch's, Inc. (Mitch's Bar & Grill), 2113 West Superior Street, and has submitted its report to the city council of the city of Duluth as Public Document No. 09-0126-17;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on January 26, 2009, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 09-0126-17 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of Mitch's, Inc. (Mitch's Bar & Grill), 2113 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 Duluth City Council fine the licensee \$500 for the first offense, however that \$250 of the fine be due and payable within 30 days of final council action. The remaining fine amount to be stayed for a period of one year

following final council action and be abated if no same or similar violations occur during that one year period.

Resolution 09-0067 was unanimously adopted.
Approved January 26, 2009
DON NESS, Mayor

- - -

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

(a) On December 3, 2008, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Ray's B&G, Inc. (North Pole Bar/Ray's Grill), 5606-5610 Raleigh Street, and has submitted its report to the city council of the city of Duluth as Public Document No. 09-0126-18;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on January 26, 2009, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 09-0126-18 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of Ray's B&G, Inc. (North Pole Bar/Ray's Grill), 5606-5610 Raleigh 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 Duluth City Council fine the licensee \$500 for the first offense, however that \$250 of the fine be due and payable within 30 days of final council action. The remaining fine amount to be stayed for a period of one year following final council action and be abated if no same or similar violations occur during that one year period.

Resolution 09-0068 was unanimously adopted.
Approved January 26, 2009
DON NESS, Mayor

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WHEREAS, Regulation 24 CFR Part 91 issued by the U.S. department of housing and urban development (HUD) requires the city to submit and receive HUD approval of an annual action plan as part of a HUD-approved five-year consolidated plan for the city of Duluth; and

WHEREAS, Title 1 of the Housing and Community Development Act of 1974, as amended, establishes a community development block grant (CDBG) program for the purpose of developing viable urban communities by providing decent housing and suitable living environment and expanding economic opportunities and preventing and/or eliminating conditions of slum and blight, principally for persons of low and moderate income; and

WHEREAS, the city of Duluth desires to continue to carry out HUD-funded programs.

NOW, THEREFORE, BE IT RESOLVED, that the FY 2009 action plan portion of the FY 2005-2009 city of Duluth consolidated plan for housing and community development required by HUD federal legislation is hereby adopted and approved.

BE IT FURTHER RESOLVED, that the city of Duluth hereby makes a finding that expenditures as set forth in Resolution 09-0048 are necessary and appropriate and, further, that said expenditures for the CDBG program will serve to assist low- and moderate-income individuals/families (no less than 70 percent as described in federal regulations) and/or serve to prevent or eliminate conditions of slum or blight in the community.

BE IT FURTHER RESOLVED, that the city of Duluth hereby makes a finding that expenditures as set forth in resolutions 09-0049 and 09-0050 are necessary and appropriate and,

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

further, that said expenditures for the HOME and ESG programs will serve to assist low- and moderate-income people.

BE IT FURTHER RESOLVED, that the city of Duluth and its officials are authorized and directed to assume full responsibility for assuring that its community development program is carried out in full compliance with the provisions of the acts implementing the programs and all regulations of HUD issued pursuant thereto and authorizing appropriate city officials to execute any documents with HUD to implement the program. This authorization shall also apply to existing programs with the city and HUD under the HUD CDBG, HOME and emergency shelter grant programs.

Resolution 09-0047 was unanimously adopted.

Approved January 26, 2009

DON NESS, Mayor

- - -

WHEREAS, City Council Resolution No. 09-0047, adopted January 26, 2009, approved the FY 2009 action plan portion of the Duluth consolidated plan for housing and community development FY 2005-2009; and

WHEREAS, the secretary of HUD is authorized to make grants to cities and/or counties to finance local community development programs, approved in accordance with the provisions of Title I of said act, as well as grants under the Cranston-Gonzales National Affordable Housing Act of 1990, as amended, (the HOME program) and the Stewart B. McKinney Homeless Assistance Act of 1987, as amended (the emergency shelter grant-ESG-program).

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are hereby authorized to make and submit appropriate documentation to HUD for those projects and corresponding funding levels as set forth below:

2009 CITY OF DULUTH COMMUNITY
DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM-FUND 262 PROJECT CD09CD

<u>SUBPROJECT</u>	<u>ACTIVITY</u>	<u>AMOUNT</u>	<u>PROJECTS</u>
<u>HOUSING PROJECTS</u>			
HOUS	1734	\$1,285,468	Duluth property rehabilitation program - HRA/NCLT
HOUS	1291	\$ 42,000	Downpayment assistance for IDAs - Community Action Duluth
HOUS	1091	\$ 244,000	Duluth weatherization program - AEOA
HOUS	HS04	\$ 50,500	Section 108 loan guarantee payment - Duluth rental housing program - Village Place
<u>ECONOMIC DEVELOPMENT PROJECTS</u>			
ECDV	2412	\$ 150,000	SOAR Duluth At Work - SOAR Career Solutions
ECDV	1244	\$ 112,500	CHUM support services for employment - Churches United in Ministry

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ECDV	2805	\$ 37,500	NYS JET (jobs, education and training) - Neighborhood Youth Services
ECDV	2264	\$ 80,000	Growing neighborhood businesses - Northeast Entrepreneur Fund, Inc.

PUBLIC FACILITY IMPROVEMENT PROJECTS

PFAC	PF01	\$ 170,000	Curb ramp accessibility and sidewalk improvements
PFAC	PF02	\$ 15,000	Community development street assistance program

PUBLIC SERVICE PROJECTS

PSVC	1244	\$ 76,000	Duluth Hunger Project - CHUM
PSVC	1929	\$ 70,000	Primary healthcare services - Lake Superior Community Health Center
PSVC	1348	\$ 20,000	Clothes That Work and social services - Damiano Center
PSVC	2511	\$ 43,150	Emergency heating assistance - Salvation Army
PSVC	1974	\$ 23,000	Youth Center - Life House
PSVC	134A	\$ 21,000	Eviction and homelessness prevention - Damiano Center
PSVC	2509	\$ 32,000	Battered Women's Shelter program - Safe Haven Shelter and/or AICHO
PSVC	251A	\$ 54,000	Transitional housing program - Salvation Army and/or WCDO
PSVC	1168	\$ 96,000	Youth Development Collaborative: Valley Youth Center, Grant Community School Collaborative, Boys & Girls Club, YMCA Mentor Duluth Collaborative, YWCA Girls & Youth programs

PLANNING/PROGRAM ADMINISTRATION

ADMC	AD01	\$ 535,200	CDBG program administration
ADMC	AD02	\$ 50,000	Neighborhood planning
		\$3,207,318	Total

BE IT FURTHER RESOLVED, that the following are hereby designated as the financial resources for the above program:

SOURCE OF FUNDING

Year 2008	CDBG Grant - city	\$2,901,000
Year 2005	CDBG Grant - city	\$ 6,318
Year 2006	CDBG Grant - city	\$ 174,116

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Year 2007	CDBG Grant - city	\$ 125,884
<hr/>		
Total		\$3,207,318

BE IT FURTHER RESOLVED, that the proper city officials are authorized to make the following transfers in prior year community development accounts:

	<u>Original Budget</u>	<u>Amount of Change</u>	<u>Revised Budget</u>
<u>2005</u> CD05CD			
PFAC-PF04 Hillside Sport Court	\$ 75,000	-\$ 6,318	\$ 68,682
<u>2006</u> CD06CD			
HOUS-2239 NHS affordable housing services	\$ 97,150	-\$ 41,430	\$ 55,720
PFAC-PF02 Downtown accessibility-Pase III	\$177,900	-\$ 46,885	\$131,015
PFAC-PF06 Morgan Park streets-Phase III	\$ 80,000	-\$ 38,705	\$ 41,295
ECDV-1244 Lifecyclers, Inc.	\$ 47,096	-\$ 47,096	\$0
<u>2007</u>			
PFAC-PF01 Hillside neighborhood accessibility	\$154,900	-\$ 41,817	\$113,083
PSVC-1974 Youth Center-Life House	\$ 25,000	-\$ 5,000	\$ 20,000
Bal.Sh.2220 Lien repayments	\$ 79,067	-\$ 79,067	\$0

\$306,318 - Total amount reprogrammed

BE IT FURTHER RESOLVED, that the city of Duluth and its officials are authorized and directed to assume full responsibility for assuring that its community development program is carried out in full compliance with the provisions of the acts implementing the programs and all regulations of HUD issued pursuant thereto. This authorization shall also apply to existing programs with the city and HUD under the HUD CDBG, HOME and ESG programs.

BE IT FURTHER RESOLVED, that the appropriate city officials are authorized to execute the appropriate agreements with these agencies upon receipt of HUD funds.

Resolution 09-0048 was unanimously adopted.

Approved January 26, 2009

DON NESS, Mayor

- - -

WHEREAS, City Council Resolution No. 09-0047, adopted January 26, 2009, approved the FY 2009 action plan portion of the Duluth consolidated plan for housing and community development FY 2005-2009; and

WHEREAS, the secretary of HUD is authorized to make grants to cities and/or counties to finance local community development programs, approved in accordance with the provisions of Title I of said act, as well as grants under the Cranston-Gonzales National Affordable Housing Act

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

of 1990, as amended, (the HOME program) and the Stewart B. McKinney Homeless Assistance Act of 1987, as amended (the emergency shelter grant-ESG-program).

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are hereby authorized to make and submit appropriate documentation to HUD for those projects and corresponding funding levels as set forth below:

2009 HOME PROGRAM - FUND 260, PROJECT CD09HM

<u>SUBPROJECT</u>	<u>ACTIVITY</u>	<u>PROJECTS</u>	<u>AMOUNT</u>
GN09	1736	Homeless rental assistance program (TBRA)- HRA	\$ 37,950
GNO9	1737	TBRA administration - HRA	\$ 3,000
CH09	2270	Housing predevelopment - NCLT	\$ 20,000
CH09	2271	Rehabilitation - resale - NCLT Duluth Veterans' Place - NCLT Property acquisition/rehabilitation - Center City	\$340,000 \$250,000 \$ 99,240
GN09	AD01	Program administration (city)	<u>\$ 77,000</u>
		Total	\$827,190

BE IT FURTHER RESOLVED, the following are hereby designated as the financial sources for the above program:

Year 2009	HOME grant	\$800,000
Year 2008	Program income	<u>\$ 27,190</u>
Total		\$827,190

BE IT FURTHER RESOLVED, that the proper city officials are authorized to make the following transfers in prior year community development accounts:

		<u>Original Budget</u>	<u>Amount of Change</u>	<u>Revised Budget</u>
<u>2008 CD08HM</u>				
Bal. Sh. 2220	Lien repayments	\$ 27,190	-\$ 27,190	-0-
		\$27,190 - Total amount reprogrammed		

BE IT FURTHER RESOLVED, that the city of Duluth and its officials are authorized and directed to assume full responsibility for assuring that its community development program is carried out in full compliance with the provisions of the acts implementing the programs and all regulations of HUD issued pursuant thereto. This authorization shall also apply to existing programs with the city and HUD under the HUD CDBG, HOME and ESG programs.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

BE IT FURTHER RESOLVED, that the appropriate city officials are authorized to execute the appropriate agreements with these agencies upon receipt of approval of HUD funds.

Resolution 09-0049 was unanimously adopted.

Approved January 26, 2009

DON NESS, Mayor

- - -

WHEREAS, City Council Resolution No. 09-0047, adopted January 26, 2009, approved the FY 2009 action plan portion of the Duluth consolidated plan for housing and community development FY 2005-2009; and

WHEREAS, the secretary of HUD is authorized to make grants to cities and/or counties to finance local community development programs, approved in accordance with the provisions of Title I of said act, as well as grants under the Cranston-Gonzales National Affordable Housing Act of 1990, as amended, (the HOME program) and the Stewart B. McKinney Homeless Assistance Act of 1987, as amended (the eEmergency shelter grant-ESG-program).

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are hereby authorized to make and submit appropriate documentation to HUD for those projects and corresponding funding levels as set forth below:

2009 ESG PROGRAM - FUND 262, PROJECT CD09ES

<u>SUBPROJECT</u>	<u>PROJECTS</u>	<u>AMOUNT</u>
1244	CHUM Stabilization Services for Homeless	\$ 28,000
2109	MACV - Duluth	\$ 16,000
2509	Battered Women's Shelter programs-Safe Haven and/or AICHO	\$ 23,000
2511	Transitional housing-Salvation Army and/or WCDO	\$ 41,047
1974	Life House, Harbor House	\$ 14,000
	Program administration-city	<u>\$ 4,000</u>
	Total	\$126,047

BE IT FURTHER RESOLVED, that the following is hereby designated as the financial resource for the above program:

Source of Funding

2009 ESGP grant	\$125,000
2007 ESGP grant	<u>1,047</u>
Total	\$126,047

BE IT FURTHER RESOLVED, that the proper city officials are authorized to make the following transfer in 2007 emergency shelter grant program account:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

		<u>Original Budget</u>	<u>Amount of Change</u>	<u>Revised Budget</u>
<u>2007</u>				
CD07ES 1974	Life House - Harbor House	\$15,200	-\$1,047	\$14,153
	\$1,047 - Total amount reprogrammed			

BE IT FURTHER RESOLVED, that the city of Duluth and its officials are authorized and directed to assume full responsibility for assuring that its community development program is carried out in full compliance with the provisions of the acts implementing the programs and all regulations of HUD issued pursuant thereto. This authorization shall also apply to existing programs with the city and HUD under the HUD CDBG, HOME and ESG programs.

BE IT FURTHER RESOLVED, that the appropriate city officials are authorized to execute the appropriate agreements with these agencies upon receipt of approval of HUD funds.

Resolution 09-0050 was unanimously adopted.

Approved January 26, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute a memorandum of understanding with DEDA, substantially in the form of that on file in the office of the city clerk as Public Document No. 09-0126-19, which allows DEDA to participate during 2009 in the city's self insurance fund program; DEDA funds in the amount of \$6,500 to be deposited in 610-036-1656-4904.

Resolution 09-0053 was unanimously adopted.

Approved January 26, 2009

DON NESS, Mayor

- - -

RESOLVED, that:

(a) The city council finds a sufficient petition was filed with the city clerk requesting an amendment to a special use permit issued on April 14, 1997, as Resolution 97-0916 for an equipment building for Verizon Wireless at 416 West Tenth Street, legally described as Lots 65 and 67, Block 135, Duluth Proper Third Division; and

(b) Pursuant to Section 50-32 of Article IV 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

(c) The planning commission, at its January 13, 2009, regular meeting, recommended approval of the request with conditions; and

(d) The approval was made because of the city planning commission's findings 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.

FURTHER RESOLVED, that the city council of the city of Duluth approves a special use permit for an equipment building, subject to the following conditions:

(a) Proper permits are to be secured prior to start of construction;

(b) The equipment shelter be limited to, constructed and maintained according to the following documents provided by Verizon Wireless:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Documents labeled T-1, A-1, A-2, A-3, A-4, A-5, A5.1, A-6, E-1 dated 12-1-08 prepared by Design 1, Robert Davis, 9973 Valley Road, Eden Prairie, MN 55344, Telephone Number 952-903-9299;

(c) That any alterations that do not alter major elements of the plan documents may be approved by the director of community resources (aka planning and development) without further planning commission or city council action; however, no such administrative approval shall constitute a variance from the provisions of Chapter 50 or Chapter 51.

Resolution 09-0056 was unanimously adopted.

Approved January 26, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept the grant funds to enter into a HOME agreement with NCLT substantially in the form of that on file in the office of the city clerk as Public Document No. 09-0126-20, the amount payable thereunder of \$250,000 from 260 020-5434 CD08HM CH08-2273.

Resolution 09-0072 was unanimously adopted.

Approved January 26, 2009

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. 09-0126-21, with, and accept funds from, St. Louis County to provide Minnesota family investment program, diversionary work program and E-3 innovation program employment and training services in an amount not less than \$938,864 for the period January 1, 2009, through December 31, 2009. Monies received under this agreement will be deposited in Fund 268, Agency 031, Organization 6235 (MFIP), 6236 (DWP) and 6228 (E-3).

Resolution 09-0055 was unanimously adopted.

Approved January 26, 2009

DON NESS, Mayor

- - -

RESOLVED, city officials are hereby authorized to amend and extend Agreement No. 20458 with Minnesota Power, a division of Allete, Inc., for one year, from January 1, 2009, through December 31, 2009, to continue professional services related to the acquisition, transportation and management of the natural gas supply for the city's gas utility, at an amount not to exceed \$31,800, payable from the Gas Fund 520, Agency 500, Organization 1960, Object 5310.

Resolution 09-0040 was unanimously adopted.

Approved January 26, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Bobcat of Duluth for the purchase and delivery of a Bobcat 5600 Turbo Toolcat with 56 HP diesel engine and options for the park maintenance division in accordance with state of Minnesota Contract #439916, Release #T652(5), specifications and pricing in the amount of \$47,339.45 plus \$3,077.07 sales

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tax for a total amount of \$50,416.52, terms net 30, FOB destination, payable out of Capital Equipment Fund 250, Department 015, Organization 2008, Object 5580, Project CE250-V809.

Resolution 09-0043 was unanimously adopted.

Approved January 26, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a lease agreement with Compudyne, Inc., substantially in the form of that on file in the office of the city clerk as Public Document No. 09-0126-22 for the location and operation by Compudyne of wireless communications equipment on the Highland Water Tower, payments to be made to the Water Fund 510, Agency 500, Revenue Source 4809.

Resolution 09-0058 was unanimously adopted.

Approved January 26, 2009

DON NESS, Mayor

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RESOLVED, that the proper city officers are hereby authorized to enter into a consultant agreement with Northland Consulting Engineers, LLP, in an amount not to exceed \$75,000, from Capital Bond Fund 450, Agency 030, Object 5520, Project No. CP2007 OT-0705, for providing professional engineering services to the city of Duluth in connection with City Hall steam vaults; said services and payment therefore to be substantially as outlined in the agreement on file in the office of the city clerk as Public Document No. 09-0126-23.

Resolution 09-0064 was unanimously adopted.

Approved January 26, 2009

DON NESS, Mayor

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RESOLVED, that city officials are hereby authorized to reimburse St. Louis County property management 50 percent of the 2008 costs in upgrading the shared public impound lot at the St. Louis County public safety building on 2030 Arlington Avenue North in Duluth for an amount of \$30,480.43, payable from the following accounts:

(a) \$3,163.05 from General Fund 100, Agency 200, Organization 1640-2232, Object 5241;

(b) \$6,951.88 from General Fund 100, Agency 200, Organization 1640-2233, Object 5441; and

(c) \$20,365.50 from Duluth Police Grant Programs Fund 215, Agency 200, Organization 2261, Object 5580.

Resolution 09-0041 was unanimously adopted.

Approved January 26, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officers are authorized to accept a grant from the state of Minnesota commissioner of public safety, state patrol division, to fund the city's participation in the NightCAP program in the amount of \$19,800, to be deposited in Fund 110, Agency 160,

Organization 1610, Revenue Source 4220-02, and to execute any documents required to be executed to accept such grant (Public Document No. 09-0126-24).

Resolution 09-0054 was unanimously adopted.

Approved January 26, 2009

DON NESS, Mayor

- - -

RESOLVED, that Resolution 07-0189 is hereby amended by increasing the amount authorized to be used for providing services as a hazardous materials chemical assessment team from \$45,000 to \$90,000 and increasing the total amount authorized for acceptance pursuant to said resolution by a corresponding amount.

Resolution 09-0075 was unanimously adopted.

Approved January 26, 2009

DON NESS, Mayor

- - -

RESOLVED, that Resolution 08-0704 is hereby amended and the vendor name changed from Denny Hecker's Automall to Nelson Auto Center, on a contract for the purchase and delivery of two 2009 Dodge Chargers for use as marked police squads in accordance with state of Minnesota Contract #440044, Release #A-228(5), specifications and pricing in the amount of \$42,420.10, terms net 30, FOB destination, payable out of Capital Equipment Fund 250, Agency 015, Organization 2008, Object 5580, Project CE250-V803.

Resolution 09-0078 was unanimously adopted.

Approved January 26, 2009

DON NESS, Mayor

- - -

The following resolutions were also considered:

Resolution 09-0051, of the city of Duluth, Minnesota, stating the intent to issue an amount not to exceed \$1,800,000 general obligation capital improvement bonds, Series 2009, and to reallocate prior capital improvement bond proceeds, was introduced by Councilor Fedora for discussion.

Councilor Stauber stated he cannot support bonding for capital improvements which should be on a pay-as-you-go basis.

Resolution 09-0051 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. 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 15, 2008 (the plan).

Section 2. The city council held a public hearing on January 26, 2009, on the city's intention to issue bonds in 2009 in an amount not to exceed \$1,800,000 and on the reallocation of certain bond proceeds 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. A. 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 2009 (the bonds), in an amount not to

exceed \$1,800,000, for the purpose of providing funds for the acquisition and betterment of the following projects: improvements at City Hall including roof and window replacement, elevator improvements and repairs to the courtyard and Second Street vault; improvements to fire department facilities including masonry, overlays and remodeling; modifications and maintenance of the mechanical systems at the main library; and payment of discount and costs of issuance of the bonds;

B. Further, the city previously issued its \$1,240,000 general obligation capital improvement bonds, Series 2007C, dated December 13, 2007 (the Series 2007C bonds). The council hereby finds and determines that it is necessary, expedient and in the best interest of the city's residents that the city reallocate, in accordance with the plan, the sum of \$80,000 of the proceeds of the Series 2007C bonds to finance costs of the construction of improvements to City Hall.

Section 4. A. The city clerk shall publish a notice of intent to issue capital improvement bonds and to reallocate proceeds of the Series 2007C bonds in substantially the form on file as Public Document No. 09-0126-25 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 and/or the reallocation of the proceeds of the 2007C bonds, as applicable, 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 and/or such reallocation, as applicable, shall not be issued or reallocated until the question of their issuance and/or reallocation, as applicable, 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 09-0051 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause and President Gilbert -- 8

Nays: Councilor Stauber -- 1

Approved January 26, 2009

DON NESS, Mayor

- - -

Resolution 09-0012, in the matter of the on sale intoxicating liquor license Norshor Experience, Inc. (Norshor Experience), 211 East Superior Street, was introduced by Councilor Krause for discussion.

The rules were suspended upon a unanimous vote to hear from a speaker on the resolution.

Randall Tigue, attorney for Norshor Experience, explained that his first objection is that the findings of facts that were written after the hearing by the alcohol, gambling and tobacco commission (AGTC) were never voted on by the commission before being presented to the city council. He stated his second objection is that Norshor Experience is being singled out for a high number of police calls when it was undisputed that it was not in the top five bars for police service calls, and Norshor was the only one required to cut the calls in half, which they did. Mr. Tigue also explained that the Norshor is being charged for controlled substance use on the premises when the only reason the police knew of the controlled substance was when the employees told the police. He continued by saying that this action is being used as a basis for disciplinary action

which makes the statement that if a bar asks the police for help to get rid of drug dealing in their bar, the city will go after your liquor license.

Councilor Fedora stated that because of the high number of police service calls to the Norshor, there should be compensation for that level of service which will send a message to other establishments with excessive calls for police service that appropriate punishment would be levied.

Councilor Fedora moved to add the following language to the end of the resolution:

"The council hereby accepts the commission recommendation that licensee shall be fined \$750 and have its license suspended for one day but further determines that no part of the fine or the one-day suspension shall be stayed. The council further determines that full payment of \$750 shall be paid within 30 days of council action and the one day suspension shall take place the second Friday following the effective date of this resolution,' which motion was seconded for discussion.

Councilor Stauber stated the council should follow the AGTC's recommendation as they are the group that has been doing the work and conducting the hearings.

Councilor Fedora's amendment passed upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause and President Gilbert -- 8

Nays: Councilor Stauber -- 1

Resolution 09-0012, as amended, was adopted as follows:

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

(a) On July 22, 2008, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Norshor Experience, Inc., d/b/a Norshor Experience, 211 East Superior Street and has submitted its report to the city council of the city of Duluth as Public Document No. 09-0126-26;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on January 26, 2009, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 09-0126-26 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of Norshor Experience, Inc., d/b/a Norshor Experience, 211 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: the commission recommends that the licensee be fined \$750 and have its license suspended for one day for this offense. The commission further recommends that payment of \$250 of the fine and the one day license suspension be stayed for a period of 12 months and if no further violation of the laws regulating the sale of intoxicating beverages occurs during the 12 month period following the date of the council's action, then the \$250 fine and one day suspension will be removed. The commission finally recommends payment of the \$500 be paid within 30 days of council action.

The council hereby accepts the commission recommendation that licensee shall be fined \$750 and have its license suspended for one day but further determines that no part of the fine or the one day suspension shall be stayed. The council further determines that full payment of

\$750 shall be paid within 30 days of council action and the one day suspension shall take place the second Friday following the effective date of this resolution.

Resolution 09-0012, as amended, was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause and President Gilbert -- 8

Nays: Councilor Stauber -- 1

Approved January 26, 2009

DON NESS, Mayor

- - -

Resolution 09-0057, denying a request to amend Chapter 50 of the Duluth City Code, 1959, as amended, Zoning District Map No. 21 as contained in the Appendix to Chapter 50, to provide for the reclassification from M-1, Manufacturing, to R-3, Apartment Residential, property located on West First Street between 24th Avenue West and 25th Avenue West (Thomas Swanson), was introduced by Councilor Stauber.

Councilor Stauber moved to table the resolution for consideration with its companion Ordinance 09-002 on February 10, which motion was seconded and unanimously carried.

- - -

Resolution 09-0069, vacating part of West Fourth Street between 44th Avenue West and 45th Avenue West (Independent School District #709), was introduced by Councilor Stauber for discussion.

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

Ronald A. Miller stated that a private company is stepping in to influence our public governing body and the people need to vote on the school plan.

Lawrence Burda asked the city council for help to engage the school board into bringing a plan to the citizens that is responsible, as the red plan is dividing the city and sending hundreds of Duluth students out of ISD 709. He continued by saying that the red plan comes at a time when Duluth is in bad financial shape and people cannot afford the new school taxes and asked the council not to vote on any street vacations until the Plan B school plan has been voted on by the public.

Tim Velner urged support for closing the street at Denfeld because it runs through the school campus and is a safety issue for the kids crossing the street to get to their cars.

Harry Welty stated the school district's plans are constantly changing and encouraged the council to wait until the school board finalizes the plans for Denfeld instead of giving them a green light on whatever they decide to do.

Jay Cole stated that there will be an influx of jobs in Duluth because of the construction of the schools.

Katie Krikorian expressed her concern that the school board is not being straightforward with their answers and urged the council to get straight answers from the school board and not to settle for less.

Pam Kramer, representing LISC and SCVNDA, stated that both organizations have been working to revitalize the neighborhood in West Duluth, and that quality education and the upgrading of aging facilities are part of a healthy community, creating a sustainable neighborhood for people who live there.

Councilor Krause stated that by closing neighborhood schools it is destabilizing two neighborhoods, schools are becoming remote from where the families live, and this school is a landlocked piece of land trying to fit more and more in there, creating a bigger traffic problem.

Councilor Stauber stated that the city should get something in writing from the school district guaranteeing that what they say will be done by the district will be done because once the street is vacated, the street is lost to the city.

Resolution 09-0069 was adopted as follows:

RESOLVED, that:

(a) The city council finds a sufficient petition was filed with the city clerk requesting the vacation of West Fourth Street from the west right-of-way line of 44th Avenue West to the east right-of-way line of 45th Avenue West; 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 and such commission gave due notice of public hearing and did consider same in public hearing (FN 08119); and the city planning commission found that the proposed improvement to the school campus will render this section of West Fourth Street useless for some or all of the purposes for which it was dedicated, the school district owns land on both sides of the street to be vacated and accommodations can be made using pedestrian and utility easements; and

(c) The planning commission, at its January 13, 2009, regular meeting did approve vacating the street petitioned for vacation with the condition that an alternative easement to the public for pedestrian and utility purposes be approved by city council and associated costs be paid for by the ISD #709; and

(d) That the city council of the city of Duluth approves the vacation of the following and as more particularly described on Public Document No. 09-0126-27: vacation of that part of West Fourth Street from the west right-of-way line of 44th Avenue West to the east right-of-way line of 45th Avenue West; and

(e) That the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution, together with a plat showing the portion of the street to be vacated.

Resolution 09-0069 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Gardner and President Gilbert -- 6

Nays: Councilors Krause and Stauber -- 2

Abstention: Councilor Fosle -- 1

Approved January 26, 2009

DON NESS, Mayor

- - -

Resolutions 09-0070 and 09-0071, approving and denying, respectively, the vacation of alleyways within a city block bounded by Arrowhead Road, Humes Avenue, Cleveland Street and Kenwood Avenue (Duluth Teachers Credit Union), were introduced by Councilor Stauber for discussion.

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

Don Behling, Cheryl Behling, John Sorenson, Stanley Beckman, Marlene Zwak, Diane Sorenson and Barbara Brooks urged the councilors not to support the vacation for the following reasons: there are already three Walgreen's in Duluth which could lead to an over saturation of the store; this will invade the neighborhood and change the complexity of a family neighborhood; there will be traffic safety issues with the ingress and egress off a residential street; there will be

a high traffic volume and this would be a high impact versus the low impact business that was the original reason for the zoning change.

Councilor Stauber moved to table the resolutions, which motion was seconded and unanimously carried.

- - -

Resolution 09-0029, amending Resolution 08-0344 retaining Kennedy & Graven, Chartered, as special counsel to assist the city attorney in retiree healthcare litigation by \$30,000, for a new total amount not to exceed \$80,000, was introduced by President Gilbert for discussion.

Councilor Stauber stated that the city attorney could have handled the amount of work that has been done so far and voiced concern that this law firm will be coming back to ask for more money at a later date.

Resolution 09-0029 was adopted as follows:

RESOLVED, that the proper city officers are hereby authorized to amend Resolution 08-0344, retaining Kennedy & Graven, Chartered, to assist the city attorney in the representation of the city in a matter currently pending in the St. Louis County district court and entitled *Hartley Conrad, Paula Savela and Carol Griak v. City of Duluth*, Court File No. 69DU-CV-08-1793, and to be available on a continuing basis to advise the city on the issues involved in the lawsuit, as set out in the request for proposals, pursuant to its proposal dated May 20, 2008, not to exceed \$80,000, payable from Fund 610-036-1650-5319.

Resolution 09-0029 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause and President Gilbert -- 8

Nays: Councilor Stauber -- 1

Approved January 26, 2009

DON NESS, Mayor

- - -

Resolution 09-0063, authorizing agreement with Lockridge Grindal Nauen, PLLP, for federal legislative services not to exceed \$48,000, was introduced by President Gilbert for discussion.

Councilor Stauber stated it does not make sense for the city to hire lobbyists to represent Duluth in Washington, DC, when we elect representatives who are supposed to be doing that.

Councilor Fedora stated the city's financial times are too tough to be spending money on a federal lobbyist and that taking money from the water fund after water rates were raised this year is not the right thing to do.

Mayor Ness explained that there are millions of dollars at stake for the city this year and the lobbyists will help get money for several projects, including the sanitary sewer overflows, transportation funding for work on Skyline Parkway and Joshua Avenue and help keep the 148th Fighter Wing stationed in Duluth.

Resolution 09-0063 as adopted as follows:

RESOLVED, that the proper city officials are hereby authorized to execute an agreement, substantially in the form of that on file with the city clerk as Public Document No. 09-0126-28, with Lockridge Grindal Nauen, PLLP, under which that firm will assist the city in monitoring, reporting and lobbying related to certain federal legislative and administrative matters, at a cost to the city not to exceed \$48,000, payable from Fund 510 Water Fund, Department 500, Division 1915 general expense - \$12,000; Fund 530 Water Fund, Department 500, Division 1915 general

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

expense - \$12,000; Fund 110 general fund, Department 700, Division 1401 citywide dues and lobbying - \$24,000.

Resolution 09-0063 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fosle, Gardner, Krause and President Gilbert -- 7

Nays: Councilors Fedora and Stauber -- 2

Approved January 26, 2009

DON NESS, Mayor

- - -

Resolution 09-0074, authorizing an agreement with Historic Union Depot, Inc., in the amount of \$151,800, was introduced by President Gilbert for discussion.

The rules were suspended upon a unanimous vote to hear from a speaker on the resolution.

Ken Buehler thanked the councilors for their past support as the Depot, and the nine participating member organizations in the Depot are the heart and soul of the arts, history and culture in the community.

Councilor Krause stated that there are many ways to use tourism tax dollars and proposed that the city supplant this with police activities such as identity theft which is tourist driven and could be easily justified.

Resolution 09-0074 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. 09-0126-29, with the Historic Union Depot, Inc. (Depot), in an amount not to exceed \$151,800, payable from Fund 258-030-5436-03.

Resolution 09-0074 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Stauber and President Gilbert -- 8

Nays: Councilor Krause -- 1

Approved January 26, 2009

DON NESS, Mayor

- - -

Resolution 09-0061, authorizing city officials to execute a four-year agreement with Northern Energetics for energy consulting services and audits for a total amount not to exceed \$272,000, was introduced by Councilor Fosle for discussion.

Councilor Fosle stated that this is a large amount of money being spent for services that could be done for free.

Resolution 09-0061 was adopted as follows:

RESOLVED, that city officials are hereby authorized to execute an agreement with Northern Energetics, said agreement to be substantially in the form of Public Document No. 09-0126-30 on file in the office of the city clerk, to provide energy consulting services and audits for approximately

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

1,000 single and multifamily family homes per year, for years 2009, 2010, 2011 and 2012, for an amount not to exceed \$272,000, payable from the Home Energy Conservation Fund 555, Agency 500, Object 5441.

Resolution 09-0061 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Gardner, Krause, Stauber and President Gilbert -- 8

Nays: Councilor Fosle -- 1

Approved January 26, 2009

DON NESS, Mayor

- - -

BE IT RESOLVED, that the proper city officials are authorized to accept a grant from the National Association of Aging and Nutritional Services Programs in the amount of \$10,000 and to execute the grant agreement, substantially the same as that on file with the clerk as Public Document No. 09-0126-31; grant proceeds to be deposited in Fund 210-030-3150.

Resolution 09-0052 was unanimously adopted.

Approved January 26, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept a grant, a copy of which is on file in the office of the city clerk as Public Document No. 09-0126-34(a), from the Duluth legacy endowment fund in the amount of \$500 for the Harrison Community Recreation Center rain water displacement project; said sum to be deposited in Capital Fund 450-030-4270, CP 2009 OT-0721, and to execute all documents necessary thereto.

RESOLVED FURTHER, that the proper city officials are hereby authorized to accept a grant, a copy of which is on file in the office of the city clerk as Public Document No. 09-0126-34(b), from the Duluth legacy endowment fund in the amount of \$500 for the Chester Bowl Improvement Club - ski cadet program; said sum to be deposited in Special Projects Fund 210-030-3150, and to execute all documents necessary thereto.

RESOLVED FURTHER, that the proper city officials are hereby authorized to accept a grant, a copy of which is on file in the office of the city clerk as Public Document No. 09-0126-34(c), from the Duluth legacy endowment fund in the amount of \$1,000 for the Duluth public schools FOCUS PLUS and ARCH programs - Lincoln Park improvement project; said sum to be deposited in Special Projects Fund 210-030-3150, and to execute all documents necessary thereto.

RESOLVED FURTHER, that the proper city officials are hereby authorized to accept a grant, a copy of which is on file in the office of the city clerk as Public Document No. 09-0126-34(d), from the Duluth legacy endowment fund in the amount of \$1,000 for the Duluth public library book time with your baby program; said sum to be deposited in General Fund 110-130-1303-4270, and to execute all documents necessary thereto.

Resolution 09-0060 was unanimously adopted.

Approved January 26, 2009

DON NESS, Mayor

- - -

Resolution 09-0062, authorizing the city to enter into an agreement with Bentleyville Tour of Lights, Inc., and the entertainment and convention center authority for the production, promotion

and management of the 2009 Bentleyville Tour of Lights, was introduced by Councilor Anderson for discussion.

Councilor Stauber stated one concern is that Bayfront is being turned over to Bentleyville for 123 days, which allows them to sublet during that period to other vendors. He also expressed concern that there is no definition of the term "event" and there should be a description of what the city expects from the word "event." Councilor Stauber reviewed that the council set up a scale for charging promoters wanting to use Bayfront and the scale was based on the type of event coming into the city, but this contract goes against the policy set by the city and voiced concern that the management company that the city has hired to run events at Bayfront was not involved with the contract.

Councilor Krause stated that there should have been a request of proposals (RFP) for this.

To Councilor Cuneo's questioning, Mayor Ness replied that this came at the time when the city deemed it could not light up Bayfront for the holidays due to staff shortages and finances and brought the idea to the owner. He continued by saying that Bayfront is underutilized during the winter months and this will help the city to bring tourists into the Downtown Waterfront area at very little cost to the city.

Councilor Anderson expressed concern that by allowing this event to happen for free, other for profit or nonprofits will request to use Bayfront for free, and went on to say that parking will be a scarcity for this event, but the city needs to charge for parking to be consistent with all the other events held there.

Resolution 09-0062 was adopted as follows:

RESOLVED, that the proper city officers are authorized to enter into an agreement with the entertainment and convention center authority and Bentleyville Tour of Lights, Inc., providing for the production, promotion and management of the 2009 Bentleyville Tour of Lights, said agreement to be substantially in the form of that filed in the office of the city clerk as Public Document No. 09-0126-32, fees to be deposited in Fund 0237, Agency 015, Revenue Source 4623.

Resolution 09-0062 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner and President Gilbert -- 7

Nays: Councilors Krause and Stauber -- 2

Approved January 26, 2009

DON NESS, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

ORDINANCE TABLED

BY COUNCILOR FEDORA

08-100 (9957) - AN ORDINANCE PERTAINING TO CITY BONDING, AMENDING CHAPTER 20 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO ADD A NEW ARTICLE III.

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 first time:

INTRODUCED BY COUNCILOR GARDNER

09-004 - AN ORDINANCE AMENDING SECTIONS 18 AND 21 OF THE CITY CHARTER TO ALLOW APPOINTMENT OF ADDITIONAL OFFICERS AND TO AUTHORIZE ADOPTION OF JOB SPECIFICATIONS BY RESOLUTION.

- - -

INTRODUCED BY COUNCILOR STAUBER

09-002 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, ZONING DISTRICT MAP NO. 21 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM M-1, MANUFACTURING, TO R-3, APARTMENT RESIDENTIAL, PROPERTY LOCATED ON WEST FIRST STREET BETWEEN 24TH AVENUE WEST AND 25TH AVENUE WEST (THOMAS SWANSON).

- - -

BY COUNCILOR ANDERSON

09-003 - AN ORDINANCE AMENDING CHAPTER IV, SECTION 21, OF THE CITY CHARTER RELATING TO POLITICAL ACTIVITIES OF CITY EMPLOYEES.

- - -

The following entitled ordinance was read for the second time:

INTRODUCED BY COUNCILOR STAUBER

09-001 (9958) - AN ORDINANCE AUTHORIZING CONVEYANCE BACK TO THE STATE OF MINNESOTA OF 80 ACRES OF PROPERTY KNOWN AS THE BAYVIEW FOREST PARK AND AUTHORIZING A MEMORANDUM OF UNDERSTANDING WITH THE PROCTOR SCHOOL DISTRICT REGARDING THE USE OF THE PROPERTY.

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

- - -

The meeting was adjourned at 10:05 p.m.

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

- - -

ORDINANCE NO. 9957

BY COUNCILOR FEDORA:

AN ORDINANCE PERTAINING TO CITY BONDING, AMENDING CHAPTER 20 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO ADD A NEW ARTICLE III.

The city of Duluth does ordain:

Section 1. That Chapter 20 of the Duluth City Code, 1959, as amended, is hereby amended by the addition of a new Article III which reads as follows:

Article III. Annual Bonding Plan and Information.

Sec. 20-33. Annual bonding plan—establishment.

Prior to the approval of any annual budget for any budget year, the city shall by resolution establish a plan for the city's anticipated general obligation bonding for said budget year including the estimated amount of general obligation bonds which

the city intends to issue during that year and the principal amount of general obligation bonds which are scheduled or anticipated to be retired during the year in question; provided that nothing herein shall be deemed to limit the authority of the council to subsequently approve issuance of general obligation bonds in excess of such amount by approval of an ordinance or resolution authorizing such issuance. Sec. 20-34. Information to be provided prior to sale.

Prior to or at the meeting at which the council calls for the sale of any general obligation bonds and establishes the terms of such sale, the chief administrative officer or his or her designee shall provide to the council, either by means of a resolution or an accompanying memorandum, a statement of the annual amount of general obligation bonds proposed for issuance pursuant to Section 20-33 above for the year in which the subject bonds are to be issued, the amount of general obligation bonds previously issued in that year, the amount of said proposed issue and the amount of general obligation bonds remaining unissued for the subject year if the proposed general obligation bonds are in fact issued.

Sec. 20-35. Application of article--definitions.

(a) The provisions of this Article III shall be applicable only to the issuance of general obligation bonds;

(b) For the purposes of this Article, the term, "general obligation bonds" shall mean any indebtedness of the city which is a general obligation of the city, whether actual or contingent, including bonds, notes and certificates of indebtedness, but shall not include bonds which refund previously-issued debt, whether or not general obligation debt, or general obligation tax and aid anticipation certificates.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: March 8, 2009)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed January 26, 2009
Approved January 26, 2009
DON NESS, Mayor

- - -

ORDINANCE NO. 9958

AN ORDINANCE AUTHORIZING CONVEYANCE BACK TO THE STATE OF MINNESOTA OF 80 ACRES OF PROPERTY KNOWN AS THE BAYVIEW FOREST PARK AND AUTHORIZING A MEMORANDUM OF UNDERSTANDING WITH THE PROCTOR SCHOOL DISTRICT REGARDING THE USE OF THE PROPERTY.

The city of Duluth does ordain:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Section 1. That the proper city officials are hereby authorized to enter into a memorandum of understanding with Independent School District 704 regarding the use of the parcels described in Section 2, such agreement in the form of Public Document No. 09-0126-33.

Section 2. 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:

Undivided 1/2 interest in Northeast Quarter (NE 1/4) of Southeast Quarter (SE 1/4), except 1.65 acres for Boulevard, Section 11, T49N, R15W; and

Undivided 1/2 interest in Southeast Quarter (SE 1/4) of Southeast Quarter (SE 1/4), Section 11, T49N, R15W, except 3.18 acres for boulevard and except that part lying southeasterly of a line run parallel with and distant 100 feet northwesterly of the following described line:

Beginning at a point on the south line of said Section 11, distant 157.2 feet west of the southeast corner thereof; thence run northeasterly to a point on the east line of said Section 11, distant 169.0 feet north of said southeast corner.

Section 3. That this ordinance shall take effect 30 days from and after its passage and publication. (Effective date: March 8, 2009)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed January 26, 2009
Approved January 26, 2009
DON NESS, Mayor

- - -

OFFICIAL PROCEEDINGS

Special meeting of the Duluth City Council held on Thursday, February 5, 2009, 5:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 8

Absent: Councilor Cuneo -- 1

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

09-0205-01 The PFM Group bid results regarding the proposed bond sale (09-0076R).
-- Received

- - -

MOTIONS AND RESOLUTIONS

Resolution 09-0076, providing for the issuance, sale and delivery of \$1,640,000 general obligation utilities revenue bonds, Series 2009A; establishing the terms and form thereof; and awarding the sale thereof, was introduced by Councilor Fedora for discussion.

The rules were suspended upon a unanimous vote to hear from a speaker on the resolution.

Jessica Cameron, representing the PFM Group, reviewed the market volatility and the results of the bids for the bonds.

Resolution 09-0076 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. Bond Purpose and Authorization.

1.01 Under and pursuant to the provisions of Section 55 of the City Charter, Minnesota Statutes, Sections 115.46 and 444.075 and Chapter 475, and other pertinent provisions of said Charter and Statutes, the City is authorized to issue its general obligation bonds to provide funds for the payment of costs of improvements to the municipal sewer utility (including bonds representing part of the interest cost of the issue, within the limitations specified in Minnesota Statutes, Section 475.56), which bonds 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.

1.02 The city council has, by Ordinance No. 9946 adopted November 24, 2008, ordered the issuance, sale and delivery of general obligation sewer utility revenue bonds in the maximum amount of \$1,500,000 of the City (of which \$1,444,000 of such amount shall be issued), for the payment of the costs of improvements to the municipal sewer utility and for payment of part of the interest cost of the Bonds (the "Sewer Portion of the Bonds"). The improvement program for the municipal sewer utility includes (i) sanitary sewer rehabilitation; (ii) sanitary sewer relining; (iii) the sanitary sewer portion of the 2008 SIP projects; and (iv) the sanitary sewer portion of the Trunk Highway 53 project.

1.03 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 to provide funds for the payment of costs of improvements to the municipal water utility (including bonds representing part

of the interest cost of the issue, within the limitations specified in Minnesota Statutes, Section 475.56), which bonds 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.

1.04 The city council has, by Ordinance No. 9947 adopted November 24, 2008, ordered the issuance, sale and delivery of general obligation water utility revenue bonds in the maximum amount of \$220,000 of the City (of which \$196,000 of such amount shall be issued), for the payment of the costs of improvements to the municipal water utility and for payment of part of the interest cost of the Bonds (the "Water Portion of the Bonds"). The improvement program for the municipal water utility includes Arlington pump station improvements.

1.05 The city council has determined that it is necessary and expedient that the City issue such municipal utilities bonds in a single issuance of \$1,640,000 General Obligation Utilities Revenue Bonds, Series 2009A (the "Bonds").

1.06 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.

1.07 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 UBS Financial Services, Inc. of New York, New York (the "Purchaser"), to purchase the Bonds at a cash price of \$1,653,088.10, 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:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Year	Water Portion of the Bonds	Sewer Portion of the Bonds	Total	Interest Rate
2010	\$ 10,000	\$ 75,000	\$ 85,000	2.00%
2011	11,000	79,000	90,000	2.00%
2012	11,000	84,000	95,000	2.50%
2013	12,000	83,000	95,000	2.50%
2014	12,000	88,000	100,000	3.00%
2015	12,000	88,000	100,000	3.00%
2016	12,000	93,000	105,000	3.00%
2017	13,000	97,000	110,000	3.00%
2018	13,000	97,000	110,000	3.25%
2019	14,000	101,000	115,000	3.50%
2020	14,000	106,000	120,000	3.50%
2021	15,000	110,000	125,000	3.50%
2022	15,000	110,000	125,000	3.75%
2023	16,000	114,000	130,000	4.00%
2024	16,000	119,000	135,000	4.00%

2.02 (a) The Bonds maturing in the years 2010 through 2017 shall not be subject to optional redemption and prepayment before maturity, but those maturing in the year 2018 and in subsequent years shall each be subject to redemption and prepayment at the option of the City on February 1, 2017, and on any date thereafter, in whole or in part, and if in part, in such order of maturities as selected by the City and by lot as to the Bonds maturing in the same year, at a price equal to the principal amount thereof plus accrued interest to the redemption date;

(b) In the event any of the Bonds are called for redemption, notice thereof identifying the Bonds to be redeemed will be given by the Bond Registrar by mailing a copy of the redemption notice by first class mail (postage prepaid) at least 30 days but not more than 60 days prior to the date fixed for redemption to the registered owner of each Bond to be redeemed at the address shown on the registration books kept by the Bond Registrar; provided however, that so long as the Bonds are registered in the name of Cede & Co. as nominee of The Depository Trust Company, New York, New York ("DTC"), notice of redemption shall be given in accordance with the terms of the Representation Letter hereinafter described. Failure to give notice by mail to any registered owner, or any defect therein, will not affect the validity of any proceeding for the redemption of Bonds not affected by such defect or failure. Bonds so called for redemption will

cease to bear interest after the specified redemption date, provided that the funds for the redemption are on deposit with the place of payment at that time;

(c) If less than all the Bonds of a maturity are called for redemption while the Bonds are registered in the name of Cede & Co., the City or the Bond Registrar designated below will notify DTC of the particular amount of such maturity to be prepaid. DTC will determine by lot the amount of each participant's interest in such maturity to be redeemed and each participant will then select by lot the beneficial ownership interest in such maturity to be redeemed. If less than all the Bonds of a maturity are called for redemption and the Bonds are not registered in the name of Cede & Co., the Bond Registrar will determine by lot or other manner deemed fair, the amount of each maturity to be redeemed. All prepayments shall be at a price equal to the principal amount thereof plus accrued interest.

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, 2009. 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 printed on or 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 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 first publication or the mailing (if there is no publication) 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 UTILITIES REVENUE BOND, SERIES 2009A

R-__ \$_____

Interest Rate	Maturity Date	Date of Original Issue	CUSIP
	February 1, ____	February __, 2009	

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, 2009. 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 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 \$1,640,000, all of like date and tenor, except for number, denomination, maturity date and interest rate, pursuant to a resolution adopted on February 5, 2009, by the governing body of the City (the "Resolution"). The Bonds consist of two issues:

(i) That portion of the Bonds (\$1,444,000) issued for improvements to the municipal sewer utility are issued pursuant to the authority contained in Minnesota Statutes, Chapter 475, and Sections 115.46 and 444.075 and Section 55 of the Home Rule Charter of the City, and all other laws and charter provisions thereto enabling and pursuant to Ordinance No. 9946 adopted November 24, 2008, for the purpose of providing funds for improvements to such municipal sewer utility and for payment of part of the interest cost of such bond issue. That portion of the Bonds issued for the municipal sewer utility 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 portion of the Bonds issued for the sewer utility, 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 portion of the Bonds issued for the sewer utility.

(ii) That portion of the Bonds (\$196,000) issued for improvements to the municipal water utility are issued pursuant to the authority contained in Minnesota Statutes, Chapter 475, and Section 444.075 and Section 55 of the Home Rule Charter of the City, and all other laws and charter provisions thereto enabling and pursuant to Ordinance No. 9947 adopted November 24, 2008, for the purpose of providing funds for improvements to such municipal water utility and for payment of part of the interest cost of such bond issue. That portion of the Bonds issued for the municipal water utility are payable from the net revenues to be derived from the operation of the municipal water 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 water 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 portion of the Bonds issued for the water utility, 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 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 portion of the Bonds issued for the water utility.

The Bonds of this series maturing in the years 2010 through 2017 are not subject to redemption before maturity, but those maturing in the year 2018 and in subsequent years are each subject to redemption and prepayment at the option of the City on February 1, 2017, and on any date thereafter, in whole or in part, in such order of maturities as selected by the City and by lot as to Bonds maturing in the same year, at a price equal to the principal amount plus accrued interest to the redemption date.

Not less than 30 nor more than 60 days prior to the date fixed for redemption and prepayment of any Bonds, notice of redemption shall be mailed to each registered owner of a Bond to be redeemed; however, that so long as the Bonds are registered in the name of Cede & Co., as nominee for The Depository Trust Company, New York, New York ("DTC"), notice of redemption shall be given in accordance with the terms of the Blanket Issuer Letter of Representations executed by the City and DTC.

If less than all the Bonds of a maturity are called for redemption while the Bonds are registered in the name of Cede & Co., the City or the Bond Registrar designated below will notify DTC of the particular amount of such maturity to be prepaid. DTC will determine by lot the amount of each participant's interest in such maturity to be redeemed and each participant will then select by lot the beneficial ownership interest in such maturity to be redeemed. If less than all the Bonds of a maturity are called for redemption and the Bonds are not registered in the name of Cede & Co., the Bond Registrar will determine by lot or other manner deemed fair, the amount of each maturity to be redeemed. All prepayments shall be at a price

equal to the principal amount thereof plus accrued interest. If any Bond is redeemed in part, upon surrender of the Bond being redeemed, the City shall deliver or cause to be delivered to the registered owner of such Bond, a Bond in like form in the principal amount equal to that portion of the Bond so surrendered not being redeemed.

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 this 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, 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 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.

Date	Registered Owner	Signature of Bond Registrar
2/__/09	Cede & Co. c/o The Depository Trust Company 55 Water Street New York, NY 10041 Federal Taxpayer I.D. No.: 13-2555119	_____

BOND COUNSEL OPINION

I certify that attached hereto is a full, true, and correct copy of the legal opinion rendered by bond counsel on the issuance of the Bonds, dated as of the original date of delivery of and payment for the Bond.

Clerk

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. Revenues, Accounts and Covenants.

3.01 Sewer Portion of the Bonds.

(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 Sewer Portion of the Bonds and on all other bonds 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 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) The City has created a separate construction account within the Public Utility Sewer Fund to which there shall be credited \$1,455,535.54 from the proceeds of the Bonds, together with any additional funds which may be available and are appropriated for improvements to the utility. 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 improvements to the sewer utility and costs of the issuance of the Sewer Portion of the Bonds;

(c) 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 "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 Sewer Portion of 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. The treasurer shall credit to the Sewer Debt Service Fund \$0 of unused discount and the amount of accrued interest on the Sewer Portion of the Bonds. 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 Sewer Portion of the Bonds, and a pro rata portion of 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;

(d) 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 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.

3.02 Water Portion of the Bonds.

(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 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 Water Portion of the Bonds and on all other bonds 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 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 water utility bonds when due;

(b) The City has created a separate construction account within the Public Utility Water Fund to which there shall be credited \$196,814.39, together with any additional funds which may be available and are appropriated for improvements to the utility. 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 improvements to the water utility and costs of the issuance of the Water Portion of the Bonds;

(c) 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 "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 Water Portion of the Bonds and on any other bonds which have been or may be issued and made payable from said net revenues of the water utility. The treasurer shall credit to the Water Debt Service Fund \$738.17 of unused discount and the amount of accrued interest on the Water Portion of the Bonds. 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 Water Portion of the Bonds, and a pro rata portion of 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;

(d) 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 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.

3.03 If the balances in either the Sewer Debt Service Fund or the Water 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 the Debt Service Funds when the balances therein are sufficient. It is estimated that the net revenues herein pledged and appropriated to said Debt Service Funds will be received at the times and in amounts not less than

5% 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 4. Tax Covenants; Miscellaneous.

4.01 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.

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 (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 Funds 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 covenants that with respect to the gross proceeds of the Bonds, the following schedule will 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.

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. 04-0219-02.

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 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 09-0076 was adopted upon the following vote:

Yeas: Councilors Anderson, Eckenberg, Fedora, Fosle, Gardner, Krause and President Gilbert -- 7

Nays: Councilor Stauber -- 1

Absent: Councilor Cuneo -- 1

Approved February 5, 2009

DON NESS, Mayor

- - -

The meeting was adjourned at 5:15 p.m.

JEFFREY J. COX, City Clerk

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Tuesday, February 10, 2009, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: Councilor Krause -- 1

- - -

The minutes of council meetings hold on August 11 and 25, 2008, were approved upon a unanimous vote.

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

09-0210-01 American Indian Community Housing Organization, et al. (two signatures), petition to vacate the south 0.1 foot of Lots 34 and 36, West Second Street, Duluth Proper First Division. -- Assessor

09-0210-14 The following communications regarding the proposed vacation of alleyways within a block bounded by Arrowhead Road, Humes Avenue, Cleveland Street and Kenwood Avenue (09-0070R and 09-0071R): (a) Norman and Barbara Breimon; (b) Holiday Companies; (c) Marlene and Larry Zwak. -- Received

- - -

REPORTS FROM OTHER OFFICERS

09-0210-02 Assessor letter of sufficiency of petition to vacate the south 0.1 foot of Lots 34 and 36, West Second Street, Duluth Proper First Division. -- Received

09-0210-03 Parks and recreation division manager Lake Superior Zoological Society minutes of January 13, 2009: (a) Annual; (b) Business meetings. -- Received

- - -

REPORTS OF BOARDS AND COMMISSIONS

09-0210-13 Alcohol, gambling and tobacco commission minutes of: (a) November 5; (b) December 3, 2008; (c) January 7, 2009, meetings. -- Received

09-0210-04 American Indian commission minutes of November 24, 2008, meeting. -- Received

09-0210-05 Duluth airport authority minutes of December 16, 2008, meeting. -- Received

09-0210-06 Duluth transit authority: (a) Income statement for November 2008; (b) Minutes of December 3, 2008, meeting. -- Received

09-0210-07 Duluth public arts commission minutes of January 26, 2009, meeting. -- Received

09-0210-08 Entertainment and convention center authority minutes of January 27, 2009, meeting. -- Received

09-0210-09 Housing and redevelopment authority minutes of: (a) September 23; (b) October 28, 2008, meetings. -- Received

09-0210-10 Library board minutes of November 25, 2008, meeting. -- Received

09-0210-11 Parks and recreation commission minutes of December 10, 2008, meeting. -- Received

09-0210-12 Spirit Mountain recreation area authority minutes of December 18, 2008, meeting. -- Received

- - -

OPPORTUNITY FOR CITIZENS TO BE HEARD

Jerry Schlafer felt that city has had certain projects that are not working out and in the future should learn that if private businesses do not see the project as viable, the city should not take them on.

- - -

RESOLUTIONS TABLED

Councilor Stauber moved to remove Resolution 09-0057, denying a request to amend Chapter 50 of the Duluth City Code, 1959, as amended, Zoning District Map No. 21 as contained in the Appendix to Chapter 50, to provide for the reclassification from M-1, Manufacturing, to R-3, Apartment Residential, property located on West First Street between 24th Avenue West and 25th Avenue West (Thomas Swanson), from the table, 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

09-002 (9959) - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, ZONING DISTRICT MAP NO. 21 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM M-1, MANUFACTURING, TO R-3, APARTMENT RESIDENTIAL, PROPERTY LOCATED ON WEST FIRST STREET BETWEEN 24TH AVENUE WEST AND 25TH AVENUE WEST (THOMAS SWANSON).

Councilor Stauber moved to suspend the rules to consider the ordinance at this time, which motion was seconded and unanimously carried.

- - -

Resolution 09-0057 failed upon a unanimous vote (Public Document No. 09-0210-15).

- - -

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

- - -

Councilor Stauber moved to remove Resolution 09-0070 and 09-0071, approving and denying, respectively, the vacation of alleyways within a city block bounded by Arrowhead Road, Humes Avenue, Cleveland Street and Kenwood Avenue (Duluth Teachers Credit Union), 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.

Cheryl Behling, Stan Beckman, Mary Gallegos, Barbara Brooks, Barb Breimon and Marlene Zwak supported Resolution 09-0071 (denying the vacation) for the reasons of: this location should not be the site for "big box" development; a business could be located here, but not at the expense of taking down three family homes; if a Walgreens is built on the site, there will be serious safety issues to both pedestrians and vehicles; this is contrary to a principle of the comprehensive plan

to strengthen neighborhoods; a concerned, affected resident has put their house on the market; one of the exits from the site would be onto a residential street; this will add to the existing traffic congestion problems with the college students who reside in this residential area; the vacation petition was for the “uselessness” of the alleys, which have been determined by the planning commission as “useful” alleys; the city council should not lose control of this issue; there is no need for this 14,000 square foot operation; the initial rezoning request was for a credit union which is a low impact commercial business; last year the council denied this vacation; this will have a negative effect on existing small businesses in the shopping center and this corner has the second highest accident occurrence in the city.

President Gilbert noted that when the variance request comes forth, the issues can then be defined and finalized.

Councilor Stauber moved to remove both resolutions from the agenda and refer them back to the administration until all agreements between all the parties have been finalized so it is clear on what would be put there, which motion was seconded and unanimously carried.

- - -

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

RESOLVED, that the city is hereby authorized to participate in the joint property tax advisory committee during 2009, including paying for the city’s share of the consultant agreement with Jeff Van Wyche, at a cost to the city of \$10,750 which shall be payable from the city council’s budget, Fund 110, Agency 110, Organization 1101, Object 5319.

Resolution 09-0077 was unanimously adopted.

Approved February 10, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Xerox Corporation for copier lease and maintenance services in various locations in accordance with existing contractual fees for a total amount of \$45,981, payable from various funds, agencies, organizations and objects.

Resolution 09-0081 was unanimously adopted.

Approved February 10, 2009

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 Duluth Archery Club and Duluth Aviation Institute and does hereby waive the 60 day waiting period which it has to object to the issuance of said exemption.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

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 09-0092 was unanimously adopted.

Approved February 10, 2009

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the transfer of the following on sale intoxicating liquor license and on sale Sunday license and application for a 2:00 a.m. beverage license for the period ending August 31, 2009, subject to departmental approvals:

Sir Benedict's III, Inc. (Sir Benedict's Tavern), 805 East Superior Street, with Antonio Coppola, 50 percent stockholder and Aura Coppola, 50 percent stockholder, transferred from Sir Benedict's, Inc. (Sir Benedict's Tavern), same address.

Resolution 09-0093 was unanimously adopted.

Approved February 10, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officers are authorized to accept a first amendment to Grant No. CCGP-06-0016-Z-FY06 from the state of Minnesota department of employment and economic development to provide an additional \$333,249, to be deposited in 255-020-4220-02, to fund additional environmental clean up work related to the Clyde project and committing to the local match to be provided by the project developer.

Resolution 09-0083 was unanimously adopted.

Approved February 10, 2009

DON NESS, Mayor

- - -

RESOLVED, that plans for Project No. 69-604-067 showing proposed alignment, profiles, grades and cross-sections for the construction, reconstruction or improvement of CSAH No. 4 (Rice Lake Road) from Central Entrance to Arrowhead Road within the corporate limits of the city of Duluth have been prepared and presented to the city.

FURTHER RESOLVED, that the plans and specifications prepared by St. Louis County are hereby approved.

Resolution 09-0046 was unanimously adopted.

Approved February 10, 2009

DON NESS, Mayor

- - -

RESOLVED, that plans for Project No. 69-604-066 showing proposed alignment, profiles, grades and cross-sections for the construction, reconstruction or improvement of CSAH No. 4 (Rice Lake Road) from Arrowhead Road to Martin Road within the corporate limits of the city of Duluth have been prepared and presented to the city.

FURTHER RESOLVED, that the plans and specifications prepared by St. Louis County are hereby approved.

Resolution 09-0073 was unanimously adopted.

Approved February 10, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Pomp's Tire Service, Inc., for the purchase and delivery of vehicle and equipment tires and repairs as needed during year 2009 for the fleet services division in accordance with state of Minnesota Contract #432206, Release T-525(5), specifications and pricing for an estimated amount of \$30,000, terms net 30, FOB destination, payable as follows:

- (a) \$24,000 from Fleet Services Fund 660, Agency 015, Object 5221;
- (b) \$6,000 from Fleet Services Fund 660, Agency 015, Object 5404.

Resolution 09-0079 was unanimously adopted.

Approved February 10, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Acme Electric Tool Crib of the North for the purchase and delivery of utility and maintenance uniforms as needed during year 2009, the third year of a five-year contract, in accordance with existing city specifications for an estimated amount of \$32,850, payable from various funds, agencies, organizations and objects.

Resolution 09-0082 was unanimously adopted.

Approved February 10, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Benson Electric Company for the installation of a new pump at Lift Station No. 6, to include a contract in process for \$21,650 plus an increase (Change Order No. 1) of \$6,325, for a total contract amount of \$27,975, payable from the Sewer Fund 530, Agency 500, Organization 1905, Object 5535, and Project No. 0743SN.

Resolution 09-0085 was unanimously adopted.

Approved February 10, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Viking Electric Supply, Inc., for the purchase and delivery of street light pole bases and parts for the Downtown, Canal Park and Fitger's Brewery complex areas in accordance with city specifications and the vendor's quote of \$28,355.63 plus sales tax of \$1,843.12, for a total of \$30,198.75, terms net 30, FOB destination, payable from the Street Lighting Utility Fund 550, Agency 120, Object 5580.

Resolution 09-0087 was unanimously adopted.

Approved February 10, 2009

DON NESS, Mayor

- - -

RESOLVED, city officials are hereby authorized to contract with Service Electric of Superior, Inc., for completing small electrical work during year 2009, including labor and materials, at various sites within the city of Duluth in accordance with state of Minnesota Contract #437179, Release E-79(5), specifications and pricing, for an estimated amount of \$64,000, payable as follows:

- (a) \$43,500 from Water Fund 510, Agency 500, Organization 1955, Object 5404 (Requisition No. 09-0073);

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

(b) \$6,500 from Water Fund 510, Agency 500, Organization 1955, Object 5220 (Requisition No. 09-0073);

(c) \$8,000 from Gas Fund 520, Agency 500, Organization 1960, Object 5404 (Requisition No. 09-0074);

(d) \$6,000 from Gas Fund 520, Agency 500, Organization 1960, Object 5220 (Requisition No. 09-0074).

Resolution 09-0088 was unanimously adopted.

Approved February 10, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Dakota Supply Group, Inc., for the purchase and delivery of Badger water meter parts during year 2009 for the utility operations division for an estimated total amount of \$37,300, terms net 30, FOB destination, payable from Water Fund 510, Agency 500, Organization 1940-2410, Object 5220.

Resolution 09-0089 was unanimously adopted.

Approved February 10, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to renew the existing contract with Vine Body Shop, the third year of a three year contract, for furnishing vehicle body repairs as needed during year 2009 in accordance with specifications and pricing in an amount not to exceed \$45,000, terms net 30, FOB destination, payable as follows:

(a) \$30,000 from the Fleet Services Fund 660, Department/Agency 015, Object 5221;

(b) \$15,000 from the Fleet Services Fund 660, Department/Agency 015, Object 5404.

Resolution 09-0097 was unanimously adopted.

Approved February 10, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with MacQueen Equipment, Inc., for the purchase and delivery of OEM (original equipment manufacturer) replacement parts for the fleet services division in accordance with existing specifications at an estimated amount of \$40,000, terms net 30, discount ten percent current price list, FOB destination, payable from the Fleet Services Fund 660, Department/Agency 015, Object 5221.

Resolution 09-0098 was unanimously adopted.

Approved February 10, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Dresser, Inc., for the purchase and delivery of Roots natural gas meters during year 2009 in accordance with city specifications and the vendor's quote of \$20,895.30 plus \$1,358.19 sales tax for a combined total amount of \$22,253.49, terms net 30, FOB destination, payable from the Gas Fund 520, Agency 500, Organization 1940-2410, Object 5227.

Resolution 09-0099 was unanimously adopted.

Approved February 10, 2009

DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

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:

On Second Street in front of 2330 West Second Street;

On Eighth Street in front of 627 East Eighth Street.

Resolution 09-0091 was unanimously adopted.

Approved February 10, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Polaris Library Systems for the tax-exempt purchase and delivery of software and hardware maintenance on the library's Polaris Integrated Library System during year 2009 in accordance with city specifications and Polaris' quote of \$30,584.24, terms net 30, payable from the General Fund 110, Agency 130, Organization 1303, Object 5404.

Resolution 09-0086 was unanimously adopted.

Approved February 10, 2009

DON NESS, Mayor

- - -

The following resolutions were also considered:

Resolution 09-0084, authorizing city officials to contract with Inter-City Oil Company, Inc., for both bulk and service station fuels and delivery service as needed during year 2009 for an amount not to exceed \$1,200,000, was introduced by Councilor Fosle for discussion.

To Councilor Anderson's and Fosle's question of the reference to the "best and most complete proposal..." and what that exactly means, Chief Administrative Officer Lisa Potswald stated that she would supply a response.

Councilor Gardner moved to table resolution for more information, which motion was seconded and unanimously carried.

- - -

RESOLVED, that city officials are hereby authorized to contract with G&K Services, Inc., for laundry services and the rental of miscellaneous items during year 2009 in accordance with state of Minnesota Contract #438968, Release L-337(5), specifications and pricing for an estimated total of \$66,800, terms net 30, pick up and delivery service, payable from various funds, agencies, organizations and objects.

Resolution 09-0096 was unanimously adopted.

Approved February 10, 2009

DON NESS, Mayor

- - -

Resolution 09-0059, authorizing an agreement with Frank Madden & Associates for legal services related to labor negotiations in an amount not to exceed \$50,000, was introduced by President Gilbert for discussion.

Councilor Fedora moved to table the resolution until all councilors were present, seeing that this is a significant change in policy, which motion was seconded and failed upon the following vote:

Yeas: Councilors Cuneo, Fedora, Fosle and Gardner -- 4

Nays: Councilors Anderson, Eckenberg, Stauber and President Gilbert -- 4

Absent: Councilor Krause -- 1

Councilor Stauber expressed his concerns of: there are a lot of good, local, well qualified firms that could handle this; there was no request for proposals (RFP) for this; the city will be paying a great deal of money associated with driving time from Plymouth, Minnesota; there is no corporate memory associated with an outside firm as there would be in doing this in-house: this \$50,000 will be spent just to bring the legal firm up to date and city staff will still need to be present during these sessions.

Ms. Potswald noted: under state purchasing rules, there was no requirement of an RFP; the city did extensive research on this selection; bringing in someone with expertise in negotiations with over 30 cities and counties is beneficial; there are opportunities to use phone and video conferencing versus driving and records are kept on contract negotiations, so there is an historical, corporate memory in place.

Councilors discussed at length the merits of the issue.

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

- - -

Resolution 09-0080, amending Resolution 06-0556, extending the city's professional services Contract #20214 with Carlson Media, Inc., for an increase of \$170,000, and a total contract amount of \$424,900, was introduced by Councilor Fosle for discussion.

Councilor Anderson noted that he would be abstaining from any discussion and voting on this issue, due to a professional relationship.

Councilor Stauber noted that he would not be supporting this for reasons of: three years ago, there was only one bid proposal, even though it was clear that there were others who could have supplied this service and after three years, it should not be extended two more years without considering other firms.

Ms. Potswald noted that this is a cost savings, because it costs the city every time a contract is bid out.

Resolution 09-0080 failed upon the following vote (Public Document No. 09-0210-16):

Yeas: Councilors Cuneo, Eckenberg and Gardner -- 3

Nays: Councilors Fedora, Fosle, Stauber and President Gilbert -- 4

Abstention: Councilor Anderson -- 1

Absent: Councilor Krause -- 1

- - -

Resolution 09-0094, authorizing city officials to enter into a contract with MacQueen Equipment, Inc., for the purchase and delivery of a 2009 Elgin Pelican street sweeper with options in the amount of \$173,622.69 and Resolution 09-0095, authorizing city officials to enter into a contract with St. Joseph Equipment, Inc., for the purchase and delivery of a 2009 Case backhoe Model 580SM-3 in the amount of \$106,698.09, were introduced by Councilor Fosle for discussion.

Ms. Potswald noted that: these purchases would come from the utility fund, not general fund; delaying purchases creates a backlog of more purchases and the equipment goes past their prime trade in value, with more dollars being spent on maintenance and there is a need for good, dependable equipment to do necessary repairs.

Councilor Fedora expressed concerns of: the nation, state and city are in tough financial straits; the private sector is repairing their equipment, not buying new equipment; this equipment should be "nursed" along one more year; purchases such as this causes utility costs to increase and thus increase rates and this also effects the taxpayers.

Councilors discussed this issue at length.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Resolution 09-0094 was adopted as follows:

RESOLVED, that city officials are hereby authorized to contract with MacQueen Equipment, Inc., for the purchase and delivery of a 2009 Elgin Pelican Model NS street sweeper with options in accordance with state of Minnesota Contract #439468, Release #S-843(5), specifications and pricing in the amount of \$163,026 (includes freight) plus \$10,596.69 sales tax, for a total amount of \$173,622.69, terms net 30, FOB St. Paul, payable out of Stormwater Fund 535, Department/Agency 500, Organization 1905, Object 5580.

Resolution 09-0094 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fosle, Gardner, Stauber and President Gilbert -- 7

Nays: Councilor Fedora -- 1

Absent: Councilor Krause -- 1

Approved February 10, 2009

DON NESS, Mayor

- - -

Resolution 09-0095 failed upon the following vote (Public Document No. 09-0210-19):

Yeas: Councilor Eckenberg -- 1

Nays: Councilors Anderson, Cuneo, Fedora, Fosle, Gardner, Stauber and President Gilbert -- 7

Absent: Councilor Krause -- 1

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a second amendment to that certain redevelopment agreement bearing City Contract No. 20702, a copy of which amendment is on file in the office of the city clerk as Public Document No. 09-0210-17, with Allete, Inc., for the acquisition and redevelopment of the Duluth Steam District No. 2 facilities, extending the time for closing provided for therein.

Resolution 09-0101 was unanimously adopted.

Approved February 10, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a third amendment to that certain management, operation and maintenance agreement bearing City Contract No. 14679, a copy of which amendment is on file in the office of the city clerk as Public Document No. 09-0210-18, with Allete, Inc., for the management, operation and maintenance of Duluth Steam District No. 2, extending the term thereof.

Resolution 09-0102 was unanimously adopted.

Approved February 10, 2009

DON NESS, Mayor

- - -

At this time, 8:34 p.m., the public hearing on the proposed ordinance amending Section 21 of the City Charter relating to political activities of city employees began.

At this time, 8:35 p.m., no one appeared who wished to be heard and the public hearing was closed.

- - -

At this time, 8:35 p.m., the public hearing amending sections 18 and 21 of the City Charter to allow for the appointment of additional officers and to authorize the adoption of job specifications by resolution began.

At this time, 8:36 p.m. no one appeared who wished to be heard and the public hearing was closed and the regular order of business was resumed.

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinance was read for the first time:

INTRODUCED BY COUNCILOR GARDNER

09-005 - AN ORDINANCE AMENDING SECTION 2-44 OF THE DULUTH CITY CODE, 1959, AS AMENDED, BY MODIFYING THE MEMBERSHIP OF THE PARKS AND RECREATION COMMISSION.

- - -

The following entitled ordinances were read for the second time:

INTRODUCED BY PRESIDENT GILBERT

09-004 - AN ORDINANCE AMENDING SECTIONS 18 AND 21 OF THE CITY CHARTER TO ALLOW APPOINTMENT OF ADDITIONAL OFFICERS AND TO AUTHORIZE ADOPTION OF JOB SPECIFICATIONS BY RESOLUTION.

Councilor Fedora moved to table the ordinance until all councilors were present, which motion was seconded and unanimously carried.

- - -

BY COUNCILOR ANDERSON

09-003 - AN ORDINANCE AMENDING CHAPTER IV, SECTION 21, OF THE CITY CHARTER RELATING TO POLITICAL ACTIVITIES OF CITY EMPLOYEES.

Councilor Fedora moved to table the ordinance until all councilors were present, which motion was seconded and unanimously carried.

- - -

The meeting was adjourned at 8:43 p.m.

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 9959

AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, ZONING DISTRICT MAP NO. 21 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM M-1, MANUFACTURING, TO R-3, APARTMENT RESIDENTIAL, PROPERTY LOCATED ON WEST FIRST STREET BETWEEN 24TH AVENUE WEST AND 25TH AVENUE WEST (THOMAS SWANSON).

The city of Duluth does ordain:

Section 1. That Lots 386 to 400, Block 49, Duluth Proper Second Division, be reclassified from M-1, Manufacturing, to R-3, Apartment Residential, and that Plate No. 21 of the zoning district map as contained in the Appendix to Chapter 50 of the Duluth City Code, 1959, is amended to read as follows:

(MAP)
[see map on next page]
(Ref. File No. 09003)

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: March 22, 2009)

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

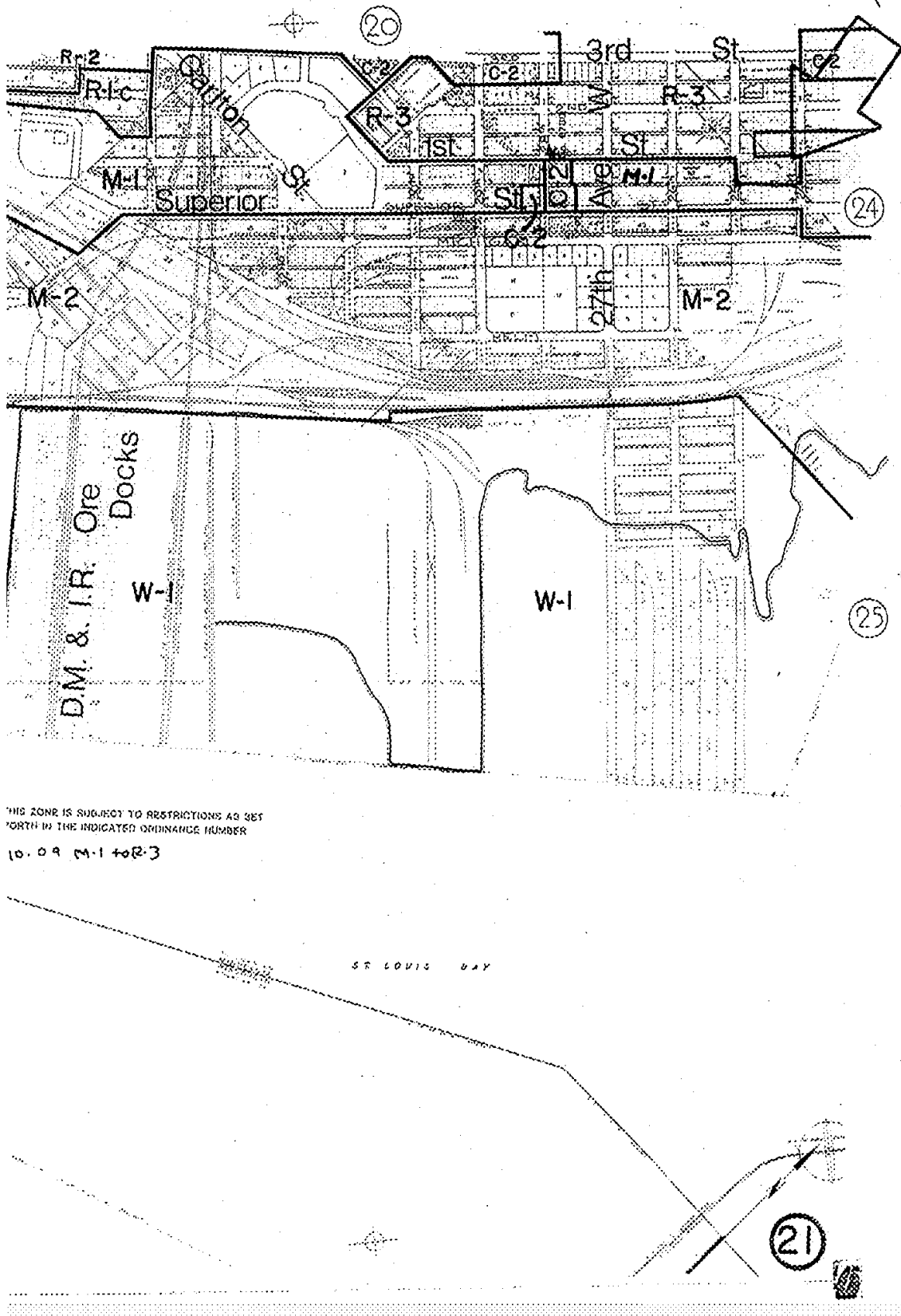
Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Stauber and President Gilbert -- 8

Nays: None -- 0

Absent: Councilor Krause -- 1

ATTEST:
JEFFREY J. COX, City Clerk

Passed February 10, 2009
Approved February 10, 2009
DON NESS, Mayor



THIS ZONE IS SUBJECT TO RESTRICTIONS AS SET FORTH IN THE INDICATED ORDINANCE NUMBER

10.09 M-1 to R-3

SR LOUIS BAY

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, February 23, 2009, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Absent: None -- 0

- - -

The minutes of council meetings held on September 8, 18 and 22, 2008, were approved upon a unanimous vote.

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

09-0223-01 Jeff Madill, et al. (three signatures), petition to vacate 48th Avenue East from Colorado Street south 140 feet to alley. -- Assessor

09-0223-02 Brian Ronstrom petition to vacate 33 foot wide easement abutting property at 3860 East Superior Street. -- Assessor

09-0223-07 The following communications regarding inclusion of the Lakewalk at Beacon Pointe and The Ledges into the infrastructure project priorities for federal stimulus funding (09-0132R): (a) Ellen Dunlap; (b) David Gangeness; (c) Carolyn Peterson; (d) Sharon van Drueten. -- Received

09-0223-08 The following communications regarding the proposed rezoning of both sides of Sundby Road, north of Page Street (09-0131R and 09-006-O): (a) Candy Lee; (b) Tom and Maryann Salmonson; (c) David and Pamela Sorenson. -- Received

- - -

REPORTS FROM OTHER OFFICERS

09-0223-03 Assessor letters of sufficiency of petitions to vacate:

(a) 48th Avenue East from Colorado Street south 140 feet to alley;

(b) Utility easement abutting property at 3860 East Superior Street. -- Received

09-0223-04 Clerk applications to the Minnesota gambling control board for exemption from lawful gambling licenses (raffles) from: (a) Holy Family Catholic Church on September 19; (b) St. Louis and Carlton County of Pheasants Forever on April 17; (c) St. Luke's Foundation on July 13; (d) United Northern Sportsman Club on April, 24, 2009. -- Received

- - -

REPORTS OF BOARDS AND COMMISSIONS

09-0223-05 Duluth airport authority balance sheet of November 30, 2008. -- Received

09-0223-06 Duluth Seaway Port authority financial statement for December 2008. -- Received

- - -

OPPORTUNITY FOR CITIZENS TO BE HEARD

Mel Heinrich suggested the city change the location of City Hall in order to have all services in one location such as Central High School when it closes and the city could rent out all the other spaces to other government agencies or nonprofits.

- - -

RESOLUTIONS TABLED

President Gilbert moved to remove Resolution 09-0059, authorizing an agreement with Frank Madden & Associates for legal services related to labor negotiations in an amount not to exceed \$50,000, from the table, which motion was seconded and unanimously carried.

Mayor Ness stated the amount is a reasonable expectation of what it should cost for the negotiation process during the year.

Councilor Gardner voiced her objection to the resolution because the city is becoming increasingly prone to paying for services that are already available from city staff and the amount will probably be increased during the year. She voiced concern that the firm is not from Duluth and that the money could have been used for vacant job positions that would be for the betterment of Duluth.

Councilor Stauber expressed concern that the city is hiring big guns to come after the unions which will antagonize things instead of building bridges with the employees.

The rules were suspended upon a unanimous vote to hear from a speaker on the resolution.

David Ross, representing the Duluth Area Chamber of Commerce, stated their appreciation that the city is looking outside City Hall to get help with labor negotiations, but a request for proposals (RFP) should have been done as there are qualified businesses in Duluth who have the history and understanding of the city and the dynamics that exist between the employees and administration who could have done the negotiations.

Resolution 09-0059 was adopted as follows:

RESOLVED, that the proper city officials are hereby authorized to execute an agreement, substantially in the form of that on file with the city clerk as Public Document No. 09-0223-09, with Frank Madden & Associates to provide legal services related to labor negotiations with city's collective bargaining units for new labor contracts, in an amount not to exceed \$50,000, which shall be payable from Fund 110, Department 700, Organization 1407, Object 5304.

Resolution 09-0059 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Krause and President Gilbert -- 7

Nays: Councilors Gardner and Stauber -- 2

Approved February 23, 2009

DON NESS, Mayor

- - -

Councilor Fosle moved to remove Resolution 09-0084, authorizing city officials to contract with Inter-City Oil Company, Inc., for both bulk and service station fuels and delivery service as needed during year 2009 for an amount not to exceed \$1,200,000, from the table, which motion was seconded and unanimously carried.

Resolution 09-0084 was adopted as follows:

RESOLVED, that city officials are hereby authorized to renew the existing Contract #20352 with Inter-City Oil Company, Inc., the third year of a five year contract, for the purchase and

delivery of both bulk and service station fuels as needed during year 2009 for an amount not to exceed \$1,200,000, payable from the Fleet Services Fund 660, Department 015, Object 5212.

Resolution 09-0084 was unanimously adopted.

Approved February 23, 2009

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 Gilbert 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 2008 SIP for Lakeside-Norwood (Contract #7103; assessable amount - \$111,453.28) to be deposited in Fund 330, is hereby confirmed.

Resolution 09-0133 was unanimously adopted.

Approved February 23, 2009

DON NESS, Mayor

- - -

RESOLVED, that the assessment roll levied to defray the assessable portion of 2008 SIP for Morley Heights (Contract #7095; assessable amount - \$58,980.83) to be deposited in Fund 330, is hereby confirmed.

Resolution 09-0134 was unanimously adopted.

Approved February 23, 2009

DON NESS, Mayor

- - -

RESOLVED, that the assessment roll levied to defray the assessable portion of 2008 SIP for Fairmount North (Contract #7094; assessable amount - \$148,266.62) to be deposited in Fund 330, is hereby confirmed.

Resolution 09-0135 was unanimously adopted.

Approved February 23, 2009

DON NESS, Mayor

- - -

RESOLVED, that the assessment roll levied to defray the assessable portion of 2008 SIP for Lakeside-Rockview (Contract #7096; assessable amount - \$331,551.80) to be deposited in Fund 330, is hereby confirmed.

Resolution 09-0136 was unanimously adopted.

Approved February 23, 2009

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 by the liquor control commissioner, subject to departmental approvals and any specific restrictions:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Grandma's Marathon - Duluth, Inc. Canal Park Drive and Buchanan Street, for June 19-21, 2009, with Scott Kennan, manager, with the music and serving ending at 1:00 a.m.

Resolution 09-0112 was unanimously adopted.

Approved February 23, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officers are hereby authorized to execute an administrative services agreement with Midwest EAP Solutions, Inc., to provide employee assistance program services for city employees for year 2009, substantially in the form of Public Document No. 09-0223-10 on file with the city clerk, at an estimated cost of \$8,976, which shall be paid from the Fund 605, Agency 036, Organization 1651, Object 5319.

Resolution 09-0126 was unanimously adopted.

Approved February 23, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officers are hereby authorized to execute an administrative services agreement with SuperiorUSA Benefits Corporation to provide communication, implementation and management of a flexible benefits plan for city employees for year 2009, in accordance with the provisions of Section 125 of the Internal Revenue Code, which agreement shall be substantially in the form of Public Document No. 09-0223-20, on file with the city clerk, at an estimated cost of \$14,860, which shall be paid from the General Fund 110, Department 700, Division 1431.

Resolution 09-0127 was unanimously adopted.

Approved February 23, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a second amendment to that certain Skywalk agreement bearing City Contract No. 15462, a copy of which amendment is on file in the office of the city clerk as Public Document No. 09-0223-11, with IRET Properties, modifying the description of the Skywalk area on the second floor of Livingston's Building.

Resolution 09-0119 was unanimously adopted.

Approved February 23, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to increase the amount payable from \$50,000 to \$60,231 for the 2008 HUD CDBG program community development street assistance program, Fund 262, Agency 020; with the additional funding being transferred from the 2006 CDBG contingency account as set forth as follows:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

2006 CDBG Program – Fund 262 – Project CD06CD Account Revised 2006				
Sub project	Project	Budget	New Amount	Difference
2006 ADMC-AD03	Contingency	\$15,290	\$5,059	-\$10,231
2008 CDBG Program – Fund 262 – Project CD08CD Account Revised 2008				
2008 PFAC-PF02	Community development street assistance	\$50,000	\$60,231	\$10,231

Resolution 09-0120 was unanimously adopted.
 Approved February 23, 2009
 DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to settle the claim by American Voyager Motel, Inc., for a total amount of \$456,000, said claim arising out of the eminent domain action filed in St. Louis County district court and entitled *Duluth Economic Development Authority v American Voyager Motel, Inc.*, St. Louis County File No. 69DU-CV-05-532, and execute all documents necessary, funds to paid from Fund 435, Agency 030, Object 5510.

Resolution 09-0130 was unanimously adopted.
 Approved February 23, 2009
 DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to amend Resolution 06-0134 and City Contract C-20060 with MSA Professional Services, Inc., for professional engineering services related to the water, wastewater and gas utility SCADA (supervisory control and data acquisition) system. This amendment increases the contract amount by \$219,491 for a new contract total of \$322,713.59, payable as follows:

- (a) \$38,172.35 from Water Fund 510, Agency 500, Organization 1905, Object 5536;
- (b) \$71,573.15 from Gas Fund 520, Agency 500, Organization 1905, Object 5533;
- (c) \$109,745.50 from the Sewer Fund 530, Agency 500, Organization 1905, Object 5536.

Resolution 09-0103 was unanimously adopted.
 Approved February 23, 2009
 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) for parts, supplies and labor as needed during year 2009 for the fleet services division in accordance with existing specifications at an estimated amount of \$60,000, terms net 30, discount 35 percent current price list, FOB destination, payable as follows:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

- (a) \$50,000 (parts) from the Fleet Services Fund 660, Department/Agency 015, Object 5221;
- (b) \$10,000 (other) from the Fleet Services Fund 660, Department/Agency 015, Object 5404.

Resolution 09-0108 was unanimously adopted.
Approved February 23, 2009
DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Larson Chevrolet-Oldsmobile, Inc., for the purchase and delivery of OEM (original equipment manufacturer) parts and labor for General Motors vehicles as needed during year 2009 for the fleet services division in accordance with existing specifications at an estimated amount of \$30,000, terms net 30, discount 25 percent current price list, FOB destination, payable as follows:

- (a) \$25,000 (parts) from the Fleet Services Fund 660, Department/Agency 015, Object 5221;
- (b) \$5,000 (labor) from the Fleet Services Fund 660, Department/Agency 015, Object 5404.

Resolution 09-0110 was unanimously adopted.
Approved February 23, 2009
DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with NorthStar Ford, LLC, for the purchase and delivery of OEM (original equipment manufacturer) Ford parts and labor as needed during year 2009 for the fleet services division in accordance with existing specifications at an estimated amount of \$40,000, terms net 30, discount 30 percent current price list, FOB destination, payable as follows:

- (a) \$34,000 (parts) from the Fleet Services Fund 660, Department/Agency 015, Object 5221;
- (b) \$6,000 (labor) from the Fleet Services Fund 660, Department/Agency 015, Object 5404.

Resolution 09-0111 was unanimously adopted.
Approved February 23, 2009
DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Twin Port Mailing for postage and daily mailing services for the public works and utilities department in accordance with specifications and the vendor's quote, for a total estimated amount of \$205,200, terms net 30, payable from various funds, agencies, organizations and objects.

Resolution 09-0115 was unanimously adopted.
Approved February 23, 2009
DON NESS, Mayor

- - -

RESOLVED, that Resolution 08-0497 to Salo Engineering, Inc., for professional engineering services for the 2009 municipal state aid project located on Woodland Avenue between Kent Road and Arrowhead Road, S.A.P. 118-157-020, City Project No. 0243TR, be amended to

increase the amount by \$138,779.31 for a new total of \$514,905.88, payable from Permanent Improvement Fund 0411, Department/Agency 035, Object 5530.

Resolution 09-0123 was unanimously adopted.
Approved February 23, 2009
DON NESS, Mayor

- - -

RESOLVED, that Resolution 07-0547 to Krech Ojard & Associates for professional engineering services for Year 2008 street improvement program for Lakeside-Rockview be amended to increase the amount by \$3,981.96 for a new total of \$205,181.96, payable from Street Improvement Program Fund 0440, Department/Agency 038, Object 5530.

Resolution 09-0124 was unanimously adopted.
Approved February 23, 2009
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 20, 2009, to coincide with Grandma's Marathon 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 09-0113 was unanimously adopted.
Approved February 23, 2009
DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Minnesota Power, a division of Allete, Inc., for the installation of 31 emergency siren poles at various locations in accordance with specifications and the company's quote of \$40,000, terms net 30, payable as follows:

- (a) \$23,548.39 from Capital Improvements Fund 450, Agency 030, Object 5530, Project CP 2007-OT0704;
- (b) \$16,451.61 from Special Projects Fund 210, Agency 030, Organization 3163, Object 5580.

Resolution 09-0114 was unanimously adopted.
Approved February 23, 2009
DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with St. Louis County department of communications to provide computer-aided dispatch system access during year 2009 to the city of Duluth police department in accordance with bureau of criminal apprehension

(BCA) fees of \$26,160, terms net 30, payable from the General Fund 110, Agency 160, Organization 1610, Object 5441.

Resolution 09-0116 was unanimously adopted.
Approved February 23, 2009
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. 09-0223-12, with Independent School District 709 (Duluth public schools) as fiscal host for Duluth interagency early intervention committee (Duluth IEIC) under which agreement the Duluth public library shall receive \$1,000 for fiscal year 2008/2009 to select, purchase, catalog, house and maintain materials and books for the Duluth IEIC, funds to be deposited in Fund 110, Agency 130, Organization 1303, Object 4261.

Resolution 09-0104 was unanimously adopted.
Approved February 23, 2009
DON NESS, Mayor

- - -

RESOLVED, that the proper city officers are authorized to execute and implement an agreement with Fond Du Lac Tribe of Lake Superior providing for its use of the Washington Recreation Center for senior recreational programming for the period January 1, 2009, through December 31, 2013, for \$525 per year; said agreement to be substantially in the form of Public Document No. 09-0223-21, on file in the office of the city clerk; said monies to be deposited into Fund 110, Agency 130, Organization 1302.

Resolution 09-0121 was unanimously adopted.
Approved February 23, 2009
DON NESS, Mayor

- - -

The following resolutions were also considered:

Resolution 09-0122, authorizing application to the Minnesota public facilities authority and to enter into a loan/grant agreement for the construction of the Lakeside interceptor sanitary sewer overflow (SSO) storage facility - Basin #2 at 20th Avenue East and Water Street, was introduced by Councilor Fosle for discussion.

The rules were suspended upon a unanimous vote to hear from a speaker on the resolution.

Carol Burns, representing the residents of Water Street, expressed concern for the toxic chemicals on that site and requested that all steps are taken to mitigate any possible harm to their property and persons with the removal of those chemicals. She questioned if the neighbors on Water Street will be involved in the planning process of the Lakewalk extension in relation to the vehicular traffic on Water Street.

Resolution 09-0122 was adopted as follows:

The city council finds:

(a) That the city of Duluth has a long term program to eliminate and manage sanitary sewer overflows which includes construction of storage basins to accommodate peak wet weather flows; and

(b) Studies have shown that the city of Duluth must construct multiple storage basins to eliminate sanitary sewer overflows from the Lakeside interceptor; and

(c) The estimated cost of the Lakeside interceptor SSO storage facility - Basin #2 project is estimated to be \$6,000,000, with \$1,854,130 of the costs being funded by a grant from the 2005 bonding bill. The remaining costs (\$4,145,870) are the city's responsibility. The public facilities authority expects to have grant and loan monies available from President Obama's stimulus package to finance the city's share of the project costs; and

(d) To receive this money, the city must submit required information and 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 and to enter into a loan/grant agreement with the Minnesota public facilities authority for funding of the Lakeside interceptor sanitary sewer overflow storage facility - Basin #2 at 20th Avenue East and Water Street 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 \$4,145,870 or the as-bid costs of the project.

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 09-0122 was unanimously adopted.

Approved February 23, 2009

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 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 09-0140 was unanimously adopted.

Approved February 23, 2009

DON NESS, Mayor

- - -

Resolution 09-0137, confirming the appointment of Mark Winson as the chief administrative officer [CAO] for the city of Duluth, was introduced by Councilor Gardner for discussion.

Councilor Stauber expressed his concern that as an employee of the city of Duluth Mr. Winson should be living in the city of Duluth as should all city employees.

Councilor Gardner stated her concern that Mr. Winson was a board member of the zoological society that helped construct the contract between the society and the city which involved the removal of city employees, and also expressed concern that his salary would be more than the current CAO while having less responsibilities.

Resolution 09-0137 was adopted as follows:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

WHEREAS, subject to the approval of the city council, and pending a background investigation and drug testing results, the mayor shall appoint Mark Winson to the position of chief administrative officer.

NOW, THEREFORE, BE IT RESOLVED, that the appointment of Mark Winson to the position of chief administrative officer is hereby confirmed and that the proper city officials are hereby authorized to execute and implement an employment contract substantially in the form of that on file in the office of the city clerk as Public Document No. 09-0223-13.

Resolution 09-0137 was unanimously adopted.

Approved February 23, 2009

DON NESS, Mayor

- - -

WHEREAS, subject to the approval of the city council, the mayor shall appoint Lisa Potswald to the position of director of public administration.

NOW, THEREFORE, BE IT RESOLVED, that the appointment of Lisa Potswald to the position of director of public administration is hereby confirmed and that the proper city officials are authorized to execute and implement a re-assignment agreement substantially in the form of that on file in the office of the city clerk as Public Document No. 09-0223-14.

Resolution 09-0138 was unanimously adopted.

Approved February 23, 2009

DON NESS, Mayor

- - -

Resolution 09-0128, authorizing an amendment to the community development block grant agreement with Ma & Pop's 4th Street Market, Inc., and the execution of a satisfaction of mortgage, was introduced by Councilor Stauber.

The rules were suspended upon a unanimous vote to hear from a speaker on the resolution.

Scott Yeazle stated it is important to maintain the community spirit in the Central Hillside, and the 4th Street Market has been very generous to, and works hard for, the community.

Resolution 09-0128 was adopted as follows:

RESOLVED, that the proper city officials are hereby authorized to enter into a first amendment to the community development block grant agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 09-0223-15, with Ma & Pops 4th Street Market, Inc., (agency) and Deyona Kirk, pursuant to which the city will accept \$20,000 from the sale of Deyona and Jamar Kirk's home, will release its mortgage lien on the home, and will require the agency and Deyona Kirk execute a promissory note in the amount of \$39,500.

FURTHER RESOLVED, that the manager of the city's community development division is hereby authorized to execute the satisfaction of mortgage upon the receipt of a cashier's check in the amount of \$20,000 and the execution of a promissory note in the amount of \$39,500 substantially in the form of that attached as Exhibit 1 to the amendment.

Resolution 09-0128 was unanimously adopted.

Approved February 23, 2009

DON NESS, Mayor

- - -

Resolution 09-0131, denying a request to amend Chapter 50 of the Duluth City Code, 1959, as amended, Zoning District Map No. 27 as contained in the Appendix to Chapter 50, to provide

for the reclassification from R-1-b, One Family Residential, and S, Suburban, to C-5, Planned Commercial, for property located on both sides of Sundby Road, north of Page Street (Mission Development, LLC/Arrowhead Commercial Partners, LLC), was introduced by Councilor Stauber.

Councilor Stauber moved to table the resolution for consideration with companion Ordinance 09-006 at the next meeting, which motion was seconded and unanimously carried.

- - -

Resolution 09-0132, setting infrastructure project priorities for federal stimulus funding, was introduced by President Gilbert for discussion.

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

Alison Clarke and John Sanford asked the council to consider the addition of the Lakewalk along the shoreline behind the Ledges town homes to the mayor's project priorities for federal stimulus money before the city loses the land in July and it reverts back to the state.

Jerry Kimball questioned why the extension of the Lakewalk between 23rd Avenue East and 25th Avenue East was not included in the stimulus priorities list and hoped it was not because of pressure from the condominium owners.

Judy Gordon stated that the people directly affected by the Lakewalk should have some input on how things are constructed and also in finding a way to give people access to the lake without having to infringe on the people who live there.

Mayor Ness reviewed that this stretch has quite a history with the city as there is a dispute between the residents that live there and those who want to see the Lakewalk constructed on the lake side. He continued by saying that he supports the Lakewalk on the lake side of those developments and will work to achieve that end goal as quickly as possible. Mayor Ness went on to say there are many funding sources that can be used for this project, but it is not the right project to apply for stimulus dollars, given the criteria of the federal government.

Councilor Anderson moved to amend the project priorities of the resolution to add the Lakewalk project as it is a shovel ready project that needs to be completed by July 2009 or part of the land given to the city by the state will revert back to the state, which motion was seconded and discussed.

Councilor Fedora stated that this amendment is a last minute effort to add on to a list of priorities that were put together in a thoughtful process.

Councilor Anderson's amendment failed upon the following vote:

Yeas: Councilors Anderson, Gardner and President Gilbert -- 3

Nays: Councilors Cuneo, Eckenberg, Fedora, Fosle, Krause and Stauber -- 6

Resolution 09-0132 was adopted as follows:

The city council finds as follows:

(a) The city administration and council wish to establish a set of priorities for possible funding through the federal stimulus package; and

(b) The city administration and city staff have researched and compiled a list of shovel-ready infrastructure improvement projects, a copy of which is on file in the city clerk's office as Public Document No. 09-0223-16, which reflect the standards and criteria needed for possible funding; and

(c) The city administration and council desire to seek funding for projects that will aid the local economy by providing much needed infrastructure investment and job creation.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

NOW, THEREFORE, BE IT RESOLVED, that the city council hereby endorses the list of infrastructure improvement projects attached hereto as priorities for possible funding through the federal stimulus package.

Resolution 09-0132 was unanimously adopted.

Approved February 23, 2009

DON NESS, Mayor

- - -

Resolution 09-0117, authorizing city officials to contract with Car Truck City for the purchase and delivery of two 2009 Chevrolet Silverado extended cab 4x4 pickup trucks in the amount of \$48,299.61, was introduced by Councilor Fosle for discussion.

Councilor Fedora stated that with the condition of the economy, the city should delay making large purchases at this time, especially since the trucks to be replaced do not have many miles on them. He also stated that the city needs to update their fleet service policy as the current policy is 20 years old and the city is using outdated criteria to purchase new vehicles.

Councilor Cuneo stated that purchases like these should be on the consent agenda with the council not having to question every purchase made by the city, so there needs to be a policy discussion on how to determine when purchases should be made.

Resolution 09-0117 was adopted as follows:

RESOLVED, that city officials are hereby authorized to contract with Car Truck City for the purchase and delivery of two Chevrolet Silverado extended cab 4x4 pickup trucks for the department of public works and utilities, in accordance with state of Minnesota Contract #440137, Release T-642(5), specifications and pricing in the amount of \$45,117 plus \$2,932.61 plus \$250 for tax-exempt license plates, registration, title, and document fees, for a combined total amount of \$48,299.61, payable as follows:

- (a) \$4,967.15 from Water Fund 510, Agency 500, Organization 1905, Object 5580;
- (b) \$43,332.46 from Gas Fund 510, Agency 500, Organization 1905, Object 5580.

Resolution 09-0117 was adopted upon the following vote:

Yeas: Councilors Anderson, Eckenberg, Gardner, Krause and President Gilbert -- 5

Nays: Councilors Cuneo, Fedora, Fosle and Stauber -- 4

Approved February 23, 2009

DON NESS, Mayor

- - -

Resolution 09-0118, authorizing city officials to enter into a contract with Nelson Auto Center for the purchase and delivery of two 2009 GMC Savanna one ton cargo vans in the amount of \$42,612.31, was introduced by Councilor Fosle.

Resolution 09-0118 failed upon the following vote (Public Document No. 09-0223-22):

Yeas: Councilors Anderson, Eckenberg and Krause -- 3

Nays: Councilors Cuneo, Fedora, Fosle, Gardner, Stauber and President Gilbert -- 6

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with SEH, Inc., for professional engineering services related to the Lakewalk East extension, Phase III, from 47th Avenue East to 60th Avenue East, for the estimated amount of \$80,380,

payable from the Capital Improvement Fund 450, Department/Agency 030, Object 5520, City Project No. 0569TR.

Resolution 09-0129 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Stauber and President Gilbert -- 8

Nays: Councilor Krause -- 1

Approved February 23, 2009

DON NESS, Mayor

- - -

Resolution 09-0125, authorizing acceptance of grant from FEMA in the amount of \$184,314 for the purpose of securing and installing two-way video conferencing equipment in fire halls and committing local share, was introduced by Councilor Cuneo for discussion.

Councilor Stauber stated there are other alternatives available for video conferencing on the Internet with software which would be a way to save money and cheaper for taxpayers.

Resolution 09-0125 was adopted as follows:

RESOLVED, that the proper city officials are authorized to accept Grant Agreement No. EMW-2008-FO-04706 from the U.S. department of homeland security, federal emergency management agency, a copy of which amendment is on file in the office of the city clerk as Public Document No. 09-0223-17, in the amount of \$184,314, said funds to be deposited in Fund 210, Agency, 030, Organization 3169, Revenue Source 4209-02, for the purpose of securing and installing two-way video conferencing equipment in city fire halls to promote more efficient training of fire fighting personnel and committing \$46,078 as the city's local share cost of said grant, said sum to be paid from the 2009 capital equipment budget.

Resolution 09-0125 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause and President Gilbert -- 8

Nays: Councilor Stauber -- 1

Approved February 23, 2009

DON NESS, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

ORDINANCES TABLED

INTRODUCED BY PRESIDENT GILBERT

09-004 - AN ORDINANCE AMENDING SECTIONS 18 AND 21 OF THE CITY CHARTER TO ALLOW APPOINTMENT OF ADDITIONAL OFFICERS AND TO AUTHORIZE ADOPTION OF JOB SPECIFICATIONS BY RESOLUTION.

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

Ordinance 09-004 failed upon the following vote (Public Document No. 09-0223-18):

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Krause, Stauber and President Gilbert -- 8

Nays: Councilor Gardner -- 1

[Editor's Note: City Charter amendments need a 9/9ths vote to be adopted.]

- - -

BY COUNCILOR ANDERSON

09-003 - AN ORDINANCE AMENDING CHAPTER IV, SECTION 21, OF THE CITY CHARTER RELATING TO POLITICAL ACTIVITIES OF CITY EMPLOYEES.

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

Councilor Krause stated that the dynamics of a work place changes once the employee becomes a public official.

Ordinance 09-003 failed upon the following vote (Public Document No. 09-0223-19):

Yeas: Councilors Anderson, Cuneo, Eckenberg, Gardner, Stauber and President Gilbert -- 6

Nays: Councilors Fedora, Fosle and Krause -- 3

[Editor's Note: City Charter amendments need a 9/9ths vote to be adopted.]

- - -

The following entitled ordinance was read for the first time:

INTRODUCED BY COUNCILOR STAUBER

09-006 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, ZONING DISTRICT MAP NO. 27 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-B, ONE-FAMILY RESIDENTIAL, AND S, SUBURBAN, TO C-5, PLANNED COMMERCIAL, FOR PROPERTY LOCATED ON BOTH SIDES OF SUNDBY ROAD, NORTH OF PAGE STREET (MISSION DEVELOPMENT, LLC/ARROWHEAD COMMERCIAL PARTNERS, LLC).

- - -

The following entitled ordinance was read for the second time:

INTRODUCED BY COUNCILOR GARDNER

09-005 (9960) - AN ORDINANCE AMENDING SECTION 2-44 OF THE DULUTH CITY CODE, 1959, AS AMENDED, BY MODIFYING THE MEMBERSHIP OF THE PARKS AND RECREATION COMMISSION.

Councilor Krause moved to amend Section 2-44 of the ordinance to insert after the phrase "two at large members," the phrase "who shall not be residents of the same council district," which motion was seconded and carried upon the following vote:

Yeas: Councilors Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause and President Gilbert -- 7

Nays: Councilors Anderson and Stauber -- 2

Councilor Gardner moved passage of the ordinance, as amended, and the same was adopted upon a unanimous vote.

- - -

The meeting was adjourned at 9:30 p.m.

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

- - -

ORDINANCE NO. 9960

AN ORDINANCE AMENDING SECTION 2-44 OF THE DULUTH CITY CODE, 1959, AS AMENDED, BY MODIFYING THE MEMBERSHIP OF THE PARKS AND RECREATION COMMISSION.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

The city of Duluth does ordain:

Section 1. That Section 2-44 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 2-44. Composition; appointment; qualifications and terms of members generally; filling vacancies.

The parks and recreation commission shall consist of 11 voting members, who shall be appointed by the mayor, subject to the approval of the council and three nonvoting members, appointed as provided herein. The voting membership shall be comprised of one resident of each of the five council districts in the city, two at large members, who shall not be residents of the same council district, one member with formal education in recreation who is employed in that field, one member who is a member of, or recommended by, the commission on disabilities, one member who works with recreation programs and facilities as a staff member in the community schools program and one member with formal education in land management who is employed in that field. Each voting member shall be a resident of the city of Duluth, except that the recreation and land management professionals and the community schools representative may either be residents of the city or work in the city. All appointments of voting members shall be for terms of three years, except such appointments as may be made for the remainder of expired terms or to provide for staggered terms. The nonvoting membership shall be comprised of one Duluth City Council member, one Duluth school board member and one St. Louis County commissioner. Such nonvoting members shall be recommended for appointment by their respective governmental bodies and shall serve for indefinite terms. Vacancies caused by death, resignation or otherwise shall be filled by the mayor only for the unexpired terms, subject to approval of the city council, in the same manner as for initial appointments. Members shall be eligible for reappointment. The term of any member of the commission shall be deemed vacant upon failure to attend two consecutive meetings or three meetings in a year unless advance notice is given to the president of the commission and such nonattendance resulted from justifiable cause. The city shall provide one parks and recreation staff member and one public works staff member to assist the commission in carrying out its responsibilities.

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: April 5, 2009)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed February 23, 2009
Approved February 23, 2009
DON NESS, Mayor

- - -

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, March 9, 2009, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Cuneo, Eckenberg, Fedora, Gardner, Krause, Stauber and Vice President Anderson -- 7

Absent: Councilor Fosle and President Gilbert -- 2

- - -

Vice President Anderson presided in the absence of President Gilbert.

- - -

The minutes of council meetings held on October 13 and 27, 2009, were approved upon a unanimous vote.

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

09-0309-01 Duluth Lakewalk Office Phase II, LLC, by Mark D. Pilon, attorney, further petition (five signatures) to reclassify Lots 14-17, Block 1, Grant Park Division of Duluth (2900 Piedmont Avenue), from R-1-b to C-1. -- Assessor

09-0309-02 Independent School District No. 709 petitions to vacate portions of:

(a) Elinor Street from the west line of North 54th Avenue West to the east line of North Central Avenue alley; and Central Avenue alley from the south line of Central Place to the north line of Elinor Street;

(b) Ensign Street from the west line of Chambersburg Street to the east line of Church Street;

(c) North 53rd Avenue East from the north line of Oneida Street to the south line of Glenwood Street; all that part of the alley between the west line of North 53rd Avenue East to a line 16 feet east of the west line of Lots 11 and 22, Block 2, Altered Plat of London Park Addition to Duluth; and dedication of a new alley easement running north/south on the west edge of Lots 11 and 22, Block 2, Altered Plat of London Park Addition to Duluth from the north line of Oneida Street to the south line of Glenwood Street. -- Assessor

09-0309-25 Janet Draper communication regarding the proposed rezoning of both sides of Sundby Road, north of Page Street (09-0131R and 09-006-O). -- Received

- - -

REPORTS FROM OTHER OFFICERS

09-0309-03 Clerk application to the Minnesota gambling control board for exemption from lawful gambling license (raffle) from Regents of the University of Minnesota on April 30, 2009. -- Received

09-0309-04 Purchasing agent emergency order awarded to Braun Pump and Controls for repair of lift pump No. 1, high and low pumps in the amount of \$76,882.44. -- Received

- - -

REPORTS OF BOARDS AND COMMISSIONS

09-0309-13 Alcohol, gambling and tobacco commission minutes of February 4, 2009, meeting. -- Received

09-0309-05 Board of zoning appeals minutes of: (a) September 23, 2008; (b) January 27, 2009, meetings. -- Received

09-0309-06 Duluth airport authority: (a) Balance sheet of December 31, 2008; (b) Minutes of January 20, 2009, meeting. -- Received

09-0309-07 Duluth transit authority minutes of January 7, 2009, meeting. -- Received

09-0309-08 Entertainment and convention center authority minutes of February 24, 2009, meeting. -- Received

09-0309-09 Library board minutes of January 27, 2009, meeting. -- Received

09-0309-10 Parks and recreation commission minutes of January 14, 2009, meeting. -- Received

09-0309-11 Planning commission minutes of January 13, 2009, meeting. -- Received

09-0309-12 Spirit Mountain recreation area authority board minutes of January 22, 2009, meeting. -- Received

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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.)

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

RESOLVED, that Resolution 08-0760 confirming the assessment roll levied to defray the assessable portion of the eight inch watermain in Osage Avenue from Page Street to 410 feet north of the center line (Contract No. 5419, assessable amount: \$58,722) be amended to decrease the assessment by \$4,503.41 for a new total assessment of \$54,218.59.

Resolution 09-0106 was unanimously adopted.

Approved March 9, 2009

DON NESS, Mayor

- - -

RESOLVED, that Resolution 08-0759 confirming the assessment roll levied to defray the assessable portion of the eight inch watermain in Ethel Avenue from Springvale Road to 365 feet northerly (Contract No. 5399, assessable amount: \$972,221) be amended to decrease the assessment by \$6,307.85 for a new total assessment of \$90,913.15.

Resolution 09-0109 was unanimously adopted.

Approved March 9, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Waste Management of Northern Minnesota, the first of four one-year contract renewal options, 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 \$90,000, terms net 30, FOB job sites, and payable from various funds, agencies, organizations and objects.

Resolution 09-0100 was unanimously adopted.

Approved March 9, 2009

DON NESS, Mayor

- - -

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

(a) On February 4, 2009, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Canal Park Liquor, LLC (Canal Park Liquor), 302 Lake Avenue South, and has submitted its report to the city council of the city of Duluth as Public Document No. 09-0309-14;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on February 4, 2009, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 09-0309-14 regarding any suspension, revocation and/or civil penalty relating to the off sale intoxicating liquor license of Canal Park Liquor, LLC (Canal Park Liquor), 302 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 Duluth City Council fine the licensee \$500 for the first offense, however that \$250 of the fine be due and payable within 30 days of final council action. The remaining fine amount to be stayed for a period of one year following final council action and be abated if no same or similar violations occur during that one year period.

Resolution 09-0144 was unanimously adopted.

Approved March 9, 2009

DON NESS, Mayor

- - -

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

(a) On February 4, 2009, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Va Bene Café, Inc. (Va Bene), 734 East Superior Street, and has submitted its report to the city council of the city of Duluth as Public Document No. 09-0309-15;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on February 4, 2009, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 09-0309-15 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of Va Bene Café, Inc. (Va Bene), 734 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 Duluth City Council fine the licensee \$500 for the first offense, however that \$250 of the fine be due and payable within 30 days of final council action. The remaining fine amount to be stayed for a period of one year following final council action and be abated if no same or similar violations occur during that one year period.

Resolution 09-0145 was unanimously adopted.

Approved March 9, 2009

DON NESS, Mayor

- - -

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

(a) On February 4, 2009, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Gonzalez Ramos, Inc. (Maya Family Mexican Restaurant), 1725 Miller Trunk Highway,

and has submitted its report to the city council of the city of Duluth as Public Document No. 09-0309-16;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on February 4, 2009, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 09-0309-16 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of Gonzalez Ramos, Inc. (Maya Family Mexican Restaurant), 1725 Miller Trunk Highway, 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 Duluth City Council fine the licensee \$500 for the first offense payable within 30 days of final council action.

Resolution 09-0146 was unanimously adopted.

Approved March 9, 2009

DON NESS, Mayor

- - -

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

(a) On February 4, 2009, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Hippo Down the Street, LLC (Carmody Irish Pub), 308 East Superior Street, and has submitted its report to the city council of the city of Duluth as Public Document No. 09-0309-17;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on February 4, 2009, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 09-0309-17 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of Hippo Down the Street, LLC (Carmody Irish Pub), 308 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 Duluth City Council fine the licensee \$500 for the first offense payable within 30 days of final council action.

Resolution 09-0147 was unanimously adopted.

Approved March 9, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Duluth Lawn & Sport for the purchase and delivery of two John Deere 1435 Series II commercial front mowers for the park maintenance division, in accordance with state of Minnesota Contract #440435, Release #M—448(5), specifications and pricing in the amount of \$51,602.74 plus sales tax of \$3,354.18, for a combined total amount of \$54,956.92, terms net 30, FOB destination, and payable as follows:

(a) \$7,456.92 from Capital Equipment Fund 250, Agency 015, Organization 2008, Object 5580, Project: CE250-V811;

(b) \$47,500.00 from Capital Equipment Fund 250, Agency 015, Organization 2009, Object 5580, Project: CE250-V905.

Resolution 09-0149 was unanimously adopted.

Approved March 9, 2009

DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

RESOLVED, that city officials are hereby authorized to contract with Rick's Tree and Stump Removal for tree removal services during year 2009, the second of four one-year contract renewal options, for an estimated amount of \$30,000, terms net 30, payable from General Fund 110, Agency 120, Organization 1217-2150, Object 5454.

Resolution 09-0150 was unanimously adopted.

Approved March 9, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Liscomb-Hood-Mason Company for property insurance from February 16, 2009, through February 15, 2010, the second of four one-year renewal options, covering 40 city-owned structures, miscellaneous equipment and business personal property in accordance with its quote of \$79,581.72, terms net 30, payable as follows:

(a) \$8,492.57 from the Duluth Economic Development Authority Fund 866, Agency 860, Object 5360;

(b) \$71,089.15 from the Self-Insurance Fund 610, Agency 036, Organization 1650, Object 5360.

Resolution 09-0152 was unanimously adopted.

Approved March 9, 2009

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	Round-Up Bar & Grill, 415 East Fourth Street
Duluth Softball Players Association	Bergey's, 2232 West Superior Street

Resolution 09-0161 was unanimously adopted.

Approved March 9, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proposed specifications for the new civil service classification of supervisor, parking and traffic maintenance, which were approved by the civil service board on December 2, 2008, and which are filed with the city clerk as Public Document No. 09-0309-18, are approved; that said classification shall be subject to the city's collective bargaining agreement with its city of Duluth Supervisory Association employees; and that pay range for said classification shall be ranges 1070 - 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 09-0148 was unanimously adopted.
Approved March 9, 2009
DON NESS, Mayor

- - -

RESOLVED, that:

(a) The city council finds a sufficient petition was filed with the city clerk requesting the vacation of the Skywalk easement in the Lake Superior Place Building located at 21 West Superior Street, legally described as:

Lots 9 and 11, Duluth Proper First Division; 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 and such commission gave due notice of public hearing and did consider same in public hearing (FN 07108); and, the city planning commission at its February 18, 2009, regular meeting, found that the proposed vacated area is no longer needed for Skywalk purposes as an alternative route has been secured; and

(c) That the city council of the city of Duluth approves the vacation of a portion of the Skywalk located in the Lake Superior Place Building, and as more particularly described on Public Document No. 09-0309-19;

(d) That the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution together with a map showing the portion of the Skywalk to be vacated.

Resolution 09-0154 was unanimously adopted.
Approved March 9, 2009
DON NESS, Mayor

- - -

RESOLVED, that the Saint Louis County Board of Commissioners is hereby requested to free convey to the city of Duluth the following tax forfeited parcels for stormwater drainage purposes:

Auditor's Plat #19, Lots 8 and 9 except northerly 125 feet and all of Lots 10-13 inclusive (part of Parcel ID 0132-00080).

Resolution 09-0162 was unanimously adopted.
Approved March 9, 2009
DON NESS, Mayor

- - -

RESOLVED, that the Saint Louis County Board of Commissioners is hereby requested to free convey to the city of Duluth the following tax forfeited parcels for roadway purposes:

Ironton Second Division, Block 55, Lots 1-3 inclusive (part of Parcel ID 2530-11420).

Resolution 09-0163 was unanimously adopted.
Approved March 9, 2009
DON NESS, Mayor

- - -

RESOLVED, that proper city officials are hereby authorized to execute and implement a contract, in substantially the form and containing substantially the terms of the contract on file of the city clerk as Public Document No. 09-0309-20, with, and accept funds from, the Minnesota department of employment and economic development to provide services under Title I of the Workforce Investment Act, the Minnesota youth program services, Minnesota state dislocated

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

worker program services and older American program as defined in the local workforce investment plan, for the term beginning April 1, 2009, and ending March 31, 2012. Program funds will be accepted upon receipt of notices of funds available. For Title I Workforce Investment Act, Minnesota youth program services, and Minnesota state dislocated worker program services funds will be deposited into and paid from Fund 268. For older American program, funds will be deposited into and paid from Fund 270.

Resolution 09-0142 was unanimously adopted.

Approved March 9, 2009

DON NESS, Mayor

- - -

RESOLVED, that Resolution 02-0304 to LHB Engineers and Architects for professional engineering services for the preliminary and final design for the rehabilitation of Bridge No. 93402, located on Second Street over Chester Creek, S.A.P. 118-130-005, City Project No. 0068TR, be amended to increase the amount by \$15,224 for a new total of \$57,738, payable from Permanent Improvement Fund 0411, Department/Agency 035, Object 5530.

Resolution 09-0141 was unanimously adopted.

Approved March 9, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into first amendments to water tower site lease agreements with Clearwire US, LLC, for both the Orphanage Water Tower and the Proctor Water Tower, substantially in the form of those on file in the office of the city clerk as Public Document No. 09-0309-21(a) and Public Document No. 09-0309-21(b), for the location and operation of additional wireless communications equipment, payments to be paid to the Water Fund 510, Agency 500, Revenue Source 4809.

Resolution 09-0143 was unanimously adopted.

Approved March 9, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officers are authorized to execute an agreement, filed as Public Document No. 09-0309-22, with the Drift Toppers Snowmobile Club for the grooming and maintenance of the eastern portion of the cross-city snowmobile trail for an amount not to exceed \$7,672; payable from Fund 110, Agency 120, Organization 1217-2140, Object 5441.

Resolution 09-0155 was unanimously adopted.

Approved March 9, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officers are authorized to execute an agreement, filed as Public Document No. 09-0309-23, with the Over the Hill Night Riders snowmobile club for the grooming and maintenance of the western portion of the cross-city snowmobile trail for an amount not to exceed \$12,604; payable from Fund 110, Agency 120, Organization 1217-2140, Object 5441.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Resolution 09-0156 was unanimously adopted.
Approved March 9, 2009
DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with DSC Communications for the tax-exempt purchase and delivery of ten ICOP Model 20/20 Vision digital video recorders (DVRs), 20 wireless upload kits and three wireless access point devices for the Duluth police department in accordance with specifications and the vendor's quote of \$52,000 plus \$650 shipping for a total combined amount of \$52,650, terms net 10, FOB destination (police radio shop), payable from the Capital Equipment Fund 250, Agency 015, Organization 2009, and Object 5580, Project CE250-V902.

Resolution 09-0158 was unanimously adopted.
Approved March 9, 2009
DON NESS, Mayor

- - -

The following resolutions were also considered:

Resolution 09-0165, approving the exemption of a raffle license and waiving the 60 day waiting period for Second Harvest Northern Lakes Food Bank, was introduced by Councilor Krause. for discussion.

Councilor Krause stated that Vice President Anderson should abstain from voting on this resolution as Vice President Anderson is on the board of the food bank and it would be a conflict of interest.

Resolution 09-0165 was adopted as follows:

BE IT RESOLVED, that the Duluth City Council hereby approves of the Minnesota gambling control board issuing a lawful gambling exemption to Second Harvest Northern Lakes Food Bank 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 09-0165 was unanimously adopted.
Approved March 9, 2009
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. 09-0309-24, with the Lake Superior Warehousing Company, Inc., to allow the city to dispose

of snow from street plowing operations on certain Duluth economic development authority owned property, know as Lot D and leased to Lake Superior Warehousing Company, Inc.

Resolution 09-0157 was adopted upon the following vote:

Yeas: Councilors Cuneo, Eckenberg, Gardner, Krause, Stauber and Vice President Anderson -- 6

Nays: None -- 0

Abstention: Councilor Fedora -- 1

Absent: Councilor Fosle and President Gilbert -- 2

Approved March 9, 2009

DON NESS, Mayor

- - -

Resolution 09-0166, authorizing housing and redevelopment authority of Duluth to forgive a community development block grant rehabilitation loan made under the property rehabilitation program, was introduced by Councilor Stauber for discussion.

Councilor Krause voiced concern that the city is forgiving more and more loans which is not profitable for the city to do.

Resolution 09-0166 was adopted as follows:

RESOLVED, the city council of the city of Duluth hereby authorizes forgiveness by HRA of the repayment of the property rehabilitation program CDBG emergency loan in the amount of \$4,800.

Resolution 09-0166 was adopted upon the following vote:

Yeas: Councilors Cuneo, Eckenberg, Fedora, Gardner, Stauber and Vice President Anderson -- 6

Nays: Councilor Krause -- 1

Absent: Councilor Fosle and President Gilbert -- 2

Approved March 9, 2009

DON NESS, Mayor

- - -

Resolution 09-0160, authorizing consent decree in settlement of the claim of United States, et al., was introduced by Vice President Anderson.

Councilor Fedora moved to table the resolution for a committee meeting on April 6, which motion was seconded and unanimously carried.

- - -

Resolution 09-0167, submitting a proposed amendment to sections 18 and 21 of the City Charter to the voters at a general election on November 3, 2009, was introduced by Vice President Anderson for discussion.

Councilor Gardner stated that the civil service system is a good process that is in place which prevents discrimination and favoritism from occurring, and it would serve the mayor well in hiring two employees to work in his office.

Mayor Ness stated that he would like to bring in his own staff and someone who would have the same political outlook as he does, and when there is a change in mayors, he would be able to bring his own staff to work for the city.

Resolution 09-0167 was adopted as follows:

WHEREAS, the city council has determined that a proposed amendment to the City Charter which would amend sections 18 and 21 to allow the appointment of additional officers and

authorize adoption of job specifications by resolution, as set forth in Ordinance No. 09-004 on file in the office of the city clerk, be submitted to the electors of the city of Duluth for their ratification or rejection in the manner provided for by law.

NOW, THEREFORE, BE IT RESOLVED, that the city council hereby submits such proposal to the qualified voters of the city of Duluth at the general municipal election to be held on Tuesday, November 3, 2009.

RESOLVED FURTHER, that the city clerk shall place upon the ballot at such general municipal 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 the Duluth City Charter be amended to provide the Mayor the ability to appoint a communications and policy officer and a community relations officer and allow the job specifications for each position be established by City Council resolution?

Yes _____ No _____

A "YES" vote is a vote in favor of allowing the Mayor to appoint a communications and policy officer and a community relations officer and that job specifications for those appointments will be established by City Council resolution.

A "NO" vote is a vote against allowing the Mayor to appoint a communications and policy officer and a community relations officer.

Resolution 09-0167 was unanimously adopted.

Approved March 9, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officers are authorized to accept a grant from the Skyline Rotary Club for the fire department's "Get Alarmed Duluth" project in the amount of \$5,000, said sum to be deposited in Fund 110, Agency 150, Organization 1501, Revenue Source 4660, and to execute all documents necessary thereto.

RESOLVED FURTHER, that the city council expresses its appreciation to the Skyline Rotary Club for its generous donation to the safety and welfare of our community.

Resolution 09-0159 was unanimously adopted.

Approved March 9, 2009

DON NESS, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR STAUBER

09-007 - AN ORDINANCE NAMING AN UNNAMED PUBLIC THOROUGHFARE NICK GLUMAC DRIVE LOCATED IN THE FORMER ATLAS CEMENT PLANT, MORGAN PARK (BILL ULLAND, IKONICS CORPORATION).

- - -

INTRODUCED BY PRESIDENT GILBERT

09-009 - AN ORDINANCE MODIFYING PROCESS FOR CONVEYING CITY-OWNED REAL ESTATE, AMENDING ARTICLE XXXIII OF CHAPTER 2 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

- - -

The following entitled ordinance was read of the second time:

INTRODUCED BY COUNCILOR STAUBER

09-006 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, ZONING DISTRICT MAP NO. 27 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-B, ONE-FAMILY RESIDENTIAL, AND S, SUBURBAN, TO C-5, PLANNED COMMERCIAL, FOR PROPERTY LOCATED ON BOTH SIDES OF SUNDBY ROAD, NORTH OF PAGE STREET (MISSION DEVELOPMENT, LLC/ARROWHEAD COMMERCIAL PARTNERS, LLC).

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

- - -

The meeting was adjourned at 7:35 p.m.

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

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, March 23, 2009, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 8

Absent: Councilor Anderson -- 1

- - -

The minutes of council meetings held on November 10, 20, 24 and December 1, 2008, were unanimously approved.

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

09-0323-01 Globe Duluth Enterprises, Inc, by bpd architects, LLP, petition to vacate part of 11th Street and St. Louis Avenue, Plat of Upper Duluth. -- Assessor

09-0323-07 Terese Tomanek communication regarding the proposed Charter commission consideration of a reduction in city councilor compensation (09-0185R). -- Received

09-0323-06 The following communications regarding the proposed rezoning of property on both sides of Sundby Road (09-0131R and 09-006-O): (a) Aaron Brockman; (b) Janet Draper; (c) Alex M. Johnson; (d) Jan Karon. -- Received

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REPORTS FROM OTHER OFFICERS

09-0323-02 Assessor letters of sufficiency of petitions to:

(a) Reclassify Lots 14-17, Block 1, Grant Park Division of Duluth from R-1-b to C-1;

(b) Vacate:

(1) Elinor Street from the west line of North 54th Avenue West to the east line of North Central Avenue alley; and Central Avenue alley from the south line of Central Place to the north line of Elinor Street;

(2) Ensign Street from the west line of Chambersburg Street to the east line of Church Street;

(3) North 53rd Avenue East from the north line of Oneida Street to the south line of Glenwood Street; all that part of the alley between the west line of North 53rd Avenue East to a line 16 feet east of the west line of Lots 11 and 22, Block 2, Altered Plat of London Park Addition to Duluth; and dedication of a new alley easement running north/south on the west edge of Lots 11 and 22, Block 2, Altered Plat of London Park Addition to Duluth from the north line of Oneida Street to the south line of Glenwood Street. -- Received

09-0323-03 Building official appeal of board of zoning appeals denial of variances in sign sizes and placement at 222 East Superior Street (AH Zeppa Foundation, by Foundations Architecture). -- Committee 2 (planning and economic development)

- - -

REPORTS OF BOARDS AND COMMISSIONS

09-0323-04 Duluth transit authority: (a) December 2008 income statement; (b) Minutes of January 28, 2009, meeting. -- Received

09-0323-05 Parks and recreation commission minutes of February 11, 2009, meeting. --
Received

- - -

OPPORTUNITY FOR CITIZENS TO BE HEARD

Chad McKenna and Buddy Robinson spoke on behalf of the Minnesota Citizens Federation NE, of their concern of selling the gas utility. They noted their concerns of: St. Cloud and Superior have a private sector owning their natural gas operations and their rates are higher; a private firm will need to recoup the expense of the utility purchase and show a profit, so rates will go up; with the city in financial distress, the last thing it should do is sell off one of its most profitable assets; the blue ribbon private sector panel that reviewed options for the retiree healthcare issue looked at this option, but concluded it would be a mistake; wages at these private firms are not cheaper than those of the city and thus those salaries would be covered in the rates charged and the utility currently pays the city's general fund an amount "in lieu of taxes" which would be less than what they would receive as its share from a private operation's property taxes.

- - -

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 Gilbert 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 agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 09-0323-08, with Pro-West and Associates, Inc., for professional services related to the development of digital plat and parcel mapping in those sections specified in said public document in an amount not to exceed \$93,000, payable as follows:

- \$5,000 from the Water Utilities Fund 510-500-1925-5310;
- \$5,000 from the Gas Utilities Fund 520-500-1925-5310;
- \$5,000 from the Sewer Utilities Fund 530-500-1925-5310;
- \$5,000 from the Stormwater Utilities Fund 535-500-1925-5310;
- \$73,000 from Special Projects Fund 210-030-3154.

Resolution 09-0176 was unanimously adopted.

Approved March 23, 2009

DON NESS, Mayor

- - -

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

College of St. Scholastica, 1200 Kenwood Avenue, for May 1, 2009, with Luke Moravec, manager.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Resolution 09-0168 was unanimously adopted.
Approved March 23, 2009
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 (Marshall Auction), 1215 Rice Lake Road, for May 1, 2009, with Barbara Brueggemann, manager.

Northland Vietnam Veterans Association, Bayfront Park, for August 7, 8 and 9, 2009, the serving ceasing at 9:30 p.m. with Kathy Camps, manager.

Resolution 09-0169 was unanimously adopted.
Approved March 23, 2009
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Carlson Bros. Mechanical Contracting for removal of existing steam boiler system and installation of indirect gas-fired heating system at Lakewood pump house in accordance with its low specification bid of \$79,800, payable out of Fund 510, Department/Agency 500, Organization 1905, Object 5533, Project No. 09-25.

Resolution 09-0175 was unanimously adopted.
Approved March 23, 2009
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 St. John's School and does hereby waive the 60 day waiting period which it has to object to the issuance of said exemption, and approves the application to conduct off site gambling for the Duluth Curling Club at 327 Harbor Drive.

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 09-0183 was unanimously adopted.
Approved March 23, 2009
DON NESS, Mayor

- - -

RESOLVED, that Change Order No. 1 to Contract No. 20787 with Donald Holm Construction, Inc., be and hereby is authorized in an amount of \$31,501, payable from Capital Fund 450, Department/Agency 030, Object 5520, CP 2008, OT-0807, for additional construction costs for the remodeling of Fire Station #10, thereby increasing the total contract amount to \$183,447.

Resolution 09-0186 was unanimously adopted.
Approved March 23, 2009
DON NESS, Mayor

- - -

BY COUNCILOR GARDNER:

RESOLVED, that the Duluth City Council hereby reappoints Michelle Hooley to the civil service board for a term expiring on March 31, 2015.

Resolution 09-0171 was unanimously adopted.
Approved March 23, 2009
DON NESS, Mayor

- - -

RESOLVED, that Mark Winson, chief administrative officer to the mayor, is hereby designated as the responsible authority for data practices as defined by Minnesota Statutes, Section 13.02, subd. 16.

BE IT FURTHER RESOLVED, that Resolution 08-0262 adopted April 28, 2008, be rescinded.

Resolution 09-0172 was unanimously adopted.
Approved March 23, 2009
DON NESS, Mayor

- - -

RESOLVED, that the appointment by Mayor Ness to the housing and redevelopment authority of Maureen Booth, for a term expiring on January 6, 2014, replacing Betsy Little, is confirmed.

Resolution 09-0177 was unanimously adopted.
Approved March 23, 2009
DON NESS, Mayor

- - -

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. 09-0323-09, are confirmed.

Resolution 09-0178 was unanimously adopted.
Approved March 23, 2009
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement substantially in the form of the copy on file in the office of the city clerk as Public Document No. 09-0323-10 to the low income housing tax credit program joint powers agreement with the Minnesota housing finance agency (Minnesota housing) extending the term thereof.

Resolution 09-0174 was unanimously adopted.
Approved March 23, 2009
DON NESS, Mayor

- - -

RESOLVED,

(a) That the city council finds a sufficient petition was filed with the city clerk requesting the vacation of part of the West Second Street alley legally described as the northerly 0.1 feet of the alley abutting Lot 34 and the east half of Lot 36 of Duluth Proper First Division, West Second Street;

(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 alley area is useless for some or all of the uses for which it was dedicated;

(c) The planning commission, at its March 10, 2009, regular meeting did approve vacating the alley petitioned for vacation as since time of construction in 1908 the building has not interfered with public use of the alley.

RESOLVED FURTHER,

(a) That the city council of the city of Duluth approves the vacation of West Second Street alley legally described as the northerly 0.1 feet of the alley abutting Lot 34 and the east half of Lot 36 of Duluth Proper First Division, West Second Street, and as more particularly described on Public Document No. 09-0323-11;

(b) That the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution.

Resolution 09-0181 was unanimously adopted.

Approved March 23, 2009

DON NESS, Mayor

- - -

RESOLVED,

That the city council grant a special use permit submitted by St. Louis County for a shared public impound lot at 2501 Rice Lake Road for use by St. Louis County and the Duluth police department, based on the following findings:

(a) St. Louis County has submitted a request for a special use permit in accordance with Section 50-35(cc) of the City Code, for an essential municipal or public utility use, facility or building;

(b) A public facility at this location is consistent with the comprehensive land use plan's designation on the future land use map as institutional;

(c) The improvements to the 39,500 square foot site, including a chain link security fence, electronic gate, light poles and class five gravel, will not negatively impact the surrounding properties.

Resolution 09-0187 was unanimously adopted.

Approved March 23, 2009

DON NESS, Mayor

- - -

RESOLVED,

That the city council grant a special use permit submitted by the Western Lake Superior Sanitary District to construct a loading dock to serve the existing asphalt appliance pad at the materials recovery center at 4587 Ridgeview Road, based on the following findings:

(a) The Western Lake Superior Sanitary District has submitted a request for a special use permit in accordance with Section 50-35(cc) of the City Code, for an essential municipal or public utility use, facility or building;

(b) A public utility facility at this location is consistent with the comprehensive land use plan's designation on the future land use map as transportation and utilities;

(c) The proposed loading dock is consistent with the original plans submitted for the materials recovery center, which was granted a special use permit by city council in 2001 (01-0792R);

(d) All stormwater runoff from the loading dock and ramp will be diverted to existing stormwater sedimentation basin #1, located in the southwest corner of the facility;

(e) The proposed loading dock will not cause negative environmental impacts upon the community.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Resolution 09-0188 was unanimously adopted.
Approved March 23, 2009
DON NESS, Mayor

- - -

WHEREAS, a bill has been introduced in the Minnesota Senate, S.F. No. 847, a copy of which is on file in the office of the city clerk as Public Document No. 09-0323-12, which would establish a pilot program for the cities of Duluth, St. Paul, Inver Grove Heights, West St. Paul and South St. Paul for managing cases involving persons who are arrested for driving with an invalid license and helping these persons to become valid drivers; and

WHEREAS, the city of Duluth attorney's office has consulted in the development of the pilot program and believes the program would greatly benefit community safety in the city of Duluth by providing prosecutors with an effective tool for handling these difficult cases.

NOW, THEREFORE, BE IT RESOLVED, that an initiative to support Minnesota Senate Bill S.F. No. 847, creating a license reinstatement diversion pilot program, be added to the city legislative priorities agenda for 2009.

Resolution 09-0170 was unanimously adopted.
Approved March 23, 2009
DON NESS, Mayor

- - -

RESOLVED, that the city engineer is 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. 09-0323-13, with Qwest to install a temporary line and subsequently place new cable related to City Project No. 0243TR, the reconstruction of Woodland Avenue between Kent Road and Arrowhead Avenue, in an amount not to exceed \$210,010, payable from Permanent Improvement Fund 0411, Agency 035, Object 5530.

Resolution 09-0173 was unanimously adopted.
Approved March 23, 2009
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to pay to Mohammed El Damir the sum of \$13,560.73 in full and final settlement of the claim which arose out of a break in a city watermain occurring near 620 Woodland Avenue on February 9, 2009; payment to be made from the Self Insurance Fund 610-036-1652-5841.

Resolution 09-0193 was unanimously adopted.
Approved March 23, 2009
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:

Both sides of Woodland Avenue between Kent Road and Arrowhead Road.
Resolution 09-0139 was unanimously adopted.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Approved March 23, 2009
DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Thane Hawkins Polar Chevrolet for the purchase and delivery of a 2009 Chevrolet Express 1500 AWD eight-passenger van with options for the Duluth police department in accordance with state of Minnesota Contract No. 440058, Release A-175(5), specifications and pricing for \$26,541.48 plus \$1,725.20 sales tax plus \$125 for tax exempt plates, title, registration and document fees, for a total amount of \$28,391.68, terms net 30, FOB destination, and payable from the Capital Equipment Fund 250, Agency 015, Organization 2009, Object 5580.

Resolution 09-0151 was unanimously adopted.

Approved March 23, 2009
DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Municipal Emergency Services, Inc., for the tax-exempt purchase and delivery of Globe G-Xtreme gear, coats and pants, for the fire department during contract year from June 1, 2009, through May 31, 2010, the first of two one-year renewal options, in accordance with city specifications and based on the vendor's unchanged price list for a total of \$33,206.04, payable as follows:

- (a) \$10,000.00 from the General Fund 110, Agency 150, Organization 1502, Object 5218;
- (b) \$23,206.04 from the General Fund 110, Agency 150, Organization 1502, Object 5241.

Resolution 09-0153 was unanimously adopted.

Approved March 23, 2009
DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Porter Lee Corporation for the purchase and installation of BEAST (Barcoded Evidence Analysis, Statistics and Tracking) software and hardware for the Duluth police department for \$22,027.81 plus \$1,431.80 sales tax, for a total amount of \$23,459.61, terms net 30, payable from the General Fund 110, Agency 160, Organization 1640-2232, Object 5441.

Resolution 09-0184 was unanimously adopted.

Approved March 23, 2009
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. 09-0323-14, with St. Louis County to purchase certain equipment and provide certain patrol services as set forth in the U.S. department of homeland security/bureau of customs and border protection's operations Order No. 09-GFNDUM-01-001 Version 0 ("Operation Stone Garden Duluth 2008") and to be reimbursed in the amount of not to exceed \$288,260, said sums to be deposited in Fund 215-200-2286-4210-01.

Resolution 09-0191 was unanimously adopted.

Approved March 23, 2009
DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Yamaha Golf and Utility, Inc., for the four-year lease of 110 golf carts and ten gas utility carts for the Enger Park and Lester Park golf courses in accordance with specifications and the vendor's low bid of \$71,125.20 per year, for a total amount of \$284,500.80 in four years, sales tax collected with each rental, terms net 30, FOB destination, and payable as follows:

- (a) \$142,250.40 from the Golf Fund 503, Agency 400, Organization ENGR, Object 5415;
- (b) \$142,250.40 from the Golf Fund 503, Agency 400, Organization LSTR, Object 5415.

RESOLVED FURTHER, that this four-year lease is subject to the availability of funds.

Resolution 09-0180 was unanimously adopted.

Approved March 23, 2009

DON NESS, Mayor

- - -

The following resolutions were also considered:

Resolution 09-0185, by councilors Stauber, Fedora and Anderson, requesting the Charter commission examine an amendment to Section 5 of the City Charter supporting a reduction in city councilor compensation, was introduced for discussion.

Councilor Stauber expressed support for the resolution for the reasons of: this is more about sacrifice, because the council asked the citizens to sacrifice with less services; the city has increased fees and property taxes; employees are being asked to make sacrifices with decreased benefits and retirees are being asked to make sacrifices.

Councilor Gardner moved to amend the resolution as follows:

(a) In paragraph 2, after the phrase "the council desires," insert "for each councilor to have the option," and after the phrase "to reduce," delete "its" and insert "their";

(b) In paragraph 4, before the first "reduction," insert "an optional," and before the second "reduction," insert "an individual option for a,"
which motion was seconded and discussed.

Councilor Gardner noted that: this amendment gives each councilor the option to reduce their compensation; all councilors use their compensation differently and any future councilor who does not have much money should not be discouraged from running.

Councilors Fedora and Krause felt that: citizens and employees did not have the "option" of having their water rates increased, paying a street lighting utility fee or on being laid off; there should be unified council support for this reduction to lead by example and councilors could choose other means to save much larger amounts of money by not having interns, not submitting a bill for city related travel or expenses or stopping their checks from the city.

The amendment carried as follows:

Yeas: Councilors Cuneo, Fosle, Gardner, Krause and President Gilbert -- 5

Nays: Councilors Eckenberg, Fedora, and Stauber -- 3

Absent: Councilor Anderson -- 1

Councilor Fosle moved to amend the resolution by adding the following sentence to the last paragraph:

"The city council further supports the Charter commission reviewing and recommending ways the savings can be directed or segregated to allow the council to direct the allocation of those funds,"

which motion was seconded and failed upon the following vote:

Yeas: Councilors Cuneo, Fosle, Krause and President Gilbert -- 4

Nays: Councilors Eckenberg, Fedora, Gardner and Stauber -- 4

Absent: Councilor Anderson -- 1

Councilor Cuneo expressed support for the resolution, but noted that the council is not over paid and has no direct staff.

Councilor Eckenberg noted that: the 2001 council salary study showed that on average each councilor does about 1,037 hours of council business a year, which is almost a half time job; the council salary has not changed since 2001 and thus has had no inflation; with possibly four new councilors in 2010, it is not right to take a position on the salary implications for them and there should not be a "symbolic" nature to the precedence of this to full time city employees.

Resolution 09-0185, as amended, failed upon the following vote (Public Document No. 09-0323-15):

Yeas: Councilors Cuneo, Fedora and Stauber -- 3

Nays: Councilors Eckenberg, Fosle, Gardner, Krause and President Gilbert -- 5

Absent: Councilor Anderson -- 1

- - -

Resolution 09-0197, by Councilor Fosle, requesting the Charter commission examine an amendment to Section 6 of the City Charter regarding city council interns, was introduced for discussion.

Councilors Fosle and Krause expressed support for the resolution for reasons of: this could allow the administration to allocate these funds elsewhere with the budget crisis and internships could still be offered seeing that it is a learning experience, but without the compensation.

To councilor questions, Chief Administrative Officer Mark Winson noted that currently there are only two council interns and they are paid a \$25 per week stipend when they are working and the reference in the Charter states that this can be budgeted at up to \$20,000, while the budgeted line item is currently \$10,000.

Councilors Eckenberg and Fedora opposed the resolution for reasons of: the interns assist part time councilors who have time constraints; the councilors have no direct staff and the use of interns have not been abused by the council.

Resolution 09-0197 failed upon the following vote (Public Document No. 09-0323-16):

Yeas: Councilors Fosle, Krause and Stauber -- 3

Nays: Councilors Cuneo, Eckenberg, Fedora, Gardner and President Gilbert -- 5

Absent: Councilor Anderson -- 1

- - -

BY COUNCILOR ANDERSON:

RESOLVED, that the city council hereby requests the Charter commission to recommend an amendment of Chapter IV, Section 21 of the City Charter, which proposed ordinance is on file in the office of the city clerk as Public Document No. 09-0323-17.

Resolution 09-0189 was unanimously adopted.

Approved March 23, 2009

DON NESS, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinance was read for the first time:

INTRODUCED BY COUNCILOR STAUBER

09-010 - AN ORDINANCE GRANTING TO HERITAGE FOUNDATION, INC., (AKA DULUTH AREA FAMILY YMCA) A CONCURRENT USE PERMIT FOR A SKYWALK INTO AND OVER THE RIGHT-OF-WAY OF THE WEST FIRST STREET ALLEY FOR PROPERTY LOCATED AT 302 WEST FIRST STREET.

- - -

The following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR STAUBER

09-007 (9961) - AN ORDINANCE NAMING AN UNNAMED PUBLIC THOROUGHFARE NICK GLUMAC DRIVE LOCATED IN THE FORMER ATLAS CEMENT PLANT, MORGAN PARK (BILL ULLAND, IKONICS CORPORATION).

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

Bill Ulland spoke in support of the ordinance for reasons of: Nick was great man who was born in Gary; was a pillar and fixture in Morgan Park and it is very appropriate to name this street after an individual who lived in this neighborhood.

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

- - -

INTRODUCED BY PRESIDENT GILBERT

09-009 (9962) - AN ORDINANCE MODIFYING PROCESS FOR CONVEYING CITY-OWNED REAL ESTATE, AMENDING ARTICLE XXXIII OF CHAPTER 2 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

President Gilbert moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

The meeting was adjourned at 8:10 p.m.

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 9961

AN ORDINANCE NAMING AN UNNAMED PUBLIC THOROUGHFARE NICK GLUMAC DRIVE LOCATED IN THE FORMER ATLAS CEMENT PLANT, MORGAN PARK (BILL ULLAND, IKONICS CORPORATION).

The city of Duluth does ordain:

Section 1. That the following unnamed public thoroughfare shall be and is hereby named Nick Glumac Drive (FN 09006):

A strip of land 66 feet wide lying in the West Half of the Southeast Quarter, Section 34, Township 49 North, Range 15 West, St. Louis County, Minnesota, the centerline of said easement being described as follows:

Commencing at the southwest corner of said W1/2-SE1/4; thence north 00 degrees 17 minutes 17 seconds west, along the west line of said W1/2-SE1/4 a distance of 653.51 feet; thence north 89 degrees 23 minutes 03 seconds east a distance of 224.44 feet to the easterly

right-of-way line of Commonwealth Avenue (Minnesota Trunk Highway No. 23) and the point of beginning of the line to be described; thence north 89 degrees 23 minutes 03 seconds east a distance of 337.11 feet; thence northeasterly, along a tangential curve concave to the northwest having a radius of 170.77 feet, central angle of 91 degrees 54 minutes 07 seconds a distance of 273.91 feet; thence north 02 degrees 31 minutes 04 seconds west a distance of 195.64 feet; thence northwesterly, along a tangential curve concave to the southwest having a radius of 2140.85 feet, central angle of 15 degrees 05 minutes 48 seconds, a distance of 564.09 feet; thence northwesterly, along a compound curve concave to the southwest having a radius of 586.50 feet, central angle of 10 degrees 22 minutes 00 seconds a distance of 106.12 feet; thence north 27 degrees 35 minutes 16 seconds west a distance of 86.17 feet; thence north 02 degrees 13 minutes 42 seconds east a distance of 80.57 feet, and there terminating.

Section 2. That the city clerk, upon passage of this ordinance, shall:

(a) Notify the director of public works and utilities to proceed with erection of street signs relating to such change;

(b) Notify the following agencies and utilities of the specific changes:

(1) Business office of Qwest Communications;

(2) Manager of delivery and collection, main post office;

(3) County auditor, St. Louis County;

(4) President, Minnesota Power;

(5) Chief, Duluth fire department;

(6) Chief, Duluth police department;

(7) Director, public works and utilities;

(8) City assessor;

(9) Voter registration department;

(10) Minnesota department of transportation;

(11) St. Louis County 911 agency.

Section 3. That this ordinance shall take effect 30 days after its passage and publication.

(Effective date: May 3, 2009)

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

Yeas: Councilors Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 8

Nays: None -- 0

Absent: Councilor Anderson -- 1

Passed March 23, 2009

Approved March 23, 2009

DON NESS, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 9962

AN ORDINANCE MODIFYING PROCESS FOR CONVEYING CITY-OWNED REAL ESTATE, AMENDING ARTICLE XXXIII OF CHAPTER 2 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

The city of Duluth does ordain:

Section 1. That Article XXXIII of Chapter 2 of the Duluth City Code, 1959, as amended,

is hereby amended by deleting said Article as existing in its entirety and by substituting the following therefor:

Article XXXIII. Conveyance of Real Property.

Sec. 2-175. Application of Article.

This Article shall apply to the authorization of all forms of conveyance of the title or portion thereof to real property owned by the city, whether effective upon the effective date of the authorizing ordinance or executory or conditional except that this Article shall not apply to the granting of easements for roadways, sidewalks and utilities over such property.

Sec. 2-176. Preconditions to conveyance.

Prior to any conveyance governed by this Article:

(a) The city's planning agency shall have reviewed the proposed conveyance for conformity to the city's comprehensive plan and shall have reported its findings in writing to the council with regard thereto; provided that the council may dispense with the requirement of this subsection upon a finding that the proposed conveyance has no relationship to said plan, approved by a two-thirds vote of the council. For the purposes of this Section and of Minnesota Statutes Section 462.356, the city's planning agency shall be deemed to be that department or division of the city responsible for physical planning in the city and the administrator of that department or division shall be responsible for the required review and report;

(b) The city assessor shall have provided a written estimate of the market value of the property interest sought to be conveyed.

Sec. 2-177. Methods of conveyance.

Conveyances under this Article may be accomplished or implemented in the following manners:

(a) Conveyance to the highest responsible bidder pursuant to Section 2-177.1 below;

(b) Conveyance to the highest responsible bidder at auction pursuant to Section 2-177.2 below;

(c) Conveyance to another governmental agency by sale or exchange at an amount other than market value pursuant to Section 2-177.3 below;

(d) Conveyance to a party other than another governmental agency at an amount at or less than market value in order to further other city interests pursuant to Section 2-177.4 below;

(e) Conveyance to an adjacent property owner or owners of property which cannot be developed pursuant to Section 2-178 below.

Sec. 2-177.1. Conveyance to the highest bidder.

(a) The city may convey any property to the highest bidder by ordinance naming the person to whom it is to be conveyed, the consideration to be paid for the property and any conditions or limitation on the conveyance, either in the ordinance or in the form of an agreement approved by ordinance. Any such agreement may contain an option to purchase with any conditions approved by the council;

(b) Conveyance pursuant to this Section shall only be approved after the availability of the property for conveyance is suitably advertized and reasonable opportunity for notice to be received by all potential purchasers has been provided. Such advertizing can be accomplished either by direct advertizing in suitable

medium or through the services of an agent or broker, in which case a prior agreement with such agent or broker shall have been authorized and entered into.

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.

Sec.2-177.3. Conveyance to another governmental unit.

The city may convey city property to another governmental unit by sale or exchange where the council finds by ordinance that the needs of said governmental unit are 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. The ordinance shall name the entity to whom it is to be conveyed, the compensation to paid for the property if any and any conditions or limitation on the conveyance.

Sec. 2-177.4. Conveyance to further city interests.

The city may convey city property to a non-governmental entity at no cost or at less than market value if the council finds by ordinance that such conveyance will further other important city interests or objectives and that such conveyance is necessary to the accomplishment of such interests. The ordinance shall name the person or entity to whom it is to be conveyed, the compensation to be paid for the property if any and any conditions or limitation on the conveyance. Said ordinance shall specifically identify and describe the interests and objectives to be furthered and shall state the reason or reasons why it is necessary to convey the property at less than market value.

Sec. 2-178. Exemption for property which cannot be developed.

If, due to existing laws or regulations, no building can legally be constructed on a parcel, the city may directly sell such parcel by ordinance to an adjacent owner or adjacent owners without competitively bidding but at a price at least equal to its market value as determined by the city assessor. If more than one adjacent owner requests the property, the council may divide the parcel and sell part to each adjacent owners. An adjacent owner is one who owns property that is contiguous with the parcel being sold and is not separated from it by a street, alley, railroad or similar improvement.

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

(Effective date: May 3, 2009)

President Gilbert moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 8

Nays: None -- 0

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Absent: Councilor Anderson -- 1

ATTEST:
JEFFREY J. COX, City Clerk

Passed March 23, 2009
Approved March 23, 2009
DON NESS, Mayor

- - -

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, April 13, 2009, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Absent: None -- 0

- - -

The minutes of the council meeting held on December 15, 2008, were unanimously approved.

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

09-0413-01 Jeff Jackson, et al. (three signatures), petition to vacate Bayview Avenue between Lot 1, Block 6 and Lot 12, Block 7, Oakland Addition to Duluth. -- Assessor

09-0413-02 Sarah Seidelmann, et al. (six signatures), petition to vacate Lester Street Alley from 51st Avenue East to 52nd Avenue East, Block 151, Crosby Park Addition. -- Assessor

09-0413-15 Canal Park Business Association communication regarding the proposed modification of parking regulations, allowing for use of different parking metering equipment (09-013-O). -- Received

09-0413-16 Northern Communities Land Trust communication and data regarding the proposed acceptance of neighborhood stabilization program (NSP) funding (09-0228R). -- Received

09-0413-17 John Ramos communication regarding the proposed Spirit Mountain recreation area authority budgets for the fiscal year May 1, 2009, to April 30, 2010 (09-0224R). -- Received

09-0413-18 The following communications regarding variances from rental license restrictions in the protection zone (09-0233R and 09-014-O): (a) Alicia Johnson; (b) Roberta Paulson-Young. -- Received

09-0413-19 The following communications regarding the proposed designation of an off-leash dog area (09-0239R): (a) Fred Anderson; (b) Pat Castellano; (c) Stacey Harter; (d) Jim Peterson; (e) Karen Plass. -- Received

09-0413-20 The following communications regarding the proposed rezoning of property on both sides of Sundby Road (09-0131R and 09-006-O): (a) Al Bugge; (b) Sandy Johnson; (c) Mike and Robyn Jones; (d) Candy Lee. -- Received

09-0413-21 The following communications regarding the proposed transfer of monies from community investment trust fund for the street reconstruction, preservation and maintenance program (09-0226R): (a) Byron Broten; (b) Randy Hill. -- Received

- - -

REPORTS FROM OTHER OFFICERS

09-0413-03 Assessor letters of sufficiency of petitions to vacate:

(a) Bayview Avenue between Lot 1, Block 6 and Lot 12, Block 7, Oakland Addition to Duluth;

(b) Lester Street Alley from 51st Avenue East to 52nd Avenue East, Block 151, Crosby Park Addition;

(c) Part of 11th Street and St. Louis Avenue, Plat of Upper Duluth. -- Received
09-0413-04 Building official submitting appeal, by St. Louis County, of heritage preservation commission's denial to issue a permit for demolition of the St. Louis County jail located at Mesaba Avenue and West Second Street. -- Committee 2 (planning and economic development)

09-0413-05 Clerk application to the Minnesota gambling control board for exemption from lawful gambling license (raffle) from Lincoln Park Business Group on July 18, 2009. -- Received

09-0413-13 Police department local solicitation application for city council review of the Recovery Act: Edward Byrne memorial justice assistance grant (JAG) formula program. -- Received

- - -

REPORTS OF BOARDS AND COMMISSIONS

09-0413-14 Alcohol, gambling and tobacco commission minutes of March 9, 2009, meeting. -- Received

09-0413-06 Commission on disabilities minutes of March 4, 2009, meeting. -- Received

09-0413-07 Duluth airport authority minutes of February 17, 2009, meeting. -- Received

09-0413-08 Entertainment and convention center authority minutes of March 16, 2009, building committee meeting. -- Received

09-0413-09 Heritage preservation commission minutes of March 24, 2009, meeting. -- Received

09-0413-10 Housing and redevelopment authority minutes of: (a) November 25; (b) December 23, 2008; (c) January 27 (annual); (d) January 27 (regular), 2009, meetings. -- Received

09-0413-11 Tree commission minutes of: (a) November 21, 2008; (b) January 20; February 17, 2009, meetings. -- Received

09-0413-12 Spirit Mountain recreation area authority minutes of February 19, 2009, meeting. -- Received

- - -

OPPORTUNITY FOR CITIZENS TO BE HEARD

Jerry Schlafer reviewed that the city of Superior has cleaned up their appearance and will be debt free in a few years, and questioned why Duluth does not find out how Superior is being successful with a fraction of the resources so Duluth will have a better future.

- - -

RESOLUTIONS TABLED

Councilor Stauber moved to remove Resolution 09-0131, denying a request to amend Chapter 50 of the Duluth City Code, 1959, as amended, Zoning District Map No. 27 as contained in the Appendix to Chapter 50, to provide for the reclassification from R-1-b, One-family Residential, and S, Suburban, to C-5, Planned Commercial, for property located on both sides of Sundby Road, north of Page Street (Mission Development LLC/arrowhead Commercial Partners, LLC), from the table, which motion was seconded and unanimously carried.

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INTRODUCTION AND CONSIDERATION OF ORDINANCE
ORDINANCE TABLED

INTRODUCED BY COUNCILOR STAUBER

09-006 (9963) - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, ZONING DISTRICT MAP NO. 27 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-B, ONE-FAMILY RESIDENTIAL, AND S, SUBURBAN, TO C-5, PLANNED COMMERCIAL, FOR PROPERTY LOCATED ON BOTH SIDES OF SUNDBY ROAD, NORTH OF PAGE STREET (MISSION DEVELOPMENT, LLC/ARROWHEAD COMMERCIAL PARTNERS, LLC).

At this time, Councilor Stauber moved to remove the ordinance 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.

The following speakers urged support of the rezoning of Sundby Road for the following reasons: David Ross, representing the Duluth Area Chamber of Commerce, Craig Olson, representing the building trades, Ken Truscott and Dave Holappa stated there is too little commercial development in Duluth; this development would add to the tax base to keep and restore our public services; Duluth needs more businesses that generate tax revenue through property and sales taxes; Duluth needs to find a way to keep developers and help to become a better retail center; this project will create construction and retail jobs; very few neighbors would be impacted by this development; there are reasons to change and update the comprehensive plan when needed and this is a large piece of property for a large development to happen.

Councilor Krause reviewed that this is a challenged piece of property with 11 acres of wetland and a long downgrade slope to Miller Creek that will require a lot of mitigation, and this request would convert the property to a high density box development with no idea of what that box development would be or what tax base would be. He voiced concern that this is a blind piece of land with no definition of what is coming and could even be sectioned off and sold. Councilor Krause also stated that there is concern from the neighbors, and city staff and the planning commission are not in support of this development. He also explained that the development model around the country for malls is going from a high density model to a more modern development that is a mixed use model that is more user and family friendly, removing the impact of high density to a residential area.

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Stauber and President Gilbert -- 8

Nays: Councilor Krause -- 1

- - -

Resolution 09-0131 failed upon the following vote (Public Document No. 09-0413-22):

Yeas: Councilor Krause -- 1

Nays: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Stauber and President Gilbert -- 8

- - -

President Gilbert moved to remove Resolution 09-0160, authorizing consent decree in settlement of the claim of United States, et al., from the table, which motion was seconded and unanimously carried.

The rules were suspended upon a unanimous vote to hear from a speaker on the resolution.

Brad Clifford, executive director of North Star Community Development Corporation, urged support of this resolution and stated that the corporation looks forward to working with the administration and community to save money.

Councilor Eckenberg stated the Federal government is forcing the city to spend millions of dollars and expecting Duluth to pay for all the improvements even though it is a natural resource for the country. He continued saying that any new option that would help the citizens pay for any part of this fix should be explored by the city.

Mayor Ness explained that the lateral lines are a home's private infrastructure and accounts for over 50 percent of the sanitary sewer system and is a major reason for the overflows. He continued saying that the environmental protection agency (EPA) and department of justice do not care how the 175 homes get done just as long as the work gets done in a year. Mayor Ness also stated that he wants to work with the council to find a way to help pay for the lines, but the city needs to accept the compromise to prevent more punitive measures which would be worse if the city does not accept the decree.

To questioning from the council, Mayor Ness replied that the administration is making a commitment to look into new financing packages such as grants and loans to help residents with their lateral lines, and a component of that is the city's success achieving stimulus dollars for the overflow tanks. He continued saying that if the city receives some stimulus dollars, staff would review the entire program and some of those resources may be put toward lateral lines.

Councilor Stauber stated there are other options such as an insurance program that could help pay for the homeowner's replacement of the lateral lines, but the city has not been open in exploring this option.

Councilor Stauber moved to retable the resolution to hear other options to finance the replacement of lateral lines, which motion was seconded and failed upon the following vote:

Yeas: Councilors Eckenberg and Stauber -- 2

Nays: Councilors Anderson, Cuneo, Fedora, Fosle, Gardner, Krause and President Gilbert -- 7

Resolution 09-0160 was adopted as follows:

RESOLVED, that the proper city officials are authorized to execute a consent decree, substantially in the form of that on file in the office of the city clerk as Public Document No. 09-0413-23, in settlement of the complaint arising out of alleged violations of the Clean Water Act by the city of Duluth and Western Lake Superior Sanitary District filed by United States, et al., in the United States district court district of Minnesota and entitled *United States of America and State of Minnesota v. City of Duluth, Minnesota and Western Lake Superior Sanitary District* for a total amount of \$188,000, funds to be paid from Fund 610, Agency 036, Organization 1653, Object 5841.

Resolution 09-0160 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause and President Gilbert -- 8

Nays: Councilor Stauber -- 1

Approved April 13, 2009

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 Gilbert 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 sidewalk patch 2008 (Contract #5435; assessable amount: \$8,329.30), to be deposited in Fund 325, is hereby confirmed.

Resolution 09-0204 was unanimously adopted.

Approved April 13, 2009

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 (Lake Superior Brewing Company), Leif Erickson Park, for April 25, 2009, with Don Hoag, manager.

Resolution 09-0211 was unanimously adopted.

Approved April 13, 2009

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the transfer of the following on sale intoxicating liquor license, on sale Sunday license and 2:00 a.m. beverage license for the period ending August 31, 2009, subject to departmental approvals and the payment of sales and property taxes:

Live Bar, Inc. (Live Downtown), 323 West First Street, with Charles Koltes, president, and Debra Adams-Koltes, treasurer/secretary, transferred from Blue Sky Duluth, Inc. (Oly's Duluth Pub), same address.

Resolution 09-0212 was unanimously adopted.

Approved April 13, 2009

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby issues the following on sale intoxicating liquor license for the period ending August 31, 2009, subject to departmental approvals and the payment of sales and property taxes:

Duluth Lodging, Inc. (Comfort Inn West), 3900 West Superior Street, with Terry Lundberg, president, and J. Scott Lundberg, vice president.

Resolution 09-0213 was unanimously adopted.

Approved April 13, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Evolving Solutions, Inc., said agreement to be substantially in the form of Public Document No. 09-0413-25 on file in

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

the office of the city clerk, for the purchase, delivery and installation of a storage area network, VMware and backup solution for the management information systems division (MIS), based on the request for proposal (RFP) specifications and the vendor's revised quote of \$167,579.85, payable as follows:

\$165,528.19	Capital Equipment Fund 250	Agency 015	Organization 2005	Object 5580	Project No. CE250-E503
\$2,051.66	Capital Equipment Fund 250	Agency 015	Organization 2006	Object 5580	Project No. CE250-E601

Resolution 09-0241 was unanimously adopted.
 Approved April 13, 2009
 DON NESS, Mayor

- - -

RESOLVED, that the proposed amendments to the specifications for the civil service classification of electrician, which were approved by the civil service board on March 3, 2009, and which are filed with the city clerk as Public Document No. 09-0413-26, are approved. This classification shall remain subject to the city's collective bargaining agreement with its basic unit employees and compensated at Pay Range 29.

Resolution 09-0198 was unanimously adopted.
 Approved April 13, 2009
 DON NESS, Mayor

- - -

RESOLVED, that the proposed amendments to the specifications for the civil service classification of senior planner, which were approved by the civil service board on March 17, 2009, and which are filed with the city clerk as Public Document No. 09-0413-27, are approved. This classification shall remain subject to the city's collective bargaining agreement with its basic unit employees and compensated at Pay Range 136.

Resolution 09-0199 was unanimously adopted.
 Approved April 13, 2009
 DON NESS, Mayor

- - -

RESOLVED, that the proposed amendments to the specifications for the civil service classification of master electrician, which were approved by the civil service board on March 3, 2009, and which are filed with the city clerk as Public Document No. 09-0413-28, 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 09-0200 was unanimously adopted.
 Approved April 13, 2009
 DON NESS, Mayor

- - -

RESOLVED, that the proposed amendments to the specifications for the civil service classification of employment technician, which were approved by the civil service board on March 17, 2009, and which are filed with the city clerk as Public Document No. 09-0413-29, are approved.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

This classification shall remain subject to the city's collective bargaining agreement with its basic unit employees and compensated at Pay Range 131.

Resolution 09-0201 was unanimously adopted.

Approved April 13, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proposed specifications for the new civil service classification of communications and policy officer, which were approved by the civil service board on March 17, 2009, and which are filed with the city clerk as Public Document No. 09-0413-30, 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 1105 to 1110. 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 09-0202 was unanimously adopted.

Approved April 13, 2009

DON NESS, Mayor

- - -

RESOLVED, that pursuant to Section 2-68 of the Duluth City Code, 1959, as amended, the appointments by Mayor Ness to city boards and commissions for terms expiring on March 31 of various years, as listed on Public Document No. 09-0413-31, are confirmed.

Resolution 09-0214 was unanimously adopted.

Approved April 13, 2009

DON NESS, Mayor

- - -

RESOLVED, that the appointment by Mayor Ness to the planning commission of Drew Digby, for a term expiring on March 31, 2012, replacing Gilbert Harries, is confirmed.

Resolution 09-0215 was unanimously adopted.

Approved April 13, 2009

DON NESS, Mayor

- - -

RESOLVED, that the reappointments by Mayor Ness to the planning commission of John Vigen for a term expiring on March 31, 2012, and Henry Banks and Heather Rand for terms expiring on March 31, 2013, are confirmed.

Resolution 09-0216 was unanimously adopted.

Approved April 13, 2009

DON NESS, Mayor

- - -

RESOLVED, that the city council of the city of Duluth hereby adopts the amended community development program citizens participation plan dated February 2009, a copy of which is on file in the office of the city clerk as Public Document No. 09-0413-32.

Resolution 09-0203 was unanimously adopted.

Approved April 13, 2009

DON NESS, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, that the city of Duluth hereby authorizes reimbursement to the Duluth

economic development authority (DEDA) of 20 percent of the repayment received by the city on a workout agreement related to financial support given by the city and DEDA to Sinex Aviation Technologies, d/b/a/ EmpowerMX (developer), which assisted developer in relocating and expanding its operations into the Duluth Technology Village facility, payable from Fund 235, Agency 020, Object 5700-80.

Resolution 09-0209 was unanimously adopted.

Approved April 13, 2009

DON NESS, Mayor

- - -

RESOLVED, that the city of Duluth hereby expresses its intention to convey the city's interest in that parcel of property legally described on Public Document No. 09-0413-33(a) to Kohl's Department Stores, Inc., (Kohl's) and to grant to Kohl's a temporary construction and environmental monitoring easement over that parcel of property legally described on Public Document No. 09-0413-33(b) in exchange for conveyance by Kohl's to the city of that parcel of property legally described on Public Document No. 09-0413-33(c) under and subject to the following general terms and conditions:

(a) Compliance with the requirements of Article XXXIII of Chapter 2 of the Duluth City Code, 1959, as amended;

(b) Negotiation and execution of a property exchange agreement between the city and Kohl's which shall be subject to approval by the city council by ordinance;

(c) The securing and receipt by Kohl's of all necessary approvals from all appropriate and necessary jurisdictions, approving the transaction and Kohl's proposed use of the property described on Public Document No. 09-0413-33(a) for construction and operation of a one-level, piling-supported parking structure, including but not limited to approvals and permits from the U.S. Army corps of engineers, the Minnesota state pollution control agency, the Minnesota state department of natural resources and the city of Duluth.

Resolution 09-0234 was unanimously adopted.

Approved April 13, 2009

DON NESS, Mayor

- - -

RESOLVED, that the city of Duluth does hereby accept a public right-of-way easement substantially in the form of that on file in the office of the city clerk as Public Document No. 09-0413-34 from Lake Superior Center authority (LSCA), said easement being for public walkway and recreational trail purposes over property in St. Louis County legally described in said public document.

Resolution 09-0236 was unanimously adopted.

Approved April 13, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute a memorandum of understanding, substantially the same as that on file in the office of the city clerk as Public Document No. 09-0413-35, with St. Louis County for the repair of the failing retaining wall adjacent to the St. Louis County Courthouse and City Hall, funds to be paid out of Fund 450, Department 030, Object 5530, Project No. CP2009-0908.

Resolution 09-0205 was unanimously adopted.

Approved April 13, 2009

DON NESS, Mayor

- - -

WHEREAS, the economic downturn is having a critical impact on everyday Americans who are struggling to maintain or find jobs in an increasingly difficult environment; and

WHEREAS, those same Americans are the taxpayers that provide the revenue needed to operate essential government services; and

WHEREAS, Congress has approved and President Obama has signed into law a taxpayer-sponsored economic recovery package that will provide billions of dollars to help economically devastated cities and states immediately provide jobs to millions of out-of-work Americans through considerable infrastructure rebuilding, green energy projects and other projects that will require manufactured components; and

WHEREAS, our taxpayer dollars should be spent to maximize the creation of American jobs and restore the economic vitality of our communities; and

WHEREAS, any domestically produced products that are purchased with economic recovery plan monies will immediately help struggling American families and will help stabilize our greater economy; and

WHEREAS, any economic recovery plan spending should - to the extent legally and practically possible - include a commitment from the city of Duluth to buy materials, goods and services for projects from companies that are produced within the United States, thus employing the very workers that pay the taxes for the economic recovery plan spending in the first place.

NOW, THEREFORE, BE IT RESOLVED, that city of Duluth elected officials will work to maximize the creation of American jobs and to restore economic growth and opportunity by spending economic recovery plan funds on products and services that both create jobs and help keep Americans employed.

FURTHER RESOLVED, that the elected officials of the city of Duluth commit to purchasing products and services that are made or performed in the United States of America whenever and wherever possible with any economic recovery monies provided to the city of Duluth by the American taxpayers.

BE IT FURTHER RESOLVED, that the elected officials of the city of Duluth commit to publish any requests to waive these procurement priorities so as to give American workers and producers the opportunity to identify and provide the American products and services that will maximize the success of our nation's economic recovery program.

Resolution 09-0217 was unanimously adopted.

Approved April 13, 2009

DON NESS, Mayor

- - -

RESOLVED, that plans for Project No. 69-691-21 showing proposed alignment, profiles, grades and cross-sections for the construction, reconstruction or improvement of CSAH No. 91 (Haines Road) from CSAH 56 (Morris Thomas Road) to Airport Road within the corporate limits of the city of Duluth have been prepared and presented to the city.

FURTHER RESOLVED, that the plans and specifications prepared by St. Louis County are hereby approved.

Resolution 09-0179 was unanimously adopted.

Approved April 13, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to execute and implement an amended contract between Mn/DOT, the city of Duluth and SEH, Inc., for a transportation study along London Road (T.H. 61) in Duluth, which contract extends the completion date of the contract authorized by Resolution 07-0444, passed on June 25, 2007, to May 31, 2009.

Resolution 09-0196 was unanimously adopted.

Approved April 13, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to pay to Travis L. Carlson the sum of \$11,971.35 in full and final settlement of the claim which arose out of a break in a city watermain occurring near 2402 West Fourth Street on February 11, 2009; payment to be made from the Self Insurance Fund 610-036-1652-5841.

Resolution 09-0206 was unanimously adopted.

Approved April 13, 2009

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. 09-0413-36, with St. Louis County for the painting of lane lines on city streets in Duluth, at a cost not to exceed \$60,000, payable out of General Fund 110, Agency 120, Division 1217, Cost Center 2130, Object 5226.

Resolution 09-0210 was unanimously adopted.

Approved April 13, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with St. Louis County and the city of Hermantown, a copy of which is on file in the office of the city clerk as Public Document No. 09-0413-37, for signal installation, street lights, signing and traffic control as set forth in State Project No. 69-606-017 at the intersections of Maple Grove Road (CSAH 6) with Mall Drive and Burning Tree Road.

Resolution 09-0218 was unanimously adopted.

Approved April 13, 2009

DON NESS, Mayor

- - -

RESOLVED, that Resolution 08-0085 awarding a contract to Salo Engineering, Inc., for engineering services for survey and field data collection for 2008-2010 construction projects be hereby amended to increase the contract amount for topography of 40th Avenue East Creek for future FEMA remapping of Zone A and associated survey work required to construct the Lakewalk Trail in front of the Ledges townhomes, for a new total of \$21,720.08. \$9,380.08 will be payable from Stormwater Utility Fund 0535, Agency 500, Object 5533, and \$12,340 will be payable from Capital Improvement Fund 450, Agency 030, Object 5530; City Project No. 0782TR.

Resolution 09-0219 was unanimously adopted.

Approved April 13, 2009

DON NESS, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

- - -

RESOLVED, that city officials are hereby authorized to contract with Viele Contracting, Inc., for a second year of three one-year renewal options, for the purchase and delivery of an estimated 20,000 tons of Class 5 gravel, 400 tons of 3/4 inch washed rock, 300 tons of rip-rap and 200 tons of bedding sand for public works and utilities and street maintenance projects in year 2009 for an estimated amount of \$162,300 plus \$10,549.50 sales tax, for a combined estimated total of \$172,849.50, terms net 30, FOB destination and payable as follows:

Amount	Fund	Agency	Organization	Object
\$133,817.25 from Requisition No. 09-0056				
(40%) \$53,526.90	Water Fund 510	500	1945	5224
(10%) \$13,381.73	Gas Fund 520	500	1945	5224
(30%) \$40,145.18	Sewer Fund 530	500	1945	5224
(20%) \$26,763.45	Stormwater Fund 535	500	1945	5224
\$39,032.25 from Requisition 09-0048				
(100%) \$39,032.25	General Fund 110	120	1217-2140	5224

Resolution 09-0229 was unanimously adopted.
 Approved April 13, 2009
 DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Groebner and Associates, Inc., for the purchase and delivery of 400 hard case temperature-compensated gas meters in accordance with specifications and the vendor's quote of \$26,910 plus \$1,749.15 sales tax for a combined total amount of \$28,659.15, terms net 25 days, FOB destination, payable from Gas Fund 520, Agency 500, Organization 1940-2410, Object 5227.

Resolution 09-0231 was unanimously adopted.
 Approved April 13, 2009
 DON NESS, Mayor

- - -

RESOLVED, that the city of Duluth must construct a sanitary sewer storage basin to eliminate sanitary sewer overflow from the east interceptor.

The city of Duluth desires to develop plans and specifications for the construction of a facility to store sanitary sewer overflows along the East Interceptor. The proposed basin will be located in Canal Park adjacent to the existing city of Duluth Lift Station No. 6 (200 Lake Place Drive).

The city desires to hire a consultant engineer to provide the engineering services required for the design and construction administration for the east interceptor sanitary sewer overflow storage facility.

MSA Professional Services, Inc., in conjunction with Brown and Caldwell, Inc., has submitted a proposal for engineering services in connection with this project.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

The proper city officials are hereby authorized to enter into an agreement with MSA Professional Services, Inc., to provide the city with such engineering services.

FURTHER RESOLVED, that the cost of said engineering services, estimated at \$1,807,459, will be funded from the Clean Water Surcharge Fund 0532, Department/Agency 500, Object 5532, City Project No. 0519SN.

Resolution 09-0240 was unanimously adopted.

Approved April 13, 2009

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. 09-0413-38, with Safe Haven Shelter for Battered Women, Inc., for services related to the domestic abuse intervention project in the amount of not to exceed \$30,303, payable from Fund 215-200-2280-4209-02.

Resolution 09-0235 was unanimously adopted.

Approved April 13, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officers are authorized to enter into an agreement with Lake Superior Girls Fastpitch, said agreement to be substantially in the form of Public Document No. 09-0413-39 on file in the office of the city clerk, payment to be deposited in Special Leagues Fund 0210-030-3190-4625-02.

Resolution 09-0192 was unanimously adopted.

Approved April 13, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept an Opportunity Online Hardware Grant from the Bill and Melinda Gates Foundation to be made in two phases, a Phase I (2009-2010) amount of \$39,000, and a Phase II (2010-2011) amount of \$26,000 for the purchase of 40 public computers to be installed at three library locations, such funds to be deposited in Fund 240-300-SG70-4270, and to execute a letter of commitment and phase and match documents, substantially the same as those on file in the office of the city clerk as Public Document No. 09-0413-40.

BE IT FURTHER RESOLVED, that a required local match to granted funds: a Phase I, 25 percent match amount of \$13,000; and a Phase II, 50 percent match amount of \$26,000 is hereby authorized and shall be payable from Fund 110-700-1420-5580.

Resolution 09-0208 was unanimously adopted.

Approved April 13, 2009

DON NESS, Mayor

- - -

The following resolutions were also considered:

Resolution 09-0207, authorizing city officials to contract with Mercury Associates, Inc., for professional services in evaluating and determining the appropriateness of the current city fleet

replacement plan at an amount not to exceed \$24,420, was introduced by Councilor Krause for discussion.

Councilor Fosle explained that he contacted the city of Minneapolis to get information on a fleet study that was completed for them and added that they are willing to share the study with other cities and counties, which could be beneficial to Duluth.

Councilor Fosle moved to table the resolution for further information, which motion was seconded and unanimously carried.

- - -

Resolution 09-0224, approving the budget for the fiscal year May 1, 2009, to April 30, 2010, in the amount of \$4,731,717 and the capital repair and replacement budget for the Spirit Mountain recreation area authority, was introduced by Councilor Fedora for discussion.

The rules were suspended upon a unanimous vote to hear from a speaker on the resolution.

Warner Wirta voiced concern that Lake Superior is being polluted by the barrels in the lake, the foreign ships, the mining companies, and the mechanical racing at Spirit Mountain, and stated that the Indian community has not been included in the development of the Spirit Mountain master plan and requested that someone from the Indian community be appointed to the Spirit Mountain recreation area authority board.

Resolution 09-0224 was adopted as follows:

RESOLVED, that the budget for the fiscal year May 1, 2009, to April 30, 2010, in the amount of \$4,731,717, including the 2009 repair and replacement budget in the amount of \$225,000 as set out in the budget on file with the city clerk as Public Document No. 09-0413-24 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) at least once per calendar year, by October 31 of that year. If repaid as agreed with the city treasurer, no interest shall be charged. 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 09-0224 was unanimously adopted.

Approved April 13, 2009

DON NESS, Mayor

- - -

Resolution 09-0242, by Councilor Fedora, recommending collection efforts be initiated against Sinex Aviation Technologies, Inc., dba EmpowerMX, was introduced for discussion.

Councilor Fedora moved to withdraw the resolution from the agenda, which motion was seconded and unanimously carried.

- - -

RESOLVED, that the appropriate city officials are authorized to transfer \$20,000 from the reserve for capital improvements fund balance in the tourism tax fund to Capital Improvements Fund 450 for that portion of Lakewalk trail in front of the Ledges townhomes.

Resolution 09-0220 was unanimously adopted.

Approved April 13, 2009

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth finds that efforts to collect a debt in the amount of \$48,306, relating to a forgivable loan with Invision of Duluth, Inc., d/b/a Connecting Point (Connection Point), have been unsuccessful and therefore deems the debt to be uncollectible.

FURTHER RESOLVED, that the city auditor is hereby authorized to write the debt of Connecting Point in the amount of \$48,306 off of the city's loan accounts.

Resolution 09-0223 was unanimously adopted.

Approved April 13, 2009

DON NESS, Mayor

- - -

Resolution 09-0225, calling for the prepayment and redemption of general obligation street improvement bonds, Series 2001D, of the city of Duluth, Minnesota, and transferring monies from the community investment trust fund therefor; Resolution 09-0226, transferring monies from community investment trust fund for the street reconstruction, preservation and maintenance program; and Resolution 09-0227, transferring monies to street improvement debt service fund from the community investment trust fund to cancel 2009 debt service tax levy, were introduced by Councilor Fedora for discussion.

Councilor Stauber stated that there should have been a resolution of support as promised by the administration, the policy should be in writing, there should be a report from the city's chief financial officer stating that transferring \$18 million from the community investment trust fund is a good idea, and there should be some assurance as to where this money is actually going. He voiced concern that most of the work will be done by city employees and that the city is banking on the fact that the Fond du Lac tribe will continue to contribute to the fund at the same rate.

Mayor Ness agreed there should have been a resolution of support for the presentation and the principals that were outlined, but this is a straightforward program that has been developed from the comments made by councilors. He went on to say that there is a lot more work for contractors on this plan than what the city has been doing, the city's maintenance efforts will be increased and there will be additional city staff available to increase snow plowing efforts.

Resolutions 09-0225, 09-0226 and 09-0227 were adopted as follows:

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 Minnesota Statutes, Chapter 475 and the Home Rule Charter of the city, the city previously issued its \$4,800,000 general obligation street improvement bonds, Series 2001D, dated September 1, 2001 (the 2001 bonds). The 2001 bonds were issued to finance street improvements through the city's 2001 street improvement program.

Section 2. The 2001 bonds are substantially in the form prescribed by Resolution 01-0642 duly adopted by the council on September 6, 2001 (hereinafter referred to as the 2001 bond resolution).

Section 3. The council hereby determines that it is necessary and desirable in order to reduce debt service costs to the city, that the city redeem and prepay the 2001 bonds maturing on and after February 1, 2010 (the redeemed bonds), of which \$2,800,000 in principal amount is outstanding and is hereby called for prepayment and redemption on June 1, 2009 (the redemption date).

Section 4. The council hereby transfers \$2,473,448.67 from the community

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

investment trust fund (Fund 256) to the 2001 improvement bond account (the debt service account) within the street improvement debt service fund for the prepayment and redemption of the redeemed bonds.

Section 5.

(a) The funds appropriated in Section 4 hereof in the amount of \$2,473,448.67 together with the monies previously deposited in the debt service account in the amount of \$367,343 shall be segregated and shall constitute a separate trust fund to be used for no purpose other than the payment of the principal and interest on the redeemed bonds on the redemption date;

(b) It is hereby found and determined that the funds appropriated and on deposit in the debt service account in the amount of \$2,840,791.67 will be sufficient to pay the interest (\$40,791.67) on the 2001 bonds to the redemption date and the outstanding principal of the refunded bonds (\$2,800,000) on the redemption date;

(c) Upon redemption of the redeemed bonds on the redemption date, the debt service account shall be terminated.

Section 6. The redeemed 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 on file with the city clerk as Public Document No. 09-0413-41, which terms and conditions are hereby approved and incorporated herein by reference. The city clerk or his designee is hereby authorized and directed to send written notice of call for redemption to Wells Fargo Bank, National Association, as bond registrar and paying agent for the 2001 bonds, so that the bond registrar can provide the notice of call for redemption to the bond holders at least 35 days prior to the redemption date.

Resolution 09-0225 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause and President Gilbert -- 8

Nays: Councilor Stauber -- 1

Approved April 13, 2009

DON NESS, Mayor

- - -

WHEREAS, the city of Duluth, Minnesota (the city), annually establishes a street reconstruction, preservation and maintenance program (the SIP); and

WHEREAS, historically the SIP has been financed through the city's issuance of general obligation bonds; and

WHEREAS, the city administration has proposed funding the annual SIP from revenues derived from the Fond-du-Luth Casino, net of expenses and net of prior council commitments for such funds and from available state of Minnesota funds and from assessments; and

WHEREAS, the purpose of the resolution is to transfer monies for the 2009 and 2010 SIP 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:

Section 1. The city council hereby transfers \$11,200,000 from the CIT fund to the street improvement capital project fund (Fund 440) to provide monies for the 2009 and 2010 SIP including \$432,248 for 2008 street preservation program costs that were not previously funded by general obligation bonds. Such transfer is based on the estimated 2009 and 2010 revenues from the Fond-du-Luth Casino, less prior council commitments of such revenues. The transfers authorized in Section 1 above, from the CIT fund to the street improvement capital project fund,

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

shall be made quarterly over 2009 and 2010 but in no event later than needed to pay project costs.

Section 2. The projects for the 2009 and 2010 SIP shall be established by further resolution or resolutions of the council.

Resolution 09-0226 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause and President Gilbert -- 8

Nays: Councilor Stauber -- 1

Approved April 13, 2009

DON NESS, Mayor

- - -

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 2009 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 \$4,972,940 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, 2010, and February 1, 2011. The monies hereby appropriated shall be transferred to the debt service fund within 30 days of passage and approval of this resolution.

Resolution 09-0227 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause and President Gilbert -- 8

Nays: Councilor Stauber -- 1

Approved April 13, 2009

DON NESS, Mayor

- - -

Resolution 09-0243, confirming the appointment of David Montgomery as the chief financial officer for the city of Duluth, was introduced by Councilor Gardner for discussion.

President Gilbert stated that since Mr. Montgomery has not met will all of the councilors and that the council should not approve someone who is managing a \$80 million budget until they have met with the council.

Resolution 09-0243 was adopted as follows:

WHEREAS, the chief administrative officer upon the direction of the mayor has recommended the appointment of David Montgomery to the position of chief financial officer; and

WHEREAS, the City Charter requires the city council confirm this appointment.

THEREFORE, BE IT RESOLVED, that the city council hereby confirms the appointment of David Montgomery to the position of chief financial officer for the city of Duluth.

Resolution 09-0243 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause and Stauber -- 8

Nays: President Gilbert -- 1
Approved April 13, 2009
DON NESS, Mayor

- - -

Resolution 09-0228, authorizing the acceptance of \$1,600,000 in neighborhood stabilization program (NSP) funding from Minnesota housing finance agency and authorizing contracts with appropriate agencies, was introduced by Councilor Stauber for discussion.

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

Jeff Corey, executive director of Northern Communities Land Trust, stated that the organization is a great community asset and this funding is a great way to grow this community asset and provide more affordable home ownership opportunities to improve the neighborhoods.

Jane Brenny, Gary Anderson and Lindsey Longaker stated their support of the land trust for the following reasons: the land trust makes it possible for lower income citizens to buy homes; maintaining a home and yard is an empowering experience; being a homeowner gives a person a better quality of life; there are education classes to help become better homeowners; the land trust encourages community involvement and they partner with other community organizations to help with the maintaining and updating of their homes.

Councilor Fedora agreed that it is a well run organization, but stated that it would be better if the homeowner would also own the land besides just the house.

Councilor Fedora moved to amend the resolution by adding the following sentence to the end of the resolution: "All units sold under this contract shall be either private sales or contracts for deed in accordance with the affordability requirements as mandated by the Minnesota housing finance agency," which motion was seconded and failed upon the following vote:

Yeas: Councilor Fedora -- 1

Nays: Councilors Anderson, Cuneo, Eckenberg, Fosle, Gardner, Krause, Stauber and President Gilbert -- 8

Resolution 09-0228 was adopted as follows:

RESOLVED, that the city council of Duluth hereby accepts \$1,600,000 in neighborhood stabilization program (NSP) funds from the Minnesota housing finance agency to address the negative impact of vacant and foreclosed houses on targeted neighborhoods within the city of Duluth and that the city council also authorizes contracts (Public Document No. 09-0413-45) for implementing the city's program with the Duluth Housing and Redevelopment Authority for \$457,000 and the Northern Communities Land Trust for \$1,006,500, contingent upon the completion of the environmental review process.

Resolution 09-0228 was unanimously adopted.

Approved April 13, 2009
DON NESS, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, that in response to the request of the building appeal board, it is the intent of the council to review the standards for the granting of variances from the rental licensing restrictions of sections 29A-32.1(a) and 29A-32.1(b) of the Duluth Legislative Code as provided in Section 29A-32.1(h), and to revise those standards if such revision is found to be beneficial for

the preservation of the public welfare.

Resolution 09-0233 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Gardner, Krause, Stauber and President Gilbert -- 8

Nays: Councilor Fosle -- 1

Approved April 13, 2009

DON NESS, Mayor

- - -

Resolutions 09-0237 and 09-0238, denying and granting, respectively, an application for Sign Code variance by AH Zeppa Family Foundation for property located at 222 East Superior Street, were introduced by Councilor Stauber.

Resolution 09-0237 failed upon the following vote (Public Document No. 09-0413-42):

Yeas: None -- 0

Nays: Councilors Anderson, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 8

Abstention: Councilor Cuneo -- 1

- - -

Councilor Stauber moved to amend Resolution 09-0238 by adding reasons for the variance to subparagraph (a):

(1) 222 East Superior Street is the reuse of an historic structure, not originally a theater;

(2) Marquis for theaters are generally larger and in keeping with other historic buildings in the area," which motion was seconded and carried upon the following vote:

Yeas: Councilors Anderson, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 8

Nays: None -- 0

Abstention: Councilor Cuneo -- 1

Resolution 09-0238, as amended, was adopted as follows:

BY COUNCILOR STAUBER:

RESOLVED, that the decision of the board of zoning appeals denying a variance from the Sign Code as requested by AH Zeppa Family Foundation is reversed upon the following grounds:

(a) Based upon the record presented to the council, the council finds that a hardship exists and that the nature of the demonstrated hardship is:

(1) 222 East Superior Street is the reuse of an historic structure, not originally a theater;

(2) Marquis for theaters are generally larger and in keeping with other historic buildings in the area.

RESOLVED FURTHER, that a variance from the Sign Code as requested by the applicant is granted conditioned upon the following terms and conditions:

(a) That the signs must be installed and maintained as shown on the rendering labeled #3 in the Variance File #09003;

(b) Signs must be installed with required permits under Chapter 44 of the Duluth City Code.

Resolution 09-0238, as amended, was adopted upon the following vote:

Yeas: Councilors Anderson, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

President Gilbert -- 8

Nays: None -- 0

Abstention: Councilor Cuneo -- 1

Approved April 13, 2009

DON NESS, Mayor

- - -

Resolution 09-0230, authorizing city officials to contract with Elk River Ford for the purchase and delivery of ten 2009 Ford Crown Victoria interceptor vehicles for use as fully-marked police squads in the amount of \$226,083.60, was introduced by Councilor Cuneo for discussion.

President Gilbert expressed concern that the city is buying ten cars from an out of town dealer when the city should be buying from a local dealer and stated the administration needs to come up with a solution for this problem.

Resolution 09-0230 was adopted as follows:

RESOLVED, that city officials are hereby authorized to contract with Elk River Ford, Inc., for the tax-exempt purchase and delivery of ten 2009 Ford Crown Victoria Interceptor vehicles with options for use as fully-marked police squads in accordance with Minnesota Contract #439865, Release A-175(5), specifications and pricing for a total amount of \$226,083.60, terms net 30, FOB destination and payable as follows:

Amount	Fund	Agency	Organization	Object	Project
7% \$14,880.91	Capital Equipment Fund 250	015	2006	5580	CE250-V604
56% \$126,649.18	Capital Equipment Fund 250	015	2008	5580	CE250-V803
37% 84,553.51	Capital Equipment Fund 250	015	2009	5580	CE250-V902

Resolution 09-0230 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause and Stauber -- 8

Nays: President Gilbert -- 1

Approved April 13, 2009

DON NESS, Mayor

- - -

Resolution 09-0232, temporarily allowing parking on Harbor Drive under certain conditions, was introduced by Councilor Cuneo for discussion.

Councilor Stauber and President Gilbert stated that the Duluth economic development authority (DEDA) worked to create free parking lots and worked with the Duluth Entertainment Convention Center (DECC) to provide parking for their patrons and cannot support the resolution.

Resolution 09-0232 was adopted as follows:

RESOLVED, that parking shall be allowed on the following portions of Harbor Drive until the city's office of building safety has issued a certificate of occupancy for the new portion of the

parking ramp at the Duluth Entertainment Convention Center presently under construction, whereupon the authorization for such parking will terminate:

On both sides of Harbor Drive between Railroad Street and South Harbor Drive for a maximum of three hours for any vehicle except that no such parking shall be allowed between 2:00 a.m. and 6:00 a.m.

On the north side of South Harbor Drive between Harbor Drive and Fifth Avenue West during the time period of one hour before until one hour after events are occurring in the Duluth Entertainment Convention Center.

Resolution 09-0232 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner and Krause -- 7

Nays: Councilor Stauber and President Gilbert -- 2

Approved April 13, 2009

DON NESS, Mayor

[Editor's Note: This resolution was reconsidered and returned to the administration for further review at the April 27, 2009, council meeting.]

- - -

RESOLVED, that the proper city officers are authorized to accept a gift from St. Louis County in the amount of \$12,500; funds to be used for the construction of the Duluth Skate Park; payment to be deposited in Fund 450-030, Revenue Source 4260, Project CP2003-C215.

Resolution 09-0195 was unanimously adopted.

Approved April 13, 2009

DON NESS, Mayor

- - -

Resolution 09-0239, designating a certain area for use as an off-leash dog area, was introduced by Councilor Anderson for discussion.

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

The following people opposed the dog park for the following reasons: Gary Gordon, Judy Gordon, Grant Wilson, Irene Durfee and Corey Malstrom: what projects are left unfunded if the city is funding a dog park; is this a healthy community if the dog is exercising but the people are sitting and watching the dogs; would people rather hear the sounds of Lake Superior or dogs barking; the grass would be burned by dog urine; the size is so small that the dogs cannot exercise; the current dog park is not kept up by the city; the smell that results from dog feces that are not picked up; the parking lot is not large enough to handle all the people who might want to use the dog park; rules on the Lakewalk are currently being ignored and what are the odds that the dog park will be kept up by the dog owners and the close proximity to the residential neighborhood directly across the street.

Jim Topie explained that this is a well designed dog park from a licensed landscape architect while Keene Creek dog park was not done that way. He continued saying that the city could team with an organization to help pay for and keep up the dog park and urged the council to vote to put the pole locations in now even if the dog park is not constructed at this time.

Stacey Harter stated that this is the city's second chance to get a dog park right as Keene Creek is poorly designed, and explained that dog parks are a socialization process and not only used as an exercise place.

Councilor Anderson stated that although there are upkeep issues with the first dog park that the city created, this dog park is a good fit because this location needs some landscaping because of the holding tank. He reviewed that this resolution is only for engineering purposes and the

construction of the dog park may or may not happen at this time, but the city would have the option of making it a dog part in the future.

Mayor Ness stated that the intent of this resolution is to have a policy decision made by the city council on the intent to have a dog park in this area. He continued saying he does not favor having a dog park in this area as it would encourage more dogs on leashes in the area at a time when the extension of the Lakewalk will bring more bike and inline skate traffic.

Councilor Gardner stated her support for a dog park at this location because it is going to be a small park with different uses than the Keene Creek location. She continued saying that people will continue bringing their dogs to the Lakewalk and this will be a place for the owners to bring their dogs.

Councilor Fedora called the question, which motion was seconded and unanimously carried.

Resolution 09-0239 failed upon the following vote (Public Document No. 09-0413-43):

Yeas: Councilors Anderson, Gardner and President Gilbert -- 3

Nays: Councilors Cuneo, Eckenberg, Fedora, Fosle, Krause and Stauber -- 6

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INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

BY COUNCILOR STAUBER

09-014 - AN ORDINANCE REPEALING SECTION 29A-32.1(h) OF CHAPTER 29A OF THE DULUTH CITY CODE, 1959, AS AMENDED; PROVIDING FOR A VARIANCE FROM THE RENTAL LICENSE RESTRICTION PROVIDED FOR IN SECTIONS 29A-32.1(a) AND 29A-32.1(b) OF CHAPTER 29A.

- - -

INTRODUCED BY COUNCILOR STAUBER

09-015 - AN ORDINANCE AMENDING SECTION 2-132 OF THE DULUTH CITY CODE, 1959, AS AMENDED, ESTABLISHING THE MEMBERSHIP OF THE ENVIRONMENTAL ADVISORY COUNCIL.

- - -

INTRODUCED BY COUNCILOR CUNEO

09-013 - AN ORDINANCE MODIFYING PARKING REGULATIONS, ALLOWING FOR USE OF DIFFERENT PARKING METERING EQUIPMENT, AMENDING SECTIONS 33-101, 33-102, 33-104, 33-106, 33-107, 33-108, 33-109, 33-110, 33-111 AND 33-112 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

- - -

INTRODUCED BY COUNCILOR CUNEO

09-016 - AN ORDINANCE REPEALING CHAPTER 6, ARTICLE V, AND AMENDING SECTIONS 6-3, 6-4, 6-12, 6-27, 6-39, 6-82, 6-84, 6-85, 6-86, 6-87 AND 6-96 OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO THE ANIMAL HUMANE BOARD.

- - -

The following entitled ordinance was read for the second time:

INTRODUCED BY COUNCILOR STAUBER

09-010 (9964) - AN ORDINANCE GRANTING TO HERITAGE FOUNDATION, INC., (AKA DULUTH AREA FAMILY YMCA) A CONCURRENT USE PERMIT FOR A SKYWALK INTO AND OVER THE RIGHT-OF-WAY OF THE WEST FIRST STREET ALLEY FOR PROPERTY LOCATED AT 302 WEST FIRST STREET.

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

- - -

The meeting was adjourned at 10:30 p.m.

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

- - -

ORDINANCE NO. 9963

AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, ZONING DISTRICT MAP NO. 27 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-B, ONE-FAMILY RESIDENTIAL, AND S, SUBURBAN, TO C-5, PLANNED COMMERCIAL, FOR PROPERTY LOCATED ON BOTH SIDES OF SUNDBY ROAD, NORTH OF PAGE STREET (MISSION DEVELOPMENT, LLC/ARROWHEAD COMMERCIAL PARTNERS, LLC).

The city of Duluth does ordain:

Section 1. That the 29.66 acres of the subject property located on both sides of Sundby Road, north of Page Street, be reclassified from R-1-b, one-family residential, and S, suburban, to C-5, planned commercial, and that Plate No. 27 of the zoning district map as contained in the Appendix to Chapter 50 of the Duluth City Code, 1959, is amended to read as follows:

[MAP]

[see map at end of meeting]

(Reference File No. 09004)

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: May 24, 2009)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Stauber and President Gilbert -- 8

Nays: Councilor Krause -- 1

ATTEST:
JEFFREY J. COX, City Clerk

Passed April 13, 2009
Approved April 13, 2009
DON NESS, Mayor

- - -

ORDINANCE NO. 9964

AN ORDINANCE GRANTING TO HERITAGE FOUNDATION, INC., (AKA DULUTH AREA FAMILY YMCA) A CONCURRENT USE PERMIT FOR A SKYWALK INTO AND OVER THE RIGHT-OF-WAY OF THE WEST FIRST STREET ALLEY FOR PROPERTY LOCATED AT 302 WEST FIRST STREET.

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 hereby granted to Heritage Foundation, Inc., their successors and interests, referred to herein as the permittees, to occupy, serve and maintain a skywalk into and over part of the right of way of the West First Street alley adjoining Lot 50, Duluth Proper First Division, West First Street and Lot 49, Duluth Proper First Division, West Superior Street, as the same was dedicated to the use of public in the plat of Duluth Proper First Division, on file and of record in the office of the register of deeds in and for the St. Louis County, Minnesota, described as follows:

Lying between two lines 33.00 feet distant, measured at right angles to and parallel with Third Avenue West, Duluth Proper First Division. The easterly of said two lines being the westerly line of said Third Avenue West.

Section 2. That before this ordinance shall be effective for any purpose whatsoever, the aforesaid permittees shall file with the city clerk a duly executed and acknowledged written acceptance of the terms of this resolution; and a certificate of insurance approved as to form by the city attorney evidencing that the permittees have in force insurance meeting the following requirements: Comprehensive general liability insurance policy shall be maintained in force by permittees in an amount not less than \$1,500,000 for bodily injuries and in an amount not less than \$500,000 for property damage or \$1,500,000 single limit coverage. Such coverage shall include all permittees' activities occurring on the permitted premise whether said activities are performed by employees or agents under contract to permittees. Such policy of insurance shall be approved by the city attorney and shall contain a condition that it may not be cancelled without 30 days written notice to the city of Duluth. The city of Duluth shall be named as an additional insured on said policy of insurance required by this paragraph. Current ISO additional insured endorsement CG 20 10 is not acceptable. If the ISO 20 10 is used, it must be a pre-2004 edition.

Section 3. That said permit granted under this ordinance may be terminated at any time when and if the city of Duluth determines to use the area occupied by said permittees for any purpose in accordance with the duly dedicated public easement or other lawful use. Giving the permittees 30 days written notice by resolution of the council of the city of Duluth to the last known address of the permittees shall be sufficient notice of termination.

Section 4. That upon the giving of the notice of termination as aforesaid, the permittees shall remove all fixtures and pertinences of every kind whatsoever thereto from the tract of land described above within said 30 days, all at the expense and cost of the permittees, and without right on the part of the permittees to claim from the city of Duluth, or any of its officers, agents or servants, any compensation, reimbursement for damages of any kind whatsoever.

Section 5. That by the acceptance of the terms of this ordinance as aforesaid, the permittees hereby agree to save harmless and defend and indemnify the city of Duluth against any claims or demand which may arise against the city of Duluth by reason of any act or omission of

the permittees, its employees, agents, and assigns and agree that such skywalk shall be so constructed and at all times maintained so as in no way to interfere with or damage any portion of the sidewalk, or sewer, watermains, gas mains, pipes, conduits or other public utilities now or to be hereinafter located in any part of said West First Street alley rights-of-way and agree that the city of Duluth shall not be liable for damage caused to said skywalk while the city is engaged in making repairs to the alley, public sidewalks, or public utilities or during snow removal operations, and agree to pay to the city of Duluth all extra costs of installation of any such sewers, gas mains, watermains, pipes, conduits, or other public utilities made necessary by the presence of skywalk in said West First Street alley rights-of-way.

Section 6. The permittees shall, at their expense, protect, support, temporarily disconnect, relocate in the same street, alley or public place, or remove from the street, alley or public place, any property of the grantee when required by the proper city officials by reason of snow removal, traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade or alley grade, installation of sewers, drains, water pipes, power lines, signal lines and tracks, the installation or repair of any other type of structures or improvements by governmental agencies, when acting in a governmental or proprietary capacity.

Section 7. The permittees shall further observe the following conditions:

(a) This permit shall be in effect until the property currently held by Heritage Foundation, Inc., is transferred to another party, at which time the permit shall expire;

(b) This permit is subject to revocation by a resolution of the city council and 14 days notice to the permittees for failure to maintain the terms and conditions of this permit or at the discretion of the city;

(c) Skywalk shall be limited to the designated area shown on page III D 4 of the March 10, 2009, staff report to the planning commission (Public Document No. 09-0413-44);

(d) The term of this permit shall expire on June 1, 2030.

Section 8. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: May 24, 2009)

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

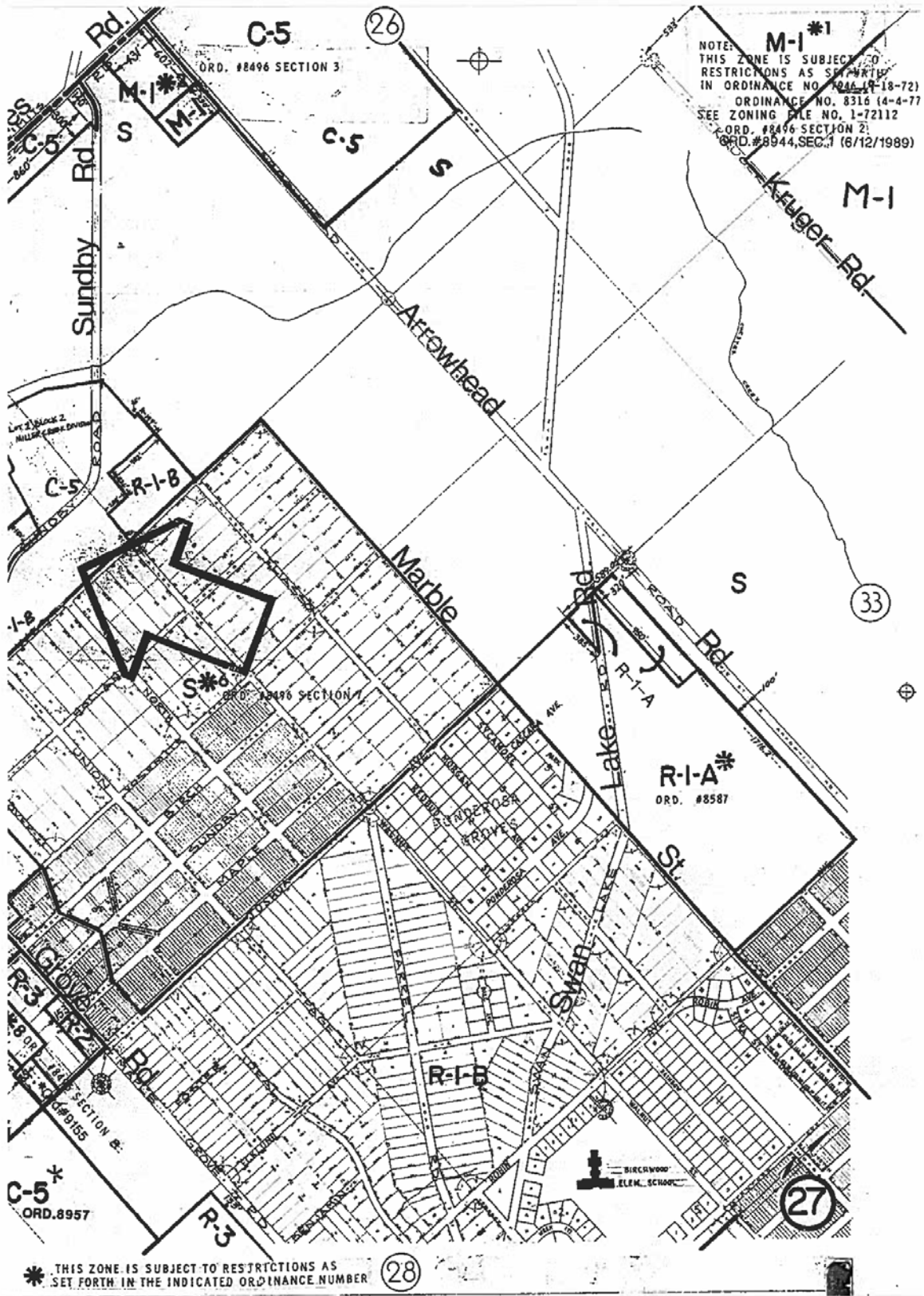
Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed April 13, 2009
Approved April 13, 2009
DON NESS, Mayor

- - -



OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, April 27, 2009, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Absent: None -- 0

- - -

The minutes of council meetings held on January 5, 12 and 26, 2009, were approved upon a unanimous vote.

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

09-0427-01 Arrowhead Bowhunters Alliance 2008 Duluth hunt review, pursuant to Resolution 08-0288. -- Received

09-0427-13 Duluth Area Chamber of Commerce communication regarding purchase of street maintenance equipment (09-0276R, 09-0277R, 09-0278R and 09-0279R). -- Received

09-0427-10 Carl Keller communication regarding authorization of a council letter to the building appeal board (09-0282R). -- Received

09-0427-12 Susan Koschak communication regarding variances from rental license restrictions in the protection zone (09-014-O). -- Received

09-0427-11 The following communications regarding demolition of the historic St. Louis County jail (09-0280R and 09-0281R): (a) Lisa Baumann; (b) Elliott Bayly; (c) Bryan and Marilyn Borich; (d) Pat Castellano; (e) Glen and Debra Filipovich; (f) Kris Fisher; (g) John Foucalt; (h) Carmeron Fryer; (i) Julie Heilman; (j) Victoria Henricksen; (k) Andrew Hine; (l) Dorance and Marie Jordahl; (m) Matt and Laurie Kania; (n) Chad Larsen; (o) Patricia Lenz; (p) Mike Levig; (q) Mike Logan; (r) Bill Lyth; (s) Mary Louise Murphy; (t) National Trust for Historic Preservation; (u) Sherry Rovig; (v) Dore Stubenvoll; (w) Sue Vogen. -- Received

- - -

REPORTS FROM OTHER OFFICERS

09-0427-02 Assessor affidavit of mailing of notice of public hearings at 5:00 p.m. on April 21, and 7:00 p.m. on April 27, 2009, to be held in the Council Chamber, Third Floor, City Hall, regarding the proposed street improvement of Woodland Avenue from Kent Road to Arrowhead Road. -- Clerk

09-0427-09 Parks and recreation division manager rental agreement with Klancy Kennedy for dwelling unit located at Duluth Heights Community Recreation Center, pursuant to Section 2-35 of the Duluth City Code. -- Mayor for execution

- - -

REPORTS OF BOARDS AND COMMISSIONS

09-0427-03 American Indian commission minutes of February 23, 2009, meeting. -- Received

09-0427-24 Building appeal board minutes of: (a) March 12; (b) April 9; (c) June 11; (d) July 9; (e) August 13; (f) September 10; (g) October 8; (h) November 12; (i) December 10, 2008, meetings. -- Received

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

09-0427-04 Charter commission minutes of January 14, 2009, meeting. -- Received

09-0427-05 Duluth legacy endowment fund advisory board minutes of: (a) December 22, 2008; (b) January 13; (c) March 23, 2009, meetings. -- Received

09-0427-06 Entertainment and convention center authority minutes of April 13, 2009, meeting. -- Received

09-0427-07 Library board minutes of February 24, 2009, meeting. -- Received

09-0427-08 Planning commission minutes of: (a) March 10; (b) March 16, 2009, meeting. -- Received

- - -

At this time, 7:07 p.m., the public hearing on the Woodland Avenue from Kent Road to Arrowhead Road project began.

Cindy Voigt, city engineer, reviewed that this project is \$ 4.8 million, noting the assessable portion and time frame of the construction.

Drew Digby, chair of the active living committee of Fit City Duluth, felt that: this plan creates a minor freeway through the neighborhood; there are few crossings for pedestrians; few safety measures for bicyclists and the smooth road design will have drivers going above 30 mph. He requested that this be the last design that does not take into account a complete street approach.

Pete Langer spoke on his safety concerns for both bicyclist and vehicle operators at the area between Arrowhead and Snively, on Woodland Avenue, and the general movement of bicyclists and pedestrians in high traffic areas.

At this time, 7:18 p.m., the hearing was declared closed and the regular order of business resumed.

- - -

Councilor Fosle moved to suspend the rules to consider Resolution 09-0182, ordering the improvement of Woodland Avenue from Kent Road to Arrowhead Road at an estimated cost of \$4,800,000, at this time, which motion was seconded and unanimously carried.

Councilors discussed at length the aspects of this project and expressed concerns that consideration be given motorists, pedestrians and bicyclists.

Resolution 09-0182 was adopted as follows:

RESOLVED, that it is deemed necessary for public convenience and safety and it is hereby ordered that Woodland Avenue from Kent Road to Arrowhead Road (City Project No. 0243TR) 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 \$4,800,000, payable from Permanent Improvement Fund 0411, Agency 035, Object 5530. The funding sources for this project will be as follows: \$3,342,300 from municipal state aid funds, \$580,000 from Water Fund 0510, \$105,000 from Stormwater Utility Fund 0520, \$505,000 from Sanitary Sewer Fund 0530, \$10,000 from Gas Utility Fund 0520, and \$257,700 from Street Improvement Fund 0440, assessable to benefitting properties.

FURTHER RESOLVED, that the council order in subject project in accordance with the provisions of Section 61 of the Duluth City Charter and that said improvement is hereby ordered.

Resolution 09-0182 was unanimously adopted.

Approved April 27, 2009

DON NESS, Mayor

- - -

OPPORTUNITY FOR CITIZENS TO BE HEARD

Jerry Schlafer commented on the need for public trust of elected officials, noting that is incorrect to believe that there will be no increase in sales tax with a new proposed Walgreen's, thus what else would you be losing the trust on?

- - -

RESOLUTION TABLED

Councilor Krause moved to remove Resolution 09-0207, authorizing city officials to contract with Mercury Associates, Inc., for professional services in evaluating and determining the appropriateness of the current city fleet replacement plan at an amount not to exceed \$24,420, from the table, which motion was seconded and unanimously carried.

Councilor Fosle noted that if Duluth followed the Minneapolis replacement plan, it would save a large amount of funds. He further noted that the school district keeps their buses, which must follow stringent safety standards, longer than what the city is proposing to keep vehicles.

Resolution 09-0207 failed upon the following vote (Public Document No. 09-0427-14):

Yeas: Councilors Gardner and Krause -- 2

Nays: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Stauber and President Gilbert -- 7

- - -

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

RESOLVED, that Resolution 08-0742 adopting license, permit and fee charges for 2009 be amended to increase the fee for the following to the amount set forth below, which fee shall be effective as of the effective date of this resolution:

Police	
License, Permit, Fee Name	2009 Fee
Deer hunting qualification certificate	\$30.00

Resolution 09-0270 was unanimously adopted.

Approved April 27, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to contract with Black Goose Chimney and Duct for the cleaning of heating and ventilating systems at City Hall, in accordance with existing specifications, in the amount of \$29,120, payable from General Fund 110-700-1423-5520.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Resolution 09-0248 was unanimously adopted.
Approved April 27, 2009
DON NESS, Mayor

- - -

RESOLVED, that the proper city officers are hereby authorized to enter into a consultant agreement with Northland Consulting Engineers, LLP, in an amount not to exceed \$16,400, from Capital Bond Fund 450, Agency 030, Object 5520, Project No. CP2009 09-08 B, for providing professional engineering services to the city of Duluth in connection with repairs to City Hall retaining wall and stairs; said services and payment therefore to be substantially as outlined in the agreement on file in the office of the city clerk as Public Document No. 09-0427-15.

Resolution 09-0249 was unanimously adopted.
Approved April 27, 2009
DON NESS, Mayor

- - -

RESOLVED, that the proper city officers are hereby authorized to enter into a consultant agreement with Architecture Advantage, LLP, in an amount not to exceed \$28,000, from Capital Bond Fund 450, Agency 030, Object 5520, Project No. CP2009 09-04B, for providing certain professional services to the city of Duluth in connection with the replacement of City Hall windows; said services and payment therefore to be substantially as outlined in the agreement on file in the office of the city clerk as Public Document No. 09-0427-16.

Resolution 09-0250 was unanimously adopted.
Approved April 27, 2009
DON NESS, Mayor

- - -

RESOLVED, that the proper city officers are hereby authorized to enter into a consultant agreement with Architecture Advantage, LLP, in an amount not to exceed \$27,000, from Capital Bond Fund 450, Agency 030, Object 5520, Project No. CP2009 09-09B, for providing certain professional services to the city of Duluth in connection with the relocation and remodeling for housing staff from building safety to Fire Station #1 and relocation of radio shop from Fire Station #1 to maintenance shop; said services and payment therefore to be substantially as outlined in the agreement on file in the office of the city clerk as Public Document No. 09-0427-17.

Resolution 09-0251 was unanimously adopted.
Approved April 27, 2009
DON NESS, Mayor

- - -

RESOLVED, that the city council of the city of Duluth hereby issues off sale 3.2 percent malt liquor license renewals and 2:00 a.m. beverage license renewals for the period beginning May 1, 2009, and ending April 30, 2010, 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. 09-0427-18.

Resolution 09-0255 was unanimously adopted.
Approved April 27, 2009
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, 2009, and ending April 30, 2010,

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

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. 09-0427-19.

Resolution 09-0256 was unanimously adopted.

Approved April 27, 2009

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves issuance of the following consumption and display license by the liquor control commissioner for the period beginning April 1, 2009, and ending March 31, 2010, subject to departmental approvals and the payment of sales and property taxes:

Order of Owls, Nest #1200, 118 East Second Street.

Resolution 09-0257 was unanimously adopted.

Approved April 27, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Insight Public Sector, Inc., for the purchase and delivery of hardware and related products as needed in year 2009 in accordance with state of Minnesota Contract #436388, Release C-813(5), specifications and pricing, not to exceed the budget allocation of \$80,000, payable from various funds, departments/agencies, organizations, objects.

Resolution 09-0259 was unanimously adopted.

Approved April 27, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Hewlett-Packard Company for the purchase and delivery of computer hardware and related products as needed in year 2009 in accordance with state of Minnesota Contract #432981, Release C-874(5), specifications and pricing, not to exceed the budget allocation of \$65,000, payable from various funds, departments/agencies, organizations, objects.

Resolution 09-0262 was unanimously adopted.

Approved April 27, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Software House International for the purchase and delivery of computer software products as needed in year 2009 in accordance with state of Minnesota 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 09-0263 was unanimously adopted.

Approved April 27, 2009

DON NESS, Mayor

- - -

WHEREAS, the city purchasing division received a request for the purchase of a 2009 one-ton, 4x4 regular cab and chassis; and

WHEREAS, a request for bids was solicited and the state of Minnesota contract for such a purchase was reviewed; and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

WHEREAS, the city purchasing division compared the lowest solicited bid with the state of Minnesota contract bid and found the state bid to be lower; and

WHEREAS, a requisition for Nelson Auto Center was then received.

RESOLVED, that city officials are hereby authorized to contract with Nelson Auto Center for the purchase and delivery of a 2009 GMC Sierra 3500 4WD regular cab and chassis with options and accessories in accordance with state of Minnesota Contract #440160, Release T-636(5), specifications and pricing in the amount of \$28,662.13 plus \$1,863.04 sales tax plus \$125 tax exempt plates, title and registration, for a combined total amount of \$30,650.17, terms net 30, FOB destination, payable from the Capital Equipment Fund 250, Agency 015, Organization 2009, Object 5580, Project CE250-V905.

Resolution 09-0266 was unanimously adopted.

Approved April 27, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to pay to MetLife Auto & Home, as subrogee of Bruce G. Mars, the sum of \$15,361.26 in full and final settlement of the claim which arose out of a failure of a city sanitary sewer pumping station occurring near 442 Hastings Drive on November 7, 2008; payment to be made from the Self Insurance Fund 610-036-1653-5841.

Resolution 09-0246 was unanimously adopted.

Approved April 27, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to pay to North Shore Bank of Commerce the sum of \$54,359.29 in full and final settlement of the claim which arose out of a break in a city watermain valve occurring near 131 West Superior Street on May 12, 2008; payment to be made from the Self Insurance Fund 610-036-1652-5841.

Resolution 09-0254 was unanimously adopted.

Approved April 27, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Nelson Auto Center for the purchase and delivery of three 2009 GMC Savanna Model 3500 one-ton cargo vans with options and accessories in accordance with state of Minnesota Contract #440057, Release #A-175(5), specifications and pricing in the amount of \$59,950.23 plus \$3,896.77 for sales tax, and \$375 for tax exempt plates, title and registration, for a combined total amount of \$64,222, terms net 30, FOB destination, payable as follows:

(a) \$16,055.50 from Water Fund 510, Agency 500, Organization 1905, Object 5580;

(b) \$48,166.50 from Gas Fund 520, Agency 500, Organization 1905, Object 5580.

Resolution 09-0260 was unanimously adopted.

Approved April 27, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with LHB Engineers and Architects, Inc., for professional engineering services related to the third phase of painting and structural rehabilitation of the Aerial Lift Bridge, Bridge No. L6116, located

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

on MSAS 140 (Lake Avenue), in an amount not to exceed \$304,172, payable from the Permanent Improvement Fund 0411, Department/Agency 035, Object 5520, City Project 0792TR, S.A.P. 118-140-030, Requisition No. 09-0301.

Resolution 09-0269 was unanimously adopted.

Approved April 27, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Arrowhead Concrete Works, Inc., for the purchase and delivery of approximately 450 cubic yards of ready-mix concrete as needed during year 2009 by the street maintenance crews, in accordance with the bid specifications and the vendor's low bid of \$95.16 per cubic yard of Type 3A32 concrete, for a total of \$42,822 plus \$2,783.43 sales tax, for an estimated combined total of \$45,605.43, terms net 30, FOB destination, payable from the General Fund 110, Agency 120, Organization 1217-2140, Object 5224.

Resolution 09-0271 was unanimously adopted.

Approved April 27, 2009

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. 09-0427-20, with the city of Chisholm to accept \$201,020 to fund one criminal analyst position and related costs which will provide assistance to the Lake Superior drug and gang task force, said sums to be payable to Fund 215-200-2287-4209-02.

Resolution 09-0244 was unanimously adopted.

Approved April 27, 2009

DON NESS, Mayor

- - -

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

Both sides of Grand Forks Avenue from Chestnut Street to the alley north of Vernon Street.

Both sides of Winnipeg Avenue from Chestnut Street to Vernon Street.

Resolution 09-0258 was unanimously adopted.

Approved April 27, 2009

DON NESS, Mayor

- - -

RESOLVED, that in accordance with the provisions of Section 33-108 of the Duluth City Code, 1959, as amended, the following parking meter zone is hereby established:

On the north side of Superior Street between Ninth Avenue East and Tenth Avenue East.

Proposed rate will be one quarter for 40 minutes with a two hour limit.

Metered parking shall be applicable between 8:30 AM and 5:30 PM Monday through Saturday.

This metered zone will take effect upon installation of the parking meters.

Resolution 09-0261 was unanimously adopted.

Approved April 27, 2009

DON NESS, Mayor

- - -

RESOLVED, that the city council requests that city staff review potential parking related issues, refer them to the parking commission for study and recommendation and bring appropriate recommendations back to council for consideration.

The following items shall be considered:

- (a) Time limits on parking meters of low usage;
- (b) Resolution 08-0454, which established parking meters on Second Street between Fourth Avenue West to Fourth Avenue East. These meters would likely produce little revenue and would reduce the number of driving lanes from three to two;
- (c) Meter placement on London Road east of Tenth Avenue East near the Rose Garden and Leif Erikson Park; Junction Avenue north of College Street; Harbor Drive; the east side of Third Avenue West between Second Street and Third Street;
- (d) Review time limits on meters in Canal Park and enforcement of the sculpture lot;
- (e) Review policy and use of Lot A near Playfront Park for efficient and fair use during DECC construction.

Resolution 09-0267 was unanimously adopted.

Approved April 27, 2009

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 2006, Chapter 258, subd. 13, entitled Polar Shores exhibit; 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 sources and amounts of the \$200,000 local match identified in the development proposal are committed to the project and to be paid from Fund 450, Department 030, Object 5530, Project CP2007-OTO713; 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 09-0245 was unanimously adopted.

Approved April 27, 2009

DON NESS, Mayor

- - -

The following resolutions were also considered:

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Ulland Brothers, Inc., for construction of high pressure gas mains and services in various locations for the engineering division. Ulland Brothers, Inc., had the lowest responsible bid of \$270,436, payable out of Gas Fund 0520, Department/Agency 500, Organization 1905, Object 5533, City Project No. 0429GS.

Resolution 09-0265 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fosle, Gardner, Krause, Stauber and President Gilbert -- 8

Nays: None -- 0

Abstention: Councilor Fedora -- 1

Approved April 27, 2009

DON NESS, Mayor

- - -

WHEREAS, subject to the approval of the city council, and pending a background investigation and drug testing results, the mayor shall appoint Michael Ashcraft to the position of chief administrative officer.

NOW, THEREFORE, BE IT RESOLVED, that the appointment of Michael Ashcraft to the position of chief administrative officer is hereby confirmed and that the proper city officials are hereby authorized to execute and implement an employment contract substantially in the form of that on file in the office of the city clerk as Public Document No. 09-0427-21.

Resolution 09-0247 was unanimously adopted.

Approved April 27, 2009

DON NESS, Mayor

- - -

Resolution 09-0264, authorizing the execution of a lease agreement with the St. Louis and Lake counties regional railroad authority for exclusive use of Municipal Lot d for the period June 1, 2009, through September 30, 2009, at no cost to authority, was introduced by Councilor Eckenberg for discussion.

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

Ken Buehler, general manager of the North Shore Scenic Railroad, noted the appreciation of the patrons to be parking in this lot; adding that the proposed Northern Lights Express now has a stop at the casino in Hinckley and that it has funding from both the federal stimulus program and the 2009 transportation bill.

Resolution 09-0264 was adopted as follows:

RESOLVED, that the proper city officers are hereby authorized to enter into a lease agreement (Public Document No. 09-0427-23) with St. Louis and Lake counties regional railroad authority for the exclusive use of Municipal Lot D located under the Interstate 35 Freeway between Fourth and Fifth avenues West for parking for the patrons and customers of its excursion trains operating from the St. Louis County Heritage and Arts Center for the period June 1, 2009, through September 30, 2009, at no cost to the authority.

Resolution 09-0264 was unanimously adopted.

Approved April 27, 2009

DON NESS, Mayor

- - -

Resolution 09-0253, amending Resolution 09-0232 to correct a locational error, was

introduced by Councilor Cuneo for discussion.

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

Bob Hom and Craig Samborski and noted that the prior resolution did not work out as well as expected and that the need for parking is only for the area from the Vista Fleet to the end of the Irving, during the construction period.

- - -

RESOLUTION RECONSIDERED

At this time, Councilor Anderson moved to reconsider Resolution 09-0232, temporarily allowing parking on Harbor Drive under certain conditions, which motion was seconded and unanimously carried.

Councilor Stauber moved to remove this resolution and Resolution 09-0253 from the agenda and return them to the administration, which motion was seconded and unanimously carried.

- - -

Resolution 09-0268, denying a request to amend Chapter 50 of the Duluth City Code, 1959, as amended, Zoning District Map No. 19 as contained in the Appendix to Chapter 50, to provide for the reclassification from R-1-b, One-family Residential, to C-1, Commercial, at 2900 Piedmont Avenue (Duluth Lakewalk Offices Phase II, LLC). was introduced by Councilor Stauber.

Councilor Stauber moved to table the resolution to be considered with companion Ordinance File No. 09-020 at the next meeting, which motion was seconded and unanimously carried.

- - -

Resolutions 09-0280 and 09-0281, granting and denying, respectively, a demolition permit to St. Louis County for the demolition of the historic St. Louis County jail, were introduced by Councilor Stauber for discussion.

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

Bill Majewski, Bob Berg, Jon Niemi, Robert Hewitt, Glen Filipovich, Erin Haufin Berg, of the Preservation Alliance of Minnesota, Bill Hickey, Craig Milkert, structural engineer; Phil Waugh, technical designer adviser, Tony Dierckins, Don Dass, Carolyn Sundquist, vice chairperson of the heritage preservation commission, Penny Clark, Debbie Filipovich, Zak Filipovich, Abbot Apter, member of the Minnesota historical society, Dennis Lamkin, Pam Kramer and Royce Yeager supported Resolution 09-0281, noting the reasons of: historical buildings are important to creating the personality of places; the county commissioners who ordered the construction had the intent to blend it with the other buildings; it was the second building built in the civic center; the poor conditions that have been shown are due to not securing the building adequately, allowing these conditions to develop; the county needs to do their share to preserve this building; the building is too valuable an asset to the beauty and historic nature of the Civic Center to be torn down; it is a significant part of Duluth's heritage; there have been studies to show how the building can be re-used for other purposes; the secretary of the interior's standards cover this building; maintenance is crucial for historical buildings; the old jail is an excellent candidate for reuse and can be made energy efficient; the unique features of this old jail has great opportunities; a high tech office building built into the facade of the outer frame work of the jail would be the best use; the county officials quoted negative aspects out of studies done without mentioning the positive

aspects; the secretary of the interior's standards quoted by the county have been amended and other sections would apply in this situation; this project is eligible for tax credits and thus is a very economical project; there is greater risk to the public regarding asbestos during demolition, than with preservation; the structural integrity allows for the jail cells to be removed and the building remodeled; it is very commonly, regularly and successfully done, that a consultant is brought on board to dispose of this property; the jail was designed by a world famous designer as part of the Civic Center plan; this building is a link to a time beyond living memory; the heritage preservation ordinance was adopted to preserve and protect important buildings; this is the first time that this ordinance has come into play, ironically against an other governmental body; the county should have been more proactive during a better economic time; the four buildings of the Civic Center, including the jail, are in the Duluth Civic Center Heritage Landmark District, established by ordinance and also in the National Register for Historic Places; "demolition" is inconsistent with preservation standards and against the comprehensive plan and sustainability; the county has shown, with the Depot, that it can do good preservation, but here we are just requesting that the county sell the building; to overturn the commission's decision sends a strong message that this council does not uphold or respect the laws it adopted; "sustainable" is reusing the old jail building that has remarkable stone carvings; these types of use of historic buildings are important to retain the character of the city; there are already hundreds of existing parking lots within this area; the Minnesota historical society requests that the Duluth heritage preservation commission's decision be upheld; Duluth has many refurbished buildings that were considered for demolition at one point that were in worse shape than the jail building; the charrette for the Downtown area supported the restoration of the old jail through its established principles; the city's ordinance does not allow for the approval of the demolition of this building; there are safety factors relative to whether the building is demolished or not and money will have to be put towards the jail for asbestos and lead abatement regardless of it being refurbished or demolished.

Tom Wright, William Scalzo, historic architect, supported Resolution 09-0280 for the reasons of: citizens are tired of saving old buildings like the Armory since five years have gone by and nothing has been done; these old buildings are filled with asbestos; Superior made the right decision with taking the Palace Theater down; if nothing else is built there, parking is needed and noted that the building owner of an historically designated building can do whatever they wish, as long as there are no federal funds attached to the property.

Tony Mancuso and Allan Mitchell, from St. Louis County, noted: that historical tax credits are not available to a county and only available if the jail was sold to a private entity; asbestos insulation has been dampened by water leakage into the building and that has caused the asbestos covering to deteriorate; the 50 years of lead paint that has been flaking off has been removed; mold, which is a health threat, has grown in between the walls because of the water damage; when the water leaks got out of control, funding to keep it had been reduced; this building is no longer safe for being re-used; no additional office space is needed, because in 2012 the county will own the Governmental Services Center; there are no immediate plans for this location other than for having the building taken down and "mothballing" it would be very expensive, exceeding a million dollars.

City Attorney Johnson advised councilors to proceed and make their decision without worrying about potential litigation as it would be addressed when and if it came forth.

The council reviewed and discussed this issue at length.

Councilors Eckenberg, Fedora and Stauber noted support for Resolution 09-0281 for the reasons of: the jail is in deplorable condition and falling apart; this is a complicated and expensive

adaptive re-use project; the expense by the county of tax dollars to “mothball” is not in the best interests of the public; the elected body of the county determined unanimously the best decision for this building and it was stated that the Armory would be refurbished in three years and now it has been six years with no improvements.

Councilors Cuneo, Gardner, Krause and Anderson expressed support for Resolution 09-0281, for the reasons of: that more time be given to the historical groups to work with the county to find a re-use for the building; the jail is a protected historic natural resource; the county has not shown that no feasible and prudent alternative exists; the city ordinance is quite clear as to what can be done here; buildings that have been restored have an impact and make a statement about the community and if this issue comes back again after a period of time, without any progress, there would be support for the demolition.

Resolution 09-0280 failed upon the following vote (Public Document No. 09-0427-22):

Yeas: Councilors Eckenberg, Fedora and Stauber -- 3

Nays: Councilors Anderson, Cuneo, Fosle, Gardner, Krause and President Gilbert -- 6

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Councilor Fedora moved to amend Resolution 09-0281, by adding the wording “ that the county at their sole discretion by nature of this resolution can transfer ownership of the jail to the city of Duluth for \$1,” which motion was seconded and failed upon the following vote:

Yeas: Councilors Eckenberg and Fedora -- 2

Nays: Councilors Anderson, Cuneo, Fosle, Gardner, Krause, Stauber and President Gilbert -- 7

Resolution 09-0281 was adopted as follows:

BY COUNCILOR STAUBER:

RESOLVED, that the council finds as follows:

(a) The historic St. Louis County jail is a protectible natural resource within the meaning of the Minnesota Environmental Rights Act;

(b) The demolition of the jail will destroy or materially adversely affect this protected resource;

(c) The county has failed to demonstrate that no feasible and prudent alternatives exist.

RESOLVED FURTHER, that the council affirms the decision of the heritage preservation commission denying the application of St. Louis County for the demolition of the historic St. Louis County jail.

Resolution 09-0281 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Fosle, Gardner, Krause and President Gilbert -- 6

Nays: Councilors Eckenberg, Fedora and Stauber -- 3

Approved April 27, 2009

DON NESS, Mayor

- - -

Resolution 09-0276, authorizing city officials to enter into a contract with Ziegler, Inc., for the purchase and delivery of a Caterpillar articulating asphalt roller in the amount of \$126,223.55; Resolution 09-0277, authorizing city officials to enter into a contract with Swanston Equipment Company for the purchase and delivery of a 2009 Etnyre S-2000 oil distributor in the amount of \$131,120; Resolution 09-0278, authorizing city officials to enter into a contract with Ziegler, Inc., for the purchase and delivery of a Trail King tandem tilt trailer in the amount of \$25,876.25; and Resolution 09-0279, authorizing city officials to enter into a contract with Ruffridge-johnson

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Equipment Company, Inc., for the purchase and delivery of a 2009 Bomag Model BF815 asphalt paver in the amount of \$123,091.64, were introduced by Councilor Fosle for discussion.

Barb Kolodge, street maintenance supervisor, reviewed at length that this new aspect of street improvements will spend \$6.1 million through private contractors. She further noted that in addition there will be work done by city employees, which will be a band aid until a total street improvement can be accomplished.

Councilors Stauber and Fosle expressed concern regarding these resolutions and how it affects local contractors.

Councilor Fosle moved to table the resolutions, which motion was seconded and failed upon the following vote:

Yeas: Councilors Eckenberg, Fedora, Fosle and Stauber -- 4

Nays: Councilors Anderson, Cuneo, Gardner, Krause and President Gilbert -- 5

Resolutions 09-0276, 09-0277, 09-0278 and 09-0279 were adopted as follows:

RESOLVED, that city officials are hereby authorized to contract with Ziegler, Inc., for the purchase and delivery of a Caterpillar Model CB534D double steel drum, articulating asphalt roller with options for street maintenance in accordance with state of Minnesota Contract #439299, Release #R-642(5), specifications and pricing in the amount of \$114,670 plus \$7,453.55 sales tax and \$4,100, seven year/3,500 hour full machine warranty for a total amount of \$126,223.55, terms net 30, FOB destination, payable out of Street Improvement Fund 440, Department/Agency 038, Object 5580, Project SIP2009-CAPEQ.

Resolution 09-0276 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Gardner, Krause and President Gilbert -- 6

Nays: Councilors Fedora, Fosle and Stauber -- 3

Approved April 27, 2009

DON NESS, Mayor

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RESOLVED, that city officials are hereby authorized to contract with Swanston Equipment Company for the purchase and delivery of a 2009 Etnyre S-2000 Centennial cab and chassis mounted oil distributor, mounted on a 2009 Ford F-750 cab and chassis for street maintenance in accordance with state of Minnesota Contract #440533, Release #O-84(5), specifications and pricing in the amount of \$123,000 plus \$7,995 sales tax and \$125 vehicle title & registration for a total amount of \$131,120, terms net 30, payable out of Street Improvement Fund 440, Department/Agency 038, Object 5580, Project SIP2009-CAPEQ.

Resolution 09-0277 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Gardner, Krause and President Gilbert -- 6

Nays: Councilors Fedora, Fosle and Stauber -- 3

Approved April 27, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Ziegler, Inc., for the purchase and delivery of a Trail King TKT32 tandem industrial tilt trailer for street maintenance in accordance with state of Minnesota Contract #439957, Release #T-603(5), specifications and pricing in the amount of \$24,250 plus \$1,576.25 sales tax and \$50 title and registration for a total amount of \$25,876.25, terms net 30, FOB destination, payable out of Street Improvement Fund 440, Department/Agency 038, Object 5580, Project SIP2009-CAPEQ.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Resolution 09-0278 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Gardner, Krause and President Gilbert -- 6

Nays: Councilors Fedora, Fosle and Stauber -- 3

Approved April 27, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Ruffridge-Johnson Company, Inc., for the purchase and delivery of a 2009 Bomag Model BF815 asphalt paver with MOBA dual side joint matcher and set of ditch cut-off plates for street maintenance in accordance with vendors bid specifications and pricing in the amount of \$115,579 plus \$7,512.64 sales tax for a total amount of \$123,091.64, terms net 30, FOB destination, payable out of the Street Improvement Fund 440, Department/Agency 038, Object 5580, Project SIP2009-CAPEQ.

Resolution 09-0279 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Gardner, Krause and President Gilbert -- 6

Nays: Councilors Fedora, Fosle and Stauber -- 3

Approved April 27, 2009

DON NESS, Mayor

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Resolution 09-0282, by Councilor Cuneo, authorizing a council letter to the building appeal board, was introduced for discussion.

Councilors discussed at length the aspects of various circumstances, definitions and possible clarifications.

Councilor Gardner moved to table the resolution so the term "hardship" could be better defined, which motion was seconded and carried upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fosle, Gardner, Stauber and President Gilbert -- 7

Nays: Councilors Fedora and Krause -- 2

- - -

Resolution 09-0286, by Councilor Anderson, honoring city of Duluth library employees. was introduced for discussion.

Councilor Anderson moved to amend the resolution as follows:

(a) In subparagraph (b), delete "65" and insert "45";

(b) In subparagraph (f), delete "500,00" and insert "400,000," which motion was seconded and unanimously carried.

Resolution 09-0286, as amended, was adopted as follows:

BY COUNCILOR ANDERSON:

The city council finds:

(a) April 14 was national library workers day; and

(b) Our great city has strong libraries with 45 dedicated workers who help minds soar; and

(c) Our talented library workers help more than 50,000 borrowers find the information they need to learn, prosper and have fun; and

(d) Our library workers offer free and equal access to a world of knowledge regardless of age, income or background; and

(e) Our library workers embrace change and constantly reinvent their services to meet

the demands of the information age; and

(f) Duluth residents made nearly 400,000 visits to our three libraries last year; and

(g) Our libraries are being used more than ever with less financial backing due to cuts in state aid to local government; and

(h) Our libraries work well because AFSCME library workers do.

Resolution 09-0286, as amended, was unanimously adopted.

Approved April 27, 2009

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 STAUBER

09-020 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, ZONING DISTRICT MAP NO. 19 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-b, ONE FAMILY RESIDENTIAL, TO C-1, COMMERCIAL, OF PROPERTY LOCATED AT 2900 PIEDMONT AVENUE (DULUTH LAKEWALK OFFICES PHASE II, LLC).

- - -

INTRODUCED BY COUNCILOR STAUBER

09-022 - AN ORDINANCE AUTHORIZING AGREEMENT WITH KOHL'S DEPARTMENT STORES, CONVEYING CERTAIN PROPERTY IN EXCHANGE FOR CONVEYANCE OF OTHER PROPERTY, BOTH ADJACENT TO KOHL'S DEPARTMENT STORE.

- - -

INTRODUCED BY COUNCILOR FOSLE

09-019 - AN ORDINANCE MODIFYING AND ESTABLISHING PROCEDURES FOR ASSESSING FOR LOCAL IMPROVEMENTS, AMENDING CHAPTER 45 OF THE CODE.

- - -

INTRODUCED BY COUNCILOR CUNEO

09-017 - AN ORDINANCE AMENDING SECTION 36 OF THE CITY CHARTER INCREASING THE NUMBER OF DEPUTY FIRE CHIEFS FROM ONE TO TWO.

- - -

BY COUNCILOR ANDERSON

09-018 - AN ORDINANCE AMENDING CHAPTER IV, SECTION 21, OF THE CITY CHARTER RELATING TO CITY EMPLOYEES RUNNING FOR CITY OFFICES.

- - -

BY COUNCILORS ANDERSON, CUNEO, GARDNER AND ECKENBERG

09-021 - AN ORDINANCE ADDING A NEW CHAPTER 29D OF THE DULUTH CITY CODE, 1959, AS AMENDED, ESTABLISHING A DOMESTIC PARTNER REGISTRY.

- - -

The following entitled ordinances were read for the second time:

BY COUNCILOR STAUBER

09-014 - AN ORDINANCE REPEALING SECTION 29A-32.1(h) OF CHAPTER 29A OF THE DULUTH CITY CODE, 1959, AS AMENDED; PROVIDING FOR A VARIANCE FROM THE

RENTAL LICENSE RESTRICTION PROVIDED FOR IN SECTIONS 29A-32.1(a) AND 29A-32.1(b) OF CHAPTER 29A.

As sponsor of the ordinance, Councilor Stauber requested that the ordinance be removed from the agenda, which motion accepted without any objections.

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INTRODUCED BY COUNCILOR STAUBER

09-015 (9965) - AN ORDINANCE AMENDING SECTION 2-132 OF THE DULUTH CITY CODE, 1959, AS AMENDED, ESTABLISHING THE MEMBERSHIP OF THE ENVIRONMENTAL ADVISORY COUNCIL.

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

- - -

INTRODUCED BY COUNCILOR CUNEO

09-013 (9966) - AN ORDINANCE MODIFYING PARKING REGULATIONS, ALLOWING FOR USE OF DIFFERENT PARKING METERING EQUIPMENT, AMENDING SECTIONS 33-101, 33-102, 33-104, 33-106, 33-107, 33-108, 33-109, 33-110, 33-111 AND 33-112 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

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

- - -

INTRODUCED BY COUNCILOR CUNEO

09-016 (9967) - AN ORDINANCE REPEALING CHAPTER 6, ARTICLE V, AND AMENDING SECTIONS 6-3, 6-4, 6-12, 6-27, 6-39, 6-82, 6-84, 6-85, 6-86, 6-87 AND 6-96 OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO THE ANIMAL HUMANE BOARD.

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

- - -

The meeting was adjourned at 10:55 p.m.

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 9965

AN ORDINANCE AMENDING SECTION 2-132 OF THE DULUTH CITY CODE, 1959, AS AMENDED, ESTABLISHING THE MEMBERSHIP OF THE ENVIRONMENTAL ADVISORY COUNCIL.

The city of Duluth does ordain:

Section 1. That Section 2-132 of the Duluth City Code, 1959, as amended is amended to read as follows:

Sec. 2-132. Membership; terms; vacancies.

The council shall consist of 13 members. There shall be four nonvoting ex officio members: a member of the Duluth City Council selected by the president of the city council; the land use supervisor of the city or designee; an appointee of the Western Lake Superior Sanitary District; and the director of public works and utilities of the city or designee. A member of the Duluth planning commission selected by

the president of the commission shall be a voting ex officio member. Eight voting members shall be appointed by the mayor and confirmed by the city council. A minimum of four of these members shall be selected from lists of persons recommended by locally recognized environmental organizations. Vacancies shall be filled for the unexpired terms in the same manner. Of these initial eight members, three shall be appointed for three years, three shall be appointed for two years, and two shall be appointed for one year. Thereafter, all appointments shall be for a term of three years. Members shall serve until their successors are appointed and qualified.

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

(Effective date: June 7, 2009)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Nays: None -- 0

ATTEST:

JEFFREY J. COX, City Clerk

Passed April 27, 2009
Approved April 27, 2009
DON NESS, Mayor

- - -

ORDINANCE NO. 9966

AN ORDINANCE MODIFYING PARKING REGULATIONS, ALLOWING FOR USE OF DIFFERENT PARKING METERING EQUIPMENT, AMENDING SECTIONS 33-101, 33-102, 33-104, 33-106, 33-107, 33-108, 33-109, 33-110, 33-111 AND 33-112 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

The city of Duluth does ordain:

Section 1. That Section 33-101 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 33-101. Definitions.

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 council by resolution 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 Council 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 2. That Section 33-102 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 33-102. Installation.

The mayor or such officers or employees of the city as he or she may designate are hereby authorized to install or place parking meters in parking meter zones designated under the authority of this Division. Such parking meters shall be placed in reasonable proximity to all parking meter spaces and signs shall be erected to notify persons parking in parking meter spaces as to the location and identity of the parking meter which authorizes and controls parking in said parking meter space.

Section 3. That Section 33-104 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 33-104. Specifications.

Each parking meter shall display a signal showing legal parking upon the deposit of the appropriate fee, for the period of time prescribed by this Division or shall, upon deposit of such fee, issue a receipt to the purchaser thereof displaying the date and time purchased and the period of time thereafter during which the purchaser is entitled to park his or her vehicle in a parking meter space in the zone in which the receipt was issued. Any such receipt shall authorize the parking of a vehicle in a parking meter space only if the receipt is visibly displayed on the windshield or on the dashboard of such vehicle adjacent to the driver's seat during the time period for which it is valid.

Section 4. That Section 33-106 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 33-106. Same--Manner of parking vehicles therein.

Any vehicle parked in any parking meter space shall be parked within the

lines circumscribing said space or, if one side of such space is not demarcated by such line, by a line which would connect the ends of the lines demarcating end of the space most adjacent to the missing line.

Section 5. That Section 33-107 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 33-107. Operation.

Except in a period of emergency determined by an officer of the fire or police division or in compliance with the directions of a police officer or traffic control sign or signal, when any vehicle shall be parked in any parking meter space, the operator of such vehicle shall, upon entering the parking meter space, immediately pay the fee therefore and, if a receipt is issued by the parking meter, shall display said receipt as provided for in Section 33-104. When required by the directions on the parking meter, the operator of such vehicle, after the deposit of the proper coins or tokens, shall also set in operation the timing mechanism on such meter in accordance with directions properly appearing thereon. Failure to so pay the fee, to display any receipt, or to set the timing mechanism in operation, when so required, shall constitute a violation of this Division. Upon the deposit of the fee, the display of any receipt as required by Section 33-104 and the setting of the timing mechanism in operation when so required, the metered parking space may be lawfully occupied by a vehicle during the period of time authorized under this; provided, that any person placing a vehicle in a parking meter space with regard to which a meter indicates that unused time has been left in the parking meter by a previous occupant of the space shall not be required to pay any additional fee so long as his occupancy of such space does not exceed the indicated unused parking time. Upon the expiration of such unused time, if such vehicle shall remain parked in any such parking meter space, such vehicle shall be considered as parking beyond the period of legal parking time, and such parking shall be deemed a violation of this Division.

Section 6. That Section 33-108 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 33-108. Parking meter zones.

The city council may, by resolution 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 7. That Section 33-109 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 33-109. Parking longer than maximum time specified prohibited.

No person shall cause a vehicle to occupy a parking meter space for a period of time longer than the maximum time limit established for such space.

Section 8. That Section 33-110 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 33-110. Hours of operation.

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 council shall establish by resolution for each parking meter zone.

Section 9. That Section 33-111 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 33-111. Prohibited acts.

It shall be unlawful and a violation of the provisions of this Division for any person:

(a) To cause, allow, permit or suffer any vehicle registered in the name of or operated by such person to be parked beyond the period of legal parking time established for any metered parking space or to pay any fee for the purpose of parking beyond the maximum legal parking time for the particular parking meter space;

(b) To park any vehicle across any line or marking of a parking meter space or in such position that the vehicle shall not be entirely within the area designated by such lines or markings;

(c) To deface, injure, tamper with, open or wilfully break, destroy or impair the usefulness of any parking meter installed under the provisions of this Division;

(d) To deposit or cause to be deposited in any parking meter any slugs, device or metal substance or other substitute for lawful coins or tokens approved by written order of the chief of police;

(e) To fail to comply with any of the provisions of this Division;

(f) Any owner or operator of any vehicle who causes, allows or permits the vehicle to remain parked unlawfully at a parking meter for over two hours shall be guilty of a separate aggravated violation of this Division and shall be punished as provided in Section 33-46 of this Chapter.

Section 10. That Section 33-112 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 33-112. Division declared regulatory.

The fees required by this Division to be paid for the privilege of parking are hereby imposed as police regulations and inspection fees to cover the cost of inspection and regulation involved in the inspection, installation, operation, control and use of the parking spaces and parking meters described in this Division and involved in checking up and regulating the parking meter zones created by this Division.

Section 11. This ordinance shall take effect 30 days from and after its passage and publication. (Effective date: June 7, 2009)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed April 27, 2009
Approved April 27, 2009
DON NESS, Mayor

- - -

ORDINANCE NO. 9967

AN ORDINANCE REPEALING CHAPTER 6, ARTICLE V, AND AMENDING SECTIONS 6-3, 6-4, 6-12, 6-27, 6-39, 6-82, 6-84, 6-85,

6-86, 6-87 AND 6-96 OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO THE ANIMAL HUMANE BOARD.

The city of Duluth does ordain:

Section 1. That Article V of Chapter 6 of the Duluth City Code, 1959, as amended, relating to the animal humane board is hereby repealed in its entirety.

Section 2. That Section 6-3 of the Duluth City Code, 1959, is amended to read as follows:

Sec. 6-3. Impoundment--authorized; redemption fee of certain dogs.

(a) Police officers and animal control officers shall have the authority to seize, take up and impound all animals:

(1) Which may be found running at large contrary to the provisions of this Chapter. It shall also be the duty of the animal control officers to see that animals required to be licensed are in fact so licensed;

(2) Which are found to be in an environment or subject to conditions which would, to a reasonable person, evidence that the animal's health, safety or well being is endangered due to adverse weather conditions or in other circumstances set forth in Article VI of this Chapter;

(3) Which constitute a nuisance under this Chapter;

(4) Which are found to be in circumstances, such as the animal exhibiting fresh wounds, scarring, or is observed in a fight, or other indications which, to a reasonable person, evidence that animal has been or will be used, trained or encouraged to fight with another animal, or the owner of such animal has in custody or possession any training apparatus, paraphernalia or drugs used to prepare such animal to be fought with another animal;

(b) Any person may seize, impound or restrain any animal which is found running at large in the city of Duluth and hold such animal for the animal control officer or deliver such animal to the city animal shelter;

(c) The animal control officer shall hold such animals until they are claimed by their owners or until disposed of in accordance with Section 6-4 of this Article. All unclaimed animals shall be held for not less than five business days before being disposed of by the animal control authority;

(d) Any animal impounded under the provisions of this Article shall be released only upon the payment of the expenses of taking and keeping the animal. If the animal is unlicensed, in addition to the impounding and boarding fee, the animal shall not be released without payment of the prescribed license fee. The city council shall set the amount of such license fee by resolution.

However, if it is the opinion of a licensed veterinarian that a critically injured or diseased animal will unnecessarily suffer, such animal may be humanely euthanized prior to the five day holding period even though attempts to locate or notify the owner have been unsuccessful. The owner shall be responsible for the cost of euthanization and/or the reasonable costs of the care and treatment;

(e) The animal control officer shall provide necessary and humane care for all animals impounded and the expenses thereof shall be paid by the owner or the person claiming the same.

Section 3. That Section 6-4 of the Duluth City Code, 1959, as amended, is amended to

read as follows:

Sec. 6-4. Disposal after five business days.

After the waiting period prescribed by Section 6-3, the animal control authority may make provision for the humane euthanasia or adoption of such animals which remain unclaimed. Other animals for which the waiting period is not applicable may be disposed of immediately by the animal control authority. The city council may, from time to time, by resolution, set such fees for animal control services as may be necessary to defray the costs of operating the city animal shelter. Such fees may include, but are not limited to disposal fees, placement fees and service calls within and without the city. The city council shall set the amount of such fees by resolution. All such fees shall be collected by the animal control authority and shall be turned in to the city treasury.

Section 4. That Section 6-12 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 6-12. Fees.

(a) Any person owning or possessing a dog or cat shall pay a yearly license fee for each such dog or cat. The city council may, from time to time, by resolution, set such license fees;

(b) No license shall be required for dogs or cats brought into the city for the purpose of participating in any shows. Any properly identified service dog which aids persons who are totally or partially blind or deaf or have physical or sensory disabilities shall be issued a dog license at no charge upon providing proof of certification of training as a service dog.

Section 5. That Section 6-27 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 6-27. Impoundment of dogs, cats and ferrets without valid rabies vaccination tags.

Any dog, cat or ferret found off the owner's premises and not wearing a valid rabies vaccination tag may be impounded. All impounded dogs, cats or ferrets shall be given proper care and maintenance. Impoundment of all animals shall be in accordance with the provisions of this Chapter. Each dog, cat or ferret impounded pursuant to this Section shall be kept at least five days after the impoundment thereof, unless conditionally reclaimed by its owner as herein provided. Any dog, cat or ferret which is impounded pursuant to this Section may be conditionally reclaimed by its owner by payment of the fees prescribed in this Chapter and by compliance with the rabies vaccination requirements of this Chapter within 72 hours of release. Upon claiming any dog, cat or ferret which has not previously been vaccinated, the owner shall make a cash deposit with the animal control authority, which shall be refunded upon the owner filing proof that the dog, cat or ferret has been vaccinated within 72 hours of release; otherwise the cash deposit shall be forfeited to the city. The city council may, from time to time, by resolution, set the amount of the cash deposit.

If the owner of a dog, cat or ferret impounded because of the absence of a valid rabies vaccination tag claims that his or her animal has been vaccinated, such owner may reclaim his or her dog, cat or ferret upon production of proof of vaccination, payment of all impounding fees and acquisition of a valid rabies

vaccination tag. If a dog, cat or ferret impounded pursuant to this Section is unclaimed by its owner at the end of five days, such animal may be disposed of in accordance with provisions of Section 6-4 of the this Chapter.

Section 6. That Section 6-39 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 6-39. Maximum number of animals.

(a) No more than three dogs of over the age of four months shall be kept, harbored or maintained within any individual dwelling unit or on any lot or other parcel of property in the city without a maximum dog exception license. The number of dogs permitted above may be increased by obtaining such license issued by the city clerk's office. Such license shall specify any restrictions, limitations, conditions or prohibitions which the animal control authority deems reasonably necessary to protect any person or neighboring use from unsanitary conditions, unreasonable noise or odors, or annoyance, or to protect the public health or safety. Such license may be modified from time to time or revoked by the animal control authority for failure to conform to such restrictions, limitations or prohibitions. Such modification or revocation shall be effective from and after ten days following the mailing of written notice thereof by certified mail to the person or persons keeping or maintaining such dogs;

(b) No more than three cats of over the age of four months shall be kept, harbored or maintained within any individual dwelling unit or on any lot or other parcel of property in the city without such license. The number of cats permitted above may be increased by obtaining a permit issued by the city clerk's office. Such license shall specify any restrictions, limitations, conditions or prohibitions which the animal control authority deems reasonably necessary to protect any person or neighboring use from unsanitary conditions, unreasonable noise or odors, or annoyance, or to protect the public health or safety. Such license may be modified from time to time or revoked by the animal control authority for failure to conform to such restrictions, limitations or prohibitions. Such modification or revocation shall be effective from and after ten days following the mailing of written notice thereof by certified mail to the person or persons keeping or maintaining such cats;

(c) License application. Maximum dog and/or cat exception licenses shall be issued on a yearly basis. Each license shall be in effect beginning on the first day of January and expiring on the last day of December of that calendar year. All such licenses issued after the first day of January and before the last day of December shall expire on the last day of December of that same calendar year. The city council may, from time to time, by resolution, set such license fees;

(d) Any owner denied a maximum dog and/or cat exception license or having such license revoked may appeal the animal control authority's decision to the administrative lieutenant of the Duluth police department. The administrative lieutenant will review the decision and determine the validity of such license denial and determine what, if any, other course of action to take;

(e) Any owner aggrieved by a decision of the administrative lieutenant may appeal to the city council by filing written notice of said appeal to the city clerk within 15 days after the administrative lieutenant's decision is rendered.

Section 7. That Section 6-82 of the Duluth City Code, 1959, as amended, is amended

to read as follows:

Sec. 6-82. License fees.

Persons operating or maintaining pet shops, grooming shops, breeding kennels, boarding kennels, or animal shelters or veterinary hospitals, when such facilities are maintained under professional supervision, shall, in addition to other licenses required by this Section, pay a license fee. The city council may, from time to time, by resolution, set such license fees for persons maintaining or operating the following:

- (a) Kennels keeping two to five dogs or cats;
- (b) Kennels keeping six to 11 dogs or cats;
- (c) Kennels keeping 12 or more dogs or cats;
- (d) Veterinary hospitals;
- (e) A pet shop business;
- (f) A commercial grooming shop business;
- (g) A nuisance wildlife removal business.

All such kennel fees shall apply only to dogs or cats over the age of four months. The city animal shelter is exempt from the provisions of this Section.

Section 8. That Section 6-84 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 6-84. Issuance of licenses.

Prior to the issuance of any first time license thereof under this Article, the animal control authority shall conduct an inspection of the licensee to determine compliance with this Article. Prior to the issuance of any license renewal thereof under this Article, the animal control authority may conduct an inspection of the licensee to determine compliance with this Article. The animal control authority, for all application of license and renewal of license, shall make a written report of such investigation to the office of the city clerk. A license shall not be issued or renewed without full compliance with the terms of this Article. License issued under this Article shall expire one year from the date of issuance, unless earlier suspended or revoked as provided in this Article. Each license issued under this Article shall be prominently displayed at all times in the establishment for which it is issued. A licensee shall be responsible for all actions and conduct of any employee or agent of the licensee and any violation of this Article by an employee or agent shall be deemed to be the actions and conduct of the licensee.

Section 9. That Section 6-85 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 6-85. Complaints and questions as to licenses, laws, etc.

Whenever there shall be filed with the city clerk or with the city council any complaint or question relating to the issuance or granting of licenses or any problem relating to control or enforcement of this Article or any other regulations of the city relating to the licensees, such complaints or questions shall be referred immediately to the administrative lieutenant of the Duluth police department to investigate such complaints.

Section 10. That Section 6-86 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 6-86. Suspension and revocation of licenses.

(a) When it comes to the attention of the animal control authority that any licensee licensed pursuant to this Chapter may have violated the provisions of this Chapter or any other law relating to its operation, or that such licensee may be engaging in other conduct that may constitute good cause for the suspension or revocation of its license, the animal control authority will review to determine the validity of the allegations and to determine what, if any, disciplinary measures shall be taken against the licensee;

(b) Any licensee having such license suspended or revoked may appeal the animal control authority's decision to the administrative lieutenant of the Duluth police department. Any review hearing called pursuant to the provisions of this Section 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 review hearing, the administrative lieutenant shall hear all relevant evidence and arguments from all parties. After due deliberation, the administrative lieutenant shall determine the validity of the allegations and what, if any, corrective or punitive measures will be recommended to the city council. At the completion of the review hearing, the administrative lieutenant shall direct the city clerk to prepare a report to the city council which shall consist of the 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 review hearing. The city council shall not render a decision on the matter until at least ten days after it has received the report of the administrative lieutenant. During this ten day period, either party to the review hearing may present written exceptions to the report of the administrative lieutenant or make arrangements to be placed on the agenda of the city council to present oral argument to the city council concerning the matter. 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 licensee. The bond of the licensee may be declared forfeited to the city by the city council for violation of the terms of this Article. A copy of the resolution shall be served upon the licensee personally or by first class mail;

(c) Without limiting other grounds for suspension or revocation, the following shall be deemed to be good cause for suspension or revocation of a license:

(1) Violation of any law relating to its operation, including, but not limited to, state, federal and local laws and animal cruelty;

(2) The licensee has failed to pay license fees or city or state sales tax or that property taxes on the building have not been paid;

(3) The licensee has failed to file or maintain any insurance or bond required by law;

(4) Refusal to cooperate with the police, department of public health or the city animal control officer in any investigation;

(5) The filing of a license application containing information or statements known by the applicant to be false;

(6) The licensee has engaged in fraudulent conduct or misrepresentation in connection with the handling, sale or disposition of animals or in

representations to the animal control officer, police or department of public health.

Section 11. That Section 6-87 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 6-87. Duties of licensee.

It shall be the duty of each licensee of a licensed breeding kennel, boarding kennel, pet shop, grooming shop, nuisance wildlife removal business, animal shelters (whether public or private, profit or nonprofit) and veterinary hospital to operate and maintain such facility, as well as all of its pens, cages, runways and all the premises upon which it is situated, or which constitute a part of its operational area, in a clean and sanitary manner; to provide adequate light and ventilation; to dispose of urine and fecal material through an approved sewer system; to screen or otherwise fly-proof the isolation wards; to rat-proof all buildings and structures; to keep the premises vermin free; and to conduct its operations in such a manner that no public nuisance will be created or noisome odors arise therefrom. The animal control authority, police officers and members of the public health department shall be given free access to pet shops, grooming shops, kennels, nuisance wildlife removal businesses, animal shelters and veterinary hospitals and to its operational areas, or premises, for the purpose of ascertaining compliance or noncompliance with and enforcing this Section.

Section 12. That Section 6-96 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 6-96. Concealing of dangerous animals.

No person shall harbor, hide or conceal an animal which has been declared dangerous by the court, law enforcement officer, the animal control authority or by the animal control officer, which has been ordered into custody for euthanasia or other disposition.

Section 13. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: June 7, 2009)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed April 27, 2009
Approved April 27, 2009
DON NESS, Mayor

- - -

OFFICIAL PROCEEDINGS

Special meeting of the Duluth City Council held on Thursday, May 7, 2009, 5:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and Vice President Anderson -- 8

Absent: President Gilbert -- 1

- - -

Vice President Anderson presided in the absence of President Gilbert.

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCE

The following entitled ordinance was read for the first time:

INTRODUCED BY COUNCILOR STAUBER

09-022 - AN ORDINANCE AUTHORIZING AGREEMENT WITH KOHL'S DEPARTMENT STORES, CONVEYING CERTAIN PROPERTY IN EXCHANGE FOR CONVEYANCE OF OTHER PROPERTY, BOTH ADJACENT TO KOHL'S DEPARTMENT STORE.

- - -

The meeting was adjourned at 5:02 p.m.

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

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, May 11, 2009, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Absent: None -- 0

- - -

The minutes of council meetings held on February 5, 10, 23, March 9 and 23, 2009, were approved upon a unanimous vote.

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

09-0511-09 The following communications regarding the proposed installation of parking kiosks in Canal Park (09-0313R): (a) Canal Park Business Association, (b) Greater Downtown Council. -- Received

09-0511-10 The following communications regarding the proposed establishment of a domestic partner registry (09-0302R and 09-021-O): (a) Angie Nichols; (b) Karen Young. -- Received

09-0511-11 The following communications regarding the proposed issuance of a demolition permit for the historic St. Louis County jail building (09-0317R): (a) Duluth LISC; (b) Tom Hollenhorst; (c) Home Seas LLC; (d) Mark Poirier; (e) St. Louis County administrator. -- Received

- - -

REPORTS FROM THE ADMINISTRATION

Mayor Ness welcomed Michael Ashcraft as the new chief administrative officer.

- - -

REPORTS OF BOARDS AND COMMISSIONS

09-0511-08 Alcohol, gambling and tobacco commission minutes of April 1, 2009, meeting. -- Received

09-0511-01 Board of zoning appeals minutes of: (a) February 24; (b) March 24, 2009, meetings. -- Received

09-0511-02 Building appeal board minutes of: (a) January 14; (b) February 11; (c) March 11, 2009, meetings. -- Received

09-0511-03 Duluth transit authority: (a) Income statement for January 2009; (b) Minutes of February 25, 2009, meeting. -- Received

09-0511-04 Community development committee minutes of December 2, 2008, meeting. -- Received

09-0511-05 Housing and redevelopment authority minutes of: (a) February 24; (b) March 11, 2009, meetings. -- Received

09-0511-06 Library board minutes of March 24, 2009, meeting. -- Received

09-0511-07 Spirit Mountain recreation area authority minutes of March 19, 2009, meeting. -- Received

- - -

OPPORTUNITY FOR CITIZENS TO BE HEARD

KL Lewis voiced concern about a potential safety issue at Second Avenue West below Mesaba Avenue with the heavy construction trucks going down the avenue and the consequences if a truck loses its breaks.

- - -

Jerry Schlafer suggested the city start licensing the renters in Duluth which would increase revenue and their license being renewed would depend upon their behavior during the year.

- - -

At this time, 7:10 p.m., the public hearing regarding the proposed Charter amendment to increase the number of deputy fire chiefs was opened.

No one appeared who wished to be heard and the public hearing was closed at 7:12 p.m.

- - -

At this time, 7:13 p.m., the public hearing regarding the proposed Charter amendment relating to city employees running for city offices was opened.

No one appeared who wished to be heard and the public hearing was closed at 7:15 p.m.

- - -

At this time, 7:15 p.m., the public hearing regarding the proposed Duluth economic development authority (DEDA) reorganization amendment was opened.

KL Lewis stated that Duluth needs an entity like DEDA to improve the economic development of the city, but it may be time to modify the membership of the board to include both councilors and general public members.

No one else appeared who wished to be heard and the public hearing was closed at 7:20 p.m.

- - -

RESOLUTIONS TABLED

Councilor Stauber moved to remove Resolution 09-0268, denying a request to amend Chapter 50 of the Duluth City Code, 1959, as amended, Zoning District Map No. 19 as contained in the Appendix to Chapter 50, to provide for the reclassification from R-1-b, One-family Residential, to C-1, Commercial, at 2900 Piedmont Avenue (Duluth Lakewalk Offices Phase II, LLC), from the table, 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

09-020 (9968) - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, ZONING DISTRICT MAP NO. 19 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-b, ONE FAMILY RESIDENTIAL, TO C-1, COMMERCIAL, OF PROPERTY LOCATED AT 2900 PIEDMONT AVENUE (DULUTH LAKEWALK OFFICES PHASE II, LLC).

Councilor Stauber moved consider the ordinance at this time, which motion was seconded and unanimously carried.

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fosle, Gardner, Krause, Stauber and President Gilbert -- 8

Nays: None -- 0

Abstention: Councilor Fedora -- 1

- - -

Resolution 09-0268 failed upon the following vote (Public Document No. 09-0511-12):

Yeas: None -- 0

Nays: Councilors Anderson, Cuneo, Eckenberg, Fosle, Gardner, Krause, Stauber and President Gilbert -- 8

Abstention: Councilor Fedora -- 1

- - -

Councilor Cuneo moved to remove Resolution 09-0282, authorizing a council letter to the building appeal board, from the table, which motion was seconded and unanimously carried.

Councilor Fosle expressed concern that this resolution would require people to use realtors when selling their property, which would be unfair to the homeowner.

Councilor Fedora stated that while he is against the 300 foot rule, the problem with this resolution is that it is nonbinding, with no legislation at the city level to give them a clear parameter to judge appeals by, hardship is subjective to each situation and the homeowner would have to list their house with a realtor.

Councilor Eckenberg offered a friendly amendment to the letter, in paragraph 2, to delete the word "of" and insert the word "over" after the phrase "below 2.5 percent," which Councilor Cuneo agreed to.

Resolution 09-0282, as amended, was adopted as follows:

BY COUNCILOR CUNEO:

RESOLVED, that the council president is authorized to sign on behalf of the city council the letter to the city of Duluth building appeal board, a copy of which is on file in the office of the city clerk as Public Document No. 09-0511-13, and to cause the letter to be delivered to said board.

Resolution 09-0282, as amended, was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Gardner, Krause, Stauber and President Gilbert -- 7

Nays: Councilors Fedora and Fosle -- 2

Approved May 11, 2009

DON NESS, Mayor

- - -

MOTIONS AND RESOLUTIONS

Pursuant to City Council Standing Rules, the following entitled resolution was read for the first time:

BY COUNCILOR STAUBER

09-0318 - RESOLUTION AMENDING RULE 14 OF THE STANDING RULES OF THE CITY COUNCIL PERTAINING TO COMMITTEE APPOINTMENTS.

- - -

CONSENT AGENDA

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

President Gilbert 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 April 1, 2009, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Red Carpet Bottle House, Inc., d/b/a Shanty Bottle Shop, 1231 East Fourth Street, and has submitted its report to the city council of the city of Duluth as Public Document No. 09-0511-14;

(b) Pursuant to Duluth City Code, Chapter 8, Section 9, clause (a), on May 11, 2009, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 09-0511-14 regarding any suspension, revocation and/or civil penalty relating to the off sale intoxicating liquor license of Red Carpet Bottle House, Inc., d/b/a Shanty Bottle Shop, 1231 East Fourth 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 Duluth City Council fine the licensee \$500 for the offense, however that \$250 of the fine be due and payable within 30 days of final council action. The remaining fine amount to be stayed for a period of one year following final council action and be abated if no same or similar violations occur during that one year period.

Resolution 09-0272 was unanimously adopted.

Approved May 11, 2009

DON NESS, Mayor

- - -

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

(a) On April 1, 2009, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Last Chance Liquor of Duluth, Inc. (Last Chance Liquor), 619 East Fourth Street, and has submitted its report to the city council of the city of Duluth as Public Document No. 09-0511-15;

(b) Pursuant to Duluth City Code, Chapter 8, Section 9, clause (a), on May 11, 2009, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 09-0511-15 regarding any suspension, revocation and/or civil penalty relating to the off sale intoxicating liquor license of Last Chance Liquor of Duluth, Inc. (Last Chance Liquor), 619 East Fourth 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 Duluth City Council fine the licensee \$750 for the offense, however that \$500 of the fine be due and payable within 30 days of final council action. The remaining \$250 fine amount to be stayed for a period of one year

following final council action and be abated if no same or similar violations occur during that one year period.

Resolution 09-0273 was unanimously adopted.
Approved May 11, 2009
DON NESS, Mayor

- - -

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

(a) On April 1, 2009, 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, d/b/a 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. 09-0511-16;

(b) Pursuant to Duluth City Code, Chapter 8, Section 9, clause (a), on May 11, 2009, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 09-0511-16 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of Hospitality Associates of Duluth, LLC, d/b/a 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 Duluth City Council fine the licensee \$500 for the offense, however that \$250 of the fine be due and payable within 30 days of final council action. The remaining fine amount to be stayed for a period of one year following final council action and be abated if no same or similar violations occur during that one year period.

Resolution 09-0274 was unanimously adopted.
Approved May 11, 2009
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to contract with Minnesota Resource Conservation, Inc., for professional services in conducting an energy survey and completing state of Minnesota B-3 public building benchmarking of 150 Duluth city buildings, in accordance with its proposal and an amount not to exceed \$20,000, net 30, payable from General Fund 110, Agency 700, Organization 1423, Object 5520; said services and payment therefore to be substantially as outlined in the agreement on file in the office of the city clerk as Public Document No. 09-0511-17.

Resolution 09-0298 was unanimously adopted.
Approved May 11, 2009
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 by the liquor control commissioner, subject to departmental approvals and any specific restrictions:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

College of St. Scholastica, 1200 Kenwood Avenue, for June 6, 2009, from 3:00 p.m. to 10:00 p.m., with Kenneth Kolquist, manager.

Resolution 09-0305 was unanimously adopted.
Approved May 11, 2009
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, 2009, subject to departmental approvals:

CW Chips Grill & Bar, Inc. (Twins Bar), 501-505 East Fourth Street.
Resolution 09-0306 was unanimously adopted.
Approved May 11, 2009
DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the transfer of the following on sale intoxicating liquor license, on sale Sunday license and application for a 2:00 a.m. beverage license for the period ending August 31, 2009, subject to departmental approvals, and the payment of sales and property taxes:

Clough Enterprises, LLC (Northstar Pub), 1909 West Superior Street, transferred from Shand, LLC (Blue Crab Bar), same address.
Resolution 09-0307 was unanimously adopted.
Approved May 11, 2009
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, 2009, subject to departmental approvals, and the payment of sales and property taxes:

Takk for Maten/Kippis, LLC (Takk for Maten Café, Kippis Tapas Bar), 11 East Superior Street, Suite 110.
Resolution 09-0308 was unanimously adopted.
Approved May 11, 2009
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	Bedrock Bar, 2023 West Superior Street
Duluth Curling Club	Copasetic Lounge, 322 East Central Entrance

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Licensee	Gambling site
Recreational Experiences Achieving Community Harmony	Live Downtown, 321-323 West First Street
Confidence Learning Center	Northstar Pub, 1909 West Superior Street

Resolution 09-0309 was unanimously adopted.
Approved May 11, 2009
DON NESS, Mayor

- - -

RESOLVED, that the reappointment by Mayor Ness of John Vigen (planning commission representative) to the board of zoning appeals for a term expiring on March 31, 2010, is confirmed.
Resolution 09-0292 was unanimously adopted.
Approved May 11, 2009
DON NESS, Mayor

- - -

RESOLVED, that the appointments by Mayor Ness to the planning commission of Frank Holappa for a term expiring on March 31, 2012, and Katelyn Kuor for a term expiring on March 31, 2013, replacing Roger Wedin and Ruth Eaton, are confirmed.
Resolution 09-0293 was unanimously adopted.
Approved May 11, 2009
DON NESS, Mayor

- - -

RESOLVED, that the appointment by Mayor Ness of Kim Riordan to the Duluth human rights commission for a term expiring on March 31, 2012, replacing Trudie Hughes who resigned, is confirmed.
Resolution 09-0311 was unanimously adopted.
Approved May 11, 2009
DON NESS, Mayor

- - -

BY COUNCILOR STAUBER:

WHEREAS, the DEDA provides funding to the city pursuant to the cost allocation plan for city staff and services; and

WHEREAS, DEDA lots B, C and D in Bayfront are being utilized to ease the parking congestion caused by the construction of the new arena at the DECC; and

WHEREAS, historically the city has plowed the lots for winter activities promoted at Bayfront.

NOW, THEREFORE, the city council hereby requests that the administration cause the snowplowing of DEDA lots B, C and D in Bayfront for the 2009/2010 and 2010/2011 winter seasons.

Resolution 09-0295 was unanimously adopted.
Approved May 11, 2009
DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

RESOLVED, that the proper city officials are hereby authorized to accept as a co-recipient, along with the Duluth airport authority (DAA), an EDA grant in the amount of \$1,431,033 for site infrastructure at the North Business Development Area at the Duluth International Airport.

FURTHER RESOLVED, that the proper city officials are authorized to enter into a lead agency agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 09-0511-18, which designates the DAA as the lead agent on the North Business Development Area project.

Resolution 09-0315 was unanimously adopted.

Approved May 11, 2009

DON NESS, Mayor

- - -

RESOLVED, that the city council hereby amends the 2008 annual action plan (Public Document No. 09-0511-19) to add \$1,162,800 in homeless prevention and rapid re-housing program (HPRP) funding recommended by the community development committee.

Resolution 09-0316 was unanimously adopted.

Approved May 11, 2009

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. 09-0511-20, with Senior Service America, Inc., (SSAI) to serve Duluth residents age 55 and older with work experience training and services in the amount of \$74,898 for the period of February 17, 2009, through June 30, 2010. Program funds will be accepted upon receipt of notices of funds available. Monies received shall be deposited in Fund 270, Agency 025, Organization 6330.

Resolution 09-0252 was unanimously adopted.

Approved May 11, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officers are hereby authorized to execute agreements, copies of which are filed with the city clerk as Public Document No. 09-0511-21, 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 120, Division 1217-2140, Revenue Source 4654-02.

Resolution 09-0296 was unanimously adopted.

Approved May 11, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into Cooperative Construction Agreement No. 94457-R, a copy of which is on file in the office of the city clerk as Public Document No. 09-0511-22, with the Minnesota department of transportation. This agreement provides for payment by the city to the state for the city's share of the cost of lighting, parking lanes and sidewalk construction performed on T.H. 23 (Commonwealth Avenue) within the corporate city limits in the amount of \$10,481.87, payable out of Permanent Improvement Fund 0411, Agency 035, Object 5530, S.P. 6910-86, City Project No. 0777TR.

FURTHER RESOLVED, that the proper city officials are hereby authorized to execute the agreement and any amendments to the agreement.

Resolution 09-0275 was unanimously adopted.

Approved May 11, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with MSA Professional Services, Inc., for professional engineering services for the Highland pump station.

The city is undertaking a major water system improvement project that will provide near term water demands and will serve the city for the majority of this century.

The most recent study has found that major improvements are required for the Highland pump station. The city of Duluth desires to determine preliminary design requirements for the Highland pump station, which will be used for applying for funding assistance. The city desires to hire a consultant engineer to provide the engineering services required for the preliminary design for the Highland pump station. MSA Professional Services, Inc., has submitted a proposal for engineering services for preliminary design in connection with this project.

The cost of said engineering services for preliminary design is estimated at \$23,357 and is payable from the Water Bond Fund 0511, Department/Agency 500, Object 5532, City Project No. 0765WA.

Resolution 09-0284 was unanimously adopted.

Approved May 11, 2009

DON NESS, Mayor

- - -

RESOLVED, that Resolution 05-0046 awarding a contract to Camp, Dresser and McKee, Inc., for engineering services for the development of a long term plan for the evaluation and elimination of sanitary sewer overflows in the city's sanitary sewer collection system be hereby amended to increase the contract amount for Phase IV flow monitoring, modeling and analysis work for basins 23 through 30, preparation of I&I removal plan and preparation of remedial measures plan, all required by the consent decree, in the amount of \$423,756 for a new total of \$1,009,769. The increase of \$423,756 will be payable from the Clean Water Fund 0532, Agency 500, Object 5532, City Project No. 0511SN.

Resolution 09-0285 was unanimously adopted.

Approved May 11, 2009

DON NESS, Mayor

- - -

RESOLVED, that the city of Duluth is undertaking a major water system improvement program that will not only provide near-term water demands, but will also serve the city for the majority of this century.

Studies have shown that major improvements are needed for the Arlington pump station.

The estimated cost of reconstructing the Arlington pump station is \$2,605,900. The public facilities authority (PFA) may have grant and loan monies available from the American Recovery and Reinvestment Act (President Obama's stimulus package) to finance the city's share of the project costs.

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

The proper city officials are hereby authorized to submit an application and to enter into a loan/grant agreement with the Minnesota public facilities authority for funding of the reconstruction of Arlington pump station 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 \$2,605,800 or the as-bid costs of the project.

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 09-0287 was unanimously adopted.

Approved May 11, 2009

DON NESS, Mayor

- - -

RESOLVED, that studies have shown that the West Duluth reservoir roof is in extremely poor condition and requires total roof removal and replacement and floor reconstruction.

The estimated cost for reconstruction at the West Duluth reservoir is \$5,000,000. The public facilities authority (PFA) may have grant and loan monies available from the American Recovery and Reinvestment Act (President Obama's stimulus package) to finance the city's share of the project costs.

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

The proper city officials are hereby authorized to submit an application and to enter into a loan/grant agreement with the Minnesota public facilities authority for funding of the West Duluth reservoir reconstruction 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 \$5,000,000 or the as-bid costs of the project.

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 09-0288 was unanimously adopted.

Approved May 11, 2009

DON NESS, Mayor

- - -

RESOLVED, that the city of Duluth is undertaking a major water system improvement program that will not only provide near-term water demands, but will also serve the city for the majority of this century.

Studies have shown that major improvements are needed for the Highland pump station.

The estimated cost of reconstructing the Highland pump station is \$1,980,000. The public facilities authority (PFA) may have grant and loan monies available from the American Recovery and Reinvestment Act (President Obama's stimulus package) to finance the city's share of the project costs.

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

The proper city officials are hereby authorized to submit an application and to enter into a loan/grant agreement with the Minnesota public facilities authority for funding of the Highland pump station 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 \$1,980,000 or the as-bid costs of the project.

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 09-0289 was unanimously adopted.

Approved May 11, 2009

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 2009 in accordance with the city's specifications and the vendor's low bid of \$30,932 plus \$2,010.58 sales tax for a total amount of \$32,942.58, terms net 30, FOB destination, payable from the Water Fund 510, Agency 500, Organization 1945, Object 5227.

Resolution 09-0299 was unanimously adopted.

Approved May 11, 2009

DON NESS, Mayor

- - -

RESOLVED, that pursuant to Minnesota Statute Sec. 161.36, the commissioner of transportation be appointed as agent to 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, on file in the office of the city clerk as Public Document No. 09-0511-23, prescribing the terms and conditions of said federal aid participation as set forth and contained in Minnesota Department of Transportation Agency Agreement No. 94505.

Resolution 09-0314 was unanimously adopted.

Approved May 11, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officers are authorized to accept a bulletproof vest reimbursement grant from the United States department of justice, bureau of justice assistance, office of justice programs, in the amount of \$16,234.24, to be deposited in Fund 110, Agency 160, Organization 1610, Revenue Source 4209-02, and to execute any documents required to be executed to accept such grant.

Resolution 09-0310 was unanimously adopted.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Approved May 11, 2009
DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Video Guidance for the purchase and installation of two-way video conferencing hardware in accordance with state of Minnesota Contract #433290, Release #V26(5), specifications and pricing in the amount of \$219,491.34, tax and shipping included, payable as follows:

(a) \$175,593.07 from FEMA Grant Fund 210, Agency 030, Organization 3169, Object 5580;

(b) \$43,898.27 from Capital Equipment Fund 250, Agency 015, Organization 2009, Object 5580, Project CE250-E901.

Resolution 09-0312 was unanimously adopted.

Approved May 11, 2009
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to accept \$36,218.79 from the Arrowhead Library System for use in 2009 by the Duluth public library to purchase library materials and access to on-line resources, said sum to be deposited in Fund 110-130-1303-4654-02.

Resolution 09-0290 was unanimously adopted.

Approved May 11, 2009
DON NESS, Mayor

- - -

The following resolutions were also considered:

Resolution 09-0297, establishing annual bonding plan for 2009, was introduced by Councilor Fedora.

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

- - -

Resolution 09-0301, setting 2010 fees for the new alarm system user permit categories, was introduced by Councilor Fedora.

Councilor Fedora moved to table the resolution for consideration with companion Ordinance 09-011 at the next council meeting, which motion was seconded and unanimously carried.

- - -

Resolution 09-0317, by Councilor Fedora, of intent regarding the issuance of a demolition permit for the historic St. Louis County jail building, was introduced for discussion.

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

Penny Clark, Don Dass, Carolyn Sundquist and Glen Filipovich stated that a six month time frame for finding a developer is not realistic; questioned why there was an urgent need for a parking lot; the six month time frame is a set up for failure; selling real estate takes longer than six months and even longer for this type of building; there are many examples of award winning projects that take historic buildings and turn them into useful buildings; putting this building into the hands of private developers will save taxpayers money and it was requested that 18-24 months be given to find a developer to reuse the building.

Councilor Krause stated that the county should not have let the building get into such bad shape, it could have found other uses for the building and it owes it to the community to try and save this building.

Councilor Krause moved to amend the resolution to change the deadline date from "November 15, 2009" to "November 15, 2010." The amendment failed for lack of a second.

Councilor Krause moved to amend the resolution to change the deadline date from "November 15, 2009" to "June 15, 2010," which motion was seconded and failed upon the following vote:

Yeas: Councilors Cuneo, Gardner, Krause and President Gilbert -- 4

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

Councilor Eckenberg voiced concern that there would be a three month process for the county to get the request back to the city and moved to amend the last paragraph of the resolution as follows:

(a) Delete the phrase "expresses its intent to issue" and insert the word "approves";

(b) Delete the phrase "anytime after" and insert the phrase "but defers issuance until,"

which motion was seconded and carried upon the following vote:

Yeas: Councilors Anderson, Eckenberg, Fedora, Fosle and Stauber -- 5

Nays: Councilors Cuneo, Gardner, Krause and President Gilbert -- 4

Resolution 09-0317, as amended, was adopted as follows:

BY COUNCILOR FEDORA:

WHEREAS, by vote on April 27, 2009, the Duluth City Council denied the issuance of a permit to St. Louis County for the demolition of the historic St. Louis County jail in Duluth, Minnesota; and

WHEREAS, as of April 27, 2009, St. Louis County has not adequately shown that no "feasible and prudent" alternative exists.

THEREFORE, BE IT RESOLVED, that the city council hereby approves a demolition permit, but defers issuance until November 15, 2009, to St. Louis County for the historic jail based on a showing of no "feasible and prudent" alternative if the county demonstrates a good faith attempt to aggressively market the property to a developer with the financial means and professional experience necessary to redevelop the property and has been unsuccessful in those attempts.

Resolution 09-0317, as amended, was adopted upon the following vote:

Yeas: Councilors Anderson, Eckenberg, Fedora, Fosle and Stauber -- 5

Nays: Councilors Cuneo, Gardner, Krause and President Gilbert -- 4

Approved May 11, 2009

DON NESS, Mayor

- - -

Resolution 09-0300, authorizing city officials to enter into a contract with Acme Electric Tool Crib of the North for the purchase and delivery of a Genie self propelled articulating boom in the amount of \$63,367.50, was introduced by Councilor Krause for discussion.

Councilors Fosle and Fedora questioned how many days a year this piece of equipment would be used in order to be justify the cost and questioned if this piece of equipment could be rented or a used one bought for less dollars.

Councilor Gardner moved to table the resolution for more information, which motion was seconded and carried upon the following vote:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Yeas: Councilors Anderson, Cuneo, Eckenberg, Gardner and President Gilbert -- 5
Nays: Councilors Fedora, Fosle, Krause and Stauber -- 4

- - -

RESOLVED, that city officials are hereby authorized to contract with Nelson Auto Center for the purchase and delivery of a 2009 GMC Sierra 3500HD 4WD extended cab and chassis 4x4 work truck with V-plow and options for the fleet services division in accordance with specifications and the vendor's low bid of \$36,773 plus \$2,390.25 sales tax plus \$125 tax exempt plates and registration for a total amount of \$39,288.25, terms net 30, FOB destination, and payable from the Capital Equipment Fund 250, Agency 015, Organization 2009, Object 5580, Project No. CE250-V903.

Resolution 09-0303 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause and President Gilbert -- 8

Nays: Councilor Stauber -- 1

Approved May 11, 2009

DON NESS, Mayor

- - -

Resolution 09-0319, by Councilor Stauber, amending Resolution 89-0323 establishing the Duluth economic development authority (DEDA) to change the composition of the membership of the authority, was introduced.

Councilor Stauber moved to table the resolution for consideration with companion Resolution 09-0318 on May 26, which motion was seconded and unanimously carried.

- - -

Resolution 09-0294, authorizing an agreement with Latham and Associates, Inc., for strategic, valuation and sale advisory services pertaining to the city steam facilities in an amount not to exceed \$60,000, was introduced by President Gilbert for discussion.

Councilor Fosle expressed concern that the city is trying to balance the budget by selling the city's assets and questioned why the city needs to hire a consultant to study the issue instead of using city staff to review the books.

Mayor Ness explained that the city is proposing to sell the capital asset of the steam plant that the city neither operates nor derives financial advantage from. He continued by saying that the steam plant is outside of the core services that the city provides and represents a liability to the city because the city owns it. Mayor Ness urged passage of this resolution as this consultant has experience in the sale of steam plants, and their job will be to assess the value of the plant and help develop the criteria for the potential sale to a buyer while protecting the users of the steam plant.

Resolution 09-0294 was adopted as follows:

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. 09-0511-24, with Latham and Associates, Inc., to study the financial feasibility of a potential sale of the city-owned steam facilities, in an amount not to exceed \$60,000, which shall be payable from Fund 540, Agency 920, Organization 1495, Object 5319.

Resolution 09-0294 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Gardner and Stauber -- 6

Nays: Councilors Fosle, Krause and President Gilbert -- 3

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Approved May 11, 2009
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 Woodland Avenue from Kent Road to Arrowhead Road in the amount of \$4,065,000, payable out of Public Improvement Fund 0411, Agency 035, Object 5530, City Project No. 0243TR.

Resolution 09-0304 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fosle, Gardner, Krause, Stauber and President Gilbert -- 8

Nays: None -- 0

Abstention: Councilor Fedora -- 1

Approved May 11, 2009

DON NESS, Mayor

- - -

Resolution 09-0313, of intent to install parking kiosks in Canal Park, was introduced by Councilor Fosle for discussion.

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

Anita Zager urged the council to support the resolution as the option for kiosks are a better revenue source than parking meters, kiosks have payment flexibility, such as credit cards and it is a modern, customer-friendly method for payment. She requested that the city consider this as a seasonal option only.

Scott Miller, representing the Canal Park Business Association, requested the council support this resolution, and added that in working with the administration they have been able to develop a comprehensive parking program by creating short, medium and long term parking to give customers, visitors and employees several options to maximize the parking in Canal Park.

Resolution 09-0313 was adopted as follows:

WHEREAS, on April 27, 2009, the Duluth City Council approved Ordinance [*File No.*] 09-013, modifying parking regulations, allowing for the use of different parking metering devices; and

WHEREAS, the use of parking kiosks will be allowed upon the effective date of that ordinance; and

WHEREAS, the Canal Park Merchants Association has indicated a preference for parking kiosks instead of parking meters in the Canal Park area.

NOW, THEREFORE, BE IT RESOLVED, that the city council hereby expresses its intent to have parking kiosks installed in the Canal Park area to control parking and collect revenue therefrom except for on South Lake Avenue, from Railroad Street to the Aerial Lift Bridge.

Resolution 09-0313 was unanimously adopted.

Approved May 11, 2009

DON NESS, Mayor

- - -

RESOLVED, that at the request of Nels Nelson & Sons, Inc., Resolution No. 08-0617 awarding the construction contract for the Lakewalk East extension, Phase II, project to that company is hereby rescinded and the award of said contract is hereby revoked.

RESOLVED FURTHER, that the contract for the Lakewalk East extension, Phase II, (City Project No. 0580TR, CP 2008-OT0818, S.P. 118-090-13, Federal Project No. TEAX 6908(147)) is hereby awarded to the next lowest bidder, Veit & Co., Inc., on their bid of \$658,343.85, payable from Capital Improvement Fund 0450, Agency 030, Object 5530.

Resolution 09-0323 was unanimously adopted.

Approved May 11, 2009

DON NESS, Mayor

- - -

Resolution 09-0283, authorizing a service agreement with Duluth Sister Cities International, Inc., in the amount of \$34,000, was introduced by Councilor Anderson for discussion.

Councilor Krause stated that this year's money amount is less than last year and that the organization is working their way out of being funded by the city.

Councilor Fosle reviewed that last year when the resolution was passed giving the organization money, councilors stated it would be the last time and questioned what has changed so that the council would be willing to approve the agreement this year.

In response to Councilor Fedora's questions, Melissa Kadlec, director of Sister Cities International, Inc., replied that city councilors have gone on trips as an official delegate of the city and have had some expenses reimbursed by the organization.

Councilor Fedora questioned City Attorney Gunnar Johnson if there was a conflict of interest if a councilor was accepting reimbursement from an organization that was receiving money from the city of Duluth. Mr. Johnson replied that he was unable to issue an opinion at this time and would have to research that question and report back to the council at a later date.

Councilor Fosle stated that it is wrong for the council to vote to give an organization money and then have a councilor receive reimbursement money from that organization and reviewed the Charter as to how it relates to accepting gifts.

Councilor Fedora explained that the issue is about whether it is a conflict of interest that the council approves an organization's budget and in turn a councilor receives a financial benefit by having his/her travel expenses reimbursed by the organization.

Councilor Fedora moved to amend the last paragraph to insert after the phrase "in an amount not to exceed \$34,000," the following: "provided that the following provision be added to Article II, Section 1, Special Terms: The corporation will not provide any form of payment or reimbursement, directly or indirectly, to any city council member serving as the official delegate for any exchange to a sister city or for traveling to a sister city on their own initiative. Funds shall be payable," which motion was seconded.

After lengthy discussion, Councilor Eckenberg called the question on the amendment.

Councilor Fedora's amendment failed upon the following vote:

Yeas: Councilors Fedora, Fosle and Stauber -- 3

Nays: Councilors Anderson, Cuneo, Eckenberg, Gardner, Krause and President Gilbert -- 6

Resolution 09-0283 was adopted as follows:

RESOLVED, that the Duluth City Council hereby finds as follows:

(a) Sister city relationships stimulate community interest in culture, history, art and the study of foreign languages; open new dialogues with people of another culture to find unique solutions to municipal problems therefore improving the quality of life for citizens of Duluth; promote Duluth tourism; advertise the city of Duluth; provide invaluable learning and educational

experiences for Duluth citizens; provide an opportunity for improving local relations through working together for a common objective; promote trade and stimulate the local economy by associating local products with the city marketing name (branding); and provide doors through which Duluth's citizens can experience and come to understand other countries and their people and cultures, thus furthering global understanding and world peace; and

(b) The city desires to participate in sister city relationships between the city and cities of other countries in part through participation in Sister City International which participation includes international exchanges of citizen visits, correspondence, artwork, culture, music and education; and

(c) The city has deemed it to be in the public interest to provide funding to the Duluth Sister Cities International, Inc., (DSCI) for these services.

FURTHER 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. 09-0511-25, with DSCI in an amount not to exceed \$34,000, payable from Fund 258, Agency 030, Account 5436-05.

Resolution 09-0283 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Gardner, Stauber and President Gilbert -- 7

Nays: Councilor Fosle -- 1

Abstention: Councilor Krause -- 1

Approved May 11, 2009

DON NESS, Mayor

- - -

Resolution 09-0302, by Councilor Anderson, amending Resolution 08-0742 adopting license, permit and fee charges for 2009; adding domestic partnership registration application fee, was introduced for discussion.

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCE

The following entitled ordinance was read for the second time:

**BY COUNCILORS ANDERSON, CUNEO, GARDNER AND ECKENBERG
09-021 (9972) - AN ORDINANCE ADDING A NEW CHAPTER 29D OF THE DULUTH CITY
CODE, 1959, AS AMENDED, ESTABLISHING A DOMESTIC PARTNER REGISTRY.**

Councilor Anderson moved to consider the ordinance at this time, which motion was seconded and unanimously carried.

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

KL Lewis stated that although same sex couples are in the minority, they should have the same civil rights to government services as everyone else.

Debra Taylor explained that this ordinance will not add people to any level of government's benefit plans, but allows people who have a domestic partner whose private employer has such benefits to become available to them.

Celia Scheer expressed concern that government should be out of the marriage business and people should not have to register for benefits.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Aerial Schner stated that recognition is important to domestic partners so that they do not feel like second class citizens.

Councilor Fosle explained that he has contacted several companies in Duluth and asked if the process would be easier for partners to get benefits if they had a government certificate and the companies responded that they currently have plans in place for partners and it works fine.

Councilor Krause stated this registration should be occurring at the county level where marriage and death certificates are issued and that he would not be voting on this issue as the city does not have a real say in this matter.

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

- Yeas: Councilors Anderson, Cuneo, Eckenberg, Gardner and President Gilbert -- 5
- Nays: Councilors Fedora, Fosle and Stauber -- 3
- Abstention: Councilor Krause -- 1

- - -

Councilor Fedora moved to amend Resolution 09-0302 to add a \$25 fee for partnership dissolution, which motion was seconded for discussion.

Mr. Johnson explained to councilors that the ordinance that was just passed does not include a provision for a partnership dissolution fee, so there is no authority to collect this fee.

Councilor Fedora's amendment failed upon the following vote:

- Yeas: Councilors Fedora and Fosle -- 2
- Nays: Councilors Anderson, Cuneo, Eckenberg, Gardner, Stauber and President Gilbert -- 6
- Abstention: Councilor Krause -- 1

Resolution 09-0302 was adopted as follows:

BY COUNCILOR ANDERSON:

RESOLVED, that Resolution 08-0742 adopting license, permit and fee charges for 2009 be amended by adding the following fee, pursuant to Section 29D-3(b) of the Duluth City Code:

Clerk	
License, Permit, Fee Name	2009 Fee
Domestic partnership registration application	\$25.00

Resolution 09-0302 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Gardner, Stauber and President Gilbert -- 6

Nays: Councilors Fedora and Fosle -- 2

Abstention: Councilor Krause -- 1

Approved May 11, 2009

DON NESS, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR FOSLE

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

09-023 - AN ORDINANCE ADDING NEW SECTIONS 45-82.4 AND 45-82.5 TO THE DULUTH CITY CODE, 1959, AS AMENDED, AUTHORIZING PRIVATE WORK IN CONJUNCTION WITH CITY SIDEWALK CONTRACTS.

- - -

INTRODUCED BY COUNCILOR CUNEO

09-011 - AN ORDINANCE AMENDING CHAPTER 29B OF THE DULUTH CITY CODE, 1959, AS AMENDED, MODIFYING REGULATIONS FOR ALARM SYSTEMS AND FALSE ALARM CALLS.

- - -

The following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR STAUBER

09-022 (9969) - AN ORDINANCE AUTHORIZING AGREEMENT WITH KOHL'S DEPARTMENT STORES, CONVEYING CERTAIN PROPERTY IN EXCHANGE FOR CONVEYANCE OF OTHER PROPERTY, BOTH ADJACENT TO KOHL'S DEPARTMENT STORE.

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

- - -

INTRODUCED BY COUNCILOR FOSLE

09-019 (9970) - AN ORDINANCE MODIFYING AND ESTABLISHING PROCEDURES FOR ASSESSING FOR LOCAL IMPROVEMENTS, AMENDING CHAPTER 45 OF THE CODE.

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

- - -

INTRODUCED BY COUNCILOR CUNEO

09-017 (9971) - AN ORDINANCE AMENDING SECTION 36 OF THE CITY CHARTER INCREASING THE NUMBER OF DEPUTY FIRE CHIEFS FROM ONE TO TWO.

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

- - -

BY COUNCILOR ANDERSON

09-018 - AN ORDINANCE AMENDING CHAPTER IV, SECTION 21, OF THE CITY CHARTER RELATING TO CITY EMPLOYEES RUNNING FOR CITY OFFICES.

Councilor Krause stated that having a full time or part time city employee on the council would be a problem if there was a conflict of interest for that councilor, which could result in a 4-4 vote on the issue and conflict in the work place could be a problem.

Councilor Anderson moved passage of the ordinance and the same failed upon the following vote (Public Document No. 09-0511-27):

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Stauber and President Gilbert -- 8

Nays: Councilor Krause -- 1

[Editor's Note: City Charter amendments need a 9/9ths vote to become adopted.]

- - -

The meeting was adjourned at 10:30 p.m.

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

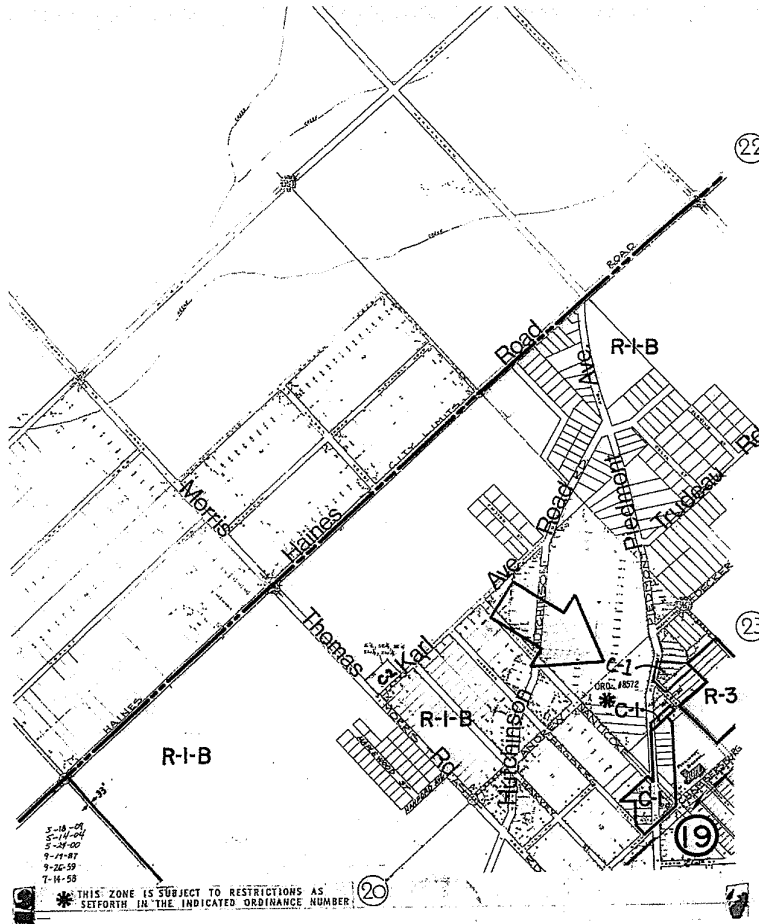
- - -

ORDINANCE NO. 9968

AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, ZONING DISTRICT MAP NO. 19 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-b, ONE FAMILY RESIDENTIAL, TO C-1, COMMERCIAL, OF PROPERTY LOCATED AT 2900 PIEDMONT AVENUE (DULUTH LAKEWALK OFFICES PHASE II, LLC).

The city of Duluth does ordain:

Section 1. That Lots 14 - 17, Block 1, Grant Park Division, be reclassified from R-1-b, One Family Residential, to C-1, Commercial, and that Plate No. 19 of the zoning district map as contained in the Appendix to Chapter 50 of the Duluth City Code, 1959, is amended to read as follows:



(Reference File No. 09001)

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: June 21, 2009)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fosle, Gardner, Krause, Stauber and President Gilbert -- 8

Nays: None -- 0

Abstention: Councilor Fedora -- 1

ATTEST:

JEFFREY J. COX, City Clerk

Passed May 11, 2009

Approved May 11, 2009

DON NESS, Mayor

- - -

ORDINANCE NO. 9969

AN ORDINANCE AUTHORIZING AGREEMENT WITH KOHL'S DEPARTMENT STORES, CONVEYING CERTAIN PROPERTY IN EXCHANGE FOR CONVEYANCE OF OTHER PROPERTY, BOTH ADJACENT TO KOHL'S DEPARTMENT STORE.

The city of Duluth does ordain:

Section 1. City council hereby finds that the conveyance of the property referenced as the "Exhibit A Property" and the "Exhibit C Property" in Public Document No. 09-0511-26, a copy of which is on file in the office of the city clerk, is properly zoned for the proposed parking project as described in said public document and that therefore the proposed conveyance has no relationship to the city's comprehensive plan as said finding is provided for in Section 2-176(a) of the City Code.

Section 2. There is on file in the office of the city clerk as Public Document No. 09-0511-26, a written estimate of the market value of the "Exhibit A Property" and the "Exhibit C Property" prepared by the city assessor.

Section 3. The city council hereby finds that the conveyance of the "Exhibit A Property" and the "Exhibit C Property" to Kohl's Department Stores, Inc., in accordance with the terms and conditions of Public Document No. 09-0511-26, furthers the interests of the city by preserving and maintaining within the city an important member of the city's business community, by assisting in improving the traffic flow in the Miller Hill area and by increasing and further protecting more and more valuable natural resources in said area and that said conveyance will result in property of greater financial and environmental value being received by the city.

Section 4. The proper city officials are hereby authorized to enter into that certain real property swap agreement with Kohl's Department Stores, Inc., a Delaware corporation, authorizing the sale of land as therein provided and to execute all documents necessary thereto.

Section 5. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: June 21, 2009)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Nays: None -- 0

ATTEST:

JEFFREY J. COX, City Clerk

Passed May 11, 2009

Approved May 11, 2009

DON NESS, Mayor

- - -

ORDINANCE NO. 9970

AN ORDINANCE MODIFYING AND ESTABLISHING PROCEDURES FOR ASSESSING FOR LOCAL IMPROVEMENTS, AMENDING CHAPTER 45 OF THE CODE.

The city of Duluth does ordain:

Section 1. That Section 45-74 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 45-74. Special assessment board--composition.

The special assessment board shall consist of the chief administrative officer, who shall be board chairman, the city engineer, the city assessor, the director of public works and utilities and the community development manager.

Section 2. That Section 45-75 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 45-75. Same--Hearings and meetings; quorum; minutes; election of secretary; adoption of rules.

Three members of the board shall at all times constitute a quorum. The board shall keep minutes of all hearings conducted by the board and of all meetings held by the board, which minutes shall be signed by the secretary and the presiding officer of the board, and filed in the office of the city clerk as a permanent record. The secretary shall be elected by the board, and may or may not be a member of the board. The board shall hold meetings at such times and at such places as the board shall determine. The board may adopt such rules and regulations not inconsistent with the Charter nor with this Division as the board shall deem advisable or necessary to give effect to this Section. Upon adoption of any such rules or regulations by the board, notice of the adoption thereof along with copies thereof shall be transmitted to the city council for their review. Unless the council shall, by resolution, vote to delay or overturn any such rule or regulation by the meeting next proceeding the meeting at which the council receives notice thereof, said rules and regulations shall be thereafter deemed to be effective and shall thereafter govern the practices and procedures of and before the board. In addition to the meetings and hearings which the board may or shall hold under authority of this Section, the council nevertheless may direct the board to hold other meetings and hearings as the council by resolution may determine.

Section 3. That Section 45-76 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 45-76. Local improvements to conform to requirements of division.

Except as otherwise specifically provided in this Code, every local improvement to be paid for in whole or in part by special assessment shall as nearly as may be practicable conform to the requirements of this Division. The costs of such improvements shall be assessed against benefitted property in a manner determined by the council to be a fair and equitable method of allocating such costs, which method may include but shall not be limited to a "per front foot" basis, a "per square foot" basis or a "per parcel" basis.

Section 4. That Chapter 45 of the Duluth City Code, 1959, as amended, is hereby amended by the addition of a new Section 45-76.1 which reads as follows:

Sec. 45-76.1. Initiation of improvements to be assessed.

Every local improvement, any portion of the cost of which is to be assessed against benefitted property shall be initiated either by petition in accordance with the provisions of Section 45-77 below or by direction of a city council resolution as provided for in Section 45-77.1 below.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Section 5. That Section 45-77 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 45-77. Petitions for local improvements; procedure for filing; action of city council.

(a) Any petition for a local improvement shall be filed with the city clerk, who thereupon shall forthwith transmit such petition to the city assessor. The assessor shall, with the assistance of the city engineer, determine whether such petition has been properly executed. In order to be valid, a petition must be executed by the owners of the majority of the front footage of the property which will be assessed for all or a portion of the costs of such improvements. The assessor shall report his findings as to sufficiency to the city council. If the council shall find the petition to be sufficient, the council may adopt an ordering in resolution ordering in the construction of the improvement;

(b) As part of the ordering in resolution as provided for in Section 62 of the Charter, the council shall make a determination of the total estimated cost of the project to be assessed against benefitted properties which may include the city's direct and indirect costs of designing, building and financing the project and the method by which the assessable cost of the improvements are to be assessed against the benefitted property, which may include but not be limited to a "per front foot" basis, a "per square foot" basis or a "per parcel" basis. Upon approval of said resolution, the city shall send notice to the owners of all property to be assessed in the manner provided for in Section 61(b) of the Charter setting forth the method by which the costs are to be assessed and setting forth the estimated amount to be assessed against the subject property;

(c) The owners of property to be assessed shall have ten days from the date that notice is sent to them to deliver notice to the city clerk that they are unwilling to accept the proposed improvements and the proposed assessment against their property and that they wish to withdraw their signature or signatures from the petition, if they were signatories of the petition. If any property owner fails to so notify the city clerk within said ten day period, such owner shall have waived any right to object to the assessment for such work on any grounds related to the sufficiency of the petition process or such owner's consent to the improvement and the assessment therefore;

(d) If, after the end of the ten day period provided for in subsection (c) above, there remains, not withdrawn from the petition, signatures of the owners of property which will be required to pay a majority of the costs of such improvements which are to be paid by assessment, said petition shall be valid and the city may proceed to have constructed the subject improvements and to so assess for said portion of such costs. If, after said ten day period, there shall not remain on the petition the signatures of the owners of property which will be required to pay a majority of the costs of such improvements which are to be paid by assessment, said petition shall be deemed to have been insufficient.

Section 6. That Chapter 45 of the Duluth City Code, 1959, as amended, is hereby amended by the addition of a new Section 45-77.1 which reads as follows:

Sec. 45-77.1. Assessments initiated by council action.

In the event that the council determines that it is necessary to construct a local improvement for which no petition has been filed, the council may adopt a resolution of intent to construct the improvement, which resolution shall be effective upon the affirmative vote of a simple majority of the council present and voting.

Section 7. That Section 45-82 of the Duluth City Code, 1959, as amended, is hereby amended by deleting said section in its entirety and by substituting the following for it:

Sec. 45-82. Certification and approval of assessment roll; publication of assessments; manner of paying assessments.

(a) Approval of assessment roll. After local improvement as provided in this Chapter shall have been completed and accepted by the city, the city engineer shall compute and certify to the city council the cost thereof, including any incidental expenses of publication, mailing, etc., and the city assessor shall certify to the city council an assessment roll. At the next regular meeting thereafter, the city council shall consider and adopt said assessment roll, or return said assessment roll to the city assessor with instructions as to any corrections or modifications required. In the event that said assessment is so returned, the city assessor shall make said corrections and return said assessment roll as corrected to the council prior to its next regular meeting, at which time it shall be considered and approved with or without further amendment and correction by the council;

(b) Hearing; time for payment. Within ten days after such approval, the council shall have published in the official paper of the city and shall have mailed to each person whose name appears on said assessment roll a notice briefly describing the improvement for which the assessment is made, and stating that the assessment is payable at the treasurer's office at any time within 90 days subsequent to the publication of said notice in the case of assessments which are not eligible for payment in installments, and within 40 days subsequent to the publication of said notice in the case of assessments which are eligible for payment in installments, and that unless the same is so paid within said period, or in the case of assessments eligible for payment in installments, an application is made to the city treasurer for an extension of time of payment as herein provided within such 40 day period after the publication of notice, a penalty of ten percent will be added to such assessment. Assessments shall be eligible for payment in installments when so determined by the council, except that an assessment against an owner of property which is less than \$500 for any single description of land as shown on the records of the city assessor shall not be so eligible;

(c) Installment payment. Within the 40 days after the publication of the notice of assessment, upon application in writing to the city treasurer by any owner of real estate against which an assessment which is eligible for payment in installments is made, the treasurer shall extend the time for paying such assessment in installments extended in the manner determined by the council not to exceed the estimated useful life of the improvement and, in any event, not exceeding 15 in number, payable yearly from 40 days after the date of the approval by the council of said assessment. Each of said installments of extended assessments shall be payable annually from the date the entire assessment would be payable, without penalty, and shall bear interest at a rate which shall be from time to time by resolution of the city council. Such installments of extended

assessments, together with the accrued interest thereon, from the first Monday in January following, shall be considered to be delinquent under Section 45-82.1 below when they shall severally become due and payable, but not before. Any such installments may be paid prior to its maturity with interest to the date of payment only. Installment payment of assessments as authorized herein shall be computed in such a way that the minimum installment payment for any single parcel of land as shown on the records of the city assessor shall be \$100, except for the final payment;

(d) Default. In the event of default in timely payment of an installment assessment levied upon a tract or parcel of land, the council may, at its option, declare all subsequent installment assessments at once due and payable;

(e) Modification by the board. Within 18 months after an assessment is confirmed by the city council, the special assessment board is authorized to withdraw such assessment and either extend the time during which the property owner may elect to pay such assessment in installments in those cases where the board is satisfied that good cause exists for such extension, or correct a mathematical error made in the computation of such assessment; provided, however, that whenever such correction results in an increase of the assessment, the affected party shall be given notice by mail of such increased assessment, and such party may, within 14 days after such notice is given, request the special assessment board to submit such increased assessment to the city council for its approval. Upon receipt of such request, the special assessment board shall submit such increased assessment to the city council and the council may approve or disapprove such assessment or make such adjustment to such assessment as it deems appropriate. If the city council approves all or any part of the modified assessment roll, the affected party may appeal such assessment within 30 days of the date of the city council's action on the matter, such appeal to be governed by the provisions of Section 67 of the Charter. Action by the special assessment board pursuant to this paragraph shall be approved by at least three members thereof and a copy of the minutes of the board relating to such action shall be filed with the city clerk, who shall attach such minutes to the assessment roll affected by such action.

Section 8. That Chapter 45 of the Duluth City Code, 1959, as amended, is hereby amended by the addition of a new Section 45-82.1 which reads as follows:

Sec. 45-82.1. Delinquencies in payments of assessments-- penalties; assessments to be lien upon real estate.

Each assessment not paid on or before 40 days after the publication of the notice directing payment shall be deemed delinquent except as hereinafter provided for, and a penalty of ten percent shall thereupon be added, unless an extension of the assessment shall have been made by the council, as provided for in the next preceding Section. All installments of extended assessments shall be deemed delinquent if not paid at the time fixed for payment in the extension, and when delinquent a ten percent penalty shall in each case be added except as hereinafter provided for; provided, however, that no penalty or interest shall accrue or be charged against any property which is assessed during such time as it is owned by the state of Minnesota pursuant to forfeiture for nonpayment of real estate taxes until said property is redeemed pursuant to Minnesota Statutes, Chapter 281, or any

successor statute. Every assessment shall be a lien upon the property against which the assessment is made, from the time such assessment is confirmed by the council.

Section 9. That Chapter 45 of the Duluth City Code, 1959, as amended, is hereby amended by the addition of a new Section 45-82.2 which reads as follows:

Sec. 45-82.2. Same--Statement of delinquencies; enforcement and collection.

In each year the council shall cause to be made a certified statement of the several pieces of land against which assessments have been made and are delinquent, describing the land affected and giving the amount of assessment with penalties added, which certified statement shall be filed with the county auditor of St. Louis County, Minnesota, on or before five working days after December 20 in each year. It shall be the duty of said county auditor to extend said assessments with penalties, as shown by said certified statement, upon the tax rolls of the said county of St. Louis for the taxes of the particular year in which said assessment is filed, and the same for each year ending October 15 shall be carried into the tax becoming due or payable in January of the following year, and shall be enforced and collected in the manner provided for the enforcement and collection of state and county taxes under and in accordance with the provisions of the general laws of the state, except that in court proceedings to enforce the collection of taxes, no defense as to the validity of any such assessment shall be permitted. Such assessment, if not paid, shall become delinquent and be subject to the same penalties and the same rate of interest as the taxes for state and county purposes under the general laws of the state.

Section 10. That Chapter 45 of the Duluth City Code, 1959, as amended, is hereby amended by the addition of a new Section 45-82.3 which reads as follows:

Sec. 45-82.3. Assessments, penalties and interest belong to city; applicability of Chapter to public service corporations.

All assessments with penalties and interest thereon paid to the county treasurer shall belong to the city of Duluth, and shall be turned over to the treasurer by said county treasurer in the manner provided by law.

Every franchise granted to any public service corporation shall contain a provision that such corporation shall to the extent of such franchise be subject to all the provisions of this Chapter in all respects the same as any other person or corporation.

Section 11. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: June 21, 2009)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed May 11, 2009
Approved May 11, 2009
DON NESS, Mayor

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ORDINANCE NO. 9971

**AN ORDINANCE AMENDING SECTION 36 OF THE CITY CHARTER
INCREASING THE NUMBER OF DEPUTY FIRE CHIEFS FROM
ONE TO TWO.**

The city of Duluth does ordain:

Section 1. That Section 36 of the 1912 Home Rule Charter of the City of Duluth, as amended, be amended to read as follows:

Section 36(A). The board, with the approval of the council, shall make rules and regulations for the proper conduct of its business, and shall provide: for the classification of all employees, except (1) the officers mentioned in Chapter IV (sections 18 through 34, inclusive) of this Charter; (2) two deputy chiefs of police, who at the time of appointment as such must be a sworn law enforcement officer in the classified service of the city; (3) two deputy fire chiefs, who at the time of appointment as such must be employed in the fire department of the city; (4) an equal opportunity representative; and (5) day laborers, officers of election boards, special police officers, special detectives and other temporary employees; for open competitive and free examination as to fitness, provided that when the board certifies a position as an entry level position which requires only basic manual skills, open and free random selection may be used in lieu of or in connection with a competitive examination; for an eligibility list from which vacancies shall be filled; for a period of probation before employment is made permanent; and for promotion on the basis of merit, experience and record. Employees within the scope of this Chapter, who are in office at the time of the adoption of this Charter, shall retain their positions, unless removed for cause. The council may, by ordinance, confer upon the board such further rights and duties as may be deemed necessary to enforce and carry out the principles of this Chapter;

(B). Notwithstanding anything to the contrary in paragraph (A) above, the board, with the approval of the council, may establish noncompetitive or other alternative evaluation procedures for the employment of persons with disabilities when because of such disabilities the procedures prescribed by paragraph (A) would not provide such disabled applicants with equal employment opportunity. The board may authorize the appointment of any such person to a position in the classified service if it determines that such person has so demonstrated the ability to perform the duties of the position;

(C). Notwithstanding anything to the contrary in paragraph (A) above or in any ordinance of the city, any person who is employed or has been employed by the city in any classified or unclassified position, who has sustained personal injury arising out of and in the course of such person's employment with the city within the meaning of the state worker's compensation law so that such person may be entitled to receive worker's compensation benefits as a result of such personal injury, or has sustained personal injury or developed a disease or debilitating condition such that the person may qualify for disability benefits pursuant to a long term disability insurance program provided by the city by collective bargaining agreement or otherwise, may be employed in any classified position deemed appropriate by the chief administrative officer without having to comply with the ordinary classified

service procedures regarding application for employment, testing, and certification from an eligible list. Any person employed in a classified position pursuant to this paragraph shall not be compensated for employment in such position at a rate which is greater than that currently prescribed for the city position or classification which such person occupied when the above-mentioned personal injury was sustained, or the above-mentioned disability occurred. The implementation of this Subsection (C) shall be subject to the provisions of any pertinent collective bargaining agreement to which the city is a party.

Section . That this ordinance shall take effect 90 days after its passage and publication.
(Effective date: August 20, 2009)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed May 11, 2009
Approved May 11, 2009
DON NESS, Mayor

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ORDINANCE NO. 9972

BY COUNCILORS ANDERSON, CUNEO, GARDNER AND ECKENBERG:

AN ORDINANCE ADDING A NEW CHAPTER 29D OF THE DULUTH CITY CODE, 1959, AS AMENDED, ESTABLISHING A DOMESTIC PARTNER REGISTRY.

The city of Duluth does ordain:

Section 1. That the Duluth City Code, 1959, as amended, is hereby amended by adding the following Chapter 29D to read as follows:

CHAPTER 29D.

HUMAN RIGHTS AND DOMESTIC PARTNERSHIPS.

Sec. 29D-1. Purpose.

The city of Duluth recognizes that a nationwide debate has advanced an expanded concept of familial relationships between two non-married, adult partners who are committed to one another to the same extent as married persons are to each other, except for the traditional marital status and solemnities. This Chapter creates a process to provide persons the opportunity to declare themselves domestic partners thereby providing a government-based foundation to such committed relationships which positively contributes to the health, safety and welfare of the community as a whole.

Sec. 29D-2. Definitions.

For purposes of this Chapter, the following terms shall be defined as follows:

- (a) Domestic partner. Any two adults who:
- (1) Are not related by blood closer than permitted under marriage laws of the state;
 - (2) Are not married or related by marriage;
 - (3) Are competent to enter into a contract;

- (4) Have no other domestic partner;
- (5) Are jointly responsible to each other for the necessities of life;
- (6) Are as committed to one another as married persons are traditionally committed, except for the traditional marriage status and solemnities;

(b) Domestic partnership. The term “domestic partnership” shall include, upon production of valid, government-issued documentation, in addition to domestic partnerships registered with the city of Duluth, and regardless of whether partners in either circumstances have sought further registration with the city of Duluth:

(1) Any persons who have a currently-registered domestic partnership with a governmental body pursuant to state, local or other law authorizing such registration. The term domestic partnership shall be construed liberally to include same-sex unions, regardless of title, in which two same-sex individuals are committed to one another as married persons are traditionally committed, except for the traditional marital status and solemnities;

(2) Marriages that would be legally recognized as a contract of lawful marriage in another local, state or foreign jurisdiction, but for the operation of Minnesota law.

Sec. 29D-3. Registration of domestic partnerships.

(a) The city clerk shall accept an application to register as domestic partners from persons who state in such application that they meet the definition of domestic partners set out in Section 29D-2. Subsequent changes in address shall be reported to the city clerk within 30 days of such change;

(b) The city clerk shall charge an application fee for the registration of a domestic partnership and shall charge a reasonable fee per document for providing certified copies of registrations, amendments or notices of termination. Said fees shall be set in accordance with Section 31-6(a) of this Code. There shall be no charge for filing amendments or notices of termination;

(c) The city clerk shall provide each domestic partner with a registration certificate. The registration certificate shall not be issued prior to the third working day after the date of the application;

(d) This application and certificate may be used as evidence of the existence of a domestic partner relationship;

(e) The city clerk shall keep a record of all registrations of domestic partnership, amendments to registrations and notices of termination received by the city clerk. The records shall be maintained so that amendments and notices of termination are filed with the registration of domestic partnership to which they pertain;

(f) The application and amendments thereto, the registration certificate, and termination notices shall constitute government data and will be subject to disclosure pursuant to the terms of the Minnesota Government Data Practices Act.

Sec. 29D-4. Amendments.

The city clerk may accept amendments for filing from persons who have domestic partnership registrations on file, except amendments which would replace one of the registered partners with another individual.

Sec. 29D-5. Termination of domestic partnership.

(a) Either person in a domestic partnership registered with the city of Duluth may initiate the termination of the domestic partnership, by written notification to the city clerk. The city clerk shall promptly notify the other partner at the address of record by certified mail;

(b) A domestic partnership registration terminates when the earlier of the following occurs:

(1) One of the partners dies; or

(2) Forty-five days after one partner sends the other written notice that he or she has terminated the partnership by filing a notice of termination with the city clerk; or

(3) Forty-five days after the city clerk notifies the non-filing partner of the filing of any notice of termination.

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

(Effective date: June 21, 2009)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Gardner and President Gilbert -- 5

Nays: Councilors Fedora, Fosle and Stauber -- 3

Abstention: Councilor Krause -- 1

ATTEST:

JEFFREY J. COX, City Clerk

Passed May 11, 2009

Approved May 11, 2009

DON NESS, Mayor

- - -

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Tuesday, May 26, 2009, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Absent: None -- 0

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

09-0526-01 Harold and Jane Glowacki petition to vacate the alley between Lots 1 and 27-30, Block 81, Central Dickson Division. -- Assessor

09-0526-02 Minnesota state auditor audit report for Duluth/North Shore Sanitary District for the year ended December 31, 2007. -- Received

09-0526-26 Home Seas LLC communication regarding the proposed issuance of a demolition permit for the historic St. Louis County jail building (09-0366R). -- Received

09-0526-07 Per Mar Security Services communication regarding the proposed ordinance modifying regulations for alarm systems and false alarm calls (09-0301R and 09-011-O). -- Received

09-0526-08 The following communications regarding the proposed approval of budget and cost sharing formula of Minneapolis - Duluth/Superior passenger rail alliance and authorizing payment of city's cost share of \$50,000 (09-0330R): (a) Carolyn Clark; (b) William Clark; (c) Tamara Hensley. -- Received

09-0526-09 The following communications regarding the proposed resolution of intent to include \$200,000 in the 2010, 2011, 2012, 2013 and 2014 general fund budgets as a voluntary payment to the business improvement district (09-0361R): (a) Bill Bennett; (b) Laura Bergen; (c) Donna Boman; (d) Ed Gleeson and Rick Boo; (e) Dean Casperson; (f) Gina Esterbrooks; (g) Cindy Hayden; (h) Sanford Hoff; (i) Mark Jeronimus; (j) Peggy Moen; (k) Kristi O'Brien; (l) Kris Olson; (m) Bill Roberts; (n) Bill Rogers; (o) Kristi Schmidt. -- Received

09-0526-10 The following communications regarding the board of zoning appeals denial of an application for zoning code variance by Commonwealth Development for property located at the corner of Kenwood Avenue and Arrowhead Road: (a) B. Brooks; (b) Mary Gallegos (supported by 538 signatures); (c) Cathy and Don Letourneau; (d) St. Benedict's Church; (e) Daniel Thompson; (f) Marlene and Larry Zwak. -- Received

09-0526-11 The following communications regarding board of zoning appeals approval to grant a variance to ISD No. 709 to allow front yard parking on property located at 301 North 40th Avenue East (Ordean School) (09-0371R and 09-0372R): (a) Brenda Anderson; (b) Michele Benson; (c) Linda Magni; (d) Larry and Arnelle Monson; (e) Brian Ronstrom; (f) Kent Worley; (g) Linda and Mark Zurn. -- Received

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REPORTS FROM OTHER OFFICERS

09-0526-03 Assessor affidavit of mailing of notice of public hearing by the special assessment board to be held on June 9, 2009, 2:30 p.m., Room 106A, City Hall, on reassessment and levying of assessments against real estate especially benefitted, Plat 3970 Parcel 01090 (33

Riverside Drive), delinquent solid waste (assessable amount: \$6,593.34 (2001 - 2006)). -- Received

09-0526-25 Building official appeals of board of zoning appeals decisions to:

(a) Deny a variance to allow a building and parking lot to extend into a more restricted zoning district for the development of a new Walgreen's store at 1402 West Arrowhead Road (Commonweal Development Corporation);

(b) Grant a variance to ISD #709 to allow front yard parking for the proposed Eastern High School in a residential zone at 301 North 40th Avenue East (Dale Pagenkopf). -- Committee 2 (planning and economic development)

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REPORTS OF BOARDS AND COMMISSIONS

09-0526-04 Entertainment and convention center authority special business meeting minutes of May 12, 2009. -- Received

09-0526-05 Planning commission minutes of April 14, 2009, meeting. -- Received

09-0526-06 Tree commission minutes of March 17, 2009, meeting. -- Received

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OPPORTUNITY FOR CITIZENS TO BE HEARD

Tom Wright expressed his concerns that the city does not have the funds to take care of the entrances to Morgan Park, with grass over a foot high; streets improvements or having softball fields prepared for kids to qualify to play in state softball tournament. He felt that every time one turns around the city is handing out money, but when it comes to local kids, there are no funds.

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Dave Barschdorf expressed concerns over: something that is growing wild in the ditch by the alley, close to his house; that the closed roadway near his home needs landscaping so the his property does not continue to get washed out and that residents are moving out because of actions from the school district, thus reducing the tax base.

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RESOLUTIONS TABLED

Councilor Fedora moved to remove Resolution 09-0301, setting 2010 fees for the new alarm system user permit categories, from the table, 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 CUNEO

09-011 (9973) - AN ORDINANCE AMENDING CHAPTER 29B OF THE DULUTH CITY CODE, 1959, AS AMENDED, MODIFYING REGULATIONS FOR ALARM SYSTEMS AND FALSE ALARM CALLS.

Councilor Fedora moved to suspend the rules to also consider the ordinance at this time, which motion was seconded and unanimously carried.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Councilor Fedora moved to amend the ordinance, Section 29B-4(b), so that the “20” minutes of call back be changed to “30” minutes, which motion was seconded and discussed.

Councilor Fedora noted that given the geographic challenges of the city, it could take that long to respond to a call. The amendment carried unanimously.

Councilor Krause opposed the ordinance and resolution because he felt that it would “fee” the citizens of Duluth to death and that it will curtail and reduce some of the people who put alarm systems in.

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Stauber and President Gilbert -- 8

Nays: Councilor Krause -- 1

- - -

Resolution 09-0301 was adopted as follows:

RESOLVED, that pursuant to Duluth City Code sections 29B-3 and 29B-4, Resolution 08-0742 adopting license, permit and fee charges for 2009 be amended to add the following fees, effective January 1, 2010:

Police	
License, permit, fee name	2010 Fee
Alarm system user permit/fees	
Permit	
Annual	\$20.00
Late fee	\$20.00
False alarm fees	
1st response	-0-
2nd response	-0-
3rd response	\$100.00
4th response	\$200.00
5th response	\$300.00
<i>Note: Annually, false alarm fees will continue to be increased \$100.00 per response.</i>	
Keyholder timely response failure fee	\$20.00

Resolution 09-0301 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Stauber and President Gilbert -- 8

Nays: Councilor Krause -- 1

Approved May 26, 2009

DON NESS, Mayor

- - -

Councilor Stauber moved to remove Resolution 09-0319, amending Resolution 89-0323 establishing the Duluth economic development authority (DEDA) to change the composition of the membership of the authority, from the table, which motion was seconded and unanimously carried.

- - -

UNFINISHED BUSINESS

Resolution 09-0318, by Councilor Stauber, amending Rule 14 of the standing rules of the city council pertaining to committee appointments, was also introduced for discussion.

- - -

MOTIONS AND RESOLUTIONS

Councilor Stauber moved to suspend the rules to consider Resolution 09-0342, amending Resolution 89-0323 establishing the Duluth economic development authority, said amendment related to the executive director, DEDA personnel and the composition of membership of the authority, introduced by President Gilbert, at this time, which motion was seconded and unanimously carried.

- - -

Councilor Stauber moved to remove resolutions 09-0318 and 09-0319 from the agenda, which motion was seconded and unanimously carried.

Councilor Stauber commented that he was disappointed with the administration initially requesting him to bring this issue forward and they bringing forth their version which is significantly different.

Councilors Krause and Fosle opposed Resolution 09-0342 for the reasons of: appointed individuals could feel an allegiance to the mayor; an issue can come forward with council dissension and longer meetings, with a limited number of councilors not involved in the DEDA discussion; DEDA appointments could be viewed as "rubber stamps" for what the administration proposes; appointments could be a reactionary board versus an economic development position; as long as there is a political position involved, it is a short term vision and with citizens not being appointed from a tax increment district, that district is not represented in the decision making.

The mayor commented on his intentions with the resolution.

Councilors discussed at length the aspects and rationale of the proposed expenditure level and district representation on DEDA and how DEDA should function.

Councilor Gardner moved to amend the last paragraph of the resolution by changing "\$50,000" to "\$100,000," which motion was seconded and carried upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora and Gardner -- 5

Nays: Councilors Fosle, Krause, Stauber and President Gilbert -- 4

Resolution 09-0342, as amended, was adopted as follows:

RECITALS:

The council finds as follows:

(a) The Duluth City Council adopted Resolution 89-0323, on April 24, 1989, establishing the Duluth economic development authority (DEDA);

(b) The Duluth City Council adopted Resolution 98-0949, on December 21, 1998, amending the above-referenced resolution to require that four of the commissioners on DEDA be city councilors and to further require that a majority of the commissioners present at a meeting must be city councilors for action to be taken;

(c) The Duluth City Council adopted Resolution 99-0239, on March 22, 1999, further amending the above-referenced resolution to require that any expenditure by DEDA in excess of \$25,000 be approved by the city council;

(d) The Duluth City Council adopted Resolution 02-0606, on October 28, 2002, further amending the above-referenced resolution to require that if an action is taken by DEDA at a meeting in which council members do not constitute a majority of commissioners present and voting, then that action is not final and cannot be implemented unless and until it is approved by resolution of the Duluth City Council;

(e) The Duluth City Council adopted Resolution 04-0202 on March 22, 2004, further amending the above-referenced resolution to change the composition of the members of the authority to consist of nine members all of whom shall be members of the council with the term of the commissioners' appointments coinciding with their term of office as members of the city council, deleting the provision that an action taken by DEDA at a meeting in which council members do not constitute a majority of commissioners present and voting is not final and cannot be implemented unless and until it is approved by resolution of the council, and further deleting the requirement that DEDA shall not enter into an agreement or contract involving an expenditure by DEDA of more than \$25,000 without the prior approval of the council;

(f) The Duluth City Council adopted Resolution 04-0215 on March 22, 2004, further amending the above-referenced resolution to provide that the executive director of the DEDA shall be appointed by the mayor, subject to approval by the city council and to provide that the executive director act at the direction of the commissioners;

(g) Resolution 89-0323, Resolution 98-0949, Resolution 99-0239, Resolution 02-0606, Resolution 04-0202 and Resolution 04-0215 are hereinafter collectively referred to as the DEDA establishment resolution;

(h) The Duluth City Council desires to further amend the DEDA establishment resolution.

NOW, THEREFORE, BE IT RESOLVED, that paragraph 4 of the DEDA establishment resolution is hereby amended to read as follows:

4. That the DEDA shall be governed by a board of commissioners ("commissioners") consisting of seven members, three of whom shall be members of the city council. All members shall be appointed by the mayor and approved by a majority vote of the council. The appointment of the council commissioners shall expire with their terms of office as members of the council and a vacancy shall be created. The term of the appointments of the non-council commissioners shall be governed by Minnesota Statutes Section 469.095, subdivision 2(c).

BE IT FURTHER RESOLVED, that paragraph 6 of the DEDA establishment resolution is hereby amended to read as follows:

6. The executive director of the DEDA shall be appointed by the mayor, subject to approval by the DEDA board, and the executive director shall act at the direction of the mayor and by policy set forth by the DEDA board.

FURTHER RESOLVED, that paragraph 7 of the DEDA establishment resolution is hereby amended to read as follows:

7. That the mayor or his/her designees (the "administration") shall provide such city staff to the DEDA as the DEDA may request who, when acting in such capacity, shall report to the executive director; provided that the administration may require reasonable reimbursement by the DEDA for costs associated with the provision of such staff; and provide further that nothing

in this paragraph shall preclude the DEDA from hiring such personnel as the DEDA may from time to time determine.

FURTHER RESOLVED, that the nine city councilors shall continue to be DEDA commissioners until such time as all seven commissioners are appointed and approved to take office pursuant to this resolution.

FURTHER RESOLVED, that the DEDA establishment resolution is hereby amended to add a new paragraph 19 to read as follows:

19. That DEDA shall not enter into an agreement involving an expenditure by DEDA of more than \$100,000 without the prior approval of the council.

Resolution 09-0342, as amended, was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora and Gardner -- 5

Nays: Councilors Fosle, Krause, Stauber and President Gilbert -- 4

Approved May 26, 2009

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

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 2009:

General obligation bonds and notes to be issued in 2009	\$7,810,000
General obligation bonds and notes to be retired in 2009	
Scheduled general obligation bonds anticipated to mature and be retired	\$14,939,552
General obligation bonds anticipated to be called and retired with CIT funds	<u>\$2,800,000</u>
Total anticipated general obligation bond retirements for 2009	<u>\$17,739,552</u>
Net anticipated increase (decrease) in general obligation bonding for 2009	(\$9,929,552)

FURTHER RESOLVED, that the city administration has identified federal stimulus funds available for use by the city in funding sewer and water improvement projects.

FURTHER RESOLVED, that it is the intent of the city to maximize the use of such grants to finance these water and sewer projects, but that the final determination of the amount of such grant funding is determined by the state of Minnesota public facilities authority.

FURTHER RESOLVED, that bond funding will be available through said Authority at advantageous rates which will fund any portion of the costs of such projects not covered by grant funds.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

FURTHER RESOLVED, that therefore the city administration anticipates that the amount of additional general obligation bonding to be required by the city for these projects over and above that set forth above will range between a minimum of \$3,910,000 and a maximum of \$8,980,000 for 2009.

Resolution 09-0297 was unanimously adopted.

Approved May 26, 2009

DON NESS, Mayor

- - -

RESOLVED, that \$90,800 in the tourism tax fund originally allocated to the Lake Superior Zoo for a full year of a management contract be reallocated to the general fund for partial reimbursement of two months of unbudgeted zoo expenses due to a contract start date of March 1, 2009.

Resolution 09-0320 was unanimously adopted.

Approved May 26, 2009

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:

Lemon Reef, Inc. (Reef Bar), 2002 London Road, for June 20, 2009, with the serving ceasing at 3:00 p.m.

Chaser's of Duluth, Inc. (Bedrock Bar), 2023 West Superior Street, for June 20, 2009, with the music and serving ceasing at 9:00 p.m.

Grandma's, Inc. (Grandma's Saloon & Grill), 522 Lake Avenue South, for June 20, 2009, with the serving and music ceasing at 1:00 a.m.

LeBlanc/Terwey, Inc. (Moldeez), 1426 Commonwealth Avenue, for June 27, 2009, with the serving and music ceasing at 11:00 p.m.

Grandma's Angie's, Inc. (Little Angie's Cantina), 11 East Buchanan Street, for June 20, 2009, entire deck open until 2:00 a.m., sidewalk area in front of deck until 1:00 a.m.

Resolution 09-0291 was unanimously adopted.

Approved May 26, 2009

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:

Duluth Softball Players Association, Wheeler Field, for June 12, 2009, with John Vaydich, manager.

Resolution 09-0321 was unanimously adopted.

Approved May 26, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Peterson Brothers Roofing and Construction, Inc., for Duluth City Hall roof replacement in accordance with its low specification bid of \$419,975; \$231,577 payable out of Capital Fund 450,

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Department/Agency 030, Object 5520, CP 2008 OT-0802 and \$188,398 payable out of Capital Fund 450, Department/Agency 030, Object 5520, CP 2009 09-02B.

Resolution 09-0328 was unanimously adopted.

Approved May 26, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Lipe Brothers Construction, Inc., for reroofing of Irving Recreation Center in accordance with its low specification bid of \$31,200 and Lafayette Recreation Center in accordance with its low specification bid of \$44,900 for a total contract amount of \$76,100, payable out of General Fund 100-700-1420-5520, CM OT-0815G.

Resolution 09-0331 was unanimously adopted.

Approved May 26, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Four Star Construction, Inc., for reroofing of Park Point beach house in accordance with its low specification bid of \$138,698, payable out of General Fund 100-700-1420-5520, CM 09-01G.

Resolution 09-0332 was unanimously adopted.

Approved May 26, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with A.W. Kuettel and Sons, Inc., for installation of elastomeric roof coating over existing metal roof at the Woodland Recreation Center in accordance with its proposal dated April 13, 2009, in the amount of \$21,710, payable out of General Fund 100-700-1420-5520, CM 09-01G.

Resolution 09-0334 was unanimously adopted.

Approved May 26, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to contract with Elevator Advisory Group, Inc., for elevator decommissioning and modernization services in City Hall at an amount not to exceed \$13,725, terms net 30, payable from Capital Improvement Fund No. 450, Agency 030, Object 5520, Project No. CP2009-0907B; said services to be substantially as outlined in the agreement on file in the office of the city clerk as Public Document No. 09-0526-13.

Resolution 09-0352 was unanimously adopted.

Approved May 26, 2009

DON NESS, Mayor

- - -

RESOLVED, that Change Order No. 2 to Contract No. 20767 with Lipe Brothers Construction be and hereby is authorized, in an amount of \$12,837.71, payable from Capital Fund 450, Department/Agency 030, Object 5520, CP 2008, OT-0808, for additional construction costs for

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

bathroom remodeling at Fire Station #11, thereby increasing the total contract amount to \$54,937.71.

Resolution 09-0353 was unanimously adopted.
Approved May 26, 2009
DON NESS, Mayor

- - -

RESOLVED, that Michael Ashcraft, chief administrative officer to the mayor, is hereby designated as the responsible authority for data practices as defined by Minnesota Statutes, Section 13.02, subd. 16.

BE IT FURTHER RESOLVED, that Resolution 09-0172 adopted on March 23, 2009, be rescinded.

Resolution 09-0324 was unanimously adopted.
Approved May 26, 2009
DON NESS, Mayor

- - -

RESOLVED, that the proposed amendments to the specifications for the civil service classification of gas control operator I, which were approved by the civil service board on April 21, 2009, and which are filed with the city clerk as Public Document No. 09-0526-12 are approved. This classification shall remain subject to the city's collective bargaining agreement with its basic unit employees and compensated at Pay Range 26.

Resolution 09-0350 was unanimously adopted.
Approved May 26, 2009
DON NESS, Mayor

- - -

RESOLVED, that the proposed amendments to the specifications for the civil service classification of meter reader, which were approved by the civil service board on April 21, 2009, and which are filed with the city clerk as Public Document No. 09-0526-24, are approved. This classification shall remain subject to the city's collective bargaining agreement with its basic unit employees and compensated at Pay Range 22.

Resolution 09-0354 was unanimously adopted.
Approved May 26, 2009
DON NESS, Mayor

- - -

RESOLVED, that Resolution 08-0702 is hereby amended by deleting the name, "Minnesota Power and Light Company, a division of Allete Corporation" and inserting the name "Rendfield Land Company" therefor.

Resolution 09-0325 was unanimously adopted.
Approved May 26, 2009
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to make the following fund decrease in the Federal Program Fund 262, Agency 020, 2009 HUD-funded community development account as set forth below:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

2009 ESGP Program - Fund 262 - Project CD09ES Account Revised 2009				
Activity	Project	Amount	New Grant	Difference
AD01	Administration	\$4,000	\$3,657	(\$343)

Resolution 09-0340 was unanimously adopted.
 Approved May 26, 2009
 DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to make the following fund increase in the Federal Program Fund 260, Agency 020, Object 5434, 2009 HUD-funded community development account as set forth below:

2009 HOME Program - Fund 260 - Project CD09HM Account Revised 2009					
Sub-project	Activity	Project	Amount	New Grant	Difference
CH09	2270	Housing - pre-development - NCLT	\$20,000	\$36,317	\$16,317

Resolution 09-0341 was unanimously adopted.
 Approved May 26, 2009
 DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to make the following fund decreases in the Federal Program Fund 262, Agency 020, Object 5434, HUD-funded community development accounts as set forth below:

2009 CDBG Program - Fund 262 - Project CD09CD Account Revised 2009					
Sub-project	Activ-ity	Project	Amount	New Grant	Difference
HOUS	1734	Duluth property rehabilitation - HRA/NCLT	\$1,285,468	\$1,224,217	(\$61,251)
PSVC	1244	Duluth Hunger Project	\$76,000	\$74,121	(\$1,879)
PSVC	1929	Primary health care	\$70,000	\$68,260	(\$1,740)
PSVC	2511	Emergency heating assistance	\$43,150	\$42,080	(\$1,070)

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

2009 CDBG Program - Fund 262 - Project CD09CD Account Revised 2009					
PSVC	2509	Battered Women's Shelter	\$32,000	\$31,200	(\$800)
PSVC	251A	Transitional housing	\$54,000	\$52,660	(\$1,340)
PSVC	1974	Youth Center - Life House	\$23,000	\$22,430	(\$570)
PSVC	1348	Clothes That Work - Damiano	\$20,000	\$19,500	(\$500)
PSVC	1168	Youth development - YMCA	\$96,000	\$93,610	(\$2,390)
PSVC	134A	Eviction and homeless- ness prevention	\$21,000	\$20,480	(\$520)
					(\$72,060)

Resolution 09-0344 was unanimously adopted.
Approved May 26, 2009
DON NESS, Mayor

- - -

RESOLVED, that the city council hereby amends the 2008 annual action plan to add \$760,123 in CDBG-R from the American Recovery Reinvestment Act (ARRA) and authorizes the appropriate city officials to enter into agreements.

Resolution 09-0355 was unanimously adopted.
Approved May 26, 2009
DON NESS, Mayor

- - -

RESOLVED, that:

(a) The city council finds a sufficient petition was filed with the city clerk requesting the vacation of part of 11th Street from the westerly line of Minnesota Avenue to a line drawn from the southernmost corner of Lot 162 to the westernmost corner of Lot 160; the vacation of part of St. Louis Avenue from a line drawn from the southernmost corner of Lot 145 to the easternmost corner of Lot 146 northerly to a line from the westernmost corner of Lot 173 to the easternmost corner of Lot 176; and the vacation of the 15 foot highway easement located along and south of the northwesterly line of Lot 173 and Lot 174 all located in the plat of Upper Duluth; 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, 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 areas are useless for some or all of the uses for which it was dedicated as the public has not used these rights-of-ways since 1984, corrects an administrative error, and there are no plans to improve these rights-of-ways for utilities; and

(c) The planning commission, at its May 12, 2009, regular meeting did approve vacating the areas petitioned for vacation as since these rights-of-ways and the easement are useless for the purpose for which they were dedicated.

RESOLVED FURTHER, that:

(a) The city council of the city of Duluth approves the vacation of part of 11th Street from the westerly line of Minnesota Avenue to a line drawn from the southernmost corner of Lot 162 to the westernmost corner of Lot 160; the vacation of part of St. Louis Avenue from a line drawn from the southernmost corner of Lot 145 to the easternmost corner of Lot 146 northerly to a line from the easternmost corner of Lot 173 to the easternmost corner of Lot 176; and the vacation of the 15 foot highway easement located along and south of the northwesterly line of Lot 173 and Lot 174 all located in the plat of Upper Duluth and as more particularly described on Public Document No. 09-0526-15;

(b) The city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution.

Resolution 09-0358 was unanimously adopted.

Approved May 26, 2009

DON NESS, Mayor

- - -

RESOLVED, that:

(a) The city council finds a sufficient petition was filed with the city clerk requesting the vacation of 48th Avenue East from the south line of Colorado Street to the north line of Colorado Street Alley located in the London Addition to Duluth; 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, 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 some or all of the uses for which it was dedicated as the street has not been improved for vehicle purposes, utility easements can be created to maintain and repair utilities, a pedestrian easement can be created to allow for access to the neighborhood and there are no plans to improve this street; and

(c) The planning commission, at its May 12, 2009, regular meeting did approve vacating the street petitioned for vacation as the street is useless for the purpose for which it was dedicated as the street has not been developed and will not likely be developed and an easement can be established for utilities and pedestrian access.

RESOLVED FURTHER,

(a) That the city council of the city of Duluth approves the vacation 48th Avenue East from the south line of Colorado Street to the north line of Colorado Street alley located in the London Addition to Duluth retaining a utility and pedestrian easement located within an area described as that portion lying between a line parallel with and 26 feet west of the centerline of 48th Avenue East and a line parallel with and 25 feet east of the centerline of 48th Avenue East and as more particularly described on Public Document No. 09-0526-16;

(b) That the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of Saint Louis county, Minnesota, a certified copy of this resolution.

Resolution 09-0359 was unanimously adopted.

Approved May 26, 2009

DON NESS, Mayor

- - -

RESOLVED, that proper city officials are hereby authorized to execute and implement a contract, in substantially the form of the contract on file with the clerk and Public Document No. 09-0526-17, with Elizabeth Thiede, independent licensed teacher, to serve as a full time

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

contract teacher to provide basic education instructional services to Workforce Investment Act program participants at the Duluth workforce center for the period June 1, 2009, through June 30, 2010, at a cost not to exceed \$47,000; payment to be made from Fund 268.

Resolution 09-0326 was unanimously adopted.

Approved May 26, 2009

DON NESS, Mayor

- - -

RESOLVED, that the city of Duluth hereby accepts two quit claim deeds from the Minnesota department of transportation, filed as Public Document No. 09-0526-18 for reconveyance of properties along Lakewalk.

Resolution 09-0347 was unanimously adopted.

Approved May 26, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with KGM Contractors, Inc., for the 2009 street improvement program - Lakeside Lower Central in the amount of \$1,678,652.40, payable out of Street Improvement Fund 0440, Department/Agency 038, Object 5530, City Project No. 0218TR.

Resolution 09-0369 was unanimously adopted.

Approved May 26, 2009

DON NESS, Mayor

- - -

RESOLVED, that in accordance with the provisions of Section 33-108 of the Duluth City Code, 1959, as amended, the following parking meter zone is hereby established:

On the south side of Superior Street in front of 508 East Superior Street.

Proposed rate will be one quarter for 40 minutes, with a 2-hour limit.

The metered zone will consist of seven parking meters and one accessible parking space.

Metered parking shall be applicable between 8:30 AM and 5:30 PM, Monday through Saturday.

This metered zone will take effect upon installation of the parking meters.

Resolution 09-0335 was unanimously adopted.

Approved May 26, 2009

DON NESS, Mayor

- - -

RESOLVED, that in accordance with the provisions of Section 33-97 of the Duluth City Code, 1959, as amended, the following parking meter zones in Canal Park are hereby established:

Canal Park Drive between Railroad Street and Morse Street.

Lake Avenue South between Railroad Street and the Aerial Lift Bridge.

The Sculpture Lot.

The Lake Place Lot.

The Irvin Lot.

The Steam Plant Lot.

FURTHER RESOLVED, that all parking meter zones in Canal Park shall be enforced between May 15 and October 15 of each year, and that between October 15 and May 15 parking

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

shall be limited to the same time as the metered zone indicates but with no charge, and that metered parking shall be applicable between 8:30 AM and 5:30 PM, Monday through Saturday.

Resolution 09-0339 was unanimously adopted.

Approved May 26, 2009

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 1:00 a.m. in conjunction with Grandma's Marathon on June 20, 2009, to coincide with the Canal Park Business Association'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 09-0360 was unanimously adopted.

Approved May 26, 2009

DON NESS, Mayor

- - -

BY COUNCILOR ANDERSON:

WHEREAS, the city council has determined that a proposed amendment to the City Charter which would amend Section 21 to eliminate the requirement that a city employee running for political office, other than the office of mayor of Duluth or city councilor, must take a leave of absence from city employment, as set forth in Ordinance File No. 09-018 on file in the office of the city clerk, be submitted to the electors of the city of Duluth for their ratification or rejection in the manner provided for by law.

THEREFORE, BE IT RESOLVED, that the city council hereby submits such proposal to the qualified voters of the city of Duluth at the general municipal election to be held on Tuesday, November 3, 2009.

RESOLVED FURTHER, that the city clerk shall place upon the ballot at such general municipal 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

The Duluth City Charter currently requires a city employee to take a leave of absence from city employment in order to run for any political office (except for a position on the board of education for the city of Duluth). Should the Charter be amended to require any permanent, full-time city employee to take a leave of absence from city employment only when running for the office of Mayor of the city of Duluth or city councilor for the city of Duluth but not for any other political office.

Yes _____ No _____

A "YES" vote changes the current Charter language to require a city employee to take a leave of absence from city employment in order to run for the

office of mayor of the city of Duluth or city councilor for the city of Duluth but not for any other political office.

A "NO" vote retains the current Charter language which requires a city employee to take a leave of absence from city employment in order to run for any political office except for a position on the board of education of the city of Duluth.

Resolution 09-0336 was unanimously adopted.

Approved May 26, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to enter into a second amendment to the agreement regarding special events held at Bayfront Festival Park, substantially in the form of that on file in the office of the city clerk as Public Document No. 09-0526-19, with Secret Service Entertainment, LLC (contractor), the Duluth economic development authority (DEDA) and Lake Superior Center authority (LSCA), which amendment deletes the portion of the agreement addressing parking on the city-owned and DEDA-owned lots near Bayfront.

Resolution 09-0364 was unanimously adopted.

Approved May 26, 2009

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. 09-0526-20, with Secret Service Entertainment, LLC ("Secret Service") for parking lot management services related to city-owned Lot A in Bayfront, parking fees payable into Fund 237-015-4623.

Resolution 09-0365 was unanimously adopted.

Approved May 26, 2009

DON NESS, Mayor

- - -

The following resolutions were also considered:

RESOLVED, that Additional Services Directive No. 1 to Contract No. 20308 with Krech Ojard & Associates, P.A., Engineers and Architects, be and hereby is authorized, in an amount of \$35,522, payable from Capital Bond Fund 450, Agency 030, Organization 5520, Project No. CP 2007 OT-0709, for certain additional professional services in conjunction with the East Duluth vehicle storage facility, thereby increasing the total contract amount to \$63,958.

Resolution 09-0327 was unanimously adopted.

Approved May 26, 2009

DON NESS, Mayor

- - -

RESOLVED, that:

(a) The city council finds a sufficient petition was filed with the city clerk requesting the vacation of part of Elinor Street from the west line of 54th Avenue West to the east line of Central Avenue Alley extended and vacation of the Central Avenue Alley in Block 105 from the south line of Cental Place to the north line of Elinor Street, all located in the West Duluth Sixth Division Plat of Duluth; and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

(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 on May 12, 2009, and the city planning commission found that proposed improvement to the school campus will render this alley and Elinor Street useless for some or all of the purposes for which it was dedicated and accommodations can be made using pedestrian and utility easements; and

(c) The planning commission, at its May 12, 2009, regular meeting did approve vacating Elinor Street and the alley as the proposed improvement to the school campus will render this section of Elinor Street and the alley useless for some or all of the purposes for which it was dedicated and accommodations can be made using pedestrian and utility easements.

RESOLVED FURTHER, that:

(a) The city council of the city of Duluth approves the vacation of that part of Elinor Street from the west line of 54th Avenue West to the east line of the Central Avenue Alley extended, retaining the vacated portion for utility and pedestrian purposes and vacation of the Central Avenue Alley from the south line of Cental Place to the north line of Elinor Street, all located in the West Duluth Sixth Division and as more particularly described on Public Document No. 09-0526-14; and

(b) The city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution.

Resolution 09-0356 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Gardner, Krause, Stauber and President Gilbert -- 8

Nays: None -- 0

Abstention: Councilor Fosle -- 1

Approved May 26, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Northland Constructors of Duluth, LLC, and Monarch Paving Company for the purchase of hot mix fine as needed from June 1, 2009, through May 31, 2010, for the street maintenance division in accordance with St. Louis County's bid specifications and the vendors' bids at the estimated amounts listed below:

	Base Amount	Sales Tax	Totals
(a) Northland Constructors of Duluth, LLC	\$637,500.00	\$41,437.50	\$678,937.50
(b) Monarch Paving Company	\$318,853.00	\$20,725.45	\$339,578.45
Totals	\$956,353.00	\$62,162.95	\$1,018,515.95

for a total amount of \$956,353 plus \$62,162.95 sales tax, for a combined total estimated amount of \$1,018,515.95, terms net 30, FOB destination, payable as follows:

(a) Requisition 09-0031:

(1) \$515,992.50 (76 percent), from Street Improvement Fund 440, Agency 038, Object 5222, Project No. SIP 2009-recap;

(2) \$162,945.00 (24 percent), from general fund, Agency 120, Organization 1217-2140, Object 5222;

(b) Requisition 09-0332:

(1) \$228,075.08 (67 percent), from Street Improvement Fund 440, Agency 038, Object 5222, Project No. SIP 2009-recap;

(2) \$111,503.37 (33 percent), from general fund, Agency 120, Organization 1217-2140, Object 5222.

Resolution 09-0345 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fosle, Gardner, Krause, Stauber and President Gilbert -- 8

Nays: None -- 0

Abstention: Councilor Fedora -- 1

Approved May 26, 2009

DON NESS, Mayor

- - -

Resolution 09-0338, to establish a new parking meter zone on the east side of Harbor Drive between Railroad Street and South Harbor Drive, and establishing time limits and rates therefor, was introduced by Councilor Cuneo.

Councilor Cuneo moved to remove the resolution from the agenda and return it to the administration as they requested, which motion was seconded and unanimously carried.

- - -

Resolution 09-0330, approving budget and cost sharing formula of Minneapolis - Duluth/Superior passenger rail alliance and authorizing payment of city's cost share of \$50,000, was introduced by President Gilbert for discussion.

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

Tom Wright and Dave Barschdorf opposed the resolution for reasons of: this is spending dollars the city does not have; passenger rail has never been able to make it before; it is not going to save any time compared to driving; it is not going to help the city of Duluth; federal stimulus funds should be used instead and there are safety issues associated with high speed rail transportation.

Ken Buehler, John Ongaro, Patrick Doran, Lynn Bell and Steve Horn supported the resolution for reasons of: the state rail plan meetings were well attended in Duluth and overwhelmingly favorable for this project; that while there is federal funding, other cities are attempting to compete for the same funding; this project has four years of hard work behind it; this project links to this area to the largest most powerful engine in the state, the Twin Cities metro area; the Minnesota Legislature appropriated \$10 million to assist on this project; with this there is less energy usage, greater safety and reduced highway congestion; it likely will bring individuals who might not otherwise come and rail travel cost will be competitive with other means of travel.

Councilors Anderson, Eckenberg and Gardner expressed support for the resolution for reasons of: it is good for economic development, the environment and overall for transportation; because of the use of cell phones and internet and increased cost of gasoline, it is a different situation than when trains were previously here; seniors would be a market that would use it and the ease of travel in the winter.

Councilors Krause and Fosle opposed the resolution because: many individuals could drive to the cities twice as compared to one train ticket; as people learn that it will not be a one hour trip, their position changes; the logistics of getting around at their destination will not make this popular;

Superior has not signed on to support this, even with it stopping in that city; a bullet train would be successful; there was no economic boom the last time we had train service and Minneapolis is paying the same amount as Duluth which is not fair.

Resolution 09-0330 was adopted as follows:

RESOLVED, that the city council hereby approves the 2009 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. 09-0526-23, 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 2009 budget in the amount of \$50,000 in conformance with Section VI-A. of City Agreement No. 20580, said sum to be payable from the Tourism Tax Fund 258 and allocated from the reserve for capital improvement fund balance.

Resolution 09-0330 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Gardner and President Gilbert -- 5

Nays: Councilors Fedora, Fosle, Krause and Stauber -- 4

Approved May 26, 2009

DON NESS, Mayor

- - -

Resolution 09-0361, by Councilor Gardner, of intent to include \$200,000 in the 2010, 2011, 2012, 2013 and 2014 general fund budgets as a voluntary payment to the business improvement district, was introduced for discussion.

The rules were suspended upon a unanimous vote to hear from a speaker on the resolution.

Kristi Stokes, executive director of the Greater Downtown Council, expressed support for the resolution for reasons of: this would be a continuation of a very successful project with the city; five years ago the property owners supported an additional fee for the betterment of the Downtown; this project has made the Downtown friendlier, cleaner and safer and this provides an environment where individuals want to live, work and shop.

Councilor Krause noted his concerns of locking the city into funding this for several years because: sales and property tax receipts are decreasing; the city's financial status is constantly changing and city services are having to be reduced.

Councilor Krause moved to amend the resolution by deleting the years "2011, 2012, 2013 and 2014," which failed for lack of a second.

Councilor Krause moved to amend the last paragraph of the resolution by adding the phrase "subject to annual review as part of the regular city budget process" after the phrase "2010, 2011, 2012, 2013 and 2014 annual budgets," which motion was seconded and carried as follows:

Yeas: Councilors Cuneo, Eckenberg, Fosle, Gardner, Krause and President Gilbert -- 6

Nays: Councilors Anderson, Fedora and Stauber -- 3

Councilor Fosle stated that he would be abstaining because when his band played at a recent "Rock the Block" event they were paid by the Greater Downtown Council.

President Gilbert stated that he opposed the resolution because this resolution would reduce the amount of tourism tax that is available for important projects and that the costs for improving the Downtown could be funded by other means so that the city does not have to subsidize this project.

Resolution 09-0361, as amended, was adopted as follows:

BY COUNCILOR GARDNER:

WHEREAS, the Greater Downtown Council ("GDC") was incorporated as a private, nonprofit corporation in the state of Minnesota in 1984; and

WHEREAS, the mission statement of the GDC states that it exists to promote and support the development of a clean, safe and vibrant Downtown, is a catalyst and coordinator for enhancing the Downtown business climate through the public and private sectors, and plays a unique role in bringing together business, community and government leaders to focus on Downtown issues; and

WHEREAS, the city of Duluth ("city") and the Duluth economic development authority ("DEDA") have both relied upon the GDC as a partner in addressing such Downtown issues; and

WHEREAS, the city is represented on the GDC's Duluth Downtown Waterfront District advisory committee; and

WHEREAS, from the GDC membership as well as from initiatives including the economic summit, the mayor's Downtown task force and the national trust for historic preservation's preservation development initiative project, there has been a call for heightened efforts to have a strong, healthy Downtown that includes residential, professional services, education, retail and entertainment; and

WHEREAS, under Minnesota Statutes Chapter 428A, cities are authorized to adopt an ordinance establishing what is referred to as a special service district; and

WHEREAS, in 2004, a special services district ("district") was approved for Downtown Duluth which has operated to provide a wide range of services to promote a safe, clean and vibrant Downtown Waterfront; and

WHEREAS, the GDC board of directors has operated the district since 2005 and will continue to successfully focus upon clean and safe issues, marketing/promotions/special events, and physical enhancements utilizing a proposed total district budget for calendar year 2010 in the amount of \$534,000; and

WHEREAS, the city has provided financial support for the district since 2005 in the amount of \$200,000.00 per year; while the city's contribution has remained stable, the property owners in the district have paid 2-3% annual increases each year since the district's inception to meet the need for increasing services; and

WHEREAS, due to difficult economic times, the city has limited resources and has scaled back on some services citywide; and

WHEREAS, the district is willing to assume responsibility for enhanced trash removal services as well as skywalk operations and security until the end of 2014, or until such time that the city has the financial ability to provide such services; and

WHEREAS, the GDC will begin its public petition drive to renew the district in early June 2009; and

WHEREAS, approximately \$301,000 will be generated from mandatory assessments within the district and an estimated \$7,500 will be generated from voluntary payments made in lieu of assessments from those district property owners that are governmental and/or nonprofit and the GDC has applied for \$20,000 of grant funds; and

WHEREAS, the administration has expressed its continued support of the GDC and the desired outcomes of the district.

NOW, THEREFORE, BE IT RESOLVED, that the Duluth City Council hereby states its intention to include in its 2010, 2011, 2012, 2013 and 2014 annual budgets, subject to annual review as part of the regular city budget process, an appropriation of \$200,000 for its voluntary

payment to the district, which payment would likely be derived from the tourism tax fund and the parking fund and/or such other fund sources as the city administration may designate.

Resolution 09-0361, as amended, was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Gardner and Stauber -- 6

Nays: Councilor Krause and President Gilbert -- 2

Abstention: Councilor Fosle -- 1

Approved May 26, 2009

DON NESS, Mayor

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Resolution 09-0362 and 09-0363, denying and granting, respectively, an application for zoning code variance by Commonweal Development for property located at the corner of Kenwood Avenue and Arrowhead Road (1402 West Arrowhead Road proposed address), were introduced by Councilor Stauber for discussion.

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

Mary Gallegos, Diane Schubert, Cheryl Behling, Barbara Brooks, Diane Sorensen, Jane Planton, Marlene Zwak, Pat Trachte and Dave Barschdorf supported Resolution 09-0362 [*denying application*] for reasons of: this location does not fit into the guidelines set by prior city councils; there is no benefits to having a Walgreens at this location; the petition submitted by Mary Gallegos reflects the support of approximately 538 individuals; initially when the development was proposed, it was a small credit union, which did not adversely affect the neighborhood; one exit and entrance off Cleveland, which is a dead end street, is not compatible to the neighborhood; the approval for the credit union was never intended for something larger like this; this would not allow for children to play safely outside; three houses should not be torn down for this project; putting a signal light half a block away will not allow for smooth traffic flow; in getting the initial approval the credit union committed to a 9:00 a.m. to 5:00 p.m., Monday through Friday, business at this location; the comprehensive plan states... "to avoid large scale commercial development in this area"; this proposed business would likely drive an already similar business out of business; the intersection of Kenwood Avenue and Arrowhead Road have the second highest incidence of serious accidents in the city; with all the different changes, it appears to be a "back door" approach and this has been voted on before and should be considered a dead issue.

Stuart Shafer spoke in support of Resolution 09-0363 [*granting an application*] for reasons of: they have been working over a year trying to deal with all the issues in good faith; the use is appropriate for this site; the plan can be implemented with only positive impacts for the neighborhood; the objections are based on misinformation and "not in my backyard" reasoning; city staff supports this project and there are many economic benefits with this project.

The councilors discussed at length the issues presented by the speakers.

Resolution 09-0363 failed upon a unanimous vote (Public Document No. 09-0526-21).

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Resolution 09-0362 was adopted as follows:

BY COUNCILOR STAUBER:

RESOLVED, that the application for a variance from the zoning ordinance is denied based upon the following:

(a) Based upon the record presented, the applicant has failed to show that the project would safeguard the character of the more restricted district and protect the character of the surrounding property as required by sections 50-47(c)(1) and (5) of the Duluth City Code.

Resolution 09-0362 was unanimously adopted.
Approved May 26, 2009
DON NESS, Mayor

- - -

Resolutions 09-0371 and 09-0372, reversing and affirming, respectively, the decision of the board of zoning appeals to grant a variance to ISD #709 to allow front yard parking on property located at 301 North 40th Avenue East (Ordean School), were introduced by Councilor Stauber for discussion.

The rules were suspended upon a unanimous vote to hear from a speaker on the issue.

Kerry Leider, representing Independent School District #709, spoke in support of Resolution 09-0372 [*affirming decision*] and responded to questions raised at the committee meeting regarding the school's starting and ending time and number of parking spaces. He noted that this resolution will have more positive than negative impacts on the neighborhood, the bus diesel emissions will be reduced by moving the bus drop off to the west side of the building and the visual impact to homes across from this area will be reduced by those houses being purchased by the school district.

Councilor Fedora supported Resolution 09-0372 as it would allow for more off street parking and with the district purchasing the homes on the east side of 40th Avenue East, no homes would be facing the school directly.

Resolution 09-0372 failed upon the following vote (Public Document No. 09-0526-22):

Yeas: Councilors Cuneo and Fedora -- 2

Nays: Councilors Anderson, Eckenberg, Gardner, Krause, Stauber and President Gilbert -- 6

Abstention: Councilor Fosle -- 1

- - -

Councilors supported Resolution 09-0371 [*reversing decision*] because of: the need for the proof of hardship; the increased traffic that will be at a high school; the neighborhood's safety; the impervious runoff that will be created and the close proximity of the loading zone and parental drop off area.

Councilor Stauber moved to amend the resolution as follows:

(a) In subparagraph (b), insert the word "not" before the word "necessary";

(b) In subparagraph (c), delete the word "not" before the word "necessary,"

which motion was seconded and carried upon the following vote:

Yeas: Councilor Anderson, Cuneo, Eckenberg, Gardner, Krause, Stauber and President Gilbert -- 7

Nays: Councilor Fedora -- 1

Abstention: Councilor Fosle -- 1

Resolution 09-0371, as amended, was adopted as follows:

RESOLVED, that the decision of the board of zoning appeals granting an application for a variance by ISD #709 to allow front yard parking is reversed upon the following findings:

(a) ISD #709 has failed to produce sufficient evidence demonstrating that a hardship exists as required by Duluth Legislative Code Section 50-47(b);

(b) That a variance is not necessary for the preservation and enjoyment of a substantial property right;

(c) That a variance would unreasonably increase traffic or diminish property values.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Resolution 09-0371 was adopted upon the following vote:

Yeas: Councilors Anderson, Eckenberg, Gardner, Krause, Stauber and President Gilbert -- 6

Nays: Councilors Cuneo and Fedora -- 2

Abstention: Councilor Fosle -- 1

Approved May 26, 2009

DON NESS, Mayor

- - -

Resolution 09-0366, by Councilor Anderson, of intent regarding the issuance of a demolition permit for the historic St. Louis County jail building and rescinding Resolution No. 09-0317, was introduced for discussion.

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

Jay Cole and Penny Clark expressed opposition to the resolution for reasons of: there will be fund raiser event to utilize the building so that it will create jobs, housing and end poverty (see Public Document No. 09-0526-26); the heritage preservation commission has voted to deny a demolition permit to St. Louis County because of its adverse affect the Duluth city heritage district; city ordinances prohibit demolition of local designated landmarks and the council is elected to uphold city ordinances.

Councilor Cuneo moved to amend the resolution by changing "November 15, 2009" to "April 15, 2010," because he felt six months is not an adequate realistic time for the intent of this resolution to happen, which motion was seconded for discussion.

Councilor Eckenberg opposed the amendment for reasons of: the belief that the local ordinance is in direct contradiction to the framework of the four points for decision making, that the city attorneys office advised the council about; dragging this out will serve not purpose and it will end up in the courts regardless.

Councilor Gardner felt that the resolution is intended to be a compromise and an opportunity for both parties to work together.

Councilor Cuneo's amendment failed upon the following vote:

Yeas: Councilors Cuneo, Gardner, Krause and President Gilbert -- 4

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

Resolution 09-0366 was adopted as follows:

BY COUNCILOR ANDERSON:

WHEREAS, by vote on April 27, 2009, the Duluth City Council denied the issuance of a permit to St. Louis County for the demolition of the historic St. Louis County jail in Duluth, Minnesota (09-0281R); and

WHEREAS, as of April 27, 2009, St. Louis County has not adequately shown that no "feasible and prudent" alternative exists.

THEREFORE, BE IT RESOLVED, that if St. Louis County reapplies for the demolition permit and if this matter comes before this body, the city council hereby expresses its intent to issue a demolition permit anytime after November 15, 2009, to St. Louis County for the historic jail based on a showing of no "feasible and prudent" alternative if the county demonstrates a good faith attempt to aggressively market the property to a developer with the financial means and professional experience necessary to redevelop the property and has been unsuccessful in those attempts.

FURTHER RESOLVED, that City Council Resolution No. 09-0317 is hereby rescinded and shall be of no force and effect.

Resolution 09-0366 was adopted upon the following vote:

Yeas: Councilors Anderson, Eckenberg, Fedora, Fosle, Gardner and Stauber -- 6

Nays: Councilors Cuneo, Krause and President Gilbert -- 3

Approved May 26, 2009

DON NESS, Mayor

- - -

Resolution 09-0357, authorizing the proper city officials to enter into an agreement with the Duluth Area Family YMCA for the operation of various city park facilities, was introduced by Councilor Anderson for discussion.

Councilor Gardner moved to table the resolution so that more information could be secured, which motion was seconded and carried upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Gardner, Krause, Stauber and President Gilbert -- 7

Nays: Councilors Fedora and Fosle -- 2

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INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR FEDORA

09-024 - AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF \$4,700,000 GENERAL OBLIGATION REVENUE BONDS OR NOTE OF THE CITY OF DULUTH 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 noted that while this ordinance authorizes the issuance of bonds up to \$4,700,000, the actual expenditure by the city will be only approximately \$800,000 because of the receipt of federal stimulus funds.

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BY COUNCILOR FEDORA

09-026 - AN ORDINANCE AMENDING SECTION 29A-34 OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO RENTAL LICENSING APPEAL PROCEDURES.

- - -

INTRODUCED BY COUNCILOR STAUBER

09-027 - AN ORDINANCE AMENDING SECTIONS 44-23, 50-21 AND 50-35 OF THE DULUTH CITY CODE, AS AMENDED.

- - -

INTRODUCED BY COUNCILOR STAUBER

09-029 - AN ORDINANCE GRANTING TO VINEYARD CHRISTIAN FELLOWSHIP A CONCURRENT USE PERMIT TO PLACE LANDSCAPE/SIGNAGE IN THE RIGHT-OF-WAY AT 1533 WEST ARROWHEAD ROAD.

- - -

INTRODUCED BY COUNCILOR STAUBER

09-030 - AN ORDINANCE AMENDING SECTION 50-35 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

- - -

BY COUNCILORS STAUBER AND KRAUSE

09-025 - AN ORDINANCE AMENDING SECTION 29A-32.1 OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO RENTAL LICENSING.

- - -

At this time, 10:48 p.m., Councilor Krause moved to amend the standing rules to extend the meeting until 11:10 p.m., which motion was seconded and unanimously carried.

- - -

The following entitled ordinance was read for the second time:

INTRODUCED BY COUNCILOR FOSLE

09-023 (9974) - AN ORDINANCE ADDING NEW SECTIONS 45-82.4 AND 45-82.5 TO THE DULUTH CITY CODE, 1959, AS AMENDED, AUTHORIZING PRIVATE WORK IN CONJUNCTION WITH CITY SIDEWALK CONTRACTS.

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 11: 06 p.m.

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 9973

AN ORDINANCE AMENDING CHAPTER 29B OF THE DULUTH CITY CODE, 1959, AS AMENDED, MODIFYING REGULATIONS FOR ALARM SYSTEMS AND FALSE ALARM CALLS.

The city of Duluth does ordain:

Section 1. That Chapter 29B of the Duluth City Code, 1959, as amended, is hereby amended by deleting said Chapter as existing in its entirety and by substituting the following therefore:

CHAPTER 29B.

ALARM SYSTEMS AND FALSE ALARM CALLS.

Sec. 29B-1. Purpose.

The purpose of this Chapter is to reduce the number of false alarms and thereby protect the public safety by minimizing unnecessary use of the city's resources. This Chapter provides regulation for the use of alarm systems, establishes permit fees, provides for penalties for violations and establishes a system of administration.

Sec. 29B-2. Definitions.

For purposes of this Chapter, the following terms shall be defined as follows:

(a) Act of nature. An unusual, extraordinary, sudden and unexpected manifestation of the forces of nature that cannot be prevented by reasonable human care, skill or foresight;

(b) Alarm company. The business by any individual, partnership, corporation or other entity of selling, leasing, maintaining, monitoring, servicing,

repairing, altering, replacing, moving, or installing any alarm system or causing to be sold, leased, maintained, monitored, serviced, repaired, altered, replaced, moved or installed, any alarm system in or on any building, structure or premises;

(c) Alarm permit. A permit issued by the police department to an alarm system user;

(d) Alarm system. Any instrument(s) or other device(s) which, as one of its purposes, is used to protect buildings, dwellings, structures, premises or persons from criminal acts or unauthorized entries by warning persons of a crime or unauthorized entry through the automatic emission or transmission of a sound or signal to any person or alarm company, who then requests a police department response (Automobile alarm devices shall not be considered an alarm system under the terms of this Chapter.);

(e) Alarm system user. The person, firm, partnership, association, corporation, company or other entity of any kind that uses or is in control of any building, dwelling, structure or premises wherein an alarm system is maintained, regardless of whether it owns or leases the system;

(f) Building. A structure suitable for affording shelter for human beings including any appurtenant or connected structure;

(g) Dwelling. The building or part of a building used by an individual as a place of residence on either a full-time or a part-time basis. A dwelling may be part of a multi dwelling or multipurpose building or a manufactured home as defined in Minnesota Statutes §327.31, subdivision 6;

(h) False alarm. Any activation of an alarm not caused by or as a result of a criminal act, an unauthorized entry or an act of nature;

(i) False alarm dispatch. The response by an officer(s) or designee of the police department to the building, dwelling, structure, premises or person where an alarm has been activated and after investigation, finding that there is no reason to believe the occurrence of a criminal offense or unauthorized entry. It shall not be considered a false alarm dispatch if the alarm company or alarm system user cancels the alarm dispatch request prior to the police department being dispatched;

(j) False alarm dispatch notice. A written notice form sent to the alarm system user that the alarm has been determined to be a false alarm dispatch and that subsequent false alarm dispatches will result in a penalty under Section 29B-4;

(k) Premises. Real property and any appurtenant building or structure. Sec. 29B-3. Alarm system user permit.

(a) Upon the effective date of this Section, every alarm system user shall obtain, for each alarm system, approval from the police department for an alarm system user permit. A permit when issued shall be valid from January 1 to December 31 and must be renewed by the alarm system user each year thereafter. As part of the renewal process, the alarm system user must provide a current list of the names and telephone numbers of those persons (keyholders) who have the ability to control the alarm system and who are available 24 hours per day;

(b) The annual fee for the permit and renewal thereof shall be set in accordance with Section 31-6(a) of this Code;

(c) The permit shall be physically displayed upon the premises where the alarm system is used, shall be readily visible from the exterior thereof, and shall be available for inspection by the police department;

(d) Any person, corporation, or other entity applying for an alarm system user permit shall supply to the police department, on a form to be provided, the following information:

- (1) The name, address and telephone number of the applicant;
- (2) The place and address where the alarm system will be installed and maintained;
- (3) The person or entity responsible for installing, maintaining, monitoring, altering and/or servicing the alarm system;
- (4) The type of alarm system being installed;
- (5) A list of the names and telephone numbers of those persons (keyholder) who have the ability to control the alarm system and who are available 24 hours per day;
- (6) Additional information as required by the police department;

(e) A charge, thereof shall be set in accordance with Section 31-6(a) of this Code, and will be added to any fees herein for any alarm system user who fails to obtain an alarm system permit within 30 days after the effective date of this Section, or who is more than 30 days delinquent in renewing an alarm system user permit;

(f) Upon request, an alarm company shall provide to the city, in a form and format specified by the city, the name, address and telephone number of the alarm users to whom the alarm business provides alarm services.

Sec. 29B-4. False alarms; penalties.

(a) Any alarm system user having more than two false alarm dispatches in any consecutive 365 day annual period shall pay a false alarm fee to the city set in accordance with Section 31-6(a) of this Code;

(b) Regardless of the number of false alarm dispatches in an annual period, the alarm system user shall pay an additional fee as set in accordance with Section 31-6(a) of this Code for each false alarm dispatch where the keyholder fails to respond to the premises within 30 minutes of notice of the 911 dispatch;

(c) Any fee not received by the city within 30 days shall be increased by a late fee set in accordance with Section 31-6(a) of this Code.

Sec. 29B-5. Alarm system not to be similar to sirens.

It shall be unlawful to install or use an alarm system, which upon activation emits a sound similar to sirens in use on emergency vehicles or for civil defense purposes.

Sec. 29B-6. Violation and payment of administrative fees.

It is a violation of this Chapter for an alarm system user to fail to comply with sections 29B-1 through 29B-5.

If payment of any fee herein is not received by the city within 90 days of the violation, a citation may be issued for failure to pay the administrative fee, the city may commence proceedings to revoke the permit of the alarm system user and/or assess outstanding fee(s) in accordance with Section 29B-7.

Sec. 29B-7. Assessment for any violation of this Chapter.

(a) On or before June 1 of each year, the department head of the police department or designee, may transmit to the city assessor a list of the properties, which have outstanding fees for violation(s) under this Chapter, including the amount due. Such list shall be accompanied by a verified statement that the amounts indicated are in fact due and owing, and that the police department has made a reasonable attempt to collect such amounts. For each account transmitted, a collection fee in the amount set by city council resolution shall be added to reimburse the city its administrative costs;

(b) Upon the receipt of such list, the city assessor shall make an assessment roll containing, in columns, the name of the owner of each lot or parcel of land separately assessed. The assessment roll shall include the collection fee set forth in Section 29B-7(a);

(c) On or before July 1 of each year, the city assessor shall certify the assessment roll to the city council. The assessor shall give 20 days notice by first class mail to the apparent owner of each lot or parcel of land and any other party known to have a legal interest in said land stating the amount of the assessment, including the collection fee, the description of the property, that the assessment roll is on file in the assessor's office and that any party aggrieved by the assessment may appeal the assessment to the city assessor by filing a written notice of appeal with the assessor within 20 days after the notice of assessment. Such notice shall indicate that the assessment, including the collection fee, is due and payable to the city on or before October 1 of the current year. Failure to make payment by such date shall render the assessment delinquent;

(d) Any party aggrieved by an assessment made pursuant to this Chapter may appeal such assessment by filing a written notice of appeal with the city assessor. The notice shall state the precise grounds upon which the appeal is taken. The city assessor shall notify the appellant of the time and place of the hearing. At the hearing, the city assessor shall hear and determine all objections made to the regularity of the proceedings or to the correctness of the amount of such assessment or of the amount levied upon a particular lot or parcel of land. If the proceedings are found to be regular and the amounts claimed had been properly billed to the occupant of the premises, the assessor shall correct any errors which may have been found in the assessment and shall thereupon recommend that the city council by resolution confirm such assessment. To each assessment a collection fee shall be added in an amount set by council resolution to reimburse the city its administrative assessment costs. Immediately thereafter notice of the confirmed assessment and its amount, including the collection fees, shall be sent by the city treasurer by mail to the apparent owner of each lot or parcel of land assessed. Such notice shall indicate that the assessment is due and payable on or before October 1 of the year when confirmed and that failure to make payment by such date shall render the assessment delinquent. After all appeals are heard and determined, the city council shall confirm the entire assessment roll by resolution;

(e) After the city council confirms the assessment roll, the city treasurer shall file with the county auditor, during the time set by law for such filings, a certified statement of all assessments delinquent under this Chapter, describing the land

affected and giving the amount of the assessment, with ten percent penalty added, after which the assessment shall follow the provisions of Section 70 of the City Charter.

Annually, the city treasurer shall remit to the police department all sums together with the interest thereon collected with regard to delinquent accounts submitted to the city treasurer. Any penalty collected by the city treasurer on such accounts shall be retained by the city treasurer;

(f) The provisions of sections 64, 65, 66 and 67 of the City Charter with reference to appeals to the district court shall apply to the provisions of this Chapter in reference to the confirmation of assessments.

Sec. 29B-8. Confidentiality of data.

To the extent permitted by law, all information submitted in compliance with this Chapter shall be held in the strictest confidence and shall be designated nonpublic data and security information exempt from disclosure. Any violation of confidentiality should be deemed a violation of this Chapter.

Section 2. That this ordinance shall take effect January 1, 2010.

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Stauber and President Gilbert -- 8

Nays: Councilor Krause -- 1

ATTEST:
JEFFREY J. COX, City Clerk

Passed May 26, 2009
Approved May 26, 2009
DON NESS, Mayor

- - -

ORDINANCE NO. 9974

AN ORDINANCE ADDING NEW SECTIONS 45-82.4 AND 45-82.5 TO THE DULUTH CITY CODE, 1959, AS AMENDED, AUTHORIZING PRIVATE WORK IN CONJUNCTION WITH CITY SIDEWALK CONTRACTS.

The city of Duluth does ordain:

Section 1. That Chapter 45 of the Duluth City Code, 1959, as amended, is hereby amended by the addition of a new Section 45-82.4, which reads as follows:

Sec. 45-82.4. Public sidewalk repair--private initiation--assessment.

The city engineer is authorized to contract with private property owners to repair or replace the public sidewalk located on said owner's property subject to the owner or owners of benefitted property agreeing, in the form of an agreement which is approved by the city attorney, to either reimburse the city for all of the city's direct and indirect costs of such work or agreeing that the benefitted property be assessed for all of such costs. The term of any such assessment shall be established by the city engineer.

Section 2. That Chapter 45 of the Duluth City Code, 1959, as amended, is hereby amended by the addition of a new Section 45-82.5, which reads as follows:

Sec. 45-82.5. Incidental private repair--assessments.

When the city is itself or by means of a contract repairing or replacing any public sidewalk, the city engineer or his or her designee is hereby authorized to enter into an agreement to repair or replace private sidewalks, curbs, stairs, railings or concrete curb aprons on property on or adjacent to property upon which said public sidewalks are located subject to the owner or owners of benefitted property agreeing, in the form of an agreement which is approved by the city attorney, to either reimburse the city for all of the city's direct and indirect costs of such work or agreeing that the benefitted property be assessed for all of such costs. The term of any such assessment shall be established by the city engineer.

Section 3. This ordinance shall take effect 30 days from and after its passage and publication. (Effective date: July 1, 2009)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed May 26, 2009
Approved May 26, 2009
DON NESS, Mayor

- - -

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, June 8, 2009, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Cuneo, Eckenberg, Fedora, Fosle, Gardner, Stauber and Vice President Anderson -- 7

Absent: Councilor Krause and President Gilbert -- 2

- - -

Vice President Anderson presided in the absence of President Gilbert.

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

09-0608-01 Minnesota state auditor Lake Superior Center authority audit report for the year ended December 31, 2007. -- Received

09-0608-09 Jerome and Jean Kwako communication regarding board of zoning appeals decision to grant a variance to ISD #709 to allow front yard parking on property located at 301 North 40th Avenue East (Ordean School) (09-0371R and 09-0372R). -- Received

09-0608-10 Ken Lindberg communication regarding skateboarding in Canal Park (09-035-O). -- Received

09-0608-11 The following communications regarding the proposed creation of the Duluth private sewer service grant/loan program and increasing the amount of the clean water fund surcharge (09-033-O): (a) Donn Larson; (b) Don Letourneau; (c) Rodney Lubiani; (d) Mike Morrissey; (e) Jim Peterson; (f) Michael Skog; (g) Sheila Vath. -- Received

09-0608-12 The following communications regarding the proposed curfew amendment (09-008-O): (a) Kathy Dockter; (b) Pamela Kleinschmidt; (c) Debbie Isabell Nelson; (d) Wayne Purser; (e) Karin Swor. -- Received

- - -

REPORTS FROM OTHER OFFICERS

09-0608-02 Assessor letter of sufficiency regarding petition to vacate the alley between Lots 1 and 27-30, Block 81, Central Dickson Division. -- Received

09-0608-03 Clerk application to the Minnesota gambling control board for exemption from lawful gambling license (raffle) from Domestic Abuse Intervention Programs on August 3, 2009. -- Received

- - -

REPORTS OF BOARDS AND COMMISSIONS

09-0608-04 Board of zoning appeals minutes of April 28, 2009, meeting. -- Received

09-0608-05 Building appeal board minutes of April 8, 2009, meeting. -- Received

09-0608-06 Duluth transit authority: (a) February 2009 income statement; (b) Minutes of: (1) March 16; (2) March 25, 2009, meetings. -- Received

09-0608-07 Library board minutes of April 28, 2009, meeting. -- Received

09-0608-08 Special board of review minutes and report of May 13, 2009, meeting. -- Received

- - -

OPPORTUNITY FOR CITIZENS TO BE HEARD

Glen Filipovich requested that the six month window that the council has given to sell the St. Louis County jail not start until the request for the RFP is completed, the Duluth Preservation Alliance has reviewed the request, a competent broker is employed who deals with historic and commercial property and the advertising actually begins with a real estate broker.

- - -

Jerry Schlafer stated that the ticket revenue from the Northern Lights train will not be enough to pay for the train as most people will not ride the train because it will cost more and take more time to get from their house in Duluth to their destination in the Twin Cities than driving themselves. He continued saying it will start with eight trains a day but they will have to keep cutting that number until it is affordable and will end up needing a public subsidy to keep it solvent.

- - -

State Representative Roger Reinert reviewed that it was a good session for Duluth in the legislature with Duluth receiving funding for several projects, and thanked the council for his experience on the council and their quick responses for opinions and issues when he needed to talk about a bill being proposed in the legislature.

- - -

RESOLUTIONS RECONSIDERED

At this time, Vice President Anderson moved to reconsider resolutions 09-0371 and 09-0372, reversing and affirming, respectively, the decision of the board of zoning appeals to grant a variance to ISD #709 to allow front yard parking on property located at 301 North 40th Avenue East (Ordean School), which motion was seconded and carried upon the following vote:

Yeas: Councilors Cuneo, Eckenberg, Fedora, Gardner and Vice President Anderson -- 5

Nays: Councilor Stauber -- 1

Abstention: Councilor Fosle -- 1

Absent: Councilor Krause and President Gilbert -- 2

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

Dale Pagenkopf spoke against the councilors reconsidering the resolutions as there is a lack of usable space for parking for the students and teachers.

Brian Ronstrom questioned why this issue was being brought back when the council had voted down the request, as councilors had expressed concern about front yard parking and service delivery which does not belong in the front yard of a school.

Councilor Gardner moved to table the resolutions until the absent councilors were able to be present, which motion was seconded and carried upon the following vote:

Yeas: Councilors Cuneo, Eckenberg, Fedora, Gardner, Stauber and Vice President Anderson -- 6

Nays; None -- 0

Abstention: Councilor Fosle -- 1

Absent: Councilor Krause and President Gilbert -- 2

- - -

RESOLUTION TABLED

Vice President Anderson moved to remove Resolution 09-0357, authorizing the proper city officials to enter into an agreement with the Duluth Area Family YMCA for the operation of various city park facilities, from the table, which motion was seconded and unanimously carried.

Resolution 09-0357 was adopted as follows:

WHEREAS, the city faces a demand for the provision of public recreational services with reduced financial and staffing resources; and

WHEREAS, the Duluth Area Family YMCA desires to enter into an agreement with the city for the operation of the Woodland Community Center, program use of a portion of Chester Bowl and facility scheduling, program use and lifeguarding services at Park Point Recreation Area.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officers are authorized and directed to execute the agreement filed as Public Document No. 09-0609-13, between the city of Duluth and the Duluth Area Family YMCA.

Resolution 09-0357 was unanimously adopted.

Approved June 8, 2009

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.)

Vice President Anderson 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 contract with The Jamar Company for reroofing of 40th Avenue West tool house in accordance with its low specification bid of \$35,800; \$15,286 payable out of General Fund 100-700-1420-5520, CM OT-0815G and \$20,514 payable out of General Fund 100-700-1420-5520, CM 09-01G.

Resolution 09-0333 was unanimously adopted.

Approved June 8, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to contract with Architecture Advantage, LLP, for professional services in providing architectural, interior design and space planning needs assistance at various city structures for an amount not to exceed \$10,000, terms net 30, payable from the General Fund 110, 700, Organization 1423, Object 5520; said services to be substantially as outlined in the agreement on file in the office of the city clerk as Public Document No. 09-0608-14.

Resolution 09-0351 was unanimously adopted.

Approved June 8, 2009

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 Lakehead Racing Association and Spirit

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Valley Citizens Neighborhood Development Association 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 09-0380 was unanimously adopted.

Approved June 8, 2009

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, 2009, subject to departmental approvals, the payment of sales and property taxes, and further subject to approval by the liquor control commissioner:

Lakehead Racing Association (Proctor Speedway), 800 Boundary Avenue, with John Omundson, manager.

Resolution 09-0381 was unanimously adopted.

Approved June 8, 2009

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the following on sale intoxicating liquor 2:00 a.m. beverage license for the period ending August 31, 2009:

JMMP Enterprises, LLC (Kom On Inn), 332 North 57th Avenue West.

Resolution 09-0382 was unanimously adopted.

Approved June 8, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Duncan Technologies, Inc., for the purchase and delivery of parking meters and meter replacement parts for traffic maintenance in accordance with specifications and the vendor's quote of \$39,978.75 plus \$2,598.62 sales tax for a total amount of \$42,577.37, terms net 30, FOB destination, payable from the Parking Fund 505, Department 015, Organization 1481, Object 5241.

Resolution 09-0387 was unanimously adopted.

Approved June 8, 2009

DON NESS, Mayor

- - -

RESOLVED, that:

(a) The city council finds a sufficient petition was filed with the city clerk requesting the vacation of that part of the utility easement as shown on the plat of Country Club Division according to the plat on file in the office of the county recorder, St. Louis County, Minnesota, described as follows:

Beginning at the most northerly corner of Lot 1, said Country Club Division; thence north 71 degrees 47 minutes 30 seconds east, assumed bearing along the southeasterly line of Superior Street, a distance of 34.74 feet to the most northerly corner of the plat of said Country Club Division; thence on a bearing of south 192.65 feet along the easterly line of said Country Club Division; thence south 71 degrees 47 minutes 30 seconds west 58.22 feet along the southeasterly line of said Country Club Division to the southeasterly extension of the southwesterly line of said Lot 1; thence north 18 degrees 12 minutes 30 seconds west 33.00 feet along said

southeasterly extension to the most southerly corner of said Lot 1; thence north 71 degrees 47 minutes 30 seconds east 12.63 feet along the southerly line of said Lot 1; thence northeasterly 37.59 feet along a tangential curve concave to the northwest having a central angle of 71 degrees 47 minutes 30 seconds and a radius of 30.00 feet; thence on a bearing of north 136.20 feet along the east line of said Lot 1 to the point of beginning; 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, 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 is useless, based on the finding that there are no existing utilities within the easement; and

(c) The planning commission, at its May 12, 2009, regular meeting, did approve, unanimously, vacating the easement; and

(d) The city council of the city of Duluth approves the vacation of the following and as more particularly described on Public Document No. 09-0608-15:

Beginning at the most northerly corner of Lot 1, said Country Club Division; thence north 71 degrees 47 minutes 30 seconds east, assumed bearing along the southeasterly line of Superior Street, a distance of 34.74 feet to the most northerly corner of the plat of said Country Club Division; thence on a bearing of south 192.65 feet along the easterly line of said Country Club Division; thence south 71 degrees 47 minutes 30 seconds west 58.22 feet along the southeasterly line of said Country Club Division to the southeasterly extension of the southwesterly line of said Lot 1; thence north 18 degrees 12 minutes 30 seconds west 33.00 feet along said southeasterly extension to the most southerly corner of said Lot 1; thence north 71 degrees 47 minutes 30 seconds east 12.63 feet along the southerly line of said Lot 1; thence northeasterly 37.59 feet along a tangential curve concave to the northwest having a central angle of 71 degrees 47 minutes 30 seconds and a radius of 30.00 feet; thence on a bearing of North 136.20 feet along the east line of said Lot 1 to the point of beginning; and

(e) That the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution together with a plat showing the portion of the easement to be vacated.

Resolution 09-0346 was unanimously adopted.

Approved June 8, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with the United States department of the Army, authorizing the city to accept a grant in the estimated amount of \$375,000 for the 2009 cured-in-place pipe rehabilitation of sanitary sewers, which funds shall be deposited into the Sanitary Sewer Fund 0530, Department 500, Division 1900, Revenue Source 4209-01, City Project No. 00724SN.

FURTHER RESOLVED, that the city understands that these COE Section 569 funds are available on a 75 percent/25 percent local sponsor matching basis. The city intends to match funds from the sale of revenue bonds which the city estimates to be \$157,155 or the as-bid costs of the project.

Resolution 09-0367 was unanimously adopted.

Approved June 8, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with the United States department of the Army, authorizing the city to accept a grant in the estimated amount of \$2,010,000 for the Lift Station No. 6 reconstruction and collection system and diversion structure piping improvements project, which funds shall be deposited into the Clean Water Fund 0532, Department 500, Revenue Source 4209-01, City Project No. 0802SN.

FURTHER RESOLVED, that the city understands that these COE Section 569 funds are available on a 75 percent/25 percent local sponsor matching basis. The city intends to match funds from a public facilities authority loan which the city estimates to be \$1,000,000 or the as-bid costs of the project.

Resolution 09-0368 was unanimously adopted.

Approved June 8, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Rice Lake Construction Group for the construction of the Lakeside interceptor sanitary sewer overflow storage facility in Basin No. 2 in the amount of \$5,884,400, which is being funded by a \$1,526,267 grant from the 2005 bonding bill, by a \$3,660,833 grant from ARRA, and with the remaining \$697,300 payable out of the Clean Water Fund 0532, Department/Agency 500, Object 5532, City Project No. 0696SN, Requisition No. 09-0289.

Resolution 09-0370 was unanimously adopted.

Approved June 8, 2009

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. 09-0608-16 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 09-0375 was unanimously adopted.

Approved June 8, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with JMF Construction, Inc., for the 2009 CDBG Phase 6 Downtown area accessibility project - curb ramps and sidewalk replacement for the apparent low bid of \$126,266.30, payable out of CDBG Fund 0262, Department/Agency 020, Object 5434, City Project No. 0774TR.

Resolution 09-0376 was unanimously adopted.

Approved June 8, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Brandon Kubis, dba B.K. Cleaners, for the painting of 2,573 gas meter piping sets throughout the

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

city of Duluth for the customer service division for the low bid of \$30,824.54, payable out of Gas Fund 0520, Department/Agency 500, Organization 1905, Object 5535, City Project No. 0414GS.

Resolution 09-0377 was unanimously adopted.

Approved June 8, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Instrument Control Systems for a supervisory control and data acquisition system for the city of Duluth's natural gas, water and wastewater utilities, for the apparent low bid of \$2,797,789, with \$1,440,228 payable out of the Gas Utility Fund 0520, \$977,519 payable out of the Sanitary Sewer Utility Fund 0530, and \$380,042 payable out of the Water Utility Fund 0510, Department/Agency 500, Object 5533, City Project No. 0047GS.

Resolution 09-0378 was unanimously adopted.

Approved June 8, 2009

DON NESS, Mayor

- - -

RESOLVED, that pursuant to Section 61 of the 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 2009 street preservation program 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 be included in the special assessment:

Cody Street from Central Avenue West to 59th Avenue West (1,589 feet);

Superior Street from Garfield Avenue to Jenswold Street and Michigan Street from Jenswold Street to 40th Avenue West (total of 10,700 feet);

Kenwood Avenue from Skyline Parkway to Cleveland Street (5,088 feet).

Resolution 09-0386 was unanimously adopted.

Approved June 8, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officers are authorized to enter into an agreement with University of Minnesota-Duluth providing for the sharing of law enforcement data, said agreement to be substantially in the form of Public Document No. 09-0608-17, on file in the office of the city clerk.

Resolution 09-0374 was unanimously adopted.

Approved June 8, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Larson Chevrolet, Inc., for the purchase and delivery of a tax exempt 2009 Chevrolet Tahoe special services vehicle with options for the police department in accordance with specifications and the vendor's low bid of

\$28,987, terms net 30, FOB destination, and payable from the Duluth Police Grant Program Fund 215, Agency 200, Organization 2286, Object 5580.

Resolution 09-0379 was unanimously adopted.

Approved June 8, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Ultramax Ammunition for the purchase and delivery of ammunition in year 2009 for the police department in accordance with specifications and the vendor's low bid of \$33,871 plus sales tax of \$2,201.61 for a total of \$36,072.61, terms net 30, FOB destination, payable as follows:

(a) General Fund 110, Department 160, Organization 1620, Object 5217: \$11,072.61;

(b) General Fund 110, Department 160, Organization 1620, Object 5448: \$25,000.

Resolution 09-0388 was unanimously adopted.

Approved June 8, 2009

DON NESS, Mayor

- - -

The following resolutions were also considered:

Resolution 09-0329, authorizing the proper city officials to enter into a contract with KTM Paving, Inc., for bituminous overlays at fire stations #1, 4 and 7 in the amount of \$156,265, was introduced by Vice President Anderson.

Resolution 09-0329 failed upon a unanimous vote (Public Document No. 09-0608-18).

- - -

Resolution 09-0390, of intent regarding the creation and adoption of the Duluth private sewer service grant/loan program and program guidelines, was introduced by Councilor Fosle for discussion.

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

Dennis Lamkin stated he was in the first group of residents who had to get their lateral lines replaced and has spent \$23,259 to fix his lateral lines and supports the resolution to get some money from the city to help reimburse him for his costs.

Ted Chura questioned why he should have to pay for someone else's lateral lines and questioned why the administration wants everyone to pay for private sewer lines.

Councilor Fedora moved to table the resolution for consideration with companion Ordinance 09-033 on June 15, 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 FEDORA

09-032 - AN ORDINANCE TO AMEND THE DISTRIBUTION OF THE TAX LEVY OF THE CITY OF DULUTH FOR THE YEAR 2009 BY TRANSFERRING A PORTION OF THE DEBT SERVICE LEVY TO THE GENERAL FUND SUPPORT LEVY.

- - -

INTRODUCED BY COUNCILOR KRAUSE

09-031 - AN ORDINANCE MODIFYING CHAPTER 41 PURCHASING PROVISIONS, AMENDING SECTIONS 41-1, 41-6, 41-10, 41-15, 41-16, 41-23, 41-24, 41-28, AND REPEALING SECTIONS

41-7, 41-8, 41-11, 41-12, 41-13, 41-14, 41-25, 41-26 AND 41-31 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

- - -

BY COUNCILORS KRAUSE AND ECKENBERG

09-034 - AN ORDINANCE REGULATING RUBBISH AND TALL GRASS, AMENDING SECTIONS 24-6 AND 24-37 OF THE DULUTH CITY CODE.

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

Celia Scheer stated she understands the reason for the ordinance, but the city needs to focus on bigger issues for the city, and also stated that the city cannot successfully legislate behavior.

Anna Cook questioned who will be the authority to declare what property is a nuisance and what is offense, and why the ordinance does not address alternative lawncare procedures.

- - -

BY COUNCILOR GARDNER

09-035 - AN ORDINANCE AMENDING SECTIONS 33-5, 45-6.1 AND 45-6.2 OF THE DULUTH CITY CODE, 1959, AS AMENDED, REGARDING THE USE OF ROLLERBLADES, ROLLER-SKATES AND SKATEBOARDS.

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

Joe Ostberg, Ben Johnson and Dee Kubishak spoke against the ordinance for the following reasons: skateboarding is a way to get away from stress; skateboarding is a passion for a lot of kids and they spend hours practicing; skateboarding should not be taken away just because a few skaters are disrespectful; police already pick on skateboarders; the new skate park is hard to get to and is too small; there are no lights at the new skate park so you cannot skate at night; banning skateboarding will cast another shadow on Duluth's reputation; this will make the city unfriendly to young kids who want to do something out of the box; kids are being treated as menaces; skateboarding is not an organized sport so skateboarders are not treated the same as those who participate in school sponsored sports and restrictions should not be imposed until solutions are brought forward.

Scott Occhino, representing a group of inline skaters, requested the council consider groups like theirs when passing this ordinance and how it would affect their skating on the streets and sidewalks.

Scott Miller, representing Canal Park Business Association, urged support of the ordinance as the first step to alleviate the safety concerns for their customers in the district. He continued saying that business owners have tried to talk to the skaters about not using the benches and steps, but the problem is getting worse.

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INTRODUCED BY COUNCILOR FOSLE

09-033 - AN ORDINANCE AUTHORIZING CREATION OF THE DULUTH PRIVATE SEWER SERVICE GRANT/LOAN PROGRAM AND INCREASING THE AMOUNT OF THE CLEAN WATER FUND SURCHARGE, AMENDING SECTION 43-11.1 AND 43-33.1 OF THE CODE.

- - -

BY COUNCILOR CUNEO

09-008 - AN ORDINANCE AMENDING SECTION 34-1 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

- - -

The following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR FEDORA

09-024 (9975) - AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF \$4,700,000 GENERAL OBLIGATION REVENUE BONDS OR NOTE OF THE CITY OF DULUTH 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 Cuneo, Eckenberg, Fedora, Fosle, Gardner and Vice President Anderson

-- 6

Nays: Councilor Stauber -- 1

Absent: Councilor Krause and President Gilbert -- 2

- - -

BY COUNCILOR FEDORA

09-026 - AN ORDINANCE AMENDING SECTION 29A-34 OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO RENTAL LICENSING APPEAL PROCEDURES.

Councilor Fedora moved to table the ordinance so that all of the councilors would be in attendance to vote, which motion was seconded and unanimously carried.

- - -

INTRODUCED BY COUNCILOR STAUBER

09-027 - AN ORDINANCE AMENDING SECTIONS 44-23, 50-21 AND 50-35 OF THE DULUTH CITY CODE, AS AMENDED.

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

Kerry Leider explained that the school district has been working with the planning department to amend city ordinances to allow for the following: the proposed amendment would allow for school signs on the side of the school itself and one free standing ground sign; the proposed amendment would allow for a variance for a building height change as current language does not allow for that even if it is justified; and a proposed amendment would allow for off site parking for schools by a special use permit in existing smaller sites since the demand for parking has increased in areas where a school is in a neighborhood.

Councilor Stauber moved to table the ordinance so that all of the councilors would be in attendance to vote, which motion was seconded and carried upon the following vote:

Yeas: Councilors Cuneo, Eckenberg, Fedora, Gardner, Stauber and Vice President Anderson -- 6

Nays: None -- 0

Abstention: Councilor Fosle -- 1

Absent: Councilor Krause and President Gilbert -- 2

- - -

INTRODUCED BY COUNCILOR STAUBER

09-029 (9976) - AN ORDINANCE GRANTING TO VINEYARD CHRISTIAN FELLOWSHIP A CONCURRENT USE PERMIT TO PLACE LANDSCAPE/SIGNAGE IN THE RIGHT-OF-WAY AT 1533 WEST ARROWHEAD ROAD.

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

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INTRODUCED BY COUNCILOR STAUBER

09-030 (9977) - AN ORDINANCE AMENDING SECTION 50-35 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

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

Bill Burns stated that this has been an 18 month process and urged support of the ordinance which would allow tennis courts and sport courts as a special use permit in neighborhoods.

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

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BY COUNCILORS STAUBER AND KRAUSE

09-025 - AN ORDINANCE AMENDING SECTION 29A-32.1 OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO RENTAL LICENSING.

Councilor Stauber moved to table the ordinance so that all of the councilors would be in attendance to vote, which motion was seconded and unanimously carried.

- - -

The meeting was adjourned at 8:30 p.m.

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

- - -

ORDINANCE NO. 9975

AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF \$4,700,000 GENERAL OBLIGATION REVENUE BONDS OR NOTE OF THE CITY OF DULUTH 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 a commitment from the Minnesota public facilities authority (the "authority") for a loan and grant for the construction for the Lakeside interceptor sanitary sewer overflow storage facility - Basin No. 2, which consists of a two million gallon buried concrete wastewater overflow storage tank located at 20th Avenue East and Water Street (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 sewer utility for the project, and determines that it is necessary

to issue general obligation sewer utility revenue bonds or a note in the maximum amount of \$4,700,000 for the purpose of paying costs of the project.

1.03 The city has heretofore issued and sold the following: general obligation gas and sewer utilities revenue bonds dated December 1, 2001, the sewer utility portion of such bonds now outstanding in the amount of \$805,000; general obligation utilities facility bonds dated September 1, 2002, the sewer utility portion of such bonds now outstanding in the amount of \$1,338,000; general obligation utilities revenue bonds dated December 1, 2002, the sewer utility portion of such bonds now outstanding in the amount of \$1,220,000; general obligation water and sewer utilities revenue refunding bonds dated March 1, 2003, the sewer utility portion of such bonds now outstanding in the amount of \$195,000; general obligation sewer utility revenue note dated December 12, 2003, authorized in the amount of \$1,179,115; general obligation sewer utility revenue bonds dated December 1, 2004, now outstanding in the amount of \$3,175,000; general obligation sewer utility revenue bonds dated December 19, 2005, now outstanding in the amount of \$2,980,000; general obligation utilities revenue bonds dated December 19, 2006, the sewer utility portion of such bonds now outstanding in the amount of \$850,000; general obligation sewer utility revenue note dated July 12, 2007, authorized in the amount of \$2,042,350; general obligation sewer utility revenue bonds dated December 13, 2007, now outstanding in the amount of \$2,020,000; 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 \$1,165,035; and general obligation utilities revenue bonds dated February 19, 2009, the sewer utility portion of such bonds now outstanding in the amount of \$1,444,000. Under the provisions of the ordinances authorizing said bonds, the city reserved the privilege of issuing additional bonds payable from said net revenues on a parity with the bonds and notes dated December 1, 2001, September 1, 2002, December 1, 2002, March 1, 2003, December 12, 2003, December 1, 2004, December 19, 2005, December 19, 2006, July 12, 2007, December 13, 2007, and February 19, 2009.

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 a note of the city of Duluth in the maximum amount of \$4,700,000, 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.

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. (Effective date: July 12, 2009)

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

Yeas: Councilors Cuneo, Eckenberg, Fedora, Fosle, Gardner and Vice President Anderson

-- 6

Nays: Councilor Stauber -- 1

Absent: Councilor Krause and President Gilbert -- 2

ATTEST:
JEFFREY J. COX, City Clerk

Passed June 8, 2009
Approved June 8, 2009
DON NESS, Mayor

- - -

ORDINANCE NO. 9976

AN ORDINANCE GRANTING TO VINEYARD CHRISTIAN FELLOWSHIP A CONCURRENT USE PERMIT TO PLACE LANDSCAPE/SIGNAGE IN THE RIGHT-OF-WAY AT 1533 WEST ARROWHEAD ROAD.

The city of Duluth does ordain:

Section 1. That the city council finds that the Vineyard Christian Fellowship filed with the city clerk an application for a concurrent use permit at 1533 West Arrowhead Road.

Section 2. Under the authority of Section 100 of the City Charter and Article X of Chapter 45 of the Duluth City Code, as amended, permission is hereby granted to the Vineyard Christian Fellowship to place landscape/signage as described in Public Document No. 09-0608-19 in the right-of-way at 1533 West Arrowhead Road, legally described as Lot 9, Nortons Duluth Outlots, as such use would not inconvenience the public use.

Section 3. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: July 12, 2009)

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

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

Nays: None -- 0

Absent: Councilor Krause and President Gilbert -- 2

ATTEST:
JEFFREY J. COX, City Clerk

Passed June 8, 2009
Approved June 8, 2009
DON NESS, Mayor

- - -

ORDINANCE NO. 9977

AN ORDINANCE AMENDING SECTION 50-35 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

The city of Duluth does ordain:

Section 1. That Section 50-35 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 50-35. Enumerated.

The following are the special uses for which the city council may issue a special permit, as provided in Section 50-32:

(a) Airport, landing field or landing strip for all forms of aircraft, auto race track and drag strip;

(b) Amusement park, but not within 300 feet of any R district;

(c) Beauty salon in an R district, subject to the following restrictions and conditions:

(1) Such use shall be incidental and subordinate to the principal residential use conducted within a dwelling and not in an accessory building;

(2) At least 120 square feet but not more than 1/4 of the floor area of one story of the building shall be devoted solely to such use and to no other use;

(3) Only one person shall work in the beauty salon and such person shall reside on the premises;

(4) There shall be no separate entrance to the beauty salon from the front of the building, and the applicant shall provide evidence of inspection and compliance with all applicable fire and building codes;

(5) No signs or displays advertising the salon shall be permitted on the premises;

(6) At least two off street parking spaces shall be available on the premises for use by patrons of the salon, such parking space requirement to be in addition to the parking space requirements otherwise applicable to the premises;

(7) Applicant shall, prior to issuance of a special use permit pursuant to this Section, provide proof that applicant has all required licenses for operation of a beauty salon;

(8) Notice and publication as required by Section 50-32.2 of this Code shall, in the case of permits under this paragraph, include mailed notice to all property owners and occupants of property within 200 feet of the building;

(9) No permit shall be granted pursuant to this paragraph if a beauty salon already exists within 1,000 feet of the premises;

(d) The city council recognizes that bed and breakfasts are an asset to the community and help the preservation of historic homes and neighborhoods and help the economy of the region as small businesses. Bed and breakfast inns and country inns; in districts where they are permitted as special uses and only as provided herein;

(1) This special use permit shall be granted only to those properties, which meet or exceed the criteria outlined herein. A bed and breakfast inn must be a residential building that has no greater impact on the uses of the public areas or infrastructure or natural resources of the neighborhood than, or be apparent to an observer to be other than, the existing property used as a fully occupied private home with house guests. The principal building must appear outwardly to be a single family dwelling, giving no appearance of a business use other than allowed signs.

No permit shall be considered or issued for a bed and breakfast facility located closer than 450 feet to an existing bed and breakfast facility. This limitation may be waived by the city council for properties which are locally designated heritage preservation landmarks;

(2) An application for this special use permit shall include the following:

(A) A site plan as defined in Section 50-1.60;

(B) A landscape plan as defined in Section 50-1.40;

(C) A set of detailed floor plans indicating the traditional uses of all rooms and the intended uses in the bed and breakfast operation;

(D) Sign drawings showing location, dimensions and detail;

(E) For a waiver of the 450 foot separation, a copy of the resolution designating the properties as a heritage preservation landmark;

(3) Bed and breakfast inns and country inns may be granted special use permits subject to the following standards and conditions:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

- (A) The property must be comprised of a minimum of 0.6 acre;
- (B) The main residential building must contain a minimum of 1,500 square feet of area on the first floor;
- (C) For an inn, the proprietor shall be the owner and occupant of the property;
- (D) Off street parking for the uses of the property shall be provided on site as required in Section 50-26. Scattered off site parking shall not be allowed;
- (E) All parking areas shall be hard-surfaced and visually screened by vegetation and/or fencing (consistent with the architecture of the structure) as required by the city in order to maintain the apparent single family use of the property;
- (F) Dining areas shall not exceed three seats per habitable unit in bed and breakfast inns. In bed and breakfast country inns, allowed under this Section, 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 bed and breakfast inns, 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 which 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;
- (G) Any construction to restore buildings to historic condition, any construction of new buildings and any exterior alterations to the building must be authorized by the city council through this special use permit process;
- (H) There shall be a limitation on the number of guest rooms permitted based on the size of the building, building code or fire code;
- (I) Total signage on the property shall not exceed 12 square feet in size. Such signage shall complement the architecture of the structure;
- (J) Guests' stays shall be limited to 21 consecutive days;
- (K) A bed and breakfast establishment must comply with all building and fire code requirements. Inspections shall be conducted before special use permits or licenses are issued;
- (L) The owner/operator shall present inspection reports from the city fire marshal and St. Louis County health department to the city clerk prior to the issuance of any licenses;
- (M) Such other conditions deemed necessary by the planning commission and/or city council to ensure the use complies with the purpose of this Subsection;
- (e) Cemetery, crematorium or mausoleum;
- (f) Child care facility. A state licensed residential facility for care and treatment of children located within 100 feet of an existing state licensed residential program that has an administrative organization and structure approved under state law for providing shelter, food, training, treatment and other aspects of care of not

more than six children, and is an extension of an existing facility licensed under state law.

Any such facility shall meet all other state licensing requirements for such facilities, be contiguous to or located not more than 100 feet from the existing licensed facility charged with operation of the facility, and must not present any external image other than that of a single family residence;

- (g) Circus or carnival grounds, but not within 300 feet of any R district;
- (h) Clinic of less than 10,000 square feet in floor area;
- (l) Commercial, recreational or amusement development for temporary or seasonal periods;
- (j) Commercial rooming house, but only in those districts where permitted as special use;
- (k) Commercial services and recreational uses in the IP industrial park district, as further defined in Section 50-123 of this Chapter;
- (l) Day care facility, but only in those districts where permitted as a special use;
- (m) Elderly congregate housing facility, but only in those districts where permitted as a special use;
- (n) Marina;
- (o) Mini storage facilities; subject to compliance with the following criteria:
 - (1) Located in a S zone;
 - (2) On a parcel not less than 7-1/2 acres in size with no less than 500 feet of frontage on a publicly maintained right-of-way;
 - (3) Development shall not increase the peak stormwater runoff from the site from its existing condition based upon a storm of 100 year frequency and 24 hour duration (5.25 inches of rainfall);
 - (4) Signage shall be limited to one 40 square foot 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;
 - (5) There shall be maintained a minimum of 50 feet of landscaped or naturally vegetated buffer from all property lines;
 - (6) There shall be a minimum structure setback of 100 feet from any property line;
 - (7) Storage area unit shall not exceed a 12 foot wall height and a floor area of 300 square feet;
 - (8) Lighting shall be limited so as not to illuminate beyond property lines;
- (p) Office building of a civic, religious or charitable organization, conducting activities primarily by mail and not handling merchandise or rendering services on the premises, but only within the R-4 district;
- (q) Petroleum soil treatment;
 - (1) Petroleum soil treatment in the form of land treatment (soil farming) shall be located in S-suburban zones and shall comply with the following criteria:

(A) That the pollution control agency (PCA) shall have reported to the planning department regarding the individual site and the possibility of any problems relative to issuance of PCA authorization for use of the site;

(B) The natural topography, drainage character, vegetation and use of the site shall not be altered beyond site preparation required for any listed permitted land use within the S-suburban zone. Specifically:

1. No vegetation shall be cut or removed from within state required setbacks except as required for installation of temporary roads;

2. Vegetation removal shall be minimal. Vegetation greater than six inches caliper shall not be removed except as determined necessary to accommodate minimal equipment clearances, and there shall be minimal preparation of the soil on the treatment area. Such preparation shall minimize disturbance of the topsoil and does not preclude the return of the site to listed permitted S-suburban zone land uses;

(C) All treatment areas must be planted to pasture grasses during treatment and replanted to the original vegetation after the treatment process has been completed;

(D) No sites shall be located within wetland, shore land or flood zones as defined by Chapter 51 of the Code;

(E) That the applicant shall maintain the treatment site in strict compliance with all conditions of this permit and associated state or federal permits;

(2) Petroleum soil treatments using biodegradation such as composting or aerobic treatment cells or other technologies as may be developed and approved by the PCA from time to time, shall be only permitted in M-1 and M-2 zones, and shall be subject to the standards (A), (B), (D) and (E) cited above;

(r) Power transmission line, review and approval to be provided for separately in each of two steps:

(1) A general corridor special use permit;

(2) A final design special use permit, under the following conditions and procedures:

(A) Submittal information for general corridor special use permits. In addition to other information required by the special use permit process, the applicant shall provide the following information with applications for general corridors:

1. A statement demonstrating the need for the proposed line;

2. Drawings showing the approximate location of a preferred route (having a width of less than 1,000 feet) and at least one alternative route. Included within each route shall be an intended center line and subject site and adjacent area information, the form of which shall be determined by the planning commission on existing topography, land uses, soils, vegetation, water courses, wetlands, major drainage ways, flood plains, rock outcroppings and scenic views. Drawings shall also indicate proposed general types, heights and ranges of spacing of supporting structures and related equipment such as pumping stations, although the specific type of line shall not be approved until the final design review;

3. A statement identifying potential locations of conflict such as adjacent scenic and residential areas and describing general proposed methods of dealing with such conflicts;

4. A statement addressing each applicable standard of Section 50-35(r)(4) below in regard to the preferred route and alternative routes;

(3) Submittal information for final design special use permits. In addition to information otherwise required by the special use permit process, the applicant shall provide the following for final design special use permits:

(A) Plans and profiles, the form of which shall be determined by the planning commission, showing the exact location of the center line and the exact location and design of supporting structures and related equipment as proposed by the applicant. Alternative potential designs of supporting structures shall also be presented;

(B) A landscaping plan and subject site and adjacent area information on existing topography, land uses, soils, vegetation, water courses, wetlands, major drainage ways, flood plains, rock outcroppings and scenic views in a form which shall be determined by the city planning commission;

(C) A statement addressing each applicable standard of Section 50-35(r)(4) below;

(4) Standards for approval. No special use permit shall be granted unless the following standards and conditions are met in addition to normal requirements of the special use permit process:

(A) For general corridor special use permits:

1. The public need for the route and facility as specifically proposed shall be demonstrated;

2. Where possible, lines shall avoid existing and potential urban density residential neighborhoods;

3. 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;

(B) For final design special use permits:

1. Where it is determined that a proposal would unduly harm adjacent property or property values, it shall be determined that no other 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;

2. 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;

3. Lines shall meet or exceed the National Electric Safety Code;

4. Electro-magnetic noise and interference with radio and television reception, as well as audible hum outside the line right-of-way, shall be minimized;

5. 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;

(C) For both general corridor and final design special use permits. The following standards shall apply in addition to those required above under general corridor and final design special use permits:

1. 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 which would create sedimentation and pollution problems; areas of unstable soils which 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;

2. 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;

(5) Alteration of final design special use permit. Once the final design special use permit is issued, the applicant may change the height and location of structures for engineering purposes provided no structure height is increased or decreased by more than 20 percent of its approved height or moved more than 25 feet from its approved location. Should it be necessary to alter the height or location more than the amounts set forth herein, applicant must obtain the approval of the city planning commission after the commission has conducted its normal public hearing and notice procedures. The decision of the planning commission on any alterations shall be final unless appealed to the city council within ten days;

(s) Privately operated community building or recreation field;

(t) Any public or government owned or leased building not permitted in a particular district; provided that such permit shall run for a full period of the lease and that both lease and permit shall run for not less than ten years from date of permit;

(u) Radio or television broadcasting tower or station;

(v) Residential care facility, only in those districts where permitted as a special use;

(w) Residential rooming house, only in those districts where permitted as a special use;

- (x) Riding stable;
- (y) Solid waste disposal facility;
 - (1) Special use permits for solid waste disposal facilities and yard waste compost facilities shall be granted only under certain circumstances and under certain conditions;
 - (2) An application for this special use permit shall include the following:
 - (A) A complete legal description of the property and the specific site within the property description;
 - (B) A site plan as defined in Section 50-1.64;
 - (C) A landscape plan as defined in Section 50-1.65.7;
 - (D) A detailed plan schedule for excavation, grading, dumping, filling, covering, landscaping and closure of the facility;
 - (E) Engineering certification, signed by the project engineer, which must certify (with any exceptions listed) that the design for construction is in accordance with standards as set out in these regulations and state statutes and rules relating to the specific type of requested facility;
 - (F) Signage plans showing location, dimensions and detail;
 - (G) Drainage plan that provides for diversion of surface water around and away from the disposal area and does not increase the rate of runoff, from the predevelopment condition, from the site onto adjoining properties;
 - (H) Ground water monitoring plan as and if required by state statutes or rules;
 - (I) A detailed dust control plan for the facility and for roadways in and leading to and from the facility;
 - (3) Standards and conditions. Solid waste disposal facilities and yard waste composting facilities may be granted special use permits in S, M-1 and M-2 zones subject to the following:
 - (A) Setbacks, in M-2 zones, all aspects of the solid waste disposal operation shall be setback from all property lines a minimum of 150 feet. In S and M-1 zones the setback shall be 300 feet from all properties zoned other than M-2. Such setbacks shall be bermed and/or landscaped so as to be visually screened from adjacent properties and roadways. 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;
 - (B) Licensing for all solid waste disposal operations and facilities as well as yard waste composting facilities shall comply with all state and Western Lake Superior Sanitary District requirements in accordance with Minnesota Statutes and agency rules;
 - (C) Solid waste disposal facilities for industrial waste shall only be allowed in M-2 zones. Such facilities shall be approved in the special use permit only for specified types of industrial waste;
 - (D) Solid waste disposal facilities for construction debris shall only be allowed in M-2 zones;
 - (E) Facilities for composting of yard waste shall not accept materials other than yard waste;

(F) 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 these are defined in Chapter 51 of this Code;

(G) 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;

(H) There shall be no burning of materials;

(I) 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 S and M-1 zones shall be constructed with an approved, as part of the special use permit, dust free material;

(J) All vehicles transporting materials to or from the facility shall be covered;

(K) For sites in S and M-1 zones, there shall be no dumping or operations outside of buildings, nor delivery or removal of materials to or from the site occurring between the hours of 10:00 p.m. and 7:00 a.m.;

(L) Except for yard waste composting facilities there shall be no processing (separating or sorting) of materials outside of covered structures;

(M) Noise emanating from a building in which dumping, separating or other processing of material is performed shall not exceed 55db at any property line which abuts property zoned other than M-2;

(N) In S and M-1 zones there shall be no exterior lighting permitted except to provide security for buildings and parking areas. Where such lighting is permitted it shall be directed so no light source is visible from any property line;

(O) Compliance funding: 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;

(z) Strobe lights, as defined in Section 10-36 of this Code, may be used on radio and television broadcasting towers exceeding 400 feet in height located in that area of the city commonly known as the tower farm within Section 28, Township 50, Range 14, subject to the following restrictions and conditions:

(1) Strobe lights may be used only when the north sky illumination on a vertical surface at the base of the tower is greater than five footcandles. Red obstruction lights must be used at all other times;

(2) Strobe installations shall be shielded so as not to be visible from ground elevation for a radius of two miles from the antenna base;

(3) Strobe installations will be allowed only on towers which are required by federal aviation administration regulations to be painted orange and white;

- (aa) Drive-in theater in the S suburban district;
- (bb) Tourist or trailer camp; provided, that such tourist or trailer camp shall comply with the applicable provisions of this Code and the laws of the state;
- (cc) Essential municipal or public utility use, facility or building, other than a business office or production facility; provided that such use, facility or building shall be located in a S district only if its specific function requires that it be so located in order to serve the immediate neighborhood, as opposed to serving a major portion of the community. Provided, that a substation which serves more than the immediate neighborhood may be granted a special use permit in S districts if such substation is located in such a manner that it is visually screened from adjacent properties and is located on a site of at least five acres;
- (dd) Veterinarian or animal hospital; provided, that practice is limited to the treatment of small animals (household pets, i.e. dogs, cats, birds, which are ordinarily permitted in the house and kept for company or pleasure) and that all aspects of the facility are totally contained (including kennel runs and exercise areas) within a sound-proof building with adequate ventilation;
- (ee) Wind energy conversion systems. Wind energy conservation systems (WECS) shall be permitted, provided; tower height shall not exceed 200 feet; that existing or future uses permitted within adjacent properties are not adversely effected by noise, electronic signal interference or safety conditions; that satisfactory visual screen buffers be provided at the edges of the property to mitigate aesthetic impacts upon the neighborhood if located within "R" districts; and that WECS be set back from all property lines a distance equal to or greater than the tower height as measured from the base of the tower unless it can be demonstrated that tower failure would not damage adjacent public or private interests;
- (ff) Personal wireless communications service towers. These towers shall include all towers and poles over 50 feet high used to provide "personal wireless services" as defined in 47 USCS §332(c)(7)(C)(I), including those commonly known as cellular telephone towers or personal communications services (PCS) towers. The following standards shall apply to the considerations of special use permits for these towers:
 - (1) No permit decision shall unreasonably discriminate among providers of functionally equivalent services;
 - (2) No permit decision shall have the effect of prohibiting personal wireless services in an area;
 - (3) No permit decision shall be based on the environmental effects of radio frequency emissions if the proposed tower complies with all applicable federal communications commission regulations;
 - (4) Any decision to deny a permit for these towers must be made in writing and supported by substantial evidence contained in a written record;
 - (5) The construction of new towers shall, where possible, be avoided when there are existing high buildings or other structures in the area that can reasonably be used to house the telecommunications facilities;
 - (6) Whenever possible, new towers shall be built in zones for manufacturing or commercial uses as opposed to zones for residential uses;

(7) New towers shall, where possible, be constructed to accommodate multiple telecommunications users and thus minimize the proliferation of the towers, if such multiple use capacity can be attained using reasonable height limitations;

(8) New towers shall, where reasonably possible, be designed to blend into the proposed site so as to minimize its visual impact on the surrounding area;

(9) Telecommunications facilities and equipment used in conjunction with the tower shall not create unacceptable noise levels for the surrounding area;

(10) New towers shall comply with all applicable laws, including, but not limited to, the state building code and federal communications and aeronautics statutes, rules and regulations;

(gg) Tennis courts and sports courts.

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

(Effective date: July 12, 2009)

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

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

Nays: None -- 0

Absent: Councilor Krause and President Gilbert -- 2

ATTEST:

JEFFREY J. COX, City Clerk

Passed June 8, 2009

Approved June 8, 2009

DON NESS, Mayor

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OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, June 15, 2009, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Absent: None -- 0

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

09-0615-01 Minnesota state auditor entertainment and convention center authority audit report for the years ended December 31, 2008 and 2007. -- Received

09-0615-10 Fred Anderson communication regarding the proposed approval of a C-5 plan to Kohl's Department Stores, Inc. (09-0408R). -- Received

09-0615-03 Morgan Park Community Club communication regarding proposed curfew amendment (09-008-O). -- Received

09-0615-05 The following communications regarding the board of zoning appeals approval to grant a variance to ISD 709 to allow front yard parking on property located at 301 North 40th Avenue East (Ordean School) (09-0371R and 09-0372R): (a) Stephanie Boerboom; (b) Mary Churchill; (c) George Hovland; (d) Dianne Johnson; (e) Elizabeth Koski; (f) Donald Leake; (g) Arnelle and Larry Monson; (h) Rodger Pearson; (i) Robert Reichert; (j) Brian Ronstrom; (k) Debra Sanders; (l) Chris Stemper; (m) Jim Thole; (n) Allen Willman; (o) Kent Worley. -- Received

09-0615-02 The following communications regarding the proposed creation of the Duluth private sewer service grant/loan program and increasing the amount of the clean water fund surcharge (09-0390R and 09-033-O): (a) Kelly Boedigheimer; (b) Ted Chura; (c) Karen Holden; (d) Matt Marks; (e) Kim Pierson and Sherri Hobbs; (f) Glen Kush; (g) J. William Tusken; (h) Shiela and Dennis Vath; (i) Shirley Williams. -- Received

09-0615-11 The following communications regarding the proposed ordinance relating to rubbish and tall grass (09-034-O): (a) Fred Anderson; (b) Matt Johnson; (c) Rhonda Johnson. -- Received

09-0615-12 The following communications regarding proposed skateboard regulations on public property located in Canal Park and the proposed ordinance regarding the use of inline skates, rollerskates and skateboards (09-0393R and 09-035-O): (a) Jeremiah Brown; (b) Canal Park Business Association; (c) Greater Downtown Council; (d) Steve Lasky; (e) Bill Meierhoff; (f) Eric Robinson; (g) Chip Stewart. -- Received

09-0615-04 The following communications regarding the proposed resolutions submitting propositions at the next municipal election to the voters of Duluth to approve Ordinance 09-027, pertaining to signs, building height variances and off-site parking for schools; and to provide direction to the city on requests for variances, special use permits and easement vacations for purposes of implementing ISD 709's long range facility plan (09-0423R, 09-0424R, 09-027-O): (a) Brenda Anderson; (b) Kathy Bray; (c) Patrick Buchberger; (d) Lawrence and Lorna Burda; (e) Shirley Evensen; (f) Fayth Glass; (g) Gary Glass; (h) Paul Goossens; (i) Cynthia Grindy; (j) Karen Heisick; (k) Robert Higgins; (l) Rhonda Johnson; (m) Mimi Larson; (n) Ann Lenz; (o) Linda Magni; (p) Maureen Maloney; (q) Jeanne Mendoza; (r) Nancy Nelson; (s) Bruce and

Mary Nielsen; (t) Richard Paulson; (u) Gina Pfingsten; (v) John Powers; (w) Marcia Stromgren; (x) Jim and Mary Stukel; (y) Tom Tonkin; (z) Barbara Walcome; (aa) Allen Willman. -- Received 09-0615-13 The following communications regarding the proposed approval of a special use permit for temporary storage of various aggregates at 1630 Rice Lake Road (09-0418R): (a) Tom and Julie Benson; (b) Norm and Wanda Hansen. -- Received

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REPORTS FROM OTHER OFFICERS

09-0615-06 Police department local solicitation application for city council review of the Edward Byrne memorial justice assistance grant (JAG) program for 2009 (Grant No. 2009-G9101-MNDJ). -- Received

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REPORTS OF BOARDS AND COMMISSIONS

09-0615-07 Commission on disabilities minutes of May 6, 2009, meeting. -- Received

09-0615-08 Parks and recreation commission minutes of: (a) March 11; (b) April 15; (c) May 13, 2009, meetings. -- Received

09-0615-09 Spirit Mountain recreation area authority minutes of April 16, 2009, meeting. -- Received

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At this time, 7:02 p.m., President Gilbert announced that the public hearing regarding the North Star Aerospace amendment would begin.

Heidi Timm-Bijold, assistant business developer, explained the nature of the amendment. No one else appeared who wished to be heard.

At this time, 7:04 p.m., President Gilbert announced that the public hearing would end and the regular order of business resumed.

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OPPORTUNITY FOR CITIZENS TO BE HEARD

Dave Barschdorf expressed his concerns on: actions by the school district; the number of individuals that have taken their children out of the Duluth school district in opposition to the school district's red plan; that taxpayers paid for a recent sister city trip and that the tourism fund is broke.

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Scott Yeazle invited the council to the Juneteenth celebration.

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Kay L. Lewis commented on her concerns relative to the erosion behind the Duluth Entertainment Convention Center (DECC) where ships dock with no safety measures to assist anyone who might fall in and the lack of city buildings that do not have solar panels to reduce energy costs.

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RESOLUTIONS TABLED

Councilor Stauber moved to remove resolutions 09-0371 and 09-0372, reversing and affirming, respectively, the decision of the board of zoning appeals to grant a variance to ISD #709 to allow front yard parking on property located at 301 North 40th Avenue East (Ordean School), from the table, which motion was seconded and unanimously carried.

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

Michele Benson, Kay L. Lewis, Bob Reichert and Dale Pagenkoff expressed support for Resolution 09-0371 for the reasons of: putting a high school on the Ordean site puts students and residents at risk for serious injury, due to the overcrowded facilities in this area; with trucks coming in and out at all times and students who do not act any smarter than elementary students, it is a very dangerous situation; there is someone who does not want to leave the neighborhood so the district stated that they would just build the parking lot around them; the nearby creek is likely to be adversely affected by this project's needs; the safety of the eagle nest is in jeopardy; when it is determined that this site is too small, more private property will be needed to be taken; you need to put items where they belong, not where they do not; there is no unique hardship to this site, which is required by the Code; the additional parking will only create additional confusion; cars will be utilizing only a very narrow portion of the roadway and this site is too small.

Kerry Leider, representing Independent School District 709, spoke in support of Resolution 09-0372 for the reasons of: this location will not involve semi-trucks, as the district has a central storage area for semi-truck deliveries; the parent drop off area is an improvement to the current operation; the actual impervious surface is only 39 percent; an environmental impact statement will address all environmental concerns and the resolution will allow an additional 31 spaces that will be very beneficial to the school and the neighborhood.

Councilors Krause, Anderson, Stauber and Gardner supported Resolution 09-0371 for the reasons of: there is no hardship here; traffic concerns of high traffic volumes on Superior Street and London road; it will adversely affect the neighborhood; about a third of the site is environmentally sensitive and not being able to be used and it is hard to see where adding these additional parking spaces will make it better.

Councilor Eckenberg supported Resolution 09-0372, stating that: the loss of 31 parking spaces would be detrimental; the Denfeld site is half the size of this site and more parking on the site equals less parking in the neighborhood; this is really the back or side of the school; a new street will be added west of this building and the hardship would be this school not being the best it could be.

Councilors discussed extensively both resolutions and the issues raised.

Resolution 09-0371 failed upon the following vote (Public Document No. 09-0615-14):

Yeas: Councilors Anderson, Gardner, Krause and Stauber -- 4

Nays: Councilors Cuneo, Eckenberg, Fedora and President Gilbert -- 4

Abstention: Councilor Fosle -- 1

- - -

Resolution 09-0372 failed upon the following vote (Public Document No. 09-0615-15):

Yeas: Councilors Cuneo, Eckenberg, Fedora and President Gilbert -- 4

Nays: Councilors Anderson, Gardner, Krause and Stauber -- 4

Abstention: Councilor Fosle -- 1

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Councilor Fosle moved to remove Resolution 09-0390, of intent regarding the creation and adoption of the Duluth private sewer service grant/loan program and program guidelines, from the table, which motion was seconded and unanimously carried.

- - -

Councilor Fosle move to suspend the rules to consider Ordinance 09-033 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 FOSLE

09-033 (9982) - AN ORDINANCE AUTHORIZING CREATION OF THE DULUTH PRIVATE SEWER SERVICE GRANT/LOAN PROGRAM AND INCREASING THE AMOUNT OF THE CLEAN WATER FUND SURCHARGE, AMENDING SECTION 43-11.1 AND 43-33.1 OF THE CODE.

- - -

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

Wade Newton expressed support for this program for the reasons of: video of the individual lines shows citizens the problem; property values will increase even though one will likely be paying increased property taxes, so this will even out in the end and the program will assist those who have limited means.

Todd Pfeffer expressed concern about why they are paying more for this program since, as a resident of Fond du Lac, they paid for 99 percent of the \$4.1 million for installing sewers and water.

Kay L. Lewis questioned why there could not be federal stimulus funding for this.

Stacy Nylund felt that this is a community issue that should be treated as such financially versus an individual property owner's problem.

Councilors Krause, Fedora, Stauber and Fosle opposed the project for the reasons of: individual costs are raising daily for families, without any wage increases; home ownership repairs are an ever increasing responsibility; there are a significant number of households that are not contributing to this problem; about a year ago, the city implemented a \$5.57 charge to help pay for improvements to the stormwater storage tanks; a couple months ago, at the time of the settlement of the consent decree, the administration stated that they had no plans for charging any increased fees or higher rates; even though a property is not contributing to the problem or the homeowner paid for this already, the citizens are helping to pay for someone's private infrastructure; there should be a scale as to the amount of the loan that would be available, based on income and there should be a contingency of selling a home for those who are at the low end of financial income; this is a huge waste of homeowner and taxpayer dollars; there is no right to appeal in this process; there was never anyone from outside city government that was allowed to come and address this issue; leaking by the house is likely the problem that needs to be fixed versus all the lateral lines; this has been delayed because individuals have been waiting to see if there will be a funding source and some individuals have put in septic systems and will still be assessed.

Councilors Anderson, Cuneo, Gardner and Eckenberg supported the project for the reasons of: homeowners can better afford a few dollars more on their sewage bills versus the replacement of a lateral line; this is a community problem, thus deserving a community wide solution that does not over burden a homeowner; protecting Lake Superior has to be a priority for the city and the city is behind schedule on acting on this.

President Gilbert moved to amend Section 43-11.1(a) of the ordinance to insert the sentence "From and after January 1, 2012, the amount of the monthly surcharge shall again be \$5.57" after the sentence "Commencing August 1, 2009, and until January 1, 2012, the amount of the monthly surcharge shall be \$8.78"; which amendment was seconded and carried upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fosle, Gardner, Krause, Stauber and President Gilbert -- 8

Nays: Councilor Fedora -- 1

The ordinance, as amended, was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Gardner and President Gilbert -- 5

Nays: Councilors Fedora, Fosle, Krause and Stauber -- 4

- - -

Resolution 09-0390 was adopted as follows:

WHEREAS, the city is in the process of developing the Duluth private sewer service grant/loan program and establishing program guidelines pursuant to Minnesota Statute Section 471.342; and

WHEREAS, said program and program guidelines shall provide grants and/or loans to private property owners for the required repair, reconstruction or lining of private sanitary sewer services; and

WHEREAS, the city has set forth an amendment to Section 43-33.1 and Section 43-11.1 of the Duluth City Code on file in the office of the city clerk as Ordinance [File] No. 09-033 authorizing the creation of the grant program; and

WHEREAS, the city feels it is important to provide preliminary details of the program to encourage the immediate repair, reconstruction or lining of private sanitary sewer services.

THEREFORE, BE IT RESOLVED, that it is the intention of the city council to create and adopt the Duluth private sewer service grant/loan program and program guidelines to financially assist property owners for the repair, reconstruction or lining of private sanitary sewer services as part of the city's inflow and infiltration reduction program.

FURTHER RESOLVED, that the program guidelines shall include the following:

(a) Grant funds for sanitary sewer repair, replacement or lining shall only be available to those private property owners who have received notice from the city of their eligibility therefore;

(b) The maximum grant amount available for any designated private sanitary sewer repair, replacement or lining shall be equal to 80 percent of the total project cost up to a maximum grant amount of \$4,000;

(c) Grant funds shall be available to private property owners whose sanitary sewer repair, replacement or lining may be underway or has been completed prior to the establishment of the program but which otherwise comply with the program's guidelines and design parameters.

Resolution 09-0390 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Gardner and President Gilbert -- 5

Nays: Councilors Fedora, Fosle, Krause and Stauber -- 4

Approved June 15, 2009

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.)

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

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

RESOLVED, that the proper city officials are hereby authorized to execute a supplemental labor agreement with Local 101, International Association of Firefighters, substantially the same as that on file in the office of the city clerk as Public Document No. 09-0615-16, which modifies the 2007-2009 collective bargaining agreement to realize cost savings in the payment of overtime.

Resolution 09-0322 was unanimously adopted.

Approved June 15, 2009

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 with any specific restrictions:

Copasetic Softball Team (Copasetic Classic), Wheeler Field, for July 18 and 19, 2009, with Paul King, manager.

Lincoln Park Business Group (Lincoln Park Mountain Bike Challenge and Festival), Lincoln Park, for July 18, 2009, with Heath Hickok, manager.

Twelve Holy Apostles Greek Orthodox Church (Taste of Greece), 632 East Second Street, for July 11 and 12, 2009, with Lee Regas, manager.

Resolution 09-0401 was unanimously adopted.

Approved June 15, 2009

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 July 17, 2009, with the serving starting at 6:00 p.m. and the music and serving ceasing at 1:00 a.m.

Rustic Bar, Inc. (Rustic Bar), 401 North Central Avenue, for July 17, 2009, with the serving starting at 6:00 p.m. and the music and serving ceasing at 1:00 a.m.

JMMP Enterprises, LLC (Kom on Inn), 332 North 57th Avenue West, for July 17, 2009, with the serving starting at 6:00 p.m. and music and serving ceasing at 1:00 a.m.

Dubh Linn Pub & Billiards, LLC (Dubh Linn Pub & Billiards), 109 West Superior Street, for July 11, 2009, with the music and serving starting at 7:00 p.m. and ceasing at midnight.

Dubh Linn Pub & Billiards, LLC (Dubh Linn Pub & Billiards), 109 West Superior Street, for July 9, 2009, for Rock the Block event from 4:00 p.m. to 8:00 p.m.

Hospitality Associates of Duluth, LLC (Aces on First), 113 West First Street, for July 10, 2009, from 7:00 p.m. to midnight.

Live Bar, Inc. (Live Downtown), 323 West First Street, for July 10, 2009, from 7:00 p.m. to midnight.

Resolution 09-0402 was unanimously adopted.

Approved June 15, 2009

DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Total Parking Solutions for the purchase and delivery of four Compact XL parking kiosks with accordance with specifications and the vendor's low bid of \$48,996, payable out of Parking Fund 505.

Resolution 09-0405 was unanimously adopted.
Approved June 15, 2009
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Erling Hansen General Contractor, Inc., for construction of Arlington maintenance building at 601 South Arlington Avenue in accordance with its low specification bid of \$68,300, payable out of Capital Fund 450, Department/Agency 030, Object 5520, CP 2008 OT 0801.

Resolution 09-0413 was unanimously adopted.
Approved June 15, 2009
DON NESS, Mayor

- - -

RESOLVED, that the city council hereby requests the Charter commission to recommend an amendment to Section 8 of the City Charter relating to contracts which are not subject to competitive bidding requirements authorizing the award of such contracts up to an amount as set forth by ordinance, which proposed ordinance is on file in the office of the city clerk as Public Document No. 09-0615-17.

Resolution 09-0414 was unanimously adopted.
Approved June 15, 2009
DON NESS, Mayor

- - -

RESOLVED, that the proposed amendments to the specifications for the civil service classification of fire marshal, which were approved by the civil service board on April 7, 2009, and which are filed with the city clerk as Public Document No. 09-0615-18, are approved. This classification shall remain subject to the city's collective bargaining agreement with its fire unit employees and compensated at Pay Range 233.

Resolution 09-0343 was unanimously adopted.
Approved June 15, 2009
DON NESS, Mayor

- - -

RESOLVED, that the proposed amendments to the specifications for the civil service classification of utility operations supervisor, which were approved by the civil service board on April 7, 2009, and which are filed with the city clerk as Public Document No. 09-0615-19, are approved. This classification shall remain subject to the city's collective bargaining agreement with its supervisory unit employees and compensated at Pay Range 1080 - 1095.

Resolution 09-0349 was unanimously adopted.
Approved June 15, 2009
DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

RESOLVED, that the reappointment by Mayor Ness of Paul Heller to the sanitary sewer board of the Western Lake Superior Sanitary District, for a term expiring on July 1, 2012, is confirmed.

Resolution 09-0395 was unanimously adopted.
 Approved June 15, 2009
 DON NESS, Mayor

- - -

RESOLVED, that the (re)appointments by Mayor Ness to the Duluth airport authority of Conrad Firling, Robert Pearson and Michael Lundstrom, replacing Michael Orman, for terms expiring on July 1, 2012, are confirmed.

Resolution 09-0397 was unanimously adopted.
 Approved June 15, 2009
 DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a second amendment to the MIF loan agreement and a second promissory note modification agreement substantially in the form of those on file in the office of the city clerk as Public Document No. 09-0615-20 with Northstar Machine and Tool, Inc., d.b.a. Northstar Aerospace, allowing Northstar to make interest-only payments for an additional six-month period, from July 1, 2009, through December 31, 2009.

FURTHER RESOLVED, that the proper city officials are hereby authorized to execute a second amendment to the grant agreement with the state of Minnesota, such amendment to reflect the second amendment to the MIF loan agreement and second promissory modification agreement.

Resolution 09-0409 was unanimously adopted.
 Approved June 15, 2009
 DON NESS, Mayor

- - -

RESOLVED, that the city council objects to the reclassification to nonconservation and sale of the following tax forfeited parcels by the board of county commissioners of Saint Louis County:

Parcel ID and legal description	Location	Reason
010-0850-03500 010-0850-03510 010-0850-03520 Dodges Addition Block 28, Lots 3, 4, and 5 TRACT #3	north side of Greene Street between 64th and 65th avenues West (Cody)	trout stream and stormwater protection

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Parcel ID and legal description	Location	Reason
010-1630-01240 010-1630-01250 010-1630-01260 010-1630-01270 Fond du Lac Fifth Street Lots 62, 64, 66, and 68 TRACT #5	north side of Fifth Street extended to the intersection with Mission Creek (Fond du Lac)	trout stream, flood plain, and stormwater protection
010-1630-01140 010-1630-01160 010-1630-01190 010-1640-00210 010-1640-00270 010-1640-00280 Fond du Lac Fifth Street Lots 42-60, even numbered lots Fond du Lac Sixth Street Lots 41-59, odd numbered lots TRACT #6	west side of Mission Creek between extended Fifth and Sixth streets (Fond du Lac)	trout stream and stormwater protection, future addition to adjacent park
010-1640-01140 010-1640-01150 010-1640-01160 010-1640-01170 010-1640-01180 010-1640-01190 010-1640-01200 010-1640-01210 010-1640-01220 010-1640-01230 Fond du Lac Sixth Street Lots 42-60, even numbered lots TRACT #7	west side of Mission Creek on the north side of extended Sixth Street (Fond du Lac)	trout stream and stormwater protection, addition to adjacent park
010-1650-00310 Fond du Lac Seventh Street Lots 61-69 odd numbered lots TRACT #8	south side of Seventh Street extended to Mission Creek (Fond du Lac)	trout stream, flood plain, and stormwater protection
010-3140-02030 010-3140-02040 Macfarlanes Grassy Point Add. Block 11, Lot 3, except hwy rt. of way, and Lot 4 TRACT #10	east side of extended 64th Avenue West, north of Roosevelt Street (Fairmount)	stream and stormwater protection, stream runs through the property

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Parcel ID and legal description	Location	Reason
010-3850-00800 Portland Division Block 125, Lot 7 TRACT #11	south side of Sixth Street between Eighth and Ninth avenues East (East Hillside)	stream and stormwater protection
010-3850-00810 Portland Division Block 125, Lot 8 TRACT #12	south side of Sixth Street between Eighth and Ninth avenues East (East Hillside)	stream and stormwater protection, stream runs through the property
010-1760-01670 East Fond du Lac Lots 14, 15, and 16 TRACT #20	east side of extended 125th Avenue West north of Highway 23 (Fond du Lac)	steep slope preservation, addition to park
010-2710-01250 Duluth Lands in the City Section 5, Twp 50N, Rng 14W E ½ of W ½ of NW ¼ of SW ¼, except hwy rt. of way TRACT #21	north side of Norton Road east of Rice Lake Road (airport)	airport runway approach protection (Safety Zone B)
010-2710-05739 Duluth Lands in the City Section 19, Twp 50N Rng 14W Wly 235 feet of the Sly 60 feet of the N ½ of the NW ¼ of the SE ¼ of the SE ¼ TRACT #23	east side of Chambersburg Avenue north of the crossing of Miller Creek (Duluth Heights)	trout stream, flood plain, and stormwater protection

Resolution 09-0410 was unanimously adopted.
Approved June 15, 2009
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to submit one or more applications to the federal department of energy (DOE) to secure ARRA funding, also known as federal stimulus funding; acceptance of any funding awarded to the city to require subsequent council approval.

Resolution 09-0415 was unanimously adopted.
Approved June 15, 2009
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 15, 2009, municipal and school board primary election and November 3, 2009, for the municipal and school board general election:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

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
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. St. Peter's Catholic Church (lower level)	818 West Third Street
23. Lincoln Park Senior Center (lower level)	2014 West Third Street
24. Holy Cross Lutheran Church (lower level)	410 North Arlington Avenue

POLLING PLACE LIST

POLLING PLACE	ADDRESS
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. Bethany Baptist Church (social hall)	6700 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 15, 2009, and November 3, 2009, elections.

BE IT FURTHER RESOLVED, that the proper city officials are hereby authorized to establish and post temporary handicapped parking zones for the September 15, 2009, and November 3, 2009, 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 09-0373 was unanimously adopted.

Approved June 15, 2009

DON NESS, Mayor

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RESOLVED, that city officials are hereby authorized to contract with MSA Professional Services, Inc., for the preparation of a study evaluating the potential cost savings for upgrading electrical controls at the Lakewood pump station and water treatment plant for the department of public works and utilities in accordance with the vendor's proposal of \$23,979, terms net 30, payable from the Water Fund 510, Department/Agency 500, Organization 1955, Object 5319; said

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

services to be substantially as outlined in the agreement on file in the office of the city clerk as Public Document No. 09-0615-21.

Resolution 09-0383 was unanimously adopted.
Approved June 15, 2009
DON NESS, Mayor

- - -

RESOLVED, that 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 not to exceed \$34,200 for year 2009, terms net 30, payable from General Fund 110, Department/Agency 500, Organization 1930-2310, Object 5455.

Resolution 09-0391 was unanimously adopted.
Approved June 15, 2009
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with JMF Construction, Inc., for the 2009 sanitary and storm manhole adjustment program for the apparent low bid of \$73,882.84, payable out of Sanitary Sewer Fund 0530 and Stormwater Fund 0535, Agency 500, Organization 1905, Object 5535, city project nos. 0410SN/0411ST.

Resolution 09-0396 was unanimously adopted.
Approved June 15, 2009
DON NESS, Mayor

- - -

RESOLVED, that Amendment No. 1 to Agreement No. 20484 with Bonestroo, Inc., is hereby authorized for professional services related to the city rate structure for sanitary sewer utility billing, increasing the amount by \$5,000, for a total contact amount of \$10,000, terms net 30, payable from Sewer Fund 530, Department/Agency 500, Organization 1945, Object 5310.

Resolution 09-0399 was unanimously adopted.
Approved June 15, 2009
DON NESS, Mayor

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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. 09-0615-22, with the Friends of the Minnesota Conservation Corps for services related to the Lakeside stormwater runoff reduction program as specified in said public document in an amount not to exceed \$16,000, payable from the Stormwater Special Projects Fund 535-500-1915-5439.

Resolution 09-0400 was unanimously adopted.
Approved June 15, 2009
DON NESS, Mayor

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WHEREAS, the city of Duluth, public works and utilities department decommissioned four 30,000 gallon propane fuel tanks at 5131 Morris Thomas Road in Hermantown, Minnesota, in 1990-1991; and

WHEREAS, the city has determined that the four 30,000 gallon propane fuel tanks are surplus and the city purchasing division posted an offer to sell on the city's website; and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

WHEREAS, the purchasing division received four offers to purchase and determined that Superior Fuel Company offered the highest net purchase price of \$112,000.

NOW, THEREFORE, BE IT RESOLVED, that the Duluth City Council hereby authorizes the sale and removal of four 30,000 gallon propane fuel tanks from 5131 Morris Thomas Road in Hermantown, Minnesota, to Superior Fuel Company in the amount of \$112,000 to be deposited into Gas Fund 520, Department/Agency 500, Organization 1900, Object 4853.

Resolution 09-0404 was unanimously adopted.

Approved June 15, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to enter into a public housing community based police officer agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 09-0615-23, with the Housing and Redevelopment Authority of Duluth, Minnesota (HRA), pursuant to which the HRA will pay the city \$50,000 for the services of a Duluth police officer who will work pro-actively to provide security services and improve the social conditions at the HRA's public housing sites, payable into Fund 110-160-1610-4261.

Resolution 09-0385 was unanimously adopted.

Approved June 15, 2009

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 for the following events sponsored by the Greater Downtown Council, 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:

Sponsor/Event	Date	Location	Times
Rock The Block	June 25, 2009	Superior Street between Fifth and Sixth Avenue West	4:00 p.m. to 8:00 p.m.
Rock The Block	July 9, 2009	Superior Street between First and Second Avenue West	4:00 p.m. to 8:00 p.m.
Sidewalk Days Street Dance	July 10, 2009	First Street between Third and Fourth Avenue West	7:00 p.m. to midnight
Sidewalk Days Street Dance	July 10, 2009	First Street between First and Second Avenue West	7:00 p.m. to midnight
Sidewalk Days Street Dance	July 11, 2009	Superior Street between First and Second Avenue West	7:00 p.m. to midnight
Rock The Block	July 23, 2009	First Street between Fourth and Fifth Avenue West	4:00 p.m. to 8:00 p.m.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Rock The Block	August 6, 2009	Morse Street between Lake Avenue South and Canal Park Drive	4:00 p.m. to 8:00 p.m.
Rock The Block	August 20, 2009	First Street between First and Second Avenue West	4:00 p.m. to 8:00 p.m.
Rock The Block	September 3, 2009	Superior Street between First and Second Avenue West	4:00 p.m. to 8:00 p.m.

Resolution 09-0389 was unanimously adopted.
 Approved June 15, 2009
 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 on July 17, 2009, from 6:00 p.m. to 1:00 a.m. 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 09-0403 was unanimously adopted.
 Approved June 15, 2009
 DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into three agreements, all substantially in the form of that on file in the office of the city clerk as Public Document No. 09-0615-24 with the organized crime drug enforcement task forces under the direction of the US bureau of alcohol, tobacco, firearms, and explosives enforcement to reimburse the city for its costs in providing criminal investigative services related to the following, on-going federal criminal investigations, each in the amount of not to exceed \$15,000, for a total amount of not to exceed \$45,000, all funds received payable to Fund 215:

- GL-MN-181 Big Deal;
- GL-MN-192 Big Change;
- GL-MN-211 Malverde.

Resolution 09-0406 was unanimously adopted.
 Approved June 15, 2009
 DON NESS, Mayor

- - -

RESOLVED, that the proper city officers are hereby authorized and directed to execute a facility use agreement with the Duluth Public Schools ISD 709 early childhood family education program, a copy of which is filed as Public Document No. 09-0615-25, for the use of the Washington Center, rooms 110 and 114, for a cost of \$350 per month from June 2009 - August

2010. These funds shall be deposited into Fund 110, Department/Agency 120, Organization 1217-2120, Object 4622.

Resolution 09-0412 was unanimously adopted.
Approved June 15, 2009
DON NESS, Mayor

- - -

The following resolutions were also considered:

RESOLVED, that the city, acting through the city treasurer, shall make available a line of credit to the Duluth airport authority of up to \$2,000,000, to be drawn upon as needed, to assist in the management of cash flow in connection with the Duluth airport authority's new airport terminal construction project, same to be repaid in full periodically upon receipt by the Duluth airport authority of project funds from defined FAA, state of Minnesota and other grant or bonding sources which are providing construction cost reimbursement funds. The line of credit shall be available for use in the construction of the Duluth airport authority's new terminal and directly related infrastructure improvements only and shall terminate upon completion of the 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.

Resolution 09-0417 was unanimously adopted.
Approved June 15, 2009
DON NESS, Mayor

- - -

Resolution 09-0393, by Councilor Gardner, prohibiting the riding or the propelling of any skateboard on any public property located in Subdistrict A, Subdistrict B or Subdistrict C in the Downtown Waterfront Mixed Use-design (DWMX-D) Review District, was introduced for discussion.

- - -

Councilor Gardner moved to suspend the rules to consider Ordinance 09-035 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 GARDNER

09-035 (9978) - AN ORDINANCE AMENDING SECTIONS 33-5, 45-6.1 AND 45-6.2 OF THE DULUTH CITY CODE, 1959, AS AMENDED, REGARDING THE USE OF INLINE SKATES, ROLLERSKATES AND SKATEBOARDS.

- - -

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

Ken Lindberg, Tom Holden, Tony Boen, president of the Canal Park Business Association and Scott Miller supported the restrictions, for the reasons of: skateboarders adversely affect the tourist business; around the Marine Museum property has been damaged, staff and visitors are being harassed and \$25,000 plus has been spent to try to eliminate these problems; Canal Park was not designed to be a playground for skateboarders, roller blades or bikers; unfortunately there are some very irresponsible skateboarders who create a safety hazard; when the privilege of using

skateboards on sidewalks starts to impose itself on the rights of individuals to walk on the sidewalk, that privilege needs to be taken away; such a ban is very common in various waterfront districts throughout the country; businesses have been working unsuccessfully for three years to enforce the existing laws; this area is promoted as a pedestrian friendly area; is it easier for the police to enforce a complete ban; skateboards can still use the Lakewalk and this was primarily initiated by the Canal Park businesses.

Ben Johnson, Dylan Gagnon, Dane Gagnon, Joel Smith, John Schneider, Taylor Leege, Dylan Beck, Toin Meierhoff and Matt Wennberg opposed the restriction for the reasons of: skateboarding is part of the youth culture, which cannot be changed; the business association has reversed their opposition to inline skaters; pushing the skating into the streets and to after 9:00 p.m. is dangerous; there are more important things, like drugs, to worry about in Canal Park; skateboarding is form of creative self expression; skateboarding is a mode of transportation that should be allowed as long as the wheels do not leave the ground; the real problem is not the actual skateboarders, but the younger kids who hang out in the Canal Park area and usually just carry a skateboard around; skateboarding is already banned in the Canal Park during normal business hours, but there is still skateboarding, so extending the hours will not change anything; skateboarders are spending money in the Canal Park area; having lived in Canal Park for 20 years and owning property there, there is no reason to have this proposed total ban; very few are the problem, which is the exception not the rule and long boarders should not included in this ban.

Police Chief Gordon Ramsay noted that this has been primarily initiated by the Canal Park Business Association after a large increase in the number of complaints last year and added that he is in support of the resolution.

Councilor Krause moved to amend the Section 45-6.1 or the ordinance to delete "14 inches" and insert "nine inches," which motion was seconded and carried unanimously.

Councilor Fedora moved to amend the ordinance as follows:

(a) In Section 45-6.1, after the phrase "upon any public street," insert the text "unless such public street does not provide a sidewalk for pedestrian use. No parent or guardian of any child under the age of eight years old shall allow or permit such child to use any tricycle or coaster wagon upon any public street in the city which does not provide a sidewalk for pedestrian use unless supervised by such parent or guardian" and delete the word "but";

(b) At the end of Section 45-6.2(e), add the phrase "unless supervised by such parent or guardian," which motion was seconded and unanimously carried.

Councilors discussed at length the issues raised.

Councilor Fedora opposed the ordinance, stating that Canal Park is for everyone and this is discriminatory.

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Gardner, Krause and Stauber -- 6

Nays: Councilors Fedora, Fosle and President Gilbert -- 3

- - -

Councilor Cuneo moved to amend the resolution by adding language to ban skateboarders on the sidewalks in Canal Park, which motion was seconded and failed upon the following vote:

Yeas: Councilors Cuneo, Fedora, Fosle and Stauber -- 4

Nays: Councilors Anderson, Eckenberg, Gardner, Krause and President Gilbert -- 5

Resolution 09-0393 was adopted as follows:

BY COUNCILOR GARDNER:

WHEREAS, the Downtown Waterfront Mixed Use-Design Review District (DMWX-D), which encompasses the Canal Park area, was established to provide for a variety of compatible integrated land uses that will enhance the liveliness of the DWMX-D District and provide for a balance between tourist oriented attractions, public recreational facilities, commercial and industrial enterprises, residential uses and neighborhood services; and

WHEREAS, the abundance of services and public uses encompassed in the DWMX-D District Canal Park area results in a large volume of pedestrian traffic; and

WHEREAS, business owners who operate within the DWMX-D District Canal Park area, officials from the Canal Park Business Association, and the Lake Superior Maritime Visitor Center have expressed concern over the increased use of skateboards in the area which has resulted in damage to public property and collisions with pedestrians; and

WHEREAS, skateboarding is not compatible with the varied public uses of the canal park area of the DWMX-D District and poses a safety threat to both skateboard riders and members of the public visiting the area.

THEREFORE, BE IT RESOLVED, that pursuant to Duluth City Code Section 45-6.2(c), the city council hereby bans the riding or propelling of any skateboard on any public property located in Subdistrict A, Subdistrict B and Subdistrict C in the Downtown Waterfront Mixed Use-Design Review District as designated pursuant to Section 50-145 of the Duluth City Code, except that portion of the paved Lakewalk within the DWMX-D District lying northwesterly of the southeasterly line of East Morse Street extending to Lake Superior, but including both the north and south pier of the Duluth Ship Canal and the walkways associated therewith.

Resolution 09-0393 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Gardner, Krause and Stauber -- 6

Nays: Councilors Fedora, Fosle and President Gilbert -- 3

Approved June 15, 2009

DON NESS, Mayor

- - -

Resolution 09-0348, approving proposed specifications for the new civil service classification of construction inspection leadworker and specifying contract benefits for same, was introduced by Councilor Gardner.

Councilor Gardner moved to return the resolution to the administration because of an appeal to the civil service board, which motion was seconded and unanimously carried.

- - -

Resolution 09-0394, confirming the reappointments of Melanie Hendrickson and Walter Kramer and the appointment of John Brostrom, replacing Sarah Chambers, to the Duluth transit authority, was introduced by Councilor Gardner for discussion.

Councilor Krause moved to split the resolution, with Walter Kramer as separate a resolution, because he felt that philosophically he did not support an individual serving more than two full terms, which motion was seconded and carried upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fosle, Gardner, Krause, Stauber and President Gilbert -- 8

Nays: Councilor Fedora -- 1

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Resolution 09-0394(a), confirming the reappointment of Melanie Hendrickson and the appointment of John Brostrom, was adopted as follows:

RESOLVED, that the (re)appointments by Mayor Ness to the Duluth transit authority of Melanie Hendrickson (District 1), and John Brostrom (at large), replacing Sarah Chambers, for terms expiring on June 30, 2012, are confirmed.

Resolution 09-0394(a) was unanimously adopted.

Approved June 15, 2009

DON NESS, Mayor

- - -

Resolution 09-0394(b), confirming the reappointment of Walter Kramer, was adopted as follows:

RESOLVED, that the reappointment by Mayor Ness to the Duluth transit authority of Walter Kramer (at large) for the term expiring on June 30, 2012, is confirmed.

Resolution 09-0394(b) was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Stauber and President Gilbert -- 8

Nays: Councilor Krause -- 1

Approved June 15, 2009

DON NESS, Mayor

- - -

Resolution 09-0407, approving the vacation of part of Ensign Street (Independent School District #709), was introduced by Councilor Stauber for discussion.

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

Penny Turcott opposed the resolution for the reasons of: this street is the only one that goes through the neighborhood and the closure of it would make local traffic go about a mile out of the way; emergency vehicles to the nursing home will require a longer route and if is this approved, then Pershing Street should be opened up.

Tom Ochock, chairperson of the board of trustees of Christ Lutheran Church, supported the resolution, noting that: the fire department has been contacted and this change would still allow their response to be in their required time limits; the church council supports this; the planning commission unanimously approved this and this is a good project for the neighborhood.

Councilor Stauber expressed a concern that some neighbors might not have known that when this was tabled at a prior planning commission meeting, it was subsequently considered at the next meeting.

Resolution 09-0407 failed upon the following vote (Public Document No. 09-0615-26):

Yeas: Councilors Cuneo, Eckenberg, Fedora and President Gilbert -- 4

Nays: Councilors Anderson, Gardner, Krause and Stauber -- 4

Abstention: Councilor Fosle -- 1

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Resolution 09-0408, issuing a C-5 plan approval to Kohls Department Stores, Inc., for relocation of driveways and pedestrian access, to reconfigure the existing parking lot, add a delivery truck access drive, construct a new elevated parking structure and provide landscaping/screening at 2115 Miller Trunk Highway, was introduced by Councilor Stauber for discussion.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

The rules were suspended upon a unanimous vote to hear from a speaker on the resolution.

Kay L. Lewis expressed concern why a platform is proposed over the wetlands, thus blocking the flow of some water and increasing the impervious area.

Resolution 09-0408 was adopted as follows:

RESOLVED, that the city council finds the following:

(a) Kohl's Department Stores, Inc., has submitted to the city council a request for C-5 Plan approval, in accordance with Section 50-140(a) of the City Code, for relocation of driveways and pedestrian access, to reconfigure the existing parking lot, add a delivery truck access drive, construct a new elevated parking structure, and provide landscaping/screening on property located at 2115 Miller Trunk Highway (Lot 1, Block 1, Miller Creek Division); and

(b) Said permit application was duly referred to the city planning commission at their June 9, 2009, regular meeting, and the city planning commission has subsequently reported its conditional approval to the city council; and

(c) The approval was made because of the city planning commission's findings that compliance with the appropriate standards of the ordinance will be met through the conditions of approval; and

(d) Approval is granted to Kohl's Department Stores, Inc., for amendment of a C-5 Plan for 2115 Miller Trunk Highway, including relocation of driveways and pedestrian access, reduction in the number of parking stalls, and reconfiguration of the parking lot, new landscaping/screening, and relocation of signs on property located at 5115 Burning Tree Road, subject to the following conditions:

(1) The project be constructed and maintained in accordance with documents submitted by SAS+Associates titled "Kohl's Department Stores, Inc. - Hwy 53/Sundby Rd Parking Replacement Project" and as identified as Public Document No. 09-0615-27:

- (A) T1.1 Title Sheet, dated 4-28-09;
- (B) C1.1 Parcel Sketch, dated 4-22-09;
- (C) C1.2 Conservation Easement, dated 4-22-09;
- (D) C1.3 Existing Site & Removals Plan, dated 4-22-09;
- (E) C2.1 Site Plan, dated 6-3-09;
- (F) C2.2 Site Utility Plan, dated 4-22-09;
- (G) C2.3 Site Utility Profiles, dated 4-22-09;
- (H) C2.4 Site Utility Profile & Schedule, dated 4-22-09;
- (I) C3.1 Grading Plan (At Grade), dated 4-22-09;
- (J) C3.2 Grading Plan (Below Grade), dated 4-22-09;
- (K) C3.3 Spot Elevation Plan, dated 4-22-09;
- (L) C4.1 SWPPP Existing Site Layout, dated 4-22-09;
- (M) C4.2 SWPPP Proposed Site Plan & General Info, 4-22-09;
- (N) C4.3 SWPPP Details & Notes, dated 4-22-09;
- (O) C5.1 Site Details, dated 4-22-09;
- (P) C5.2 Site Details, dated 4-22-09;
- (Q) C5.3 Site Details, dated 4-22-09;
- (R) C6.1 Existing Site Photometrics Plan, dated 4-22-09;
- (S) C6.2 Site Photometrics Plan, dated 4-22-09;
- (T) L1.1 Wetland Mitigation Summary, dated 4-22-09;

- (U) L1.2 Wetland Mitigation Planting Plan, dated 4-22-09;
- (V) L1.3 Wetland Mitigation Areas & Details, dated 4-22-09;
- (W) L1.4 Landscape Planting Plan, dated 4-22-09;
- (X) L1.5 Landscape Details, dated 4-22-09;
- (Y) L1.6 Landscape Details, dated 4-22-09;
- (Z) T1.11 Title Sheet, dated 4-22-09;
- (AA) A1.21 Parking Surface Plan, dated 3-30-09;
- (BB) A2.11 Southwest Elevations;
- (CC) A3.11 Parking Surface Cross Sections, dated 3-30-09;
- (DD) S1.11 Pile and Pile Cap/Grade Beam Plan, dated 3-30-09;
- (EE) S1.51 Parking Surface Framing Plan, dated 3-30-09; and

(2) Any alterations to the approved plans that do not alter major elements of the plan may be approved by the land use supervisor without further planning commission or city council action; however, no such administrative approval shall constitute a variance from the provisions of Chapter 50, Article XXIII; and

(3) Kohl's Department Stores, Inc., provide the city of Duluth engineering division with a copy of a maintenance plan for the sediment trap structure A-5 (Sheet C2.4, Site Utility Profile & Schedule, A-5 Profile); and

(4) Kohl's Department Stores, Inc., provide all post construction record drawings to the city of Duluth engineering division.

Resolution 09-0408 was unanimously adopted.

Approved June 15, 2009

DON NESS, Mayor

- - -

Resolution 09-0416, granting a special use permit to city of Duluth, maintenance operations, for temporary storage of various aggregates at 1630 Rice Lake Road, was introduced by Councilor Stauber for discussion.

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

Kelly Herstad and Mark Lambert opposed the resolution for the reasons of: this location would be unsightly for gravel storage; city trucks would have poor visibility when exiting from this site; across from the animal allies site down the road, would be a much safer location; this entrance to the city with beautiful views is used as a primary road for taxis from the airport and thus should not have a gravel storage pile; as a good neighbor and developer, this gravel storage pile will become a detriment to further development in this area; the planning commission denied this 11 to 1 and if this is approved, there needs to be good reasonable conditions associated with it.

Resolution 09-0416 failed upon a unanimous vote (Public Document No. 09-0615-28).

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Resolution 09-0423, submitting a proposition at the next municipal election to the voters of Duluth to approve Ordinance 09-027; and Resolution 09-0424, submitting an advisory proposition at the next municipal election to the voters of Duluth to provide direction to the city on requests for variances, special use permits and easement vacations for purposes of implementing ISD 709's long range facility plan, by Councilor Stauber, were introduced for discussion.

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

Craig Olson, Chris Lane, David Ross, Paul Goosens, Mimi Larson and Mike Akervik opposed the resolutions for the reasons of: these are not in the best interests of the long range

facilities plan; it does not place the council in a good decision making position; the council should look into the specifics of each special use permit or vacation and make the best decision; it sets a bad precedence for other issues to be put forth on the ballot; the Duluth Chamber of Commerce Board of Directors unanimously supports the school district's plan and the board's authority to make this decision; the school board completed an exhaustive two year process of data collection, analysis, community review, discussion and decision making; the school board is a duly elected body to make school related decisions; the city council should refrain from entangling itself in the business of another public entity; the city council should be involved in reviewing specific special use and variances on their own merit and as with the planning commission reviews, the council should only be involved with the specific special use and variance requests.

Brian Ronstrom, Lawrence Burda, Gordon Downs, Karen Husick, Tom Kasper and Brenda Anderson supported the resolutions for the reasons of: as required by law, the school district has to show a "hardship" for these permits, which they have not; the real hardships if this is allowed, would be to the residents with increased traffic delays, reduced property values and extended rush hour traffic; Superior Street parking congestion would increase; there is the possible Bald and Golden Eagle Protection Act to contend with; this will be a massive earth moving project; there will be an increase in impervious surface areas; citizens should have the right to vote on this issue that affects safety, street closing, parking, traffic, eminent domain and ball fields; this has contributed to the financial hardship of those that cannot afford it; this is the highest school bonding issue in the state of Minnesota; all these requests would not have been needed if the school district had conferred with the city prior to developing all these plans; if these variances are approved, they will have severe negative impact on community, neighborhoods and homes; the school district plan does not follow the comprehensive plan and this affects the entire city and that's why the city council should be involved.

Councilors discussed at length the issues raised.

Councilor Stauber supported the resolutions for the reasons of: the council has a leadership and representative role, and in this case it is helpful to know how the community wishes the council to represent them and there are approximately 11 special use permits, variance or zoning changes involved with this project, so there is a significant community affect.

Councilors Eckenberg, Anderson and Fedora opposed the resolutions for the reasons of: the city council is not in the position to dictate to another elected body; there is no legal binding authority for the city by having this on the ballot and the council is only elected to look at each permit on its own merits.

Resolution 09-0423 failed upon the following vote (Public Document No. 09-0615-30):

Yeas: Councilors Gardner, Krause and Stauber -- 3

Nays: Councilors Anderson, Cuneo, Eckenberg, Fedora and President Gilbert -- 5

Abstention: Councilor Fosle -- 1

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Resolution 09-0424 failed upon the following vote (Public Document No. 09-0615-29):

Yeas: Councilors Krause and Stauber -- 2

Nays: Councilors Anderson, Cuneo, Eckenberg, Fedora Gardner and President Gilbert -- 6

Abstention: Councilor Fosle -- 1

- - -

RESOLVED, that the proper city officers are hereby authorized to amend Resolution 08-0344 (as amended by Resolution 09-0029), retaining Kennedy & Graven, Chartered, to assist the city attorney in the representation of the city in a matter currently pending in the St. Louis

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

County district court and entitled *Hartley Conrad, Paula Savela and Carol Griak v. City of Duluth*, Court File No. 69DU-CV-08-1793, and to be available on a continuing basis to advise the city on the issues involved in the lawsuit, as set out in the request for proposals, pursuant to its proposal dated May 20, 2008, not to exceed \$180,000, payable from Fund 610-036-1650-5319.

Resolution 09-0384 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause and President Gilbert -- 8

Nays: Councilor Stauber -- 1

Approved June 15, 2009

DON NESS, Mayor

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At this time, 10:50 p.m., Councilor Fedora moved to suspend the rules to extend the meeting until 11:30 p.m., which motion was seconded and unanimously carried.

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Resolution 09-0418, approving the submission of state bonding requests for the 2010 capital budget, was introduced by President Gilbert for discussion.

Mayor Ness reviewed that the purpose of this resolution is to secure the council's feedback and input, or just send it back and the administration will proceed as has been done in the past.

Councilors discussed items on the list and the process.

Councilor Stauber moved to remove this resolution from the agenda and refer it back to the administration, which motion was seconded and carried upon the following vote:

Yeas: Councilors Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 8

Nays: Councilor Anderson -- 1

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RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Ulland Brothers, Inc., for the reconditioning of Second Street from Mesaba Avenue to 24th Avenue East in the amount of \$3,521,440.14, payable out of the Permanent Improvement Fund 0411, Agency 035, Object 5530, City Project No. 0383TR, S.A.P. 118-130-04 MTB.

Resolution 09-0398 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fosle, Gardner, Krause, Stauber and President Gilbert -- 8

Nays: None -- 0

Abstention: Councilor Fedora -- 1

Approved June 15, 2009

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 2009 for use by the Duluth public library, said gifts to be deposited in Fund 240, Agency 300, Organization SG50, Revenue Source 4660, and, on behalf of the city, thank the Friends of the Duluth Public Library for their generous gifts.

Resolution 09-0392 was unanimously adopted.

Approved June 15, 2009

DON NESS, Mayor

- - -

WHEREAS, the city faces a demand for the provision of public recreational services with reduced financial and staffing resources; and

WHEREAS, the Friends of the Parks, Duluth, desires to enter into an agreement with the city for the operation and maintenance of the Lower Chester Community Recreation Center.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officers are authorized and directed to execute the agreement filed as Public Document No. 09-0615-31, between the city of Duluth and the Friends of the Parks, Duluth.

Resolution 09-0411 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Krause and Stauber -- 7

Nays: Councilor Gardner and President Gilbert -- 2

Approved June 15, 2009

DON NESS, Mayor

- - -

WHEREAS, the city faces a demand for the provision of public recreational services with reduced financial and staffing resources.

WHEREAS, the Irving Recreation and Events Association desires to enter into an agreement with the city for the operation and maintenance of the Irving Community Recreation Center.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officers are authorized and directed to execute the agreement filed as Public Document No. 09-0615-32 between the city of Duluth and the Irving Recreation and Events Association.

Resolution 09-0419 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Krause, Stauber and President Gilbert -- 8

Nays: Councilor Gardner -- 1

Approved June 15, 2009

DON NESS, Mayor

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INTRODUCTION AND CONSIDERATION OF ORDINANCES

ORDINANCES TABLED

BY COUNCILOR FEDORA

09-026 - AN ORDINANCE AMENDING SECTION 29A-34 OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO RENTAL LICENSING APPEAL PROCEDURES.

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

Councilor Fedora stated that this ordinance would add a procedure for homeowners to appeal an adverse building appeal board decision to the city council, which deals with appeals from other situations.

Councilor Krause opposed the ordinance for the reasons of: there is already a mechanism where homeowners can appeal those decisions and there is likely to be a floodgate of these appeals to the city council.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Councilor Fedora moved passage of the ordinance and the same failed upon the following vote (Public Document No. 09-0615-33):

Yeas: Councilors Eckenberg, Fedora, Fosle and President Gilbert -- 4
Nays: Councilors Anderson, Cuneo, Gardner, Krause and Stauber -- 5

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INTRODUCED BY COUNCILOR STAUBER

09-027 (9979) - AN ORDINANCE AMENDING SECTIONS 44-23, 50-21 AND 50-35 OF THE DULUTH CITY CODE, AS AMENDED, RELATING TO SIGNS, BUILDING HEIGHT VARIANCES AND OFF-SITE PARKING FOR SCHOOLS.

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

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

Mr. Leider reviewed the details and reason for this Zoning Code change.

Councilors asked various clarification questions and discussed the issues further.

Councilor Krause expressed a desire to have the three proposed items come back separately, because when you lump a lot of things together, often one item forces you into a "no" vote, while you support other aspects.

Councilor Stauber moved to amend the ordinance by removing the references to the changes in height restrictions and front yard parking, which motion was seconded and discussed.

- - -

At this time, 11:26 p.m., Councilor Krause moved to suspend the rules to extend the meeting until midnight, which motion was seconded and unanimously carried.

- - -

Councilor Stauber's amendment failed upon the following vote:

Yeas: Councilors Gardner, Krause and Stauber -- 3

Nays: Councilors Anderson, Cuneo, Eckenberg, Fedora and President Gilbert -- 5

Abstention: Councilor Fosle -- 1

The ordinance was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Gardner and President Gilbert -- 6

Nays: Councilors Krause and Stauber -- 2

Abstention: Councilor Fosle -- 1

- - -

BY COUNCILORS STAUBER AND KRAUSE

09-025 - AN ORDINANCE AMENDING SECTION 29A-32.1 OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO RENTAL LICENSING.

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

Councilor Stauber passage of the ordinance and the same failed upon the following vote (Public Document No. 09-0615-34):

Yeas: Councilors Eckenberg, Krause, Stauber and President Gilbert -- 4

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

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

The following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR FEDORA

09-032 (9980) - AN ORDINANCE TO AMEND THE DISTRIBUTION OF THE TAX LEVY OF THE CITY OF DULUTH FOR THE YEAR 2009 BY TRANSFERRING A PORTION OF THE DEBT SERVICE LEVY TO THE GENERAL FUND SUPPORT LEVY.

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

- - -

INTRODUCED BY COUNCILOR KRAUSE

09-031 (9981) - AN ORDINANCE MODIFYING CHAPTER 41 PURCHASING PROVISIONS, AMENDING SECTIONS 41-1, 41-6, 41-10, 41-15, 41-16, 41-23, 41-24, 41-28, AND REPEALING SECTIONS 41-7, 41-8, 41-11, 41-12, 41-13, 41-14, 41-25, 41-26 AND 41-31 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

Councilor Krause moved to amend sections 41-23 and 41-24 of the ordinance to delete all references of "\$100,000" and insert "\$50,000," which motion was seconded and carried upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Gardner, Krause, Stauber and President Gilbert -- 8

Nays: Councilor Fosle -- 1

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Gardner, Krause, Stauber and President Gilbert -- 8

Nays: Councilor Fosle -- 1

- - -

BY COUNCILORS KRAUSE AND ECKENBERG

09-034 - AN ORDINANCE REGULATING RUBBISH AND TALL GRASS, AMENDING SECTIONS 24-6 AND 24-37 OF THE DULUTH CITY CODE.

Councilor Fosle moved to amend the first sentences of subsections 24-6(b) and 24-37(b) of the ordinance to insert the words "or public" between the words "private" and "property," which motion was seconded and fails as follows:

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

Nays: Councilors Anderson, Cuneo, Eckenberg, Krause and Stauber -- 5

Councilors discussed at length the aspects of the public nuisance versus the costs to monitor and enforce this ordinance.

- - -

At this time, 11:54 p.m., Councilor Fedora moved to suspend the rules to extend the meeting until 12:30 p.m., which motion was seconded and unanimously carried.

- - -

Councilor Krause moved passage of the ordinance and the same failed upon the following vote (Public Document No. 09-0615-35):

Yeas: Councilors Eckenberg, Krause, Stauber and President Gilbert -- 4

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

- - -

BY COUNCILOR CUNEO

09-008 (9983) - AN ORDINANCE AMENDING SECTION 34-1 OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO CURFEW.

Councilor Krause opposed the ordinance because he did not feel that this will reduce crime.

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Gardner, Stauber and President Gilbert -- 7

Nays: Councilors Fosle and Krause -- 2

- - -

The meeting was adjourned at 12:05 a.m.

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 9978

BY COUNCILOR GARDNER:

AN ORDINANCE AMENDING SECTIONS 33-5, 45-6.1 AND 45-6.2 OF THE DULUTH CITY CODE, 1959, AS AMENDED, REGARDING THE USE OF INLINE SKATES, ROLLERSKATES AND SKATEBOARDS.

The city of Duluth does ordain:

Section 1. That Section 33-5 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 33-5. Same--bicycles, inline skates, rollerskates, skateboards and animals.

Every person riding a bicycle, inline skates, rollerskates, skateboard or an animal or driving any animal drawing a vehicle upon a roadway shall be subject to the provisions of this Chapter applicable to the driver of a vehicle, except those provisions which by their nature can have no application.

Section 2. That Section 45-6.1 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 45-6.1. Tricycles, coaster wagons prohibited on roadways.

No person shall use any tricycle or coaster wagon upon any public street unless such public street does not provide a sidewalk for pedestrian use. No parent or guardian of any child under the age of eight years old shall allow or permit such child to use any tricycle or coaster wagon upon any public street in the city which does not provide a sidewalk for pedestrian use unless supervised by such parent or guardian. This Section shall not pertain to the use of any two or three wheeled bicycle if all of its wheels are at least nine inches in diameter.

Section 3. That Section 45-6.2 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 45-6.2. Inline skates, rollerskates and skateboards--general use.

(a) No person shall ride or propel inline skates, rollerskates or a skateboard upon any public sculpture, statue, monument, fountain, or on any planter, flower or tree box, flower bed or garden, upon any area designed and used

for public seating, benches, railings, walls of any public building or structure or any other equipment or structure located in any public park or upon any public property;

(b) No person shall ride or propel inline skates, rollerskates or a skateboard at any time anywhere on the grounds of the main branch of the Duluth public library or the Duluth civic center;

(c) No person shall ride or propel inline skates, rollerskates, or a skateboard upon any sidewalk in a business district between the hours of 7:30 a.m. and 9:00 p.m. or at any times in posted areas which have been designated by city council resolution. For the purposes of this Section, the term business district shall have the meaning given it in Section 33-1 of this Code;

(d) No person shall ride or propel inline skates, rollerskates or a skateboard upon a public street, sidewalk, or other area available for pedestrian use by the public as a matter of right, in such manner as endangers or is likely to endanger other persons or cause damage to property.

Behavior deemed to endanger shall include, but is not limited to:

(1) Riders failing to yield to motor vehicles while riding upon or when crossing a public street or highway;

(2) Riders failure to operate at a speed which is reasonable and prudent for conditions of motor vehicle and/or pedestrian traffic;

(3) Riders failing to yield the right-of-way to any pedestrian upon any public way;

(4) Riders performing jumps, tricks or traveling in an unreasonable manner that results in any injury or damage to any person, animal or property of another;

(e) No parent or guardian of any child under the age of eight years old shall allow or permit such child to ride or propel inline skates, rollerskates or a skateboard upon any public street or alley in the city unless supervised by such parent or guardian.

Section 4. That this ordinance shall take effect 30 days after its passage and publication.
(Effective date: July 22, 2009)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Gardner, Krause and Stauber -- 6

Nays: Councilors Fedora, Fosle and President Gilbert -- 3

ATTEST:
JEFFREY J. COX, City Clerk

Passed June 15, 2009
Approved June 15, 2009
DON NESS, Mayor

- - -

ORDINANCE NO. 9979

AN ORDINANCE AMENDING SECTIONS 44-23, 50-21 AND 50-35 OF THE DULUTH CITY CODE, AS AMENDED, RELATING TO SIGNS, BUILDING HEIGHT VARIANCES AND OFF-SITE PARKING FOR SCHOOLS.

The city of Duluth does ordain:

Section 1. That Section 44-23 of the Duluth City Code, as amended, is amended to read as follows:

Sec. 44-23. Regulations in R-1-a, R-1-b, R-1-c and R-2 zoning districts.

The following signs are permitted to be located in the R-1-a, R-1-b, R-1c and R-2 districts set forth in Chapter 50 of this Code:

(a) One each sign containing the words entrance, exit, stop and no trespassing, each not exceeding three square feet in area. No illuminated or animated signs are permitted;

(b) One sign advertising property for sale, lease or rent, or informing that property has been sold, not exceeding six square feet in area and located not less than ten feet from any property line unless affixed to a building, and having no illumination. Such signs are to be removed within seven days after the property has been sold, leased or rented;

(c) One name plate per dwelling indicating the name of the occupant and a permitted occupation, not exceeding two square feet in area. Only indirect illumination is permitted;

(d) Church bulletin board, not exceeding 25 square feet, located not less than ten feet from any property line and on same property as the church. Only indirect illumination is permitted. Permit required;

(e) Recreation field signs to include: One directional sign no more than 20 square feet in area and ten feet in height, one sign identifying the recreational field not more than ten square feet in area and attached to the principal building, and one scoreboard sign for each play area. No sign other than score boards shall contain advertising and no scoreboard shall contain more than ten square feet of product or service advertising. Only indirect illumination is permitted;

(f) Political or property owner opinion signs must be located not less than three feet from any side property line or public street or sidewalk improvement and if illuminated must comply with ordinances regulating illumination. Signs over six feet in height must comply with structure safety standards as evidenced by a valid building permit;

(g) Signs informing of construction or remodeling.

For nonresidential construction or remodeling, one sign announcing contemplated or actual improvements on a site shall be allowed, which sign shall not exceed 32 square feet in area, provided that an additional 16 square feet shall be allowed for identification of architects, engineers and prime contractors. Only indirect illumination is permitted.

For residential construction or remodeling, one sign identifying the architects, engineers and prime contractors, having a total area of no more than 20 square feet shall be allowed. Only indirect illumination is permitted.

No signs permitted under this subsection shall be located within a required yard as established in Chapter 50 of this Code, and all such signs shall be removed within seven days after completion of the improvements;

(h) Temporary signs on the premises which do not advertise any ongoing business activity, do not exceed six square feet in area, are not illuminated, are located at least ten feet from side property line or public street or sidewalk improvement and are not maintained for more than two days;

(i) Only in conjunction with a home occupation as defined and permitted by Chapter 50 of this Code, one sign not exceeding one square foot which is attached to the dwelling, which contains only the name and title of the person engaged in such occupation and which is not illuminated;

(j) Schools, grades K-12. One wall identification sign not exceeding 32 square feet. Maximum height of 16 feet or top of wall, whichever is less. On a corner lot, two such signs per building. In addition, one freestanding ground sign not exceeding 32 square feet in area and eight feet in height. Either the wall sign or the ground sign, but not both, may be illuminated. Flashing, animated and revolving signs are not permitted.

Section 2. That Section 50-21 of the Duluth City Code, as amended, is amended to read as follows:

Sec. 50-21. Exceptions to article—height.

(a) The height regulations prescribed in this Article shall not apply to television and radio towers, church spires, belfries, monuments, tanks, water and fire towers, stage towers, or scenery lofts, cooling towers, ornamental towers and spires, chimneys, elevator penthouses, air conditioning penthouses, skylights, smokestacks, conveyors, storage elevators and facilities, flagpoles and wind energy conversion systems;

(b) Public, semi-public or public service buildings, hospitals, institutions or schools, where permitted, may be erected to a height not exceeding 60 feet and churches and temples not exceeding 75 feet when the required side and rear yards are each increased by one foot for each foot of additional building height above the height regulations for the district in which the building is located; a variance may be granted pursuant to Article VI of this Chapter, provided that no variance shall be granted unless the board finds that the reason for the variance is due to the existence of a hardship, as defined in Section 50-47(b). The variance shall be granted only upon compliance with any conditions determined by the board to be reasonable and necessary to protect the interests of the abutting property owners and the residential character of the surrounding neighborhood;

(c) The limitation on the number of stories shall not apply to buildings used exclusively for storage purposes; provided that such buildings do not exceed the height in feet permitted in the district in which they are located.

Section 3. That Section 50-35 of the Duluth City Code, as amended, is amended to read as follows:

Sec. 50-35. Enumerated.

The following are the special uses for which the city council may issue a special permit, as provided in Section 50-32:

(a) Airport, landing field or landing strip for all forms of aircraft, auto race track and drag strip;

(b) Amusement park, but not within 300 feet of any R district;

(c) Beauty salon in an R district, subject to the following restrictions and conditions:

(1) Such use shall be incidental and subordinate to the principal residential use conducted within a dwelling and not in an accessory building;

(2) At least 120 square feet but not more than 1/4 of the floor area of one story of the building shall be devoted solely to such use and to no other use;

(3) Only one person shall work in the beauty salon and such person shall reside on the premises;

(4) There shall be no separate entrance to the beauty salon from the front of the building, and the applicant shall provide evidence of inspection and compliance with all applicable fire and building codes;

(5) No signs or displays advertising the salon shall be permitted on the premises;

(6) At least two off street parking spaces shall be available on the premises for use by patrons of the salon, such parking space requirement to be in addition to the parking space requirements otherwise applicable to the premises;

(7) Applicant shall, prior to issuance of a special use permit pursuant to this Section, provide proof that applicant has all required licenses for operation of a beauty salon;

(8) Notice and publication as required by Section 50-32.2 of this Code shall, in the case of permits under this paragraph, include mailed notice to all property owners and occupants of property within 200 feet of the building;

(9) No permit shall be granted pursuant to this paragraph if a beauty salon already exists within 1,000 feet of the premises;

(d) The city council recognizes that bed and breakfasts are an asset to the community and help the preservation of historic homes and neighborhoods and help the economy of the region as small businesses. Bed and breakfast inns and country inns; in districts where they are permitted as special uses and only as provided herein;

(1) This special use permit shall be granted only to those properties, which meet or exceed the criteria outlined herein. A bed and breakfast inn must be a residential building that has no greater impact on the uses of the public areas or infrastructure or natural resources of the neighborhood than, or be apparent to an observer to be other than, the existing property used as a fully occupied private home with house guests. The principal building must appear outwardly to be a single family dwelling, giving no appearance of a business use other than allowed signs.

No permit shall be considered or issued for a bed and breakfast facility located closer than 450 feet to an existing bed and breakfast facility. This limitation may be waived by the city council for properties which are locally designated heritage preservation landmarks;

(2) An application for this special use permit shall include the following:

- (A) A site plan as defined in Section 50-1.60;
- (B) A landscape plan as defined in Section 50-1.40;
- (C) A set of detailed floor plans indicating the traditional uses of all rooms and the intended uses in the bed and breakfast operation;
- (D) Sign drawings showing location, dimensions and detail;
- (E) For a waiver of the 450 foot separation, a copy of the resolution designating the properties as a heritage preservation landmark;

(3) Bed and breakfast inns and country inns may be granted special use permits subject to the following standards and conditions:

(A) The property must be comprised of a minimum of 0.6 acre;

(B) The main residential building must contain a minimum of 1,500 square feet of area on the first floor;

(C) For an inn, the proprietor shall be the owner and occupant of the property;

(D) Off street parking for the uses of the property shall be provided on site as required in Section 50-26. Scattered off site parking shall not be allowed;

(E) All parking areas shall be hard-surfaced and visually screened by vegetation and/or fencing (consistent with the architecture of the structure) as required by the city in order to maintain the apparent single family use of the property;

(F) Dining areas shall not exceed three seats per habitable unit in bed and breakfast inns. In bed and breakfast country inns, allowed under this Section, 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 bed and breakfast inns, 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 which 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;

(G) Any construction to restore buildings to historic condition, any construction of new buildings and any exterior alterations to the building must be authorized by the city council through this special use permit process;

(H) There shall be a limitation on the number of guest rooms permitted based on the size of the building, building code or fire code;

(I) Total signage on the property shall not exceed 12 square feet in size. Such signage shall complement the architecture of the structure;

(J) Guests' stays shall be limited to 21 consecutive days;

(K) A bed and breakfast establishment must comply with all building and fire code requirements. Inspections shall be conducted before special use permits or licenses are issued;

(L) The owner/operator shall present inspection reports from the city fire marshal and St. Louis County health department to the city clerk prior to the issuance of any licenses;

(M) Such other conditions deemed necessary by the planning commission and/or city council to ensure the use complies with the purpose of this subsection;

(e) Cemetery, crematorium or mausoleum;

(f) Child care facility. A state licensed residential facility for care and treatment of children located within 100 feet of an existing state licensed residential program that has an administrative organization and structure approved under state

law for providing shelter, food, training, treatment and other aspects of care of not more than six children, and is an extension of an existing facility licensed under state law.

Any such facility shall meet all other state licensing requirements for such facilities, be contiguous to or located not more than 100 feet from the existing licensed facility charged with operation of the facility, and must not present any external image other than that of a single family residence;

- (g) Circus or carnival grounds, but not within 300 feet of any R district;
- (h) Clinic of less than 10,000 square feet in floor area;
- (i) Commercial, recreational or amusement development for temporary or seasonal periods;
- (j) Commercial rooming house, but only in those districts where permitted as special use;
- (k) Commercial services and recreational uses in the IP industrial park district, as further defined in Section 50-123 of this Chapter;
- (l) Day care facility, but only in those districts where permitted as a special use;
- (m) Elderly congregate housing facility, but only in those districts where permitted as a special use;
- (n) Marina;
- (o) Mini storage facilities; subject to compliance with the following criteria:
 - (1) Located in a S zone;
 - (2) On a parcel not less than 7-1/2 acres in size with no less than 500 feet of frontage on a publicly maintained right-of-way;
 - (3) Development shall not increase the peak stormwater runoff from the site from its existing condition based upon a storm of 100 year frequency and 24 hour duration (5.25 inches of rainfall);
 - (4) Signage shall be limited to one 40 square foot 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;
 - (5) There shall be maintained a minimum of 50 feet of landscaped or naturally vegetated buffer from all property lines;
 - (6) There shall be a minimum structure setback of 100 feet from any property line;
 - (7) Storage area unit shall not exceed a 12 foot wall height and a floor area of 300 square feet;
 - (8) Lighting shall be limited so as not to illuminate beyond property lines;
- (p) Office building of a civic, religious or charitable organization, conducting activities primarily by mail and not handling merchandise or rendering services on the premises, but only within the R-4 district;
- (q) Petroleum soil treatment;
 - (1) Petroleum soil treatment in the form of land treatment (soil farming) shall be located in S-suburban zones and shall comply with the following criteria:

(A) That the pollution control agency (PCA) shall have reported to the planning department regarding the individual site and the possibility of any problems relative to issuance of PCA authorization for use of the site;

(B) The natural topography, drainage character, vegetation and use of the site shall not be altered beyond site preparation required for any listed permitted land use within the S-suburban zone. Specifically:

1. No vegetation shall be cut or removed from within state required setbacks except as required for installation of temporary roads;

2. Vegetation removal shall be minimal. Vegetation greater than six inches caliper shall not be removed except as determined necessary to accommodate minimal equipment clearances, and there shall be minimal preparation of the soil on the treatment area. Such preparation shall minimize disturbance of the topsoil and does not preclude the return of the site to listed permitted S-suburban zone land uses;

(C) All treatment areas must be planted to pasture grasses during treatment and replanted to the original vegetation after the treatment process has been completed;

(D) No sites shall be located within wetland, shore land or flood zones as defined by Chapter 51 of the Code;

(E) That the applicant shall maintain the treatment site in strict compliance with all conditions of this permit and associated state or federal permits;

(2) Petroleum soil treatments using biodegradation such as composting or aerobic treatment cells or other technologies as may be developed and approved by the PCA from time to time, shall be only permitted in M-1 and M-2 zones, and shall be subject to the standards (A), (B), (D) and (E) cited above;

(r) Power transmission line, review and approval to be provided for separately in each of two steps:

(1) A general corridor special use permit;

(2) A final design special use permit, under the following conditions and procedures:

(A) Submittal information for general corridor special use permits. In addition to other information required by the special use permit process, the applicant shall provide the following information with applications for general corridors:

1. A statement demonstrating the need for the proposed line;

2. Drawings showing the approximate location of a preferred route (having a width of less than 1,000 feet) and at least one alternative route. Included within each route shall be an intended center line and subject site and adjacent area information, the form of which shall be determined by the planning commission on existing topography, land uses, soils, vegetation, water courses, wetlands, major drainage ways, flood plains, rock outcroppings and scenic views. Drawings shall also indicate proposed general types, heights and ranges of spacing of supporting structures and related equipment such as pumping stations, although the specific type of line shall not be approved until the final design review;

3. A statement identifying potential locations of conflict such as adjacent scenic and residential areas and describing general proposed methods of dealing with such conflicts;

4. A statement addressing each applicable standard of Section 50-35(r)(4) below in regard to the preferred route and alternative routes;

(3) Submittal information for final design special use permits. In addition to information otherwise required by the special use permit process, the applicant shall provide the following for final design special use permits:

(A) Plans and profiles, the form of which shall be determined by the planning commission, showing the exact location of the center line and the exact location and design of supporting structures and related equipment as proposed by the applicant. Alternative potential designs of supporting structures shall also be presented;

(B) A landscaping plan and subject site and adjacent area information on existing topography, land uses, soils, vegetation, water courses, wetlands, major drainage ways, flood plains, rock outcroppings and scenic views in a form which shall be determined by the city planning commission;

(C) A statement addressing each applicable standard of Section 50-35(r)(4) below;

(4) Standards for approval. No special use permit shall be granted unless the following standards and conditions are met in addition to normal requirements of the special use permit process:

(A) For general corridor special use permits:

1. The public need for the route and facility as specifically proposed shall be demonstrated;

2. Where possible, lines shall avoid existing and potential urban density residential neighborhoods;

3. 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;

(B) For final design special use permits:

1. Where it is determined that a proposal would unduly harm adjacent property or property values, it shall be determined that no other 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;

2. 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;

3. Lines shall meet or exceed the National Electric Safety Code;

4. Electro-magnetic noise and interference with radio and television reception, as well as audible hum outside the line right-of-way, shall be minimized;

5. 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;

(C) For both general corridor and final design special use permits. The following standards shall apply in addition to those required above under general corridor and final design special use permits:

1. 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 which would create sedimentation and pollution problems; areas of unstable soils which 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;

2. 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;

(5) Alteration of final design special use permit. Once the final design special use permit is issued, the applicant may change the height and location of structures for engineering purposes provided no structure height is increased or decreased by more than 20 percent of its approved height or moved more than 25 feet from its approved location. Should it be necessary to alter the height or location more than the amounts set forth herein, applicant must obtain the approval of the city planning commission after the commission has conducted its normal public hearing and notice procedures. The decision of the planning commission on any alterations shall be final unless appealed to the city council within ten days;

(s) Privately operated community building or recreation field;

(t) Any public or government owned or leased building not permitted in a particular district; provided that such permit shall run for a full period of the lease and that both lease and permit shall run for not less than ten years from date of permit;

(u) Radio or television broadcasting tower or station;

(v) Residential care facility, only in those districts where permitted as a special use;

(w) Residential rooming house, only in those districts where permitted as a special use;

- (x) Riding stable;
- (y) Solid waste disposal facility;
 - (1) Special use permits for solid waste disposal facilities and yard waste compost facilities shall be granted only under certain circumstances and under certain conditions;
 - (2) An application for this special use permit shall include the following:
 - (A) A complete legal description of the property and the specific site within the property description;
 - (B) A site plan as defined in Section 50-1.64;
 - (C) A landscape plan as defined in Section 50-1.65.7;
 - (D) A detailed plan schedule for excavation, grading, dumping, filling, covering, landscaping and closure of the facility;
 - (E) Engineering certification, signed by the project engineer, which must certify (with any exceptions listed) that the design for construction is in accordance with standards as set out in these regulations and state statutes and rules relating to the specific type of requested facility;
 - (F) Signage plans showing location, dimensions and detail;
 - (G) Drainage plan that provides for diversion of surface water around and away from the disposal area and does not increase the rate of runoff, from the predevelopment condition, from the site onto adjoining properties;
 - (H) Ground water monitoring plan as and if required by state statutes or rules;
 - (I) A detailed dust control plan for the facility and for roadways in and leading to and from the facility;
 - (3) Standards and conditions. Solid waste disposal facilities and yard waste composting facilities may be granted special use permits in S, M-1 and M-2 zones subject to the following:
 - (A) Setbacks, in M-2 zones, all aspects of the solid waste disposal operation shall be setback from all property lines a minimum of 150 feet. In S and M-1 zones the setback shall be 300 feet from all properties zoned other than M-2. Such setbacks shall be bermed and/or landscaped so as to be visually screened from adjacent properties and roadways. 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;
 - (B) Licensing for all solid waste disposal operations and facilities as well as yard waste composting facilities shall comply with all state and Western Lake Superior Sanitary District requirements in accordance with Minnesota Statutes and agency rules;
 - (C) Solid waste disposal facilities for industrial waste shall only be allowed in M-2 zones. Such facilities shall be approved in the special use permit only for specified types of industrial waste;
 - (D) Solid waste disposal facilities for construction debris shall only be allowed in M-2 zones;
 - (E) Facilities for composting of yard waste shall not accept materials other than yard waste;

(F) 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 these are defined in Chapter 51 of this Code;

(G) 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;

(H) There shall be no burning of materials;

(I) 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 S and M-1 zones shall be constructed with an approved, as part of the special use permit, dust free material;

(J) All vehicles transporting materials to or from the facility shall be covered;

(K) For sites in S and M-1 zones, there shall be no dumping or operations outside of buildings, nor delivery or removal of materials to or from the site occurring between the hours of 10:00 p.m. and 7:00 a.m.;

(L) Except for yard waste composting facilities there shall be no processing (separating or sorting) of materials outside of covered structures;

(M) Noise emanating from a building in which dumping, separating or other processing of material is performed shall not exceed 55db at any property line which abuts property zoned other than M-2;

(N) In S and M-1 zones there shall be no exterior lighting permitted except to provide security for buildings and parking areas. Where such lighting is permitted it shall be directed so no light source is visible from any property line;

(O) Compliance funding: 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;

(z) Strobe lights, as defined in Section 10-36 of this Code, may be used on radio and television broadcasting towers exceeding 400 feet in height located in that area of the city commonly known as the tower farm within Section 28, Township 50, Range 14, subject to the following restrictions and conditions:

(1) Strobe lights may be used only when the north sky illumination on a vertical surface at the base of the tower is greater than five footcandles. Red obstruction lights must be used at all other times;

(2) Strobe installations shall be shielded so as not to be visible from ground elevation for a radius of two miles from the antenna base;

(3) Strobe installations will be allowed only on towers which are required by federal aviation administration regulations to be painted orange and white;

- (aa) Drive-in theater in the S suburban district;
- (bb) Tourist or trailer camp; provided, that such tourist or trailer camp shall comply with the applicable provisions of this Code and the laws of the state;
- (cc) Essential municipal or public utility use, facility or building, other than a business office or production facility; provided that such use, facility or building shall be located in a S district only if its specific function requires that it be so located in order to serve the immediate neighborhood, as opposed to serving a major portion of the community. Provided, that a substation which serves more than the immediate neighborhood may be granted a special use permit in S districts if such substation is located in such a manner that it is visually screened from adjacent properties and is located on a site of at least five acres;
- (dd) Veterinarian or animal hospital; provided, that practice is limited to the treatment of small animals (household pets, i.e. dogs, cats, birds, which are ordinarily permitted in the house and kept for company or pleasure) and that all aspects of the facility are totally contained (including kennel runs and exercise areas) within a sound-proof building with adequate ventilation;
- (ee) Wind energy conversion systems. Wind energy conservation systems (WECS) shall be permitted, provided; tower height shall not exceed 200 feet; that existing or future uses permitted within adjacent properties are not adversely effected by noise, electronic signal interference or safety conditions; that satisfactory visual screen buffers be provided at the edges of the property to mitigate aesthetic impacts upon the neighborhood if located within "R" districts; and that WECS be set back from all property lines a distance equal to or greater than the tower height as measured from the base of the tower unless it can be demonstrated that tower failure would not damage adjacent public or private interests;
- (ff) Personal wireless communications service towers. These towers shall include all towers and poles over 50 feet high used to provide "personal wireless services" as defined in 47 USCS §332(c)(7)(C)(I), including those commonly known as cellular telephone towers or personal communications services (PCS) towers. The following standards shall apply to the considerations of special use permits for these towers:
 - (1) No permit decision shall unreasonably discriminate among providers of functionally equivalent services;
 - (2) No permit decision shall have the effect of prohibiting personal wireless services in an area;
 - (3) No permit decision shall be based on the environmental effects of radio frequency emissions if the proposed tower complies with all applicable federal communications commission regulations;
 - (4) Any decision to deny a permit for these towers must be made in writing and supported by substantial evidence contained in a written record;
 - (5) The construction of new towers shall, where possible, be avoided when there are existing high buildings or other structures in the area that can reasonably be used to house the telecommunications facilities;
 - (6) Whenever possible, new towers shall be built in zones for manufacturing or commercial uses as opposed to zones for residential uses;

(7) New towers shall, where possible, be constructed to accommodate multiple telecommunications users and thus minimize the proliferation of the towers, if such multiple use capacity can be attained using reasonable height limitations;

(8) New towers shall, where reasonably possible, be designed to blend into the proposed site so as to minimize its visual impact on the surrounding area;

(9) Telecommunications facilities and equipment used in conjunction with the tower shall not create unacceptable noise levels for the surrounding area;

(10) New towers shall comply with all applicable laws, including, but not limited to, the state building code and federal communications and aeronautics statutes, rules and regulations;

(gg) Tennis courts and sports courts;

(hh) Off-site parking for schools, grades K-12, located within an R district. When a school cannot accommodate all parking stalls on-site, or the result is considered detrimental and unaesthetic to the school site and the surrounding neighborhood, an off-site parking lot may be granted a special use permit provided the following minimum standards and conditions are met, and further provided that the minimum standards shall not limit the city council's authority to impose additional conditions and safeguards as provided in Section 50-32:

(1) A landscape plan is submitted;

(2) The parking lot provides a minimum landscaped or naturally vegetated setback area of 15 feet adjacent to the right-of-way and all adjacent properties. Landscaping elements must screen out at least 50 percent of the view of the parking lot between ground and an elevation eight feet above the parking lot. Decorative fencing can be used in conjunction with landscaping; chain link fencing is prohibited;

(3) The parking area shall have a minimum 30 percent canopy cover at maturity;

(4) The location, size and number of curb cuts shall be designed to minimize traffic congestion or hazard in the area; curbing shall be provided to define parking and landscaped areas and to direct stormwater runoff;

(5) The proposed parking lot shall be designed to minimize pollutants in stormwater runoff to the lowest level possible applying the best available technology;

(6) If the parking lot is to be illuminated, light fixtures shall be designed and shielded so that light is directed onto the parking area and directed away from adjacent property and traffic. Illumination shall be done by full cut-off, downcast luminaries mounted on poles not to exceed 20 feet in height above the parking lot.

Section 4. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: July 19, 2009)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Gardner and President Gilbert -- 6
Nays: Councilors Krause and Stauber -- 2
Abstention: Councilor Fosle -- 1

ATTEST:
JEFFREY J. COX, City Clerk

Passed June 15, 2009
Approved June 15, 2009
DON NESS, Mayor

- - -

ORDINANCE NO. 9980

AN ORDINANCE TO AMEND THE DISTRIBUTION OF THE TAX LEVY OF THE CITY OF DULUTH FOR THE YEAR 2009 BY TRANSFERRING A PORTION OF THE DEBT SERVICE LEVY TO THE GENERAL FUND SUPPORT LEVY.

The city of Duluth does ordain:

Section 1. That Ordinance 9953 passed and approved December 15, 2008, is hereby amended by increasing Section 2 which are taxes levied for the support of the general fund by \$324,000 for a new total of \$8,594,500; and by decreasing Section 3 which are taxes levied for the purpose of payment of debt by \$324,000 for a new total of \$5,272,900.

Section 2. That this ordinance shall take effect immediately upon its passage. (Effective date: June 15, 2009)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9
Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed June 15, 2009
Approved June 15, 2009
DON NESS, Mayor

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ORDINANCE NO. 9981

AN ORDINANCE MODIFYING CHAPTER 41 PURCHASING PROVISIONS, AMENDING SECTIONS 41-1, 41-6, 41-10, 41-15, 41-16, 41-23, 41-24, 41-28, AND REPEALING SECTIONS 41-7, 41-8, 41-11, 41-12, 41-13, 41-14, 41-25, 41-26 AND 41-31 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

The city of Duluth does ordain:

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

Sec. 41-1. Definitions.

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

Contractual services. All telephone, gas, water, electric light and power service, towel and cleaning service, insurance, leases for all grounds, buildings, office or other space required by the using agencies and the rental, repair or maintenance of equipment, machinery and other city owned personal property. The term shall not include professional and other contractual services which are in their nature unique or noncompetitive.

Supplies. All supplies, materials and equipment.

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 Section 41-6 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 41-6. Same--Powers and duties.

In addition to any other powers and duties conferred by this Chapter, the city purchasing agent shall have the following powers and duties:

(a) The agent shall act to procure for the city the highest quality in supplies and contractual services at least expense to the city;

(b) The agent shall discourage uniform bidding and endeavor to obtain as full and open competition as possible on all purchases and sales;

(c) The agent shall establish and amend when necessary all rules and regulations authorized by this Chapter and any others necessary to its operation;

(d) The agent shall keep informed of current developments in the field of purchasing, prices, market conditions and new products and secure for the city the benefits of research done in the field of purchasing by other governmental jurisdictions, national technical societies, trade associations having national recognition and private businesses and organizations;

(e) The agent shall prescribe and maintain such forms as he shall find reasonably necessary to the operation of this Chapter;

(f) The agent shall prepare and adopt a standard purchasing nomenclature for using agencies and suppliers;

(g) The agent shall exploit the possibilities of buying "in bulk," so as to take full advantage of discounts;

(h) The agent shall cooperate with the department of finance and records or any other similar city department so as to secure for the city the maximum efficiency in budgeting and accounting;

(i) The agent shall declare vendors who default on their quotations irresponsible bidders and to disqualify them from receiving any business from the city for a stated period of time;

(j) The agent or his/her designee shall write specifications. All specifications shall be definite and certain and shall permit competition; provided, however, that the provisions of this Section shall not apply to unique or noncompetitive articles;

(k) The agent shall consult with the heads of other officials of the using agencies to determine their precise requirements and shall endeavor to prescribe those standards which meet the needs of the majority of such agencies.

Section 3. That Sections 41-7 and 41-8 are hereby repealed in their entirety.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Section 4. That Section 41-10 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 41-10. Same--Powers and duties regarding standard specifications.

The purchasing agent shall have the following powers and duties:

(a) To classify all the supplies used by the various branches of the city government;

(b) To prepare and adopt written specifications of all such standard supplies.

Section 5. That Sections 41-11, 41-12, 41-13, and 41-14 are hereby repealed in their entirety.

Section 6. That Section 41-15 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 41-15. Effect of adoption of standard specifications.

After its adoption, each standard specification shall, until revised or rescinded, apply alike in terms and effect to every future purchase and contract for the supply described in such specification.

The city purchasing agent shall have the authority to exempt any using agency of the city for use of the supply described in such standard specification.

Section 7. That Section 41-16 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 41-16. Purchases and contracts for services.

The city purchasing agent shall purchase or contract for all supplies and contractual services needed by any using agency which derives its support wholly or in part from the city, in accordance with purchasing procedures as prescribed by this Chapter and such rules and regulations as the agent shall adopt for the internal management and operation of the purchasing division

Except as provided in this Chapter, it shall be unlawful for any city officer to order the purchase of any supplies or make any contract within the purview of this Chapter other than through the purchasing division. Any purchase ordered or contract made contrary to the provisions of this Chapter shall not be approved by the city officials and the city shall not be bound thereby unless proper justification is provided.

Section 8. That Section 41-23 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 41-23. Contract procedure--contracts exceeding \$50,000.

Purchase of all supplies and contractual services exceeding an estimated cost of \$50,000 shall be made by the purchasing agent pursuant to the provisions of this Section either by formal written contract or upon a properly executed purchase order, whichever method such purchasing agent deems appropriate, from the lowest responsible bidder after due notice inviting proposals. All sales of personal property when the estimated value shall exceed \$50,000, shall be made by formal written contract or such other means of conveyance as the city attorney may prescribe to the highest responsible bidder after due notice inviting proposals.

(a) Notice inviting bids;

(1) Published notice. Notice inviting bids shall be published in at least two issues of the official newspaper of the city or shall be published on the

city's Internet website. The time set for the opening of such bids shall be not less than ten days from the date of the last publication of such notice in said newspaper or not less than 11 days after its publication on said website. Such notice shall include a general description of the articles to be purchased or sold, shall state where bid blanks and specifications may be secured and the time and place of opening bids;

(2) Bidders list. The city purchasing agent shall also solicit sealed bids from all responsible prospective suppliers who have requested their names to be added to a "bidders list," which the purchasing agent shall maintain, by sending them a copy of such newspaper notice or such other notice as will acquaint them with the proposed purchase or sale. In any case, invitations sent to the vendors on the bidders list shall be limited to commodities that are similar in character and ordinarily handled by the trade group to which the invitations are sent;

(b) Bid deposits. When deemed necessary by the city purchasing agent, bid deposits shall be prescribed in the public notices inviting bids. Unsuccessful bidders shall be entitled to return of such deposits where the purchasing agent has required such. A successful bidder shall forfeit any such deposit required by the purchasing agent upon failure on his part to enter a contract within ten days after the award. For the purpose of this Subsection, the term "deposit" shall mean cash, cashier's check, certified check or corporate surety bond;

(c) Bid opening procedure;

(1) Sealed bids. Bids shall be submitted sealed to the purchasing agent and shall be identified as bids on the envelope;

(2) Opening. Bids shall be opened in public at the time and place stated in the public notices;

(3) Tabulation. A tabulation of all bids received shall be posted for public inspection;

(d) Rejection of bids. The city purchasing agent shall have the authority to reject all bids, parts of all bids or all bids for any one or more supplies or contractual services included in the proposed contract when the public interest will be served thereby. The purchasing agent may reject the bid of a contractor who is in default on the payment of taxes, licenses or other money due the city;

(e) Award of contract;

(1) Authorization by city council. Contracts within the purview of this Section shall be awarded only after authorization by resolution of the city council;

(2) Lowest responsible bidder. Contracts shall be awarded to the lowest responsible bidder. In determining lowest responsible bidder, in addition to price, the purchasing agent shall consider:

(A) The ability, capacity and skill of the bidder to perform the contract or provide the service required;

(B) Whether the bidder can perform the contract or provide the service promptly or within the time specified without delay or interference;

(C) The character, integrity, reputation, judgment, experience and efficiency of the bidder;

(D) The quality of performance of previous contracts or

services;

(E) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;

(F) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;

(G) The quality, availability and adaptability of the supplies or contractual services to the particular use required;

(H) The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;

(I) The number and scope of conditions attached to the bid;

(J) The new best-value contracting law for construction

projects only:

(3) Award to other than low bidder. When the award is not given to the lowest bidder, a full and complete statement of the reason for placing the order elsewhere shall be prepared by the purchasing agent and filed with the other papers relating to the transaction;

(4) Tie bids;

(A) Local vendors. If all bids received are for the same total amount or unit price, quality and service being equal, the contract shall be awarded to a local bidder. If two or more local bidders submit tie bids, the purchasing agent shall award the contract to one of the tie bidders by drawing lots in public;

(B) Outside vendors. Where tie bids are submitted by outside vendors, the purchasing agent shall award the contract to one of the tie bidders by drawing lots in public;

(5) Performance bonds. The city purchasing agent shall have the authority to require a performance bond, before entering a contract, in such amount as he shall find reasonably necessary to protect the best interests of the city. He shall require a performance bond in every case where a law specifically requires the furnishing of a bond as a condition precedent to the awarding of a contract for the doing of any public work or the making of any public improvement;

(f) Prohibition against subdivision. No contract or purchase shall be subdivided to avoid the requirements of this Section.

Section 9. That Section 41-24 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 41-24. Same--Contracts of \$50,000 or less.

Purchases of supplies and contractual services and all sales of personal property involving \$50,000 or less shall be made pursuant to the provisions of this Section either by formal written contract or upon a properly executed purchase or sale order, whichever method is deemed appropriate.

(a) Bidding procedures;

(1) Contracts between \$25,000 and \$50,000. If the amount of the contract is estimated to exceed \$25,000 but not to exceed \$50,000 the purchasing agent shall make such purchases or sales by direct negotiation, obtaining two or more quotations when possible. All quotations obtained shall be kept on file for a period of at least one year after receipt thereof;

(2) Contracts of \$25,000 or less. If the amount of the contract is estimated to be \$25,000 or less, the purchasing agent may, in his discretion, make the purchase or sale either upon quotation or in the open market. If the contract is made upon quotation, it shall be based, so far as practicable, on at least two quotations, which shall be kept on file for a period of at least one year after receipt thereof;

(3) Purchases of \$5,000 or less. In the case of purchases estimated to be \$5,000 or less, department heads or their designees are authorized to make such purchases without the approval of the purchasing agent. Such purchases may be made either upon quotation or in the open market. If such purchases are made upon quotation, they shall be based, so far as practicable, on at least two quotations, which shall be kept on file for a period of at least one year after receipt thereof;

(b) Rejection of bids. The purchasing agent or other person authorized to make purchases shall have the authority to reject all bids, parts of all bids or all bids for any one or more supplies or contractual services included in the proposed contract when the public interest will be served thereby. The purchasing agent or other person authorized to make purchases may reject the bid of a contractor who is in default on the payment of taxes, licenses or other money due the city;

(c) Award of contract. The purchasing agent or, subject to the limitations of paragraph (a)(3) of this Section, other persons authorized to make purchases shall have authority to award contracts within the purview of this Section, provided that contracts for more than \$25,000 with sole source providers or for which only one complete responsive bid was received shall be awarded only after authorization by the city council;

(d) Performance bonds. The provisions regarding performance bonds contained in Section 41-23 of this Code are hereby incorporated into this Section. Section 10. That Sections 41-25 and 41-26 are hereby repealed in their entirety.

Section 11. That Section 41-28 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 41-28. Inspection and testing.

The city purchasing agent shall provide oversight of the inspection of all deliveries of supplies or contractual services to determine their conformance with the specifications set forth in the order or contract.

The purchasing agent shall have the authority to authorize using agencies having the staff and facilities for adequate inspection to inspect all deliveries made to such using agencies under rules and regulations which the purchasing agent shall prescribe.

The purchasing agent shall have the authority to require chemical and physical tests of samples submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with the specifications. In the performance of such tests, the purchasing agent shall have the authority to make use of laboratory facilities of any agency of the city government or of any outside laboratory.

Section 12. That Section 41-31 is hereby repealed in its entirety.

Section 13. That this ordinance shall take effect 30 days after its passage and publication.

(Effective date: July 22, 2009)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Gardner, Krause, Stauber and President Gilbert -- 8

Nays: Councilor Fosle -- 1

ATTEST:

JEFFREY J. COX, City Clerk

Passed June 15, 2009

Approved June 15, 2009

DON NESS, Mayor

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ORDINANCE NO. 9982

AN ORDINANCE AUTHORIZING CREATION OF THE DULUTH PRIVATE SEWER SERVICE GRANT/LOAN PROGRAM AND INCREASING THE AMOUNT OF THE CLEAN WATER FUND SURCHARGE, AMENDING SECTION 43-11.1 AND 43-33.1 OF THE CODE.

The city of Duluth does ordain:

Section 1. That Section 43-11.1 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 43-11.1. Clean water surcharge.

(a) In order to protect the public health and the environment, the city, under order from the United States environmental protection agency and Minnesota pollution control agency must improve its wastewater collection system. Therefore, there shall be created a clean water surcharge upon each customer and user, commencing July 1, 2008 and until July 30, 2009, the amount of the monthly surcharge shall be \$5.57. Commencing August 1, 2009, and until January 1, 2012, the amount of the monthly surcharge shall be \$8.78. From and after January 1, 2012, the amount of the monthly surcharge shall again be \$5.57 or an amount set by an amendment to this Section. There is also created in the city accounting system a fund known as the clean water fund. Into the fund shall be deposited the following amounts:

- (1) The amounts collected as the clean water surcharge under this Section;
- (2) Any amount allocated to it by action of the city council or city administration;
- (3) Any amounts received as penalties for violation of Chapter 43, Article IV;
- (4) Any amount received as fees or surcharge under Section 43-33.4;
- (5) Any amount received as the surcharge authorized by Section 43-12.1;
- (6) Any interest earned by the fund;
- (7) Any loans, loan payments or grants received by the city for the purpose of designing, constructing, repairing, maintaining, or replacing structures

or facilities, including structures used for sanitary sewage overflow storage or for repayment of loans made pursuant to the private sewer service program established pursuant to Section 43-33.1(c)(2) below, for the purpose of attaining compliance with federal or state I&I standards, or any consent decree for that purpose which is binding on the city;

(b) The money in the clean water fund shall be spent only for the purpose set out in (7) above or for the purpose of making grants and loans under the said private sewer service program. The requirements of this Chapter continue in force after the termination of the clean water surcharge. It is the policy of the city that eventually each sewer in the city shall be inspected and brought into compliance with this Chapter.

Section 2. That Section 43-33.1 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 43-33.1. Entry for inspections; building sewer improvement, I&I program and private sewer service grant/loan program.

(a) Upon designation of any sewer basin pursuant to Section 43-33 above, the director shall cause all buildings within said sewer basin to be inspected for compliance with Section 43-31 above. Upon determination that any building does not comply with Section 43-31 above and does not qualify for a certificate of non-contribution, the director shall issue an order to disconnect any portion of the plumbing of such building in violation of said Section 43-31, or do any act required to attain compliance;

(b) No person shall fail or refuse to allow the director to inspect any building to determine whether the plumbing of such building complies with the requirements of Section 43-31 above after having been given reasonable advance notice of the director's intent to do so; such notice may be given by mail as provided for in Section 43-33 above or in person or by posting notice thereof on the premises to be inspected. In the event that the owner or person in control of any building shall deny or refuse to allow the director to inspect any such building after such notice has been given, the director may allow the inspection to be made by a qualified person who is not a city employee, in a manner acceptable to the director, having results reported and supported by evidence acceptable to the director, all at the owner's expense. If the owner or person in control refuses to allow any sufficient inspection, the director shall use such other means as are authorized by law, including but not limited to securing a search warrant for such building or a court order requiring that access be granted in order to gain access to conduct such inspection;

(c) (1) The director, using uniform criteria, shall determine which properties and/or building sewers in the district shall be included in the I&I program. For each building sewer included in the I&I program, sewer inspections required by the director for purposes of the program will be performed by city employees or agents without charge. The director, using uniform criteria, shall annually designate at least 630 building sewers that, as part of the I&I program, will have the building sewer trap removed, footing drains disconnected from the sanitary sewer system, and a sump pump installed or gravity discharge installed. The city will pay up to \$2,150 of the reasonable cost of these improvements based upon the uniform

criteria in the I&I guidelines;

(2) Pursuant to the authority of Minnesota Statutes Section 471.342 and any successor thereto, the city hereby establishes the Duluth private sewer service grant/loan program, hereinafter referred to as the "private sewer service program," as part of the city's inflow and infiltration program. Said program shall be available for use on properties located within basins designated pursuant to paragraph (a) above which have been specifically designated as eligible therefor in writing by the director. The city council is hereby authorized to approve, by resolution, program guidelines establishing criteria for program eligibility and standards for compliance with the program. Pursuant to said guidelines the city may provide grants or loans or both to private property owners for the repair, reconstruction or lining of private sanitary sewer laterals which are eligible therefore pursuant to the private sewer service program guidelines;

(d) A property remains subject to all applicable standards, requirements, and penalties of this Chapter regardless of whether or not it is selected for the I&I program;

(e) The clean water surcharge shall terminate on June 30, 2028.

Section 3. That this ordinance shall take effect 30 days after its passage and publication.

(Effective date: July 22, 2009)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Gardner and President Gilbert -- 5

Nays: Councilors Fedora, Fosle, Krause and Stauber -- 4

Passed June 15, 2009

Approved June 15, 2009

DON NESS, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

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ORDINANCE NO. 9983

BY COUNCILOR CUNEO:

AN ORDINANCE AMENDING SECTION 34-1 OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO CURFEW.

The city of Duluth does ordain:

Section 1. That Section 34-1 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 34-1. Curfew.

(a) Prohibited acts;

(1) No minor under the age of 16 years between the hours of 11:00 p.m. and 5:00 a.m. of the following day and no minor, age 16 or 17 years between the hours of 12:01 a.m. and 5:00 a.m. of the same day shall loiter, idle, wander, stroll or play in or upon the public streets, highways, roads, alleys, parks, playgrounds, wharves, docks or other public grounds, public places and public buildings, places of amusement and entertainment, vacant lots or other unsupervised places; provided, that the provisions of this Section shall not apply to a minor accompanied by his parent, guardian or other adult person having the care and custody of the

minor or where the minor is upon an emergency errand or legitimate business directed by his parent, guardian or other adult person having the care and custody of the minor. Any minor violating the provisions of this Section shall be dealt with in accordance with juvenile court law and procedure;

(2) No minor under the age of 18 years of age shall misrepresent his or her age for the purposes of defeating the lawful application of subsection (a)(1) of this Section.

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

(Effective date: July 19, 2009)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Gardner, Stauber and President Gilbert -- 7

Nays: Councilors Fosle and Krause -- 2

ATTEST:
JEFFREY J. COX, City Clerk

Passed June 15, 2009
Approved June 15, 2009
DON NESS, Mayor

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OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, July 13, 2009, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Absent: None -- 0

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The minutes of council meetings held on April 13 and 27, 2009, were approved upon a unanimous vote.

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

09-0713-01 A&L Properties concurrent use permit application to construct a skywalk between the Technology Village building and the Wieland Block building (11-16 East Superior Street). -- Planning commission

09-0713-02 Richard Hoag, by Cheryl Fosdick, et al. (five signatures), petition to vacate Wyoming Street between 60th Avenue East and Occidental Boulevard (Lot 3, Block 36, Lester Park Third Division). -- Assessor

09-0713-03 David J. Staniger, et al. (three signatures), petition to include the installation of separate water and sewer services in the 2009 Lakeside street improvement program for properties described as 801, 809 and 813 North 46th Avenue East. -- Assessor

09-0713-04 Minnesota state auditor:

(a) Duluth airport authority audit report for the years ended December 31, 2008 and 2007;

(b) Duluth transit authority audit report for the years ended December 31, 2008 and 2007;

(c) Western Lake Superior Sanitary District:

(1) Comprehensive annual financial report for the year ended December 31, 2008;

(2) Management and compliance report for the year ended December 31, 2008. -- Received

09-0713-21 Charles and Lori Berglund communication regarding assessments for the portion of Kenwood Avenue included in the 2010 street improvement program (09-0440R). -- Received

09-0713-22 Charles Horton communication regarding resolution appointing members to the Duluth economic development authority (09-0463R). -- Received

09-0713-23 Elizabeth Sandwick communication regarding resolution requesting the parks and recreation commission review the feasibility of creating a neighborhood playground equipment revitalization program. (09-0439R). -- Received

09-0713-05 The following communications regarding designation of Lakewalk property from 23rd to 25th avenues East as park land (09-0433R): (a) Kathleen Clark; (b) Terry Clark; (c) Alison Clarke; (d) Ellen Dunlap; (e) Tom Hollenhorst; (f) Sharon Johnson; (g) Susan Crawford Ward. -- Received.

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REPORTS FROM OTHER OFFICERS

09-0713-06 Assessor:

(a) Affidavit of mailing of notice of public hearing by the special assessment board at 7:00 p.m. on July 7, and at 1:15 p.m. on July 8, 2009, both to be held in the City Council Chambers, Third Floor, City Hall on ordering of proposed construction for the 2009 street preservation program on Cody Street, Kenwood Avenue and West Superior Street;

(b) Assessment roll of delinquent solid waste collecting expenses during the period of March 1, 2008, to June 1, 2009, for which the licensed collector has not been reimbursed;

(c) Letter of sufficiency of petition to include the installation of separate water and sewer services in the 2009 Lakeside street improvement program for properties described as 801, 809 and 813 North 46th Avenue East. -- Received

09-0713-07 Auditor comprehensive annual financial report for the city of Duluth for the year ended December 31, 2008. -- Received

09-0713-08 Clerk applications to the Minnesota gambling control board for exemption from lawful gambling licenses from: (a) Ducks Unlimited Chapter Arrowhead 023 on September 10, 2009 (raffle); (b) Duluth Amateur Hockey on January 8, 2010 (raffle); (c) Duluth East Athletic Association on May 3, 2010 (raffle); (d) St. Margaret Mary Church on September 13, 2009 (bingo and raffle). -- Received

09-0713-09 Parks and recreation division manager use agreement with Mount of Olives Baptist Church for the Duluth Heights Community Recreation Center, 33 West Mulberry Street, pursuant to Section 2-35, Duluth City Code. -- Mayor for execution

09-0713-10 Property manager lease agreement with Two Harbors Chamber of Commerce for the Lester River tourist information building adjacent to Highway 61, pursuant to Section 2-35, Duluth City Code. -- Mayor for execution

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REPORTS OF BOARDS AND COMMISSIONS

09-0713-11 Building appeal board minutes of May 13, 2009, meeting. -- Received

09-0713-12 Duluth airport authority minutes of: (a) May 19; (b) May 27, 2009, meetings. -- Received

09-0713-13 Duluth legacy endowment fund advisory board minutes of May 20, 2009, meeting. -- Received

09-0713-14 Duluth transit authority: (a) Income statement for April, 2009; (b) Minutes of April 29, 2009, meeting. -- Received

09-0713-15 Entertainment and convention center authority minutes of: (a) June 17; (b) June 30, 2009, meetings. -- Received

09-0713-16 Housing and redevelopment authority of Duluth financial and compliance report for the year ended September 30, 2008. -- Received

09-0713-17 Library board minutes of May 26, 2009, meeting. -- Received

09-0713-18 Planning commission minutes of May 12, 2009, meeting. -- Received

09-0713-19 Seaway Port authority of Duluth minutes of: (a) January 13; (b) January 29; (c) March 18, 2009, meetings. -- Received

09-0713-20 Spirit Mountain recreation area authority minutes of May 21, 2009, meeting. -- Received

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OPPORTUNITY FOR CITIZENS TO BE HEARD

Jay Cole explained that he has been handing out flyers to encourage St. Louis County to be more effective with their marketing to sell the old jail and voiced his concern that the county is making it challenging to finding a reuse for the building.

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

RESOLVED, that the assessment levied for reinstatement of a canceled garbage assessment at 33 Riverside Drive (Plat Parcel 3970-01090) is set forth below:

Contracts 2001310, 2002310, 2003310, 2004310, 2005310 and 2006310; assessable amount: \$6,593.34,

to be deposited in Fund 110; and that this assessment is hereby confirmed.

Resolution 09-0422 was unanimously adopted.

Approved July 13, 2009

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to accept a state bonding grant from the state of Minnesota in the amount of \$4,900,000, said funds to be deposited into Fund 411 - permanent improvement fund and transferred to Fund 590 - Duluth airport authority, and to execute a grant agreement with the state of Minnesota and all other documents related thereto, said agreement substantially in the form of that on file in the office of the city clerk as Public Document No. 09-0713-24, related to the first phase of the new airport terminal project at the Duluth International Airport.

FURTHER RESOLVED, that the proper city officials are hereby authorized to enter into a memorandum of understanding, substantially in the form of that on file in the office of the city clerk as Public Document No. 09-0713-24, with the Duluth airport authority (the "authority") pursuant to which the city will reimburse the authority for the work being done under the first phase of the new airport terminal project.

Resolution 09-0432 was unanimously adopted.

Approved July 13, 2009

DON NESS, Mayor

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RECITALS:

(a) The city of Duluth, Minnesota (city) has granted a cable television franchise (franchise) that is currently held by CC VIII Operating, LLC (franchisee), an indirect, wholly-owned subsidiary of Charter Communications, Inc. (Charter);

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

(b) Franchisee owns, operates and maintains a cable television system (system) in the city;

(c) On March 27, 2009, Charter and certain of its subsidiaries filed voluntary petitions in the United States bankruptcy court for the southern district of New York (bankruptcy court) seeking relief under the provisions of Chapter 11 of Title 11 of the United States Code to order to effectuate a financial restructuring - Case No. 09-11435;

(d) Pursuant to the terms of the proposed plan of reorganization agreed to by Charter and its key bondholders, the current stock in Charter will be cancelled and replaced by new Class A common stock and new Class B common stock. The voting interest of Charter's principal stockholder, Paul G. Allen and his affiliated entities will be reduced from approximately 91 percent to 35 percent, and new stockholders (principally the current bondholders) will acquire the remaining 65 percent voting interest in Charter, as described in filings with the bankruptcy court (the reorganization);

(e) Under both the franchise and Minnesota Statutes Section 238.083, the city has concluded that its written approval is necessary for the above described reorganization;

(f) Franchisee has submitted to the city FCC Form 394 - application for franchise authority consent to assignment or transfer of control of cable television franchise (Form 394) which provides substantial information regarding the reorganization and qualifications of Charter and franchisee following completion of the reorganization;

(g) Based on information received by the city from franchisee, Form 394 and filings and documentation received by the city related to the proceedings before the bankruptcy court, the city has elected to consent to the reorganization.

NOW, THEREFORE, THE CITY OF DULUTH, MINNESOTA, HEREBY RESOLVES AS FOLLOWS:

(a) The franchise is in full force and effect and franchisee is the lawful holder of the franchise;

(b) Each of the foregoing recitals are hereby incorporated by reference;

(c) The city hereby consents and approves of the reorganization;

(d) Since the franchisee remains unchanged as a result of the reorganization, nothing in this resolution shall be interpreted to modify or alter franchisee's past performance under the franchise and franchisee shall remain fully liable for any and all franchise obligations unless specifically modified or altered by the bankruptcy court;

(e) By this consent the city does not waive any of franchisee's commitments, duties and obligations under the franchise, including any accrued and unfulfilled obligation of the franchisee, whether known or unknown, relating to the franchise;

(f) In the event the reorganization is not completed, for any reason, or is modified in any material manner, the city's consent provided hereunder shall not be effective.

Resolution 09-0460 was unanimously adopted.

Approved July 13, 2009

DON NESS, Mayor

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RESOLVED, that city officials are hereby authorized to contract with Enventis Telecom, Inc., a subsidiary of HickoryTech, for the purchase and delivery of telephones, routers and switches to upgrade remote sites into the 730 exchange in accordance with vendors quote in the

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

amount of \$23,490, including tax, terms net 30, FOB destination, payable from General Fund 110, Agency 700, Organization 1423, Object 5520.

Resolution 09-0443 was unanimously adopted.
Approved July 13, 2009
DON NESS, Mayor

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BE IT RESOLVED, that the city council of the city of Duluth hereby approves the following on sale intoxicating liquor 2:00 a.m. beverage license for the period ending August 31, 2009:

Black Water At Greysolon, LLC (Black Water at Greysolon), 213 East Superior Street.

Resolution 09-0447 was unanimously adopted.
Approved July 13, 2009
DON NESS, Mayor

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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 with any specific restrictions:

Duluth Softball Players Association (Beerhunters Softball Tournament), Wheeler Field, for August 1 and 2, 2009, with John Vaydich, manager.

Duluth Softball Players Association (Men's Class "E" Co-State Softball Tournament), Wheeler Field, for August 15 and 16, 2009, with John Vaydich, manager.

Duluth Police Softball Team (Minnesota State Police and Fire Softball Tournament), Wheeler Field, for July 25 and 26, 2009, with Matt McShane, manager.

Nifty 50 Cruisers (Kia of Duluth Car Show and Time Trials), 350 Garfield Avenue, for August 23, 2009, with Ryan Kern, manager.

Resolution 09-0448 was unanimously adopted.
Approved July 13, 2009
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 30-August 2, 2009, with Steve Anderson, manager.

Resolution 09-0449 was unanimously adopted.
Approved July 13, 2009
DON NESS, Mayor

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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:

Fond du Lac Management, Inc. (Fond du Luth Casino), 129 East Superior Street, for September 3, 2009, from 4:00 p.m. to midnight.

Club Friction, LLC (Score Sports Bar & Grill), 21 North Fourth Avenue West, for

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

July 23, 2009, from 4:00 p.m. to 8:00 p.m.

Resolution 09-0450 was unanimously adopted.

Approved July 13, 2009

DON NESS, Mayor

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RESOLVED, that the proper city officials are authorized to pay to Daniel and Alana Hatfield the sum of \$31,067.38 in full and final settlement of the claim which arose out of a break in a city watermain occurring near 214 South 32nd Avenue East on August 1, 2006; payment to be made from the Self Insurance Fund 610-036-1652-5841.

Resolution 09-0425 was unanimously adopted.

Approved July 13, 2009

DON NESS, Mayor

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RESOLVED, that MSA Professional Services, Inc., Contract No. C20188 for implementing fall protection improvements at wastewater lift stations be and hereby is amended for additional specifications work, rebid of project and additional station visits in the estimated amount of \$5,063.50 for a new total of \$61,496.50, payable from Sanitary Sewer Fund 530, Organization 1945, Object 5310, City Project No. 0578SN.

Resolution 09-0430 was unanimously adopted.

Approved July 13, 2009

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized and directed to execute an agreement (Public Document No. 09-0713-26) between the city of Duluth and the Regents of the University of Minnesota 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, Agency 500, Organization 1915, Object 5441.

Resolution 09-0436 was unanimously adopted.

Approved July 13, 2009

DON NESS, Mayor

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RESOLVED, that by Resolution 09-0386 the council did request the administration to prepare plans and specifications for the improvements to portions of Cody Street, Superior Street, Michigan Street and Kenwood Avenue (city project nos. 0704TR, 0754TR and 0805TR).

RESOLVED, that said plans and specifications have been prepared and filed with the secretary of the special assessment board; proper notice has been sent to the benefitting property owners; the special assessment board has conducted a hearing to meet and hear any person affected by the proposed improvement or assessment; the special assessment board has submitted its report to the council pursuant to Section 45-79 of the Duluth City Code, 1959, as amended; and the said board, at the direction of the mayor, has furnished this council with information as required by Section 45-80 of said Code.

FURTHER RESOLVED, that said improvements as described above are ordered to be made; and the total cost of said improvements, estimated by the city engineer to be \$2,216,960 payable from Street Improvement Fund 0440, Agency 038, Object 5530 of which \$554,240 is payable by special assessment against the land and premises specifically benefitted, which land and premises are described in the report of the special assessment board; that such assessments

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

shall be levied on a front foot basis and those obligated to pay such assessments shall be permitted to pay said assessments in annual installments over a five year period; that said assessments will satisfy all requirements of Chapter IX of the Charter.

FURTHER RESOLVED, that the council order in the subject projects in accordance with the provisions of Chapter IX of the City Charter and that said improvements are hereby ordered.

Resolution 09-0440 was unanimously adopted.

Approved July 13, 2009

DON NESS, Mayor

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RESOLVED, that city officials are hereby authorized to contract with Dakota Supply Group for the purchase and delivery of three ITRON FC300SR handhelds for the utility operations division per vendors quote in the amount of \$17,385, plus \$1,130.02, for a total amount of \$18,515.02, terms net 30, FOB destination, payable from the following:

(a) \$8,000.00 - Water Fund 510, Agency 500, Organization 1905, Object 5580;

(b) \$10,515.02 - Gas Fund 520, Agency 500, Organization 1905, Object 5580.

Resolution 09-0442 was unanimously adopted.

Approved July 13, 2009

DON NESS, Mayor

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RESOLVED, that the proper city officials are authorized to apply for and accept an emergency management planning grant agreement from the Minnesota department of public safety, homeland security and emergency management division in the amount of \$20,000, said funds to be deposited in Fund 210, Agency, 030, Organization 3164, Revenue Source 4210-02, for the purpose of assisting and supporting the city in maintaining adequate local emergency management programs.

Resolution 09-0420 was unanimously adopted.

Approved July 13, 2009

DON NESS, Mayor

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RESOLVED, that the proper city officials are authorized to accept Grant Agreement No. 2009-HSGP-00314 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. 09-0713-27, in the amount of \$70,000, said funds to be deposited in Fund 210, Agency 030, Organization 3172, Revenue Source 4210-02, for the purpose of supporting the Duluth fire department's chemical assessment team.

Resolution 09-0421 was unanimously adopted.

Approved July 13, 2009

DON NESS, Mayor

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RESOLVED, that Resolution 09-0244 is hereby amended by increasing the amount authorized to be accepted from the city of Chisholm to fund a criminal analyst position and related

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

costs to provide assistance to the Lake Superior drug and gang task force from \$201,020 to \$209,020.

Resolution 09-0446 was unanimously adopted.
Approved July 13, 2009
DON NESS, Mayor

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RESOLVED, that city officials are hereby authorized to execute an agreement with St. Louis County (sheriff) for four quarters of shield maintenance software associated with NEMESIS (Northeastern Minnesota enforcement and safety information system) in the amount of \$52,582, terms net 30, payable from General Fund 110, Department/Agency 160, Organization 1610, Object 5404.

Resolution 09-0456 was unanimously adopted.
Approved July 13, 2009
DON NESS, Mayor

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RESOLVED, that the proper city officers are authorized to accept an FY2009 Recovery Act Edward Byrne Memorial Justice Assistance Grant Award No. 2009-SB-B9-0512 from the United States department of justice, bureau of justice assistance, office of justice programs, in the amount of \$372,529, to be deposited in Fund 215, Agency 200, Organization 2283, Revenue Source 4209-02, to be used for equipment, software acquisition, support of the first witness program and training by the city, St. Louis County and the cities of Eveleth, Hibbing and Virginia, and to execute all documents related thereto.

FURTHER RESOLVED, that the city is authorized to enter into subgrant agreements with the following-named entities as referenced below in the following amounts, payable from Fund 215, Agency 200, Organization 2283, Revenue Source 4209-02:

<u>Entity</u>	<u>Public Document Number</u>	<u>Amount</u>
St. Louis County	09-0713-28(a)	\$43,608
Eveleth	09-0713-28(b)	10,370
Hibbing	09-0713-28(c)	11,996
Virginia	09-0713-28(d)	33,238

Resolution 09-0457 was unanimously adopted.
Approved July 13, 2009
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 on file in the office of the city clerk as Public Document No. 09-0713-29, with the United States department of agriculture, forest service law enforcement and investigations to reimburse the city for its costs in providing cooperative law enforcement services on forest service lands, each in the amount of not to exceed \$5,000, payable to Fund 110, Agency 160, Organization 1610, Revenue Source 4209-02.

Resolution 09-0458 was unanimously adopted.
Approved July 13, 2009
DON NESS, Mayor

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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. 09-0713-30, with Independent School District 709 (Duluth public schools) as fiscal host for Duluth interagency early intervention committee (Duluth IEIC) under which agreement the Duluth public library shall receive \$1,000 for fiscal year 2009/2010 to select, purchase, catalog, house and maintain materials and books for Duluth IEIC, funds to be deposited in Fund 110, Agency 130, Organization 1303, Object 4261.

Resolution 09-0431 was unanimously adopted.
Approved July 13, 2009
DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into an agreement for parking services with the Duluth Police Explorer Post 244 (Post 244) and the Duluth economic development authority (DEDA) for parking on DEDA-owned and city-owned lots west of slip two and adjacent to Bayfront during the Bayfront Blues Festival, said agreement to be substantially in the form of that on file in the office of the city clerk as Public Document No. 09-0713-31, 75 percent of the net proceeds to be retained by Post 244; 25 percent of the net proceeds from Lot A to be paid to the city and deposited into Bayfront Fund 237-015-4623, and 25 percent of the net proceeds from Lots C to be paid to DEDA.

Resolution 09-0454 was unanimously adopted.
Approved July 13, 2009
DON NESS, Mayor

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WHEREAS, the Arrowhead Bowhunters Alliance (ABA) is the contract agent for the 2009 seasonal deer hunt; and

WHEREAS, the ABA has received complaints from city residents regarding wild deer damaging property in areas located outside of the current designated hunting areas (DHA's); and

WHEREAS, the ABA has identified these areas and is requesting they be designated as being in special need of deer removal, or hot spots, for the 2009 season.

THEREFORE, BE IT RESOLVED, that pursuant to the authorization contained in Section 6-77(d)(1) of the Duluth City Code, the city council hereby designates the areas set forth on maps 1-10 of Public Document No. 09-0713-32 on file in the office of the city clerk, as areas in special need of deer removal, or hot spots, and are hereby made available for deer harvesting during the 2009 seasonal hunt.

Resolution 09-0455 was unanimously adopted.
Approved July 13, 2009
DON NESS, Mayor

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The following resolutions were also considered:

Resolution 09-0439, by Councilor Fedora, requesting the parks and recreation commission review the feasibility of creating a neighborhood playground equipment revitalization program, was introduced for discussion.

The rules were suspended upon a unanimous vote to hear from a speaker on the resolution.

Jenny Lee explained that the city removed a wooden playground in 2007 in her

neighborhood which has not yet been replaced, so the neighbors have organized an association to raise money to replace the playground equipment. She added that neighborhood parks are important for exercise for children and a place for neighbors to get to know each other, which makes it a safe neighborhood.

Councilor Krause moved to amend the fifth paragraph, subparagraph (b), of the resolution to insert the phrase "and clubhouse locations" after the phrase "recognized city parks," which motion was seconded and unanimously carried.

Resolution 09-0439, as amended, was adopted as follows:

BY COUNCILOR FEDORA:

WHEREAS, the city has removed playground equipment that was deemed unsafe from several city parks; and

WHEREAS, much of that equipment was either not replaced or only a portion of the original equipment was replaced; and

WHEREAS, city residents have expressed dissatisfaction with the state of playground equipment in existing city parks and are interested in helping to improve their neighborhood parks by raising funds to pay for new park equipment or repairs to existing equipment; and

WHEREAS, the city council believes that such improvements are beneficial to neighborhoods and the community as a whole and would like to aid residents by establishing a grant program to match funds raised by residents and neighborhood groups to repair and/or replace playground equipment in existing city parks.

NOW, THEREFORE, BE IT RESOLVED, that the city council hereby requests that the parks and recreation committee review the feasibility of creating a neighborhood playground equipment revitalization grant program which would contain the following provisions:

(a) The city of Duluth will match funds raised by a neighborhood for the purchase of new playground equipment or the repair of existing equipment on a 50 percent/50 percent basis up to a maximum matching grant amount of \$15,000;

(b) Only existing, recognized city parks and clubhouse locations will be eligible for grant funds;

(c) A neighborhood's 50 percent contribution may be made through various fund-raising activities but the city will only match verifiable cash deposits and will not accept pledge amounts;

(d) Grant applications shall include a formal site plan along with equipment specifications. Final site plans and equipment purchases shall be subject to approval by the city of Duluth parks and recreation division;

(e) City staff shall conduct any site preparation and equipment installation or repair however a neighborhood group must contribute no less than 50 hours of volunteer labor to aid in the site preparation and equipment installation or repair;

(f) Funds for the grant program shall come from the city's capital expenditures budget and shall be limited to \$75,000 annually.

Resolution 09-0439, as amended, was unanimously adopted.

Approved July 13, 2009

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 adopted June 8, 2009 (the "Ordinance"), ordered the issuance, sale and delivery of a general obligation sewer utility revenue note in the maximum amount of \$4,700,000 of the City, for the payment of the costs of improvements to the municipal sewer utility through the construction of the Lakeside Interceptor Sanitary Sewer Overflow Storage Facility - Basin No. 2, which consists of a two million gallon buried concrete wastewater overflow storage tank located at 20th Avenue East and Water Street (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 principal forgiveness (the "Principal Forgiveness") granted under the provisions of the federal American Recovery and Reinvestment Act of 2009 ("ARRA"), in the amount of \$4,183,384 to pay a portion of the costs of the Project. The Principal Forgiveness is not required to be repaid, except as otherwise provided under the Loan Agreement, as hereinafter defined. The general obligation sewer utility revenue note to be issued under the Ordinance shall be issued in the principal amount of \$796,835 (the "Note") to pay the portion of the costs of the Project not provided by ARRA and State 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. 09-0713-25(a), for the Project to the PFA pursuant to a Minnesota Public Facilities Authority Bond Purchase and Project Loan Agreement dated May 26, 2009, 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. 09-0713-25(b) 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 \$796,835, in fully registered form and lettered and numbered R-1. Interest on the Note shall be at the rate of 1.969% 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. The Note shall not be delivered until after the effective date of the Ordinance.

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 "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 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 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 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 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.

5.03 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 Note 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 09-0453 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause and President Gilbert -- 8

Nays: Councilor Stauber -- 1

Approved July 13, 2009

DON NESS, Mayor

- - -

Resolutions 09-0451 and 09-0459, approving and denying, respectively, the temporary expansion of the on sale intoxicating liquor license of Player's Grandstand, Inc. (Player's Grandstand), 4024 Grand Avenue, were introduced by Councilor Krause for discussion.

Councilor Stauber stated that the concern by the police department for this event and potential problems caused by the Hell's Angels being in Duluth should be taken seriously as it is a rare occasion when they request an event like this to be denied.

Councilor Krause moved to amend Resolution 09-0451 to delete the statement, "subject to departmental approvals," which motion was seconded and carried upon the following vote:

Yeas: Councilors Cuneo, Eckenberg, Fedora, Gardner, Krause and President Gilbert -- 6

Nays: Councilor Stauber -- 1

Abstention: Councilors Anderson and Fosle -- 2

Resolution 09-0451, as amended, was adopted as follows:

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 approval of a special events license and with any specific restrictions:

Player's Grandstand, Inc. (Player's Grandstand), 4024 Grand Avenue, for August 1, 2009, with the music and serving ceasing at midnight.

Resolution 09-0451, as amended, was adopted upon the following vote:

Yeas: Councilors Cuneo, Eckenberg, Fedora, Gardner, Krause and President Gilbert -- 6

Nays: Councilor Stauber -- 1

Abstention: Councilors Anderson and Fosle -- 2

Approved July 13, 2009

DON NESS, Mayor

- - -

Resolution 09-0459 failed upon the following vote (Public Document No. 09-0713-33):

Yeas: Councilor Stauber -- 1

Nays: Councilors Cuneo, Eckenberg, Fedora, Gardner, Krause and President Gilbert -- 6

Abstention: Councilors Anderson and Fosle -- 2

- - -

Resolution 09-0463, appointing members to the Duluth economic development authority [DEDA], was introduced by Councilor Gardner for discussion.

Councilor Krause stated that a new council should be deciding on the makeup of DEDA instead of the current council, since four new councilors could be on the council next year.

Councilor Gardner expressed her disappointment that Councilor Stauber was not being

appointed to DEDA as he has been the president of DEDA for the past four years, chairs the planning and economic development committee of the council and has organizational knowledge of the city and council that will be missing without him on DEDA.

Councilor Fosle and President Gilbert expressed disappointment that the mayor did not seek input from any of the councilors if they were interested in being on DEDA and there was no communication from the mayor to the council on his appointment decisions until it was released to the media.

President Gilbert moved to split the resolution's appointees into three parts as follows:

09-0463(a): Don Monaco;

09-0463(b): Brian Hanson and John Heino;

09-0463(c): Councilors Jeff Anderson, Tony Cuneo and Todd Fedora,

which motion was seconded and carried upon the follow vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Stauber and President Gilbert -- 8

Nays: Councilor Krause -- 1

President Gilbert moved to table Resolution 09-0463(a) until an interview could be scheduled, which motion was seconded and unanimously carried.

Resolutions 09-0463(b) and 09-0463(c) were adopted as follows:

RESOLVED, that pursuant to Resolution 09-0342 adopted on May 26, 2009, the city council confirms the appointments by Mayor Ness of the following individuals to the Duluth economic development authority:

Brian Hanson for a term expiring on May 26, 2014.

John Heino for a term expiring on May 26, 2015.

BE IT FURTHER RESOLVED, that the passage of this resolution creates the newly formed Duluth economic development authority board.

Resolution 09-0463(b) was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Stauber and President Gilbert -- 8

Nays: Councilor Krause -- 1

Approved July 13, 2009

DON NESS, Mayor

- - -

RESOLVED, that pursuant to Resolution 09-0342 adopted on May 26, 2009, the city council confirms the appointments by Mayor Ness of the following individuals to the Duluth economic development authority:

City councilors Jeff Anderson, Tony Cuneo and Todd Fedora for terms expiring on January 9, 2012.

BE IT FURTHER RESOLVED, that the passage of this resolution creates the newly formed

Duluth economic development authority board.

Resolution 09-0463(c) was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Gardner, Stauber and President Gilbert -- 7

Nays: Councilors Fosle and Krause -- 2

Approved July 13, 2009

DON NESS, Mayor

- - -

Resolutions 09-0428 and 09-0429, reversing and affirming, respectively, the decision of the board of zoning appeals to grant a variance to ISD #709 to allow front yard parking on property located at 301 North 40th Avenue East (Ordean School), were introduced by Councilor Stauber.

Councilor Stauber moved to remove both resolutions from the agenda since ISD #709 has withdrawn its request for a variance in this matter, which motion was seconded and unanimously carried.

- - -

Resolution 09-0444, by Councilor Stauber, of intent to establish an appeals process as part of the city's inflow and infiltration (I&I) program, was introduced for discussion.

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

Yeas: Councilors Cuneo, Eckenberg, Fedora, Fosle, Gardner, Stauber and President Gilbert -- 7

Nays: Councilors Anderson and Krause -- 2

- - -

Resolution 09-0445, authorizing the purchase of certain tax forfeited property in Lester Park from the state of Minnesota through St. Louis County, was introduced by Councilor Stauber.

Councilor Stauber moved to table the resolution so that it could be considered with Ordinance 09-037 on July 27, which motion was seconded and unanimously carried.

- - -

RESOLVED, that the proper city officials are authorized, upon required approval of the district court, to pay to Finley Stalvig and his attorney, Mary Katherine Cohen, \$45,000 in full and final settlement of a claim which arose out of a fall down the library stairs between Superior Street and Michigan Street on March 28, 2002, and giving rise to the civil action *Finley Stalvig v. City of Duluth*, St. Louis County District Court File Number 69DU-CV-08-2514, payment to be made from Self Insurance Fund 610, Agency 036, Organization 1651, Object 5841.

Resolution 09-0464 was unanimously adopted.

Approved July 13, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Lakehead Constructors, Inc., for 2009 coal handling upgrades for Duluth Steam Utility District One, including the demolition and legal disposal of one existing coal bucket elevator and the installation of a new coal bucket elevator and support frames at the plant at 1 Lake Place Drive, in accordance with the city's plans and specifications and the vendor's low bid of \$76,758, terms net 30, payable from the

Steam Fund 540, Department/Agency 920, Organization 1499, Object 5530.

Resolution 09-0441 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fosle, Gardner, Krause, Stauber and President Gilbert -- 8

Nays: None -- 0

Abstention: Councilor Fedora -- 1

Approved July 13, 2009

DON NESS, Mayor

- - -

Resolution 09-0434, establishing a parking meter zone on the north side of Superior Street at Sixth Avenue East, was introduced by Councilor Cuneo for discussion.

Councilor Stauber voiced concern that putting parking meters on the north side of Superior Street would create a public safety issue, as there is no crosswalk or sidewalk for citizens to use to cross the street.

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

- - -

RESOLVED, that the city of Duluth gives to Officer Steve Peterson of the city of Duluth police department the police canine Nero in recognition of the completion of Nero's years of service to the city.

FURTHER RESOLVED, that the appropriate city officials are hereby authorized to execute any documents necessary to transfer ownership of Nero to Officer Steve Peterson.

Resolution 09-0437 was unanimously adopted.

Approved July 13, 2009

DON NESS, Mayor

- - -

RESOLVED, that the city of Duluth gives to Officer Rebecka Kopp of the city of Duluth police department the police canine Niko in recognition of the completion of Niko's years of service to the city.

FURTHER RESOLVED, that the appropriate city officials are authorized to execute any documents necessary to transfer ownership of Niko to Officer Rebecka Kopp.

Resolution 09-0438 was unanimously adopted.

Approved July 13, 2009

DON NESS, Mayor

- - -

Resolution 09-0433, designating Lakewalk property from 23rd to 25th avenues East as park land, was introduced by Councilor Anderson for discussion.

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

Alison Clarke stated that designating this portion of the Lakewalk as park land creates an aura of suspicion that this part of the Lakewalk is being treated differently than the other parts of the Lakewalk because of the residents of The Ledges on Lake Superior town homes. She urged the council to table this resolution and review the whole Lakewalk when making designations. Ms. Clarke also stated that while the sewer overflow tank is being constructed, it would be a good time to use that material for the unfinished portion of the Lakewalk.

Terry Clark stated that the Lakewalk is a community treasure and should be treated as such and not regulated as private property.

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Gardner, Stauber and President Gilbert -- 7

Nays: Councilors Fosle and Krause -- 2

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

BY COUNCILOR STAUBER

09-036 - AN ORDINANCE AMENDING SECTION 2 OF ORDINANCE 1809, REPEALING SECTION 1 OF ORDINANCE 1809 AND REPEALING ORDINANCE 1917 IN ITS ENTIRETY, ALL RELATING TO THE CITY PLANNING COMMISSION.

- - -

BY COUNCILOR STAUBER

09-037 - AN ORDINANCE AUTHORIZING A DEVELOPMENT AGREEMENT WITH DIAMOND WILLOW, LLC, PROVIDING FOR THE SALE OF CERTAIN PROPERTY AND FOR CONSTRUCTION OF A RESIDENTIAL CARE FACILITY AND A MEDICAL CLINIC IN LESTER PARK.

- - -

BY COUNCILOR STAUBER

09-038 - AN ORDINANCE AUTHORIZING GRANTING OF A RESTRICTED AREA EASEMENT TO THE STATE OF MINNESOTA, DEPARTMENT OF MILITARY AFFAIRS, AND APPROVING THE GRANTING BY THE DULUTH AIRPORT AUTHORITY OF THE SAME, OVER PROPERTY AT THE DULUTH INTERNATIONAL AIRPORT.

- - -

BY COUNCILOR CUNEO

09-039 - AN ORDINANCE DECLARING STATUTORY AND CODE VIOLATIONS AS CIVIL OFFENSES, AUTHORIZING CIVIL PENALTIES THEREFORE, AUTHORIZING CORRECTIVE ORDERS AND ESTABLISHING HEARING AND ENFORCEMENT PROCEDURES WITH REGARD THERETO, ADDING A NEW CHAPTER 12 TO THE CODE AND REPEALING SECTIONS 2-7 AND 2-7.1 THEREOF.

- - -

The meeting was adjourned at 8:45 p.m.

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

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, July 27, 2009, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Absent: None -- 0

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

09-0727-01 Minnesota state auditor management and compliance report for the city of Duluth for the year ended December 31, 2008. -- Received

09-0727-02 Gail King communication regarding appointments to DEDA (09-0463R(a) and 09-0484R). -- Received

- - -

REPORTS FROM THE ADMINISTRATION

09-0727-03 Mayor Ness notice of termination to Michael Ashcroft as city of Duluth chief administrative officer. -- Received

- - -

REPORTS FROM OTHER OFFICERS

09-0727-04 Assessor letter of sufficiency of petition to vacate Wyoming Street between 60th Avenue East and Occidental Boulevard (Lot 3, Block 36, Lester Park Third Division). -- Received

- - -

REPORTS OF BOARDS AND COMMISSIONS

09-0727-05 American Indian commission minutes of June 15, 2009, meeting. -- Received

09-0727-06 Duluth airport authority: (a) Balance sheet for month ending May 31, 2009; (b) Minutes of June 11, 2009, meeting. -- Received

09-0727-07 Planning commission minutes of June 9, 2009, meeting. -- Received

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At this time, 7:02 p.m., the regular meeting was adjourned and the public hearing regarding private sewer service policies was opened.

Eric Shaffer, public works and utilities department, reviewed that the public hearing is required by state statute and that there is a resolution on the agenda adopting the policy.

Brad Clifford, executive director of North Star Development Corporation, stated that they have been reviewing all the permits that have been submitted regarding the lateral lines. He expressed a concern to the council that this is a long term problem that will last for years and that the city is losing dollars in miscalculated permit fees. He noted that it has nothing to do with the total cost as much as the price per foot.

At this time, 7:07 p.m., the public hearing was declared closed and the regular order of business resumed.

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OPPORTUNITY FOR CITIZENS TO BE HEARD

Kay L. Lewis expressed concern with all the construction in the mall area and that she has been told that busses will not be stopping at Target, that there will be no bus passage between Maple Grove Road and Mall Drive and that shelters will not be reinstalled.

- - -

Russ Stewart stated that he knows that Councilor Gardner supports the values of the third district very well. He added that he is upset with the attacks on her character and that they have gone on long enough. Mr. Stewart further noted that the city attorney has ruled that Councilor Gardner did not violate any state laws or rules.

- - -

Arielle Schnur noted that Councilor Cuneo made a mistake, he fixed it and apologized and that Councilor Gardner did not have a conflict of interest and supports the sister city program.

- - -

Penny Perry complemented the councilors for their public service. She noted that individuals are imperfect and when a mistake is made and humbly acknowledged with contrition, she is satisfied.

- - -

Claire Kirsh demanded that the mud slinging and digging for dirt on one another cease. She further asked that there be an apology when proven wrong.

- - -

Joel Sipress expressed a concern that a cloud of ugliness has descended upon the city council, when one councilor launched a completely warrant less personal attack on a fellow councilor. He noted that the attack has since been found to be completely groundless. In conclusion, he requested this councilor to admit that a mistake has been made.

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Councilor Gardner thanked those who spoke and that while she disagreed with the recent protest in the Council Chamber, she felt that anyone has the right to protest.

- - -

Councilor Fedora stated that he had nothing to do with the protest and will not apologize because he felt that what he was doing was right for the city of Duluth. He felt that any citizen would not have the same opportunity for a free plane ticket to one of our sister cities. In conclusion, he read a Section 30(A) of the City Charter.

- - -

Councilors commented on the uncivil nature of this discussion and that both councilors mentioned have dropped this issue some time ago.

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RESOLUTIONS TABLED

Councilor Gardner moved to remove Resolution 09-0463(a), appointing member to the Duluth economic development authority [DEDA], from the table, which motion was seconded and unanimously carried.

Councilor Krause stated that he would not be supporting this resolution as his opposition to this formation of DEDA, not the individual appointees.

Resolution 09-0463(a) was adopted as follows:

RESOLVED, that pursuant to Resolution 09-0342 adopted on May 26, 2009, the city council

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

confirms the appointment by Mayor Ness of the following individual to the Duluth economic development authority:

Don Monaco for a term expiring on May 26, 2015.

BE IT FURTHER RESOLVED, that the passage of this resolution creates the newly formed Duluth economic development authority board.

Resolution 09-0463(a) was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Stauber and President Gilbert -- 8

Nays: Councilor Krause -- 1

Approved July 27, 2009

DON NESS, Mayor

- - -

Councilor Stauber moved to remove Resolution 09-0444, of intent to establish an appeals process as part of the city's inflow and infiltration (I&I) program, from the table, which motion was seconded and unanimously carried.

Councilor Stauber moved to suspend the rules to consider Resolution 09-0487, adopting guidelines for the private sewer service grant program, at this time, which motion was seconded and unanimously carried.

Councilor Stauber reviewed the background on this issue and stated that Resolution 09-0487 addresses his concerns.

Mr. Shaffer stated that the city is legally committed to allow no inflow and infiltration into Lake Superior and thus would not recommend any "quantifying" references in the policy.

Councilor Stauber moved to amend subparagraph (2.)(g.)(2.) of the policy to insert the word "significant" in front of "I&I," which motion was seconded and discussed.

Mayor Ness felt that the amendment would cause extraordinary difficulty on the building appeals board and confusion to the homeowner, on how you measure "significant."

Councilor Krause favored the amendment, stating that any vagueness of this term will be defined as time goes on.

Councilor Cuneo opposed the amendment for reasons of: the greatest concentration is towards those with the most significant I&I amounts; it could be used as a means to delay the necessary work and if we do not do the necessary work, there could be fines on the city.

Councilor Stauber's amendment carried upon the following vote:

Yeas: Councilors Eckenberg, Fedora, Krause, Stauber and President Gilbert -- 5

Nays: Councilors Anderson, Cuneo, Fosle and Gardner -- 4

Resolution 09-0487, as amended, was adopted as follows:

RESOLVED, that pursuant to Minnesota Statutes Section 471.342, the guidelines for the private sewer service grant program, a copy of which are on file in the office of the city clerk as Public Document No. 09-0727-09 are hereby adopted and approved.

Resolution 09-0487, as amended, was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Stauber and President Gilbert -- 8

Nays: Councilor Krause -- 1

Approved July 27, 2009

DON NESS, Mayor

- - -

Councilor Stauber moved to remove Resolution 09-0444 from the agenda, which motion was seconded and unanimously carried.

- - -

Councilor Stauber moved to remove Resolution 09-0445, authorizing the purchase of certain tax forfeited property in Lester Park from the state of Minnesota Through St. Louis County, from the table, which motion was seconded and unanimously carried.

Councilor Stauber moved to suspend the rules to consider Ordinance 09-037 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

09-037 (9984) - AN ORDINANCE AUTHORIZING A DEVELOPMENT AGREEMENT WITH DIAMOND WILLOW, LLC, PROVIDING FOR THE SALE OF CERTAIN PROPERTY AND FOR CONSTRUCTION OF A RESIDENTIAL CARE FACILITY AND A MEDICAL CLINIC IN LESTER PARK.

Resolution 09-0445 was adopted as follows:

RESOLVED, that the proper city officials are hereby authorized to acquire the tax forfeited property described below in St. Louis County, Minnesota, from the state of Minnesota through St. Louis County, subject to a mutually acceptable agreement between the city and Diamond Willow, pursuant to which Diamond agrees to pay all the city's costs of acquisition from the state, including any fees and additional costs in acquiring said tax-forfeited property from the state, said acquisition payable from Fund 110-700-1420-5510.

Lots 1 through 6 and Lots 33 through 37, Block 64, Lester Park Fourth Division.

Resolution 09-0445 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fosle, Krause, Stauber and President Gilbert -- 7

Nays: Councilor Gardner -- 1

Abstention: Councilor Fedora -- 1

Approved July 27, 2009

DON NESS, Mayor

- - -

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fosle, Krause, Stauber and President Gilbert -- 7

Nays: Councilor Gardner -- 1

Abstention: Councilor Fedora -- 1

- - -

Councilor Cuneo moved to remove Resolution 09-0434, establishing a parking meter zone on the north side of Superior Street at Sixth Avenue East, from the table, which motion was seconded and unanimously carried.

Councilors Stauber and Gardner opposed the resolution, stating that it would encourage those parking their cars to jaywalk across the street.

Resolution 09-0434 was adopted as follows:

RESOLVED, that in accordance with the provisions of Section 33-108 of the Duluth City Code, 1959, as amended, the following parking meter zone is hereby established: on the north side of Superior Street at Sixth Avenue East.

Proposed rate will be one quarter for 40 minutes, with a two-hour limit.

Metered parking shall be applicable between 8:30 AM and 5:30 PM, Monday through Saturday.

This metered zone will take effect upon installation of the parking meters.

Resolution 09-0434 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora and Krause -- 5

Nays: Councilors Fosle, Gardner, Stauber and President Gilbert -- 4

Approved July 27, 2009

DON NESS, Mayor

- - -

Councilor Cuneo moved to remove Resolution 09-0433, designating Lakewalk property from 23rd to 25th avenues East as park land, from the table, which motion was seconded and unanimously carried.

Councilor Anderson moved to remove the resolution from the agenda and refer it the administration, 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 Gilbert 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 July 1, 2009, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Shotz Bar, Inc. d/b/a Shotz Bar, 1321 Commonwealth Avenue and has submitted its report to the city council of the city of Duluth as Public Document No. 09-0727-11;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on July 27, 2009, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 09-0727-11 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of Shotz Bar, Inc. d/b/a Shotz Bar, 1321 Commonwealth 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: the commission recommends that the Duluth City Council impose a \$250 penalty, but that the fine be stayed for a period of one year and waived if during one year from the date of council action the licensee is not found to have violated any laws related to the operation of a liquor establishment.

Resolution 09-0465 was unanimously adopted.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Approved July 27, 2009
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. 09-0727-12, with National Pharmaceutical Services, for the administration of the 2010 retiree drug subsidy, for an amount not to exceed \$13,000 payable from Fund 630, Department 036, Organization 1660, Object 5441.

Resolution 09-0479 was unanimously adopted.
Approved July 27, 2009
DON NESS, Mayor

- - -

RESOLVED, that the appointment by Mayor Ness to the American Indian commission of Donna Blue Bird for a term expiring on March 31, 2012, replacing Linda Grover who resigned, is confirmed.

Resolution 09-0473 was unanimously adopted.
Approved July 27, 2009
DON NESS, Mayor

- - -

RESOLVED, that the (re)appointments by Mayor Ness to the entertainment and convention center authority of John Arnold III, Mark Emmel and Nick Patronas, replacing Robert Beaudin, for terms expiring on June 30, 2012, are confirmed.

Resolution 09-0474 was unanimously adopted.
Approved July 27, 2009
DON NESS, Mayor

- - -

RESOLVED, that the appointment by Mayor Ness to the heritage preservation commission of Timothy Meyer (preservation professional) for a term expiring on March 31, 2010, replacing Robert Aho who resigned, is confirmed.

Resolution 09-0475 was unanimously adopted.
Approved July 27, 2009
DON NESS, Mayor

- - -

RESOLVED, that the proposed amendments to the specifications for the civil service classification of business resources manager, revised from business development manager, which were approved by the civil service board on June 23, 2009, and which are filed with the city clerk as Public Document No. 09-0727-13, are approved. This classification shall remain subject to the city's collective bargaining agreement with its supervisory unit employees and compensated at Pay Range 1125.

Resolution 09-0489 was unanimously adopted.
Approved July 27, 2009
DON NESS, Mayor

- - -

RESOLVED, that:

(a) The city council finds a sufficient petition was filed with the city clerk requesting the vacation of the alley located in Block 81 between Lots 1 and 27-30, Gary Central Division to

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Duluth; 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, 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 is useless for some or all of the uses for which it was dedicated as the alley has not been improved for vehicle purposes, there are no plans to improve this alley and the vacated alley is being retained as an easement for utilities; and

(c) The planning commission, at its July 14, 2009, regular meeting did approve vacating the alley petitioned for vacation as the alley is useless for the purpose for which it was dedicated, the alley has not been developed and will not likely be developed, and the vacated alley is being retained as an easement for utilities.

RESOLVED FURTHER, that:

(a) The city council of the city of Duluth approves the vacation of the alley located in Block 81 between Lots 1 and 27-30, Gary Central Division to Duluth, retaining the vacated alley as an easement for utilities and as more particularly described on Public Document No. 09-0727-14;

(b) The city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of Saint Louis county, Minnesota, a certified copy of this resolution.

Resolution 09-0478 was unanimously adopted.

Approved July 27, 2009

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
010-2880-00310 Lincoln Park Gardens, Block 2, Lot 20 Tract 14	west side of Springvale Road near Piedmont Avenue (Piedmont)	stream runs through property, stormwater drainage protection
010-3590-00400 Ohara's Division, Block 10, Lots 1, 2, and 3, except part taken for street Tract 20	intersection of Carlton and West Superior Street (Lincoln Park)	54 inch storm sewer pipe crosses the parcel

Resolution 09-0480 was unanimously adopted.

Approved July 27, 2009

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. 09-0727-15, with Senior Service America, Inc., (SSAI) to serve Duluth residents age 55 and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

older with work experience training and services in the amount of \$344,008 for the period of July 1, 2009, through June 30, 2010. Program funds will be accepted upon receipt of notices of funds available. Monies received shall be deposited into Fund 270, Agency 031, Organization 6330.

Resolution 09-0462 was unanimously adopted.
 Approved July 27, 2009
 DON NESS, Mayor

- - -

RESOLVED, that proper city officials are hereby authorized to approve an addendum, on file with the office of the city clerk as Public Document No. 09-0727-16 to an agreement adopted pursuant to Resolution 08-0573 on September 22, 2008, with the Minnesota department of employment and economic development's job service to provide dislocated worker programs for the period July 1, 2008, through June 30, 2009; funds will be payable from Fund 268, Agency 031, organizations 6211 (federal program) and 6210 (state program).

Resolution 09-0477 was unanimously adopted.
 Approved July 27, 2009
 DON NESS, Mayor

- - -

RESOLVED, that the proper city officers are authorized to execute the following stipulations for award and stipulation amending the taking in the matter of State v. Carl F. Brueckner, Jr., et al., copies of which are on file in the office of the city clerk as public documents between the city of Duluth and the Minnesota department of transportation and accepting payment therefore in the amount of \$70,500, plus statutory interest, to be deposited into Fund 110, Agency 700, Organization 1420, Object 4640.

Public Document No.	Document	Parcel Reference	Amount
09-0727-17(a)	Stipulation for Award	301A,C.S.6915(53=106)902	\$57,500
09-0727-17(b)	Stipulation Amending the Taking		See above
09-0727-17(c)	Stipulation of Award	304A,C.S.6915(53=106)902	\$13,000

Resolution 09-0485 was unanimously adopted.
 Approved July 27, 2009
 DON NESS, Mayor

- - -

RESOLVED, that the proper city officers are authorized and directed to grant a temporary easement running in favor of the state of Minnesota department of transportation, a copy of which is on file in the office of the city clerk as Public Document No. 09-0727-18, over the property therein described and to accept therefore the amount of \$1,100, to be deposited into Fund 110, Agency 700, Organization 1420, Object 4640.

Resolution 09-0486 was unanimously adopted.
 Approved July 27, 2009

DON NESS, Mayor

- - -

RESOLVED, that Amendment No. 1 to Resolution 09-0299 is hereby approved, thereby adjusting the original Purchase Order #2009-00000225 with HD Supply Waterworks, Ltd., for the purchase and delivery of Waterous Pacer fire hydrants during year 2009 for an increase of \$16,249.27 and a new total of \$49,191.85, terms net 30, FOB destination, payable from the Water Fund 510, Department/Agency 500, Organization 1945, Object 5227.

Resolution 09-0468 was unanimously adopted.

Approved July 27, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Coons Aggregate Supply, a division of Wissota Sand and Gravel, for the purchase and delivery of 6,000 tons of washed sand in accordance with the city's specifications and the vendor's low bid of \$57,140 plus \$3,928.38 sales tax of 6.875 percent, for a combined total amount of \$61,068.38, terms net 60, FOB destination, payable from General Fund 110, Department/Agency 120, Organization 1217-2140, Object 5223.

Resolution 09-0469 was unanimously adopted.

Approved July 27, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Salo Engineering, Inc., for the Glenwood Street reconstruction in the amount of \$450,241.37, payable from the Street Improvement Fund 0440, Department/Agency 038, Object 5530, city project nos. 0647TR and 0244TR, S.P. 118-162-13 and S.A.P. 118-162-13.

Resolution 09-0471 was unanimously adopted.

Approved July 27, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Rainbow, Inc., for the painting and general structural rehabilitation of the Aerial Lift Bridge, Phase 3, in the amount of \$4,900,000, payable out of the Permanent Improvement Fund 0411, Agency 025, Object 5520, Project No. 0792TR, S.P. 118-140-030.

Resolution 09-0472 was unanimously adopted.

Approved July 27, 2009

DON NESS, Mayor

- - -

RESOLVED, that in accordance with the provisions of Section 33-17 of the Duluth City Code, 1959, as amended, the following segment of First Street is no longer a one way street: First Street between 21st Avenue West and 22nd Avenue West. This resolution is to become effective only after said streets have been posted with proper signage indicating the change in designation.

Resolution 09-0481 was unanimously adopted.

Approved July 27, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officers are authorized to accept an FY2009 Recovery Act Edward Byrne Memorial Justice Assistance Grant Award No. 2009-G9101-MN-DJ from the United States department of justice, bureau of justice assistance, office of justice programs, in the amount of \$77,044, to be deposited in Fund 215, Agency 025, Organization 2283, Revenue Source 4209-02, to be used for equipment, software acquisition, support of the First Witness Program and training by the city and St. Louis County and to execute all documents related thereto.

FURTHER RESOLVED, that the city is authorized to enter into a subgrant agreement with St. Louis County for the first witness program and for the sheriff's records system-enhancement, training and operational costs in the amount of \$10,600, payable from Fund 215, Agency 025, Organization 2283, Revenue Source 4209-02.

Resolution 09-0482 was unanimously adopted.

Approved July 27, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept a onetime reimbursement grant from the Minnesota department of natural resources using funds appropriated by the Minnesota Legislature in Laws of Minnesota 2008, Chapter 357, Section 39, in the amount of \$33,000, to be deposited in Fund 110, Agency 700, Organization 1420, Revenue Source, 4220-01, Project CM100-0914, to be used by the city to assist the Lake Superior Zoo in obtaining accreditation and to execute all documents related thereto.

Resolution 09-0470 was unanimously adopted.

Approved July 27, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officers are hereby authorized to enter into a consultant agreement with Hoinsington Koegler Group, Inc., said agreement to be substantially in the form of Public Document No. 09-0727-19 on file in the office of the city clerk, for providing certain professional services to the city of Duluth in connection with the parks and recreation master plan for the sum not to exceed \$81,950, payable from Fund 110, Department/Agency 700, Organization 1420, Object 5530, Project CM100-OT0817.

Resolution 09-0483 was unanimously adopted.

Approved July 27, 2009

DON NESS, Mayor

- - -

The following resolutions were also considered:

Resolution 09-0426, in the matter of the on sale intoxicating liquor license Norshor Experience, Inc. (Norshor Experience), 211 East Superior Street, was introduced by Councilor Krause for discussion.

The rules were suspended upon a unanimous vote to hear from a speaker on the resolution.

Randall Tighe, attorney for Norshor Experience, stated his opposition to the resolution (Public Document No. 09-0727-23).

Councilor Fedora moved to amend the last sentence of the resolution as follows:

(a) Delete the phrase "the commission" and insert "the council";

(b) Delete the phrase "the first Friday following council action" and insert "Wednesday, July 29, 2009,"

which motion was seconded and discussed at length.

Councilor Fedora's amendment carried upon the follow vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Krause and President Gilbert -- 7

Nays: Councilors Gardner and Stauber -- 2

Resolution 09-0426, as amended, 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 6, 2009, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Norshor Experience, Inc., d/b/a Norshor Experience, 211 East Superior Street, and has submitted its report to the city council of the city of Duluth as Public Document No. 09-0727-08;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on July 27, 2009, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 09-0727-08 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of Norshor Experience, Inc., d/b/a Norshor Experience, 211 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: the commission recommends that the licensee serve the presumptive penalty under Duluth City Code § 8-9(c) for a third offense within two years as follows: \$1,000 civil penalty and five day license suspension, plus an additional one day license suspension for its failure to comply with City Council Resolution 09-0012, for a total of six days license suspension. The council further recommends that payment of the fine be made within 30 days of council action and that the six day license suspension be served beginning Wednesday, July 29, 2009.

Resolution 09-0426, as amended, was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Krause and President Gilbert -- 7

Nays: Councilors Gardner and Stauber -- 2

Approved July 27, 2009

DON NESS, Mayor

- - -

Resolution 09-0466, by Councilor Krause, of intent to develop and adopt a more stringent city council conflict of interest policy, was introduced for discussion.

Councilors Krause, Gardner and Fosle expressed support of the resolutions for the reasons of: this is just a resolution of intent, therefore it will be visited in greater detail in the future; there have been past examples of situations where conflicts of interests could have occurred; this would tighten up language to make it clear and concise; the last paragraph is intended to assist us in knowing if a councilor did have a conflict; the council would look much more professional to the community; this is good because it will uphold council morals; this is trying to reduce different interpretations by different city attorneys and it sets up a clear standard.

Councilors Anderson, Eckenberg, Cuneo, Fedora and Stauber had the following concerns

about the resolution: state statute and City Charter already address this issue and the Charter could be reviewed on this subject; at this point, this resolution is too ambiguous; legal conflicts are different from moral conflicts and thus the statute applies and if you have questions of moral conflict of interest, state them, but if there is no legal conflict, then you need to vote on issues.

Mayor Ness felt that while he understood the intent of this resolution, it would introduce a world of "gray" that will confuse the issue and provide for increased questioning of councilor intent. He added that state statute already has defined conflict of interest.

Resolution 09-0466 failed upon the following vote (Public Document No. 09-0727-20):

Yeas: Councilors Fosle, Gardner and Krause -- 3

Nays: Councilors Anderson, Cuneo, Eckenberg, Fedora, Stauber and President Gilbert -- 6

- - -

RESOLVED, that the (re)appointments by Mayor Ness to the Spirit Mountain recreation area authority of Willard Munger, Jr., Nancy Nelson, Neale Roth and Jane Gilbert-Howard, replacing Ken Buehler who resigned, for terms expiring on June 30, 2012, are confirmed.

Resolution 09-0476 was unanimously adopted.

Approved July 27, 2009

DON NESS, Mayor

- - -

RESOLVED, that pursuant to Section 19 of the Duluth City Charter, the city council hereby confirms the removal of Michael Ashcraft from the position of chief administrative officer.

Resolution 09-0491 was unanimously adopted.

Approved July 27, 2009

DON NESS, Mayor

- - -

RESOLVED, that the appointment of David Montgomery to the position of chief administrative officer is hereby confirmed and that the proper city officials are hereby authorized to execute and implement an employment contract substantially in the form of that on file in the office of the city clerk as Public Document No. 09-0727-21.

Resolution 09-0492 was unanimously adopted.

Approved July 27, 2009

DON NESS, Mayor

- - -

RESOLVED, that pursuant to Resolution 09-0342 adopted on May 26, 2009, the city council confirms the appointment by Mayor Ness of the following individual to the Duluth economic development authority:

Christine Townsend for a term expiring on May 26, 2013.

BE IT FURTHER RESOLVED, that the passage of this resolution creates the newly formed Duluth economic development authority board.

Resolution 09-0484 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Stauber and President Gilbert -- 8

Nays: Councilor Krause -- 1

Approved July 27, 2009

DON NESS, Mayor

- - -

RESOLVED, that the Duluth City Council hereby makes the following findings:

(a) That communities across the United States have designated August 4, 2009, as a *National Night Out* to celebrate community and neighborhood awareness and unity; and

(b) That the purpose of the *National Night Out* is to generate support and participate in local anti-crime efforts, to strengthen neighborhood spirit and police community partnerships, to heighten crime and drug prevention awareness and to send a message to criminals that neighborhoods are fighting back.

FURTHER RESOLVED, that the Duluth City Council wishes to express its support for the *National Night Out* and the goals and purposes behind it.

FURTHER RESOLVED, that the Duluth City Council hereby expresses its support for the *26th Anniversary National Night Out* on August 4, 2009, and encourages the administration and the various neighborhoods throughout the city to facilitate and participate in the event by spending a night out with their neighbors.

Resolution 09-0461 was unanimously adopted.

Approved July 27, 2009

DON NESS, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the second time:

BY COUNCILOR STAUBER

09-036 (9985) - AN ORDINANCE AMENDING SECTION 2 OF ORDINANCE 1809, REPEALING SECTION 1 OF ORDINANCE 1809 AND REPEALING ORDINANCE 1917 IN ITS ENTIRETY, ALL RELATING TO THE CITY PLANNING COMMISSION.

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

Mike Akervik, president of the planning commission, was available for councilor questions and noted that some of the problems of attendance was when there were two meetings a month and supported earlier advertising of vacancies before terms have expired.

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

- - -

INTRODUCED BY COUNCILOR STAUBER

09-038 (9986) - AN ORDINANCE AUTHORIZING GRANTING OF A RESTRICTED AREA EASEMENT TO THE STATE OF MINNESOTA, DEPARTMENT OF MILITARY AFFAIRS, AND APPROVING THE GRANTING BY THE DULUTH AIRPORT AUTHORITY OF THE SAME, OVER PROPERTY AT THE DULUTH INTERNATIONAL AIRPORT.

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

- - -

INTRODUCED BY COUNCILOR CUNEO

09-039 - AN ORDINANCE DECLARING STATUTORY AND CODE VIOLATIONS AS CIVIL OFFENSES, AUTHORIZING CIVIL PENALTIES THEREFORE, AUTHORIZING CORRECTIVE ORDERS AND ESTABLISHING HEARING AND ENFORCEMENT PROCEDURES WITH

REGARD THERETO, ADDING A NEW CHAPTER 12 TO THE CODE AND REPEALING SECTIONS 2-7 AND 2-7.1 THEREOF.

Councilor Cuneo moved to table the ordinance as per the request of the administration, which motion was seconded and unanimously carried.

- - -

The meeting was adjourned at 9:10 p.m.

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 9984

AN ORDINANCE AUTHORIZING A DEVELOPMENT AGREEMENT WITH DIAMOND WILLOW, LLC, PROVIDING FOR THE SALE OF CERTAIN PROPERTY AND FOR CONSTRUCTION OF A RESIDENTIAL CARE FACILITY AND A MEDICAL CLINIC IN LESTER PARK.

The city of Duluth does ordain:

Section 1. That the city of Duluth finds that the sale of the property described below to Diamond Willow, LLC (the developer) furthers important city interests and objectives including providing needed senior and assisted living housing, providing needed medical facilities for the community and up the North Shore, furthering the city's general plan for economic development in the area, providing construction jobs, and increasing the city's tax base, and further finds that such sale is necessary to accomplish such interests and objectives.

Section 2. That the proper city officials are hereby authorized to enter into a development agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 09-0727-10, with the developer pursuant to which the city will acquire certain tax forfeited property in Lester Park from the state of Minnesota through St. Louis County and thereafter convey to the developer without bids for the amount of \$28,840.38, payable into Fund 110-700-1420-4640, by quit claim deed the above-described tax forfeited property and adjacent city-owned property, all of which property is located in St. Louis County, Minnesota, and described below, for the purposes of constructing a residential care facility on the property and a medical clinic on adjacent privately-owned property and further, that the proper city officials are authorized to execute all documents necessary with regard to said conveyance:

Lots 1 through 8, that part of Lots 28, 29 and 30 lying southerly of a line beginning at the most easterly corner of said Lot 28 and terminating at the most easterly corner of said Lot 8, Lots 31 through 37, Block 64, Lester Park Fourth Division, St. Louis County.

Section 3. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: September 6, 2009)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fosle, Krause, Stauber and President Gilbert -- 7

Nays: Councilor Gardner -- 1

Abstention: Councilor Fedora -- 1

ATTEST:

Passed July 27, 2009
Approved July 27, 2009

JEFFREY J. COX, City Clerk

DON NESS, Mayor

- - -

ORDINANCE NO. 9985

BY COUNCILOR STAUBER:

AN ORDINANCE AMENDING SECTION 2 OF ORDINANCE 1809, REPEALING SECTION 1 OF ORDINANCE 1809 AND REPEALING ORDINANCE 1917 IN ITS ENTIRETY, ALL RELATING TO THE CITY PLANNING COMMISSION.

The city of Duluth does ordain:

Section 1. That Section 2 of Ordinance 1809 is amended to read as follows:

Section 2. There shall be a nonsalaried city planning commission, the membership of which shall be as here and after set forth, whose members shall be citizens of Duluth, whose appointment shall be made by the mayor and confirmed by the council, whose term of appointment shall be for four years, and who shall make and file with the city clerk an oath or affirmation as provided in Section 28 of the City Charter.

(a) As of the effective date of this ordinance, the commission shall consist of the 13 members currently serving or their successors serving for the remainder of their unexpired term.

(b) As of April 1, 2010, the membership of the commission shall be reduced to 12 members, and only two of the three terms expiring on March 31, 2010, shall be filled.

(c) As of April 1, 2011, the membership of the commission shall be reduced to 11 members, and only three of the four terms expiring on March 31, 2011, shall be filled.

(d) As of April 1, 2012, the membership of the commission shall be reduced to ten members, and only two of the three terms expiring on March 31, 2012, shall be filled.

(e) As of April 1, 2013, the membership of the commission shall be reduced to nine members, and only two of the three terms expiring on March 31, 2013, shall be filled.

(f) From and after April 1, 2013, the membership of the commission shall consist of nine members.

Section 2. That Section 1 of Ordinance 1809 and Ordinance 1917 are repealed.

Section 3. That this ordinance shall take effect 30 days after its passage and publication.

(Effective date: September 6, 2009)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Nays: None -- 0

ATTEST:

Passed July 27, 2009
Approved July 27, 2009

JEFFREY J. COX, City Clerk

DON NESS, Mayor

- - -

ORDINANCE NO. 9986

AN ORDINANCE AUTHORIZING GRANTING OF A RESTRICTED AREA EASEMENT TO THE STATE OF MINNESOTA, DEPARTMENT OF MILITARY AFFAIRS, AND APPROVING THE GRANTING BY THE DULUTH AIRPORT AUTHORITY OF THE SAME, OVER PROPERTY AT THE DULUTH INTERNATIONAL AIRPORT.

The city of Duluth does ordain:

Section 1. That the proper city officials are hereby authorized to grant an easement, substantially in the form of that on file in the office of the city clerk as Public Document No. 09-0727-22, to the state of Minnesota, department of military affairs (the "state"), and the city hereby approves the granting of the same easement to the state by the Duluth airport authority, for the establishment, maintenance, operation and use for a restricted area in, on, over and across that property in St. Louis County, Minnesota, described as follows:

Easement Area No. 1

A parcel of land located in a portion of the Northeast Quarter of the Northeast Quarter (NE ¼ NE ¼), Southeast Quarter of the Northeast Quarter (SE ¼ NE ¼), Northeast Quarter of the Southeast Quarter (NE ¼ SE ¼) of Section 1, Township 50 North, Range 15 West of the 4th P.M.; the Northwest Quarter of the Northwest Quarter (NW ¼ NW ¼) of Section 6, Township 50 North, Range 14 West of the 4th P.M.; and the Southeast Quarter of the Southeast Quarter (SE ¼ SE ¼) of Section 36, Township 51 North, Range 15 West of the 4th P.M, St. Louis County, Minnesota, being more particularly described as follows: Commencing at the northwest corner of said Section 6;thence N89°51'19"E, assumed bearing, along the north line of said Section 6, 641.47 feet to a 5/8" rebar with aluminum cap inscribed "Paul Voge, LS 25955" lying 500 feet southeasterly of, and parallel with, the centerline of the Northeast/Southwest Runway, as it currently exists, at Duluth International Airport; thence S 31°21'15" W along said parallel line, 616.87 feet to the POINT OF BEGINNING of this parcel being described; thence northwesterly, southwesterly, and southeasterly, 3460.04 feet along a non-tangent circular curve, concave to the southeast, having a radius of 800.00 feet, a central angle of 247°48'26", and a chord bearing of S 36°19'32" W; thence southwesterly, 1226.94 feet along a non-tangent circular curve, concave to the southeast, having a radius of 1727.96 feet, a central angle of 40°40'58", and a chord bearing of S 25°51'26" W to an intersection with the said parallel line lying 500 feet southeasterly of the centerline of the Northeast/Southwest Runway; thence N 31°21'15" E along the said parallel line, 2518.77 feet to the POINT OF BEGINNING.

Said parcel contains 43.90 acres, more or less, and is subject to any easements, restrictions, leases, or covenants of sight and/or of record.

Easement Area No. 2

A parcel of land located in a portion of the Northeast Quarter of the Southeast Quarter (NE ¼ SE ¼) of Section 1, Township 50 North, Range 15 West of the 4th P.M., St. Louis County, Minnesota, being more particularly described as follows: Commencing at the northeast corner of said Section 1; thence N89°51'19"E, assumed bearing, along the north line of Section 6, Township 50 North, Range 14 West of the 4th P.M., 641.47 feet to a 5/8" rebar with aluminum cap inscribed "Paul Voge, LS 25955" lying 500 feet southeasterly of, and parallel with, the

centerline of the Northeast/Southwest Runway, as it currently exists, at Duluth International Airport; thence S 31°21'15" W along said parallel line, 3266.24 feet to an intersection with a line lying 750 feet north of, and parallel with, the centerline of the East/West Runway, as it currently exists, at Duluth International Airport, and at said intersection is found a 5/8" rebar with aluminum cap inscribed "Paul Voge, LS 25955"; thence S 87°54'49" E along said 750 foot parallel line, 61.52 feet to the POINT OF BEGINNING of this parcel being described; thence, continuing along said 750 foot parallel line, 1011.20 feet to an intersection with the east line of the Northeast Quarter of the Southeast Quarter (NE ¼ SE ¼) of said Section 1, where is found a 5/8" rebar with aluminum cap inscribed "Paul Voge, LS 25955"; thence S 0°20'06" E along the east line of the Northeast Quarter of the Southeast Quarter (NE ¼ SE ¼) of said Section 1, 244.60 feet; thence southwesterly, 383.06 feet along a non-tangent circular curve, concave to the northwest, having a radius of 400.00 feet, a central angle of 54°52'08", and a chord bearing of S 66°44'48" W; thence, tangent to said curve, N 87°56'55"W, 288.17 feet; thence northwesterly, 630.87 feet along a tangent circular curve, concave to the northeast, having a radius of 400.00 feet, and a central angle of 90°21'54" to the POINT OF BEGINNING.

Said parcel contains 8.27 acres, more or less, and is subject to any easements, restrictions, leases, or covenants of sight and/or of record.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: September 6, 2009)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed July 27, 2009
Approved July 27, 2009
DON NESS, Mayor

- - -

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, August 10, 2009, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Absent: None -- 0

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

09-0810-01 Richard Hoag, by Cheryl Fosdick, further petition (one signature) to vacate Wyoming Street between 60th Avenue East and Occidental Boulevard (Lot 3, Block 36, Lester Park Third Division). -- Assessor

09-0810-11 Alison Clarke communication regarding the proposed Munger Trail extension to connect to the Lakewalk (09-0502R). -- Received

09-0810-12 The following communications regarding proposed procedure to correct errors related to eligible salary reporting to the Public Employees Retirement Association (PERA) (09-0513R): (a) Thomas Ehle; (b) Richard and Anita Paulson. -- Received

09-0810-13 The following communications regarding participation of fire fighters employed by the city of Duluth in the partnership between the International Association of Fire Fighters and the Muscular Dystrophy Association, by soliciting for donations during the annual "Fill The Boot" campaign (09-0511R): (a) Laura Bernhardson; (b) Jim Rogers. -- Received.

09-0810-14 The following communications regarding the proposed construction of a new public safety facility (09-0514R): (a) Joyce Benson; (b) Sharon Buchanan; (c) Jerome Carlson; (d) Cathryn Curley; (e) George Harnish; (f) Deborah Hendrickson; (g) Gayle Holton; (h) Lois Jaeckel; (i) Denise Lisdahl; (j) Pattie Pitoscia; (k) Linda Riddle; (l) Michael Schiltz; (m) Sarah Seidelmann; (n) Ryan Temple. -- Received

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REPORTS FROM OTHER OFFICERS

09-0810-02 Assessor affidavit of mailing of notice of the levying of assessments against the property specially benefitted for unpaid delinquent stormwater utility bills. -- Received

09-0810-03 Clerk applications to the Minnesota gambling control board for exemption from lawful gambling license from: (a) Animal Allies Humane Society on October 16, 2009 (raffle); (b) March of Dimes Foundation on October 22, 2009 (raffle); (c) St. Michael's Church on October 25, 2009 (bingo and raffle). --Received

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REPORTS OF BOARDS AND COMMISSIONS

09-0810-15 Alcohol, gambling and tobacco commission minutes of: (a) June 3; (b) July 1, 2009, meetings. -- Received

09-0810-04 Building appeal board minutes of June 10, 2009, meeting. -- Received

09-0810-06 Charter commission minutes of April 8, 2009, meeting. -- Received

09-0810-05 Civil service board minutes of: (a) June 2; (b) June 23, 2009, meetings. -- Received

09-0810-07 Duluth airport authority minutes of July 1, 2009, meeting. -- Received

09-0810-08 Entertainment and convention center authority minutes of July 29, 2009, meeting. -- Received

09-0810-09 Parks and recreation commission minutes from July 8, 2009, meeting. -- Received

09-0810-10 Spirit Mountain recreation area authority minutes of June 18, 2009, meeting. -- Received

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OPPORTUNITY FOR CITIZENS TO BE HEARD

Tom Wright commented on his concerns about the Armory building and that it has been sitting there for years and nothing has been done. He felt that it was time for it to be torn down and put back on the tax rolls with someone building something there.

Mr. Wright also felt that it is wrong that the police officers could not work the PGA golf tournament in the Twin Cities as security.

- - -

Doran Whitledge commented on his desire to do a presentation entitled "The Easy Answer on Four World Problems." He noted that he would show how solutions to these problems can be found.

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

RESOLVED, that city officials are hereby authorized to contract with Enventis Telecom, Inc., a subsidiary of HickoryTech, for the purchase, delivery and installation of hardware to upgrade the unified communication infrastructure in accordance with vendors quote and state of Minnesota contract pricing in the amount of \$71,857.93 and tax of \$4,940.23 for a total amount of \$76,798.16, terms net 30, FOB destination, payable as follows:

(a) \$75,000 - Capital Equipment Fund 250, Department 015, Organization 2009, Object 5580, Project CE250-E907;

(b) \$1,798.16 - Capital Equipment Fund 250, Department 015, Organization 2005, Object 5580, Project CE250-E503.

Resolution 09-0488 was unanimously adopted.

Approved August 10, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Johnson-Wilson Constructors for modifications to existing pool circulation systems for the Polar Shores exhibit at the Lake Superior Zoo in accordance with its low specification bid of \$394,300;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

payable out of Capital Fund 450, Department/Agency 030, Object 5520, CP 2007 OT-0713.

Resolution 09-0498 was unanimously adopted.

Approved August 10, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby to contract with New World Systems Corporation for the purchase of software licenses for Logos.NET Business Analytics modules in accordance with city system specifications and the vendor's quote of \$43,200 plus \$2,970 sales tax for a total combined amount of \$46,170, terms net 30, payable from various funds, departments/agencies, objects and organizations.

Resolution 09-0499 was unanimously adopted.

Approved August 10, 2009

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:

Duluth Softball Players Association (North Shore Classic), Wheeler Field, for August 29 and 30, 2009, with John Vaydich, manager.

Duluth Softball Players Association (9/11 Tribute To Our Northland Heroes), Wheeler Field, for September 12 and 13, 2009, with John Vaydich, manager.

Lakeside/Lester Park Business Association (Lester River Festival), Lester Park, for September 26, 2009, (rain date September 27, 2009), with Darlene Marshall, manager.

Resolution 09-0503 was unanimously adopted.

Approved August 10, 2009

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby issues 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:

Northland Country Club, 3901 East Superior Street, for August 26, 2009, with Gary Schneider, manager.

Duluth-Superior GLBT Pride, Inc. (Duluth-Superior GLBT Pride Festival), Bayfront Park, for September 5, 2009, with Carolyn Reisberg, manager.

Resolution 09-0504 was unanimously adopted.

Approved August 10, 2009

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 on sale intoxicating liquor license of Hospitality of Duluth, LLC (Aces on First), 113 West First Street, subject to departmental approvals, with any specific restrictions, for August 20, 2009, from 4:00 p.m. to 9:00 p.m.

AND BE IT FURTHER RESOLVED, that the city council of the city of Duluth hereby approves the temporary expansion of the designated serving area of the on sale intoxicating liquor license and an on sale one day dance license of Rose Garden Enterprises, LLC (Valentini's Vicino Lago), 1400 London Road, subject to departmental approvals, with any specific restrictions, for August 20, 2009, from 7:00 p.m. to 10:00 p.m.

Resolution 09-0505 was unanimously adopted.
Approved August 10, 2009
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 Kids Voting Minnesota 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 09-0506 was unanimously adopted.
Approved August 10, 2009
DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with New World Systems Corporation for the purchase of Logos.NET FM work order software and implementation costs in accordance with specifications and the vendor's quote of \$37,800 plus \$2,598.75 sales tax for a total amount of \$40,398.75, and payable as follows:

(a) \$4,077 from Capital Equipment Fund 250, Department/Agency 015, Organization 2006, Object 5580, Project CE250-E601;

(b) \$36,321.75 from Capital Equipment Fund 250, Department/Agency 015, Organization 2007, Object 5580, Project CE250-E701.

Resolution 09-0509 was unanimously adopted.
Approved August 10, 2009
DON NESS, Mayor

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RESOLVED, that the appointment by Mayor Ness of Leslie Evans (Superior, Wisconsin, representative) to the Duluth transit authority for a term expiring on June 30, 2012, replacing Lewis Martin who resigned, is confirmed.

Resolution 09-0490 was unanimously adopted.
Approved August 10, 2009
DON NESS, Mayor

- - -

RESOLVED, that David Montgomery, chief administrative officer to the mayor, is hereby designated as the responsible authority for data practices as defined by Minnesota Statutes, Section 13.02, subd. 16.

BE IT FURTHER RESOLVED, that Resolution 09-0324 adopted on May 26, 2009, be rescinded.

Resolution 09-0493 was unanimously adopted.
Approved August 10, 2009
DON NESS, Mayor

- - -

RESOLVED, that the proposed amendments to the specifications for the civil service classification of Personnel analyst, including a title change to human resources generalist, which were approved by the civil service board on June 2, 2009, and which are filed with the city clerk as Public Document No. 09-0810-16, are approved; that said classification shall remain subject to the city's collective bargaining agreement with its confidential unit employees, that the pay

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

range will change from Pay Range 9 to Pay Range 10. 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 09-0510 was unanimously adopted.
Approved August 10, 2009
DON NESS, Mayor

- - -

RESOLVED, that pursuant to Minnesota Statutes 204B.21, the following persons are hereby appointed as election judges in the respective precincts for the September 15, 2009, municipal and school board primary election and the November 3, 2009, municipal and school board general election, as listed in Public Document No. 09-0810-17.

RESOLVED FURTHER, that pursuant to Minnesota Statute, 204B.31(d), election judges shall be compensated at the rate of \$7 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 \$.55 per mile; payable from General Fund 120-1211-5441.

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 09-0512 was unanimously adopted.
Approved August 10, 2009
DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Monarch Paving Company, a Division of Mathy Construction Company, for the purchase of \$1,500 tons of fine cold mix asphalt during the contract period of June 1, 2009, through May 31, 2010, for the division of maintenance operations and department of public works and utilities in accordance with city specifications and the vendor's quote of \$60 per ton for 700 tons and \$65 per ton for 800 tons, for a total amount of \$94,000 plus \$6,462.50 sales tax, for a combined total amount of \$100,462.50, terms net 30, FOB picked up, and payable from the following funds:

Amount	Fund	Agency	Organization	Object
\$44,887.50	General Fund 100	120	1217-2140	5222
\$33,345.00	Water Fund 510	500	1945	5222
\$5,557.50	Gas Fund 520	500	1945	5222
\$11,115.50	Sewer Fund 530	500	1945	5222
\$5,557.50	Stormwater Fund 535	500	1945	5222

Resolution 09-0497 was unanimously adopted.
Approved August 10, 2009
DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to execute an agreement with Animal Allies Humane Society, substantially in the form of that on file in the office of the city

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

clerk as Public Document No. 09-0810-18, for the operation of an adoption program within the city of Duluth.

Resolution 09-0494 was unanimously adopted.
Approved August 10, 2009
DON NESS, Mayor

- - -

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. 09-0810-19, for the state fiscal years of 2010 and 2011 with the Minnesota department of public safety, office of justice programs, crime victim services, for a \$1,600 grant for a program entitled *Emergency Fund for Crime Victims*.

RESOLVED FURTHER, that funds received by the city under such grant agreement shall be deposited in Fund 210, Agency 030, Organization 3126, Revenue Source 4220.

Resolution 09-0500 was unanimously adopted.
Approved August 10, 2009
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 the grant agreement; said agreement to be substantially the same as that on file in the office of the city clerk as Public Document No. 09-0810-20; funds to be deposited in Fund 200-130-4220-02.

Resolution 09-0495 was unanimously adopted.
Approved August 10, 2009
DON NESS, Mayor

- - -

RESOLVED, that Resolution 09-0208, which authorized the acceptance of an Opportunity Online Hardware grant from the Bill and Melinda Gates Foundation, be amended to increase the grant amount to a Phase I (2009-2010) amount of \$48,750, and a Phase II (2010-2011) amount of \$32,500 for the purchase of a new total of 50 public computers to be installed at three library locations, such funds to be deposited in Fund 240-300-SG70-4270, and authorizes the proper city officials to execute additional phase and match documents, substantially the same as those on file in the office of the city clerk as Public Document No. 09-0810-21.

FURTHER RESOLVED, that the required local match to granted funds be increased to: a Phase I, 25 percent match amount of \$16,250; and a Phase II, 50 percent match amount of \$32,500 and is hereby authorized and shall be payable from Fund 110-700-1420-5580.

Resolution 09-0496 was unanimously adopted.
Approved August 10, 2009
DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby 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. 09-0810-22, with Fun Time, LLC, for the lease of the pilot house of the vessel *George Hindman* in Canal Park, all rent payable into Fund 110, Department 120, Organization 1217-2120, Revenue Source 4644, and all monies for capital improvement payable into Special Project Fund 210, Department 030, Organization. 3150.

Resolution 09-0516 was unanimously adopted.
Approved August 10, 2009
DON NESS, Mayor

- - -

The following resolutions were also considered:

Resolution 09-0511, by Councilor Gardner, requesting the administration allow fire fighters employed by the city of Duluth to participate in the partnership between the International Association of Fire Fighters and the Muscular Dystrophy Association, by soliciting for donations during the annual "fill the boot" campaign, was introduced for discussion.

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

Dan Smith, Erik Simonson, Chris Zufer, Muscular Dystrophy Association (MDA) and Kim Parmeter, MDA, spoke in support of the resolution for reasons of: the fire fighters fund-raising program for the muscular dystrophy program has been very successful; this is an opportunity for the fire fighters to interact with the citizens in a positive way; doing this "on duty" is the most effective way and maximizes the success; this is no different than giving blood on your work day; this would be done in three hour shifts; many other cities are doing it this way; all rigs will only work on this in their response district; fire fighters, councilors and the administration have been supportive of the MDA fund-raising; donations have been down due to the economy, so this need is important; with tight economic times, individuals are not able to make the large donations but are happy to donate to the fire fighters in this way and families are greatly benefited by local fund-raising.

Councilors Fedora, Eckenberg and Fosle opposed the resolution for reasons of: it is against current city policy to use city equipment for anything other than official city business unless approved by a bargaining agreement; this resolution suggests overruling the manager of a particular department in his decision making; the fire fighters and the MDA are exemplary organizations but, when managers make a decision, the council would be going down a slippery slope by overruling management decisions; a department head should not be put in the position of having to override city policy; liability for a fire fighter being hit by a vehicle is a concern and usually volunteers do not get paid their hourly wage to collect donations.

Councilors Krause, Cuneo and Gardner supported the resolution for reasons of: the fire fighters would have their rigs there and have radio contact to respond to calls; some communities have in the job description or goals that their employees become involved in their community; it is good public relations; this resolution is intended for this event only - not to set a precedence; if more money can be raised by doing it this way, it is well worth it; the MDA has agreed to release the city from any liability arising out of this plan; the city policy has not been followed in the past and the department head has supported this practice in the past.

Mayor Ness stated that the fire chief has stated his decision and that the chief met with the union regarding his concerns and then the union brought this issue to the city council versus discussing it with management to problem solve. He also stated that the issue is contrary to how decisions are made, that is, if staff or a union is upset, they should not bring it to the city council. Mayor Ness added that this has given the issue a political perspective.

Resolution 09-0511 was adopted as follows:

BY COUNCILOR GARDNER:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

WHEREAS, the International Association of Fire Fighters (IAFF) is the labor organization that represents the 280,000 fire fighters who serve the public by saving lives and protecting property in cities and governmental units throughout the United States and Canada; and

WHEREAS, the IAFF is the single largest national sponsor of the Muscular Dystrophy Association (MDA) and its annual Labor Day telethon; and

WHEREAS, since 1954, when it first initiated its partnership with the MDA, IAFF members have raised over \$275 million dollars toward the worldwide research efforts of MDA to eradicate 40 neuromuscular diseases; and

WHEREAS, the contributions generated through the efforts of fire fighters also go towards MDA's summer camps for children, professional and public health education, and other programs; and

WHEREAS, each year fire fighters raise millions of dollars nationwide through their passionate Fill the Boot campaigns, in which fire fighters greet motorists, shoppers and others and collect donations of money to MDA in their fire boots; and

WHEREAS, the commitment of the fire fighters to the cause of MDA has further elevated their image as extraordinary professionals who not only put their own lives at stake to save others from fires, explosions, structural collapses, and other disasters, but also as heroes helping to work toward saving the lives of the innocent victims of neuromuscular diseases; and

WHEREAS, the devoted support of IAFF members to the MDA not only provides significant financial assistance to finding a cure for these diseases, but also strengthens the relationship between the fire fighters and the members of the community they serve through the face to face meetings during the Fill the Boot campaign; and

WHEREAS, more than 800 cities across the United States, including Superior, Wisconsin, annually allow their fire fighter crews to conduct Fill the Boot campaign activities while on-duty in a manner that leaves them available and responsible to responding to emergency calls; and

WHEREAS, several states have passed statutes authorizing fire fighters to conduct Fill the Boot activities while on duty; and

WHEREAS, Duluth fire fighters are active members of IAFF Local 101 and long-standing participants in the Fill the Boot campaign; and

WHEREAS, unlike other city of Duluth employees, fire fighters work 24 hour shifts that include down time for personal activities; and

WHEREAS, Duluth fire fighters conduct their Fill the Boot activities in a manner that neither interferes with or precludes the performance of their regular daily duties nor detracts from other work-related obligations to the public; and

WHEREAS, the Minnesota chapter of the MDA has recognized the significant and valuable contribution of Duluth fire fighters to their annual fund raising efforts and strongly seeks their continued participation; and

WHEREAS, the Duluth City Council supports the efforts of the IAFF Local 101 and the MDA to find a cure for these terrible diseases; and

WHEREAS, the Duluth City Council recognizes that participation by the Duluth fire fighters in the nationwide MDA Fill the Boot campaign serves not only to raise money for the MDA but also benefits the city by greatly enhancing the image of its fire fighters as dedicated public servants engaged in the community through their employment and in service to charitable causes.

THEREFORE, BE IT RESOLVED, that the city council supports the efforts of the Duluth fire fighters in their participation of the MDA Fill the Boot campaign.

FURTHER RESOLVED, that the city council requests that the administration allow the

Duluth fire fighters to participate in the annual MDA Fill the Boot campaign while on duty, subject to reasonable conditions and limitations as may be established by the fire chief.

Resolution 09-0511 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Gardner, Krause and President Gilbert -- 5

Nays: Councilors Eckenberg, Fedora, Fosle and Stauber -- 4

Approved August 10, 2009

DON NESS, Mayor

- - -

Resolution 09-0513, establishing a procedure to correct errors related to eligible salary reporting to the Public Employees Retirement Association (PERA), was introduced by President Gilbert for discussion.

Councilor Gardner and Fosle noted that they receive PERA benefits but that it is through the county and school board, respectively, and will not be receiving benefits from the city.

To other councilor concerns, Mayor Ness noted that councilor contributions would not be affected by this, because this issue refers to a different kind of income than the salary that councilors receive.

City Attorney Gunnar Johnson stated that seeing that Councilor Eckenberg noted that he did receive a notice on this, without further information, he should consider abstaining on this issue.

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

Erik Simonson felt that the information told to the council is biased and that there is another side to this issue. He noted that this change was based on communication between the city and PERA and not the unions. Mr. Simonson stated that the fire union has an active grievance on this issue and filed an appeal. He encouraged the council to table this until the appeal will be heard in few weeks.

Chief Administrative Officer David Montgomery reviewed the history of this issue and the nature of the three options and where the upcoming deadline for accepting an option at this time would only apply to Option C.

Councilor Stauber moved to remove the resolution from the agenda and return it to the administration, which motion was seconded and carried upon the following vote:

Yeas: Councilors Anderson, Cuneo, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 8

Nays: None -- 0

Abstention: Councilor Eckenberg -- 1

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Resolution 09-0514, of support for the construction of a new public safety facility and funding for the project, was introduced by President Gilbert for discussion.

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

Joel Kilgour and Greg Follmer expressed concerns about the resolution for reasons of: the sub-urbanization of police services compared to the Downtown area; accessibility to police services that cannot be achieved at neighborhood locations; the loss of Downtown jobs with this move will affect the Downtown economy and more effort should be given to keeping this employment base in the Downtown or Lincoln Park neighborhood.

John Haataja, president of the police union, Craig Olson, president of the Duluth Building

Trades Council, and Linda Riddle, executive director of the Domestic Abuse and Intervention Program, supported the resolution because: this is a badly needed new police station for the officers and citizens; local business trades will be employed with the construction and the police officers are exceptionally trained and you want to keep that highly trained force.

Councilor Stauber moved to amend the tenth paragraph of the resolution by inserting the language "or an alternative general funding source amounting to \$446,700" after the phrase "2010 property tax levy," which motion was seconded and unanimously and carried as follows:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Stauber and President Gilbert -- 8

Nays: Councilor Krause -- 1

Councilors Krause and Fedora stated concerns of: many citizens are having a difficult time making ends meet with increased fees and costs, the refinancing of their homes and that this additional tax will hurt those individuals; state cut backs to local governmental aid is putting pressure on the city; sales and tourism taxes are down; a 2010 budget deficit is anticipated; the debt level is increasing; there has been no cost reporting to change the problems associated with this building's deficiencies; this will be the largest bonding that has been done for many years; there has not been a cost benefit analysis of a new building versus improvements to the existing building and the cost of the retiree healthcare liability is still hanging over the city's head.

Councilor Gardner noted that there will be an expanded police presence in the Downtown substation.

Councilors continued the discussion of the merit of this project at length.

Resolution 09-0514, as amended, was adopted as follows:

WHEREAS, the Duluth police department's current facilities located within city hall lack proper security, provide inadequate storage for property and evidence, limit the ability for the department to utilize enhanced technology, and are inefficient for both personnel and service delivery; and

WHEREAS, these facilities are hindering the ability for the department to provide a quality of policing expected from a modern police department; and

WHEREAS, the city has an opportunity to construct a new public safety building adjacent to and connected with the existing St. Louis County emergency service building at the Chris Jensen site; and

WHEREAS, the new facility would combine services with the existing St. Louis County emergency service building, be more energy efficient, provide enhanced technology, enhanced security and would securely store data, property and evidence in addition to providing a place for the department to engage and educate the community on public safety issues; and

WHEREAS, the city is considering the issuance of a combination of general obligation capital improvement bonds in addition to Build America Bonds authorized by the America Recovery & Reinvestment Act in an amount anticipated to be \$18,000,000 to fund the project; and

WHEREAS, the city's portion of the property tax levy would be increased by 2.9 percent for the next three fiscal years as the source of funds to service the debt on the bonds and a future council will need to address the funding phases in 2011 and 2012; and

WHEREAS, an amendment to the city's capital improvement plan for 2009-2013 is required to include the public safety building project.

THEREFORE, BE IT RESOLVED, that the city council believes that the construction of a new public safety building is important for the welfare and safety of the citizens of the city of Duluth

and desires to express its support for the project.

FURTHER RESOLVED, that the city council supports the issuance of a combination of general obligation capital improvement bonds in addition to Build America Bonds authorized by the America Recovery & Reinvestment Act in an amount anticipated to be \$18,000,000 for the purpose of constructing a new public safety building adjacent to and connected with the existing St. Louis County emergency service building at the Chris Jensen site.

FURTHER RESOLVED, that the city council supports a 2.9 percent increase to the city's portion of the 2010 property tax levy or an alternative general funding source amounting to \$446,700 as first phase funding for bond debt service.

FURTHER RESOLVED, that the city council hereby supports an amendment to the city's capital improvement plan to include the issuance of bonds for the public safety building project.

Resolution 09-0514, as amended, was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fosle, Gardner, Stauber and President Gilbert -- 7

Nays: Councilors Fedora and Krause -- 2

Approved August 10, 2009

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 2009 street preservation project: mill and overlay portions of Superior Street, Jenswold Street, Michigan Street, Kenwood Avenue and Cody Street, in the amount of \$1,719,915.15, payable out of Street Improvement Fund 0440, Agency 038, Object 5530, Project 0704TR.

Resolution 09-0501 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fosle, Gardner, Krause, Stauber and President Gilbert -- 8

Nays: None -- 0

Abstention: Councilor Fedora -- 1

Approved August 10, 2009

DON NESS, Mayor

- - -

Resolution 09-0502, authorizing an agreement with SEH, Inc., for professional engineering services to perform preliminary engineering and environmental documentation for the Munger Trail extension in the amount of \$493,000, was introduced by Councilor Fosle for discussion.

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

Judy Gordon expressed support of the resolution, but also expressed concerns about the Lakewalk being on Water street. She noted that there is a safety issue with bike traffic and automobiles where many accidents have almost occurred.

Andy Webb expressed concerns of: the process being used; that no one has asked the Lake Superior and Mississippi Railroad for input seeing that this would go directly through their property.

Resolution 09-0502 was adopted as follows:

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with

SEH, Inc., to perform preliminary engineering and environmental documentation for the Munger Trail extension in the amount of \$493,000, payable from Fund 0450, Department/Agency 030, Object 5530, Capital Project No. CP2009-0568TR, City Project No. 0568TR, S.P. 118-090-14 and Minnesota Project No. HPPH H146(001).

Resolution 09-0502 was unanimously adopted.

Approved August 10, 2009

DON NESS, Mayor

- - -

Resolution 09-0507, amending guidelines for the private sewer service grant program, was introduced by Councilor Fosle for discussion.

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

Dan Behrens expressed concerns that the resolution falls short in the definition and clarity that is required and that this should be tabled until clear guidelines and a written tested procedure are defined for the test called for in the appeals process.

Brad Clifford, executive director of North Star Community Development Corporation, felt that the suggestion of the water test to create a definitive understanding of what the significant contribution is really is not definitive and a court would likely dismiss it because the definition of "significance" has no reference point for the court. He added further suggestions and ideas.

Councilors discussed aspects of the inspections.

Resolution 09-0507 was adopted as follows:

RESOLVED, that pursuant to Minnesota Statutes Section 471.342, the guidelines for the private sewer service grant program approved pursuant to Resolution 09-0487 are hereby amended by substituting therefor those guidelines on file in the office of the city clerk as Public Document No. 09-0810-23, which are hereby adopted and approved.

Resolution 09-0507 was unanimously adopted.

Approved August 10, 2009

DON NESS, Mayor

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INTRODUCTION AND CONSIDERATION OF ORDINANCES

ORDINANCE TABLED

INTRODUCED BY COUNCILOR CUNEO

09-039 (9987) - AN ORDINANCE DECLARING STATUTORY AND CODE VIOLATIONS AS CIVIL OFFENSES, AUTHORIZING CIVIL PENALTIES THEREFORE, AUTHORIZING CORRECTIVE ORDERS AND ESTABLISHING HEARING AND ENFORCEMENT PROCEDURES WITH REGARD THERETO, ADDING A NEW CHAPTER 12 TO THE CODE AND REPEALING SECTIONS 2-7 AND 2-7.1 THEREOF.

Councilor Cuneo moved 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.

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The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR KRAUSE

09-040 - AN ORDINANCE AMENDING SECTION 8 OF THE CITY CHARTER ELIMINATING A STATED DOLLAR AMOUNT FOR CERTAIN CONTRACTS.

- - -

INTRODUCED BY COUNCILOR KRAUSE

09-043 - AN ORDINANCE AMENDING CHAPTER 41 PURCHASING PROVISIONS, AMENDING SECTION 41-32 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

- - -

INTRODUCED BY COUNCILOR STAUBER

09-041 - AN ORDINANCE AMENDING PLATE NO. 41 OF THE OFFICIAL FLOODPLAIN AND SHORELAND MAP AS IDENTIFIED IN SECTION 51-5 OF THE DULUTH CITY CODE DEFINING THE FLOOD FRINGE AND FLOODWAY FOR THE 40TH AVENUE EAST CREEK WITHIN THE LIMITS OF THE DULUTH PUBLIC SCHOOLS SITE AT 301 NORTH 40TH AVENUE EAST.

- - -

INTRODUCED BY COUNCILOR STAUBER

09-042 - AN ORDINANCE GRANTING A CONCURRENT USE PERMIT TO A&L PROPERTIES TO CONSTRUCT A SKYWALK OVER EAST SUPERIOR STREET BETWEEN THE DULUTH TECHNOLOGY VILLAGE BUILDING AND THE WIELAND BLOCK BUILDING.

- - -

The meeting was adjourned at 9:30 p.m.

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 9987

AN ORDINANCE DECLARING STATUTORY AND CODE VIOLATIONS AS CIVIL OFFENSES, AUTHORIZING CIVIL PENALTIES THEREFORE, AUTHORIZING CORRECTIVE ORDERS AND ESTABLISHING HEARING AND ENFORCEMENT PROCEDURES WITH REGARD THERETO, ADDING A NEW CHAPTER 12 TO THE CODE AND REPEALING SECTIONS 2-7 AND 2-7.1 THEREOF.

The city of Duluth does ordain:

Section 1. That the Duluth City Code, 1959, as amended, is hereby amended to add a new Chapter 12 thereto, which Chapter 12 reads as follows:

CIVIL OFFENSES.

Sec. 12-1. Findings of fact and statement of purpose.

The city council hereby finds that the means of enforcing the City Code through existing civil and criminal court structures has proven inadequate, cumbersome, expensive and ineffective in enforcing the provisions of the Code and in encouraging compliance with Code requirements. The purpose of this Chapter 12 is to establish a system of administrative penalties and administrative orders to operate in conjunction with the existing civil and criminal enforcement mechanisms to more efficiently and effectively induce compliance with Code provisions and correction of conditions which constitute a violation of said Code. It is furthermore the purpose of this Chapter to establish procedures for administering said system,

including provision of the opportunity to appeal to an impartial hearings officer from the imposition of any administrative penalty or administrative order.

Sec. 12-2. Definitions.

For the purposes of this Chapter, the following terms shall have the meanings hereinafter ascribed to them:

(a) Administrator. The city's chief administrative officer or such person or persons designated in writing by him or her to administer the program;

(b) Appeals deposit. An amount equal to one-half of the amount of the penalty for any violation as set forth in the penalty schedule;

(c) Code. Any provision of the Duluth City Code, 1959, as amended, from time to time, of any uniform code adopted by reference pursuant to said code and any provision of Minnesota Statutes the violation of which constitutes a misdemeanor or a petty misdemeanor pursuant to said statutes except as prohibited by Minnesota Statutes Section 169.999 or other specific statutory prohibition;

(d) Citation. Any written citation issued to any person charged with any violation as hereinafter described;

(e) Corrective order. An order to correct any condition constituting a property violation issued in conjunction with any citation;

(f) Delivery of citation. Either the date that a citation is physically presented to a violator or a date three days after a citation is deposited in the U.S. mail addressed to a violator as hereinafter provided for;

(g) Issuer. The person, authorized by Section 12-4 below to issue citations, who issues any citation for any violation;

(h) Hearing officer. The person or persons designated by the city attorney to hear and decide appeals from the issuance of any citation for any violation and to hear and decide appeals from any corrective order related to any property violation;

(i) Penalty schedule. The schedule of penalties for violations of the Code adopted by the city council as provided for in Section 12-6 below;

(j) Property violations. Those violations which pertain to the existence or nonexistence of conditions on or pertaining to real property or personal property located on and having an impact on real property, which shall include such violations under the following chapters of the Code:

- (1) Chapter 10. Buildings;
- (2) Chapter 18. Erosion and Sediment Control;
- (3) Chapter 21. Fire Protection;
- (4) Chapter 24. Garbage and Other Solid Waste;
- (5) Chapter 28. Health and Sanitation;
- (6) Chapter 29. Hotels, Motels and Motor Courts;
- (7) Chapter 29A. Housing Code;
- (8) Chapter 30. Abandoned Property and Abandoned or

Inoperative Vehicles;

- (9) Chapter 43. Sewers and Sewage Disposal;
- (10) Chapter 44. Signs;
- (11) Chapter 44A. Skywalk System;
- (12) Chapter 48. Water and Gas;

- (13) Chapter 50. Zoning;
- (14) Chapter 51. Water Resource Management;

(k) Violation. Any violation of the Code, including but not limited to the following provisions of the Code:

- (1) Chapter 4. Airports;
- (2) Chapter 5. Amusements;
- (3) Chapter 6. Animals and Fowl;
- (4) Chapter 8. Beverages;
- (5) Chapter 9. Bicycles;
- (6) Chapter 10. Buildings;
- (7) Chapter 11. Cigarettes;
- (8) Chapter 15. Dances and Dance Halls;
- (9) Chapter 18. Erosion and Sediment Control;
- (10) Chapter 21. Fire Protection;
- (11) Chapter 24. Garbage and Other Solid Waste;
- (12) Chapter 25. Gasoline Filling Stations;
- (13) Chapter 26. Harbors, Docks and Bridges;
- (14) Chapter 27. Hawkers, Peddlers and Transient Businesses;
- (15) Chapter 28. Health and Sanitation;
- (16) Chapter 29. Hotels, Motels and Motor Courts;
- (17) Chapter 29A. Housing Code;
- (18) Chapter 30. Abandoned Property and Abandoned or Inoperative Vehicles;
- (19) Chapter 33. Motor Vehicles and Traffic;
- (20) Chapter 34. Offenses--Miscellaneous;
- (21) Chapter 35. Parks and Recreation;
- (22) Chapter 36. Pawnbrokers and Metal Dealers;
- (23) Chapter 43. Sewers and Sewage Disposal;
- (24) Chapter 44. Signs;
- (25) Chapter 44A. Skywalk System;
- (26) Chapter 45. Streets, Sidewalks and Public Grounds;
- (27) Chapter 47. Vehicles for Hire;
- (28) Chapter 48. Water and Gas;
- (29) Chapter 49. Weapons;
- (30) Chapter 50. Zoning;
- (31) Chapter 51. Water Resource Management;

(l) Violator. A person alleged to have committed a violation or to be legally responsible for the commission of a violation under this Chapter.

Sec. 12-3. Alternative methods of enforcement.

(a) This Chapter is intended to provide a nonexclusive and additional method of enforcement of the Code and nothing herein shall be taken as prohibiting or preventing the city from seeking to enforce the provisions of the Code by means of any other civil or criminal remedy available under law;

(b) Provided, however, if the city shall have initiated an enforcement action for any violation arising out of any specific set of facts and a hearings officer shall have determined that said facts do not establish the existence of a violation,

no action to enforce such Code provision based on substantially identical facts shall thereafter be commenced pursuant to other available civil or criminal processes;

(c) The legal principles of res judicata and collateral estoppel shall apply to proceedings under this Chapter.

Sec. 12-4. Persons authorized to issue citations.

Any person otherwise authorized by law to issue a criminal summons for any violation of the Code or to take other authorized action to enforce the provisions of the Code shall be authorized to issue a citation for any violation under this Chapter.

Sec. 12-5. Appointment of hearings officer.

The city attorney shall, from time to time, appoint one or more persons to serve as hearings officers to hear appeals under this Chapter. Such hearings officers shall be persons licensed to practice law in the state of Minnesota as either active or retired licensees in good standing. All hearings officers shall take an oath promising to enforce and uphold the laws, ordinances, rules and regulations of the state of Minnesota and the city of Duluth in a fair and impartial manner. The city shall compensate such hearings officers as determined by the city council by resolution.

Sec. 12-6. Penalty schedule.

(a) The city council shall adopt a penalty schedule setting forth the penalties to be assessed for each violation under this Chapter, which penalty schedule said council may amend from time to time as it determines appropriate in order to encourage compliance with the Code;

(b) For property violations with regard to which a citation has been previously issued and which have not been corrected within the time provided for in Section 12-8(b) below, the amount of the penalty for any citation issued subsequently for such property violation shall be increased to an amount equal to twice the amount of the penalty assessed with regard to the most recently-issued citation for substantially the same violation.

Sec. 12-7. Issuance of citation for violation.

(a) Upon probable cause to believe that a violation has been committed and that the violator has committed the violation or is legally responsible for the commission of the violation or for allowing the condition constituting the violation to exist, an issuer is authorized to issue a citation, complying with the standards set forth below, to said violator;

(b) In the case of a violation which constitutes a property violation, the citation may, in addition, include a directive to eliminate the condition giving rise to the property violation;

(c) If reasonably practical, the issuer shall deliver the citation to the violator in person. If the violator is not present at the time that the citation is issued, cannot be reasonably contacted for the purpose of delivery of the citation or refused to accept delivery of the citation, the issuer may deliver the citation to the violator by depositing it in the U.S. mail addressed to the violator at an address of public record for violator, which may include but need not be limited to an address taken from area telephone directories, from records of the city assessor, from records of city-owned utilities or from other public sources. Delivery by such alternative means shall be deemed to be valid delivery and shall be deemed to be effective three days

after the deposit of said citation in the U.S. mail.

Sec. 12-8. Citation--content.

(a) All citations for violations issued pursuant to this Chapter shall contain at least the following:

- (1) Date of issuance of the citation;
- (2) Name and address of violator;
- (3) Date of violation;
- (4) Location where violation occurred;
- (5) Citation to Code provision(s) violated;
- (6) Short description of Code provision violated;
- (7) Amount of penalty prescribed in the penalty schedule for such violation;
- (8) Date by which violator must either have paid the prescribed penalty or appealed the issuance of the penalty and paid the appeals deposit;
- (9) Place where the penalty must be paid or to which the request for appeal and the appeals deposit must be delivered;
- (10) The name and signature of the issuer;
- (11) An identification number unique to the citation;

(b) In the case of property violations, if a corrective order is issued to the violator as provided for in Section 12-6(b) above, in addition to the content specified in paragraph (a) above, the citation shall specify what corrective action must be taken and the date by which such corrective action shall be completed.

Sec. 12-9. Citation satisfaction.

Within ten days of the delivery of a citation to any violator, the violator shall either pay the amount of the penalty prescribed in the penalty schedule with regard to the violation to the administrator or shall deliver to the administrator a written request for appeal accompanied by the appropriate appeal deposit. Such request for appeal shall contain at least the following information:

- (a) Either a legible photocopy of the citation being appealed from or the identification number of the citation being appealed from;
- (b) A succinct and complete statement of the grounds for the appeal, of all alleged facts supporting all grounds for appeal, a statement of the relief requested and a statement of any other information Violator believes to be relevant to the appeal, the relief requested or both;
- (c) The address to which any notifications, requests, directives or other information pertaining to the appeal or the appeals process should be mailed. Any communication mailed to Violator at the address provided shall be deemed to have been delivered three days after the date of mailing.

Sec.12-10. Administrative hearings procedure.

(a) Upon receipt of a notice of appeal and appeal deposit from any citation, the administrator shall schedule a date and time for a hearing before a hearings officer with regard to said appeal and shall mail notice thereof to the violator as herein provided for. Said date shall be not less than ten days after the date of mailing of the notice of hearing to the violator. Said notice shall state the date and time of the hearing, the location where the hearing is to be held and shall identify the hearings officer who will be scheduled to hear the violator's appeal;

(b) For good cause shown, a violator may request that their appeal be heard by a different hearings officer by causing to be received by the administrator not less than three days prior to the scheduled hearing date a written statement of facts supporting the allegation of good cause and a request for substitution of a different hearings officer. Upon such a showing of good cause which might reasonably render the assigned hearings officer unable to fairly hear violator's appeal, the administrator may re-assign the violator's appeal to be heard by a different hearings officer. If necessary, the administrator may re-schedule the date and time of the hearing to accommodate the assignment of a new hearings officer. Only one such re-assignment shall be available with regard to any one appeal;

(c) Upon good cause shown by the violator or by the city, the administrator may grant a continuance of the hearing on any appeal. The party requesting the continuance shall cause to be received by the administrator not less than three days prior to the scheduled hearing date a written statement of facts supporting the allegation of good cause and a request for continuance. Upon the grant of any such continuance, the administrator shall cause to be delivered to the violator and the city a notice setting forth the date, time and place of the re-scheduled hearing;

(d) Upon the written request of the violator or the city demonstrating the need therefore, delivered to the administrator not less than six days prior to the scheduled hearing date, the administrator may issue an administrative subpoena for the attendance of a witness or the production of books, papers, records or other documents that are material to the hearing of the violation. A fee of \$25 shall be charged to any violator for the issuance of each such subpoena. The party requesting the administrative subpoena shall be responsible to cause any such subpoena to be served in the manner provided for in the *Minnesota Rules of Civil Procedure* and for pay all fees and expenses of any witness subpoenaed. In addition the hearings officer, on their own motion, may cause such subpoena to be issued in which case the city shall be responsible for service thereof and for fees and expenses. Any person served with such an administrative subpoena who deems compliance therewith to be unreasonable or oppressive may appeal therefrom by causing to be received by the administrator not less than three days prior to the date scheduled for compliance therewith a written statement of facts supporting the allegation of unreasonableness or oppressiveness. The administrator may cancel the subpoena, affirm it or modify it, mitigating those factors rendering it unreasonable or oppressive. Any person who, without just cause, fails or refuses to comply with any administrative subpoena shall be guilty of a misdemeanor. In addition, the party requesting the administrative subpoena may seek an order from district court directing compliance with the administrative subpoena;

(e) Neither the city nor the violator shall be represented at the hearing by an attorney. Provided that, where relevant or where requested by the hearings officer, either party may submit a legal memorandum relevant to the issues being heard;

(f) At the hearing, the hearings officer may hear and rely on any testimony or other evidence they deem to be reasonably reliable, including, in the exercise of their discretion, hearsay testimony. Strict compliance with the *Minnesota Rules of Evidence* will not be required. The proceedings shall be either recorded by

a recording clerk recording the evidence in summary form or by means of an audio recording, and a record of all testimony and of all evidence considered shall be maintained for at least 60 days after the close of the hearing. The interpretation of technical codes such as building codes, electrical codes and other such codes by those regularly engaged in their enforcement and interpretation shall be given substantial weight;

(g) In all hearings the city shall have the burden of proving by a preponderance of the evidence that the alleged violation has occurred and that the violator is the person or one of the persons legally responsible therefore;

(h) If any violator fails to appear for any scheduled hearing, the violation shall be deemed to have been admitted by such violator, the hearings officer shall impose such penalty or order or both as they deem appropriate and the violator shall be deemed to have waived any further right of appeal.

Sec. 12-11. Decision of hearings officer.

Upon the conclusion of the hearing of any appeal, the hearings officer shall issue written findings of fact, conclusions of law, and their decision. If possible the hearings officer shall verbally render their decision at the conclusion of the hearing in the presence of the violator and the city, but, in any event, written findings, conclusions and the decision shall be issued as soon thereafter as practical and shall be mailed by the administrator to violator. Said decision may:

(a) Upon a finding that the city has failed to prove that the violation has occurred or that the violator is a person legally responsible therefore, dismiss the citation. In the event that the citation is dismissed, the appeals deposit shall be returned to the violator;

(b) Upon a finding that the city has proven that the violation has occurred and that the violator is a person legally responsible therefore, affirm the citation. In the event that the citation is affirmed, the appeals deposit shall be applied to the amount of the penalty;

(c) Upon a finding that the city has proven that the property violation has occurred and that the violator is legally responsible therefore, affirm the citation and order the violator to correct the condition giving rise to the property violation by a specified date;

(d) Upon a finding that the city has proven that the violation has occurred and that the violator is legally responsible therefore but upon a further finding that special circumstances or the interests of justice requires modification of the penalty or the corrective order, affirm the citation but reduce or stay imposition of any penalty previously ordered or modify the time for correction of any condition giving rise to any property violation or modify the corrective order;

(e) The decision of the hearings officer shall be final, subject to the right of appeal as set forth in Section 12-12 below.

Sec. 12-12. Judicial review.

Any party aggrieved by the decision of the hearings officer may appeal said decision by petitioning the Minnesota court of appeals for a writ of certiorari pursuant to Minnesota Statutes, Section 606.01.

Sec. 12-13. Enforcement of decision.

Upon mailing of a notice to a violator that the citation appealed from is valid,

the violator shall within ten days of the mailing of said notice:

- (a) Pay the full amount of the penalty to the administrator;
- (b) In the case of a property violation, commence performance of the corrective order and complete the same within the time provided for by the hearings officer's decision;
- (c) Commence an appeal as provided for in Section 12-12 above.

Sec. 12-14. Late payment charge.

There shall be added to any penalty not paid within the times prescribed for payment thereof in sections 12-9 or 12-13(a) above an amount equal to 25 percent as a late payment charge.

Sec. 12-15. Enforcement.

In the event that any violator fails to pay any penalty or other amounts owing under this Chapter or fails to comply with any corrective order, the city shall have the right to:

- (a) Collect any sums owed to the city under this Chapter by any legally allowable means;
- (b) In the case of failure to complete any corrective order resulting from any property violation, seek and be entitled to an order from the district court mandating that the violator complete the corrective order in accordance with its terms;
- (c) Itself contract with a contractor for implementation of the corrective order, entering upon the property of violator when necessary to do so, and to charge and collect from the violator the city's costs of so correcting the condition giving rise to the corrective order together with the city's reasonable costs of administering said correction. Provided, however, that where otherwise required by law, the city shall obtain authorization from a court of competent jurisdiction to enter onto violator's property to perform such corrective work.

Sec. 12-16. Assessment.

In addition to the remedies provided for above, in the event that any violator fails to pay any amount owed to the city under this Chapter with regard to any property violation, the city shall have the right to assess the amount owed against the property with regard to which the property violation arose in the manner set forth in this Section, which property shall be deemed to have been benefitted thereby;

- (a) On or before June 1 of each year, the administrator shall transmit to the city assessor a list of properties upon which property violations have occurred and with regard to which property violations there is outstanding any moneys pursuant to this Chapter in the immediately preceding 15 months, together with the amount due with respect to each such property. For each such property, a collection fee in the amount set by city council resolution shall be added to reimburse the city its administrative costs;
- (b) Upon the receipt of such list, the city assessor shall make an assessment roll containing, in columns, the name of the owner of each lot or parcel of land separately assessed, if known to him, together with a description of each such lot or parcel of land and the amount of such assessment. The assessment roll shall include the collection fee set forth in paragraph (a) above;
- (c) On or before July 1 of each year, the city assessor shall certify the

assessment roll to the city council. The assessor shall recommend that the city council by resolution confirm such assessment. To each assessment a collection fee shall be added in an amount set by council resolution to reimburse the city its administrative assessment costs. Immediately thereafter notice of the confirmed assessment and its amount, including the collection fees, shall be sent by the city treasurer by mail to the apparent owner of each lot or parcel of land assessed. Such notice shall indicate that the assessment is due and payable on or before October 1 of the year when confirmed and that failure to make payment by such date shall render the assessment delinquent. After any appeals are heard and determined, the city council shall confirm the entire assessment roll by resolution;

(d) After the city council confirms the assessment roll, the city treasurer shall file with the county auditor, during the time set by law for such filings, a certified statement of all assessments delinquent under this Chapter, describing the land affected and giving the amount of the assessment, with ten percent penalty added, after which the assessment shall follow the provisions of Article IX of the City Charter.

Section 2. That Sections 2-7 and 2-7.1 are hereby repealed.

Section 3. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: September 20, 2009)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed August 10, 2009
Approved August 10, 2009
DON NESS, Mayor

- - -

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, August 24, 2009, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Absent: None -- 0

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The minutes of council meetings held on May 7, 11, 26 and June 8, 2009, were approved upon a unanimous vote.

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

09-0824-01 Greater Downtown Council, et al. (59 signatures), submitting petition to extend the term of the Downtown Waterfront Special Service District. -- Assessor

09-0824-08 Julie Engen communication regarding the proposed purchase and installation of technical equipment and alterations for the Council Chamber (09-0538R and 09-0540R). -- Received

09-0824-02 The following communications regarding the proposed on sale intoxicating liquor, additional bar, on sale dancing and 2:00 a.m. beverage licenses of Norshor Experience, Inc. (09-0527R and 09-0528R): (a) Betty Gordon; (b) Ronald W. McDonald; (c) JP Rennquist; (d) Verne Wagner. -- Received

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REPORTS FROM OTHER OFFICERS

09-0824-03 Assessor letters of sufficiency of petitions to:

(a) Extend the term of the Downtown Waterfront Special Service District;

(b) Vacate Wyoming Street between 60th Avenue East and Occidental Boulevard (Lot 3, Block 36, Lester Park Third Division). -- Received

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REPORTS OF BOARDS AND COMMISSIONS

09-0824-04 Duluth economic development authority minutes of June 1, 2009, meeting. -- Received

09-0824-05 Duluth human rights commission minutes of July 8, 2009, meeting. -- Received

09-0824-06 Housing and redevelopment authority minutes of May 26, 2009, meeting. -- Received

09-0824-07 Planning commission minutes of July 14, 2009, meeting. -- Received

- - -

OPPORTUNITY FOR CITIZENS TO BE HEARD

Doran Whitledge stated he would be willing to talk to the council and mayor at a later date on how the city should use a time based economy to help solve Duluth's economic problem which could become a model for the rest of the nation.

- - -

At this time, 7:05 p.m., President Gilbert called to order the public hearing regarding a proposed amendment to the City Charter, Section 8, eliminating a stated dollar amount for certain contracts.

No one appeared who wished to be heard and the regular order of business was resumed at 7:07 p.m.

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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 Anderson 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 approves the renewal and issuance of 83 on sale intoxicating liquor, 85 on sale Sunday intoxicating liquor, eight additional bar, 14 on sale dancing, one late hour entertainment licenses and 38 2:00 a.m. beverage licenses, for the period beginning September 1, 2009, and ending August 31, 2010, 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. 09-0824-09.

Resolution 09-0522 was unanimously adopted.

Approved August 24, 2009

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves renewal of 14 on sale wine licenses for the period beginning September 1, 2009, and ending August 31, 2010, 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. 09-0824-10.

Resolution 09-0523 was unanimously adopted.

Approved August 24, 2009

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, 2009, and ending August 31, 2010, 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. 09-0824-11.

Resolution 09-0524 was unanimously adopted.

Approved August 24, 2009

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, 2009, and ending August 31, 2010, for issuance by the liquor control commissioner and further subject to

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

departmental approvals, the payment of sales and property taxes, as provided for in the Duluth City Code, as listed on Public Document No. 09-0824-12.

Resolution 09-0525 was unanimously adopted.
Approved August 24, 2009
DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves renewal of two brewery malt liquor off sale intoxicating liquor licenses for the period beginning September 1, 2009, and ending August 31, 2010, 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. 09-0824-13.

Resolution 09-0526 was unanimously adopted.
Approved August 24, 2009
DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Erling R. Hansen General Contractor for removal of existing concrete topping and waterproofing, installation of new waterproofing, insulation, paver system and planters, and masonry restoration for the Tiger Deck at the Lake Superior Zoo in accordance with its low specification bid of \$147,400; payable out of Fund 110, Department/Agency 700, Organization 1420, Object 5520, CM 100 09-14.

Resolution 09-0532 was unanimously adopted.
Approved August 24, 2009
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 license, subject to departmental approvals, with any specific restrictions:

Historic Union Depot, Inc. (The Depot), 506 West Michigan Street, for September 3, 2009, from 4:00 p.m. to 8:00 p.m.

Resolution 09-0536 was unanimously adopted.
Approved August 24, 2009
DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council amends Resolution 09-0505 approving the temporary expansion of the designated serving area of the on sale intoxicating liquor license of Rose Garden Enterprises, LLC, (Valentini's Vicino Lago), 1400 London Road, changing the date to September 12, 2009 (rain date September 13, 2009), subject to departmental approvals, with any specific restrictions.

Resolution 09-0542 was unanimously adopted.
Approved August 24, 2009
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to allow modification to City Contract No. 20095 to accept an additional \$25,485 in award funds from the U.S. department of housing and urban development, providing for enforcement of federal civil rights 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. 09-0824-14, capacity building funds to be deposited in Fund No. 110, Agency 110, Organization 1104, Revenue Source 4209-02.

Resolution 09-0533 was unanimously adopted.

Approved August 24, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized, upon required approval of the district court, to pay to Gina and Rick LaBelle and their attorney, Michael Tierney, \$30,000 in full and final settlement of a claim which arose out of a motor vehicle incident on November 4, 2002, and giving rise to the civil action *Gina and Rick LaBelle v. City of Duluth*, St. Louis County District Court File Number 69DU-CV-08-1816, payment to be made from Self Insurance Fund 610, Agency 036, Organization 1651, Object 5841.

Resolution 09-0521 was unanimously adopted.

Approved August 24, 2009

DON NESS, Mayor

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RESOLVED, that city officials are hereby authorized to contract with Ziegler, Inc., for the purchase and delivery of two used Caterpillar 140 M motor graders with related equipment for the fleet services division in accordance with state of Minnesota Contract #441272, Release #M439(5), specifications and pricing in the amount of \$450,000 plus \$30,937.50 sales tax plus \$13,780 warranty, for a combined total amount of \$494,717.50, terms net 30, FOB destination, payable from the Capital Equipment Fund 250, Department/Agency 015, Organization 2009, Object 5580, Project CE250-V904.

Resolution 09-0467 was unanimously adopted.

Approved August 24, 2009

DON NESS, Mayor

- - -

THE CITY COUNCIL FINDS:

(a) That the city of Duluth is under consent decree orders to eliminate sanitary sewer overflow;

(b) The East Interceptor is one of the overflow points that the city is mandated to eliminate;

(c) The estimated cost of Phase I of the East Interceptor SSO storage facility project (Lift Station No. 6 reconstruction, collection system and diversion structure piping improvements) is estimated to be \$3,000,000, with \$1,980,000 of the costs being funded by a grant from ARRA funds through the 569 assistance program. The remaining costs of \$1,020,000 are the city's responsibility. The public facilities authority (PFA) may have loan monies available to finance the city's share of the project costs;

(d) To receive this money, the city must submit required information and 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 and to enter into a loan agreement with the Minnesota public facilities authority for funding of Lift Station No. 6 reconstruction, collection system and diversion structure improvements as described in the application.

FURTHER RESOLVED, that the city of Duluth has the legal authority to apply for the funds,

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 \$1,020,000 or the as-bid costs of the project.

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 Minnesota public facilities authority.

Resolution 09-0515 was unanimously adopted.

Approved August 24, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a third amendment to that certain redevelopment agreement bearing City Contract No. 20702, a copy of which amendment is on file in the office of the city clerk as Public Document No. 09-0824-16, with Allete, Inc., for the acquisition and redevelopment of the Duluth Steam District No. 2 facilities, extending the time for closing provided for therein.

Resolution 09-0519 was unanimously adopted.

Approved August 24, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a fourth amendment to that certain management, operation and maintenance agreement bearing City Contract No. 14679, a copy of which amendment is on file in the office of the city clerk as Public Document No. 09-0824-17, with Allete, Inc., for the management, operation and maintenance of Duluth Steam District No. 2, extending the term thereof.

Resolution 09-0520 was unanimously adopted.

Approved August 24, 2009

DON NESS, Mayor

- - -

RESOLVED, that resolutions 08-0497 and 09-0125 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, S.A.P. 118-157-020, City Project No. 0243TR, be amended to increase the amount by \$84,115.40 for a new total of \$599,021.28, payable from Permanent Improvement Fund 0411, Department/Agency 035, Object 5530.

Resolution 09-0530 was unanimously adopted.

Approved August 24, 2009

DON NESS, Mayor

- - -

RESOLVED, that Resolution 08-0339 awarding a contract to LHB, Inc., for professional engineering services for the 2009 municipal state aid turnback project located on Second Street between Mesaba Avenue and 24th Avenue East, S.A.P. 118-130-004 MTB, City Project No. 0383TR, be amended to increase the amount by \$278,903.50 for a new total of \$438,875.50, payable from Permanent Improvement Fund 0411, Department/Agency 035, Object 5530.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Resolution 09-0531 was unanimously adopted.

Approved August 24, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Belair Builders, Inc., dba Belair Excavating, for the construction of 2009 watermain replacement project in Congdon Boulevard, 90th Avenue East and West Marble Street for the engineering division for the apparent low bid of \$405,514.88, payable out of Water Fund 510, Department/Agency 500, Organization 1905, Object 5536, City Project No. 0738WA.

Resolution 09-0534 was unanimously adopted.

Approved August 24, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Duluth Lawn and Sport for the purchase and delivery of a John Deere Model 5093E utility tractor (highway mower) without options for the fleet services division in accordance with state of Minnesota Contract #440972, Release #T-628(5), specifications and pricing in the amount of \$73,019.15, plus \$801 freight for equipment and delivery, plus \$5,075.14 sales tax for a total combined amount of \$78,895.29, terms net 30, payable from the Capital Equipment Fund 250, Department/Agency 015, Organization 5580, C-250-V904.

Resolution 09-0535 was unanimously adopted.

Approved August 24, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to accept a state of Minnesota, department of commerce grant in the amount of \$151,850 to be used to hire, train and provisionally employ an auto theft investigator within the Duluth police department, funds to be deposited in Fund 215, Agency 200, Organization 2266, Revenue Source 4220-02, and to execute all documents related thereto.

Resolution 09-0517 was unanimously adopted.

Approved August 24, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officers 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. 09-0824-18, with the state of Minnesota, acting through its board of trustees of the Minnesota state colleges and universities, on behalf of Lake Superior College for the processing and collection of parking citations issued by the college on college property.

Resolution 09-0518 was unanimously adopted.

Approved August 24, 2009

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 September 3, 2009, from 4:00 p.m. to 8:00 p.m. 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 09-0537 was unanimously adopted.

Approved August 24, 2009

DON NESS, Mayor

- - -

The following resolutions were also considered:

Resolution 09-0527, approving the renewal and issuance of the on sale intoxicating liquor, additional bar license, on sale dancing license and 2:00 a.m. beverage license of Norshor Experience, Inc. (Norshor Experience), 211 East Superior Street, for the period beginning September 1, 2009, and ending August 31, 2010; and Resolution 09-0528, denying renewal of the on sale intoxicating liquor license and on sale dance license of Norshor Experience, Inc. (Norshor Experience), 211 East Superior Street, for the period beginning September 1, 2009, and ending August 31, 2010, were introduced by Councilor Krause for discussion.

The rules were suspended upon a unanimous vote to hear from a speaker on the issue.

Randy Tigue, attorney for Norshor Experience, expressed frustration that neither he nor the licensee received any communication from the city that the council would be considering denying the renewal of the liquor license for Norshor Experience. He continued saying that the resolution asserts that the business is being run as a nuisance, but pointed out that the number of police calls to the business is not in the top five of bars in Duluth. Mr. Tigue also stated that the police department demanded a reduction in police calls, which has occurred, and the licensee has maintained a peaceful establishment and outperformed most bars in the city. He reviewed that the licensee had a February 6 suspension to serve and stayed open that day, but other than that there have been no liquor violations during the past year other than a violation last August that was so trivial that the city attorney's office dismissed the charge. Mr. Tigue requested that if the council votes to deny renewing the liquor license, that they have the professional integrity to state in the resolution they do not like the type of entertainment that goes on there instead of calling the establishment a public nuisance.

To questioning from Councilor Eckenberg, Assistant City Attorney Lutterman replied that she prepared a letter that was sent to the licensee notifying him that the alcohol, gambling and tobacco commission had failed to reach a recommendation for the licensee's renewal and the matter would be coming to the council on this date for consideration. She reviewed that all council resolutions are available on the city's website for anyone to review.

Councilor Stauber stated that since the licensee has been punished for the previous violation and police calls to the establishment have been reduced, this license should be treated just like any other liquor license and should be allowed to continue to operate.

Resolution 09-0527 failed upon the following vote (Public Document No. 09-0824-19):

Yeas: Councilor Stauber -- 1

Nays: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause and President Gilbert -- 8

- - -

Resolution 09-0528 was adopted as follows:

BE IT RESOLVED, that the city council of the city of Duluth finds as follows:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

(a) The Norshor Experience, Inc. (licensee) has applied for an on sale intoxicating liquor license and an on sale dancing license;

(b) Duluth Legislative Code Chapter 8, Section 52, restricts the issuance of an on sale intoxicating liquor license and provides in relevant part that no such 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.....";

(c) During the licensing period ending August 31, 2008, and during the current licensing period, the conduct of the establishment resulted in disciplinary hearings before the alcohol gambling and tobacco commission and this council twice found that the licensee was operating the establishment in a manner that constituted a public nuisance;

(d) Given the management history of the Licensee during the licensing period ending August 31, 2008, and the current period ending on August 31, 2009, it has been demonstrated that the management of the licensee is not capable of operating the establishment in a manner that does not constitute a public nuisance and that it is likely to continue to be a public nuisance.

BE IT FURTHER RESOLVED, that based upon the above findings:

(a) Licensee's application for an on sale intoxicating liquor license and on sale dance license for the period beginning September 1, 2009, and ending August 31, 2010, is denied.

Resolution 09-0528 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause and President Gilbert -- 8

Nays: Councilor Stauber -- 1

Approved August 24, 2009

DON NESS, Mayor

- - -

Resolution 09-0538, authorizing city officials to contract with Tierney Brothers, Inc., for the purchase and installation of technical audio/video/data equipment for the Duluth City Council Chamber for a total amount of \$218,148.93, was introduced by Councilor Krause for discussion.

Councilor Krause questioned what the savings would be to separate the technology items from the council dias items.

Chief Administrative Officer Montgomery replied that the savings would be minimal because the core amount of the improvements going into this process are the infrastructure, which include the wiring and cabling that are very old and outdated.

Councilor Stauber questioned if the resolution was sent back to the administration for six months for some fine tuning, would the sound system and cameras survive until then and would the price still be the same.

Karla Culhane, management information systems (MIS) division manager, replied that how long the sound system and cameras will last are an unknown and any change in the project could be cause for rebidding out the project.

Councilor Krause introduced an amendment to remove the electronic hardware to the dias and the electronic sign up options, which amendment failed for a lack of second.

Several councilors stated their support to upgrade the sound system and cameras in the chamber, but also stated their concern about the huge costs associated with the improvements and questioned if all the electronic upgrades to the dias and electronic extras were needed at this time.

Mr. Montgomery stated since there were concerns on what should be included or cut from this proposal, the administration would be willing to have the resolution sent back for six months

and to have a committee of councilors decide what is necessary at this time.

To questioning from Councilor Fosle, Mr. Montgomery replied that the money was bonded for in 2008 and the city has three years to utilize the money, but after three years the city would run into interest and arbitrage issues. He also stated that if the cost of the Council Chamber's improvements were less than the money bonded for, the extra money could go to some other capital improvement projects.

Councilor Stauber moved to return the resolution back to the administration, which motion was seconded and carried upon the following vote:

Yeas: Councilors Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 8

Nays: Councilor Anderson -- 1

- - -

Resolution 09-0540, authorizing the proper city officials to enter into a contract with Max Gray Construction, Inc., for casework alterations and additions, accent lighting and window treatments to accommodate technology upgrades for the Council Chamber in City Hall in the amount of \$69,100, was introduced by Councilor Krause.

Councilor Krause moved to return the resolution back to the administration, which motion was seconded and carried upon the following vote:

Yeas: Councilors Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 8

Nays: Councilor Anderson -- 1

- - -

Resolution 09-0539, amending Resolution 09-0007 retaining Maki and Overom, Chartered, increasing the amount by \$50,000 for a new total amount not to exceed \$60,000, was introduced by President Gilbert for discussion.

Councilor Stauber stated that if the city had their own attorneys handling this issue there would be some motivation to resolve the issue and not to drag things on or create additional conflict. He voiced concern that the city hires outside attorneys for various issues and the city should have the city attorney's office start doing more of these negotiations.

Resolution 09-0539 was adopted as follows:

RESOLVED, that the city council hereby amends Resolution 09-0007, retaining Maki and Overom, Chartered, to provide legal services to the city related to a gaming matter, increasing the amount by \$50,000 for a new total amount not to exceed \$60,000, payable from Fund 256, Department 030, Object 5304 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. 09-0824-15.

Resolution 09-0539 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause and President Gilbert -- 8

Nays: Councilor Stauber -- 1

Approved August 24, 2009

DON NESS, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR FEDORA

09-045 - AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF \$1,698,450 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 PRESIDENT GILBERT

09-047 - AN ORDINANCE EXTENDING THE TERM OF THE DOWNTOWN WATERFRONT SPECIAL SERVICE DISTRICT.

- - -

INTRODUCED BY COUNCILOR FOSLE

09-044 - AN ORDINANCE ESTABLISHING METHOD OF DETERMINING WATER, GAS AND SEWER FEES IN LIEU OF ASSESSMENT, AMENDING CHAPTERS 43 AND 48 OF THE CODE.

- - -

INTRODUCED BY COUNCILOR FOSLE

09-046 - AN ORDINANCE CLARIFYING THE ASSESSMENT OF PROJECTS INITIATED BY COUNCIL RESOLUTION, AMENDING SECTION 45-77 OF THE CODE.

- - -

The following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR KRAUSE

09-040 (9988) - AN ORDINANCE AMENDING SECTION 8 OF THE CITY CHARTER ELIMINATING A STATED DOLLAR AMOUNT FOR CERTAIN CONTRACTS.

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

- - -

INTRODUCED BY COUNCILOR KRAUSE

09-043 (9989) - AN ORDINANCE AMENDING CHAPTER 41 PURCHASING PROVISIONS, AMENDING SECTION 41-32 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

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

- - -

INTRODUCED BY COUNCILOR STAUBER

09-041 (9990) - AN ORDINANCE AMENDING PLATE NO. 41 OF THE OFFICIAL FLOODPLAIN AND SHORELAND MAP AS IDENTIFIED IN SECTION 51-5 OF THE DULUTH CITY CODE DEFINING THE FLOOD FRINGE AND FLOODWAY FOR THE 40TH AVENUE EAST CREEK WITHIN THE LIMITS OF THE DULUTH PUBLIC SCHOOLS SITE AT 301 NORTH 40TH AVENUE EAST.

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

- - -

INTRODUCED BY COUNCILOR STAUBER

09-042 (9991) - AN ORDINANCE GRANTING A CONCURRENT USE PERMIT TO A&L PROPERTIES TO CONSTRUCT A SKYWALK OVER EAST SUPERIOR STREET BETWEEN THE DULUTH TECHNOLOGY VILLAGE BUILDING AND THE WIELAND BLOCK BUILDING.

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fosle, Gardner, Krause, Stauber and President Gilbert -- 8

Nays: None -- 0

Abstention: Councilor Fedora -- 1

- - -

The meeting was adjourned at 8:25 p.m.

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

- - -

ORDINANCE NO. 9988

AN ORDINANCE AMENDING SECTION 8 OF THE CITY CHARTER
ELIMINATING A STATED DOLLAR AMOUNT FOR CERTAIN
CONTRACTS.

The city of Duluth does ordain:

Section 1. That Section 8 of the 1912 Home Rule Charter of the city of Duluth, as amended, is hereby amended, to read as follows:

Section 8. Except as in this Charter otherwise provided, all legislation and appropriations of money shall be by ordinance, save that where obligations have been incurred by ordinance, payment thereof may be ordered by resolution, and save also that licenses may be granted, flow of traffic regulated, and the powers conferred by Chapter IX hereof exercised, by resolution. The council may by ordinance authorize executive and administrative officers of the city to issue licenses and permits, except when statutes require licenses to be granted by the council, and to make contracts which are not subject to the competitive bidding requirements of Section 31 of this Charter up to an amount as set forth by ordinance. Every ordinance and resolution shall be in writing and read in full at a council meeting before a vote is taken, except (i) every ordinance or resolution, copies of which, together with a brief description of the purpose of said ordinance or resolution, are presented to each member of the council at least 12 hours prior to the time of the introduction of such ordinance or resolution, or (ii) every resolution awarding the sale of bonds, certificates of indebtedness, capital notes, lease purchase agreements, certificates of participation, and installment purchase agreements shall not be required to be read in full at each reading before the council, but may be read by title and such description. Ordinances and resolutions may be passed upon a voice vote of the council, but if such voice vote is not unanimous, the yeas and nays shall then be called and recorded.

Except for emergency ordinances or emergency resolutions or resolutions awarding the sale of bonds, certificates of indebtedness, capital notes, lease purchase agreements, certificates of participation, and installment purchase agreements, every ordinance and resolution shall be filed with the city clerk at least

24 hours prior to the introduction of the same.

Section 2. That this ordinance shall take effect 90 days after its passage and publication.
(Effective date: November 26, 2009)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Nays: None -- 0

Passed August 24, 2009
Approved August 24, 2009
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 9989

AN ORDINANCE AMENDING CHAPTER 41 PURCHASING PROVISIONS, AMENDING SECTION 41-32 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

The city of Duluth does ordain:

Section 1. That Section 41-32 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 41-32. Contracts not subject to competitive bidding process.

The purchasing agent, with the approval of the chief administrative officer, is authorized to award contracts not subject to the competitive bidding process that involve an expenditure of \$25,000 or less.

Section 2. That this ordinance shall take effect 90 days after its passage and publication.
(Effective date: November 26, 2009)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Nays: None -- 0

Passed August 24, 2009
Approved August 24, 2009
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

- - -

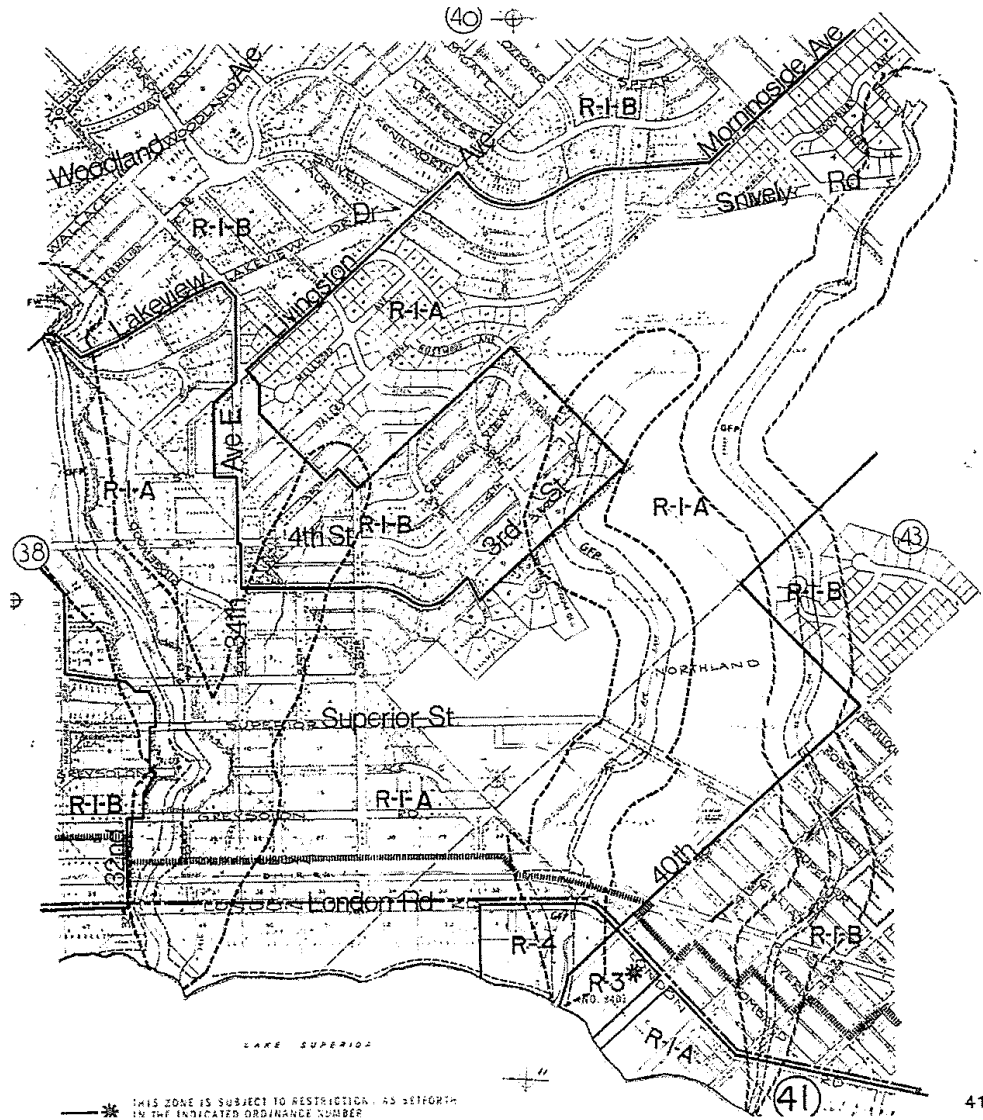
ORDINANCE NO. 9990

AN ORDINANCE AMENDING PLATE NO. 41 OF THE OFFICIAL FLOODPLAIN AND SHORELAND MAP AS IDENTIFIED IN SECTION 51-5 OF THE DULUTH CITY CODE DEFINING THE FLOOD FRINGE AND FLOODWAY FOR THE 40TH AVENUE EAST CREEK WITHIN THE LIMITS OF THE DULUTH PUBLIC SCHOOLS SITE AT 301 NORTH 40TH AVENUE EAST.

The city of Duluth does ordain:

Section 1. That Plate Number 41 of the official floodplain and shoreland map, produced by the planning department, dated March 2, 1980, revised March 1987, and filed as public document numbers 80-0128-28 and 87-0323-20, as provided for in Section 51-5 of the Duluth City Code, 1959, as amended, showing the floodplain for the 40 Avenue East Creek within the limits

of the Duluth public schools site at 301 North 40th Avenue East, is amended to read as follows:



(Ref. File No. 09055)

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: October 4, 2009)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed August 24, 2009
Approved August 24, 2009
DON NESS, Mayor

ORDINANCE NO. 9991

AN ORDINANCE GRANTING A CONCURRENT USE PERMIT TO A&L PROPERTIES TO CONSTRUCT A SKYWALK OVER EAST SUPERIOR STREET BETWEEN THE DULUTH TECHNOLOGY VILLAGE BUILDING AND THE WIELAND BLOCK BUILDING.

The city of Duluth does ordain:

Section 1. The city council finds that A&L Properties filed with the city clerk an application for a concurrent use permit at 11 East Superior Street.

Section 2. Under the authority of Section 100 of the City Charter and Article X of Chapter 45 of the Duluth City Code, as amended, permission is hereby granted to A&L Properties to construct a skywalk over East Superior Street from the second floor level of the Duluth Technology Village building to the third floor level of the Wieland Block building, as more particularly described in Public Document No. 09-0824-20; as such use would not inconvenience the public use.

Section 3. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: October 4, 2009)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fosle, Gardner, Krause, Stauber and President Gilbert -- 8

Nays: None -- 0

Abstention: Councilor Fedora -- 1

ATTEST:
JEFFREY J. COX, City Clerk

Passed August 24, 2009
Approved August 24, 2009
DON NESS, Mayor

- - -

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, September 14, 2009, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Absent: None -- 0

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

09-0914-01 Independent School District No. 709, et al. (two signatures), petition to vacate a portion of Ensign Street from the west line of Chambersburg Street to the east line of Church Street. -- Assessor

09-0914-10 Fred Anderson communication regarding extension of the Downtown Waterfront Special Service District (09-0544R, 09-0548R, 09-0549R and 09-045-O). -- Received

09-0914-11 Jim Reed communication regarding construction of a new law enforcement center (09-0562R). -- Received

09-0914-02 Joanne and Larry Spears communication regarding adoption of the Central Entrance-Miller Hill small area plan and amending the comprehensive land use plan - future land use map (09-0581R). -- Received

- - -

REPORTS FROM OTHER OFFICERS

09-0914-03 Assessor affidavit of mailing of notice of the special assessment board public hearings on September 8, 2009, at 2:30 p.m. in Room 106A, City Hall, on reassessment of local improvement and levying of assessments against real estate specially benefitted by such improvements regarding Contract No. 7036, Plat 1820, Parcel 00140, street improvement program 1999 (assessable amount: \$1,177.27); and Contract No. 5325, Plat 1350, Parcel 08100, demolition contract (assessable amount: \$4,657.75). -- Received

- - -

REPORTS OF BOARDS AND COMMISSIONS

09-0914-04 Community development committee minutes of: (a) May 26, 2009; (b) June 23, 2009, meetings. -- Received

09-0914-05 Duluth airport authority balance sheet of June 30, 2009. -- Received

09-0914-06 Duluth public arts commission minutes of July 27, 2009, meeting. -- Received

09-0914-07 Duluth transit authority minutes of May 27, 2009, meeting. -- Received

09-0914-08 Entertainment and convention center authority minutes of August 25, 2009, meeting. -- Received

09-0914-09 Library board minutes of June 23, 2009, meeting. -- Received

- - -

OPPORTUNITY FOR CITIZENS TO BE HEARD

KL Lewis questioned why the skywalk over Lake Avenue has taken so long to construct when all the other skywalks have been put up much faster.

- - -

Dave Barsdorf requested help from the city to fix his property since he is on a disability.

- - -

Pennie Turcotte urged the council not to approve the Ensign Street vacation as the land is not big enough for the new school and Ensign services a church and nursing home, and with the proposed configuration there is a safety issue where the buses would be stopping.

- - -

At this time, 7:12 p.m., the public hearing regarding the proposed amendment to the capital improvement plan, for inclusion of a new police station, was called to order.

No one appeared who wished to be heard and the public hearing was closed at 7:13 p.m.

- - -

At this time, 7:13 p.m., the public hearing regarding the proposed intent to issue capital improvement bonds was called to order.

No one appeared who wished to be heard and the public hearing was closed at 7:14 p.m.

- - -

At this time, 7:14 p.m., the public hearing regarding the proposed extension of the Downtown Waterfront Special Service District (DWSSD) was called to order.

Roger Wedin, representing the DWSSD board, reviewed the creation of the district and added that the district has performed well and has the support of the majority of the property owners in the Downtown area to continue the district for another five years.

Penny Perry stated the district plays a role in new business ventures in the Downtown area and makes a significant difference in the climate of the Downtown community. She also stated that this district is comprised of large and one person businesses forming a partnership to address the issues of the Downtown.

Chad Scott explained that the district focuses on the wealthier properties of Superior Street and Canal Park who get additional services, but the businesses on Second Street are not getting much support. He went on to say that there is false representation on who supports the service district as the businesses on the fringe of the district cannot outvote the wealthier businesses and that the wealthy businesses do not pay in proportion to their tax capacity.

No one else appeared who wished to be heard and the public hearing was closed at 7:23 p.m.

- - -

At this time, 7:23 p.m., the public hearing regarding the proposed imposition of services charges within the Downtown Waterfront Special Service District was called to order.

No one appeared who wished to be heard and the public hearing was closed at 7:24 p.m. and the regular order of business was 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 Gilbert 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 an agreement,

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

a copy of which is on file in the office of the city clerk as Public Document No. 09-0914-12, with the state of Minnesota department of administration, materials management division, to allow the city to purchase commodities, equipment and services under the state's contracts as authorized by Minnesota Statutes Section 16C.11.

Resolution 09-0545 was unanimously adopted.

Approved September 14, 2009

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 St. Luke's Foundation and Minnesota Teen Challenge 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 09-0551 was unanimously adopted.

Approved September 14, 2009

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby issues the following on sale 3.2 percent malt liquor licenses and approves issuance of on sale wine licenses for the periods ending April 30, 2010, and August 31, 2010, respectively, subject to departmental approvals, the payment of sales and property taxes, and further subject to approval of the liquor control commissioner:

Mama Mia's Pizza Company, (Mama Mia's Humble Pie Pizzeria), 1516 Kenwood Avenue, with Gordon Oftedahl, 100 percent owner.

Resolution 09-0553 was unanimously adopted.

Approved September 14, 2009

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the transfer of the following on sale intoxicating liquor license, on sale Sunday license, dancing license and application for a 2:00 a.m. beverage license for the period ending August 31, 2010, subject to departmental approvals and the payment of sales and property taxes:

Rosberg, Inc. (Roscoe's Pioneer Bar), 321-323 West First Street, with Curtis Oberg, 50 percent owner and Ross Farrell, 50 percent owner, transferred from Live Bar, Inc. (Live Downtown), same address.

Resolution 09-0554 was unanimously adopted.

Approved September 14, 2009

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 (Lake Superior Brewing Company), 2711

West Superior Street, for September 26, 2009, with Don Hoag, manager.

Resolution 09-0555 was unanimously adopted.

Approved September 14, 2009

DON NESS, Mayor

- - -

RESOLVED, that both Resolution No. 07-0635 and City Agreement No. 20519 with Architectural Resources, Inc., are hereby amended, authorizing additional professional design services in the renovation of Park Point Fire Station No. 5, and increasing the amount by \$36,905, in accordance with the city architect's specifications and the consultant's quote, for a total contract amount of \$90,905, payable from Capital Improvements Fund 450, Department/Agency 030, Object 5520, Project CP 2007-OT-0707 (OT-0810-B).

Resolution 09-0561 was unanimously adopted.

Approved September 14, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to contract with Keller Fence Company North, Inc., for the purchase, delivery and installation of security fencing and gates at two locations - (a) the street and park maintenance toolhouse located at 40th and 42nd avenues West and (b) the Longview Tennis Club located at 326 North 25th Avenue West - for the city architect division in accordance with specifications and the vendor's bid of \$76,950, terms net 30, FOB job site, payable from the Capital Improvements Fund 450, Department/Agency 030, Object 5530, Project No. CP 2008-OT-0813.

Resolution 09-0567 was unanimously adopted.

Approved September 14, 2009

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. 09-0914-13, with Job Service for the provision of dislocated worker services pursuant to the Workforce Investment Act at costs not to exceed \$187,255 for the period July 1, 2009 - June 30, 2010. Funds will be payable from Fund 268, Agency 025, Organization 6211.

Resolution 09-0560 was unanimously adopted.

Approved September 14, 2009

DON NESS, Mayor

- - -

RESOLVED, that Resolution 09-0369 awarding a contract to KGM Contractors, Inc., for the 2009 street improvement project - Lakeside Lower Central, be amended to increase the amount by \$445,201 for the installation of a new water line for a new total of \$2,123,853.40, payable out of Water Utility Fund 0510, Department/Agency 500, Division 1905, Object 5536, City Project No. 0218TR.

Resolution 09-0550 was unanimously adopted.

Approved September 14, 2009

DON NESS, Mayor

- - -

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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Public Document No. 09-0914-14, with the Minnesota department of natural resources for the maintenance of the Duluth cross country trails for the 2009-2010 season in the amount of \$5,000; said funds to be deposited in the General Fund 110-120-1217-2140-4225.

Resolution 09-0557 was unanimously adopted.

Approved September 14, 2009

DON NESS, Mayor

- - -

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. 09-0914-15, with the Minnesota department of natural resources for the maintenance of the Duluth snowmobile trails for the 2009-2010 season in the amount of \$13,925; said funds to be deposited in the General Fund 100-120-1217-4226.

Resolution 09-0558 was unanimously adopted.

Approved September 14, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an easement agreement substantially in the form of that on file with the city clerk as Public Document No. 09-0914-16, with the Secretary of the Army, granting to the city a permanent easement for the Duluth Aerial Lift Bridge.

Resolution 09-0564 was unanimously adopted.

Approved September 14, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Insituform Technologies USA, Inc., for the 2009 cured-in-place pipe (CIPP) rehabilitation of sanitary sewers at various locations in the amount of \$554,392. \$296,521.12 is payable out of the Sanitary Sewer Fund 0530, Department/Agency 025, Object 5532, and \$257,870.88 is payable out of the Community Development Fund 0262, Department/Agency 025, Object 5530, City Project No. 0724SN.

Resolution 09-0565 was unanimously adopted.

Approved September 14, 2009

DON NESS, Mayor

- - -

RESOLVED, that Resolution 09-0229 is hereby amended and the original purchase order to Viele Contracting, Inc., adjusted for the purchase and delivery of an additional 2,452 tons of Class 5 gravel for an increase of \$19,208.81 (\$17,973.16 plus \$1,235.65 sales tax), terms net 30, FOB destination, payable from the Street Improvement Fund 440, Department/Agency 038, Object 5224, Project No. SIP 2009-Recap. This brings the combined total purchase order amount to \$192,058.31, payable from various funds, departments/agencies, objects.

Resolution 09-0570 was unanimously adopted.

Approved September 14, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with

Veit & Company, Inc., for the Amity Creek tributary stream stabilization project in the amount of \$167,975, payable out of Stormwater Utility Fund 0535, Department/Agency 500, Division 1905, Object 5533, City Project No. 0631ST.

Resolution 09-0571 was unanimously adopted.

Approved September 14, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Veit & Company, Inc., for the Skyline Parkway storm sewer repair project in the amount of \$59,959, payable out of Stormwater Utility Fund 0535, Department/Agency 500, Division 1905, Object 5533, City Project No. 0703ST.

Resolution 09-0572 was unanimously adopted.

Approved September 14, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with JMF Construction, Inc., for the 2009 CDBG-ARRA sidewalk and pedestrian ramps replacement project on Superior Street between 20th Avenue West and 22nd Avenue West in the amount of \$108,979, payable out of the CDBG Fund 0262, Agency 025, Object 5434, City Project No. 0816TR.

Resolution 09-0573 was unanimously adopted.

Approved September 14, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Waste Management of Minnesota, Inc., (Canyon) for the purpose of landfill tipping fees in the disposal of an estimated 2,500 tons of boiler ash in accordance with city specifications and the vendor's bid of \$55,125, terms net 30, payable from Steam Fund 540, Department/Agency 920, Organization 1490, Object 5388.

Resolution 09-0577 was unanimously adopted.

Approved September 14, 2009

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 \$5,000, said funds to be deposited in Fund 110, Agency 150, Organization 1501, Revenue Source 4220, for the purpose of supporting the Duluth fire department personnel training.

Resolution 09-0541 was unanimously adopted.

Approved September 14, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officers are authorized to accept a bulletproof vest reimbursement grant from the United States department of justice, bureau of justice assistance, office of justice programs, in the amount of \$9,387.50 to be deposited in Fund 110, Agency 160, Organization 1610, Revenue Source 4209-02, and to execute any documents required to be executed to accept such grant.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Resolution 09-0546 was unanimously adopted.
Approved September 14, 2009
DON NESS, Mayor

- - -

RESOLVED, that the proper city officers are authorized to accept a grant from the United States Marshals Service in the amount of \$1,000 for reimbursement of overtime expenses incurred by the Duluth police department related to the district fugitive task force, such funds to be deposited in Fund 110, Agency 160, Organization 1610, Revenue Source 4209-02, and to execute any documents required to be executed to accept such grant.

Resolution 09-0547 was unanimously adopted.
Approved September 14, 2009
DON NESS, Mayor

- - -

RESOLVED, that the proper city officers are authorized to accept a grant from the Target Corporation in the amount of \$600 for the purchase of law enforcement equipment, funds to be deposited in Fund 110, Agency 160, Organization 1610, Revenue Source 4270, and to execute any documents required to be executed to accept such grant.

Resolution 09-0556 was unanimously adopted.
Approved September 14, 2009
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to act as a partner to St. Louis County under a 2010 pilot county enforcement project grant to be received by St. Louis County from the state of Minnesota, office of traffic safety, and to perform services provided for under such grant document and to receive reimbursement therefor from said county up to the amount of \$24,726, said funds to be deposited in Fund 215-200-2292-4220-02, for a period from October 1, 2009, through September 30, 2010, and to execute all documents related thereto.

Resolution 09-0568 was unanimously adopted.
Approved September 14, 2009
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept an amendment to grant Contract 09-LE-11090903-027, substantially the same as that on file in the office of the city clerk as Public Document No. 09-0914-17, from the United States department of agriculture, forest service law enforcement and investigations to reimburse the city for its costs in providing cooperative law enforcement services on forest service lands, increasing the amount accepted thereunder to \$15,000 and extending the termination date to September 30, 2010, said funds to be deposited in Fund 215-200-2285-4209-02, and authorizing said officials to execute all documents necessary thereto.

Resolution 09-0569 was unanimously adopted.
Approved September 14, 2009
DON NESS, Mayor

- - -

RESOLVED, that the proper city officers 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. 09-0914-18, with St. Louis County for the issuance, processing and collection of parking

citations issued with regard to specified county-owned parking facilities.

Resolution 09-0580 was unanimously adopted.

Approved September 14, 2009

DON NESS, Mayor

- - -

The following resolutions were also considered:

Resolution 09-0562, approving an amendment to the 2009-2013 capital improvement plan and stating the intent to issue general obligation capital improvement bonds under Minnesota Statutes, Section 475.521, in an additional amount not to exceed \$18,000,000, was introduced by Councilor Fedora for discussion.

The rules were suspended upon a unanimous vote to hear from a speaker on the resolution.

Tom Maida, vice president of the police union, urged support of the amendment to the capital improvement plan for a new police station which will be a better facility to help serve the public more efficiently.

Councilor Fedora stated that while he supports a new building for the police department, he expressed concern about the large debt increase that this bond issue will place on the public - especially those on fixed incomes. He questioned why the city has not looked at alternative plans such as updating the current offices besides building a new law enforcement center.

Councilor Krause voiced concern that the state of the economy will affect the ability of taxpayers to pay for an increase in their taxes, and the city still owes a large debt on the West Duluth police station. He also questioned why the administration has not presented the cost savings that the combined services will accomplish.

Councilor Stauber stated he does support spending \$18,000,000 for the police facility, but stated his concern that the administration is asking the council to approve the bonding without explaining how they intend to pay the bonds back. He added that he can not support this police facility without using some of the money from the retiring Canal Park Tax Increment Financing District, thereby putting this tax burden on the taxpayers.

Mayor Ness replied that the administration has put together the areas of cost savings and has given that to the council for their review. He continued saying that while he recognizes the concern on the state of the economy, this is a good time to build with the lower interest rates and costs for materials before the recession ends when the project costs would be higher. Mayor Ness reviewed that this resolution is setting the proposed maximum levy, which could be set lower when the budget is passed in December, and by passing this levy it will allow the administration to work with the council in the next three months to find other ways to finance the building.

Resolution 09-0562 was adopted as follows:

BE IT RESOLVED, by the city 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 city council approved, pursuant to Resolution No. 08-0744, adopted on December 15, 2008, a capital improvement plan for the years 2009 through 2013 which was presented to the city council in a document entitled "Capital Improvement Budget and Five Year Plan 2009-2013," dated November 2008 (the "plan");

(b) Amendments to the plan are necessary in order to provide for the

construction and equipping of a new law enforcement center. There has been presented to the city council an amendment to the plan dated September 2009 (the "plan amendment");

(c) The city council has caused due notice to be given and on September 14, 2009, held a public hearing as required by the act, to provide an opportunity for residents to express their views on the plan amendment;

(d) The city council has considered the following for each project discussed in the plan amendment 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 amendment, in the overall plan and Section 1.01(d) hereof, the city council finds that the plan, as amended by the plan amendment, is desirable and beneficial to the city and its residents.

(b) The city council finds that the proposed improvements under the plan, as amended by the plan amendment, will result in no unnecessary duplication of public facilities provided by other units of government in the region.

1.03 The plan, as amended by the plan amendment, is approved.

Section 2. Intent to issue bonds.

2.01 (a) Under and pursuant to the authority contained in the act, the city is authorized to issue general obligation capital improvement bonds to provide funds for capital improvements pursuant to the plan, as amended;

(b) The city council held a public hearing on September 14, 2009, on the city's intention to issue general obligation capital improvement bonds in 2009 in an additional amount not to exceed \$18,000,000 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;

(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 its general obligation capital improvement bonds, Series 2009 (the "bonds"), in an amount not to exceed \$18,000,000, for the purpose of providing funds for a public safety facility, consisting of constructing and equipping a new law enforcement center. The bonds are in addition to the \$1,800,000 general obligation capital improvement bonds authorized to be issued pursuant to Resolution 09-0051.

Section 3. (a) The city clerk shall publish a notice of intent to issue the bonds in substantially the form on file as Public Document No. 09-0914-19 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 09-0562 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fosle, Gardner and President Gilbert -- 6

Nays: Councilors Fedora, Krause and Stauber -- 3

Approved September 14, 2009

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 2010 for Duluth transit authority special 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 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 09-0574 was unanimously adopted.

Approved September 14, 2009

DON NESS, Mayor

- - -

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 2010 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 09-0575 was unanimously adopted.

Approved September 14, 2009

DON NESS, Mayor

- - -

Resolution 09-0576, proposing the sum to be raised by taxation for general purposes for the year 2010, was introduced by Councilor Fedora for discussion.

The rules were suspended upon a unanimous vote to hear from a speaker on the resolution.

Celia Scheer explained that the average person works from January 1 to August 12 to pay for all the taxes the government charges each person, and the money spent by governments to pay for the interest on bonds is money not being spent in the city on projects.

Councilor Fedora moved to amend the resolution to decrease the amount raised by taxation for 2010 as follows:

(a) In Section 1, decrease the amount from "\$17,176,100" to "\$16,792,200";

(b) In Section 2, decrease the amount from "\$11,265,100" to "\$10,881,200,"

which motion was seconded for discussion.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Chief Administrative Office David Montgomery reviewed that this resolution is setting the maximum tax levy and during the next 60 days the council and administration will discuss the specifics of the budget and review the policies for a final budget and levy to be set in December. He also stated that whatever rate is passed tonight is locked in and cannot be increased in December.

Councilor Fedora's amendment failed upon the following vote:

Yeas: Councilors Fedora, Krause and Stauber -- 3

Nays: Councilors Anderson, Cuneo, Eckenberg, Fosle, Gardner and President Gilbert -- 6

Councilor Fedora moved to amend the resolution to eliminate the increase of the debt service associated with the \$18,000,000 police facility as follows:

(a) In Section 1, decrease the amount from "\$17,176,100" to "\$16,728,100";

(b) In Section 3, decrease the amount from "\$5,488,900" to "\$5,040,900,"

which motion was seconded and failed upon the following vote:

Yeas: Councilors Fedora, Krause and Stauber -- 3

Nays: Councilors Anderson, Cuneo, Eckenberg, Fosle, Gardner and President Gilbert -- 6

Councilor Anderson moved to amend the resolution to add funding to fill five additional police officer vacancies and three additional fire fighting vacancies that were eliminated in the proposed 2010 budget as follows:

(a) In Section 1, increase the amount from "\$17,176,100" to "\$17,801,100";

(b) In Section 2, increase the amount from "\$11,265,100" to "\$11,890,100,"

which motion was seconded for discussion.

To Councilor Fedora's question, Mr. Montgomery replied that this amendment would increase the proposed administration's levy of 5.4 percent to approximately a levy of ten percent.

Councilor Fosle said he could not support a further increase in the tax levy above the administration's proposed levy not knowing what the final levy will be from the authorities and county.

Councilor Eckenberg stated that the items that were not included in the mayor's proposed budget are all worthwhile items and deciding on which ones to add to the proposed budget would be a tough choice.

Councilor Anderson's amendment failed upon the following vote:

Yeas: Councilors Anderson, Gardner and President Gilbert -- 3

Nays: Councilors Cuneo, Eckenberg, Fedora, Fosle, Krause and Stauber -- 6

Councilor Stauber explained that as the city increases its taxes and fees, the number of taxpayers continues to decrease as people move to a city where the taxes are not as high, thereby decreasing the tax revenue needed for the city to run itself.

Resolution 09-0576 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 2010 for general operations is hereby determined to be the sum of \$17,176,100 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 \$11,265,100.

Section 3. For the payment of debt, there will be levied for the general obligation

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

debt fund the sum of \$5,488,900.

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 \$422,100.

Resolution 09-0576 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fosle, Gardner and President Gilbert -- 6

Nays: Councilors Fedora, Krause and Stauber -- 3

Approved September 14, 2009

DON NESS, Mayor

- - -

Resolution 09-0578, setting a proposed budget for the fiscal year 2010, was introduced by Councilor Fedora for discussion.

Councilor Fedora reviewed that the city's proposed budget is decreased from the 2009 budget because of the final payment of \$3.8 million into the police pension fund and a \$4 million decrease in street improvement program debt. He continued saying that by taking away those two amounts, there is a 2.3 percent spending increase for the proposed 2010 budget.

Resolution 09-0578 was adopted as follows:

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, 2010.

GENERAL		
010	Total legislative and executive	2,439,300
120	Total public administration	19,881,800
130	Total community resources	5,192,100
150	Total fire	14,610,800
160	Total police	17,608,800
500	Total public works	1,929,100
700	Total transfers	13,713,100
110	General fund total	75,375,000

Resolution 09-0578 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fosle, Gardner and President Gilbert -- 6

Nays: Councilors Fedora, Krause and Stauber -- 3

Approved September 14, 2009

DON NESS, Mayor

- - -

Resolution 09-0581, adopting the Central Entrance-Miller Hill small area plan and amending the comprehensive land use plan - future land use map in six locations, was introduced by Councilor Stauber for discussion.

The rules were suspended upon a unanimous vote to hear from a speaker on the resolution.

Harry Munger requested that the city include in this amended plan the provisions that were included in the comprehensive plan such as a landscaping buffer and questioned if there was a trail in this plan to go along Miller Creek, which is ten miles long.

Resolution 09-0581 was adopted as follows:

RESOLVED, that the city council finds the following:

(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 identified sub-areas of the city to be studied in more detail; and

(b) The city planning division has prepared and recommends approval of the Central Entrance-Miller Hill small area plan, a land use plan for one of the sub-areas identified in the comprehensive land use plan; and

(c) The city planning division, in the Central Entrance-Miller Hill small area plan, proposes six amendments to the comprehensive land use plan - future land use map; and

(d) The city planning commission has reviewed the small area plan and the proposed six future land use map amendments, conducted a public hearing on August 11, 2009, at their regular planning commission meeting and recommends adoption of the small area plan and the proposed future land use map amendments.

BE IT FURTHER RESOLVED, that the Duluth comprehensive land use plan is hereby amended by adding to it the Central Entrance-Miller Hill small area plan as identified in Public Document No. 09-0914-20.

BE IT FURTHER RESOLVED, that the adopted comprehensive land use plan - future land use map, is amended as identified in Public Document No. 09-0914-20 and shown as map amendments #2, #3, #4, #5, #6 and #7.

Resolution 09-0581 was unanimously adopted.

Approved September 14, 2009

DON NESS, Mayor

- - -

Resolution 09-0544, providing for the imposition of service charges within the Downtown Waterfront Special Service District; Resolution 09-0548, authorizing entering into a memorandum of understanding with the Greater Downtown Council setting forth the established level of services for the Downtown Waterfront Special Service District; and Resolution 09-0549, authorizing entering into a service contract with the Greater Downtown Council to provide services to implement the Downtown Waterfront Special Service District, were introduced by President Gilbert for discussion.

At this time, President Gilbert moved consider Ordinance 09-047, 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 PRESIDENT GILBERT

09-047 (9992) - AN ORDINANCE EXTENDING THE TERM OF THE DOWNTOWN WATERFRONT SPECIAL SERVICE DISTRICT.

- - -

The rules were suspended upon a unanimous vote to hear from a speaker on the issue.

Chad Scott stated that as a business owner he does support the service district, but wants it to be fair so that businesses pay their share based on their tax capacity and is frustrated that the wealthy property owners are in favor of this because they have a cap on what they owe and do not pay their fair share.

Resolutions 09-0544 and 09-0548 were adopted as follows:

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

Section 1. PURPOSE AND AUTHORIZATION.

1.01. (a) Under and pursuant to the provisions of Minn. Stat. §§ 428A.01 - 428A.101 (the "act"), the city is authorized to establish a special service district;

(b) The city council has, by Ordinance No. 9688 adopted on September 13, 2004, adopted an ordinance establishing the Duluth Downtown Waterfront Special Service District (the "district");

(c) The city council has, by Ordinance File No. 09-047 extended the term of the district to include the period of time beginning January 1, 2010, and ending December 31, 2014.

1.02. The act provides that service charges may be imposed by the city, within the special service district, at a rate or amount sufficient to produce the revenues required to provide the special services in the district.

1.03. Property owners in the Downtown Waterfront who want to improve the safety, cleanliness and economic vitality of the Downtown Waterfront area by establishing the district pursuant to the act have petitioned the city to establish the Downtown Waterfront Special Service District and to establish service charges, all as more particularly set forth in an operating plan for Duluth's Downtown Waterfront District dated May 5, 2009 (the "operating plan") developed by a steering committee composed of a broad range of people representing property owners, business leaders, the city and others with a direct stake in enhanced business and economic development conditions in the Downtown Waterfront. The operating plan, which has been incorporated into the ordinance establishing the district by reference, sets forth the special services to be provided, the particular area of the city to be included within the district's boundaries, the amount and manner of imposing service charges and the manner in which special services will be implemented. A copy of the operating plan is available for public inspection in the city clerk's office, 411 West First Street, Duluth, Minnesota.

Section 2. SERVICE CHARGE IMPOSED.

2.01. A service charge is hereby imposed upon all property that is classified under Minn. Stat. § 273.13 and used for commercial, industrial, or public utility purposes, or is vacant land zoned or designated on a land use plan for commercial or industrial use and located within the boundaries of the district. The service charge is imposed on the basis of net tax capacity. As used in this ordinance, the term "net tax capacity" has the meaning set forth in the act. Service charges not paid on or before the applicable due date for ad valorem taxes shall be subject to the same penalty and interest as in the case of ad valorem tax amounts not paid by the respective due date. The due date for service charges payable in the same manner as ad valorem taxes is the due date given in law for the real or personal property tax for the property on which the service charge is imposed. Service charges will be collected in the same manner as ad valorem taxes. The assessment for service charges will be based upon a target total assessment of \$342,716 in

the year 2010. The total assessment will increase two percent in 2011 and three percent each of the three remaining years. The maximum service charge that will be imposed on any single property will be capped at \$8,000 in 2010. The cap will increase to \$8,160 in 2011, \$8,404.80 in 2012, \$8,656.98 in 2013, and \$8,916.68 in 2014. For purposes of applying these caps, a "single property" is a single principal building or a physically integrated set of principal buildings which commonly functions as one property, together with accessory improvements and parcels serving the principal building or buildings. Accessory improvements or parcels may include, without limitation, skywalk bridges, parking ramps, parking lots, vacant lots, open spaces and plazas. Examples of single properties which could be subject to a cap include the Tech Village, Lake Superior Place, the Minnesota Power Building, the Sellwood Building and Annex, and the Radisson Hotel. An otherwise qualifying property with multiple owners remains a "single property." An otherwise qualifying property that has been divided into separate ownership parcels through the use of a subdivision plat, condominium or similar regime and in which the parcels are separately taxed is not a "single property."

Section 3. ANNUAL CERTIFICATION.

3.01. Service charges imposed on net tax capacity which are to become payable in the following year, must be certified to the county auditor by the date provided in Section 429.061, subd. 3, for the annual certification of special assessment installments. The city assessor is directed to provide this certification annually and on a timely basis.

Resolution 09-0544 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Stauber and President Gilbert -- 8

Nays: Councilor Krause -- 1

Approved September 14, 2009

DON NESS, Mayor

- - -

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

Section 1. PURPOSE AND AUTHORIZATION.

1.01. Under and pursuant to the provisions of Minn. Stat. § 428A.01 - 428A.101 (the "act"), the city is authorized to adopt an ordinance establishing a special service district and a resolution establishing service charges within the district. The council has, by Ordinance No. 9688, established the Downtown Waterfront Special Service District and by Resolution No. 04-0595, has imposed service charges to fund special services to be rendered within the district.

1.02. By Ordinance File No. 09-047 ("2009 ordinance"), the council has extended the term of the district to December 31, 2014 and by Resolution No. 09-0544 ("2009 resolution") the council has imposed additional service charges.

1.03. The 2009 ordinance and 2009 resolution incorporate, by reference, an operating plan for Duluth's Downtown Waterfront District dated May 5, 2009 ("operating plan") developed by a steering committee composed of a broad range of people representing property owners, business leaders, the city and others with a direct stake in enhanced business and economic development conditions in the Downtown Waterfront. The operating plan sets forth the special services to be provided, the particular area of the city to be included within the district's boundaries, the amount and manner of imposing service charges and the manner in which the special services will be implemented.

1.04. Minn. Stat. § 428A.01, subd. 4, provides that "special services" may not include a service that is ordinarily provided throughout the city from general fund revenues of the city unless

an increased level of the service is provided in the special service district. In addition, Minn. Stat. § 428A.03, subd. 1, provides that service charges may not be imposed to finance a special service if the service is ordinarily provided by the city from its general fund revenues unless the service is provided in the district at an increased level.

1.05. A memorandum of understanding has been prepared to establish the existing level of city services being provided within the district and to obtain city's agreement not to decrease the level of services being provided in the district except to the extent that a similar decrease in services is being imposed throughout the city.

Section 2. APPROVAL AND AUTHORIZATION.

2.01. The city council hereby approves and authorizes the entering into and execution of the memorandum of understanding between the GDC and the city of Duluth (Public Document No. 09-0914-21).

Resolution 09-0548 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Stauber and President Gilbert -- 8

Nays: Councilor Krause -- 1

Approved September 14, 2009

DON NESS, Mayor

- - -

Councilor Fedora moved to amend Resolution 09-0549 to add the following at the end:

"FURTHER RESOLVED, that it is the intention of this city council that future annual appropriations of \$200,000 to the district, subject to annual review as part of the regular city budget process, should be derived from the tourism tax fund," which motion was seconded and unanimously carried.

Resolution 09-0549, as amended, was adopted as follows:

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

Section 1. PURPOSE AND AUTHORIZATION.

1.01. Under and pursuant to the provisions of Minn. Stat. §§ 428A.01 - 428A.101 (the "act"), the city is authorized to adopt an ordinance establishing a special service district and a resolution establishing service charges within the district. The council has, by Ordinance No. 9688, established the Downtown Waterfront Special Service District and by Resolution No. 04-0595, has imposed service charges to fund special services to be rendered within the district.

1.02. The council has also, by Ordinance File No. 09-047 (the "2009 ordinance") extended the term of the district to December 31, 2014 and also has, by Resolution Number 09-0544 (the "2009 resolution") assessed new service charges.

1.03. The 2009 ordinance and 2009 resolution incorporate, by reference, an operating plan for Duluth's Downtown Waterfront District dated May 5, 2009 ("operating plan") developed by a steering committee composed of a broad range of people representing property owners, business leaders, the city and others with a direct stake in enhanced business and economic development conditions in the Downtown Waterfront. The operating plan sets forth the special services to be provided, the particular area of the city to be included within the district's boundaries, the amount and manner of imposing service charges and the manner in which the special services will be implemented. The operating plan specifically anticipates that the special services will be implemented pursuant to a service contract between the city and the Greater Downtown Council ("GDC").

A service contract has been prepared for this purpose.

Section 2. APPROVAL AND AUTHORIZATION.

2.01. Subject to Ordinance File No. 09-047 becoming effective and further subject to approval of funding for this service contract in the city of Duluth 2010 budget, the council hereby approves and authorizes the entering into and the execution of the service contract with GDC by the proper city officials in the form of that on file in the office of the city clerk as Public Document No. 09-0914-22 in an amount not to exceed \$200,000 in 2010, payable from Fund 258-030-5436-10 together with all collected service charges.

FURTHER RESOLVED, that it is the intention of this city council that future annual appropriations of \$200,000 to the district, subject to annual review as part of the regular city budget process, should be derived from the tourism tax fund.

Resolution 09-0549, as amended, was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Stauber and President Gilbert -- 8

Nays: Councilor Krause -- 1

Approved September 14, 2009

DON NESS, Mayor

- - -

President Gilbert moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Stauber and President Gilbert -- 8

Nays: Councilor Krause -- 1

- - -

Resolution 09-0579, establishing natural gas rates for interruptible transportation service and rescinding rates for firm transportation service effective with meter readings after September 30, 2009, was introduced by Councilor Fosle for discussion.

The rules were suspended upon a unanimous vote to hear from a speaker on the resolution.

Casey Whelan explained that the proposed resolution lacks adequate factual support and analysis, is anti-competitive, and includes large rate increases with service being degraded to the customers.

Councilor Stauber moved to table the resolution for more information, which motion was seconded and carried upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Krause, Stauber and President Gilbert -- 8

Nays: Councilor Gardner -- 1

- - -

Resolution 09-0566, authorizing an agreement with AOT Public Safety Corporation to implement and provide the Duluth false alarm management program, was introduced by Councilor Cuneo for discussion.

Councilor Krause voiced concern that this false alarm program will cause residents not to invest in a security alarm system for fear of false alarms and the fine that would go along with it.

Resolution 09-0566 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. 09-0914-23, with AOT Public Safety Corporation (AOT) pursuant to which it will implement and provide the Duluth false alarm management program, the city and AOT to share net revenues as follows: city - 65 percent, AOT - 35 percent; fees collected by AOT payable into Fund 110, Department 160, Organization 1610, Revenue Source 4329, and any delinquent fees collected by the city via assessments payable from Fund 110.

Resolution 09-0566 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Stauber and President Gilbert -- 8

Nays: Councilor Krause -- 1

Approved September 14, 2009

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 FEDORA

09-048 - AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF GENERAL OBLIGATION REVENUE BONDS OF THE CITY OF DULUTH FOR THE IMPROVEMENT OF THE MUNICIPAL SEWER UTILITY IN AN AMOUNT NOT TO EXCEED \$975,000 UPON TERMS AND CONDITIONS TO BE PROVIDED BY RESOLUTION OF THE CITY COUNCIL AND PLEDGING REVENUES FOR THE PAYMENT THEREOF.

- - -

INTRODUCED BY COUNCILOR STAUBER

09-049 - AN ORDINANCE AN ORDINANCE DESIGNATING THE GEORGE H. AND CHARLOTTE S. CROSBY HOUSE, AT 2029 EAST SUPERIOR STREET, AS A DULUTH HERITAGE PRESERVATION LANDMARK.

- - -

INTRODUCED BY COUNCILOR FOSLE

09-012 - AN ORDINANCE AUTHORIZING THE DIRECT SALE OF CERTAIN PROPERTY IN THE UPPER LESTER PARK AREA TO MICHAEL J. AND MELISA L. LEDOUX FOR \$5,200.

- - -

The following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR FEDORA

09-045 (9993) - AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF \$1,698,450 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, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause and President Gilbert -- 8

Nays: Councilor Stauber -- 1

- - -

INTRODUCED BY COUNCILOR FOSLE

09-044 (9994) - AN ORDINANCE ESTABLISHING METHOD OF DETERMINING WATER, GAS AND SEWER FEES IN LIEU OF ASSESSMENT, AMENDING CHAPTERS 43 AND 48 OF THE CODE.

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

- - -

INTRODUCED BY COUNCILOR FOSLE

09-046 (9995) - AN ORDINANCE CLARIFYING THE ASSESSMENT OF PROJECTS INITIATED BY COUNCIL RESOLUTION, AMENDING SECTION 45-77 OF THE CODE.

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. 9992

**AN ORDINANCE EXTENDING THE TERM OF THE DOWNTOWN
WATERFRONT SPECIAL SERVICE DISTRICT.**

The city of Duluth does ordain:

Section 1. PURPOSE AND AUTHORIZATION.

1.01. The city has received a petition (the "petition") from property owners in the Downtown Waterfront who want to improve the safety, cleanliness and economic vitality of the Downtown Waterfront area by extending the Downtown Waterfront Special Service District ("district") pursuant to Minn. Stat. §§ 428A.01-428A.101 (the "act"). The petition has been signed by owners of more than 60 percent of the net tax capacity of property that will be subject to service charges and by owners of more than 25 percent of the land area of property that will be subject to service charges.

1.02. Under the provisions of the act, the city council may adopt an ordinance establishing a special service district. Only property that is classified under Section 273.13 and used for commercial, industrial, or public utility purposes, or is vacant land zoned or designated on a land use plan for commercial or industrial use and located in the special service district, may be subject to the charges imposed by the city on the special service district. The ordinance must describe, with particularity, the area within the city to be included within the district and the special services to be furnished in the district. Special services may not include a service that is ordinarily provided throughout the city from general fund revenues of the city unless an increased level of the service is provided in the special service district.

1.03. The council originally established the district on September 13, 2004, pursuant to Ordinance 9688. An operating plan for Duluth's Downtown Waterfront District dated May 5, 2009, ("operating plan") has been developed by a steering committee composed of a broad range of people representing property owners, business leaders, the city and others with a direct stake in enhanced business and economic development conditions in the Downtown Waterfront. A copy of the operating plan is available for public inspection in the city clerk's office, 411 West First

Street, Duluth, Minnesota. The operating plan sets forth the special services to be provided within the district, the particular area of the city to be included within the district's boundaries, the amount and manner of imposing service charges, and the manner in which the special services will be implemented. The operating plan is hereby incorporated into this ordinance. A copy of the operating plan is available for public inspection in the city clerk's office, 411 West First Street, Duluth, Minnesota.

1.04. Pursuant to the authority herein recited, and as requested in the petition, the city council hereby extends the term of the district to provide the special services as provided below.

Section 2. DESCRIPTION OF THE AREA WITHIN THE CITY TO BE INCLUDED IN THE SPECIAL SERVICE DISTRICT.

2.01. The area within the city of Duluth to be included within the District is bounded by the following:

Beginning at the intersection of the east line of Mesaba Avenue and the centerline of Third Street Alley (the "point of beginning"); thence northeast along said centerline and the continuation of said centerline to the northeast line of Tenth Avenue East; thence southeast along the northeast line of Tenth Avenue East to the southeast line of Superior Street (the district includes those properties that abut upon the northeast side of Tenth Avenue East); thence southwest along the southeast line of Superior Street to the southwest line of Eighth Avenue East; thence deflect left at an angle of 45 degrees to the shoreline of Lake Superior; thence continue south and west along the shore of Lake Superior to the northwest line of the Duluth Shipping Canal; thence south and west along said canal to Superior Bay; thence along the Duluth Superior Harbor line to the southwest line of Bayfront Park; thence north and west along the southwest line of Bayfront Park and its extension to the southeast right-of-way of U.S. Interstate Highway 35; thence south and west along said right-of-way line to the northeast line of Eighth Avenue West; thence northwest along said northeast line to the east line of Mesaba Avenue; thence north and east along the east line of Mesaba Avenue to the point of beginning.

All as more particularly depicted in Appendix B to the operating plan.

Section 3. DESCRIPTION OF SPECIAL SERVICES.

3.01. The special services to be furnished in the district are described with particularity in the operating plan on file with the city clerk as Public Document No. 09-0914-24 and will include services relating to (i) clean and safe programs, (ii) marketing/promotion/special events and (iii) physical enhancements.

Section 4. TERM OF THE SPECIAL SERVICE DISTRICT.

4.01. The extended term of the district will begin on January 1, 2010, and will end on December 31, 2014.

Section 5. SERVICE CHARGES.

5.01. Service charges to be imposed within the district will be established by a separate resolution. The resolution must meet the requirements of Minn. Stat. § 428A.03 and may, in addition, meet the requirements of Minn. Stat. § 428A.10.

Section 6. NOTICE TO COMMISSIONER OF REVENUE.

6.01. The city clerk is directed to send a copy of this ordinance to the commissioner of revenue within 30 days after its adoption.

Section 7. NOTICE OF VETO POWER.

7.01. The city clerk is directed, within five days after adoption of this ordinance, to mail a summary of this ordinance to the owner of each parcel included in the special service district and any individual or business organization subject to a service charge. The notice must meet the

requirements of Minn. Stat. § 428A.09.

Section 8. EFFECTIVE DATE.

8.01. This ordinance shall take affect and be in force 45 days from and after the date upon which it is adopted. (Effective date: October 29, 2009)

President Gilbert moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Stauber and President Gilbert -- 8

Nays: Councilor Krause -- 1

Passed September 14, 2009

Approved September 14, 2009

ATTEST:

JEFFREY J. COX, City Clerk

DON NESS, Mayor

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ORDINANCE NO. 9993

AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF \$1,698,450 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 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 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 reconstruction of the Arlington pump station (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 \$1,698,450 for the purpose of paying costs of the project.

1.03 The city has heretofore issued and sold the following: general obligation utilities facility bonds dated September 1, 2002, the water utility portion of such bonds now outstanding in the amount of \$1,131,000; general obligation utilities revenue bonds dated December 1, 2002, the water utility portion of such bonds now outstanding in the amount of \$920,000; general obligation water and sewer utilities revenue refunding bonds dated March 1, 2003, the water utility portion of such bonds now outstanding in the amount of \$95,000; general obligation utilities revenue note dated August 25, 2003, the water utility portion of such note now outstanding in the amount of \$573,124; general obligation water utility revenue note dated July 23, 2004, now

outstanding in the amount of \$1,289,000; general obligation utilities revenue bonds dated December 19, 2006, the water utility portion of such bonds now outstanding in the amount of \$1,010,000; 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 \$845,000; and general obligation utilities revenue bonds dated February 19, 2009, the water utility portion of such bonds now outstanding in the amount of \$196,000. 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 September 1, 2002, December 1, 2002, March 1, 2003, August 25, 2003, July 23, 2004, December 19, 2006, December 13, 2007, and February 19, 2009.

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 \$1,698,450, 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 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. (Effective date: October 18, 2009)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause and President Gilbert -- 8

Nays: Councilor Stauber -- 1

Passed September 14, 2009
Approved September 14, 2009
DON NESS, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

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ORDINANCE NO. 9994

AN ORDINANCE ESTABLISHING METHOD OF DETERMINING WATER, GAS AND SEWER FEES IN LIEU OF ASSESSMENT, AMENDING CHAPTERS 43 AND 48 OF THE CODE.

The city of Duluth does ordain:

Section 1. That Section 43-56 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 43-56. Connection permit--application; fee.

Any person desiring to make connection to a sanitary sewer to serve land not previously assessed for a direct special benefit conferred by the construction of such sewer shall apply to the director for a permit to so connect said property, and shall accompany his application with a description of the land proposed to be served. The director shall have the authority to approve or disapprove said connection. The director's decision to disapprove any such application may be appealed in writing to the special assessment board within ten days of said decision by filing the same in the office of the director. The amount of the fee the applicant is required to pay shall be determined by application of the rate established in accordance with Section 43-56.1 below. Any person making application for a sewer connection pursuant to

this Section shall either elect to pay the established fee in lieu of assessment in full immediately, in which case such fee should be delivered to the director; prior to issuance of the connection permit; or to pay such fee in lieu of assessment over a period of 15 years, in which case payment of such fee and interest shall be made in the same manner as is provided for the payment of deferred assessments under Section 68 of the City Charter. In those cases where a person elects to pay the fee in lieu of assessment over a period of 15 years, he shall be required to execute an agreement, acceptable in form to the city attorney, which shall be recorded by such person against the property to which the sewer connection is made, and which shall bind the applicant and future owners of such property to pay the unpaid balance of the fee in lieu of assessment.

Section 2. That Chapter 43 of the Duluth City Code, 1959, as amended, is hereby amended by the addition of a new Section 43-56.1 which reads as follows:

Sec. 43-56.1. Fee in lieu of assessment fee rate--established.

The special assessment board shall from time to time establish the sewer fee in lieu of assessment to be charged to applicants applying for a connection under Section 43-56 above on a per front foot basis, which fee shall then be applicable for the remainder of the calendar year in which it is established unless subsequently modified by the board as herein provided for. In establishing such fee in lieu of assessment, the board shall take into account the then current average or typical front foot cost for the construction of a sanitary sewer main. Nothing to the contrary in the foregoing withstanding, the board may amend said fee established with regard to any year upon a determination by the board that the previously established fee does not accurately reflect the city's current costs for construction of such sewer mains. Upon approval of the sewer fee in lieu of assessment by the board, it shall cause notice thereof to be filed with the city council. Any person wishing to contest the fee so established may appeal to the council within 30 days of such filing. The determination of the council shall be final.

Section 3. That Section 48-222 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 48-222. Charge in lieu of assessment for connection to water and gas mains.

Any person desiring to make a connection to a water or gas main to serve land not previously assessed for a direct special benefit conferred by the construction of such water or gas main shall apply to the office of the director of public works and utilities or his or her designee, hereinafter referred to as the director, for a permit to so connect said property, and shall accompany his application with a description of the land proposed to be served. The director shall have the authority to approve or disapprove said connection. The director's decision to disapprove any such application may be appealed in writing to the special assessment board within ten days of said decision by filing the same in the office of the director. The amount of the fee in lieu of assessment the applicant is required to pay shall be determined by application of the rate established in accordance with Section 48-223 below. Any person making application for a water or gas connection pursuant to this Section shall either elect to pay the established fee in lieu of assessment in full immediately, in which case such fee should be delivered to the director prior to issuance of the connection permit; or to pay such fee in lieu of

assessment over a period of 15 years, in which case payment of such fee and interest shall be made in the same manner as is provided for the payment of deferred assessments under Section 68 of the City Charter. In those cases where a person elects to pay the fee in lieu of assessment over a period of 15 years, he shall be required to execute an agreement, acceptable in form to the city attorney, which shall be recorded against the property to which the water or gas connection is made, and which shall bind the applicant and the future owners of such property to pay the unpaid balance of the fee in lieu of assessment.

Upon compliance by an applicant with the provisions of this Section, the director shall issue a connection permit; provided, however, that the director shall deny the issuance of such permit if he or she determines that water or gas service might reasonably be provided to the property by a public extension of the water or gas system or if the granting of such permit would encourage development of property which cannot be economically served by other utilities or by improved public access. A decision on the part of the special assessment board to deny issuance of a connection permit may be appealed by the applicant to the city council.

For connections to existing gas mains where the property to be served has not been previously assessed, in lieu of the procedure set forth in this Section, the applicant for connection may pay for said connection as provided for in the gas main extension program developed pursuant to Section 48-214 of this Chapter.

Section 4. That Chapter 48 of the Duluth City Code, 1959, as amended, is hereby amended by the addition of a new Section 48-223 which read as follows:

Sec. 48-223. Fee in lieu of assessment--establishment.

The special assessment board shall from time to time establish the water fee in lieu of assessment and the gas fee in lieu of assessment to be charged to applicants applying for a connection under Section 48-222 above on a per front foot basis, which fee shall then be applicable for the remainder of the calendar year in which it is established unless subsequently modified by the board as herein provided for. In establishing the fee in lieu of assessment, the board shall take into account the then current average or typical front foot cost for the construction of water and gas mains. Nothing to the contrary in the foregoing withstanding, the board may amend either or both of the fees established with regard to any year upon a determination by the board that the previously established fee does not accurately reflect the city's current costs for construction of such water or gas mains. Upon approval of any fee in lieu of assessment by the board, it shall cause notice thereof to be filed with the city council. Any person wishing to contest the fee so established may appeal to the council within 30 days of such filing. The determination of the council shall be final.

Section 5. This ordinance shall take effect 30 days from and after its passage and publication. (Effective date: October 25, 2009)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed September 14, 2009
Approved September 14, 2009
DON NESS, Mayor

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ORDINANCE NO. 9995

**AN ORDINANCE CLARIFYING THE ASSESSMENT OF PROJECTS
INITIATED BY COUNCIL RESOLUTION, AMENDING SECTION 45-
77 OF THE CODE.**

The city of Duluth does ordain:

Section 1. That Section 45-77 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 45-77. Petitions for local improvements; procedure for filing; action of city council.

(a) Any petition for a local improvement shall be filed with the city clerk, who thereupon shall forthwith transmit such petition to the city assessor. The assessor shall, with the assistance of the city engineer, determine whether such petition has been properly executed. In order to be valid, a petition must be executed by the owners of the majority of the front footage of the property which will be assessed for all or a portion of the costs of such improvements. The assessor shall report his findings as to sufficiency to the city council. If the council shall find the petition to be sufficient, the council may adopt an ordering in resolution ordering in the construction of the improvement;

(b) As part of the ordering in resolution as provided for in Section 62 of the Charter, the council shall make a determination of the total estimated cost of the project to be assessed against benefitted properties which may include the city's direct and indirect costs of designing, building and financing the project and the method by which the assessable cost of the improvements are to be assessed against the benefitted property, which may include but not be limited to a "per front foot" basis, a "per square foot" basis or a "per parcel" basis. If the project was initiated by petition pursuant to this Section, upon approval of said resolution, the city shall send notice to the owners of all property to be assessed in the manner provided for in Section 61(b) of the Charter setting forth the method by which the costs are to be assessed and setting forth the estimated amount to be assessed against the subject property;

(c) In the case of projects initiated by petition pursuant to this Section, the owners of property to be assessed shall have ten days from the date that notice is sent to them to deliver notice to the city clerk that they are unwilling to accept the proposed improvements and the proposed assessment against their property and that they wish to withdraw their signature or signatures from the petition, if they were signatories of the petition. If any property owner fails to so notify the city clerk within said ten day period, such owner shall have waived any right to object to the assessment for such work on any grounds related to the sufficiency of the petition process or such owner's consent to the improvement and the assessment therefore;

(d) In the case of projects initiated by petition pursuant to this Section, if,

after the end of the ten day period provided for in subsection (c) above, there remains, not withdrawn from the petition, signatures of the owners of property which will be required to pay a majority of the costs of such improvements which are to be paid by assessment, said petition shall be valid and the city may proceed to have constructed the subject improvements and to so assess for said portion of such costs. If, after said ten day period, there shall not remain on the petition the signatures of the owners of property which will be required to pay a majority of the costs of such improvements which are to be paid by assessment, said petition shall be deemed to have been insufficient.

Section 2. That this ordinance shall take effect 30 days after its passage and publication.
(Effective date: October 25, 2009)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed September 14, 2009
Approved September 14, 2009
DON NESS, Mayor

- - -

OFFICIAL PROCEEDINGS

Special meeting of the Duluth City Council held on Thursday, September 17, 2009, 5:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Cuneo, Eckenberg, Fosle, Gardner, Stauber and President Gilbert -- 7

Absent: Councilors Fedora and Krause -- 2

- - -

MOTIONS AND RESOLUTIONS

The council finds as follows:

(a) On September 15, 2009, 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. 09-0917-01) at 5:00 p.m., September 17, 2009, and ascertained the number of ballots cast at said election and thereby declared that at said election there were 11,059 cast votes, said votes having been cast in the following manner:

City Councilor at Large	
Mike Akervik	2,629
Becky Hall	3,743
Dan Hartman	4,749
Beth Olson	5,429
James Stauber	4,464
City Councilor - Fourth District	
Kerry Gauthier	1,006
Gordon Grant	565
Heath Hickok	472
Matt Potter	135
Celia Scheer	110

NOW, THEREFORE, BE IT RESOLVED, that Becky Hall, Dan Hartman, Beth Olson and James Stauber, 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.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

BE IT FURTHER RESOLVED, that Kerry Gauthier and Gordon Grant, 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 09-0583 was unanimously adopted.

Approved September 17, 2009

DON NESS, Mayor

- - -

The meeting was adjourned at 5:02 p.m.

JEFFREY J. COX, City Clerk

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, September 28, 2009, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Absent: None -- 0

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

09-0928-08 Brian Ronstrom appeal of the planning commission decisions to approve a variance of Section 51-29, Duluth City Code, standards for shoreland permits to construct a retaining wall within 150 feet of the ordinary high water mark of the 40th Avenue East creek and special use permit for grading, filling and/or excavating of more than 50 cubic yards of earth at 301 North 40th Avenue East - ISD 709. -- Committee 2 (Planning and economic development)

09-0928-09 US Energy Services, Inc., communication regarding the proposed natural gas rates for interruptible transportation service (09-0579R). -- Received

09-0928-10 The following communications regarding a request to establish no parking from 10:00 pm to 6:00 am on one pull-off area of Skyline Parkway (09-0600R): (a) William Agenter; (b) Joe Dittrich; (c) Mary Jane Evans; (d) Nancy Gerber; (e) Rose Hoene; (f) William Humes; (g) Chris Monroe; (h) Nancy Nelson; (i) Judy Ness; (j) Grant Odegard; (k) Ron Olson; (l) Susan Olson; (m) Michael Rentz; (n) R.M. Shackelford; (o) Jennifer Smith; (p) Adam Stevenson; (q) Amy Gerber Valentino; (r) Katie Winkler, et al. (four signatures). -- Received

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REPORTS FROM OTHER OFFICERS

09-0928-01 Assessor letter of sufficiency of petition to vacate a portion of Ensign Street from the west line of Chambersburg Street to the east line of Church Street. -- Received

09-0928-02 Clerk application to the Minnesota gambling control board for exemption from lawful gambling license (raffle) from AGC of Minnesota Foundation for February 9, 2010. -- Received

- - -

REPORTS OF BOARDS AND COMMISSIONS

09-0928-03 Building appeal board minutes of July 8, 2009, meeting. -- Received

09-0928-04 Duluth airport authority minutes of: (a) August 18; (b) September 1, 2009, meetings. -- Received

09-0928-05 Duluth economic development authority minutes of August 3, 2009, meeting. -- Received

09-0928-27 Heritage preservation commission minutes of July 28, 2009, meeting. -- Received

09-0928-06 Planning commission minutes of August 11, 2009, meeting. -- Received

09-0928-07 Spirit Mountain recreation area authority minutes of: (a) July 16; (b) August 27, 2009, meetings. -- Received

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OPPORTUNITY FOR CITIZENS TO BE HEARD

Kim Crawford, executive director of Life House, expressed her thanks to the council and citizens of Duluth for their great support for the work that they do with homeless youth. She reviewed the scope of their work.

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RESOLUTION TABLED

Councilor Fosle moved to remove Resolution 09-0579, establishing natural gas rates for interruptible transportation service and rescinding rates for firm transportation service effective with meter readings after September 30, 2009, from the table, which motion was seconded and unanimously carried.

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

Casey Whelan, U.S. Energy, representing UMD and Kemps Ice Cream Company, noted that his firm supplies energy management services to industrial and educational natural gas users in the country. He reviewed at length his perspective on the distribution rate to move gas across the distribution system. Mr. Whelan noted that Duluth's rate is already two to four times higher than comparable utilities. In conclusion, he felt that Duluth has not met the burden of proof justifying a rate increase from 40 percent to 100 percent for only one customer class.

David Montgomery, chief administrative officer, noted that the administration believes that it is appropriate to establish a reasonable transportation rate and that the study done on the proposed rate is reasonable and appropriate.

Councilors discussed the issue at length and asked questions of Mr. Whelan.

Resolution 09-0579 was adopted as follows:

RESOLVED, effective with the natural gas readings after September 30, 2009, all customers of the city's natural gas utility, whose natural gas supply is measured by meter, and purchased from a third party and transported through the utility's distribution system, shall be charged for such service in accordance with the schedule of rates established by this resolution as follows:

(a) For the initial year of such service:

Small volume commercial industrial users – \$40/month + \$0.1881/100 cu.ft.
of gas transported;

Large volume commercial industrial users – \$450/month + \$0.1661/100 cu.ft.
of gas transported;

(b) After the initial year of such service:

Small volume commercial industrial users – \$40/month + \$0.1341/100 cu.ft.
of gas transported;

Large volume commercial industrial users – \$450/month + \$0.1121/100 cu.ft.
of gas transported;

(c) Purchased gas adjustment (PGA) does not apply to these classes of service;

(d) The categories for firm transport services and charges related thereto provided for in Resolution 06-0617, as amended by Resolution 06-0877 shall be of no further effect after September 30, 2009.

RESOLVED FURTHER, that the interruptible transportation - commercial/industrial service

tariff is on file in the office of the city clerk as Public Document No. 09-0928-11.

Resolution 09-0579 was unanimously adopted.

Approved September 28, 2009

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

RESOLVED, that the assessment roll levied for reassessment of a canceled street assessment (Contract #7036; assessable amount: \$1,177.27), to be deposited in Fund 330, is hereby confirmed.

Resolution 09-0587 was unanimously adopted.

Approved September 28, 2009

DON NESS, Mayor

- - -

RESOLVED, that the assessment roll levied for reassessment of a canceled razing assessment (Contract #5325; assessable amount: \$4,657.75), to be deposited in Fund 110, is hereby confirmed.

Resolution 09-0588 was unanimously adopted.

Approved September 28, 2009

DON NESS, Mayor

- - -

RESOLVED, that both Resolution No. 09-0351 and City Agreement No. 20891 with Architecture Advantage, LLP, are hereby amended, authorizing additional architectural and interior design services at various city structures, and increasing the amount by \$15,000, for a total contract amount of \$25,000, payable from General Fund 110, Agency 700, Organization 1423, Object 5520.

Resolution 09-0594 was unanimously adopted.

Approved September 28, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Duluth-Superior Erection for repairs and waterproofing to courtyard and City Hall vault in accordance with its low specification bid of \$68,425, payable out of Capital Fund 450, Agency 030, Object 5520, CP 2009 09-08-B.

Resolution 09-0595 was unanimously adopted.

Approved September 28, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Northstar International,

Inc., d.b.a. Astleford International, for the purchase and delivery of two 2010 International Model 7500 single axle cab and chassis units for the fleet services division in accordance with state of Minnesota Contract No. 440949, Release No. T-647(5), specifications and pricing in the amount of \$153,624 plus \$9,985.56 sales tax plus \$250 license registration and tax exempt plates for a combined total amount of \$163,859.56, terms net 30, FOB destination, payable from the Capital Equipment Fund 250, Department/Agency 015, Organization 2009, Object 5580, Project CE250-V904.

Resolution 09-0603 was unanimously adopted.
Approved September 28, 2009
DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves issuance of the following brewery malt liquor off sale intoxicating liquor license for the period beginning September 1, 2009, and ending August 31, 2010, subject to approval and issuance by the liquor control commissioner and further subject to departmental approvals:

Hippo Down the Street (Carmody Irish Pub), 308 East Superior Street.
Resolution 09-0613 was unanimously adopted.
Approved September 28, 2009
DON NESS, Mayor

- - -

RESOLVED, that the proposed specifications for the new civil service classification of budget and operations analyst, which were approved by the civil service board on August 4, 2009, and which are filed with the city clerk as Public Document No. 09-0918-12, 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 133. 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 09-0584 was unanimously adopted.
Approved September 28, 2009
DON NESS, Mayor

- - -

RESOLVED, that the proposed specifications for the new civil service classification of bid and contract assistant, which were approved by the civil service board on August 4, 2009, and which are filed with the city clerk as Public Document No. 09-0928-13, 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 129. 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 09-0585 was unanimously adopted.
Approved September 28, 2009
DON NESS, Mayor

- - -

RESOLVED, that the proposed specifications for the new civil service classification of buyer, which were approved by the civil service board on July 7, 2009, and which are filed with the city clerk as Public Document No. 09-0928-14, are approved; that said classification shall be subject to the city's collective bargaining agreement with its basic unit employees; and that pay

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

range for said classification shall be Range 130. 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 09-0586 was unanimously adopted.
Approved September 28, 2009
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 alley between Blocks 151 and 158, Crosley Park Division, from the east line of 51st Avenue East to the west line of 52nd Avenue East; 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 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 is useless, based on the finding that there are no public improvements within the alley and that there will be no need for the alley in the future; and

(c) The city planning commission, at its September 8, 2009, regular meeting, did approve, unanimously, vacating the alley; and

(d) The city council of the city of Duluth approves the vacation of the following and as more particularly described on Public Document No. 09-0928-15:

The alley between Blocks 151 and 158, Crosley Park Division, from the east line of 51st Avenue East to the west line of 52nd Avenue East; and

(e) That the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution together with a plat showing the portion of the easement to be vacated.

Resolution 09-0589 was unanimously adopted.
Approved September 28, 2009
DON NESS, Mayor

- - -

WHEREAS, City Council Resolution No. 09-0316, adopted May 11, 2009, approved the amendment to the 2008 action plan portion of the Duluth consolidated plan for housing and community development FY 2005-2009; and

WHEREAS, the secretary of HUD is authorized to make grants to cities and/or counties to finance local community development programs, approved in accordance with the provisions of Title XII, the American Recovery and Reinvestment Act, as amended (the HPRP program).

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are hereby authorized to make and submit appropriate documentation to HUD for those projects and corresponding funding levels as set forth below from Fund 262-025-5434-CDSTIM:

<u>SUBPROJECT</u>	<u>2008 HPR PROGRAM - FUND 262, PROJECT HPRP PROJECTS</u>	<u>AMOUNT</u>
HPCA	Center for Alcohol and Drug Treatment, prevention case manager	\$ 49,500
HPSA	Salvation Army, prevention case manager-FHPAP	78,000
HPLH	Life House, prevention case manager	32,500

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

RRL1	Life House, FHPAP homeless case manager	52,000
RRL2	Life House, weekend service	52,000
RRCH	CHUM, FHPAP homeless case manager	65,000
RRS1	Salvation Army, housing specialist	60,000
RRCA	Center for Alcohol and Drug Treatment, flex fund including Thunderbird and Wren House	150,000
RRS2	Salvation Army, flex fund	542,404
ADPA	Program administration, city	58,140
ADWD	Wilder, HMIS data	23,256
Total		\$1,162,800

Resolution 09-0604 was unanimously adopted.
 Approved September 28, 2009
 DON NESS, Mayor

- - -

RESOLVED, that:

(a) The city council finds a sufficient petition was filed with the city clerk requesting the vacation of that part of Wyoming Street lying easterly of the easterly line of North 60th Avenue East and westerly of the westerly line of Occidental Boulevard; 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 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 some or all of the uses for which it was dedicated as the this street has not been improved for vehicle purposes, and there are no plans to improve this street and retaining the vacated street as an easement for utilities and pedestrian use; and

(c) The planning commission, at its September 8, 2009, regular meeting did approve, unanimously, vacating the street petitioned for vacation as the street is useless for the purpose for which it was dedicated as the street has not been developed and will not likely be developed and an easement can be established for utilities and pedestrian purposes.

RESOLVED FURTHER:

(a) That the city council of the city of Duluth approves the vacation of that part of Wyoming Street lying easterly of the easterly line of North 60th Avenue East and westerly of the westerly line of Occidental Boulevard located in the Lester Park Third Division to Duluth, retaining a utility and pedestrian easement within the following boundaries: beginning at a point on the east line of 60th Avenue East and 13 feet south of the north line of Wyoming Street, thence easterly 110 feet to a point, thence northerly 13 feet to a point on the north line of Wyoming Street, thence easterly 115 feet to a point on the north line of Wyoming Street, said point being 25 feet east of the southwest corner of Lot 6, Block 35, Lester Park Third Division, thence south 20 feet perpendicular to the previous line to a point, thence southwesterly to the northwest corner of Lot 1, Block 36, Lester Park Third Division, thence north 53 feet along the east line of 60th Avenue East to the point of beginning and there terminating and also retaining an easement for pedestrian purposes, ten feet either side of the centerline and the entire length of the vacated easement, more particularly described on Public Document No. 09-0928-16; and

(b) That the city clerk is hereby directed to record, with the register of deeds and/or the

registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution.

Resolution 09-0605 was unanimously adopted.

Approved September 28, 2009

DON NESS, Mayor

- - -

RESOLVED, that:

(a) The city council grant a special use permit submitted by AT&T Mobility for a 62 foot monopole to support cell phone antennas and the construction of a ten foot x 15 foot platform and support equipment shelter located at 126 South Boundary Avenue legally described on Public Document No. 09-0928-17; and

(b) Pursuant to Section 50-32(ff) of Article IV of the Duluth City Code, 1959, as amended, 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 planning commission, at its September 8, 2009, regular meeting, recommended approval of the request with conditions; and

(d) The approval was made because of the city planning commission findings 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.

FURTHER RESOLVED, that the city council of the city of Duluth approves a special use permit for a monopole communications tower and equipment building, subject to the following conditions:

(a) Proper permits are to be secured prior to start of construction;

(b) The tower and equipment shelter be limited to, constructed and maintained according to the following documents provided by by AT&T Mobility and labeled DLTHMNU2084, PROCTOR SOUTH, Sheets T-1, S-1, S-2, C-1, C-2, dated 07/28/09.

Resolution 09-0608 was unanimously adopted.

Approved September 28, 2009

DON NESS, Mayor

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RESOLVED, that proper city officials are hereby authorized to execute and implement a contract, in substantially the form and containing substantially the terms of that draft contract on file in the office of the city clerk as Public Document No. 09-0928-18, with St. Louis County to provide supported work services to Minnesota family investment program (MFIP) participants for the period July 1, 2009, through June 30, 2010, in an amount expected to be \$128,522.88 and not to exceed \$385,568.65. Said monies under this agreement shall be received from Funding Source 4260 and deposited in Fund 268, Agency 031, Organization 6228 (miscellaneous workforce grant).

Resolution 09-0602 was unanimously adopted.

Approved September 28, 2009

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 with the office of the city clerk as Public Document No. 09-0928-19, with the federal department of energy to accept an energy efficiency and conservation block grant in the amount of \$850,300 to be deposited into Fund 257 for the period of September 14, 2009, through September 13, 2012.

Resolution 09-0612 was unanimously adopted.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Approved September 28, 2009
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to pay for membership dues for the year commencing September 1, 2009, to the League of Minnesota Cities in the amount of \$28,267; payable from Fund 110, Agency 700, Organization 1401, Object 5433.

Resolution 09-0582 was unanimously adopted.

Approved September 28, 2009
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. 09-0928-20, with CBIZ Benefits & Insurance Services, Inc., for employee benefits consulting services, in an annual amount not to exceed \$80,000, which shall be payable from Fund 110, Agency 700, Organization 1407, Object 5441.

Resolution 09-0615 was unanimously adopted.

Approved September 28, 2009
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Gridor Construction, Inc., for the Arlington pump station reconstruction in the amount of \$1,389,000, payable out of the Water Bond Fund 511, Department/Agency 500, Object 5532, City Project No. 0695WA.

Resolution 09-0529 was unanimously adopted.

Approved September 28, 2009
DON NESS, Mayor

- - -

RESOLVED, that Resolution No. 09-0088 is hereby amended and the original purchase order to Service Electric of Superior, Inc., adjusted for additional electrical work at the Lakewood water treatment plant and pump stations for the department of public works and utilities, in accordance with state of Minnesota Contract #437179, Release E-79(5), specifications and pricing, at an increase of \$25,000, payable from the Water Fund 510, Department/Agency 500, Organization 1955, Object 5404. This brings the total purchase order amount to \$89,000, payable from various funds, departments/agencies, objects.

Resolution 09-0590 was unanimously adopted.

Approved September 28, 2009
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. 09-0928-21 with the St. Louis and Lake counties regional railroad authority for the construction, operation and maintenance of a sanitary sewer line crossing the St. Louis and Lake counties regional railroad authority's Lakefront Line right-of-way at a location approximately 340 feet east of Third Avenue East at a cost of \$3,000 plus a fee of \$100 per year payable from Sanitary Sewer Fund 530, Agency 500, Division 1930-2330, Object 5441, City Project No. 0802SN.

Resolution 09-0593 was unanimously adopted.
Approved September 28, 2009
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a lease agreement with T-Mobile Central, LLC, a copy of which is on file in the office of the city clerk as Public Document No. 98-0928-22, for the location and operation by T-Mobile of wireless communication equipment on the Orphanage Water Tower, payments to be paid to the Water Fund 510, Agency 500, Revenue Source 4809.

Resolution 09-0601 was unanimously adopted.
Approved September 28, 2009
DON NESS, Mayor

- - -

The city council finds:

(a) The city of Duluth must review plans and specifications for the installation of the Enbridge Alberta Clipper 36-inch pipeline and the Enbridge Southern Lights 20-inch pipeline that will cross the city of Duluth's gas transmission main;

(b) The city desires to hire a consultant engineer to provide the engineering services required for the review of the Enbridge plans;

(c) Lake Superior Consulting, LLC, has submitted a proposal for engineering services in connection with this project.

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with Lake Superior Consulting, LLC, to provide the city with such engineering services, at an estimated cost of \$3,640, payable from the Gas Fund 0520, Department/Agency 500, Organization 1930, Object 5303, City Project 0870GS.

Resolution 09-0607 was unanimously adopted.
Approved September 28, 2009
DON NESS, Mayor

- - -

RESOLVED, that pursuant to Minnesota Statutes Section 471.342, the guidelines for the private sewer service grant program approved pursuant to Resolution 09-0507 are hereby amended by substituting therefore those guidelines on file in the office of the city clerk as Public Document No. 09-0928-23 which are hereby adopted and approved.

Resolution 09-0609 was unanimously adopted.
Approved September 28, 2009
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to accept a justice assistance grant from the American Recovery and Reinvestment Act through the Minnesota department of public safety, office of justice programs, in an amount estimated to be \$300,000 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, and to execute any documents required to be executed to accept such grant.

Resolution 09-0592 was unanimously adopted.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Approved September 28, 2009
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 12th Avenue West from Sixth Street going south to the southerly dead end.

Resolution 09-0596 was unanimously adopted.

Approved September 28, 2009
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 segment:

The north side of Superior Street from 40th Avenue East to 50 feet east of 3860 East Superior Street (approximately 1,100 feet) shall be signed no parking.

The south side of the same segment of roadway shall be signed no parking 2:00 AM to 6:00 AM.

Resolution 09-0598 was unanimously adopted.

Approved September 28, 2009
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept a supplemental grant in the amount of \$398,820 from the U.S. department of justice office of violence against women, to be used as part of that office's grants to encourage arrest policies and enforcement of protection orders program ("arrest" 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 program), increasing the total amount accepted thereunder to \$798,791 and extending the termination date to July 31, 2011, said funds to be deposited in Fund 215-200-2280-4209-02, and to execute grant documents in connection therewith.

Resolution 09-0599 was unanimously adopted.

Approved September 28, 2009
DON NESS, Mayor

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The following resolutions were also considered:

RESOLVED, that:

(a) The city council grant to a special use permit submitted by T-Mobile Central, LLC, for a construction of a multi-tenant, wireless communications facility including a 150 foot monopole tower and 10 feet x 12 feet x 10 feet ground equipment shelter at 8505 Knowlton Creek Boulevard legally described as southeasterly 1/4 of the southeasterly 1/4 of the southwesterly 1/4, Section 14, T-49, R-15, Plat #010-2744-00105; and

(b) Pursuant to Section 50-32(ff) of Article IV of the Duluth City Code, 1959 as amended, was 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 planning commission, at its September 8, 2009, regular meeting, recommended

approval of the request with conditions; and

(d) The approval was made because of the city planning commission findings 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.

FURTHER RESOLVED, that the city council of the city of Duluth approves a special use permit for a monopole communications tower and equipment building, subject to the following conditions:

(a) Proper permits are to be secured prior to start of construction;

(b) The tower and equipment shelter be limited to, constructed and maintained according to the following documents provided by T-Mobile Central, LLC, labeled: City of Cloquet, A10358, Sheets T-1, B-1, C-1, C-2, C-3, A-1, S-1, S-2, E-1, Dated 5/21/09;

(c) Removal of any foliage within and/or adjacent to the site be kept to a minimum to maintain visual screening;

(d) Appropriate measures be taken to protect the unnamed stream adjacent to the site. Resolution 09-0606 was unanimously adopted.

Approved September 28, 2009

DON NESS, Mayor

- - -

RESOLVED, that:

The city council grant a special use permit to Steve Kuepers, Kuepers Architects & Builders, for a low density planned development at 9320 Grand Avenue (Westwood Heights), based on the following findings:

(a) Steve Kuepers of Kuepers Architects & Builders, has submitted to the city council a request for a special use permit for a low density planned development, hereunto referred to as Westwood Heights, in accordance with Section 50-32 of the City Code, to construct 72 units of rental housing, containing 24 three-bedroom units and 48 two-bedroom units, north of Morgan Park on a 20 acres site to include nine buildings with eight units per building; and

(b) Westwood Heights meets the eligibility requirements for a low density planned development in an R-1 one-family residential district; and

(c) Westwood Heights meets the off street parking requirement of three off street spaces for each two dwelling units for a total of 108 parking stalls, including a garage with each unit, as well as 35 on street parking stalls for guests along the south side of a private road to be constructed as a rural section with no curb and gutter, built at a width of 28 feet; and

(d) Westwood Heights provides 8.5 acres of open space, an on site stormwater retention pond, a playground and sidewalk along the private road that connects to the nearby trail system; and

(e) A planned residential use at this location is consistent with the comprehensive land use plan's designation on the future land use map as low density neighborhood; and

(f) Said permit application was duly referred to the city planning commission and a public hearing was held on the matter at their July 14, 2009, meeting and was tabled due to concerns the commission had related to the number of parking stalls for guests, location of stormwater ponds, road width and fire access; and

(g) The applicant presented a modified proposal to the city planning commission at their August 11, 2009, meeting addressing these concerns and the matter was tabled due to concerns the commission had related to the distribution of guest parking on the site and desire by the commission for the applicant to meet with residents from the nearby Morgan Park community; and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

(h) After meeting with the Morgan Park community, the applicant presented a modified proposal to the city planning commission at their September 8, 2009, meeting which incorporated input provided by the community; and

(i) Approval is granted to Steve Kuepers, Kuepers Architects & Builders, for a low density planned development, legally described as S26, T49, R15, that part of Lot 4 and of NW 1/4 of SW 1/4 lying north of Spirit Lake Trans Ry and east of 93rd Avenue West and Arbor Street, subject to the following condition:

(1) The project be constructed and maintained in accordance with documents submitted by SEH, Inc., titled "Westwood Estates Concept Plan Duluth Minnesota," dated September 2, 2009, and as identified as Public Document No. 09-0928-24.

Resolution 09-0610 was unanimously adopted.

Approved September 28, 2009

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: 323 East Ninth Street, legally described as east 1/2 Lot 59, Block 126, Duluth Proper Third Division, notice by certified mail to Estate of George Cox, c/o Todd Conrad, 7209 Hartkopf Lane, Brooklyn Park, MN 55428, signed by Todd Conrad on July 3, 2009; and

Parcel 2: 106 South Blackman Avenue, legally described as that part of Lot 5, lying north of a line beginning on the west line of said Lot 5, 58.73 feet north of the southwest corner thence to a point on the east line of said Lot 5, 75.11 feet north of the southeast corner, Block 3, Clearview Park Duluth, notice by certified mail to Patricia Erickson, 1274 Water Hen Road, Cotton, MN 55724-0232, signed by Patricia Erickson on July 3, 2009; and

Parcel 3: 2412 West First Street, legally described as the west 1/2 of Lot 390, Block 49, Duluth Proper Second Division, notice by certified mail to Timothy M. Chuk, 2822 Second Avenue East, Hibbing, MN 55746, signed by Michele Chuck on July 6, 2009, and by certified mail to state of Minnesota, c/o St. Louis County Land Department, 607 Government Services Building, 320 West Second Street, Duluth, MN 55802, signed by Ken Schoen on July 6, 2009; and

Parcel 4: 619 North 58th Avenue West, legally described as Lot 7, Block 166, West Duluth Fifth Division, notice by certified mail to Gary E. Vittorio, 5803 Cody Street, Duluth, MN 55807, signed by Stephanie Vittorio on July 27, 2009; and

Parcel 5: 1330 Fern Avenue, legally described as the northerly ten feet of Lot 6 and the southerly 25 feet of Lot 7, Block 9, Homewood Addition to Duluth, notice by certified mail to Joann G. Tesdahl, 1330 Fern Avenue, Duluth, MN 55805, returned to sender, marked "Moved left no address - unable to forward" and advertised in the Duluth News Tribune on July 23, 2009, and July 24, 2009; and

Parcel 6: 2410 Florence Avenue, legally described as Lot 4, Block 2, Lincoln Park Gardens Third Division, notice by certified mail to MN Housing Finance Agency, c/o US Bank Home Mortgage, Foreclosure Department, PO Box 1030, Minneapolis, MN 55480-1030, signed by Tom Hall on July 3, 2009; and

Parcel 7: 615 East Tenth Street, legally described as east 1/2 of Lot 103, Block

161, Duluth Proper Third Division, notice by certified mail to state of MN Chapter 278, c/o St. Louis County Land Department, 607 Government Services Building, 320 West Second Street, Duluth, MN 55802, signed by Barb Samarzia on August 31, 2009; and

(b) All such orders are now final; and

(c) The cost for demolition of the structures has been estimated to not exceed \$70,000, and there is a current unobligated balance in Fund 110-150-1504-5453 of \$70,110.70; and

(d) Fire escrow monies are being held for the removal of structures on parcels 4 and 6 in the amount of \$16,676.27.

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 110-150-1504-5453 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 09-0591 was unanimously adopted.

Approved September 28, 2009

DON NESS, Mayor

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Resolution 09-0600, by Councilor Cuneo, requesting the administration establish no parking from 10:00 p.m. to 6:00 a.m. on one pull-off area of Skyline Parkway, was introduced for discussion.

Councilor Cuneo moved to amend the resolution as follows:

(a) After the phrase, "Duluth City Code, 1959, as amended," insert the phrase, "work with the parking commission to review establishing";

(b) Replace "0.41" with "0.73,"

which amendment was seconded and unanimously failed.

Councilor Cuneo moved to amend the resolution, after the phrase, "Duluth City Code, 1959, as amended," to read, "work with the parking commission to review parking issues related to the pull-off areas located on the south side of Skyline Parkway between 40th Avenue West and 38th Avenue West,"

which amendment was seconded and unanimously failed.

Councilors discussed the lack of merits for this resolution and by doing this, it would discriminate against other areas. The council felt that Skyline Parkway is to be enjoyed by all and there is no compelling reason to close an overlook and added that there are other ways to address the specific problems there.

Resolution 09-0600 failed upon a unanimous vote (Public Document No. 09-0928-25).

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INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR FEDORA

09-051 - AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF GENERAL OBLIGATION REVENUE BONDS OR NOTE OF THE CITY OF DULUTH IN THE MAXIMUM AMOUNT OF \$1,020,000 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 FOSLE

09-050 - AN ORDINANCE AUTHORIZING THE DIRECT SALE OF CERTAIN PROPERTY IN THE SPIRIT VALLEY AREA TO CHARLES D. AND PATRICIA J. SHAW FOR \$7,500.

- - -

The following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR FEDORA

09-048 (9996) - AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF GENERAL OBLIGATION REVENUE BONDS OF THE CITY OF DULUTH FOR THE IMPROVEMENT OF THE MUNICIPAL SEWER UTILITY IN AN AMOUNT NOT TO EXCEED \$975,000 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, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause and President Gilbert -- 8

Nays: Councilor Stauber -- 1

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INTRODUCED BY COUNCILOR STAUBER

09-049 (9997) - AN ORDINANCE AN ORDINANCE DESIGNATING THE GEORGE H. AND CHARLOTTE S. CROSBY HOUSE, AT 2029 EAST SUPERIOR STREET, AS A DULUTH HERITAGE PRESERVATION LANDMARK.

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

- - -

INTRODUCED BY COUNCILOR FOSLE

09-012 (9998) - AN ORDINANCE AUTHORIZING THE DIRECT SALE OF CERTAIN PROPERTY IN THE UPPER LESTER PARK AREA TO MICHAEL J. AND MELISA L. LEDOUX FOR \$5,200.

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 8:18 p.m.

JEFFREY J. COX, City Clerk

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ORDINANCE NO. 9996

AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF GENERAL OBLIGATION REVENUE BONDS OF THE CITY OF DULUTH FOR THE IMPROVEMENT OF THE MUNICIPAL SEWER UTILITY IN AN AMOUNT NOT TO EXCEED \$975,000

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, Sections 115.46 and 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 improvement program for the municipal sewer utility includes (i) the sanitary sewer portion of the Lakeside SIP project; and (ii) the sanitary sewer portion of the Woodland Avenue project (collectively, the "project").

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, and determines it is necessary to issue general obligation sewer utility revenue bonds in the maximum amount of \$975,000 for the purpose of paying costs of the project, and paying for a portion of the interest cost of the issue, as allowed by Minnesota Statutes, Section 475.56.

1.03 The city has heretofore issued and sold the following: general obligation gas and sewer utilities revenue bonds dated December 1, 2001, the sewer utility portion of such bonds now outstanding in the amount of \$805,000; general obligation utilities facility bonds dated September 1, 2002, the sewer utility portion of such bonds now outstanding in the amount of \$1,338,000; general obligation utilities revenue bonds dated December 1, 2002, the sewer utility portion of such bonds now outstanding in the amount of \$1,220,000; general obligation water and sewer utilities revenue refunding bonds dated March 1, 2003, the sewer utility portion of such bonds now outstanding in the amount of \$195,000; general obligation sewer utility revenue note dated December 12, 2003, authorized in the amount of \$1,179,115; general obligation sewer utility revenue bonds dated December 1, 2004, now outstanding in the amount of \$3,175,000; general obligation sewer utility revenue bonds dated December 19, 2005, now outstanding in the amount of \$2,980,000; general obligation utilities revenue bonds dated December 19, 2006, the sewer utility portion of such bonds now outstanding in the amount of \$850,000; general obligation sewer utility revenue note dated July 12, 2007, authorized in the amount of \$2,042,350; general obligation sewer utility revenue bonds dated December 13, 2007, now outstanding in the amount of \$2,020,000; 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 \$1,165,035; general obligation utilities revenue bonds dated February 19, 2009, the sewer utility portion of such bonds now outstanding in the amount of \$1,444,000; and general obligation sewer utility revenue note dated August 3, 2009, authorized in the amount of \$796,835. Under the provisions of the ordinances authorizing said bonds, the city reserved the privilege of issuing additional bonds payable from said net revenues on a parity with the bonds and notes dated December 1, 2001, September 1, 2002, December 1, 2002, March 1, 2003, December 12, 2003, December 1, 2004, December 19, 2005, December 19, 2006, July 12, 2007, December 13, 2007, February 19, 2009, and August 3, 2009.

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 of the city of Duluth

in the maximum amount of \$975,000 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 of 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 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 other applicable laws.

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, and current operating expenses and to maintain the municipal sewer utility and also to 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. CERTIFICATION 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 and 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. (Effective date: November 1, 2009)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause and President Gilbert -- 8

Nays: Councilor Stauber -- 1

Passed September 28, 2009
Approved September 28, 2009
DON NESS, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

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ORDINANCE NO. 9997

AN ORDINANCE AN ORDINANCE DESIGNATING THE GEORGE H. AND CHARLOTTE S. CROSBY HOUSE, AT 2029 EAST SUPERIOR STREET, AS A DULUTH HERITAGE PRESERVATION LANDMARK.

The city of Duluth does ordain:

Section 1. That the city of Duluth does designate, pursuant to Chapter 28A of the Duluth City Code, 1959, as amended, the George H. and Charlotte S. Crosby House, at 2029 East Superior Street, as a Duluth heritage preservation landmark; said landmark is described in Public Document No. 09-0928-26 on file with the city clerk and is described as follows: city of Duluth heritage preservation landmark nomination and preservation plan for the George H. and Charlotte S. Crosby House, at 2029 East Superior Street, Duluth, Minnesota.

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: November 1, 2009)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Nays: None -- 0

Passed September 28, 2009
Approved September 28, 2009
DON NESS, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 9998

AN ORDINANCE AUTHORIZING THE DIRECT SALE OF CERTAIN PROPERTY IN THE UPPER LESTER PARK AREA TO MICHAEL J. AND MELISA L. LEDOUX FOR \$5,200.

The city of Duluth does ordain:

Section 1.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

(a) As per Section 2-176(a) of the Duluth City Code, the manager of the city's physical planning division has reviewed this proposed conveyance and found it to be in conformity with the city's comprehensive land use plan;

(b) As per Section 2-176(b) of the Duluth City Code, the city assessor has provided a written estimate of the market value which estimates that value as \$5,200;

(c) As per Section 2-178 of the Duluth City Code, the property identified in Section 2 below is of insufficient size and unbuildable as a stand alone parcel.

Section 2. That the proper city officials are hereby authorized to sell and convey the following described property, by quit claim deed, to Michael J. and Melisa L. LeDoux, husband and wife, for the amount of \$5,200 to be deposited into Fund 110, Agency 700, Organization 1420, Object 4640, and further to execute all documents necessary with regard to said conveyance:

Lot 20 (except easterly 20 feet), Block 4, Edgebrook Division (1390-00660).

Section 3. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: November 1, 2009)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed September 28, 2009
Approved September 28, 2009
DON NESS, Mayor

- - -

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, October 12, 2009, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Absent: None -- 0

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

09-1012-01 Scott Forbort petition to vacate Third Avenue West north of Seventh Street extending to the north boundary described as Lot 47, Block 92, Duluth Proper Third Division. -- Assessor

09-1012-02 Park Point Properties, LLC, et al. (two signatures), petition to reclassify from R-1-c to R-3 Lots 51-60, St. Louis Avenue, Upper Duluth. -- Assessor

09-1012-03 The following communications regarding appeal of Brian Ronstrom of planning commission approvals for a special use permit and variance for Independent School District 709 as authorized by Chapter 51, Article III, of the City Code for property located at 301 North 40th Avenue East (09-0620R and 09-0621R): (a) Gary Glass; (b) Karen Heisick; (c) Independent School District 709; (d) Virginia May and Wayne Jarvis; (e) Jerome Kwako; (f) Scott Lyons; (g) Linda Magni; (h) Nancy Nelson; (i) Richard Paulson; (j) Rodger Pearson; (k) Brian Ronstrom. -- Received

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REPORTS OF BOARDS AND COMMISSIONS

09-1012-04 Board of zoning appeals minutes of: (a) July 28; (b) August 25, 2009, meetings. -- Received

09-1012-05 Duluth airport authority balance sheet of July 31, 2009. -- Received

09-1012-06 Duluth public arts commission minutes of August 17, 2009, meeting. -- Received

09-1012-07 Duluth transit authority: (a) Financial statement of May 2009; (b) Minutes of June 24, 2009, meeting. -- Received

09-1012-08 Entertainment and convention center authority minutes of: (a) September 29, regular; (b) September 29, 2009, building committee, meetings. -- Received

09-1012-09 Housing and redevelopment authority minutes of: (a) June 30; (b) July 13; (c) July 28, 2009, meetings. -- Received

09-1012-10 Library board minutes of August 25, 2009, meeting. -- Received

09-1012-11 Seaway Port authority financial report for July 2009. -- Received

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OPPORTUNITY FOR CITIZENS TO BE HEARD

J. Paul King expressed frustration that property taxes have increased over the last four years and there is too much money being wasted on projects that the city should not be managing such as Spirit Mountain and the Great Lakes Aquarium.

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John Goldfine urged the council not to keep the 300 foot rule in the new zoning code as it

is giving Duluth the reputation of not wanting college students here and the city needs them to stay in Duluth after graduation.

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

RESOLVED, that the Duluth City Council hereby approves of the Minnesota department of commerce issuing a 2010 currency exchange license to Pawn America Minnesota, LLC, 339 East Central Entrance.

Resolution 09-0616 was unanimously adopted.

Approved October 12, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Morton International, Inc., Morton Salt Division, for the purchase and delivery of 15,000 tons of road salt for the 2009-2010 season (October through April) in accordance with state of Minnesota Contract #441103, Release S-803(5), specifications and pricing at \$53.71 per ton in the amount of \$805,650 plus sales tax of \$55,388.44, for a total combined amount of \$861,038.44, terms net 30, FOB destination, payable as follows from the General Fund 110, Department/Agency 120, Organization 1217-2140, and Object 5223:

(a) \$344,415.38, 6,000 tons, budget year 2009 (October - December); and

(b) \$516,623.06, 9,000 tons, budget year 2010 (January - April).

Resolution 09-0618 was unanimously adopted.

Approved October 12, 2009

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the transfer of the following on sale intoxicating liquor license and on sale Sunday license for the period ending August 31, 2010, subject to departmental approvals and the payment of sales and property taxes:

The Lake Effect, Inc. (Lake Avenue Café), 394 Lake Avenue South, with Mark Swenson, 40 percent stockholder, Derek Snyder, 40 percent stockholder, and Michael Schraepfer, 20 percent stockholder, transferred from Lake Avenue Café, Inc. (Lake Avenue Café), same address.

Resolution 09-0622 was unanimously adopted.

Approved October 12, 2009

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the transfer of the following on sale intoxicating liquor license, on sale Sunday license and application for a 2:00 a.m. beverage license for the period ending August 31, 2010, subject to departmental approvals and the payment of sales and property taxes:

K&K, LLC (Duluth Athletic Club), 21 North Fourth Avenue West, with Kevin Merrick, president and 50 percent stockholder, and Kurt Galchus, treasurer and 50 percent stockholder,

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

transferred from Club Friction, LLC (Score Sports Bar & Grill), same address.

Resolution 09-0623 was unanimously adopted.

Approved October 12, 2009

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 St. John's School and Lincoln Park Business Group 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 09-0628 was unanimously adopted.

Approved October 12, 2009

DON NESS, Mayor

- - -

RESOLVED, that pursuant to the requirements of Minnesota Statutes Section 645.021, Subd. 3, the Duluth City Council hereby approves Laws of Minnesota 2009, Chapter 88, Article 5, Section 17, modifying the requirements pertaining to removal of parcels from tax increment districts and to the use of tax increment proceeds after a five year period as described in said section.

Resolution 09-0625 was unanimously adopted.

Approved October 12, 2009

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 sewer basin numbers 23 and 24 described herein be added to sewer basins 1, 2, 3, 4, 5, 6, 7, 8, 10 and 11, and part of 13, 14, 15, 16, 17, 22, 25 and 26 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 sanitary sewer basin numbers 23 and 24 are hereby designated as 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.

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 09-0614 was unanimously adopted.

Approved October 12, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officers are authorized to accept an FY2009 Recovery Act Edward Byrne Memorial Justice Assistance Grant Award No. 2009-SC-B9-0127 from the United States department of justice, bureau of justice assistance, office of justice programs, in the amount of \$242,760, to be deposited in Fund 215-025-2290-4209-02, to be used for enhancing forensic and crime scene investigations, and to execute any documents required to be executed to accept such grant.

Resolution 09-0617 was unanimously adopted.
Approved October 12, 2009
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, October 26, 2009, 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 Elizabeth Street in the vicinity of the University of Minnesota - Duluth as a resident permit parking zone, as manifested by the map on Public Document No. 09-1012-12.

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.

Resolution 09-0619 was unanimously adopted.
Approved October 12, 2009
DON NESS, Mayor

- - -

The following resolutions were also considered:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the following on sale intoxicating liquor 2:00 a.m. beverage license for the period ending August 31, 2010:

Zeitgeist Arts, LLC (Teatro, Zinema 2, Zeitgeist Arts Café), 222 East Superior Street.

Resolution 09-0624 was adopted upon the following vote:

Yeas: Councilors Anderson, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 8

Nays: None -- 0

Abstention: Councilor Cuneo -- 1

Approved October 12, 2009

DON NESS, Mayor

- - -

Resolutions 09-0620 and 09-0621, affirming and reversing, respectively, the actions of the planning commission and granting a special use permit and variance to Independent School District 709 as authorized by Chapter 51, Article III, of the city of Duluth Legislative Code for property located at 301 North 40th Avenue East (unnamed eastern high school project), by Councilor Stauber, were introduced.

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Gardner, Krause, Stauber and President Gilbert -- 8

Nays: None -- 0

Abstention: Councilor Fosle -- 1

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR FOSLE

09-052 - AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN CITY PROPERTY TO VARIOUS PARTIES.

- - -

INTRODUCED BY COUNCILOR FOSLE

09-053 - AN ORDINANCE AUTHORIZING THE DIRECT SALE OF CERTAIN PROPERTY IN WISCONSIN TO DL SKIING, LLC, FOR \$100.

- - -

The following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR FEDORA

09-051 (9999) - AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF GENERAL OBLIGATION REVENUE BONDS OR NOTE OF THE CITY OF DULUTH IN THE MAXIMUM AMOUNT OF \$1,020,000 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, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause and President Gilbert -- 8

Nays: Councilor Stauber -- 1

- - -

INTRODUCED BY COUNCILOR FOSLE

09-050 (10000) - AN ORDINANCE AUTHORIZING THE DIRECT SALE OF CERTAIN PROPERTY IN THE SPIRIT VALLEY AREA TO CHARLES D. AND PATRICIA J. SHAW FOR \$7,500.

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

- - -

The meeting was adjourned at 7:20 p.m.

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

- - -

ORDINANCE NO. 9999

AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF GENERAL OBLIGATION REVENUE BONDS OR NOTE OF THE CITY OF DULUTH IN THE MAXIMUM AMOUNT OF \$1,020,000 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 a commitment from the Minnesota public facilities authority (the "authority") for a loan and grant for the construction of Phase I of the east interceptor sanitary sewer overflow storage facility (Lift Station No. 6 reconstruction, collection system and diversion structure piping improvements) (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 sewer utility for the project, and determines that it is necessary to issue general obligation sewer utility revenue bonds or a note in the maximum amount of \$1,020,000 for the purpose of paying costs of the project.

1.03 The city has heretofore issued and sold the following: general obligation gas and sewer utilities revenue bonds dated December 1, 2001, the sewer utility portion of such bonds now outstanding in the amount of \$805,000; general obligation utilities facility bonds dated September 1, 2002, the sewer utility portion of such bonds now outstanding in the amount of \$1,338,000; general obligation utilities revenue bonds dated December 1, 2002, the sewer utility portion of such bonds now outstanding in the amount of \$1,220,000; general obligation water and sewer utilities revenue refunding bonds dated March 1, 2003, the sewer utility portion of such bonds now outstanding in the amount of \$195,000; general obligation sewer utility revenue note dated December 12, 2003, authorized in the amount of \$1,179,115; general obligation sewer utility revenue bonds dated December 1, 2004, now outstanding in the amount of \$3,175,000; general obligation sewer utility revenue bonds dated December 19, 2005, now outstanding in the amount of \$2,980,000; general obligation utilities revenue bonds dated December 19, 2006, the sewer utility portion of such bonds now outstanding in the amount of \$850,000; general obligation sewer utility revenue note dated July 12, 2007, authorized in the amount of \$2,042,350; general obligation sewer utility revenue bonds dated December 13, 2007, now outstanding in the amount of \$2,020,000; 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 \$1,165,035; general obligation utilities revenue bonds dated February 19, 2009, the sewer utility portion of such bonds now outstanding in the amount of \$1,444,000, and general obligation sewer utility revenue note dated August 3, 2009, authorized in the amount of \$796,835. 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 1, 2001, September 1, 2002, December 1, 2002, March 1, 2003, December 12, 2003, December 1, 2004, December 19, 2005, December 19, 2006, July 12, 2007, December 13, 2007, February 19, 2009, and August 3, 2009.

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 a note of the city of Duluth in the maximum amount of \$1,020,000, 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.

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 That this ordinance shall take effect 30 days after its passage and publication.
(Effective date: November 15, 2009)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause and President Gilbert -- 8

Nays: Councilor Stauber -- 1

Passed October 12, 2009
Approved October 12, 2009
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10000

AN ORDINANCE AUTHORIZING THE DIRECT SALE OF CERTAIN PROPERTY IN THE SPIRIT VALLEY AREA TO CHARLES D. AND PATRICIA J. SHAW FOR \$7,500.

The city of Duluth does ordain:

Section 1. That the city council hereby finds that

(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 it 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 a written estimate of the market value which estimates that value as \$7,500;

(c) The property identified in Section 2 below is of insufficient size to allow a building to be legally constructed thereon as a stand alone parcel and therefore sale to the purchasers named in Section 2 below, as adjacent owners, is authorized pursuant to Section 2-178 of the Code.

Section 2. That the proper city officials are hereby authorized to sell and convey the following described property, by quit claim deed, to Charles D. and Patricia J. Shaw, husband and wife, for the amount of \$7,500 to be deposited into Fund 110, Agency 700, Organization 1420, Object 4640, and further to execute all documents necessary with regard to said conveyance:

That part of Lots 1-12, Block 26, Dodges Addition to Duluth, which falls between the following-described lines:

Line 1: Beginning at a point on the westerly line of Lot 12 of said Block 26, said point being 50 feet northerly from the southwest corner of said Lot 12, thence northeasterly in a straight line to a point on the northerly line of said Block 26, said point being 175 feet easterly of the northwest corner of said Lot 12 and there terminating; and

Line 2: Beginning at a point on the easterly line of Lot 1, of said Block 26, said point being 98.57 feet northerly of the southeast corner of said Lot 1, thence southwesterly to a point on the southerly line of Lot 11 of said Block 26, said point being 4.84 feet westerly of the southeast corner of said Lot 11 and there terminating.

Section 3. This ordinance shall take effect 30 days from and after its passage and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

publication. (Effective date: November 15, 2009)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Nays: None -- 0

ATTEST:

JEFFREY J. COX, City Clerk

Passed October 12, 2009

Approved October 12, 2009

DON NESS, Mayor

- - -

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, October 26, 2009, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Absent: None -- 0

- - -

The minutes of council meetings held on June 15 and July 13, 2009, were approved unanimously.

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

09-1026-01 Jane Maghan communication regarding the proposed amendment to the resident permit parking zone in the vicinity of the University of Minnesota - Duluth (Elizabeth Street) (09-0597R). -- Received

09-1026-11 Allen Willman communication regarding the proposed establishment of an ambulance/ emergency services task force (09-0670R). -- Received

- - -

REPORTS FROM THE ADMINISTRATION

09-1026-02 Mayor Ness proposed 2010 budget. -- Received

- - -

REPORTS FROM OTHER OFFICERS

09-1026-03 Assessor letters of sufficiency of petitions to:

(a) Reclassify from R-1-c to R-3 Lots 51-60, St. Louis Avenue, Upper Duluth;

(b) Vacate Third Avenue West north of Seventh Street extending to the north boundary described as Lot 47, Block 92, Duluth Proper Third Division. -- Received

- - -

REPORTS OF BOARDS AND COMMISSIONS

09-1026-04 Charter commission minutes of July 29, 2009, meeting. -- Received

09-1026-05 Commission on disabilities minutes of: (a) July 1; September 2, 2009, meetings. -- Received

09-1026-06 Duluth legacy endowment fund project group minutes of June 16, 2009, meeting. -- Received

09-1026-07 Duluth human rights commission minutes of September 9, 2009, meeting. -- Received

09-1026-08 Planning commission minutes of September 8, 2009, meeting. -- Received

09-1026-09 Special assessment board notification of change in rules and regulations for assessments on MSA routes, pursuant to Section 45-75 of the Duluth City Code. -- Received

09-1026-10 Tree commission minutes of: (a) July 21; (b) August 18, 2009, meetings. -- Received

- - -

At this time, 7:03 p.m., the public hearing regarding the Interstate 35 reconstruction project

was opened.

At this time, 7:04 p.m., no one appeared who wished to be heard and the public hearing was declared closed.

- - -

At this time, 7:04 p.m., the public hearing regarding the proposed designation of Elizabeth Street as a resident permit parking zone was opened.

At this time, 7:05 p.m., no one appeared who wished to be heard and the public hearing was declared closed.

- - -

RESOLUTION TABLED

Councilor Fedora moved to remove resolutions 09-0620 and 09-0621, affirming and reversing, respectively, the actions of the planning commission and granting and denying, respectively, a special use permit and variance to Independent School District 709 as authorized by Chapter 51, Article III, of the city of Duluth Legislative Code for property located at 301 North 40th Avenue East (unnamed eastern high school project), from the table, which motion was seconded and failed upon the following vote:

Yeas: Councilors Fedora, Cuneo and Eckenberg -- 3

Nays: Councilors Anderson, Gardner, Krause, Stauber and President Gilbert -- 5

Abstention: Councilor Fosle -- 1

- - -

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

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 \$4,595,000 general obligation utilities revenue bonds, Series 2009E (the "bonds"), pursuant to Ordinance No. 9996, adopted September 28, 2009, Minnesota Statutes, Chapter 475, and Section 115.46 and 444.075, and Section 55 of the Home Rule Charter of the city for the payment of the costs of improvements to the municipal sewer utility and for the purpose of refunding the city's general obligation gas and sewer utilities revenue bonds, Series 2001F, dated December 1, 2001;

(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. 09-1026-12. 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 09-0644 was unanimously adopted.

Approved October 26, 2009

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 general obligation improvement refunding bonds, Series 2009E, in the approximate amount of \$2,200,000 (the "bonds"), pursuant to Minnesota Statutes, Chapter 475, and the City Charter, for the purpose of refunding the city's general obligation improvement bonds, Series 1998E, dated December 1, 1998, general obligation improvement bonds, Series 1999G, dated December 1, 1999, and general obligation improvement bonds, Series 2001A, dated April 1, 2001;

(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. 09-1026-13. 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 09-0645 was unanimously adopted.

Approved October 26, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with Plover Group, Inc., for professional project manager services related to the development and implementation of the one-stop-shop project for the city administration's combination of planning and land use functions and construction permitting and services within a new department for an amount not to exceed \$30,000, payable from General Fund 110, Department/Agency 700, Organization 1407, Object 5441; said agreement to be substantially in the form of Public Document No. 09-1026-14 on file in the office of the city clerk.

Resolution 09-0626 was unanimously adopted.

Approved October 26, 2009

DON NESS, Mayor

- - -

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

of fact:

(a) On October 7, 2009, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of GMRI, Inc., d/b/a Red Lobster, 301 Lake Avenue South, and has submitted its report to the city council of the city of Duluth as Public Document No. 09-1026-15;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on October 26, 2009, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 09-1026-15 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of GMRI, Inc., d/b/a Red Lobster, 301 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 they city council impose a \$500 civil penalty and that payment of \$250 of the penalty be stayed for a period of one year and be abated if no same or similar violations occur during that one year period, and that payment of \$250 of the penalty be payable within 30 days of final council action.

Resolution 09-0629 was unanimously adopted.

Approved October 26, 2009

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 and approves a 2:00 a.m. beverage license for the period ending August 31, 2010, subject to departmental approvals, and the payment of sales and property taxes:

Hanabi Japanese Cuisine, LLC (Hanabi Japanese Cuisine), 110 North First Avenue West, with Hangjie Huang, 80 percent stockholder and Aaron Gall, 20 percent stockholder.

Resolution 09-0666 was unanimously adopted.

Approved October 26, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officers 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. 09-1026-16, with the Greater Downtown Council for the operation and maintenance of a signage system in the Downtown skywalk system.

Resolution 09-0632 was unanimously adopted.

Approved October 26, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officers are hereby authorized to enter into a maintenance agreement with Arrowhead Regional Development Commission (ARDC), said agreement to be substantially in the form of Public Document No. 09-1026-17 on file in the office of the city clerk, for full obligation and liability after completion of the cairn sign construction.

Resolution 09-0634 was unanimously adopted.

Approved October 26, 2009

DON NESS, Mayor

- - -

RESOLVED, that:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

(a) The city council grants the request for a special use permit submitted by the city of Duluth engineering division for a 24 foot x 24 foot communications equipment building on the Highland water tower site at 1701 North Arlington Avenue and legally described as Highland Gardens, Block 2, Lot 10 (2710-00250); and

(b) Pursuant to Section 50-32(cc) of Chapter 50, Article IV, of the Duluth City Code, 1959, as amended, 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 planning commission, at its October 13, 2009, regular meeting, recommended approval of the request with conditions; and

(d) The approval was made because of the city planning commission findings 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 09097).

FURTHER RESOLVED, that the city council of the city of Duluth approves a special use permit for a communications equipment building subject to the following condition:

The site improvements be limited to, constructed and maintained according to the following site plan titled "Water System Improvements" drafted by MSA Professional Services and shown on Public Document No. 09-1026-18.

Resolution 09-0656 was unanimously adopted.

Approved October 26, 2009

DON NESS, Mayor

- - -

RESOLVED, that the city council requesting the board of county commissioners of Saint Louis County reclassify to nonconservation the following tax forfeited parcels:

Parcel ID and legal description	Location
010-2710-02050 Section 7, Township 50N, Range 14W East 1/2 of Northeast 1/4 of Southwest 1/4 except one acre for school and except that part north of the Old Swan Lake Road and west of the Krueger Road	both sides of Swan Lake Road near the intersection with Krueger Junction Road (Duluth Heights)
010-2710-02150 Section 7, Township 50N, Range 14W West 1/2 of East 1/2 of East 1/2 of Southeast 1/4 of Southwest 1/4	north side of Arrowhead Road at the intersection with the high tension powerline (Duluth Heights)

Resolution 09-0658 was unanimously adopted.

Approved October 26, 2009

DON NESS, Mayor

- - -

RESOLVED, that:

(a) The city council finds a sufficient petition was filed with the city clerk requesting the vacation of that part of Bayview Avenue lying southerly of the south line of Maryland Street and northerly of the north line of the platted alley between Maryland Street and Halsey Street; 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 and such commission gave due notice of public hearing and did consider same in public hearing (FN 09034); and

(c) The planning commission, at its October 13, 2009, regular meeting did approve, unanimously, granting of the petitioned vacation as the street is useless for vehicular purposes and has not been developed and will not likely be developed, but recommends retention of an easement for utilities and pedestrian purposes; and

(d) That the city council of the city of Duluth approves the vacation of that part of Bayview Avenue lying southerly of the south line of Maryland Street and northerly of the north line of the platted alley between Maryland Street and Halsey Street, located in the Oakland Park Addition to Duluth, retaining a utility and pedestrian easement of ten feet on either side of the centerline and the entire length of the vacated street and more particularly described on Public Document No. 09-1026-20; and

(e) That the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution.

Resolution 09-0662 was unanimously adopted.

Approved October 26, 2009

DON NESS, Mayor

- - -

RESOLVED, that:

(a) The city council grant a special use permit submitted by AT&T Mobility for a 75 foot telecommunications monopole to support cell phone antennas and the construction of a five foot x five foot ground platform located at 2101 Trinity Road legally described on Public Document No. 09-1026-21; and

(b) Pursuant to Section 50-32(ff) of Chapter 50, Article IV, of the Duluth City Code, 1959, as amended, 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 planning commission, at its October 13, 2009, regular meeting, recommended approval of the request with conditions; and

(d) The approval was made because of the city planning commission findings 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.

FURTHER RESOLVED, that the city council of the city of Duluth approves a special use permit for a monopole communications tower and equipment platform, subject to the following condition:

The tower and equipment platform be limited to, constructed and maintained according to documents provided by AT&T Mobility labeled DLTHMNU2094, LAKE SUPERIOR COLLEGE, Sheets C-1 and C-3, dated 08/26/09.

Resolution 09-0663 was unanimously adopted.

Approved October 26, 2009

DON NESS, Mayor

- - -

RESOLVED, that the city is hereby authorized to execute agreements with Blue Cross and Blue Shield of Minnesota under which that company will provide administrative services, network access and stop loss insurance to the city group health plan during calendar year 2009 for an

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

administrative fee of \$29.47 per single employee or per family per month and a fee for stop loss coverage of \$11.88 per single employee per month and \$31.73 per family per month, for a total estimated cost of \$1,063,486, which shall be paid from the group health fund.

Resolution 09-0627 was unanimously adopted.

Approved October 26, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept a matching grant in the amount of \$10,000 from the Duluth-Superior Area Community Foundation to be used to develop a model carbon emissions in the city of Duluth and to develop and to implement a plan to reduce these emissions; said sum to be deposited in Energy Management Fund 257-015-4270 and to execute all documents necessary thereto.

Resolution 09-0633 was unanimously adopted.

Approved October 26, 2009

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. 09-1026-22, with CBIZ Benefits & Insurance Services, Inc., for a valuation of city's liabilities and expenses associated with its post-employment benefit obligations other than pensions, in an amount not to exceed \$12,000, which shall be payable from Fund 630, Agency 036, Organization 1650, Object 5441.

Resolution 09-0648 was unanimously adopted.

Approved October 26, 2009

DON NESS, Mayor

- - -

The city council finds as follows:

(a) That the commissioner of transportation has prepared a final layout for the reconstruction of I-35 within the corporate limits of the city of Duluth and seeks the approval therefor;

(b) That said final layout is on file in the office of the department of transportation, St. Paul, Minnesota, being marked, labeled and identified as S.P. 6982-290, T.H. 35.

RESOLVED, that said final layout for the improvement of said highway within the corporate limits of the city of Duluth is hereby approved.

FURTHER RESOLVED, that the city clerk is directed to send a certified copy of this resolution to the Minnesota department of transportation district engineer.

Resolution 09-0611 was unanimously adopted.

Approved October 26, 2009

DON NESS, Mayor

- - -

RESOLVED, that MSA Professional Services, Inc.'s contract (C20859) for professional services for design and construction services for the east interceptor sanitary sewer overflow storage facility be and hereby is amended to include design and construction services for the east interceptor SSO control structure and diversion sewer, engineering services associated with splitting the original project into two construction phases, flow monitoring and modeling of the east interceptor, additional environmental remediation work and additional landscape renderings and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

conceptual drawings in the estimated amount of \$384,323.23 for a new total of \$2,191,782.21, payable from Clean Water Fund 532, Agency 500, Object 5532, City Project No. 0519SN.

Resolution 09-0630 was unanimously adopted.

Approved October 26, 2009

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. 09-1026-23 with the St. Louis and Lake counties regional railroad authority for the construction and operation of the Lakewalk recreational trail from 47th Avenue East to 60th Avenue East at nominal cost.

Resolution 09-0631 was unanimously adopted.

Approved October 26, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute a coastal nonpoint program implementation grant agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 09-1026-24, from the state of Minnesota through the department of natural resources waters division and Minnesota's Lake Superior coastal program, for a grant in the amount of \$5,000 to be deposited in Fund 0535-500-1900-4220-01, for the project entitled: *Improving Water Quality by using Accurate GPS Technology*, which entails the purchase of a high accuracy GPS unit to accurately mark and locate structures within the city's stormwater, sanitary sewer and water distribution systems.

FURTHER RESOLVED, that a required local match to granted funds in the amount of \$5,455 is hereby authorized and shall be payable from Fund 0535-500-1915-5439.

Resolution 09-0639 was unanimously adopted.

Approved October 26, 2009

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 construction of the east interceptor sanitary sewer overflow storage facility - Phase I in the amount of \$3,423,000. \$1,980,000 is funded by an ARRA grant from the Army Corps of Engineers 569 program, payable from the Clean Water Fund 532, Department/Agency 025, Object 5532. \$1,443,000 is funded by a PFA loan and is payable from the Clean Water Fund 532, Department/Agency 500, Object 5532, City Project No. 0802SN.

Resolution 09-0646 was unanimously adopted.

Approved October 26, 2009

DON NESS, Mayor

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The city council finds:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

(a) That the city of Duluth is presently undertaking a project to perform primary engineering and environmental documentation for the Cross City Trail (Munger Trail extension), and plans to begin construction of the trail in 2011;

(b) The estimated cost for design and construction of the Cross City Trail (Munger Trail extension) is \$7,200,000. A federal high priority project (\$2,800,000) and enhancement funds project (\$700,000) are currently programmed for construction in 2011 and 2013 respectively. The Minnesota department of natural resources (DNR) has grant monies available through its parks and trails legacy grant program that are intended to accelerate the acquisition and development of recreational trails;

(c) To receive this money, the city must submit the regional trail legacy grant application to the Minnesota department of natural resources.

RESOLVED, that the proper city officials are hereby authorized to submit an application to the Minnesota department of natural resources for funding of the Cross City Trail (Munger Trail extension) 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 no less than 20 years.

FURTHER RESOLVED, that the city of Duluth estimates the grant amount to be \$500,000 and is available on a 75 percent/25 percent local matching basis, and has matching funds available.

FURTHER RESOLVED, that if the city of Duluth is awarded a grant by the Minnesota department of natural resources, the city of Duluth agrees to accept the grant award, and may enter into an agreement with the state of Minnesota for the above referenced project. The city of Duluth will comply with all applicable laws, environmental requirements and regulations stated in the grant agreement.

FURTHER RESOLVED, that the city council of the city of Duluth names the fiscal agent for the city of Duluth for this project as:

Wayne Parson
City Auditor
City of Duluth
411 West First Street
Duluth, MN 55802

Resolution 09-0647 was unanimously adopted.

Approved October 26, 2009

DON NESS, Mayor

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RESOLVED, that city officials are hereby authorized to contract with North Shore Track Services, Inc., for the removal and replacement of tracks for the proposed sewer crossing under the St. Louis and Lake counties regional rail authority trackage near Fitger's Inn in Duluth in accordance with the city's specifications and the vendor's quote of \$25,200, payable from the Clean Water Surcharge Fund 532, Department/Agency 500, Object 5532, Project No. 802SN, Requisition No. 09-0574.

Resolution 09-0649 was unanimously adopted.

Approved October 26, 2009

DON NESS, Mayor

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RESOLVED, that city officials are hereby authorized to contract with Monroe Truck Equipment for the purchase and installation of one dump body with spreader and one permanent mount sander with spreader on two single axle trucks for the fleet services division in accordance with the city's specifications and the vendor's bid of \$114,491 plus \$7,871.26 sales tax, for a combined total of \$122,362.26, terms net 30, FOB destination (delivery of completed units at no cost), payable from the Capital Equipment Fund 250, Department/Agency 015, Organization 2009, Object 5580, Project CE250-V904.

Resolution 09-0657 was unanimously adopted.
Approved October 26, 2009
DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into a professional services agreement, a copy of which agreement is on file in the office of the city clerk as Public Document No. 09-1026-25, with Latham & Associates, Inc., for advice and assistance in developing a request for proposals and evaluating the responses thereto pertaining to the potential sale of Duluth Steam District No. 1 in the amount of not to exceed \$80,000, payable from Fund 540, Agency 920, Organization 1495, Object 5319.

Resolution 09-0669 was unanimously adopted.
Approved October 26, 2009
DON NESS, Mayor

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RESOLVED, that in accordance with the provisions of Section 33-08 of the Duluth City Code, 1959, as amended, the following no parking zone is hereby established: both sides of Railroad Street between Garfield Avenue and Fifth Avenue West.

Resolution 09-0635 was unanimously adopted.
Approved October 26, 2009
DON NESS, Mayor

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RESOLVED, that in accordance with the provisions of Section 33 of the Duluth City Code, 1959, as amended, the following no parking zone is hereby established: on the west side of Fourth Avenue West between First Street and Second Street.

Resolution 09-0636 was unanimously adopted.
Approved October 26, 2009
DON NESS, Mayor

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RESOLVED, that city officials are hereby authorized to contract with Chader Voice Technology, a division of Chader Business Equipment, for the purchase and delivery of a complete Philips digital dictation system for the Duluth police department, including 150 - 9500 digital handheld recorders, 18 transcription packages and required software licenses in accordance with the city's specifications and the vendor's bid of \$63,486 plus \$4,364.66 sales tax for a combined total amount of \$67,850.66, terms net 30, FOB destination, and payable from Duluth Police Grant Programs Fund 215, Department/Agency 025, Organization 2288, Object 5201, Requisition No. 09-0518.

Resolution 09-0637 was unanimously adopted.
Approved October 26, 2009
DON NESS, Mayor

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RESOLVED, that pursuant to Duluth City Code Chapter 12, Civil Offenses, the administrative enforcement program penalty schedule, on file in the office of the city clerk as Public Document No. 09-1026-26, is hereby adopted.

Resolution 09-0640 was unanimously adopted.
Approved October 26, 2009
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. 09-1026-27 with St. Louis County 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 ("arrest") program, in the amount of not to exceed \$5,000, payable from Fund 215-200-2280-4209-02.

Resolution 09-0652 was unanimously adopted.
Approved October 26, 2009
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. 09-1026-28, with Minnesota Program Development, Inc., 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 ("arrest") program, in the amount of not to exceed \$24,959, payable from Fund 215-200-2280-4209-02.

Resolution 09-0653 was unanimously adopted.
Approved October 26, 2009
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. 09-1026-29 with Mending the Sacred Hoop, Inc., 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 ("arrest") program, in the amount of not to exceed \$5,000, payable from Fund 215-200-2280-4209-02.

Resolution 09-0654 was unanimously adopted.
Approved October 26, 2009
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. 09-1026-30 with Program for Aid to Victims of Sexual Assault, Inc., 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 ("arrest") program, in the amount of not to exceed \$127,296, payable from Fund 215-200-2280-4209-02.

Resolution 09-0655 was unanimously adopted.

Approved October 26, 2009

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to execute a first amendment to agreement with the Arrowhead Zoological Society, Inc., substantially the same as that on file in the office of the city clerk as Public Document No. 09-1026-31, amending the original agreement, dated February 17, 2009, and approved by Resolution 08-0764, to comply with GO bonding requirements.

Resolution 09-0665 was unanimously adopted.

Approved October 26, 2009

DON NESS, Mayor

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The following resolutions were also considered:

RESOLVED, that:

(a) The city council finds a sufficient petition was filed with the city clerk requesting the vacation of North 53rd Avenue East between Glenwood Street and Oneida Street; and the vacation of the alley in Block 3, Altered Plat of London Park Addition; and the vacation of that part of the alley in Block 2, Altered Plat of London Park Addition, lying easterly of the extended west line of Lot 22, Block 2, Altered Plat of London Park Addition; and the dedication of an easement (alley) for ingress and egress purposes over, under and across those parts of Lots 11, 12, 21, 22, Block 2, and the alley between said lots, Altered Plat of London Park Addition, described as follows: commencing at the southwest corner of said Lot 22, thence along the south line of said Block 2 on an assigned bearing of North 89 degrees 30 minutes 25 seconds East 21.39 feet to the point of beginning; thence north 0 degrees 28 minutes 55 seconds west 130.16 feet; thence south 89 degrees 30 minutes 34 seconds west 21.48 feet to the west line of said Lot 22; thence north 0 degrees 31 minutes 08 seconds west along said west line 26 feet; thence north 89 degrees 30 minutes 34 seconds east 21.49 feet; thence north 0 degrees 28 minutes 55 seconds west 140.16 feet to the north line of said Block 2; thence north 89 degrees 30 minutes 41 seconds east along said north line 26.69 feet; thence south 0 degrees 28 minutes 55 seconds east 296.32 feet to the south line of said Block 2; thence south 89 degrees 30 minutes 25 seconds west along said south line 26.69 feet to the point of beginning; and the dedication of a 30 foot wide easement for utility purposes over, under and across those parts of Lots 12 through 21, Block 2, and the alley between said lots, Altered Plat of London Park Addition, described as follows: commencing at the southwest corner of Lot 22 in said Block 2; thence along the south line of said Block 2 on an assigned bearing of north 89 degrees 30 minutes 25 seconds east 48.08 feet; thence north 0 degrees 28 minutes 55 seconds west 130.16 feet to the point of beginning; thence north 89 degrees 30 minutes 34 seconds east 78.58 feet; thence north 0 degrees 29 minutes 23 seconds west 30 feet; thence south 89 degrees 30 minutes 34 seconds west 78.58 feet; thence south 0 degrees 28 minutes 55 seconds east 30 feet to the point of beginning; 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 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 is useless, based on the finding that the new terminus of North 53rd Avenue East at Oneida Street is one block south of its current terminus at Glenwood Street and the new dedicated alley will provide access to affected property owners on Glenwood Street and Oneida Street; and

(c) The planning commission, at its October 13, 2009, regular meeting, did approve, unanimously, vacating the street and alley, and dedicating the new alley and utility easement; and

(d) The city council of the city of Duluth approves the vacation as more particularly described on Public Document No. 09-1026-36; and

(e) That the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution together with a plat showing the portion of the easement to be vacated.

Resolution 09-0664 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Gardner, Krause, Stauber and President Gilbert -- 8

Nays: None -- 0

Abstention: Councilor Fosle -- 1

Approved October 26, 2009

DON NESS, Mayor

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RESOLVED, that the proper city officers are authorized to enter into an agreement with Tomlinson Homes, Inc., providing for the use of property for police training purposes; said agreement to be substantially in the form of Public Document No. 09-1026-38 on file in the office of the city clerk.

Resolution 09-0668 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause and Stauber -- 8

Nays: None -- 0

Abstention: Councilor Gilbert -- 1

Approved October 26, 2009

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 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. 9993 adopted September 14, 2009 (the "ordinance"), ordered the issuance, sale and delivery of a general obligation water utility revenue note in the amount of \$1,698,450 of the city, for the payment of the costs of reconstruction of the

Arlington pump station (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 general obligation water utility revenue note to be issued under the ordinance shall be issued in the principal amount of \$1,698,450 (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. 09-1026-32, for the project to the PFA pursuant to a Minnesota public facilities authority bond purchase and project loan agreement dated October 1, 2009, 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. 09-1026-32 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 \$1,698,450, in fully registered form and lettered and numbered R-1. Interest on the note shall be at the rate of 1.077% 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. The note shall not be delivered until after the effective date of the ordinance.

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 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. 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 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 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.

5.03 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 note 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 09-0638 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause and President Gilbert -- 8

Nays: Councilor Stauber -- 1

Approved October 26, 2009

DON NESS, Mayor

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Resolution 09-0641, authorizing the issuance and providing for the sale of general obligation capital improvement bonds, Series 2009B, was introduced by Councilor Fedora for discussion.

Councilors Fedora and Krause stated their concern that with the tough economic times it is not a good time to go further into bond debt by such a large amount, which includes the building of the new public safety building.

Councilor Stauber reviewed that although he was originally in favor of bonding for the new police building with the idea that the city would use the money from the Canal Park Tax Increment Finance District, he stated he cannot support the bonding when it means increasing property taxes.

Resolution 09-0641 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. 09-0051 on January 26, 2009, declaring its intent to issue capital improvement bonds in 2009 in an amount not to exceed \$1,800,000. Further, the city council adopted Resolution No. 09-0562 on September 14,

2009, declaring its intent to issue capital improvement bonds in 2009 in an additional amount of \$18,000,000 to finance a public safety facility, consisting of construction and equipping a new law enforcement center. 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 2009B, in the approximate amount of \$7,270,000 (the "bonds"), pursuant to Minnesota Statutes, Section 475.521 and Chapter 475, and the City Charter, for the purpose providing funds for the annual capital improvement projects and a portion of the financing for the public safety facility, 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. 09-1026-33. 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 09-0641 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fosle, Gardner and President Gilbert -- 6

Nays: Councilors Fedora, Krause and Stauber -- 3

Approved October 26, 2009

DON NESS, Mayor

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Resolution 09-0642, authorizing the issuance and providing for the sale of taxable general obligation capital improvement bonds (build America bonds - direct pay), Series 2009C, was introduced by Councilor Fedora for discussion.

Councilor Fedora questioned why the council was not given an alternative to building a new \$18 million police facility when the city is spending money to repair the area of the police department that was cited as a reason for a new building.

Resolution 09-0642 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. 09-0562 on September 14, 2009, declaring its intent to issue capital improvement bonds in 2009 in an amount not to exceed \$18,000,000, to finance a public safety facility, consisting of construction and equipping a new law enforcement center. 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 taxable general obligation capital improvement bonds (Build America Bonds - direct pay), Series 2009C, in the approximate amount of \$12,100,000 (the "bonds"), pursuant to Minnesota Statutes, Section 475.521 and Chapter 475, and the City Charter, for the purpose of providing a portion of the funds

for a public safety facility, consisting of constructing and equipping a new law enforcement center 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. 09-1026-34. 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 09-0642 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fosle, Gardner and President Gilbert -- 6

Nays: Councilors Fedora, Krause and Stauber -- 3

Approved October 26, 2009

DON NESS, Mayor

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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. 08-0745 on December 15, 2008, declaring its intent to issue general obligation capital equipment notes in 2009 in the approximate amount of \$2,691,000 plus costs of issuance and discount. 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 equipment notes, Series 2009D, in the approximate amount of \$2,665,000 (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. 09-1026-35. 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 09-0643 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause and President Gilbert -- 8

Nays: Councilor Stauber -- 1

Approved October 26, 2009

DON NESS, Mayor

- - -

Resolution 09-0661, granting a special use permit to AT&T Mobility for a cellular communications equipment shelter on the Woodland water tower site at 801 Minneapolis Avenue (James Ries, Buell Consulting Inc.), was introduced by Councilor Stauber for discussion.

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

James Smith explained that he lives directly across the street from the current building and voiced the concern of the neighbors for the noise level that the equipment will be emitting. He went on to say that the city pump house currently has one air conditioner that can be heard running when their windows are open during the summer and voiced concern of the noise level associated with a new building and two air conditioners. Mr. Smith stated he has been unable to get any answers from AT&T Mobility.

Peter Campbell, representing AT&T Mobility, stated that there will be insulation inside the pump house and both air conditioners would not run at the same time as the second one will only come on if the first one fails.

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

Yeas: Councilors Cuneo, Fedora, Gardner and Stauber -- 4

Nays: Councilors Anderson, Eckenberg, Fosle, Krause and President Gilbert -- 5

Resolution 09-0661 was adopted as follows:

RESOLVED, that:

(a) The city council grants the request for a special use permit submitted by AT&T Mobility for an 11.5 foot x 20 foot equipment shelter, landscaping, and short driveway on the Woodland water tower site at 801 Minneapolis Avenue and legally described as Woodland Park Eighth Division, Block 2, Lots 3-6 (4710-00170); and

(b) Pursuant to Section 50-32(cc) of Chapter 50, Article IV, of the Duluth City Code, 1959, as amended, 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 planning commission, at its October 13, 2009, regular meeting, recommended approval of the request with conditions; and

(d) The approval was made because of the city planning commission findings 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 09099).

FURTHER RESOLVED, that the city council of the city of Duluth approves a special use permit for an equipment building, landscaping, and short driveway subject to the following condition:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

The site improvements be limited to, constructed and maintained according to the following documents provided by AT&T Mobility and titled "Woodland WT (MPLSMNU5045)" dated 08/26/2009, Sheets C-1, C-2, C-3 C-5, and shown on Public Document No. 09-1026-19.

Resolution 09-0661 was unanimously adopted.

Approved October 26, 2009

DON NESS, Mayor

- - -

The city council finds:

(a) That by Resolution 89-0885, adopted on October 30, 1989, the city council designated portions of certain streets in the vicinity of the University of Minnesota - Duluth as resident permit parking zones pursuant to Section 33-125 of the City Code;

(b) The residents of an adjoining street (Elizabeth Street east of Woodland Avenue) have submitted a petition requesting to be included in this zone;

(c) After a review of this matter, the city council has determined that the addition of such street segment to the resident permit parking zone is appropriate.

RESOLVED, that Resolution 89-0885 is hereby amended by designating the parking areas on both sides of Elizabeth Street east of Woodland Avenue to the end of the public right-of-way as part of the resident permit parking zone.

Resolution 09-0597 was unanimously adopted.

Approved October 26, 2009

DON NESS, Mayor

- - -

Resolution 09-0651, to disestablish a portion of a metered parking zone and establish police-only parking on the north side of First Street from Fourth Avenue West to 165 feet west of Fourth Avenue West, was introduced by Councilor Cuneo for discussion.

Councilor Fedora explained that there are meters on the south side of First Street that are either 15, 30 or 60 minute meters, and since six one-hour meters would be removed on the north side of First Street, then all the meters on the south side of First Street should be converted to one hour meters.

Councilor Fedora moved to amend the resolution to add the following paragraph at the end:

"FURTHER RESOLVED, that it is the intent of the Duluth City Council to have the meters on the south side of First Street from Fourth Avenue West to Fifth Avenue West all be one hour meters,"

which motion was seconded for discussion.

Councilor Fedora stated that his intent with this amendment is that the amended resolution be sent back to the parking commission for review at their November meeting.

Councilor Fedora's amendment carried upon a unanimous vote.

Resolution 09-0651, as amended, was adopted as follows:

RESOLVED, that in accordance with the provisions of Section 33 of the Duluth City Code, 1959, as amended, the following police parking only zone is hereby established: on the north side of First Street from Fourth Avenue West for 165 feet west. This will require the removal of six parking meters.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

FURTHER RESOLVED, that it is the intent of the Duluth City Council to have the meters on the south side of First Street from Fourth Avenue West to Fifth Avenue West all be one hour meters.

Resolution 09-0651, as amended, was unanimously adopted.

Approved October 26, 2009

DON NESS, Mayor

- - -

Resolution 09-0667, authorizing agreement with LHB Engineers and Architects, Inc., for design of the new public safety facility in the amount of \$1,093,238, was introduced by Councilor Cuneo for discussion.

Councilor Krause stated again that he does not support the building of this facility because of the cost during poor economic times.

Resolution 09-0667 was adopted as follows:

RESOLVED, that the proper city officers are authorized to enter into an agreement, a copy of which is on file in the office of the city clerk as Public Document No. 09-1026-37, with LHB Engineers and Architects, Inc., for the design of the proposed new public safety facility in the amount of not to exceed \$1,093,238, payable from Fund 450, Department 030, Object 5520, Project CP2009-0928B.

Resolution 09-0667 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fosle, Gardner, Stauber and President Gilbert -- 7

Nays: Councilors Fedora and Krause -- 2

Approved October 26, 2009

DON NESS, Mayor

- - -

Resolution 09-0650, governing the seasonal deer hunt in Duluth by designating additional hot spots available for hunting during the 2009 season only, was introduced by Councilor Anderson for discussion.

Councilor Fedora moved to amend the resolution by added the following paragraph at the end:

“BE IT FURTHER RESOLVED, that Map 1 be amended to exclude the area to the east of Northland Country Club,”
which motion was seconded for discussion.

Councilor Fedora explained that the amendment would reduce the area around Northland Country Club to exclude the eastern area along Superior Street and 40th Avenue East where there are very little woods and is too close to the neighborhood.

Councilor Fedora’s amendment was carried upon a unanimous vote.

President Gilbert stated that changes to the zones should be done in the spring so that the zones would be set for the fall hunt and voiced concern that this zone will be set without the public having knowledge of this change.

Resolution 09-0650, as amended, was adopted as follows:

WHEREAS, the Arrowhead Bowhunters Alliance (ABA) is the contract agent for the 2009 seasonal deer hunt; and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

WHEREAS, by Resolution 09-0455 the city council previously designated certain areas located outside of current designated hunting areas (DHA's) as being in special need of deer removal, or hot spots, for the 2009 season; and

WHEREAS, the ABA has received additional requests from private property owners to have their properties designated as hot spots for the remainder of the 2009 seasonal hunt; and

WHEREAS, the ABA is requesting the city council designate these areas as hot spots for the remainder of the 2009 season.

THEREFORE, BE IT RESOLVED, that pursuant to the authorization contained in Section 6-77(d)(1) of the Duluth City Code, the city council hereby designates the areas set forth on maps 1-3 on file in the office of the city clerk as Public Document No. 09-1026-39, as areas in special need of deer removal, or hot spots, and are hereby made available for deer harvesting during the remainder of the 2009 seasonal hunt.

BE IT FURTHER RESOLVED, that Map 1 be amended to exclude the area to the east of Northland Country Club.

Resolution 09-0650, as amended, was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause and Stauber -- 8

Nays: President Gilbert -- 1

Approved October 26, 2009

DON NESS, Mayor

- - -

Resolution 09-0670, establishing an ambulance/emergency services task force, was introduced by councilors Anderson and Fosle for discussion.

The rules were suspended upon a unanimous vote to hear from a speaker on the resolution.

Matt Will, representing Gold Cross Ambulance, requested the council table the resolution and hold a public safety committee meeting so that all stakeholders can be heard and get information on the issue. He stated that there are 47 paramedics in Duluth who provide excellent care as trained first responders and are invested in Duluth.

Councilor Krause questioned why this resolution is before the council, and since he has not heard from the public about this issue, he is unaware that there is a problem with Gold Cross's service in the region. He also questioned why, during budget shortfalls, the council would look at something that would increase the city's operational costs and the impact it would have on the city's budget.

Councilor Fedora stated that if the council wanted to look at changing the duties of the fire department to include EMT service, then the city should hire an organization that can do a non-political and non-biased expert analysis on the public safety function of the city.

Resolution 09-0670 was adopted as follows:

BY COUNCILORS ANDERSON AND FOSLE:

RESOLVED, that the city council shall establish an ambulance/emergency services task force. The purpose of the task force shall be to identify and define the current status of the pre-hospital emergency medical care system for Duluth and surrounding communities and make recommendations based on the best care model.

FURTHER RESOLVED, that the task force shall consist of five members. All five members shall be appointed by the public safety committee of the Duluth City Council. The slate of five members must be approved by a vote of the council.

FURTHER RESOLVED, that the task force shall study significant factors, applicable laws, trends and the city's history with this issue; provide the city council with an unbiased account and summary of this study; and provide the city with options as to how this issue might be addressed within the confines of state law and current pre-hospital emergency medical care requirements.

FURTHER RESOLVED, that the task force shall produce a report containing its findings and recommendations. The report shall be delivered to the council by way of the clerk, after 90 days of the task forces appointment. The members shall serve without compensation. Reasonable expenses, approved by the finance director, within the existing budget, shall be paid.

Resolution 09-0670 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Fosle, Gardner and President Gilbert -- 5

Nays: Councilors Eckenberg, Fedora and Krause -- 3

Abstention: Councilor Stauber -- 1

Approved October 26, 2009

DON NESS, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinance was read for the first time:

INTRODUCED BY COUNCILOR FEDORA

09-054 - AN ORDINANCE AMENDING ORDINANCE NO. 9999 IN ITS ENTIRETY AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF GENERAL OBLIGATION REVENUE BONDS OR NOTE OF THE CITY OF DULUTH IN THE MAXIMUM AMOUNT OF \$2,500,000 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 following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR FOSLE

09-052 (10001) - AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN CITY PROPERTY TO VARIOUS PARTIES.

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

- - -

INTRODUCED BY COUNCILOR FOSLE

09-053 (10002) - AN ORDINANCE AUTHORIZING THE DIRECT SALE OF CERTAIN PROPERTY IN WISCONSIN TO DL SKIING, LLC, FOR \$100.

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

- - -

The meeting was adjourned at 8:35 p.m.

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

- - -

ORDINANCE NO. 10001

**AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN CITY
PROPERTY TO VARIOUS PARTIES.**

The city of Duluth does ordain:

Section 1. That the city council hereby finds that:

(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 these proposed conveyances and found conveyance there of 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 for each parcel as is shown in Public Document No. 09-1026-40 on file in the office of the city clerk, which estimated market value is hereby established as the minimum acceptable price for each such parcel;

(c) The property described in Public Document No. 09-1026-40 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 Section 2-177.2 of the Code, the property described in Public Document No. 09-1026-40 is hereby sold to the highest bidders at a public auction held on September 26, 2009, at the bid price established by said auction, said auction being advertised for the required 30 day period preceding auction and all properties being sold at no less than the minimum acceptable bid or reserve.

Section 2. That the proper city officials are hereby authorized to convey the property described in Public Document No. 09-1026-40, by quit claim deed, to those buyers as shown in said public document, with funds received to be deposited into Fund 110, Agency 700, Organization 1420, Object 4640, and further to execute all documents necessary with regard to said conveyances.

Section 3. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: December 6, 2009)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed October 26, 2009
Approved October 26, 2009
DON NESS, Mayor

- - -

ORDINANCE NO. 10002

**AN ORDINANCE AUTHORIZING THE DIRECT SALE OF CERTAIN
PROPERTY IN WISCONSIN TO DL SKIING, LLC, FOR \$100.**

The city of Duluth does ordain:

Section 1. That the city council hereby finds that:

(a) Since the property to be conveyed is located within the state of Wisconsin, the proposed conveyance has no impact on the city's comprehensive land use plan;

(b) Pursuant to Section 2-176(b) of the Code, the city assessor has provided a written estimate of the market value which estimates that value as \$100;

(c) The property identified in Section 2 below is of insufficient size to allow a building to be legally constructed thereon as a stand alone parcel and therefore sale to the purchaser named in Section 2 below, as adjacent owner, is authorized pursuant to Section 2-178 of the Code.

Section 2. That the proper city officials are hereby authorized to sell and convey the following described property, by quit claim deed, to DL Skiing, LLC, a Wisconsin limited liability company, for the amount of \$100 to be deposited into Fund 110, Agency 700, Organization 1420, Object 4640, and further to execute all documents necessary with regard to said conveyance including the termination of agreement substantially in the form of that on file in the office of the city clerk as Public Document No. 09-1026-41 in favor of Mont Du Lac, Incorporated:

The easterly 30 feet of the westerly 425 feet of the northerly 25 feet of the southerly 112 feet of the southwest quarter of the southwest quarter (SW 1/4 of SW 1/4) of Section 8, Township 48 North, Range 15 West of the Fourth Principal Meridian, in Douglas County, Wisconsin.

Section 3. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: December 6, 2009)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed October 26, 2009
Approved October 26, 2009
DON NESS, Mayor

- - -

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, November 9, 2009, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Absent: None -- 0

- - -

The minutes of the council meeting held on July 27, 2009, were approved upon a unanimous vote.

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

09-1109-01 Ronald and Robin Anderson, et al. (three signatures), petition to vacate Peabody Street east of 43rd Avenue East and north of Lots 1, 2 and 3, Block 108, London Addition. -- Assessor

09-1109-08 Kelly Boedigheimer communication regarding the proposed special use permit for a 180 foot wireless communications monopole and associated ground equipment at 25 North 78th Avenue East (09-0659R and 09-0660R). -- Received

- - -

REPORTS FROM OTHER OFFICERS

09-1109-02 Assessor letter of sufficiency of petition to vacate Peabody Street east of 43rd Avenue East and north of Lots 1, 2 and 3, Block 108, London Addition. -- Received

- - -

REPORTS OF BOARDS AND COMMISSIONS

09-1109-03 Building appeal board minutes of August 12, 2009, meeting. -- Received

09-1109-04 Duluth economic development authority minutes of September 16, 2009, meeting. -- Received

09-1109-05 Duluth public arts commission minutes of September 21, 2009, meeting. -- Received

09-1109-06 Duluth transit authority: (a) Financial statement of July 2009; (b) Minutes of: (1) August 12; (2) August 26, 2009, meetings. -- Received

09-1109-07 Entertainment and convention center authority minutes of October 27, 2009, meeting. -- Received

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RESOLUTIONS TABLED

Councilor Stauber moved to remove resolutions 09-0620 and 09-0621, affirming and reversing, respectively, the actions of the planning commission and granting a special use permit and variance to Independent School District 709 as authorized by Chapter 51, Article III, of the city of Duluth Legislative Code for property located at 301 North 40th Avenue East (unnamed eastern high school project), 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 carried upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Gardner, Krause, Stauber and President Gilbert -- 8

Nays: None -- 0

Abstention: Councilor Fosle -- 1

Brian Ronstrom supported Resolution 09-0621 for the reasons of: site elevations, retaining walls, landscaping and other aspects not discussed by the planning commission should have been discussed and by definition of the required hardship, a hardship has not been met.

Kerry Leider, representing the applicant, and Bonnie Fuller-Kask supported Resolution 09-0620 for the reasons of: the planning commission unanimously supported this; a detailed environmental assessment worksheet has been completed on this project and having outside fields, like track, are an asset and benefit a large amount of students.

Councilors Stauber, Krause and Gardner opposed the approval of the permit and variance for the reasons of: the City Code is very clear as to what a "hardship" is and this is not hardship; an individual who lives close to this talked to neighbors about the concerns of making this site a high school and received support from 62 percent of the voters citywide in his campaign for a school board position; the school district has stated that a special use permit and variance are necessary for this site to work; but before they had received these approvals, they started construction; this site is too small for all the amenities they have planned and does not meet the state standards; there will be increased traffic problems with having a high school at this location and the standards in the City Code are there to protect the environment and citizens.

Councilors Fedora and Eckenberg supported Resolution 09-0620 for the reasons of: this constitutes a hardship because of the geographic terrain of the site; consideration should be given to the needs of the youth; the school board member for that district was re-elected, so there is support for the plan; there is an increased green buffer zone that has been created adjacent to the nearest property owner; relative to "light wash," there are 60-70 foot pine trees that are on the west side of this parcel and the proposed stadium lights will be directed downward, emitting less of a "light wash" than the street lights; the proposed six foot fence will be esthetically correct for the neighborhood and will not block the views of Lake Superior; this stadium will only seat about 1,500 - about half the size of Public School Stadium; there is a greater distance of lights between the field to the nearest neighbor, than that of Public School Stadium and this proposed use is nothing new, since previously this area had been used for football, baseball and soccer.

Resolution 09-0621, denying a special use permit and variance, failed upon the following vote (Public Document No. 09-1109-09):

Yeas: Councilors Gardner, Krause and Stauber -- 3

Nays: Councilors Anderson, Cuneo, Eckenberg, Fedora and President Gilbert -- 5

Abstention: Councilor Fosle -- 1

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Resolution 09-0620, granting a special use permit and variance, was adopted as follows:

BY COUNCILOR STAUBER:

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

(a) On July 28, 2009, Independent School District 709 (ISD 709) submitted its application for a special use permit for grading, filling and/or excavating of more than 50 cubic yards of

earth in a shoreland zone for the purposes of constructing a track and athletic field and related access drives at the new, as yet unnamed, eastern high school site located at 301 North 40th Avenue East. This application was submitted to the planning division and assigned File No. 09044;

(b) On July 28, 2009, ISD 709 submitted its application for a variance from the setback requirements applicable to a shoreland zone for the purposes of constructing a retaining wall as part of the track and athletic field complex and related access drives at the new, as yet unnamed, eastern high school site located at 301 North 40th Avenue East. Portions of the site are located within a shoreland zone and subject to the setback requirements of Section 51-29(e) of the Code. ISD 709 sought a variance from the 150 foot setback applicable to those portions of a proposed retaining wall needed to support the track and athletic field and located within the 150 feet setback of the ordinary high watermark of the 40th Avenue East Creek. This application was submitted to the planning division and assigned File No. 09045;

(c) Both applications were considered by the planning commission (commission) at its September 8, 2009, meeting and pursuant to Section 51-9 of the Code;

(1) The commission found that ISD 709 submitted sufficient information with its application to demonstrate that it met all of the applicable development standards for the proposed grading, filling and excavating as provided in Section 51-29 of the Code and approved the application for special use permit (File No. 09044);

(2) The commission found that ISD 709 submitted sufficient information with its application to demonstrate that it met the applicable standards for a variance as provided in Section 51-30 of the Code and approved the application for a variance (File No. 09045);

(d) The decisions of the commission have been appealed to the council pursuant to sections 51-9 and 51-10(d) of the Code by Brian Ronstrom whose property is located adjacent to the site;

(e) The appeal was considered at a meeting of council committee 2 (planning and economic development committee) held on October 12, 2009, and at the October 12, 2009, regular council meeting;

(f) Ronstrom has demonstrated that his property interests are uniquely impacted by the proposed construction and that he is an aggrieved person and has standing to assert this appeal as required by Section 51-10(d) of the Code;

(g) The city, by its planning commission, previously conducted an environment review of the project pursuant to the Minnesota Environmental Procedures Act and pursuant to Section 2-41 of the City Code. The project review included the proposed track and athletic field. On July 14, 2009, the city issued its negative declaration after concluding that the project did not have the potential for significant environmental impacts (Planning File No. 09030). No appeal challenging the decision was initiated and the 30 days statute of limitations has run. That determination is now final;

(h) A special use permit for the proposed grading, excavating and filling is required for the proposed project pursuant to Section 51-28 of the city of Duluth Legislative Code (Code);

(1) The standards applicable to a special use permit are found in sections 51-9 and 51-29 of the Code. These standards do not require a showing of hardship for purposes of granting a special use permit for grading, filling and/or excavating of more than 50 cubic yards of earth;

(2) The use of the site for school purposes is an allowable use in the zone and the use of the site for a track and athletic field is an allowable auxiliary use to the school. Accord-

ingly, the provision of Section 51-9 of the Code that requires any special use under Chapter 51 to be a permitted use under Chapter 50 of the Code is satisfied;

(3) Based upon the entire record before the council, ISD 709 has demonstrated that it has met all of the applicable development standards for the proposed grading, filling and excavating as provided in sections 51-9 and 51-29 of the Code;

(i) The standards applicable to the requested variance are provided for in Section 51-30 of the Code and require that a hardship must exist to support the granting of a variance. In addition, Section 51-30 provides that no variance may be granted that “compromises the general purposes or intent” of Chapter 51, Article III, of the Code or “results in adverse consequences to the environment”;

(1) The term “hardship” is defined in Section 51-2 of the Code as follows: “[t]he property in question cannot be put to reasonable use under the conditions allowed by the regulations set forth in this Chapter; the plight of the landowner is due to circumstances unique to [the] property, not created by the landowner. Economic considerations alone shall not constitute a hardship.” ISD 709 has demonstrated the existence of a hardship;

(A) The track and athletic field are allowable uses pursuant to Chapter 50 of the Code; therefore, the proposed use is a reasonable use of the site;

(B) Given the location of the shoreland through a significant portion of the site, the shoreland is a unique condition of the property that was not created by the landowner;

(C) Given the topography of the site, a retaining wall is necessary to avoid creating an extremely steep grade on the site that would constitute a hazard to public safety;

(D) The retaining wall is also necessary to prevent erosion and run-off from the site which would negatively impact the shoreland zone;

(2) Given the city’s prior negative declaration, no evidence in the record before council supports a conclusion that the proposed location of the retaining wall compromises the general purposes or intent of Chapter 51 of the Code or results in adverse consequences to the environment;

(3) Based upon the entire record before the council, the council finds that ISD 709 has demonstrated that it has met the standards for a variance as provided in Section 51-30 of the Code.

RESOLVED FURTHER, that the actions of the commission related to planning division file nos. 09044 and 09045 are affirmed and ISD 709 is granted a special use permit and variance as specified in the action of the planning commission.

Resolution 09-0620 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora and President Gilbert -- 5

Nays: Councilors Gardner, Krause and Stauber -- 3

Abstention: Councilor Fosle -- 1

Approved November 9, 2009

DON NESS, Mayor

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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.)

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

President Gilbert 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 sewer connect at 327 Occidental Boulevard is set forth below:

Contract #350 - assessable amount: \$9,122.75, to be deposited in Fund 530; and that this assessment roll is hereby confirmed.

Resolution 09-0678 was unanimously adopted.

Approved November 9, 2009

DON NESS, Mayor

- - -

RESOLVED, that the assessment roll levied to defray the assessable portion of the sewer connection at 1301 Mall Drive is set forth below:

Contract #351; assessable amount: \$22,442.75; to be deposited in Fund 530; and that this assessment roll is hereby confirmed.

Resolution 09-0679 was unanimously adopted.

Approved November 9, 2009

DON NESS, Mayor

- - -

RESOLVED, that the assessment roll levied to defray the assessable portions of the razing contract (#5437 - Fund 110) at the following locations is set forth below:

(a) 117 Park Avenue - assessable amount: \$3,947.05;

(b) 4011 Grand Avenue - assessable amount: \$12,183.75;

(c) 2822 West Second Street - assessable amount: \$13,915.37;

the total assessable amount is \$30,046.17 and this assessment roll is hereby confirmed.

Resolution 09-0680 was unanimously adopted.

Approved November 9, 2009

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 Northern Lights Foundation 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 09-0677 was unanimously adopted.

Approved November 9, 2009

DON NESS, Mayor

- - -

RESOLVED, that the Duluth City Council hereby approves of the Minnesota department of commerce issuing a 2010 currency exchange license to the Title Loan Company, Inc., 101 East Superior Street.

Resolution 09-0687 was unanimously adopted.

Approved November 9, 2009

DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

RESOLVED, that the proper city officials are hereby authorized to enter into an amendment to the agreement with the Lake Superior and Mississippi Railroad (LS&MR), substantially in the form of that on file in the office of the city clerk as Public Document No. 09-1109-10, to extend the term of the agreement, to update insurance coverages, and to provide for the additional right to use that portion of the former B.N. trackage lying between Spring Street and Commonwealth Avenue, extended, owned by the city, for railroad storage, revenues to the city under the agreement payable into Fund 100, Department 700, Organization 1420, Source 4644.

Resolution 09-0684 was unanimously adopted.

Approved November 9, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officers 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 clerk as Public Document No. 09-1109-11; payment by the city will be made from the General Fund 0110, Agency 700, Organization 1407, Object 5407.

Resolution 09-0674 was unanimously adopted.

Approved November 9, 2009

DON NESS, Mayor

- - -

WHEREAS, on November 3, 2009, there was held in the city of Duluth, pursuant to the provisions of Laws of Minnesota, 1973, Chapter 281, and the provisions of Section 51 of the Duluth City Charter, a general municipal election for the purpose of electing certain city officers and submitting to the voters two referendum questions; 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. 09-1109-12) at 7:00 p.m., November 9, 2009, and ascertained the number of ballots cast at said election and thereby declared that at said election, said votes having been cast in the following manner:

(a) That for the offices of councilor at large, Becky Hall received 8,256 votes, Dan Hartman received 9,322 votes, Beth Olson received 8,851 votes, James Stauber received 9,045 votes and candidates receiving write-in votes as indicated on the canvassing board report;

(b) That for the office of councilor, second district, Patrick Boyle received 2,543 votes, Rob Wagner received 668 votes and candidates receiving write-in votes as indicated on the canvassing board report;

(c) That for the office of councilor, fourth district, Kerry Gauthier received 1,932 votes, Gordon Grant received 1,779 votes and candidates receiving write-in votes as indicated on the canvassing board report;

(d) That for City Ballot Question 1 - *Should the Duluth City Charter be amended to provide the mayor the ability to appoint a communications and policy officer and a community relations officer and allow the job specifications for each position be established by city council resolution?* - there were 10,797 "yes" votes and 7,431 "no" votes;

(e) That for City Ballot Question 2 - *The Duluth City Charter currently requires a city employee to take a leave of absence from city employment in order to run for any political office (except for a position on the board of education for the city of Duluth). Should the Charter be*

amended to require any permanent, full-time city employee to take a leave of absence from city employment only when running for the office of Mayor of the city of Duluth or city councilor for the city of Duluth but not for any other political office. - there were 9,044 “yes” votes and 9,069 “no” votes.

NOW, THEREFORE, BE IT RESOLVED, that Dan Hartman and James Stauber, having received the highest numbers of the votes cast at said election for the offices of councilor at large, are hereby declared duly elected for a term of four years.

FURTHER RESOLVED, that Patrick Boyle, having received the majority of all votes cast at said election for the office of councilor, second district, is hereby declared duly elected for a term of four years.

FURTHER RESOLVED, that Kerry Gauthier, having received the majority of all votes cast at said election for the office of councilor, fourth district, is hereby declared duly elected for a term of four years.

RESOLVED FURTHER, that City Ballot Question 1 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.

FURTHER RESOLVED, that City Ballot Question 2 received a majority of negative responses and is hereby declared to be disapproved by the electors voting upon such question.

Resolution 09-0671 was unanimously adopted.

Approved November 9, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept a Government Trailblazer grant from the National Center for Civic Innovation in the amount of \$5,000, to help city staff develop and implement performance management measures, funds to be deposited in Fund 210-030-3150-4270, grant expenditures to be paid out of Fund 210-030-3150-5441, and to execute any documents required to be executed to accept such grant.

Resolution 09-0676 was unanimously adopted.

Approved November 9, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials and Duluth Steam Utility District No. 1 are hereby authorized to contract with Gorham Oien Mechanical, Inc., for the installation of district chilled water supply and return piping to the Gerald W. Heaney Federal Building and US Courthouse and Customhouse at 515 West First Street in accordance with the city’s approved plans and specifications and the vendor’s low bid of \$58,000, payable from Steam Fund 540, Department/Agency 920, Organization 1499, Object 5530.

Resolution 09-0685 was unanimously adopted.

Approved November 9, 2009

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. 09-1109-13 with the organized crime drug enforcement task forces under the direction of the US bureau of alcohol, tobacco, firearms and explosives enforcement to reimburse the city for its

costs in providing criminal investigative services during October 1, 2009, through September 30, 2010, related to on-going federal criminal investigations, in the amount of not to exceed \$15,000, funds received payable to Fund 110-160-1610-4220-02.

Resolution 09-0683 was unanimously adopted.

Approved November 9, 2009

DON NESS, Mayor

- - -

The following resolutions were also considered:

Resolutions 09-0659 and 09-0660, granting and denying, respectively, a special use permit to AT&T Mobility for a 180 foot wireless communications monopole and associated ground equipment at 25 North 78th Avenue East (Shane Begley), were introduced by Councilor Stauber for discussion.

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

Shane Begley, Jamie Kirchner, Gary Robokoff and Brian Shult, representing AT&T Mobility, and Andy Peterson, representing the Duluth Chamber of Commerce, supported Resolution 09-0659 for the following reasons: this application meets all the criteria of the zoning ordinance; there is a need for this tower because currently calls are being shipped to Wisconsin and that causes delays; the St. Louis County Sheriff's Department supports this; there is a heavy demand for 911 and regular calls in this area from residents and tourists; this particular site was chosen because there was a willing landowner and there will be plenty of room on the tower for other companies to provide better service to other customers; before putting a new tower up, the company considers all other existing possible structures and in this case there were no other alternatives in the search ring; many more customers are now converting their landlines to cellular phones, thus there is an important need for good service and enhanced service will create new opportunities in the area of economic development.

Councilors questioned the AT&T Mobility representatives on technical and practical aspects of this application.

Councilor Fosle opposed Resolution 09-0659, stating that he found it hard to believe that this particular location was the only spot that this tower could be placed and there is no recommendation from the planning commission.

Resolution 09-0660, denying a special use permit, failed upon the following vote (Public Document No. 09-1109-15):

Yeas: Councilors Fedora and Fosle -- 2

Nays: Councilors Anderson, Cuneo, Eckenberg, Gardner, Krause, Stauber and President Gilbert -- 7

- - -

Resolution 09-0659, granting a special use permit, as adopted as follows:

RESOLVED, that:

(a) The city council grants the request for a special use permit submitted by Shane Begley, Begley Wireless Consulting Services, representing AT&T Mobility for a multi-tenant (four total) wireless communications facility including a 180 foot tall monopole, 60 foot x 60 foot fenced gravel compound and 12 foot by 20 foot communications equipment building on property owned by Lonnie and Rebecca Maul and legally described as:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

An area for lease parcel purposes over, under and across that part of Lots 5 and 6, Block 14, Norton's Lakewood Gardens, according to the recorded plat thereof and situate in St. Louis County, Minnesota (010-3530-02890), described as follows and containing 3,600 square feet:

Commencing at the northwest corner of the Northeast Quarter of Section 34, Township 51, Range 13, said St. Louis County; thence south 00 degrees 08 minutes 45 seconds west, bearings based on St. Louis County Coordinate Grid, along the west line of said Northeast Quarter, a distance of 1,773.09 feet; thence south 89 degrees 51 minutes 15 seconds east a distance of 35 feet to the point of beginning of the lease parcel to be described; thence continuing south 89 degrees 51 minutes 15 seconds east a distance of 60 feet; thence south 00 degrees 08 minutes 45 seconds west a distance of 60 feet; thence north 89 degrees 51 minutes 15 seconds west a distance of 60 feet; thence north 00 degrees 08 minutes 45 seconds east a distance of 60 feet to said point of beginning; and

(b) Pursuant to Section 50-32 and Section 50-35(ff) of [Chapter 50,] Article IV, of the Duluth City Code, 1959, as amended, 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 October 13, 2009, considered the petition's effect on the comprehensive plan and property values in the neighborhood (FN 09092); and

(d) At the meeting described in (c) above, the city planning commission considered a motion to approve the petitioned special use permit with conditions and such motion failed by a vote of 5-5 and, therefore, no recommendation is made by the body; and

(e) The city council finds 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.

FURTHER RESOLVED, that the city council of the city of Duluth approves a special use permit for a multi-tenant (four total) wireless communications facility including a 180 foot tall monopole, 60 foot x 60 foot fenced gravel compound and 12 foot by 20 foot communications equipment building subject to the following condition:

The site improvements be limited to, constructed and maintained according to the following documents drafted by Edge Consulting Engineers, Inc., entitled "61 Junction (DL2170)" dated 07/14/2009, Sheets C-1, C-2, C-3, S-1, S-2, A-1 and shown on Public Document No. 09-1109-14.

Resolution 09-0659 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Gardner, Krause, Stauber and President Gilbert -- 7

Nays: Councilors Fedora and Fosle -- 2

Approved November 9, 2009

DON NESS, Mayor

- - -

RESOLVED, that pursuant to City Council Resolution 09-0342, the property acquisition/demolition program agreement between DEDA and the Housing and Redevelopment Authority of Duluth, Minnesota, (HRA) substantially in the form of that on file in the office of the city clerk as Public Document No. 09-1109-16, as approved by the DEDA board at its meeting of October 21, 2009, pursuant to DEDA Resolution No. 09D-42, is hereby approved by the Duluth City Council.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Resolution 09-0672 was unanimously adopted.
Approved November 9, 2009
DON NESS, Mayor

- - -

Resolution 09-0675, amending rates for water, natural gas, sanitary sewer and stormwater utilities effective on January 1, 2010, and repealing any conflicting rates, was introduced by Councilor Fosle for discussion.

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

Barry Kayes, Nancy Bratrud and Jennifer Jelsrud supported the resolution for the reasons of: as time goes by abuses catch up with cities and to insure a good, clean lake, these rate increases are needed; there were over 100 watermain breaks last year and these rate increases are needed to keep the infrastructure updated; it is bad economics not to do this and there is need to reinvest in our essential utility infrastructure.

Andy Peterson and David Ross, representing the Duluth Chamber of Commerce, opposed the resolution for the reasons of: residents have already experienced a great deal of rate increases in the last couple years; the city is now known as a place of expensive utility rates; this affects businesses, homeowners and renters; this is not the only way to address the problem, such as, in Coon Rapids, where they bid out watermain break repair jobs without paying overtime to city employees; the city should have a local utility rate commission or submit the rate proposals to the Minnesota public utilities commission and any increase, with this year in particular, which has been an extraordinarily difficult time for businesses, is a burden, which they cannot afford to pass on to their customers.

Jim Benning, director of the public works and utilities department, responded to councilors' questions regarding the replacement resolution, the history of rate increases, the progress being made on upgrading the utility infrastructure and other questions.

Chief Administrative Officer David Montgomery responded to councilors' questions regarding the rate setting process.

Councilors Fedora and Eckenberg opposed the resolution for the reasons of: all the past rate increases in the various city utilities in the past couple years; the additional fees charged beyond the rates on the utilities; individuals are losing their unemployment benefits; better decisions can be made on how this is funded, other than having the citizens pay more; a one year delay was suggested so the administration can look at contract changes and also look at the possibility of having an outside contractor handle these repairs.

Councilor Cuneo supported the resolution for the reasons of: the infrastructure will fall apart more without these needed repairs, which in turn will detract residents and businesses; current labor contracts have to be followed and in the future other cost savings can be looked at.

Resolution 09-0675 failed upon the following vote (Public Document No. 09-1109-17):

Yeas: Councilors Cuneo and President Gilbert -- 2

Nays: Councilors Anderson, Eckenberg, Fedora, Fosle, Gardner, Krause and Stauber -- 7

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RESOLVED, that MSA Professional Services, Inc., Contract C20886, for professional services for preliminary design services for Highland pump station improvements, be hereby amended to include design and construction engineering services for improvements to Highland pump station in the estimated amount of \$156,993 for a new total of \$180,350 payable from Water Bond Fund 511, Agency 500, Object 5532, City Project Number 0765WA.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Resolution 09-0681 was unanimously adopted.

Approved November 9, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officers 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. 09-1109-18, with St. Louis County for the lease of property upon which the city will construct its new public safety facility, at an annual rental of \$1,000 per year, payable from Fund 110, Department 160, Division 1610, Object 5411 and, in addition, one-half of the costs of reconstructing the access road to the property along with snow plowing and ice treatment, all as set forth in said agreement.

Resolution 09-0673 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fosle, Gardner, Stauber and President Gilbert -- 7

Nays: Councilors Fedora and Krause -- 2

Approved November 9, 2009

DON NESS, Mayor

- - -

Resolution 09-0686, by Councilor Cuneo, confirming appointment of members to serve on the ambulance/emergency services task force, was introduced for discussion.

Councilor Cuneo moved to table the resolution for more consideration by councilors and for others to apply, which motion was seconded and carried upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause and President Gilbert -- 8

Nays: None -- 0

Abstention: Councilor Stauber -- 1

- - -

Resolution 09-0690, approving waiving parking fees at city-owned Downtown parking ramps and Downtown parking meters at certain times during the Christmas City of the North Parade and Bentleyville Tour of Lights 2009, was introduced by Councilor Cuneo for discussion.

Councilor Stauber and President Gilbert expressed concerns of: not knowing the electrical cost the city will be paying for this project; the city will be losing parking revenue; officers will be needed to handle this event, at a cost to the city, when their services needed desperately elsewhere.

Mr. Montgomery stated that this resolution is in conjunction with what the Greater Downtown Council is doing with privately-owned ramps.

Resolution 09-0690 was adopted as follows:

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 20, 2009, during the Christmas City of the North parade, and from 5:00 p.m. until 12:00 a.m. on November 27, 2009, through January 2, 2010, during Bentleyville Tour of Lights 2009.

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 20, 2009, during the Christmas City of the North parade, and from 5:30 p.m. until 12:00 a.m. on November 27, 2009, through January 2, 2010, during Bentleyville Tour of Lights 2009.

Resolution 09-0690 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner and Krause -- 7

Nays: Councilor Stauber and President Gilbert -- 2

Approved November 9, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept a grant from the Duluth legacy endowment fund in the amount of \$1,055 for the purchase of computer furniture for the west branch of the Duluth public library, funds to be deposited in Fund 110-130-1303-4270, and to execute any documents required to be executed to accept such grant.

FURTHER RESOLVED, that the proper city officials are hereby authorized to accept a grant from the Duluth legacy endowment fund in the amount of \$750 for the purchase of furniture for the Washington Center, funds to be deposited in Fund 110-130-1302-4270, and to execute any documents required to be executed to accept such grant.

Resolution 09-0682 was unanimously adopted.

Approved November 9, 2009

DON NESS, Mayor

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INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinance was read for the first time:

INTRODUCED BY COUNCILOR FOSLE

09-055 - AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN PROPERTY IN THE GARY-NEW DULUTH AREA TO KELLY N. FRISBIE FOR \$20,000.

- - -

The following entitled ordinance was read for the second time:

INTRODUCED BY COUNCILOR FEDORA

09-054 (10003) - AN ORDINANCE AMENDING ORDINANCE NO. 9999 IN ITS ENTIRETY AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF GENERAL OBLIGATION REVENUE BONDS OR NOTE OF THE CITY OF DULUTH IN THE MAXIMUM AMOUNT OF \$2,500,000 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, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause and President Gilbert -- 8

Nays: Councilor Stauber -- 1

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The meeting was adjourned at 9:23 p.m.

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10003

AN ORDINANCE AMENDING ORDINANCE NO. 9999 IN ITS ENTIRETY AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF GENERAL OBLIGATION REVENUE BONDS OR NOTE OF THE CITY OF DULUTH IN THE MAXIMUM AMOUNT OF \$2,500,000 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 a commitment from the Minnesota public facilities authority (the "authority") for a loan and grant for the construction of Phase I of the east interceptor sanitary sewer overflow storage facility (Lift Station No. 6 reconstruction, collection system and diversion structure piping improvements) (the "project") as identified in the city's application to the authority.

1.02 The city council adopted Ordinance No. 9999 authorizing the issuance of general obligation sewer utility revenue bonds or a note in the maximum amount of \$1,020,000 for the purpose of paying costs of the project. The low bid for the project was substantially in excess of the engineer's estimate, and the city also desires to finance engineering costs. The city council desires to amend Ordinance No. 9999 in its entirety to provide for the financing of the project as hereinafter set forth.

1.03 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 Project, and determines that it is necessary to issue general obligation sewer utility revenue bonds or a note in the maximum amount of \$2,500,000 for the purpose of paying costs of the project.

1.04 The city has heretofore issued and sold the following: general obligation gas and sewer utilities revenue bonds dated December 1, 2001, the sewer utility portion of such bonds now outstanding in the amount of \$805,000; general obligation utilities facility bonds dated September 1, 2002, the sewer utility portion of such bonds now outstanding in the amount of \$1,338,000; general obligation utilities revenue bonds dated December 1, 2002, the sewer utility portion of such bonds now outstanding in the amount of \$1,220,000; general obligation water and sewer utilities revenue refunding bonds dated March 1, 2003, the sewer utility portion of such bonds now outstanding in the amount of \$195,000; general obligation sewer utility revenue note dated December 12, 2003, authorized in the amount of \$1,179,115; general obligation sewer utility revenue bonds dated December 1, 2004, now outstanding in the amount of \$3,175,000; general obligation sewer utility revenue bonds dated December 19, 2005, now outstanding in the amount of \$2,980,000; general obligation utilities revenue bonds dated December 19, 2006, the sewer utility portion of such bonds now outstanding in the amount of \$850,000; general obligation sewer utility revenue note dated July 12, 2007, authorized in the amount of \$2,042,350; general obligation sewer utility revenue bonds dated December 13, 2007, now outstanding in the amount

of \$2,020,000; 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 \$1,165,035; general obligation utilities revenue bonds dated February 19, 2009, the sewer utility portion of such bonds now outstanding in the amount of \$1,444,000, and general obligation sewer utility revenue note dated August 3, 2009, authorized in the amount of \$796,835. 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 1, 2001, September 1, 2002, December 1, 2002, March 1, 2003, December 12, 2003, December 1, 2004, December 19, 2005, December 19, 2006, July 12, 2007, December 13, 2007, February 19, 2009, and August 3, 2009.

1.05 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 a note of the city of Duluth in the maximum amount of \$2,500,000, 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.

1.06 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.

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. (Effective date: December 13, 2009)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause and President Gilbert -- 8

Nays: Councilor Stauber -- 1

ATTEST:
JEFFREY J. COX, City Clerk

Passed November 9, 2009
Approved November 9, 2009
DON NESS, Mayor

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OFFICIAL PROCEEDINGS

Special meeting of the Duluth City Council held on Thursday, November 19, 2009, 5:20 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Absent: None -- 0

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

09-1119-01 The PFM Group bid results regarding the proposed bond sales (09-0695R, 09-0696R, 09-0697R, 09-0698R, 09-0699R). -- Received

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MOTIONS AND RESOLUTIONS

Resolution 09-0695, providing for the issuance, sale and delivery of \$7,085,000 general obligation capital improvement bonds, Series 2009B; establishing the terms and form thereof; creating a debt service fund therefor; and awarding the sale thereof; Resolution 09-0696, providing for the issuance, sale and delivery of \$11,905,000 taxable general obligation capital improvement bonds (build America bonds - direct pay), Series 2009C; establishing the terms and form thereof; creating a debt service fund therefor; and awarding the sale thereof; Resolution 09-0697, providing for the issuance, sale and delivery of \$2,570,000 general obligation capital equipment notes, Series 2009D; establishing the terms and form thereof; creating a debt service fund therefor; and awarding the sale thereof; Resolution 09-0698, providing for the issuance, sale and delivery of \$4,465,000 general obligation utilities revenue bonds, Series 2009E; establishing the terms and form thereof; and awarding the sale thereof; and Resolution 09-0699, providing for the issuance, sale and delivery of \$2,150,000 general obligation improvement refunding bonds, Series 2009F; establishing the terms and form thereof; creating debt service accounts therefor; and awarding the sale thereof, were introduced by Councilor Fedora for discussion.

The rules were suspended upon a unanimous vote to hear from a speaker on the resolution.

Jessica Cameron, representing the PFM Group, reviewed stock market rates and the results of the bids for the bonds.

Resolutions 09-0695, 09-0696, 09-0697, 09-0698 and 09-0699 were 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 2009 through 2013 (the "Plan").

(b) The City Council held a public hearing on the proposed Plan on December 1, 2008, and approved the Plan on December 15, 2008.

1.03 (a) On January 26, 2009, the City Council held a public hearing on the issuance of bonds in an amount not to exceed \$1,800,000 to provide funds for improvements at City Hall including roof and window replacement, elevator improvements and repairs to the courtyard and

Second Street vault, improvements to fire department facilities including masonry, overlays and remodeling, and modifications and maintenance of the mechanical systems at the Main Library (the "Regular Capital Improvements"); and on September 14, 2009, the City Council held a public hearing on the issuance of bonds in an additional amount of \$18,000,000 to provide funds for a public safety facility, consisting of construction and equipping a new law enforcement center (the "Law Enforcement Center"); all in accordance with the Plan (the Regular Capital Improvements and the Law Enforcement Center are collectively, the "Project"). Each element of the Project is a capital improvement within the meaning of the Act.

(b) Pursuant to resolutions of the City Council adopted on January 26, 2009, and September 14, 2009, the City Council has determined that it is necessary and expedient to issue general obligation capital improvement bonds in an amount not to exceed \$19,800,000 of the City to provide funds to finance the Project and for payment of the costs of issuing such bonds.

(c) Notices of intent to issue such bonds was published in accordance with the Act on January 30, 2009, and September 18, 2009.

(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 \$7,085,000 General Obligation Capital Improvement Bonds, Series 2009B, of the City (the "Bonds") pursuant to the above-described authority, to provide funds to finance the Regular Capital Improvements and a portion of the Law Enforcement Center 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 \$9,165,918, which is an amount equal to 0.16 percent of taxable market value of property in the City for taxes payable in 2009.

(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 Morgan Stanley & Co., Inc. of New York, New York (the "Purchaser"), to purchase the Bonds at a cash price of \$7,338,606.20, 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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

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
2011	\$140,000	2.50%
2012	365,000	2.50%
2013	765,000	2.75%
2014	785,000	3.00%
2015	805,000	3.00%
2016	830,000	3.00%
2017	855,000	3.00%
2018	880,000	3.00%
2019	905,000	4.00%
2020	755,000	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, 2010. 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 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 2009B

R-__

\$_____

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Rate	Maturity	Date of Original Issue	CUSIP
%	February 1, ____	December __, 2009	

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, 2010. 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 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 \$7,085,000, 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, as amended, for the years 2009 through 2013 (the "Plan") and all other laws thereunto enabling, and pursuant to an authorizing resolution adopted by the governing body of the City on November 19, 2009 (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.

Not less than 30 nor more than 60 days prior to the date fixed for redemption and prepayment of any Term Bonds, notice of redemption shall be mailed to each registered owner of a Bond to be redeemed; provided, however, that so long as the Bonds are registered in the name of Cede & Co., as nominee for The Depository Trust Company, New York, New York ("DTC"), notice of redemption shall be given in accordance with the terms of the Blanket Issuer Letter of Representations executed by the City and DTC.

The Bonds are not subject to optional redemption and prepayment before maturity.

This Bond has been designated by the City as a "qualified tax-exempt obligation" for purposes of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

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 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

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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 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
12/__/09	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 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)

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 2009 Capital Improvement Bonds Construction Account (the "Construction Account") within its Capital Improvement Project

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Fund 450, Agency 030, to which there shall be credited the proceeds of the Bonds in the amount of \$7,157,006.45, together with any additional funds, which may be available and are appropriated for the Project. A separate subaccount shall be established for each of the projects financed by the Bonds, including the Law Enforcement Center. This account, and the subaccounts, 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 “2009 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 capitalized interest in the amount of \$180,000, the rounding amount of \$1,599.75, 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
2009	2010	*\$ 222,787
2010	2011	615,524
2011	2012	1,025,942
2012	2013	1,024,853
2013	2014	1,021,125
2014	2015	1,022,018
2015	2016	1,022,123
2016	2017	1,021,440
2017	2018	1,019,970
2018	2019	824,460

*capitalized interest of \$180,000

Said levies are such that if collected in full they, together with the capitalized interest, will produce at least 5% 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 covenants that with respect to the gross proceeds of the Bonds, the following schedule will 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 order to qualify the Bonds as “qualified tax-exempt obligations” within the meaning of Section 265(b)(3) of the Code, the City hereby makes the following factual statements and representations:

(a) the Bonds are not “private activity bonds” as defined in Section 141 of the Code;

(b) the City hereby designates the Bonds as “qualified tax-exempt obligations” for purposes of Section 265(b)(3) of the Code;

(c) the reasonably anticipated amount of tax-exempt obligations (other than private activity bonds) which will be issued by the City (and all entities whose obligations will be aggregated with those of the City and excluding the City’s obligations which are deemed designated) during the calendar year in which the Bonds are being issued will not exceed \$30,000,000; and

(d) not more than \$30,000,000 of obligations issued by the City during the calendar year in which the Bonds are being issued have been designated for the purposes of Section 265(b)(3) of the Code.

4.05 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 2009D (the “Notes”), General Obligation Utilities Revenue Bonds, Series 2009E (the “Series 2009E Bonds”), and General Obligation Improvement Refunding Bonds, Series 2009F (the “Series 2009F Bonds”). The Bonds will not be paid out of substantially the same source of funds as the Series 2009E Bonds and the Series 2009F 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. 04-0219-02.

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 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 09-0695 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fosle, Gardner and President Gilbert -- 6

Nays: Councilors Fedora, Krause and Stauber -- 3

Approved November 19, 2009

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. 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 2009 through 2013 (the "Plan").

(b) The City Council held a public hearing on the proposed Plan on December 1, 2008, and approved the Plan on December 15, 2008.

1.03 (a) On September 14, 2009, the City Council held public hearings on an amendment to the Plan and on the issuance of bonds in an amount not to exceed \$18,000,000 to finance a public safety facility, consisting of construction and equipping a new law enforcement center; all in accordance with the Plan (collectively, the "Project"). The Project is a capital improvement within the meaning of the Act.

(b) Pursuant to a resolution of the City Council adopted on September 14, 2009, the City Council has determined that it is necessary and expedient to issue General Obligation Capital Improvement Bonds in an amount not to exceed \$18,000,000 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 September 18, 2009.

(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 \$11,905,000 Taxable General Obligation Capital Improvement Bonds (Build America Bonds - Direct Pay), Series 2009C, of the City (the "Bonds") pursuant to the above-described authority, to provide a portion of the funds to finance the Project and for payment of the costs of issuing the Bonds in an amount not to exceed two percent of the proceeds of 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 \$9,165,918, which is an amount equal to 0.16 percent of taxable market value of property in the City for taxes payable in 2009.

(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 \$11,786,244.50, 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 (a) 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
2021	\$ 785,000	5.00%
2022	825,000	5.15%
2023	855,000	5.30%
2024	890,000	5.50%
2025	920,000	5.70%
2026	960,000	5.80%
2027	1,000,000	5.90%
2028	1,040,000	5.90%
2029	1,080,000	6.00%
2032	3,550,000	6.00%

The maturities of the Bonds are combined with the maturities of the City's \$7,085,000 General Obligation Capital Improvement Bonds, Series 2009B, dated the date of issuance of the Bonds, to satisfy the requirements of Minnesota Statutes, Section 475.54.

(b) The Bonds maturing on February 1 in the year 2032 shall be subject to mandatory redemption prior to maturity pursuant to the requirements of this Section 2.01(b) at a redemption price equal to the stated principal amount, as hereinafter provided, plus interest accrued thereon to the redemption date, without premium. The Bond Registrar, as designated below, shall select for redemption, by lot or other manner deemed fair, on February 1 in each of the following years, the following stated principal amounts:

For Bonds maturing on February 1, 2032 (the “2032 Term Bonds”):

Year	Principal Amount
2030	\$1,130,000
2031	\$1,175,000

The remaining \$1,245,000 stated principal amount of the 2032 Term Bonds shall be paid at maturity on February 1, 2032.

If less than such amount of the Term Bonds is outstanding on such payment date, the City shall pay the remaining balance of the Term Bonds then outstanding. The Bond Registrar shall select and call for redemption, in accordance with Sections 2.01(c) and (d) hereof, from the Term Bonds the amounts specified above and the Term Bond selected by the Bond Registrar shall become due and payable on such date.

(c) In the event any of the Term Bonds are called for redemption, notice thereof identifying the Bonds to be redeemed will be given by the Bond Registrar by mailing a copy of the redemption notice by first class mail (postage prepaid) at least 30 days but not more than 60 days prior to the date fixed for redemption to the registered owner of each Bond to be redeemed at the address shown on the registration books kept by the Bond Registrar; provided however, that so long as the Bonds are registered in the name of Cede & Co. as nominee of The Depository Trust Company, New York, New York (“DTC”), notice of redemption shall be given in accordance with the terms of the Representation Letter hereinafter described. Failure to give notice by mail to any registered owner, or any defect therein, will not affect the validity of any proceeding for the redemption of Bonds not affected by such defect or failure. Bonds so called for redemption will cease to bear interest after the specified redemption date, provided that the funds for the redemption are on deposit with the place of payment at that time.

(d) If less than all the Term Bonds of a maturity are called for redemption while the Bonds are registered in the name of Cede & Co., the Bond Registrar designated below will notify DTC of the particular amount of such maturity to be prepaid. DTC will determine by lot the amount of each participant’s interest in such maturity to be redeemed and each participant will then select by lot the beneficial ownership interest in such maturity to be redeemed. If less than all of the Term Bonds of a maturity are called for redemption and the Bonds are not registered in the name of Cede & Co., the Bond Registrar will determine by lot or other manner deemed fair, the amount of each maturity to be redeemed. All prepayments shall be at a price equal to the principal amount thereof plus accrued interest.

2.02 (a) The Bonds maturing, or subject to mandatory redemption pursuant to Section 2.01(b), in the year 2021 and in subsequent years shall each be subject to redemption and prepayment at the option of the City on February 1, 2020, and on any date thereafter, in whole or in part, and if in part, in such order of maturities as selected by the City and by lot as to the Bonds maturing in the same year, at a price equal to the principal amount thereof plus accrued interest to the redemption date.

(b) At the option of the City, the Bonds are subject to a special optional prepayment on any date in whole, but not in part, at a price equal to the principal amount thereof plus accrued interest to the redemption date, in the event the federal government discontinues the Build America Bonds direct payment program with retroactive applicability to obligations issued prior to the date of such discontinuance (including the Bonds).

(c) In the event any of the Bonds are called for redemption, notice thereof identifying the Bonds to be redeemed will be given by the Bond Registrar by mailing a copy of the redemption notice by first class mail (postage prepaid) at least 30 days but not more than 60 days prior to the date fixed for redemption to the registered owner of each Bond to be redeemed at the address shown on the registration books kept by the Bond Registrar; provided however, that so long as the Bonds are registered in the name of Cede & Co. as nominee of The Depository Trust Company, New York, New York ("DTC"), notice of redemption shall be given in accordance with the terms of the Representation Letter hereinafter described. Failure to give notice by mail to any registered owner, or any defect therein, will not affect the validity of any proceeding for the redemption of Bonds not affected by such defect or failure. Bonds so called for redemption will cease to bear interest after the specified redemption date, provided that the funds for the redemption are on deposit with the place of payment at that time.

(d) If less than all the Bonds of a maturity are called for redemption while the Bonds are registered in the name of Cede & Co., the City or the Bond Registrar designated below will notify DTC of the particular amount of such maturity to be prepaid. DTC will determine by lot the amount of each participant's interest in such maturity to be redeemed and each participant will then select by lot the beneficial ownership interest in such maturity to be redeemed. If less than all the Bonds of a maturity are called for redemption and the Bonds are not registered in the name of Cede & Co., the Bond Registrar will determine by lot or other manner deemed fair, the amount of each maturity to be redeemed. All prepayments shall be at a price equal to the principal amount thereof plus accrued interest.

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, 2010. 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 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

TAXABLE GENERAL OBLIGATION CAPITAL IMPROVEMENT BOND
(BUILD AMERICA BOND - DIRECT PAY), SERIES 2009C

R-_____ \$_____

Rate	Maturity	Date of Original Issue	CUSIP
%	February 1, _____	December __, 2009	

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, 2010. 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 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 \$11,905,000, 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, as amended, for the years 2009 through 2013 (the "Plan") and all other laws thereunto enabling, and pursuant to an authorizing resolution adopted by the governing body of the City on November 19, 2009 (the "Resolution"). This Bond is issued for the purpose of providing funds for the law enforcement center which is a capital improvement project 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 maturing in the year 2032 (the "Term Bonds") shall be subject to mandatory redemption and redeemed in installments as provided in the Resolution, at par plus accrued interest to the date of redemption.

The Bonds maturing, or subject to mandatory redemption, in the year 2021 and in subsequent years are each subject to redemption and prepayment at the option of the City on February 1, 2020, and on any date thereafter, in whole or in part, in such order of maturities as selected by the City and by lot as to Bonds maturing in the same year, at a price equal to the principal amount plus accrued interest to the redemption date.

All of the Bonds are subject to a special optional prepayment on any date, in whole, but not in part, at the option of the City, at their principal amount and accrued interest to the redemption date, in the event the federal government discontinues the Build America Bonds direct payment program with retroactive applicability to obligations issued prior to the date of such discontinuance (including the Bonds).

Not less than 30 nor more than 60 days prior to the date fixed for redemption and prepayment of any of the Bonds, notice of redemption shall be mailed to each registered owner of a Bond to be redeemed; provided, however, that so long as the Bonds are registered in the name of Cede & Co., as nominee for The Depository Trust Company, New York, New York ("DTC"), notice of redemption shall be given in accordance with the terms of the Blanket Issuer Letter of Representations executed by the City and DTC.

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 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 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
12/___/09	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 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)

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 2009 Taxable Capital Improvement Bonds (Build America Bonds - Direct Pay) 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 in the amount of \$11,416,244.50. This account shall be used to pay, or reimburse, expenses duly approved and allowed, which constitute capital expenditures for the Project, within the meaning of Section 1.150-(1)(b) of the Treasury Regulations (and not working capital expenditures, such as current operating expenses or refinancings), and to pay the costs of issuance for the Bonds (which costs, including underwriter's discount, shall not exceed two percent of the proceeds of the Bonds).

3.02 A separate debt service account is hereby created and designated as the "2009 Taxable Capital Improvement Bonds (Build America Bonds - Direct Pay) 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 capitalized interest in the amount of \$370,000.00, 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
2009	2010	*\$ 415,457
2010	2011	716,397
2011	2012	716,397
2012	2013	716,397
2013	2014	716,397
2014	2015	716,397
2015	2016	716,397
2016	2017	716,397
2017	2018	716,397
2018	2019	716,397
2019	2020	1,540,647
2020	2021	1,541,435
2021	2022	1,528,323
2022	2023	1,517,492
2023	2024	1,497,594
2024	2025	1,484,532
2025	2026	1,468,068
2026	2027	1,448,118
2027	2028	1,425,690
2028	2029	1,410,150
2029	2030	1,386,210
2030	2031	1,385,685

*\$370,000 of capitalized interest

Said levies are such that if collected in full they, together with the capitalized interest, 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. Qualified Build America Bond Designation; Irrevocable Election; Compliance with Federal Tax Laws.

4.01 The Bonds are hereby irrevocably designated qualified Build America Bonds within the meaning of Subsection 54AA(g) of the Internal Revenue Code of 1986, as amended (the "Code"), and the City hereby irrevocably elects to apply Subsection 54AA(g) of the Code to the Bonds. The City represents that all proceeds of the Bonds, less costs of issuance financed with such proceeds (which costs shall be in an amount not to exceed two percent of such proceeds), plus all income from temporary permitted investments with respect to such proceeds ("Available Project Proceeds"), shall be used only for capital expenditures, as described in Section 3.01 hereof. The City acknowledges that among the requirements for the Bonds to qualify and continue to qualify as qualified Build America Bonds is that the Bonds, but for their qualified Build America Bond designation, would be tax-exempt for federal income tax purposes, and hence that the requirements of the Code and the Treasury Regulations thereunder (the "Regulations") regarding tax-exempt obligations apply to the Bonds. The City hereby covenants to comply with such requirements.

4.02 The City thus further represents and covenants that the Project financed by the Bonds and its ownership, management and use will not cause the Bonds to be "private activity bonds" within the meaning of Section 141 of the Code. The City further covenants that it shall comply with the provisions of the Code to the extent necessary to maintain the qualified Build America Bond status of the Bonds including, if applicable, the rebate requirements of Section 148(f) of the Code. The City further covenants that it will not take any action, omit to take any action or permit the taking or omission of any action within its control (including, without limitation, making or permitting any use of the proceeds of the Bonds) if taking, permitting or omitting to take such action would cause any of the Bonds to be arbitrage bonds or private activity bonds within the meaning of the Code or would otherwise cause the Bonds to lose their status as qualified Build America Bonds within the meaning of Subsection 54AA(g) of the Code and the Regulations. The auditor, treasurer and other officers of the City charged with the responsibility of issuing the Bonds shall provide an appropriate certificate of the City certifying that the City can, and covenanting that it will, comply with the provisions of the Code and the Regulations.

4.03 The City also covenants to use its best efforts to meet the requirements and restrictions of any different or additional federal legislation which may be made applicable to the Bonds, provided that in meeting such requirements the City will do so only to the extent consistent with the proceedings authorizing the Bonds and the laws of the State of Minnesota and to the extent that there is a reasonable period of time in which to comply.

4.04 All investments made pursuant to this Resolution shall be permitted investment securities under Section 3.14 hereof, but no such investment shall be made in such a manner as would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code or the Regulations, and an officer of the City, charged with the responsibility for issuing the Bonds, shall certify as to facts, estimates, circumstances and reasonable expectations in existence on the date of delivery of the Bonds to the Purchaser which will permit the conclusion that the Bonds are not "arbitrage bonds" within the meaning of the Code or the Regulations.

Section 5. Qualified Build America Bonds - Application for Direct Payments to the City. The City shall claim available refundable credits from the Treasury with respect to each interest payment on the Bonds as provided under Subsection 54AA(g)(1) of the Code (the "Direct Payments"). The City treasurer, or his designee, is hereby authorized and directed to take all necessary actions on behalf of the City to apply for the receipt by the City of the Direct Payments,

including the timely filing of necessary Internal Revenue Service forms and information returns for that purpose and/or submitting requests electronically if and as the Treasury establishes an electronic platform in connection with its direct payment procedures. All of the Direct Payments received by the City shall be promptly deposited in the Debt Service Fund.

Section 6. 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. 04-0219-02.

Section 7. Certificate of Proceedings.

7.01 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.

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 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 09-0696 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fosle, Gardner and President Gilbert -- 6

Nays: Councilors Fedora, Krause and Stauber -- 3

Approved November 19, 2009

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.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

1.02 The city council adopted Resolution No. 08-0745 on December 15, 2008 (the "Intent Resolution"), declaring the intention of the City to issue such capital equipment notes in the amount of approximately \$2,691,000 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 percent 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 \$2,570,000 General Obligation Capital Equipment Notes, Series 2009D, 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 Piper Jaffray of Kansas City, Missouri (the "Purchaser"), to purchase the Notes at a cash price of \$2,642,486.46, 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 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
2011	\$485,000	2.00%
2012	505,000	2.00%
2013	515,000	2.00%
2014	525,000	3.00%

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Year	Amount	Interest Rate
2015	540,000	3.00%

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, 2010. 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.

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.

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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 NOTES, SERIES 2009D

R-__ \$_____

Interest Rate	Maturity Date	Date of Original Issue	CUSIP
	February 1, ____	December __, 2009	

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, 2010. 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 \$2,570,000, 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 19, 2009 (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.

This Note has been designated by the City as a "qualified tax-exempt obligation" for purposes of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

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 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.

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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

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

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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
12/__/09	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 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 \$2,638,500 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 5% 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
2009	2010	\$582,366
2010	2011	585,218
2011	2012	585,113
2012	2013	584,798
2013	2014	584,010

(b) A separate debt service account is hereby created and designated as the “2009 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 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, paid by the Purchaser, and the rounding amount of \$3,986.46, 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 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 covenants that with respect to the gross proceeds of the

Notes, the following schedule will 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 order to qualify the Bonds as “qualified tax-exempt obligations” within the meaning of Section 265(b)(3) of the Code, the City hereby makes the following factual statements and representations:

(a) the Bonds are not “private activity bonds” as defined in Section 141 of the Code;

(b) the City hereby designates the Bonds as “qualified tax-exempt obligations” for purposes of Section 265(b)(3) of the Code;

(c) the reasonably anticipated amount of tax-exempt obligations (other than private activity bonds) which will be issued by the City (and all entities whose obligations will be aggregated with those of the City and excluding the City’s obligations which are deemed designated) during the calendar year in which the Bonds are being issued will not exceed \$30,000,000; and

(d) not more than \$30,000,000 of obligations issued by the City during the calendar year in which the Bonds are being issued have been designated for the purposes of Section 265(b)(3) of the Code.

4.05 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 2009B (the “Series 2009B Bonds”), General Obligation Utilities Revenue Bonds, Series 2009E (the “Series 2009E Bonds”), and General Obligation Improvement Refunding Bonds, Series 2009F (the “Series 2009F Bonds”). The Notes will not be paid out of substantially the same source of funds as the Series 2009E Bonds and the Series 2009F Bonds; consequently, the Notes will not be combined with them for a single issue. However, the Notes and the Series 2009B 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. 04-0219-02.

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 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 09-0697 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause and President Gilbert -- 8

Nays: Councilor Stauber -- 1

Approved November 19, 2009

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 Under and pursuant to the provisions of Section 55 of the City Charter, Minnesota Statutes, Sections 115.46 and 444.075 and Chapter 475, and other pertinent provisions of said Charter and Statutes, the City is authorized to issue its general obligation bonds to provide funds for the payment of costs of improvements to the municipal sewer utility (including bonds representing part of the interest cost of the issue, within the limitations specified in Minnesota Statutes, Section 475.56), which bonds 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.

1.02 The city council has, by Ordinance No. 9996 adopted September 28, 2009, ordered the issuance, sale and delivery of general obligation sewer utility revenue bonds in the maximum amount of \$975,000 of the City (of which \$905,000 of such amount shall be issued), for the payment of the costs of improvements to the municipal sewer utility and for payment of part of the interest cost of the bonds. The improvement program for the municipal sewer utility includes (i) the sanitary sewer portion of the Lakeside SIP project; and (ii) the sanitary sewer portion of the Woodland Avenue project (collectively, the "Project").

1.03 The City has previously issued its \$6,630,000 General Obligation Gas and Sewer Utilities Revenue Bonds, Series 2001F, dated December 1, 2001 (the "2001 Bonds"). The 2001

Bonds were authorized and issued pursuant to the City Charter, Minnesota Statutes, Chapter 475 and other pertinent provisions of Minnesota Statutes.

1.04 Under and pursuant to the provisions of Minnesota Statutes, Chapter 475 (the "Act") and Section 475.67, Subdivisions 1 through 12 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.

1.05 It is necessary and desirable that the City issue \$4,465,000 General Obligation Utilities Revenue Bonds, Series 2009E (the "Bonds"), in order to (i) reduce debt service costs to refund the outstanding 2001 Bonds maturing on and after February 1, 2010 (the "Refunded Bonds"), of which \$4,030,000 in principal amount is outstanding, and (ii) provide funds for the payment of costs of the Project, and (iii) pay the costs of issuance of the Bonds. The 2001 Bonds maturing on and after February 1, 2011, are subject to prepayment and redemption on February 1, 2010 (February 1, 2010 is herein referred to as the "Redemption Date").

1.06 (a) The city has heretofore issued and sold the following: general obligation gas and sewer utilities revenue bonds dated December 1, 2001, the sewer utility portion of such bonds now outstanding in the amount of \$805,000; general obligation utilities facility bonds dated September 1, 2002, the sewer utility portion of such bonds now outstanding in the amount of \$1,338,000; general obligation utilities revenue bonds dated December 1, 2002, the sewer utility portion of such bonds now outstanding in the amount of \$1,220,000; general obligation water and sewer utilities revenue refunding bonds dated March 1, 2003, the sewer utility portion of such bonds now outstanding in the amount of \$195,000; general obligation sewer utility revenue note dated December 12, 2003, authorized in the amount of \$1,179,115; general obligation sewer utility revenue bonds dated December 1, 2004, now outstanding in the amount of \$3,175,000; general obligation sewer utility revenue bonds dated December 19, 2005, now outstanding in the amount of \$2,980,000; general obligation utilities revenue bonds dated December 19, 2006, the sewer utility portion of such bonds now outstanding in the amount of \$850,000; general obligation sewer utility revenue note dated July 12, 2007, authorized in the amount of \$2,042,350; general obligation sewer utility revenue bonds dated December 13, 2007, now outstanding in the amount of \$2,020,000; 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 \$1,165,035; general obligation utilities revenue bonds dated February 19, 2009, the sewer utility portion of such bonds now outstanding in the amount of \$1,444,000; and general obligation sewer utility revenue note dated August 3, 2009, authorized in the amount of \$796,835. Under the provisions of the ordinances authorizing said bonds, the city reserved the privilege of issuing additional bonds payable from said net revenues on a parity with the bonds and notes dated December 1, 2001, September 1, 2002, December 1, 2002, March 1, 2003, December 12, 2003, December 1, 2004, December 19, 2005, December 19, 2006, July 12, 2007, December 13, 2007, February 19, 2009, and August 3, 2009.

(b) 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.

1.07 (a) The city has heretofore issued and sold the following: general obligation gas and sewer utilities revenue bonds dated December 1, 2001, the gas utility portion of such bonds now outstanding in the amount of \$3,225,000; general obligation utilities facility bonds dated September 1, 2002, the gas utility portion of such bonds now outstanding in the amount of \$1,424,000; general obligation utilities revenue bonds dated December 1, 2002, the gas utility portion of such bonds now outstanding in the amount of \$955,000; general obligation gas utility revenue bonds dated December 1, 2003, now outstanding in the amount of \$4,445,000; and general obligation utilities revenue bonds dated December 19, 2006, the gas utility portion of such bonds now outstanding in the amount of \$1,075,000. Under the provisions of the ordinances 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, 2001, September 1, 2002, December 1, 2002, December 1, 2003, and December 19, 2006.

(b) 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.

1.08 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.

1.09 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 \$4,538,795.63, 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.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

2.01 (a) 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	Gas Utility Portion	Sewer Utility Portion	Total	Interest Rate
2011	376,000.00	139,000.00	\$515,000	2.00%
2012	390,957.45	149,042.55	540,000	2.00%
2013	402,979.80	152,020.20	555,000	2.00%
2014	406,019.42	158,980.58	565,000	2.50%
2015	412,971.70	157,028.30	570,000	2.50%
2016	424,954.95	160,045.05	585,000	3.00%
2017	432,931.03	162,068.97	595,000	3.00%
2020	0.00	185,000.00	185,000	4.00%
2025	0.00	355,000.00	355,000	4.00%
Total	\$2,846,814.35	\$1,618,185.65		

The Sewer Utility Portion of the Bonds are allocated by maturity between the new money portion to finance the Project and the refunding portion, as set forth below:

Year	New Money Portion	Refunding Portion
2011	\$45,000	\$94,000.00
2012	50,000	99,042.55
2013	50,000	102,020.20
2014	55,000	103,980.58
2015	55,000	102,028.30
2016	55,000	105,045.05
2017	55,000	107,068.97
2018	60,000	0.00
2019	60,000	0.00
2020	65,000	0.00
2021	65,000	0.00
2022	70,000	0.00
2023	70,000	0.00
2024	75,000	0.00
2025	75,000	0.00

(b) The Bonds maturing on February 1 in the years 2020 and 2025 shall be subject to mandatory redemption prior to maturity pursuant to the requirements of this Section 2.01(b) at a redemption price equal to the stated principal amount, as hereinafter provided, plus interest accrued thereon to the redemption date, without premium. The Bond Registrar, as designated below, shall select for redemption, by lot or other manner deemed fair, on February 1 in each of the following years, the following stated principal amounts:

- (1) For Bonds maturing on February 1, 2020 (the "2020 Term Bonds"):

Year	Principal Amount
2018	\$60,000
2019	\$60,000

The remaining \$65,000 stated principal amount of the 2020 Term Bonds shall be paid at maturity on February 1, 2020.

(2) For Bonds maturing on February 1, 2025 (the “2025 Term Bonds”):

Year	Principal Amount
2021	\$65,000
2022	\$70,000
2023	\$70,000
2024	\$75,000

The remaining \$75,000 stated principal amount of the 2025 Term Bonds shall be paid at maturity on February 1, 2025.

If less than such amount of the Term Bonds is outstanding on such payment date, the City shall pay the remaining balance of the Term Bonds then outstanding. The Bond Registrar shall select and call for redemption, in accordance with Section 2.02 hereof, from the Term Bonds the amounts specified above and the Term Bond selected by the Bond Registrar shall become due and payable on such date.

2.02 (a) The Bonds maturing in the years 2011 through 2018 shall not be subject to optional redemption and prepayment before maturity, but those maturing or subject to mandatory redemption pursuant to Section 2.01(b), in the year 2019 and in subsequent years shall each be subject to redemption and prepayment at the option of the City on February 1, 2018, and on any date thereafter, in whole or in part, and if in part, in such order of maturities as selected by the City and by lot as to the Bonds maturing in the same year, at a price equal to the principal amount thereof plus accrued interest to the redemption date.

(b) In the event any of the Bonds are called for redemption, notice thereof identifying the Bonds to be redeemed will be given by the Bond Registrar by mailing a copy of the redemption notice by first class mail (postage prepaid) at least 30 days but not more than 60 days prior to the date fixed for redemption to the registered owner of each Bond to be redeemed at the address shown on the registration books kept by the Bond Registrar; provided however, that so long as the Bonds are registered in the name of Cede & Co. as nominee of The Depository Trust Company, New York, New York (“DTC”), notice of redemption shall be given in accordance with the terms of the Representation Letter hereinafter described. Failure to give notice by mail to any registered owner, or any defect therein, will not affect the validity of any proceeding for the redemption of Bonds not affected by such defect or failure. Bonds so called for redemption will cease to bear interest after the specified redemption date, provided that the funds for the redemption are on deposit with the place of payment at that time.

(c) If less than all the Bonds of a maturity are called for redemption while the Bonds are registered in the name of Cede & Co., the City or the Bond Registrar designated below will notify DTC of the particular amount of such maturity to be prepaid. DTC will determine by lot the amount of each participant’s interest in such maturity to be redeemed and each participant will then select by lot the beneficial ownership interest in such maturity to be redeemed. If less than all the Bonds of a maturity are called for redemption and the Bonds are not registered in the name of Cede & Co., the Bond Registrar will determine by lot or other manner deemed fair, the amount of each

maturity to be redeemed. All prepayments shall be at a price equal to the principal amount thereof plus accrued interest.

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, 2010. 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 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

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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 first publication or the mailing (if there is no publication) 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 UTILITIES REVENUE BOND, SERIES 2009E

R-__ \$_____

Interest Rate	Maturity Date	Date of Original Issue	CUSIP
	February 1, __	December __, 2009	

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, 2010. 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 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 \$4,465,000, 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 Sections 115.46, 444.075 and 476.67, Subdivisions 1 through 12, and Section 55 of the Home Rule Charter of the City, and all other laws and charter provisions thereto enabling and pursuant to Ordinance No. 9996 adopted September 28, 2009, and pursuant to a resolution adopted on November 19, 2009, by the governing body of the City (the "Resolution"), and is issued for improvements to the municipal sewer utility and to refund the outstanding principal amount of the \$6,630,000 General Obligation Gas and Sewer Utilities Revenue Bonds, Series 2001F, dated December 1, 2001.

That portion of the Bonds issued for the municipal sewer utility 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 portion of the Bonds issued for the sewer utility, 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 portion of the Bonds issued for the sewer utility.

That portion of the Bonds issued for the municipal gas utility 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 portion of the Bonds issued for the gas utility, 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 portion of the Bonds issued for the gas utility.

The Bonds maturing in the years 2020 and 2025 shall be subject to mandatory redemption and redeemed in installments as provided in the Resolution, at par plus accrued interest to the date of redemption.

The Bonds of this series maturing in the years 2011 through 2018 are not subject to redemption before maturity, but those maturing, or subject to mandatory redemption, in the year 2019 and in subsequent years are each subject to redemption and prepayment at the option of the City on February 1, 2018, and on any date thereafter, in whole or in part, in such order of maturities as selected by the City and by lot as to Bonds maturing in the same year, at a price equal to the principal amount plus accrued interest to the redemption date.

Not less than 30 nor more than 60 days prior to the date fixed for redemption and prepayment of any Bonds, notice of redemption shall be mailed to each registered owner of a Bond to be redeemed; however, that so long as the Bonds are registered in the name of Cede & Co., as nominee for The Depository Trust Company, New York, New York ("DTC"), notice of redemption shall be given in accordance with the terms of the Blanket Issuer Letter of Representations executed by the City and DTC.

If less than all the Bonds of a maturity are called for redemption while the Bonds are registered in the name of Cede & Co., the City or the Bond Registrar designated below will notify DTC of the particular amount of such maturity to be prepaid. DTC will determine by lot the amount of each participant's interest in such maturity to be redeemed and each participant will then select by lot the beneficial ownership interest in such maturity to be redeemed. If less than all the Bonds of a maturity are called for redemption and the Bonds are not registered in the name of Cede & Co., the Bond Registrar will determine by lot or other manner deemed fair, the amount of each maturity to be redeemed. All prepayments shall be at a price equal to the principal amount thereof plus accrued interest. If any Bond is redeemed in part, upon surrender of the Bond being redeemed, the City shall deliver or cause to be delivered to the registered owner of such Bond, a Bond in like form in the principal amount equal to that portion of the Bond so surrendered not being redeemed.

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, 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.

Date	Registered Owner	Signature of Bond Registrar
12/___/09	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.

BOND COUNSEL OPINION

I certify that attached hereto is a full, true, and correct copy of the legal opinion rendered by bond counsel on the issuance of the Bonds, dated as of the original date of delivery of and payment for the Bond.

Clerk

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 2001 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. 09-1119-02. 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 Sewer Portion of the Bonds.

(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 Sewer Portion of the Bonds and on all other bonds 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 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) The City has created a separate construction account within the Public Utility Sewer Fund to which there shall be credited \$938,150.00 from the proceeds of the Bonds, together with any additional funds which may be available and are appropriated for the Project and other improvements to the utility. 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 improvements to the sewer utility and costs of the issuance of the Bonds.

(c) 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 "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 Sewer Portion of 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 Sewer Debt Service Fund the rounding amount (\$3,804.47) and the amount of accrued interest on the Sewer Portion of the Bonds. 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 Sewer Portion of the Bonds, and a pro rata portion of 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.

(d) 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 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.

4.02 Gas Portion of the Bonds.

(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 Gas Portion of the Bonds and on all other bonds 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 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 "Gas 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 Gas Portion of 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 Gas Debt Service Fund the rounding amount (\$1,841.16) and the amount of accrued interest on the Gas Portion of the Bonds. The treasurer shall transfer from the Gas Utility Operating Account to the Gas Debt Service Fund amounts of the net revenues sufficient for the payment of all interest and principal then due on the Gas Portion of the Bonds, and a pro rata portion of 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 Gas 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.

4.03 Escrow account.

(a) The City hereby creates an Escrow Account for payment of the Refunded 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 construction account, the Debt Service Funds 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 meet the 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 Refunded 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 Refunded Bonds to and including 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 Refunded Bonds is irrevocably appropriated to the payment of the principal of and interest on the Refunded Bonds to and including 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 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 shall be deposited in the Debt Service Funds.

(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.

(f) The construction funds created for the 2001 Bonds have previously been terminated and all bond proceeds therein have been expended.

4.04 It is hereby determined that upon the receipt of proceeds of the Bonds (the "Proceeds") for payment of 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 Resolutions authorizing the 2001 Bonds for collection year 2010 and thereafter.

4.05 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 Funds will be received at the times and in amounts not less than 5% 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 2001 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 2001 Bonds due on February 1, 2010, and the principal of the Refunded Bonds called for redemption and prepayment on the Redemption Date.

5.03 The Refunded Bonds shall be paid, redeemed and prepaid in accordance with their terms and in accordance with the terms and conditions set forth in the forms 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 2001 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 2001 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 2001 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 Funds 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 (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 new money portion of the Bonds issued for financing the Project (\$926,739.40), the following schedule will be met: (i) at least 15% of the gross proceeds of the new money portion of the Bonds will be allocated to expenditures for the governmental purpose of the new money portion 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 new money portion of the Bonds, and that 100% of the available proceeds of the new money portion of the Bonds will be allocated within 30 months from the date of issue of the Bonds.

(b) The proceeds of the Refunded Bonds have been totally expended for the governmental purpose for which they were issued; the gross proceeds of the refunding portion of the Bonds (\$3,647,437.35) will be totally expended for the purpose of refunding the outstanding principal amount of the Refunded Bonds and interest thereon 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).

(c) 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.

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 2009B (the "Series 2009B Bonds"), General Obligation Capital Equipment Notes, Series 2009D (the "Notes"), and General Obligation Improvement Refunding Bonds, Series 2009F (the "Series 2009F Bonds"). The Bonds will not be paid out of substantially the same source of funds as the Series 2009B Bonds, the Notes and the Series 2009F 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 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. 04-0219-02.

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 09-0698 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause and President Gilbert -- 8

Nays: Councilor Stauber -- 1

Approved November 19, 2009

DON NESS, Mayor

- - -

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

Section 1. Bond Purpose and Authorization.

1.01 (a) The City has previously issued its \$2,750,000 General Obligation Improvement Bonds, Series 1998E, dated December 1, 1998 (the "1998 Bonds"), its \$1,220,000 General Obligation Improvement Bonds, Series 1999G, dated December 1, 1999 (the "1999 Bonds"), and its \$1,405,000 General Obligation Improvement Bonds, Series 2001A, dated April 1, 2001 (the "2001 Bonds"). The 1998 Bonds, the 1999 Bonds and the 2001 Bonds were authorized and issued pursuant to the City Charter, Minnesota Statutes, Chapter 475 and all other laws thereunto enabling such issues.

(b) The 1998 Bonds were a multi-purpose issue consisting of \$1,005,000 General Obligation Improvement Bonds payable from special assessments levied against benefitted properties and of \$1,745,000 General Obligation Michigan Street Improvement Bonds issued pursuant to Minnesota Laws 1974, Chapter 130, and other laws, to finance a new realignment of Michigan Street with connector streets to old Michigan Street (the "Michigan Street Improvements"), which bonds are paid from ad valorem taxes.

1.02 Under and pursuant to the provisions of Minnesota Statutes, Chapter 475 (the "Act") and Section 475.67, Subdivisions 1 through 12 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 (a) It is necessary and desirable that in order to reduce debt service costs the City issue \$2,150,000 General Obligation Improvement Refunding Bonds, Series 2009F (the

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

“Bonds”), to refund the outstanding 1998 Bonds, 1999 Bonds and 2001 Bonds maturing on and after February 1, 2010 (the “Refunded Bonds”), of which \$2,550,000 in principal amount is outstanding. The 1998 Bonds, 1999 Bonds and 2001 Bonds maturing on or after February 1, 2011, are subject to prepayment and redemption on February 1, 2010 (February 1, 2010 is herein referred to as the “Redemption Date”).

(b) The Bonds, and the maturities therefore, are allocated to the refunding of: (i) the portion of the 1998 Bonds which financed public improvements, the 1999 Bonds and the 2001 Bonds, all of which are payable primarily from special assessments upon benefitted property (the “Public Improvement Portion of the Bonds”); and (ii) the portion of the 1998 Bonds which financed the Michigan Street Improvements, which are payable from ad valorem taxes (the “Michigan Street Improvement Portion of the Bonds”); each as set forth in Section 2.01.

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 Bonds at least two days (omitting Saturdays, Sundays and legal holidays) before the date set for receipt of bids on the Bonds, pursuant to and in accordance with Minnesota Statutes, Section 475.60, Subd. 3. 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.

1.05 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 \$2,188,264.09, 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 as of 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 stated and shall bear interest as follows:

Year	Michigan Street Improvement Portion of the Bonds	Public Improvement Portion of the Bonds	Amount	Interest Rate
2011	\$222,962.96	\$197,037.04	\$420,000	2.00%
2012	232,941.18	207,058.82	440,000	2.00%
2013	240,000.00	205,000.00	445,000	2.00%
2014	239,787.23	220,212.77	460,000	2.50%
2015	51,206.90	218,793.10	270,000	2.50%
2016	0.00	115,000.00	115,000	3.00%

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Total	\$986,898.27	\$1,163,101.73	\$2,150,000	
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2.02 The Bonds are not subject to redemption prior to 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, 2010. 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 proposed approving legal opinion of Fryberger, Buchanan, Smith & Frederick, P.A. of Duluth, Minnesota, which is to be complete and cause the opinion to be attached to each Bond, together with a certificate to be signed by the manual or facsimile signature of the city clerk in substantially the form set forth in Section 2.11, but only if the opinion is not manually executed. The city clerk is authorized and directed to execute the certificate in the name of the City upon receipt of the opinion, if required by the preceding sentence, and to file the opinion in the City offices.

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 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 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 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,

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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 first publication or the mailing (if there is no publication) 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 IMPROVEMENT REFUNDING BOND, SERIES 2009F

R-_____ \$_____

Interest Rate	Maturity Date	Date of Original Issue	CUSIP
	February 1, _____	December __, 2009	

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, 2010. 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 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 \$2,150,000, all of like date and tenor, except as to number, amount, maturity date and interest rate, pursuant to the authority contained in Minnesota Statutes, Chapter 475 and all other laws thereunto enabling, and pursuant to an authorizing resolution adopted by the governing body of the City on November 19, 2009 (the "Resolution"), and is issued for the purpose of providing money to refund the outstanding principal amount of the \$2,750,000 General Obligation Improvement Bonds, Series 1998E, dated December 1, 1998 (the "1998 Bonds"), the \$1,220,000 General Obligation Improvement Bonds, Series 1999G, dated December 1, 1999 (the "1999 Bonds"), and the \$1,405,000 General Obligation Improvement Bonds, Series 2001A, dated April 1, 2001 (the "2001 Bonds"). The 1998 Bonds were issued (i) in part to finance local public improvements, which obligations and interest thereon will be payable primarily from special assessments upon benefitted property and (ii) in part to finance the local match for grant funds for the realignment of Michigan Street as described in the Resolution, which obligations and interest thereon are payable from annual ad valorem taxes. The 1999 Bonds and the 2001 Bonds will be payable primarily from special assessments upon benefitted property.

The Bonds are not subject to redemption 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, 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

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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 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, Minnesota, 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, 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
12/___/09	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.

BOND COUNSEL OPINION

I certify that attached hereto is a full, true, and correct copy of the legal opinion rendered by bond counsel on the issuance of the Bonds, dated as of the original date of delivery of and payment for the Bond.

Clerk

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 1998 Bonds, 1999 Bonds and 2001 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. 09-1119-02. 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. Covenants, Accounts and Representations.

4.01 (a) A separate account within the City's Special Assessment Debt Service Fund is hereby created and is designated the "2009F Improvement Refunding Bond Account." The money in such account shall be used for no purpose other than the payment of principal and interest on the Public Improvement Portion of the Bonds. The 2009F Improvement Refunding Bond Account shall be maintained in the manner herein specified until all of the Bonds and interest thereon have been fully paid. To the 2009F Improvement Refunding Bond Account there is hereby pledged and irrevocably appropriated and there shall be credited: (i) any balance remitted to the City upon termination of the Escrow Agreement attributable to the 1998 Bonds which financed public improvements, the 1999 Bonds and the 2001 Bonds; (ii) any balance remaining on the Redemption Date in the debt service accounts created in the City's resolution authorizing the issuance and sale of the 1998 Bonds (Resolution No. 98-0974R) which financed public improvements, the 1999 Bonds (Resolution No. 99-0790R), and the 2001 Bonds (Resolution No. 01-0238R) (the "Prior Resolutions") after payment of principal and interest on the Refunded Bonds on the Redemption Date; (iii) any collections of the proceeds of special assessments levied for the public improvement projects listed in Section 1 of the Prior Resolutions and the ad valorem taxes hereafter levied for the payment of the Public Improvement Portion of the Bonds and interest thereon; (iv) all investment earnings on funds in the 2009F Improvement Refunding Bond Account; (v) \$4,470.69 of the rounding amount and accrued interest, if any, received from the Purchaser upon delivery of the Bonds which is allocable to the Public Improvements Portion of the Bonds, to the extent not required to fund the Escrow Account; (vi) any amount of additional interest permitted by Section 475.56 of the Act paid by the Purchaser allocable to the Public Improvement Portion of the Bonds, to the extent not required to fund the Escrow Account; (vii) all taxes or other funds pledged to repayment of the Public Improvement Portion of the 1998 Bonds, the 1999 Bonds and the 2001 Bonds in the Prior Resolutions hereafter collected pursuant to levies made in the Prior Resolutions; and (viii) any and all other monies which are properly available and are appropriated by the City to the 2009F Improvement Refunding Bond Account including taxes levied in Section 4.04(c) hereof. The amount of any surplus remaining in the 2009F Improvement Refunding Bond Account when the Bonds and interest thereon are paid shall be used as provided in Section 475.61, Subdivision 4 of the Act.

(b) A separate debt service account within the City's Debt Service Fund is hereby created and designated as the "2009F Refunding Bonds Michigan Street Improvement Debt Service Account" (the "2009 Bonds Michigan Street Account"). The 2009 Bonds Michigan Street Account shall be maintained in the manner herein specified until all of the Bonds and interest thereon have been fully paid. To the 2009 Bonds Michigan Street Account there is hereby pledged and irrevocably appropriated and there shall be credited: (i) any balance remitted to the City upon termination of the Escrow Agreement attributable to the 1998 Bonds which financed the Michigan Street Improvements; (ii) any balance remaining on the Redemption Date in the debt service account created in the City's resolution authorizing the issuance and sale of the 1998 Bonds (Resolution No. 98-0974R) which financed the Michigan Street Improvements (the "1998 Resolution") after payment of principal and interest on the Refunded Bonds on the Redemption Date; (iii) any collections of the ad valorem taxes hereafter levied for the payment of the Michigan Street Improvement Portion of the Bonds and interest thereon; (iv) all investment earnings on funds in the 2009 Bonds Michigan Street Account; (v) \$3,793.40 of the rounding amount and accrued interest, if any, received from the Purchaser upon delivery of the Bonds, which is allocable to the Michigan Street Improvement Portion of the Bonds to the extent not required to fund the Escrow Account; (vi) any amount of additional interest permitted by Section 475.56 of the Act paid

by the Purchaser allocable to the Michigan Street Improvement Portion of the Bonds, to the extent not required to fund the Escrow Account; (vii) all taxes pledged to repayment of the 1998 Bonds allocable to the Michigan Street Improvements in the 1998 Resolution hereafter collected pursuant to levies made in the 1998 Resolution; and (viii) any and all other monies which are properly available and are appropriated by the City to the 2009 Bonds Michigan Street Account including taxes levied in Section 4.04(b) hereof. The amount of any surplus remaining in the 2009 Bonds Michigan Street Account when the Bonds and interest thereon are paid shall be used as provided in Section 475.61, Subdivision 4 of the Act.

(c) Escrow account.

(i) 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 either the 2009F Improvement Refunding Bond Account or the 2009 Bonds Michigan Street Account or are not to be used for payment of costs of issuance of the Bonds; (b) accrued interest on the Bonds; (c) additional interest permitted by Section 475.56 of the Act paid by the Purchaser [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 meet the 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 1998 Bonds, 1999 Bonds and 2001 Bonds on the Redemption Date and for the Refunded Bonds called for redemption on the Redemption Date.

(ii) 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.

(iii) From the Escrow Account there shall be paid: (a) all principal of and interest to be paid on the 1998 Bonds, 1999 Bonds and 2001 Bonds to and including the Redemption Date; and (b) the principal of the Refunded Bonds due by reason of redemption on the Redemption Date.

(iv) The Escrow Account for the 1998 Bonds, 1999 Bonds and 2001 Bonds is irrevocably appropriated to the payment of the principal of and interest on the 1998 Bonds, 1999 Bonds and 2001 Bonds to and including the Redemption Date and to prepayment of the Refunded Bonds due by reason of redemption on the Redemption Date. The monies to be deposited in the Escrow Account for the 1998 Bonds, 1999 Bonds and 2001 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 2009F Improvement Refunding Bond Account and the 2009 Bonds Michigan Street Account on a prorata basis.

(v) 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.

(d) The construction funds created for the 1998 Bonds, 1999 Bonds and 2001 Bonds have previously been terminated and all bond proceeds therein have been expended.

(e) The City shall pay the costs of issuance of the Bonds from proceeds of the Bonds in the amount of \$20,000.

4.02 The city council hereby declares that it has assessed against benefitted property not less than 20 percent of the cost of the projects financed by the 1998 Bonds, 1999 Bonds and 2001 Bonds. The City further declares that it has completed the special assessment process, including

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any and all supplemental assessments or reassessments that were required to lawfully assess the benefitted property.

4.03 It is hereby determined that upon the receipt of proceeds of the Bonds (the "Proceeds") for payment of the 1998 Bonds, 1999 Bonds and 2001 Bonds that an irrevocable appropriation to the Escrow Account shall have been made within the meaning of Section 475.61, Subdivision 3 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 Prior Resolutions for collection year 2010 and thereafter.

4.04 (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.

(b) To provide monies for the payment of the principal and interest on the Michigan Street Improvement Portion of 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
2009	2010	\$259,084
2010	2011	262,159
2011	2012	264,679
2012	2013	259,416
2013	2014	55,112

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 Michigan Street Improvement Portion of the Bonds.

Such tax levies shall be irrevocable as long as any of the Michigan Street Improvement Portion of the Bonds issued hereunder are outstanding and unpaid; provided, however, that in each year while any Bonds issued hereunder remain outstanding, the city council may reduce or cancel the above levies to the extent of an irrevocable appropriation to the 2009 Bonds Michigan Street Account of monies actually on hand for payment of the portion of such principal and interest payable from such ad valorem taxes, and may direct the county auditor to reduce the levy for such calendar year by that amount. All proceeds of said taxes are hereby appropriated and shall be paid when collected into the 2009 Bonds Michigan Street Account. If the balances in the 2009 Bonds Michigan Street Account 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 the 2009 Bonds Michigan Street Account when the balances therein are sufficient.

(c) It is estimated that the special assessments levied and appropriated to the 2009F Improvement Refunding Bond Account 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 on the Public Improvement Portion of the Bonds and, accordingly, no tax is presently levied for this purpose. It is recognized, however, that the City's liability on the Public

Improvement Portion of 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 Public Improvement Portion of the Bonds, without limitation as to rate or amount.

(d) All proceeds of said special assessments and said taxes are hereby appropriated and shall be paid when collected into the 2009F Improvement Refunding Bond Account within the Special Assessment Debt Service Fund. If the balances in the 2009F Improvement Refunding Bond Account 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 the 2009F Improvement Refunding Bond Account when the balances therein are sufficient.

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 Prior Resolutions 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 1998 Bonds, 1999 Bonds and 2001 Bonds due on February 1, 2010, and the principal of the Refunded Bonds 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 clerk or his designee 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 of the Refunded Bonds.

5.04 When the principal of the 1998 Bonds, 1999 Bonds and 2001 Bonds and all interest thereon have been discharged as provided in this section, all pledges, covenants and other rights granted by the Prior Resolutions to the holders of the 1998 Bonds, 1999 Bonds and 2001 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 1998 Bonds, 1999 Bonds and 2001 Bonds shall remain in full force and effect.

Section 6. 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. 04-0219-02.

Section 7. Tax Covenants.

7.01 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 limitations, 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.

7.02 (a) The proceeds of the 1998 Bonds, 1999 Bonds and 2001 Bonds have been totally expended for the governmental purpose for which issued; the gross proceeds of the Bonds will, within 90 days of the date of issuance of the Bonds, have been totally expended for the purpose of refunding the outstanding principal amount of the Refunded Bonds and interest thereon and paying costs of issuance of the Bonds. Therefore, no rebate of arbitrage profit is required under the Internal Revenue Code of 1986, as amended (the "Code").

(b) In addition, the proceeds of the Bonds and money in the debt service accounts established herein 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 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.

(d) The City expects that all proceeds of the Bonds will be expended within six months of the date of issue of the Bonds.

7.03 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 2009B (the "Series 2009B Bonds"), General Obligation Capital Equipment Notes, Series 2009D (the "Notes"), and General Obligation Utilities Revenue Bonds, Series 2009E (the "Series 2009E Bonds"). The Bonds will not be paid out of substantially the same source of funds as the Series 2009B Bonds, the Notes and the Series 2009E Bonds; consequently, the Bonds will not be combined with them for a single issue.

Resolution 09-0699 was unanimously adopted.

Approved November 19, 2009

DON NESS, Mayor

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The meeting was adjourned at 5:35 p.m.

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

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, November 23, 2009, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Absent: None -- 0

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The minutes of council meetings held on August 10 and 24, 2009, were approved upon a unanimous vote.

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

09-1123-08 Fred Anderson communication regarding agency agreement between the city and Mn/DOT for federal participation in preliminary engineering for the Joshua Avenue/Duluth Heights connector (09-0692R). -- Received

09-1123-09 Fitger's communication regarding resolution requesting that electricity costs incurred by the city from Bentleyville Tour of Lights 2009 be derived from the tourism tax fund (09-0713R). -- Received

09-1123-10 Sweetwater Alliance communication regarding license agreement with the Duluth economic development authority (DEDA) to dispose of snow on property owned by DEDA (09-0700R). -- Received

09-1123-11 The following communications regarding a request by Park Point Properties to reclassify from R-1-c, one-family residential, to R-3, apartment residential, property located between Minnesota Avenue and Saint Louis Avenue (09-0707R): (a) Janice Cohen; (b) Alan Dartanyan; (c) Elizabeth and Joyce Hooper; (d) Park Point Properties; (e) Lloyd Schallberg. -- Received

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REPORTS FROM OTHER OFFICERS

09-1123-01 Clerk:

(a) Applications to the Minnesota gambling control board for exemption from lawful gambling licenses (raffles) from: (1) ALS Association, Minnesota Chapter, on February 6, 2010; (2) Regents of the University of Minnesota, on April 22, 2010;

(b) Waiver, by Gordon Grant, of recount of votes regarding election of Fourth Council District results pursuant to Minnesota Statutes 204C.36, Subd. 2(b). -- Received

09-1123-02 Parks and recreation division manager rental agreement with Ashley R. Youngblom for residential dwelling unit located at Duluth Heights Community Recreation Center, 33 West Mulberry Street, pursuant to Section 2-35, Duluth City Code. -- Mayor for execution

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REPORTS OF BOARDS AND COMMISSIONS

09-1123-03 Commission on disabilities minutes of September 30, 2009, meeting. -- Received

09-1123-04 Duluth airport authority: (a) Balance sheet of August 31, 2009; (b) Minutes of: (1) September 15; (2) September 28, 2009, meetings. -- Received

09-1123-05 Duluth public arts commission minutes of October 19, 2009, meeting. --
Received

09-1123-06 Library board minutes of September 22, 2009, meeting. -- Received

09-1123-07 Parks and recreation commission minutes of October 14, 2009, meeting. --
Received

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OPPORTUNITY FOR CITIZENS TO BE HEARD

Jerry Schlafer commented on the allusion that individuals can live in a community and not pay for the services that they receive. He hoped that his elected officials do the best they can to see that he receives a fair amount of services for the amount he pays.

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Laura Lundahl and Jonatan Mitchell, public relations director for the University of Minnesota - Duluth (UMD) Student Association, expressed support for the reestablishment of the higher education commission for the reasons of: college students make up 1/5th of Duluth's population for nine months of the year; this would establish an ongoing reliable line of communication; it would address concerns between college students and the larger Duluth community and college students would be better accepted by the community.

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RESOLUTION TABLED

Councilor Cuneo moved to remove Resolution 09-0686, confirming appointment of members to serve on the ambulance/emergency services task force, from the table, which motion was seconded and unanimously carried.

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

Jim Glib, Dan Hudyma, representing the collective bargaining unit for Gold Cross Paramedics, and Pete Reynolds and Judy Greske, Gold Cross employees, spoke of their concerns for the reasons of: Gold Cross provides life saving emergency treatment on the scene and through transport; both the fire department staff and Gold Cross have an invaluable part to play in protecting the citizens; the need for this task force is questioned; the task force needs to represent all sides of the equation, where the firefighters are represented, Gold Cross is not; Gold Cross provides 911 services from Cotton to Minong; and transportation from many outlying hospitals to Duluth and from Duluth to Minneapolis and Rochester; Gold Cross receives no subsidy from the city of Duluth; they are regulated and inspected by the state of Minnesota; the creation of this study appears to give the impression that Gold Cross is doing something wrong or not as good as the fire department could; a loss of this service to Duluth could adversely affect emergency service for all other areas outside of Duluth that have no other alternatives; about ten years ago, Mr. Sparks, a candidate for this task force, encouraged the council to look at alternatives for emergency service, such as the fire department.

K. Lewis felt that: this is an appearance of seizing a private business; it should be considered whether a police officer could determine whether the fire department or an ambulance comes first to what appears to be a routine situation and that Gold Cross is needed in its current profitable form covering its expenses so the citizens will not have to cover those costs.

Councilor Cuneo noted that Patrick Lee, a nominee of the task force, is excusing himself from the slate because of a conflict and that this is an issue worth talking about in the community.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Councilor Fedora moved to amend the resolution by replacing the name "Patrick Lee" with "Peg Sweeney," which motion was seconded and discussed.

Councilor Fedora stated that Peg Sweeney would be appropriate because as a county commissioner she represents a lot of the outlying rural areas that would be impacted by any changes.

Councilor Krause felt that this issue is a political football where no complaints have been noted on this service and that an elected individual can not be impartial.

To a councilor question about a potential conflict of interest, Councilor Eckenberg stated that while he is a deputy county administrator, he is now acting as a city councilor representing the best interest of the citizens of Duluth and that while he feels that Peg Sweeney would do a good job, a better representation would be that of Glen Bergstrand.

Councilor Fedora's motion was carried upon the following vote:

Yeas: Councilors Anderson, Cuneo, Fedora, Fosle, Gardner and President Gilbert -- 6

Nays: Councilors Eckenberg and Krause -- 2

Abstention: Councilor Stauber -- 1

Councilor Fedora moved to amend the resolution by replacing the name "Roger Reinert" with "Andy Peterson," which motion was seconded and discussed.

Councilor Fedora felt that because legislative candidate Reinert received a \$500 contribution from the Duluth Fire Department's Political Action Committee and in the best interest of creating objectivity, he proposed his amendment.

Councilor Anderson noted that it was his understanding the contribution came from the state firefighters union, not the local fire department.

Councilor Fedora's amendment failed upon the following vote:

Yeas: Councilors Eckenberg, Fedora and Krause -- 3

Nays: Councilors Anderson, Cuneo, Fosle, Gardner and President Gilbert -- 5

Abstention: Councilor Stauber -- 1

Councilor Fedora moved to amend the resolution by replacing the name "Jay Sparks" with "Glen Bergstrand," which motion was seconded and discussed.

Councilor Fedora stated that his intent is to insure objectivity and address the concerns raised about Mr. Sparks' past activities and that Gold Cross should have some sort of representation at the table.

Councilor Eckenberg supported the amendment because Mr. Bergstrand is past president of the Lakehead Mutual Aid Association, which is a group of 34 volunteer and professional fire departments within an area surrounding Duluth and that he is also the state fire marshal.

Councilor Gardner felt that while Mr. Bergstrand is a good resource, she would prefer that he replaced Roger Reinert.

Councilor Fedora's amendment failed upon the following vote:

Yeas: Councilors Eckenberg, Fedora, Krause and President Gilbert -- 4

Nays: Councilors Anderson, Cuneo, Fosle and Gardner -- 4

Abstention: Councilor Stauber -- 1

Councilor Anderson moved to amend the resolution by replacing the name "Roger Reinert" with "Glen Bergstrand," which motion was seconded and carried upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause and President Gilbert -- 8

Nays: None -- 0

Abstention: Councilor Stauber -- 1

Councilor Fedora moved to amend the resolution, by replacing the name "Jay Sparks" with "Andy Peterson," which motion failed for lack of a second.

Councilor Gardner moved to suspend the rules to have the nominees present introduce themselves, which motion was seconded and carried.

Theresa Gunnarson, JoAnn Hoag and Jay Sparks introduced themselves.

Councilors Fedora and Eckenberg stated that they opposed the task force: not because of the individuals, but because the consequences reach far beyond the city of Duluth; if there was a medical malpractice lawsuit and Gold Cross was not here and the fire department was performing the service, who would shoulder the liability; all citizens of Duluth would be covering the costs associated with the fire department performing this service and voting for this will mean more taxes for those outside the city limits.

Resolution 09-0686, as amended, was adopted as follows:

BY COUNCILOR CUNEO:

RESOLVED, that pursuant to Resolution 09-0670, the appointments made by the public safety committee to serve on the ambulance/emergency services task force as follows: Theresa Gunnarson, JoAnn Hoag, Glen Bergstrand, Peg Sweeney and Jay Sparks, are hereby confirmed.

Resolution 09-0686, as amended, was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Fosle, Gardner and President Gilbert -- 5

Nays: Councilors Eckenberg, Fedora and Krause -- 3

Abstention: Councilor Stauber -- 1

Approved November 23, 2009

DON NESS, Mayor

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

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 adopted November 9, 2009 (the "Ordinance"), ordered the issuance, sale and delivery of a general obligation sewer utility revenue note in the maximum amount of \$2,500,000 of the City, for the payment of the costs of improvements to the

municipal sewer utility through the construction of Phase I of the East Interceptor Sanitary Sewer Overflow Storage Facility (Lift Station No. 6 reconstruction, collection system and diversion structure piping improvements) (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 Department of the Army, represented by the U.S. Army Engineer, Detroit District, in the amount of \$1,980,000 to pay a portion of the costs of the Project. The general obligation sewer utility revenue note to be issued under the Ordinance shall be issued in the principal amount of \$2,414,150 (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. 09-1123-12(a), for the Project to the PFA pursuant to a Minnesota Public Facilities Authority Bond Purchase and Project Loan Agreement dated October 27, 2009, 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. 09-1123-12(b) 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 \$2,414,150, in fully registered form and lettered and numbered R-1. Interest on the Note shall be at the rate of 2.017% 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. The Note shall not be delivered until after the effective date of the Ordinance.

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 "2009B 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 "2009B 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 2009B Sewer Debt Service Fund are pledged to payment of the Note and other bonds and notes payable from the 2009B Sewer Debt Service Fund. The treasurer shall transfer from the Sewer Utility Operating Account to the 2009B 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 2009B 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 2009B Sewer 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 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 2009B 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 2009B Construction Account and the 2009B 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 2009B 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 2009B 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 2009B 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 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.

5.03 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 Note 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 09-0702 was unanimously adopted.

Approved November 23, 2009

DON NESS, Mayor

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RESOLVED, that the assessment roll on file in the office of the city clerk as Public Document No. 09-1123-13, which is levied to defray in full the expense of solid waste collecting during the period of March 1, 2008, to June 1, 2009, for which the licensed collector has not been reimbursed as provided for in Chapter 24 of the Duluth City Code, is hereby confirmed.

Resolution 09-0703 was unanimously adopted.

Approved November 23, 2009

DON NESS, Mayor

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BY COUNCILOR FEDORA:

RESOLVED, that the city council hereby requests and authorizes the proper city officials to transfer funds, not to exceed \$5,000, from the unreserved - undesignated fund balance of the

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

tourism tax fund to the general fund for any electricity costs incurred by the city from Bentleyville Tour of Lights 2009.

Resolution 09-0713 was unanimously adopted.
Approved November 23, 2009
DON NESS, Mayor

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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, 2010, subject to departmental approvals, and the payment of sales and property taxes:

Texas Roadhouse Holdings, LLC (Texas Roadhouse), 902 Mall Drive, with Texas Roadhouse Holdings, LLC, 100 percent owned by Texas Roadhouse, Inc.

Resolution 09-0688 was unanimously adopted.
Approved November 23, 2009
DON NESS, Mayor

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RESOLVED, that city officials are hereby authorized to contract with Tierney Brothers, Inc., for the purchase and installation of technical audio/video/data equipment for the Duluth City Council Chamber in accordance with the city's specifications and the vendor's proposal of \$163,853.48 plus \$11,264.93 sales tax for a total combined amount of \$175,118.41, terms net 30, payable from the Capital Equipment Fund 250, Department/Agency 015, Organization 2008, Object 5580, Project CE250-E801.

Resolution 09-0705 was unanimously adopted.
Approved November 23, 2009
DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Max Gray Construction, Inc., for casework alterations and additions, accent lighting and standard window treatments to accommodate technology upgrades for the council chamber in City Hall in accordance with its low specification bid of \$69,100; payable out of Capital Equipment Fund 250, Department/Agency 015, Organization 2008, Object 5580, Project CE250-E801.

Resolution 09-0712 was unanimously adopted.
Approved November 23, 2009
DON NESS, Mayor

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RESOLVED, that the proper city officers 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. 09-1123-14, with the state of Minnesota department of employment and economic development, state services for the blind, business enterprises program, to authorize operation of vending machines by a program participant in City Hall, utility payments received to be deposited in Fund 110-120-1217-2120-4622.

Resolution 09-0714 was unanimously adopted.
Approved November 23, 2009
DON NESS, Mayor

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RESOLVED, that:

(a) The city council grants the request for a Section 50-35(h) special use permit submitted by Michael G. Edmunds for a 4,570 square foot dental clinic and 13-car parking lot at 1414 Woodland Avenue and legally described as Motor Line Division, Block 9, Lots 24-27 (010-3360-01400); and

(b) Pursuant to Section 50-32 of [Chapter 50,] Article IV, of the Duluth City Code, 1959, as amended, 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 planning commission, at its November 10, 2009, regular meeting recommended approval of the request with conditions; and

(d) The approval was made because of the city planning commission findings 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 09105).

FURTHER RESOLVED, that the city council of the city of Duluth approves a special use permit for a 4,570 square foot dental clinic, 13-car parking lot, and landscaping, subject to the following conditions:

(a) That the project be limited to, constructed, and maintained according to the following documents drafted by SJA Architects titled "Proposed Dental Office, 1414 Woodland Ave.," Sheets A2, A3, and A4, all dated 11-09-2009, and Sheet C-1 drafted by SAS and Associates dated 11-05-2009, and shown on Public Document No. 09-1123-15;

(b) That the dumpster not be emptied between 10 p.m. and 7 a.m.;

(c) Any alterations to the approved plans that do not alter major elements of the plan may be approved by the land use supervisor without further city council action; however, no such administrative approval shall constitute a variance from the provisions of Chapter 50, Article IV;

(d) That prior to issuance of a building permit to develop the site as approved in this special use permit that the ordinance be amended to permit the parking to be constructed as designed.

Resolution 09-0709 was unanimously adopted.

Approved November 23, 2009

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into the second amendment to CFMS Grant No. B15693, a copy of which is on file in the office of the city clerk as Public Document No. 09-1123-16, with the Minnesota pollution control agency, extending the time for performance thereunder to September 30, 2010.

Resolution 09-0710 was unanimously adopted.

Approved November 23, 2009

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into an amendment (Public Document No. 09-1123-17) to that certain grant authorized by Resolution No. 08-0334 with the Duluth Superior Area Community Foundation, modifying the work plan and extending the time for performance thereunder to September 30, 2010.

Resolution 09-0711 was unanimously adopted.

Approved November 23, 2009

DON NESS, Mayor

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RESOLVED: that the proper city officials are authorized to settle the claim of the city of Duluth against the Duluth Amateur Hockey Association for a total amount of \$100,000 said claim arising out of the action filed in St. Louis County District Court and entitled *Lexington Insurance Company, as subrogee of City of Duluth, and City of Duluth vs. Duluth Amateur Hockey Association*, St. Louis County File No. 69DU-CV-06-1537, and execute all documents necessary, funds to be deposited into Fund 610-036-1651-4654-02.

Resolution 09-0716 was unanimously adopted.

Approved November 23, 2009

DON NESS, Mayor

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RESOLVED, that the proper city officials are authorized to pay to Thomas J. Potter the sum of \$13,167.10 in full and final settlement of the claim which arose out of a failure of a city sanitary sewer system occurring near 4723 West Sixth Street on August 19, 2009; payment to be made from the Self Insurance Fund 610-036-1653-5841.

Resolution 09-0691 was unanimously adopted.

Approved November 23, 2009

DON NESS, Mayor

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RESOLVED, that the proper city officials are authorized to pay to Gary A. Merila the sum of \$22,435 in full and final settlement of the claim which arose out of a break in a city watermain occurring near 8622 Lenroot Street on December 18, 2008; payment to be made from the Self Insurance Fund 610-036-1652-5841.

Resolution 09-0694 was unanimously adopted.

Approved November 23, 2009

DON NESS, Mayor

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The city council finds:

(a) That the city of Duluth applied to the commissioner of transportation for a grant from the Minnesota state transportation fund for the painting and general structural rehabilitation of Bridge No. L6116 over the Duluth Ship Canal on Lake Avenue (MSAS 140), S.A.P. No. 118-140-029;

(b) That the grant was approved and the amount of the grant was determined to be \$1,000,000;

(c) That additional state bond funds are available to increase the grant amount by \$547,510.12 for a new total of \$1,547,510.12.

RESOLVED, that the city of Duluth does hereby accept said additional grant in the amount of \$547,510.12 and affirms that any construction costs that qualify for Minnesota state transportation funds in excess of the grant will be appropriated from funds available to the city of Duluth, and that any grant monies appropriated for the construction costs but not required, based on the final audit, shall be returned to the Minnesota state transportation fund.

FURTHER RESOLVED, that grant monies received hereunder shall be deposited into the Capital Improvement Fund 0411, Agency 035, Revenue Source 4220-01, City Project No. 0079TR.

Resolution 09-0701 was unanimously adopted.
Approved November 23, 2009
DON NESS, Mayor

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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 the westerly 235 feet of West Niagara Street.

Resolution 09-0693 was unanimously adopted.
Approved November 23, 2009
DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to execute a joint powers agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 09-1123-18, with the state of Minnesota for continued access by the Duluth police department to the Midwest Automated Fingerprint Identification Network (MAFIN) database and equipment through June 30, 2010, for a total amount of not to exceed \$17,300, payable from Fund 110-160-1610-5441.

Resolution 09-0704 was unanimously adopted.
Approved November 23, 2009
DON NESS, Mayor

- - -

WHEREAS, on October 14, 2009, the city's parks and recreation commission held a public hearing pertaining to the construction of an alpine coaster at the Spirit Mountain recreation area after which voted to recommend a permit for such construction; and

WHEREAS, on November 10, 2009, the city's planning commission held a public hearing pertaining to the construction of an alpine coaster at the Spirit Mountain recreation area after which voted to recommend a permit for such construction.

RESOLVED, that pursuant to the provisions of Laws of Minnesota, 1973, Chapter 327, Section 5(e), the city council of the city of Duluth hereby grants a permit to the Spirit Mountain recreation area authority to construct an alpine coaster facility on the Spirit Mountain recreation area property substantially in conformance with conceptual plans therefore provided to the parks and recreation commission and the planning commission.

Resolution 09-0708 was unanimously adopted.
Approved November 23, 2009
DON NESS, Mayor

- - -

The following resolutions were also considered:

Resolution 09-0707, denying a request to amend Chapter 50 of the Duluth City Code, 1959, as amended, Zoning District Map No. 30 as contained in the Appendix to Chapter 50, to provide for the reclassification from R-1-c, one-family residential, to R-3, apartment residential, property located between Minnesota Avenue and Saint Louis Avenue, 16th Street and 200 feet southerly (Park Point Properties), was introduced by Councilor Stauber.

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

- - -

RESOLVED, that pursuant to Minnesota Statute Section 161.36, the commissioner of transportation be appointed as agent to 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, on file in the office of the city clerk as Public Document No. 09-1123-19 prescribing the terms and conditions of said federal aid participation as set forth and contained in Minnesota Department of Transportation Agency Agreement No. 95471.

Resolution 09-0692 was unanimously adopted.
Approved November 23, 2009
DON NESS, Mayor

- - -

Resolution 09-0700, authorizing a license agreement with the Duluth economic development authority (DEDA) to dispose of snow on property owned by DEDA, was introduced by Councilor Fosle for discussion.

Councilor Stauber opposed the resolution, stating that the contaminated snow melt pollutes Lake Superior and there is other land where the snow can be disposed of.

Resolution 09-0700 was adopted as follows:

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. 09-1123-20, 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 Lot D, west of Bayfront Park.

Resolution 09-0700 was adopted upon the following vote:
Yeas: Councilors Anderson, Cuneo, Fedora, Gardner and Krause -- 5
Nays: Councilors Eckenberg, Fosle, Stauber and President Gilbert -- 4
Approved November 23, 2009
DON NESS, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinance was read for the second time:

INTRODUCED BY COUNCILOR FOSLE

09-055 (10004) - AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN PROPERTY IN THE GARY-NEW DULUTH AREA TO KELLY N. FRISBIE FOR \$20,000.

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

- - -

The meeting was adjourned at 8:20 p.m.

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10004

AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN PROPERTY IN THE GARY-NEW DULUTH AREA TO KELLY N. FRISBIE FOR \$20,000.

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 \$20,000 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 in the Duluth News Tribune for over 30 days prior to being offered at public auction on September 26, 2009, at the minimum bid price or reserve of \$20,000. The property did not sell at auction. The purchaser named in Section 2 below has presented the highest offer which meets the minimum acceptable bid or reserve of \$20,000 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 Kelly N. Frisbie, a single person, for the amount of \$20,000 to be deposited into Water Fund 510, Agency 500, Organization 1900, Source 4853, and further to execute all documents necessary with regard to said conveyance:

Lots 27-30, Block 41, GARY CENTRAL DIVISION; and

Lots 27-30, Block 41, GARY FIRST DIVISION.

Section 3. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: January 3, 2010)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed November 23, 2009
Approved November 23, 2009
DON NESS, Mayor

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, December 7, 2009, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner, Krause, Stauber and President Gilbert -- 9

Absent: None -- 0

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

09-1207-01 Miller Dwan Foundation Hospice House, LLC, and city of Duluth, by William Burns, attorney, et al. (four signatures), petition to reclassify from R-1-b, one-family residential, to S, suburban, property described as Lots 1 - 16, inclusive, Block 11, and Lots 2, 4, 6, 8, 10, 12, 14 and 16, Block 12; all that part of Lots 1, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15, Block 10, lying northwesterly of Pecan Avenue and southwesterly of Rice Lake Road, together with the adjacent vacated streets and alleys, all in Clague and Prindle's Addition. -- Assessor

09-1207-02 Jeff Smith and Pete Lambert, by Northern Lights Landscaping, concurrent use permit application to construct a retaining wall for creation of off street parking at 610 and 618 West Skyline Parkway. -- Planning commission

09-1207-12 Jane and Paul Brissett communication regarding 2010 budget for Duluth libraries (09-061-O). -- Received

09-1207-13 David Isaacson and Robert Landfield communication regarding the proposed 2010 golf fees (09-0742R). -- Received

09-1207-14 Carolyn Sundquist communication regarding the 2010 funding of the Duluth Sister Cities program (09-0731R). -- Received

09-1207-03 The following communications regarding the proposed rezoning on Park Point (09-0707R and 09-060-O): (a) Jan Cohen; (b) Molly Haugen; (c) Paul and Deb Kellner and Thom Reistad, developers; (d) James Walsh. -- Received

- - -

REPORTS FROM THE ADMINISTRATION

Chief Administrative Officer David Montgomery stated that the McKnight Foundation has given the city a grant of \$160,000 for computers for the library with two years of on site computer training. He added that internet usage at the library hopefully will double.

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REPORTS FROM OTHER OFFICERS

09-1207-04 Assessor affidavit of mailing of notice of public hearing by the special assessment board to be held on December 8, 2009, 2:30 p.m., Room 106A, City Hall, on reassessment and levying of assessments against real estate especially benefitted, Plat 0070 Parcel 00290 (7302 Cardigan Street), delinquent solid waste and stormwater sewer fees (assessable amount: \$5,330.89 (2001 - 2008)). -- Received

09-1207-05 Clerk application to the Minnesota gambling control board for exemption from lawful gambling licenses (raffle) from St. Michael's Church on February 28, 2010. -- Received

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REPORTS OF BOARDS AND COMMISSIONS

09-1207-15 Alcohol, gambling and tobacco commission minutes of: (a) August 5; (b) September 2; (c) October 7, 2009, meetings. -- Received

09-1207-06 Duluth legacy endowment fund advisory board minutes of September 14, 2009, meeting. -- Received

09-1207-07 Duluth transit authority: (a) Financial statement of August 2009; (b) Minutes of September 30, 2009, meeting. -- Received

09-1207-08 Entertainment and convention center authority minutes of November 24, 2009, meeting. -- Received

09-1207-09 Housing and redevelopment authority minutes of August 25, 2009, meeting. -- Received

09-1207-10 Library board minutes of October 27, 2009, meeting. -- Received

09-1207-11 Duluth Seaway Port authority financial statement for September, 2009. -- Received

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At this time, 7:06 p.m., the public hearing regarding the 2010 budget and levy began.

Richard Nelson protested the increase of his taxes for 2010. He stated that his house had a market value of \$30,000 and now has increased 100 percent.

Andrew Slade stated his concern that the proposed budget has a large cut for the public library and that the public is losing the many services that the library offers. He noted that not only have the hours at the main library been reduced, but the city also maintains the drastically reduced hours cut at branches. Mr. Slade concluded by noting that the budget has been cut to buy current materials for the libraries and that the reduced hours will be considered the norm instead of the exception.

Dan D'Allaird felt that while the libraries are not an essential service, it is important to the long term health of the city. He felt that there are several reasons for libraries to stay open, such as students, senior citizens, people looking for jobs and those least likely to have computer resources outside the library.

Sister Edith Bogue expressed her concerns that the library has undergone a staff reduction of almost 1/3 over the last several years. She felt that the reduced hours affect family dynamics. Sister Bogue stated that with the recession hitting, the numbers visiting the library and circulation are increasing.

At this time, 7:20 p.m., the public hearing was declared closed.

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At this time, 7:21 p.m., the public hearing regarding the 2010 alcoholic beverage license fees began.

No one appeared who wished to be heard.

At this time, 7:22 p.m., the public hearing was declared closed.

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At this time, 7:23 p.m., the public hearing regarding the capital improvement plan began.

No one appeared who wished to be heard.

At this time, 7:24 p.m., the public hearing was declared closed and the regular order of business was resumed.

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OPPORTUNITY FOR CITIZENS TO BE HEARD

Gary Kolojeski expressed concern about the security alarm process and how the business handling the licensing is out of town. He expressed concerns that: emphasis should be put on the abusers and not all the homeowners; there is a need to change the ordinance to address the real problem and that security systems should be encouraged. He also noted that the listing of those with security systems should be private information.

Alecia Gaskin read a letter to the council from the parents of Alex Sahlberg stating that they felt that Gold Cross Ambulance did not do their due diligence when called to their house to handle his medical emergency.

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RESOLUTION TABLED

Councilor Stauber moved to remove Resolution 09-0707, denying a request to amend Chapter 50 of the Duluth City Code, 1959, as amended, Zoning District Map No. 30 as contained in the Appendix to Chapter 50, to provide for the reclassification from R-1-c, one-family residential, to R-3, apartment residential, property located between Minnesota Avenue and Saint Louis Avenue, 16th Street and 200 feet southerly (Park Point Properties), from the table, which motion was seconded and unanimously carried.

Councilor Stauber moved to suspend the rules to hear speakers who wished to be heard, which motion was seconded and unanimously carried.

John Clark Pegg stated that Park Point is now beyond the saturation point for development. He added that Park Point is a tourism attraction for Duluth and there is so much congestion that people do not want to go there anymore. Mr. Pegg stated that with this development, the uniqueness of Park Point will be lost and that the infrastructure could not sustain it.

Ralph Kellner, character reference for the developer, Paul Kellner, stated that the city could trust the developer, who has energy conservation experience, built many quality buildings and has been a long term resident on Park Point.

Dan O'Neill stated that the comprehensive plan was put together by the citizens of Duluth and the council has approved it. He asked that the plan be given a chance to work before changing it on Park Point.

Gloria Dunleavy stated that development should be done in responsible manner and that any development on Park Point impacts all the residents there. She expressed a concern for the amount of additional vehicles this development would bring and where they would be parked.

Councilor Stauber 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.)

Councilor Fosle moved passage of the consent agenda, which motion was seconded and unanimously carried.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

RESOLVED, that the assessment roll levied for a watermain (Contract #5420 - assessable amount - \$74,078.36), to be deposited into Fund 325, is hereby confirmed.

Resolution 09-0729 was unanimously adopted.

Approved December 7, 2009

DON NESS, Mayor

- - -

RESOLVED, that the assessment roll levied for a permanent street, turnaround, storm sewer and sidewalk (Contract #5413 - assessable amount - \$146,233.53), to be deposited into Fund 325, is hereby confirmed.

Resolution 09-0730 was unanimously adopted.

Approved December 7, 2009

DON NESS, Mayor

- - -

RESOLVED, that the operation budget for the fiscal year January 1, 2010, to December 31, 2010, in the amount of \$3,783,000 for the Duluth airport 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 09-0733 was unanimously adopted.

Approved December 7, 2009

DON NESS, Mayor

- - -

RESOLVED, that the assessment roll levied for a watermain (Contract #5410; assessable amount: \$228,387.41), to be deposited into Fund 325, is hereby confirmed.

Resolution 09-0736 was unanimously adopted.

Approved December 7, 2009

DON NESS, Mayor

- - -

BY COUNCILOR FEDORA:

RESOLVED, that any meetings of the ambulance/emergency services task force, established by Resolution 09-0670, be held in the city of Duluth Council Chamber or other suitable public meeting place and held in accordance with Minnesota Statutes Section 13D.01, commonly referred to as the Open Meeting Law.

Resolution 09-0739 was unanimously adopted.

Approved December 7, 2009

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, 2010, subject to departmental approvals, and the payment of sales and property taxes:

Blazin Wings, Inc. (Buffalo Wild Wings Grill & Bar), 1307 Miller Trunk Highway, with Blazin Wings, Inc., a wholly owned subsidiary of Buffalo Wild Wings, Inc.

Resolution 09-0689 was unanimously adopted.

Approved December 7, 2009

DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

WHEREAS, the Irving Community Association has applied to the Minnesota gambling control board for an off site premise permit; and

WHEREAS, a copy of said application was also filed with the city of Duluth as required by Minnesota Statutes 349.213, Subdivision 2, and was investigated by the Duluth police department and reviewed and approved by the Duluth alcohol, gambling and tobacco commission; and

WHEREAS, the city council approves of the issuance of said license.

NOW, THEREFORE, BY IT RESOLVED, that the Duluth City Council approves of the Minnesota gambling control board issuing an off site premise permit to the National Multiple Sclerosis Society - Minnesota Chapter.

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 09-0728 was unanimously adopted.

Approved December 7, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proposed amendments to the specifications for the civil service classification of water plant operator B, which were approved by the civil service board on September 1, 2009, and which are filed with the city clerk as Public Document No. 09-1207-20, 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 09-0727 was unanimously adopted.

Approved December 7, 2009

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 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:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

(a) Kevin J. Bovee, of the town of Lakewood, Minnesota, whose term shall commence on January 1, 2010, and shall expire on the first business day of January, 2013.

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 09-0743 was unanimously adopted.

Approved December 7, 2009

DON NESS, Mayor

- - -

RESOLVED, that the city of Duluth empowers the St. Louis County housing and redevelopment authority (HRA) to provide \$115,000 in funding to the Minnesota council for veterans, which is needed for a permanent supportive and transitional housing project for homeless veterans located at 5201 and 5209 Ramsey Street.

Resolution 09-0723 was unanimously adopted.

Approved December 7, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a third amendment to the MIF loan agreement and a third promissory note modification agreement substantially in the form of those on file in the office of the city clerk as Public Document No. 09-1207-16 with Northstar Machine and Tool, Inc., d.b.a. Northstar Aerospace, allowing Northstar to make interest-only payments for an additional six-month period, from January 1, 2010, through June 30, 2010.

FURTHER RESOLVED, that the proper city officials are hereby authorized to execute a third amendment to the grant agreement with the state of Minnesota, such amendment to reflect the third amendment to the MIF loan agreement and third promissory modification agreement.

Resolution 09-0737 was unanimously adopted.

Approved December 7, 2009

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. 09-1207-17, with Duluth-Superior Public Access Community Television, Inc., (PACT) for providing cablecasting, training and production and administrative services in 2010 relating to public access television in the net amount of \$162,000, to be paid from General Fund 110, Agency 700, Organization 1414, Object 5441.

Resolution 09-0725 was unanimously adopted.

Approved December 7, 2009

DON NESS, Mayor

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RESOLVED, that MSAS 177, Anoka Street from Howard Gnesen Road to Maxwell Avenue (.78 miles), currently exists and should be revoked as a municipal state aid street under the

provisions of Minnesota law, subject to the approval of the commissioner of transportation of the state of Minnesota.

FURTHER RESOLVED, that the city clerk is hereby authorized and directed to forward three copies of this resolution to the commissioner of transportation.

Resolution 09-0719 was unanimously adopted.

Approved December 7, 2009

DON NESS, Mayor

- - -

RESOLVED, that MSAS 148, Tenth Avenue East from Ninth Street to Kenwood Avenue (.31 miles), currently exists and should be revoked as a municipal state aid street under the provisions of Minnesota law, subject to the approval of the commissioner of transportation of the state of Minnesota.

FURTHER RESOLVED, that the city clerk is hereby authorized and directed to forward three copies of this resolution to the commissioner of transportation.

Resolution 09-0720 was unanimously adopted.

Approved December 7, 2009

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 zones are hereby established on the following streets:

Both sides of Maple Grove Road from Trunk Highway 53 to 550 feet east of Joshua Avenue.

Both sides of Cottonwood Avenue from Trunk Highway 53 to Maple Grove Road (675 feet).

Resolution 09-0715 was unanimously adopted.

Approved December 7, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute a first amendment to the Lake Superior drug and gang task force joint powers agreement; said first amendment substantially in the form of that on file in the office of the city clerk as Public Document No. 09-1207-18, allowing Lake County to participate in the task force.

Resolution 09-0722 was unanimously adopted.

Approved December 7, 2009

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to execute a memorandum of understanding with the United States department of justice, bureau of alcohol, tobacco, firearms and explosives ("ATF"), the cities of Hermantown, Minnesota, and Superior, Wisconsin, and the county of St. Louis providing for participation by the city of Duluth in a new ATF/Northern Minnesota task force; said memorandum to be substantially in the form of that on file in the office of the city clerk as Public Document No. 09-1207-19.

Resolution 09-0724 was unanimously adopted.

Approved December 7, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept overtime reimbursement in the amount of \$36,698.28 from the Northeast Law Enforcement Administrator's Council for city of Duluth police services rendered during the 2009 Hells Angels Rally in Carlton County; funds to be deposited in Fund 110-160-1610-4650.

Resolution 09-0726 was unanimously adopted.

Approved December 7, 2009

DON NESS, Mayor

- - -

RESOLVED, that the unspent portion of the bequest of Oscar J. Slotness be returned to the estate of Oscar J. Slotness, said amount being \$51,667.74, payment to made from Fund 273-031-5434.

Resolution 09-0717 was unanimously adopted.

Approved December 7, 2009

DON NESS, Mayor

- - -

The following resolutions were also considered:

Resolution 09-0745, authorizing settlement agreement in the dispute between the city of Duluth and Merrill Lynch Pierce Fenner & Smith, Inc., in the amount of \$1,975,583, was introduced by President Gilbert for discussion.

The rules were suspended upon a unanimous vote to hear from a speaker on the resolution.

Mark Briol, representing the city in a short term investment with Mainsail 2, reviewed the details and history on the investment made by the city and the work to get \$3 million back. He noted that under the terms of the confidentiality agreement councilors and the city cannot talk to the media about this settlement after this meeting and that this is the only public venue where the settlement can be discussed.

Resolution 09-0745 was adopted as follows:

RESOLVED, that the proper city officials are hereby authorized to execute a settlement agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 09-1207-21, for a total amount of \$1,975,583 in settlement of the dispute entitled *City of Duluth v. Merrill Lynch Pierce Fenner & Smith, Incorporated* asserted in arbitration before the Financial Industries Regulatory Authority (FINRA), FINRA Dispute Resolution No. 08-04814, funds to be deposited in Fund 110-120-1216-4601-02.

Resolution 09-0745 was unanimously adopted.

Approved December 7, 2009

DON NESS, Mayor

- - -

Resolution 09-0731, distributing the estimated 2010 tourism taxes of hotel-motel and food and beverage, was introduced by Councilor Fedora for discussion.

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

Melissa Kadlek, executive director of Duluth Sister Cities International, stated that the sister city program is of immense value to Duluth in goodwill and financial benefit. She added that the program has enriched the thousands of citizens for 23 years. Ms. Kadlek concluded by saying that

Duluth has received international recognition for sustainable development practices and that no funding would devastate the sister city operation.

Glenn Peterson, president of Duluth Sister Cities International, noted that the program promotes people-to-people diplomacy. He reviewed what exchanges happened in the last year and the need for this funding.

Ken Buehler, head of the technical advisory committee for the joint powers alliance for the Northern Lights Express, requested the city's continued support of the rail alliance. He stated that the Twin Ports stands to gain \$250 million of private investment, a new transportation system and is supported by Congressman Oberstar. Mr. Buehler added that the \$50,000 investment is to make sure Duluth has a voice and vote on the rail alliance.

The councilors asked questions of Mr. Buehler.

Councilor Gardner introduced an amendment to change the allocation to sister cities from \$20,000 to \$30,000, with the funding coming out of the general fund, which motion was seconded for discussion.

She noted that this is still a reduction from last year, which was \$34,000, and that this is an asset for city development.

Councilors Fosle, Fedora, Krause and Eckenberg expressed concerns that: the city could become a benefactor of sister cities and receive membership benefits for \$1,000 a year; that the previous councils have stated their intent in reducing the amount given to sister cities each year; it appears that it is their intent to never break ties with the city; there is an expectation that they be sustainable at some point in time; their Form 990's shows they are running a good organization and their balance sheet is growing each year; there is not a specific plan on how this is going to be decreased; there needs be plan to assist nonprofit organizations to be self sufficient; tourism tax revenues are significantly down; it was discussed that at some point there would be no city funding and that the city should not be funding this entity in perpetuity.

Councilor Gardner's amendment failed upon the following vote:

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

Nays: Councilors Eckenberg, Fedora, Fosle, Krause and Stauber -- 5

Councilor Fosle moved to amend the resolution by introducing the following as each being a separate motion:

- (a) Reduce \$30,000 from the public arts commission;
- (b) Reduce \$20,000 from sister cities;
- (c) Reduce \$50,000 from the rail alliance;
- (d) Increase \$50,000 to Spirit Mountain recreation area authority;
- (e) Increase \$50,000 to Visit Duluth;

which motion was seconded and discussed.

Councilor Fosle reviewed the rationale for his amendments.

Councilor Gardner moved to suspend the rules to hear from a speaker on the amendment, which motion was seconded and unanimously carried.

Penny Perry, president of the Duluth public arts commission, explained the need for the city's money to help keep the public arts pieces maintained and clean. She further noted that any funds from the one percent construction funding is not retained by the commission but is administered by the commission to create new art exhibits.

Mr. Montgomery reviewed for the council how Visit Duluth has an allocation that is set by a three year contract. He noted that if this amendment passes regarding that entity, it would require amending their contract.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Councilors Fosle and Fedora voiced concerns that: no one has really identified a real price tag; we could skip a year of funding and the rail alliance project could become an expensive project such as the aquarium and that people will want to use their cars to travel when traveling between the cities and Duluth.

Councilor Fosle's amendment (a) failed upon the following vote:

Yeas: Councilor Fosle -- 1

Nays: Councilors Anderson, Cuneo, Eckenberg, Fedora, Gardner, Krause, Stauber and President Gilbert -- 8

Councilor Fosle's amendment (b) failed upon the following vote:

Yeas: Councilors Fosle and Stauber -- 2

Nays: Councilors Anderson, Cuneo, Eckenberg, Fedora, Gardner, Krause and President Gilbert -- 7

Councilor Fosle's amendment (c) failed upon the following vote:

Yeas: Councilors Fedora, Fosle, Krause and Stauber -- 4

Nays: Councilors Anderson, Cuneo, Eckenberg, Gardner and President Gilbert -- 5

Councilor Fosle withdrew his last two amendments, due to failure of the first three.

Councilor Eckenberg moved to amend the resolution by adding an asterisk by the sisters cities allocation, in which it would then be noted that "it is the intent of the city council and administration to fund sister cities minimally \$20,000 annually from tourism taxes for as long as they are administered by the city of Duluth," which motion was seconded and discussed.

Councilor Fedora questioned why this should be done for this organization and not for others.

Councilors discussed at length the merits of the words "it is the intent of the city council."

Councilor Eckenberg's amendment failed upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg and Gardner -- 4

Nays: Councilors Fedora, Fosle, Krause, Stauber and President Gilbert -- 5

Resolution 09-0731 was adopted as follows:

RESOLVED, that the 2010 tourism taxes of hotel-motel and food and beverage, as estimated, be distributed in the following manner:

	3% Hotel-Motel	1% Hotel-Motel	2.25% Food & Beverage	Additional 2.5% Hotel-Motel	TOTAL
Duluth Public Arts Commission			\$20,000	\$10,000	\$30,000
Sister Cities			\$10,000	\$10,000	\$20,000
DECC	\$957,100				\$957,100
Visit Duluth	\$515,400	\$171,900	\$579,200	\$161,500	\$1,428,000
Historical Union Depot		\$81,500	\$56,100	\$14,200	\$151,800
Lake Superior Zoo Fund			\$413,800	\$106,200	\$520,000

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

	3% Hotel-Motel	1% Hotel-Motel	2.25% Food & Beverage	Additional 2.5% Hotel-Motel	TOTAL
General Fund	\$77,500	\$263,600	\$300,000	\$96,800	\$737,900
Spirit Mountain Debt Service				\$275,000	\$275,000
Debt Service			\$2,177,800	\$242,800	\$2,420,600
Business Improvement District			\$200,000		\$200,000
Capital Projects				\$160,600	\$160,600
Rail Alliance				\$50,000	\$50,000
Great Lakes Aquarium			\$163,100	\$86,900	\$250,000
TOTALS	\$1,550,000	\$517,000	\$3,920,000	\$1,214,000	\$7,201,000

Resolution 09-0731 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Gardner and President Gilbert -- 7

Nays: Councilors Krause and Stauber -- 2

Approved December 7, 2009

DON NESS, Mayor

- - -

RESOLVED, that the operation budget for the fiscal year January 1, 2010, to December 31, 2010, in the amount of \$12,639,055 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 09-0732 was unanimously adopted.

Approved December 7, 2009

DON NESS, Mayor

- - -

Resolution 09-0742, adopting license, permit and fee charges for 2010, was introduced by Councilor Fedora.

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

- - -

WHEREAS, the chief administrative officer upon the direction of the mayor has recommended the appointment of Adele Hartwick to the position of chief financial officer; and

WHEREAS, the City Charter requires the city council confirm this appointment.

THEREFORE, BE IT RESOLVED, that the city council hereby confirms the appointment of Adele Hartwick to the position of chief financial officer for the city of Duluth.

Resolution 09-0741 was unanimously adopted.
Approved December 7, 2009
DON NESS, Mayor

- - -

RESOLVED, that Joshua Avenue from Maple Grove Road to Arrowhead Road (approximately 1.13 miles) should be designated as a municipal state aid street under the provisions of Minnesota law, subject to the approval of the commissioner of transportation of the state of Minnesota.

FURTHER RESOLVED, that the city clerk is hereby authorized and directed to forward three copies of this resolution to the commissioner of transportation for consideration, and that upon approval of the designation of said road or portion thereof, that same be constructed, improved and maintained as a municipal state aid street of the city of Duluth, to be numbered and known as MSAS 202, Joshua Avenue.

Resolution 09-0718 was unanimously adopted.
Approved December 7, 2009
DON NESS, Mayor

- - -

Resolution 09-0738, authorizing the renewal of a license agreement with Duluth Seaway Port authority for the 2009-2010 winter season to dispose of snow on Duluth Seaway Port authority property, was introduced by Councilor Fosle for discussion.

The rules were suspended upon a unanimous vote to hear from a speaker on the resolution.

Debra Taylor expressed concerns about: minimizing what is put on the street, removing the snow from the street before putting chemicals down; in order to slow down the flow of melting snow to the lake, the city needs to prevent the water from picking up other bad things on the way down the hill and the city should find a deep, porous, sandy land surface where snow could be piled so that damage would be minimal at this spot versus some other spots.

Councilors Stauber and Fosle expressed concerns of dumping this dirty snow so close to the lake makes the city liable for polluting the lake and that this snow is already contaminated because it is only moved from the business district after the street has been plowed and salted many times.

Mr. Montgomery suggested proceeding with this resolution this year, but that a study group be put together to come back with a better solution for next year.

Resolution 09-0738 was adopted as follows:

RESOLVED, that the proper city officials are hereby authorized to renew a license agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 09-1207-22 with the Duluth Seaway port authority to allow the city to dispose of snow from street plowing operations on certain authority property at no cost to city.

Resolution 09-0738 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Gardner and President Gilbert -- 6

Nays: Councilors Fosle, Krause and Stauber -- 3

Approved December 7, 2009
DON NESS, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR FEDORA

09-057 - AN ORDINANCE DETERMINING THE SUM TO BE RAISED BY TAXATION FOR THE SPECIAL TAXING DISTRICT, DULUTH TRANSIT AUTHORITY, FOR THE YEAR 2010.

- - -

INTRODUCED BY COUNCILOR FEDORA

09-058 - AN ORDINANCE DETERMINING THE SUM TO BE RAISED BY TAXATION FOR GENERAL PURPOSES FOR THE YEAR 2010.

- - -

INTRODUCED BY COUNCILOR FEDORA

09-061 - AN ORDINANCE SETTING THE BUDGET FOR THE FISCAL YEAR 2010 APPROPRIATION MONIES FOR THE SUPPORT OF THE CITY GOVERNMENT, PUBLIC UTILITIES, AND PUBLIC ENTERPRISE FUNDS AND FOR OTHER PURPOSES.

- - -

INTRODUCED BY COUNCILOR STAUBER

09-060 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NO. 30 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-C, ONE-FAMILY RESIDENTIAL, TO R-3, APARTMENT RESIDENTIAL, PROPERTY LOCATED BETWEEN MINNESOTA AVENUE AND SAINT LOUIS AVENUE FROM 16TH STREET TO 200 FEET SOUTHERLY (PARK POINT PROPERTIES).

- - -

INTRODUCED BY COUNCILOR FOSLE

09-056 - AN ORDINANCE ESTABLISHING A PROGRAM TO CONTROL INTRODUCTION OF FATS, OILS AND GREASE INTO THE SANITARY SEWER SYSTEM, AMENDING VARIOUS DEFINITIONS IN CHAPTER 43 OF THE CODE AND ADDING A NEW DIVISION 2 TO ARTICLE VI OF CHAPTER 43 OF THE CODE.

- - -

The meeting was adjourned at 10:00 p.m.

JEFFREY J. COX, City Clerk

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, December 21, 2009, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Krause, Stauber and President Gilbert -- 8

Absent: Councilor Gardner -- 1

- - -

The minutes of council meetings held on September 14, 17 and 28, and October 12 and 26, 2009, were approved upon a unanimous vote.

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

09-1221-01 Woodland Hills petition to vacate a portion of Allendale Avenue between Lots 3, 4 and 5, Block 1, Woodland Avenue Gardens and St. James Home. -- Assessor

09-1221-08 John Glendenning, Jr., communication regarding 2010 city of Duluth budget (09-058-O, 09-061-O). -- Received

09-1221-09 RNOW, Inc., communication regarding the proposed purchase of a triple combination fire pumper truck (09-0721R). -- Received

09-1221-10 The following communications regarding the proposed Glenwood Street reconstruction project design (09-0748R): (a) Thomas L. Buhr, Jr.; (b) Jeffrey Crowe; (c) Fit City Duluth Active Living Committee; (d) Andrea Grygo; (e) Julie Hendrickson; (f) Lisa Heyesen; (g) Angel Hohenstein; (h) Jennifer Johnson; (i) Gerard E. Lawson; (j) Jay McDonald; (k) Dave Sarvela; (l) Anett Trebitz. -- Received

09-1221-03 The following communications regarding the proposed request to the Lake Superior Railroad authority to move rail cars to areas that do not obstruct the public's view of Lake Superior (09-0767R): (a) Fred Anderson; (b) Christine Penney. -- Received

09-1221-02 The following communications regarding the proposed rezoning on Park Point (09-0707R and 09-060-O): (a) Janice Cohen; (b) Ed, Liz and Mike Gleeson and Pete Clure; (c) Park Point Properties. -- Received

09-1221-11 The following communications regarding the proposed vacation of Ensign Street from Church Place to a point 128.5 feet west of Chambersburg Avenue (09-0773R): (a) Brenda Anderson; (b) Lisa Chester-Wormuth; (c) Todd Kuusisto; (d) Carolyn Lofald; (e) Piedmont Heights Dental Associates; (f) Kevin Wormuth. -- Received

- - -

REPORTS FROM OTHER OFFICERS

09-1221-04 Assessor letters of sufficiency of petitions to:

(a) Reclassify from R-1-b, one-family residential, to S, suburban, property described as Lots 1 - 16, inclusive, Block 11, and Lots 2, 4, 6, 8, 10, 12, 14 and 16, Block 12; all that part of Lots 1, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15, Block 10, lying northwesterly of Pecan Avenue and southwesterly of Rice Lake Road, together with the adjacent vacated streets and alleys, all in Clague and Prindle's Addition;

(b) Vacate a portion of Allendale Avenue between Lots 3, 4 and 5, Block 1, Woodland Avenue Gardens and St. James Home. -- Received

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

09-1221-05 Clerk applications to the Minnesota gambling control board for exemption from lawful gambling licenses (raffle) from: (a) Rotary Club of Duluth on March 11, 2010; (b) UMD Ducks Unlimited on February 19, 2010. -- Received

REPORTS OF BOARDS AND COMMISSIONS

09-1221-06 Building appeal board minutes of November 18, 2009, meeting. -- Received

09-1221-07 Commission on disabilities minutes of November 4, 2009, meeting. -- Received

OPPORTUNITY FOR CITIZENS TO BE HEARD

Jerry Schlafer commented on helping businesses with customer growth. He noted that items like metered parking in Canal Park and a ten percent sales tax on restaurants do not enhance customers and that creating customers is the key.

RESOLUTION TABLED

Councilor Fedora moved to removed Resolution 09-0742, adopting license, permit and fee charges for 2010, from the table, which motion was seconded and unanimously carried.

Resolution 09-0742 was adopted as follows:

RESOLVED, that pursuant to Section 30(B) of the Duluth City Charter and sections 2-4, 2-5, 2-6, 2-16, 6-3, 6-12, 6-14, 6-36.1, 6-36.3, 6-39, 6-77, 6-79, 6-82, 18-4, 24-22, 29A-30, 31-6(a), 33-126, 35-9.1, 35-11, 35-15, 43-12.1, 45-52, 45-108(a), 48-3, 48-207 and 48-210 of the Duluth City Code, the following license, permit and fee charges for 2010 shall be adopted.

Assessor	
License, Permit, Fee Name	2010 Fee
Abatement processing fee	
Homestead	\$25.00
Valuation	\$50.00
CD data	\$164.00
Certificate of real estate value (CRV) duplicate	\$.30
Land sales quarterly update	\$25.00
Map	
8.5 x 11; 8.5 x 14; 11 x 17	\$.30
11 x 17 copy of Mylar	\$2.25
28 x 41	\$6.50

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Assessor		
License, Permit, Fee Name		2010 Fee
	Fax a map copy	\$.30
Member access to internet website		\$240.00
Ownership search		
	Notification	\$26.00
	Rezoning	\$26.00
Property record - full page (free to property owner)		\$.30
Weekly sales updates to media - per month		\$50.00

Attorney		
License, Permit, Fee Name		2010 Fee
	*Research - after first 1/4 hour - per hour	\$150.00
* Change in license, permit or fee		

Building Safety		
License, Permit, Fee Name		2010 Fee
	*Backflow prevention testing and registration - annual - per each device	\$28.50
*Board of zoning appeals filing fee		\$125.00
Building moving permit		
	Over private property	\$5.00
	Over public property	
	1,000 square feet or under of area on first floor	\$30.00
	Over 1,000 square feet of area on first floor	\$60.00
Certificate of occupancy		\$5.00
Demolition/razing/wrecking permit		
	For every 100 cubic feet of volume	\$.25
	Minimum fee	\$15.00
*Housing Code books		\$10.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Building Safety		
License, Permit, Fee Name		2010 Fee
*Mobile home permit		
	Inspection fee	\$30.00
	Installation fee	\$55.00
Rental housing (three year licenses)		
	Correction orders, additional copy	\$10.00
	Each bed in rooming unit	\$20.00
	Each building - for a new license for an existing structure or renewal of an existing license (includes initial inspection and one reinspection)	\$200.00
	Each dwelling or housekeeping unit	\$20.00
	Each failure to appear for reinspection	\$75.00
	Inspections made in response to citizen complaints	-0-
	Per unit investigation fee for each occupied rental unit being operated as rental housing that is not licensed	\$200.00
	Reinspection after license suspended/revoked	\$150.00
	Reinstating a revoked or suspended license	\$500.00
	Reinstating an expired license	\$100.00
	Reissuance of existing license with new owner and/or manager name and address for the remainder of license period	\$10.00
	Rental license, additional copy	\$10.00
	Second or more reinspection and/or initial inspections requested by owner or authorized agent of a structure	\$150.00
	Services rendered pursuant to a contract	as per contract
	Voluntary inspection requested by the owner or his or her agent	\$200.00
Subpoena fee		
	Building official	
	Additional hourly rate	\$49.00
	Initial fee	\$200.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Building Safety	
License, Permit, Fee Name	2010 Fee
Clerical/administrative (129)	
Additional hourly rate	\$25.00
Initial fee	\$101.00
Clerical/information (126)	
Additional hourly rate	\$22.00
Initial fee	\$90.00
Code plan review	
Additional hourly rate	\$27.00
*Initial fee	\$109.00
Inspector (27)	
Additional hourly rate	\$27.00
*Initial fee	\$109.00
Inspector (29)	
Additional hourly rate	\$28.00
*Initial fee	\$112.00
Inspector (31)	
Additional hourly rate	\$32.00
*Initial fee	\$128.00
Zoning (30)	
Additional hourly rate	\$30.00
*Initial fee	\$124.00
Vacant building registration	
Administrative fee	\$75.00
Annual fee	\$400.00
Water resource management district	
Special use permit	\$156.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Building Safety		
License, Permit, Fee Name		2010 Fee
	Use permit	\$52.00
	Variance	\$156.00
* Change in license, permit or fee		

Citywide		
License, Permit, Fee Name		2010 Fee
Audio tape/CD-ROM copies - per tape/CD-ROM		\$8.00
Community event, parade and race		
Operational fees		
Equipment/services		
	48x48 sign on stand	\$2.00
	Cones, reflective	\$.35
	Locating underground water and electrical lines - per event	\$50.00
No parking signs		
	Stakes	\$2.00
	Wires	\$2.00
	Pick up truck	\$15.00
	*Portable drinking water trough - per event	\$121.00
	Type I ten inch parade stand	\$1.75
	Type II eight foot barricade	\$2.50
	Water spigot, damage deposit	\$25.00
Personnel, extra services for special events - per hour per city employee (four hour minimum)		\$50.00
*Replacement fees		
	Barricade	\$126.00
	Barricade Type II	\$382.00
	Cone	\$17.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Citywide		
License, Permit, Fee Name		2010 Fee
	Electrical panel	\$764.00
	Water spigot	\$151.00
Event options		
Pre-event sweeping		
*Daytime sweeping		
	Less than five miles	\$1,412.00
	More than five miles	\$2,722.00
*Nighttime sweeping (Downtown, Lincoln Park or West Duluth business areas)		
	Less than five miles	\$1,613.00
	More than five miles	\$2,420.00
*Post-event sweeping		\$2,420.00
*Additional sidewalk cleaning		\$403.00
Microfilm copies - per page		
	8"x12"	\$2.00
	18"x24"	\$3.00
NSF checks		\$30.00
Photocopies - per page		\$.25
Research - per hour (first 1/4 hour free) [excluding attorney and library]		\$17.00
*Special assessment incidental fee - per parcel		\$129.00
Zoning booklets		\$11.00
* Change in license, permit or fee		

Clerk		
License, permit, fee name		2010 Fee
Adult bookstore - annual		\$33.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Clerk	
License, permit, fee name	2010 Fee
Alcoholic beverage	
3.2 percent malt liquor	
Late penalty fee	
Off sale	\$28.00
On sale	\$52.00
*Off sale - annual	\$145.00
*On sale	
Annual	\$447.00
Dancing	
Annual	\$921.00
One day/evening - per day	\$111.00
Seasonal	\$335.00
Temporary - on sale	
*First day/evening	\$111.00
Each additional day/evening	\$22.00
*Transfer	\$111.00
Intoxicating liquor	
Bottle club - annual	\$300.00
Brewery malt liquor off sale - annual	\$200.00
Club - annual	
Less than 200 members	\$300.00
201-500 members	\$500.00
501-1,000 members	\$650.00
1,001-2,000 members	\$800.00
2,001-4,000 members	\$1,000.00
4,001-6,000 members	\$2,000.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Clerk	
License, permit, fee name	2010 Fee
6,001 or more members	\$3,000.00
*Late penalty fee	
Off sale	\$111.00
On Sale	\$280.00
Wine	\$84.00
Off sale	
Annual	\$1,500.00
Conditional	\$1,400.00
On sale	
*Additional bar	\$537.00
*Annual	\$3,908.00
Consumption and display permit	
Annual	\$300.00
One day	\$25.00
*Culinary class - annual	\$202.00
*Dancing	
Annual	\$1,060.00
One day/evening - per day	\$111.00
Seasonal	\$363.00
*Special Sunday license - annual	\$167.00
*Theater - annual	\$302.00
*Temporary - on sale	
Each additional day/evening	\$139.00
First day/evening	\$279.00
*Transfer	\$335.00
*Wine - on sale	

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Clerk		
License, permit, fee name		2010 Fee
	Annual	\$837.00
	Bed and breakfast - annual	\$418.00
	Dancing	
	Annual	\$921.00
	One day/evening - per day	\$111.00
	Seasonal	\$335.00
	Investigations	
	In state	\$500.00
	Outside of state	\$10,000.00
	*Late hours entertainment - annual	\$252.00
	*Permanent expansion	\$111.00
	*Special meeting request fee - per applicant	\$111.00
	*Temporary expansion	
	Each additional day/evening	\$167.00
	First day/evening	\$335.00
	Banner license	
	*Non-skywalk	\$84.00
	Skywalk	\$55.00
	Bowling alley - annual	
	*First lane	\$68.00
	Each additional lane	\$22.00
	*C-3 shopping center district revision	\$178.00
	Certified copies	\$11.00
	Chickens, keeping of - annual	\$10.00
	*Cigarette license - annual	\$134.00
	Coin operated device - annual	

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Clerk	
License, permit, fee name	2010 Fee
Card	\$15.00
Location	\$15.00
*Prorated monthly fee	\$2.00
Supplier license	\$10.00
*Community event, parade and race	\$101.00
*Concurrent use permit	\$224.00
Council minutes - per meeting	\$5.00
*Council proceedings - annual	\$68.00
Dance hall	
*Annual	\$224.00
One dance event	\$55.00
Domestic partnership registration application	\$25.00
Emergency wrecker service	
*Annual	\$418.00
Vehicle replacement fee	\$5.00
*Garbage collector license - annual	\$279.00
Gasoline filling station	
*First hose - annual	\$68.00
Each additional hose - annual	\$17.00
*Initial service inspection fee	\$111.00
*New construction during license year	\$79.00
*Grooming shop - annual	\$79.00
Horse and carriage livery service	
*Annual	\$145.00
Per carriage/per year	\$22.00
Per horse/per year	\$11.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Clerk		
License, permit, fee name		2010 Fee
Hotel/motel/motor court - annual		
	*First 25 rooms	\$79.00
	Each additional room	\$2.00
*Kennel - annual		
Boarding		
	3-11 animals	\$79.00
	12 or more animals	\$123.00
Breeding		
	2-5 animals	\$79.00
	6-11 animals	\$123.00
	12 or more animals	\$279.00
*Legislative Code		
	CD-ROM	\$139.00
	Hard copy	\$279.00
Supplement (changes only)		
	CD-ROM	\$68.00
	Hard copy	\$139.00
*Massage establishment - annual		\$111.00
Massage therapist - annual		\$33.00
*Motor vehicle dealer - annual		
	Main lot	\$363.00
	Each additional lot	\$111.00
*Motor vehicle rental - annual		\$252.00
*Nuisance wildlife removal business - annual		\$79.00
Off-leash license, annual		
	Resident, per dog	\$10.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Clerk		
License, permit, fee name		2010 Fee
	Nonresident, per dog	\$20.00
	*Private area designation	\$76.00
*Pawnbroker		
	Annual	\$363.00
	Minimum fee	\$30.00
Peddler		\$33.00
Pet license - annual		
	Altered	\$8.00
	Animal shelter license	\$3.00
	Duplicate tag	\$3.00
	Maximum exception	\$8.00
	Unaltered	\$8.00
*Pet shop - annual		\$79.00
Pool, billiard snooker & bumper pool - annual		
	*First table	\$68.00
	Each additional table	\$22.00
Precinct finder		\$11.00
Precinct map		\$8.00
*Precious metal dealer		
	Annual	\$363.00
	Minimum fee	
Recreation/sightseeing rides		
	*Annual	\$134.00
	Per vehicle/per year	\$45.00
	Vehicle(s) added during current license year inspection fee - per vehicle	\$33.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Clerk	
License, permit, fee name	2010 Fee
Resident permit parking - annual	
Resident	\$5.00
Visitor	
Regular	\$2.00
Special	\$1.00
*Rezoning petition	\$447.00
*Shooting range	
Annual	\$111.00
Initial or new construction fees	\$308.00
*Special prosecutor request fee (to prosecute conflicts of interest)	\$252.00
*Special use permit	
Filing fee	\$279.00
Low density planned developments and community unit plans	
Initial fee	\$558.00
Plan alteration review	\$224.00
Plan unit development	\$558.00
Taxicab	
*Annual	\$145.00
License transfer	\$5.00
Rate change registration fee	\$5.00
Vehicle permit - per vehicle/per year	\$17.00
Vehicle permit transfer	\$5.00
*Vacation petition filing fee	
Easement	\$447.00
Vacation - street	
Less than or equal to 200 feet	\$447.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Clerk		
License, permit, fee name		2010 Fee
	Greater than 200 feet	\$782.00
*Veterinary hospital - annual		\$79.00
* Change in license, permit or fee		

Fire		
License, Permit, Fee Name		2010 Fee
Blasting permit		
	Late fee	\$300.00
	Regular	\$200.00
Bon fire permit		\$125.00
Burning permit		\$50.00
Commercial use/occupancy permits (three year)		
Occupancy base fees (the minimum amount shown, or, if the inspection is performed by the city under a contract with the state or any other governmental agency, any amount that does not exceed the fee for the same service charged by the party with which the city has contracted, whichever is greater)		
	Assembly occupancy - per gross square foot up to 50,000 square feet (minimum of \$75)	\$.014
	Business/mercantile occupancy (not otherwise requiring a permit) - per gross square foot up to 50,000 square feet (minimum of \$75)	\$.014
	Combustible storage occupancy - per gross square foot up to 50,000 square feet (minimum of \$75)	\$.014
	Educational occupancy - per gross square foot up to 50,000 square feet (minimum of \$75)	\$.014
	Factory occupancy - per gross square foot up to 50,000 square feet (minimum of \$75)	\$.014
	Fire sprinklers or alarms systems (not otherwise requiring a permit) - per gross square foot up to 50,000 square feet (minimum of \$75)	\$.014

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Fire	
License, Permit, Fee Name	2010 Fee
Hazardous occupancy - per gross square foot up to 50,000 square feet (minimum of \$75)	\$.014
Institutional occupancy - per gross square foot up to 50,000 square feet (minimum of \$75)	\$.014
Residential occupancy	
R-1 (same as state fee)	\$100.00
Additional per unit	\$7.00
R-2	\$200.00
Additional per unit	\$20.00
R-3	\$100.00
R-4	\$100.00
Additional per unit	\$20.00
Other fees	
Correction orders, additional copy	\$10.00
Each failure to appear for third and subsequent re-inspections	\$75.00
Inspections made in response to citizen's complaint	-0-
Issuing new permit in conjunction with issuing a certificate of occupancy	-0-
Per unit investigation fee for each occupied rental unit being operated as rental housing that is no licensed	\$200.00
Reinspection upon request of any owner/occupant whose permit has been suspended or revoked	\$150.00
Reinstating a suspended or revoked permit	\$500.00
Reissuing an existing permit with the name and address of a new owner for the remainder of permit period for an occupancy with a valid permit	\$25.00
Services rendered pursuant to a contract	As per contract

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Fire	
License, Permit, Fee Name	2010 Fee
Third and subsequent reinspection and/or any initial inspection requested by the owner/occupant of a structure or his/her authorized agent	\$100.00
Fire protection systems permit	
Fire pump - includes plan review fee and may be used for replacing existing pumps or when a new pump is added to an existing system	\$500.00
Inspection outside of normal business hours in addition to permit fee (minimum four hours) - per hour	\$50.00
Permit fees	
Minimum fee	\$50.00
Per contract cost of:	
\$1.00 to \$1,200.00	\$50.00
*\$1,201.00 to \$2,000.00 (for the first \$1,200.00)	\$50.42
*Plus for each additional \$100.00, or fraction thereof, to and including \$2,000.00	\$3.39
*\$2,001.00 to \$25,000.00 (for the first \$2,000.00)	\$77.52
*Plus for each additional \$1,000.00, or fraction thereof, to and including \$25,000.00	\$15.53
*\$25,001.00 to \$50,000.00 (for the first \$25,000.00)	\$434.66
*Plus for each additional \$1,000.00, or fraction thereof, to and including \$50,000.00	\$11.20
*\$50,001.00 to \$100,000.00 (for the first \$50,000.00)	\$714.71
*Plus for each additional \$1,000.00, or fraction thereof, to and including \$100,000.00	\$7.76
*\$100,001.00 to \$500,000.00 (for the first \$100,000.00)	\$1,102.91
*Plus for each additional \$1,000.00, or fraction thereof, to and including \$500,000.00	\$6.21
*\$500,001.00 to \$1,000,000.00 (for the first \$500,000.00)	\$3,587.26
*Plus for each additional \$1,000.00, or fraction thereof, to and including \$1,000,000.00	\$5.27

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Fire	
License, Permit, Fee Name	2010 Fee
*\$1,000,000.00 and up (for the first \$1,000,000.00)	\$6,224.06
*Plus for each additional \$1,000.00, or fraction thereof	\$4.15
Plan review fee when submittal documents are required	65% of permit fee
Additional plan review required after start of initial plan review - per hour	\$50.00
Re-inspection	\$200.00
Sprinkler recall replacement	\$0.00
Fireworks permit, sale of - annual	\$100.00
Fireworks/pyrotechnics display	\$200.00
Fuel tank inspection permit - per tank	\$50.00
* Change in license, permit or fee	

Library	
License, Permit, Fee Name	2010 Fee
Barcode/security label destruction service charge	\$3.00
Billing service charge	\$3.00
Card replacement	\$3.00
Computer lab rental (4 hours or less)	\$150.00
Conference room rental	
Commercial - per day	\$150.00
Noncommercial	
Four hours	\$55.00
Per day	\$70.00
Deposit card fee	\$50.00
Extended use fines - per day	
Adult items	\$.30
Civil service books, DVDs, videos	\$1.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Library		
License, Permit, Fee Name		2010 Fee
	Juvenile items	\$.10
	Toys	\$.50
	Story kits, Book Club in a Bag	\$2.00
Gold room rental		
	Commercial - per day	\$150.00
	Noncommercial	
	Four hours or less	\$55.00
	Per day	\$70.00
Green room rental		
	Commercial - per day	\$250.00
	Noncommercial	
	Four hours or less	\$95.00
	Per day	\$120.00
Lost/damaged materials fee		cost of replacement and processing
Non-Minnesota resident borrower's card		
	First family member - annual	\$46.50
	Each additional family member - annual	\$10.00
Photocopies/printing (coin-operated machines) - per page		\$.10 - \$.25
Research		
	After first 1/2 hour - per hour	\$25.00
	Fax service - per page	\$1.00
	Mailed obituaries - per obituary	\$2.00
	Mailed photocopies - per page	\$1.00
Revenue recapture notice		\$10.00
Space/room rental equipment fee		\$10.00
Used adult books, sale of - minimum		\$.50

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Library	
License, Permit, Fee Name	2010 Fee
Used children's books, sale of - minimum	\$.50
Used magazines, sale of - minimum	\$.50

MIS	
License, Permit, Fee Name	2010 Fee
Aerial photo data GIS mapping products	
Custom mapping - minimum charge per hour (minimum one hour)	\$52.00
Standard map products - (scale 1:1200 or 1:2400)	
Up to 11"x17"	\$10.00
17"x22"	\$15.00
22"x34"	\$15.00
34"x44"	\$20.00
35"x90" city map	\$30.00
Additional copies	
Up to 11"x17"	\$2.00
Greater than 11"x17" and up to 34"x44"	\$5.00
Greater than 34"x44"	\$10.00
With 10' contours - up to 34"x44" additional fee	\$10.00
*Digital rectified aerial photo, predefined 1/2 Sec. (1/2 mile x 1 mile)	
Black and white or color, PLUS elevation model	\$383.00
Black and white	\$333.00
Color	\$333.00
*Elevation model - all derived products, predefined 1/2 Sec. (1/2 mile x 1 mile)	\$232.00
*GIS digital data - per layer	\$318.00
*Labels - selecting/printing	
Quantity of 500	\$171.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

MIS		
License, Permit, Fee Name		2010 Fee
	Quantity of 2,000 or more (plus cost of labels)	\$252.00
Raw imagery - without rectification, PLSS Sec. (1 mile x 1 mile)		\$115.00
Specialized computer information		
*Custom query		
	Minimum	\$222.00
	CD-ROM media (minimum fee plus \$10)	\$232.00
	Label request fee (minimum fee plus \$20)	\$232.00
Repeat query		\$26.00
Standard query		\$55.00
Web-based Query		
	*Annual maintenance and subscription	\$242.00
	Set up and handling	\$26.00
* Change in license, permit or fee		

Parks and Recreation		
License, Permit, Fee Name		2010 Fee
Athletic field rental		
	Heritage Hockey Center - usage fee - per hour	\$100.00
	Lights - per hour/per field	\$50.00
Per field/per day		
	Adult activities	\$50.00
	**Youth activities	\$25.00
Bayfront Festival Park		
	Playfront parking lot - per vehicle during special events	\$4.00
Use of entire park (advance payment required unless otherwise specified)		
	Damage/cleanup deposit (refundable if park left in acceptable condition and all fees are paid)	\$2,000.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Parks and Recreation		
License, Permit, Fee Name		2010 Fee
Perimeter fencing rental - per event		\$400.00
Set up/take down fee		\$500.00
Stage rental fee - per day		\$400.00
Usage fee, per day		
11:00 p.m. termination time additional fee		\$200.00
11:59 p.m. termination time additional fee		\$400.00
Charitable, nonprofit permittee		
Annual net revenues of less that \$1 million (as determined by <i>www.guidestar.org</i>)		\$500.00
Annual net revenues of \$1 million or more (as determined by <i>www.guidestar.org</i>)		\$1,000.00
Private party, unincorporated permittee		\$250.00
Pursuant to contract approved by council	as established by contract	
Vendor space, per day (based on 10'x10' minimum size space (payment due seven days after event))		\$20.00
Use of Lois M. Paulucci Music Pavilion		
Damage deposit (refundable)		\$100.00
Per hour rental		
40-199 persons		\$50.00
200-499 persons		\$90.00
Building rental		
Alcohol permit		\$90.00
Community recreation center conference room		
Per hour for meetings		\$15.00
Use of room every week for two hours - per month		\$100.00
Damage/cleanup deposit (refundable if building left in acceptable condition)		
With alcohol		\$200.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Parks and Recreation	
License, Permit, Fee Name	2010 Fee
Without alcohol	\$100.00
**Early setup fee - per hour	\$15.00
Evenings/weekends/weekdays	
First hour	\$60.00
Per hour, after first	\$25.00
Late Fee	\$25.00
Use of licensed kitchen	\$65.00
*Buskering permit	\$25.00
Duluth logo souvenirs	
Baseball cap	\$13.50
Ceramic mug	\$6.25
Clear footed glass	\$7.25
Denim shirt	\$26.00
Golf balls (pkg of 3)	\$7.25
Golf shirt	\$24.00
Grey sweatshirt	\$36.50
T-shirt	\$12.50
Watch	\$26.00
White sweatshirt	\$23.00
Electrical panel - damage deposit (refundable if panel returned in acceptable condition)	\$100.00
Golf courses - Lester Park and Enger Park	
Daily golf ticket - tax included	
*18 hole	\$30.00
18 hole junior	\$16.00
18 hole senior	\$25.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Parks and Recreation		
License, Permit, Fee Name		2010 Fee
	9 hole	\$17.00
	9 hole junior	\$11.00
	9 hole senior	\$14.00
	Fall special	\$17.00
	Twilight	\$14.00
Golf cart rental - tax included		
	*18 hole	\$30.00
	9 hole	\$17.00
	Daily private	\$15.00
	*Season private	\$230.00
	Season restricted 5-day	\$550.00
	Season unlimited	\$740.00
Season pass - tax not included		
	Adult individual unlimited	\$650.00
	Family unlimited	\$1,025.00
	*Junior unlimited (ages 8-18)	\$275.00
	*Patron card	\$175.00
	*Senior family dual (ages 62+)	\$780.00
	Senior unlimited (ages 62+)	\$440.00
	Young adult unlimited (ages 19-24)	\$400.00
Key deposit for buildings and park gates (refundable if keys returned in acceptable condition)		\$20.00
Picnic permit		
	1 to 150 persons (five hour time slot)	\$50.00
	151 to 300 persons (five hour time slot)	\$90.00
	*301+ persons (five hour time slot)	\$115.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Parks and Recreation	
License, Permit, Fee Name	2010 Fee
Picnic/wedding - alcohol consumption	\$45.00
Special league - annual	
Sport	
Adult softball - per team	\$550.00
Classic softball - per team	\$1,100.00
Flag football - per person	
With jersey	\$55.00
Without jersey	\$45.00
Team forfeit fee	\$20.00
Team roster late fee - per day	\$5.00
Special use permit (five hour time slot)	
1 to 150 persons	\$75.00
151 to 300 persons	\$115.00
*301+ persons	\$140.00
Vendor space - parks - per day	\$20.00
Washington Center	
Adult open gym - per person/per day	\$1.00
Gym rental	
As is - per hour	\$20.00
Floors covered and use of tables and chairs - per hour	\$35.00
*Wedding	
Permit (five hour time slot)	
1 to 150 persons	\$70.00
151 to 300 persons	\$110.00
301+ persons	\$125.00
Rose Garden wedding permit - per hour	\$75.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Parks and Recreation	
License, Permit, Fee Name	2010 Fee
* Change in license, permit or fee	
**New license, permit or fee	

Planning and Development	
License, Permit, Fee Name	2010 Fee
*C-3 and C-5 plan review	\$263.00
Comprehensive plan	
Booklet	\$42.00
Disk format	\$1.00
*EAW's (city as RGU)	\$525.00
*Grant intermediary fee	
DTED/contamination clean-up	\$263.00
DTED/MIF - city	\$157.00
*JOBZ application and monitoring fee (refundable if denied by council)	\$525.00
Platting	
Final review	
Five or less lots	\$104.00
*Six to 70 lots	\$184.00
Over 70 lots - per lot	\$3.00
*Preliminary review	\$525.00
*Tax forfeit reclassification	\$157.00
*Zoning text change	\$263.00
* Change in license, permit or fee	

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Police	
License, Permit, Fee Name	2010 Fee
Alarm system user	
Permit	
Annual	\$20.00
Late fee	\$20.00
False alarm fees	
1st response	-0-
2nd response	-0-
3rd response	\$100.00
4th response	\$200.00
5th response	\$300.00
<i>Note: Annually, false alarm fees will continue to be increased \$100.00 per response.</i>	
Keyholder timely response failure fee	\$20.00
Animal shelter	
Animals sold to institutions	\$215.00
Daily board fee	\$27.00
Impound fee	\$38.00
Nonresident owner surrender	\$90.00
Quarantine fee	\$160.00
Rabies deposit	\$27.00
Resident owner surrender	\$80.00
Closed investigative product/data	
Per CD-ROM	\$10.00
Per image	\$.25
Per page	\$.25
Crime scene unit audio and video recordings	
Per tape or CD	\$10.00
Staff time - per hour	\$50.00
Criminal history	\$30.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Police	
License, Permit, Fee Name	2010 Fee
Deer hunting qualification certificate	\$30.00
**Extra duty police employment hourly wage	\$55.00
Intrusion detection device permit	\$30.00
No parking signs - for construction sites - per sign	\$3.00
Pawnbroker transaction surcharge - per transaction	\$2.00
**New license, permit or fee	

Public Works and Utilities	
License, Permit, Fee Name	2010 Fee
Aerial photo	
2002	\$5.00
Pre-2002	\$3.00
Certificate of unpaid bills [<i>Comfort Systems</i>]	\$16.50
Excavation permit	
Base Fee	\$20.00
Inspection Fee	\$50.00
Fire service application	varies from \$642-\$1,533
Gas furnace comfort policy fee - annual	
Electronic ignition	\$136.00
Standing pilot	\$126.50
Gas furnace/appliance service	
Midnight - 8:00 a.m.	
First hour OR no show fee	\$100.00
Each additional 15 minutes	\$25.00
Week days	
First 1/2 hour OR no show fee	\$33.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Public Works and Utilities	
License, Permit, Fee Name	2010 Fee
Each additional 15 minutes	\$16.50
Week nights	
First 1/2 hour OR no show fee	\$49.50
Each additional 15 minutes	\$24.75
Inflow and infiltration noninspection/noncompliance surcharge - per month	\$250.00
Land disturbance permit	
Accessory building with footprint of 1,000 square feet or less where erosion control permit is required	\$50.00
Commercial, industrial, multi family construction or demolition on parcels of 10,000 square feet or greater	\$200.00
Grading permit where no structure is being built	\$50.00
Plan review on parcels greater than 10,000 square feet but less than one acre where the engineer waives the permit	\$50.00
Reinspection (<i>note: permit fee includes one inspection</i>)	\$30.00
Single family dwelling construction	
On parcels less than 10,000 square feet where no permit is required by engineer	-0-
On parcels less than 10,000 square feet where permit is required due to special conditions	
First 3,000 square feet of building footprint	\$75.00
Each additional 1,000 square feet of building footprint	\$25.00
On parcels equal to or greater than 10,000 square feet	
First 3,000 square feet of building footprint	\$75.00
Each additional 1,000 square feet of building footprint	\$25.00
Miscellaneous Permits	
Driveway crossing or sidewalk repair or replacement (private construction)	
Base fee	\$20.00
Inspection fee	\$50.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Public Works and Utilities	
License, Permit, Fee Name	2010 Fee
Occupy or obstruct street or sidewalk	
Base fee	\$30.00
Meter revenue loss charge - per meter	
Per day	
Per \$0.25/hour meter	\$1.25
Per \$0.25/40 minutes meter	\$2.00
Per \$0.50/15 minutes meter	\$10.00
Per \$0.50/30 minutes meter	\$20.00
Per \$0.75/hour meter	\$3.75
Per month	
Per \$0.25/hour meter	\$25.00
Per \$0.25/40 minutes meter	\$40.00
Per \$0.50/15 minutes meter	\$200.00
Per \$0.50/30 minutes meter	\$400.00
Per \$0.75/hour meter	\$75.00
Per week	
Per \$0.25/hour meter	\$6.25
Per \$0.25/40 minutes meter	\$10.00
Per \$0.50/15 minutes meter	\$50.00
Per \$0.50/30 minutes meter	\$100.00
Per \$0.75/hour meter	\$18.75
Per month, per square feet of area	\$0.07
Minimum fee	\$10.00
Yearly	\$200.00
Utility work (franchise holders) - minimum fee	\$40.00
Point of sale inspection fee	

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Public Works and Utilities		
License, Permit, Fee Name		2010 Fee
	Sump pump already in place or not required	\$100.00
	Sump pump installation required	\$200.00
Sewer connection - property not previously assessed - per foot of frontage; varies depending on lot size)		\$90.00
Street lighting system utility fee - per month		\$3.50
Transportation permit		
	Regular	\$10.00
	Seasonal contractor	\$50.00
Violations/noncompliance service charge		
	Dispatch of service vehicle	\$49.50
	Restoration of service	
	Between 12:00 a.m.-8:00 a.m.	\$77.50
	Between 4:30 p.m.-12:00 a.m.	\$60.50
	Between 8:00 a.m.-4:30 p.m.	\$49.50
Water connection - property not previously assessed - per foot of frontage; varies depending on lot size)		\$90.00
Water hydrant, use of		\$100.00
Water service tapping fee (one inch or less)		\$380.00
Watercourse obstruction		\$50.00

Treasurer		
License, Permit, Fee Name		2010 Fee
Assessment search/certificate		\$14.00
Delinquent assessment collection fee		\$32.00
Vehicle excise tax (per state authorization)		\$20.00

RESOLVED FURTHER, that the following fees are hereby eliminated:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Eliminated Fees			
Dept./Div.	License, Permit, Fee Name	Current Fee	
Parks	Bayfront Festival Park		
	Use of entire park (advance payment required unless otherwise specified)		
		Per paid admission on each ticket sold in excess of total daily rental payment (Payment due seven days after event)	\$.50
		Usage fee, per day	
		Charitable, nonprofit permittee selling tickets	\$500.00 plus \$.50/ticket over 1,000 tickets sold
		For profit permittee selling tickets	\$1,000.00 plus \$.50/ticket over 1,000 tickets sold
	Duluth Logo Souvenirs		
		Can Cooler	\$6.25
		Ceramic mug with coffee package	\$9.50
		Fleece	\$36.50
		Key tag	\$3.00
		Knit cap	\$10.50
	Senior programs - per person		
		Billiards tournament	\$7.50
		Citywide picnic	\$11.00
		Educational seminars	\$7.50
		Holiday banquet	\$14.50
		Special parties	\$4.00
	Special league - annual		
		Bocce (per team)	\$35.00
	Van rides - one way	\$1.25	

RESOLVED FURTHER, that any prior resolutions inconsistent or conflicting with this resolution are hereby rescinded.

RESOLVED FURTHER, that these fees shall become effective on January 1, 2010.
Resolution 09-0742 was adopted upon the following vote:
Yeas: Councilors Anderson, Cuneo, Eckenberg, Krause and President Gilbert -- 5
Nays: Councilors Fedora, Fosle and Stauber -- 3
Absent: Councilor Gardner -- 1
Approved December 21, 2009
DON NESS, Mayor

- - -

Councilor Stauber moved to suspend the rules to consider Ordinance 09-060 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

09-060 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, ZONING DISTRICT MAP NO. 30 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-C, ONE-FAMILY RESIDENTIAL, TO R-3, APARTMENT RESIDENTIAL, PROPERTY LOCATED BETWEEN MINNESOTA AVENUE AND SAINT LOUIS AVENUE FROM 16TH STREET TO 200 FEET SOUTHERLY (PARK POINT PROPERTIES).

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

- - -

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

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. 09-1221-31, with The Valuation Group, Inc., for appraisal services anticipated to be needed during 2010 related to various tax court proceedings in the total amount of not to exceed \$37,000, payable from the general fund, Miscellaneous 110-700-1407-5441.

Resolution 09-0746 was unanimously adopted.
Approved December 21, 2009
DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

RESOLVED, that the assessment roll levied for reassessment of a canceled garbage and stormwater assessment (contracts 2006310, 2007310, 2008310 and stormwater 9902200; assessable amount - \$2,060.22), to be deposited into Fund 325, is hereby confirmed.

Resolution 09-0761 was unanimously adopted.

Approved December 21, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute and implement a collective bargaining agreement between the city and Duluth Police Union, Local 807, covering the year 2010, substantially in the form of that on file in the office of the city clerk as Public Document No. 09-1221-12, which agreement contains the terms and conditions of the agreement between the parties in effect in 2007-2009 and those changes which were mutually agreed to through negotiation.

Resolution 09-0772 was unanimously adopted.

Approved December 21, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to execute and implement a collective bargaining agreement with the city of Duluth Supervisory Association, covering the year 2010, substantially the same as that on file in the office of the city clerk as Public Document No. 09-1221-13, which agreement contains the terms and conditions of the agreement between the parties in effect in 2007-2009 and those changes which were mutually agreed to through negotiation.

Resolution 09-0776 was unanimously adopted.

Approved December 21, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to execute and 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, covering the year 2010, substantially the same as that on file in the office of the city clerk as Public Document No. 09-1221-14, which agreement contains the terms and conditions of the agreement between the parties in effect in 2007-2009 and those changes which were mutually agreed to through negotiation.

Resolution 09-0777 was unanimously adopted.

Approved December 21, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to renew an agreement with SMDC Medical Center (Duluth Clinic Occupational Medicine), previously executed by purchase order, for professional services in administering a variety of confidential tests, exams and occupational medical services for city employees in accordance with the city's specifications and the vendor's updated proposal, at an amount not to exceed \$25,000 per year, from 2010 through 2012, for a grand total of \$75,000, terms net 30, and payable from General Fund 110, Department/Agency

700, Organization 1407, Object 5441; said renewal to be a written agreement substantially in the form of Public Document No. 09-1221-15 on file in the office of the city clerk.

Resolution 09-0750 was unanimously adopted.

Approved December 21, 2009

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Hovland, Inc., for structural, waterproofing, bituminous overlay and miscellaneous repairs to the city of Duluth First Street (Coney Island) parking ramp at 106 West First Street in accordance with city-approved plans and specifications and the vendor's bid, including base and alternatives, of \$115,300, payable from Parking Fund 505, Department/Agency 015, Organization 1480-2513, Object 5405.

Resolution 09-0752 was unanimously adopted.

Approved December 21, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute an agreement with St. Louis County providing for the shared use of internet bandwidth at the initial annual cost of \$3,500 per month, subject to annual review thereafter, said agreement to be substantially in the form of that on file in the office of the city clerk as Public Document No. 09-1221-16; funds payable from Fund 110-117-1107-5309.

Resolution 09-0763 was unanimously adopted.

Approved December 21, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proposed specifications for the new civil service classification of mobile data specialist, which were approved by the civil service board on October 20, 2009, and which are filed with the city clerk as Public Document No. 09-1221-17, are approved; that said classification shall be subject to the city's collective bargaining agreement with its A.F.S.C.M.E. basic unit employees; and that pay range for said classification shall be Range 133. 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 09-0779 was unanimously adopted.

Approved December 21, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proposed specifications for the new civil service classification of property and evidence technician, which were approved by the civil service board on October 20, 2009, and which are filed with the city clerk as Public Document No. 09-1221-18, are approved; that said classification shall be subject to the city's collective bargaining agreement with its A.F.S.C.M.E. basic unit employees; and that pay range for said classification shall be Range 22. 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 09-0780 was unanimously adopted.

Approved December 21, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proposed specifications for the new civil service classification of administrative legal assistant, which were approved by the civil service board on October 20, 2009, and which are filed with the city clerk as Public Document No. 09-1221-19, are approved; that said classification shall be subject to the city's collective bargaining agreement with its A.F.S.C.M.E. basic unit employees; and that pay range for said classification shall be Range 129. 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 09-0781 was unanimously adopted.

Approved December 21, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officers are authorized to reimburse the Duluth economic development authority (DEDA) in the amount of \$250,000, payable from Fund 255 when received from Allete, Inc., for the owner's share of skywalk system construction costs pertaining to the Lake Superior Place Building and the Fur Storage Property Building, which costs were incurred by DEDA but the reimbursement of which is to be paid to the city.

Resolution 09-0770 was unanimously adopted.

Approved December 21, 2009

DON NESS, Mayor

- - -

RESOLVED, that:

(a) The city council finds a sufficient petition was filed with the city clerk requesting the vacation of Peabody Street from the east line of 43rd Avenue East to the street's terminus approximately 150 feet east; 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, 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 easement is useless for transportation and pedestrian purposes, but a public purpose exists for use of a portion of the easement for utility purposes as noted in (c) below; and

(c) Minnesota Power has requested a utility easement be retained to preserve access to an existing power distribution line located in eastern end of the petitioned vacation area; and

(d) The city planning commission, at its December 8, 2009, regular meeting, did approve, unanimously, vacating the petitioned street, subject to retaining a utility easement over the area described in (e) below; and

(e) The city council of the city of Duluth approves the vacation of the following and as more particularly described on Public Document No. 09-1221-21:

That part of Peabody Street from the east line of 43rd Avenue East to the street's terminus approximately 150 feet east, retaining a utility easement over that part of the vacation area east of a line beginning ten feet west of the southeast corner of Lot 22, Dover Green Division, and terminating at a point 33 feet south of the southeast corner of said lot; and

(f) That the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution together with a plat showing the portion of the street to be vacated and easement retained.

Resolution 09-0771 was unanimously adopted.

Approved December 21, 2009

DON NESS, Mayor

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RESOLVED, that proper city officials are authorized to amend an agreement (Public Document No. 09-1221-22) with the state of Minnesota department of administration to sublease office space in the Minnesota Workforce Center - Duluth, located on the second floor of the Government Services Center, 320 West Second Street, through July 31, 2012. Based on current square footage and rental rates, rent is expected to be \$2,062.41 per month. In the event that rental rates or square footage are increased, total costs are not to exceed \$70,000 for the period January 31, 2010, through July 31, 2012, payable from Fund 0268.

Resolution 09-0782 was unanimously adopted.

Approved December 21, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a services agreement, a copy of which amendment is on file in the office of the city clerk as Public Document No. 09-1221-23, with the Canal Park Business Association pursuant to which they will operate and maintain the city-owned informational kiosks, sell advertizing on available spaces thereon and use the revenues therefrom to maintain the public maps, directories and public informational spaces thereof and to make other authorized improvements to public space in Canal Park.

Resolution 09-0765 was unanimously adopted.

Approved December 21, 2009

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 2010 for a total amount not to exceed \$34,484, terms net 30, payable from General Fund 110, Department/Agency 500, Organization 1930-2310, Object 5455.

Resolution 09-0740 was unanimously adopted.

Approved December 21, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute an agreement with the Duluth Seaway port authority for a dock wall corrosion repair joint project known as the port terminal structure retaining wall rehabilitation project and is to be constructed on the dock wall of the Clure Public Marine Terminal, said agreement substantially in the form of that on file in the office of the city clerk as Public Document No. 09-1221-24.

Resolution 09-0775 was unanimously adopted.

Approved December 21, 2009

DON NESS, Mayor

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RESOLVED, that the proper city officials are authorized to accept a grant from the state of Minnesota, commissioner of public safety, bureau of criminal apprehension, in the amount of \$100,000 for the purpose of supporting the Duluth police department's participation in the

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Minnesota financial crimes task force, and to execute the grant agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 09-1221-25, grant funds to be deposited in Fund 215-200-2259-4220-02.

Resolution 09-0749 was unanimously adopted.
Approved December 21, 2009
DON NESS, Mayor

- - -

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. 09-1221-26, 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, 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.

Resolution 09-0764 was unanimously adopted.
Approved December 21, 2009
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to execute and a concession management agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 09-1221-27, between the city and Professional Golf Management, Inc., for operation and management of the Lester Park and Enger Park golf courses for a term ending December 31, 2012, for annual costs of \$400,000 in 2010, \$408,00 in 2011 and \$416,160 in 2012, payable from Fund 503.

Resolution 09-0762 was unanimously adopted.
Approved December 21, 2009
DON NESS, Mayor

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The following resolutions were also considered:

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 2010:

General obligation bonds and notes to be issued in 2010	\$6,240,000
General obligation bonds and notes to be retired in 2010	
Scheduled general obligation bonds anticipated to mature and be retired	\$15,969,157
General obligation bonds anticipated to be called and retired with CIT funds	\$0
Total anticipated general obligation bond retirements for 2010	\$15,969,157
Net anticipated increase (decrease) in general obligation bonding for 2010	(\$9,729,157)

Resolution 09-0747 was unanimously adopted.
Approved December 21, 2009
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 2010 through 2014 which has been presented to the council in the section entitled "Capital Improvement Program Bond Summary" in the document entitled "2010-2014 Capital Improvement Plan-Capital Budget and Plan" (the plan);

(b) The council has caused due notice to be given and has held on December 7, 2009, 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. Intent to issue bonds.

2.01 (a) The council is considering the issuance of capital improvement bonds under the act and Minnesota Statutes, Chapter 475, in an amount not to exceed \$2,240,000 (the bonds), for the purpose of providing funds for the acquisition and betterment of the following projects: improvements at City Hall including window replacement, elevator improvements and modernization/remodeling; improvements to fire department facilities including furnace replacements; modifications and maintenance of the mechanical systems at the main library; public works maintenance shop structural slab repairs; boiler replacements and masonry repairs on eligible facilities under the act; and payment of discount and costs of issuance;

(b) The city hereby expresses its intent to issue the bonds for the projects in an aggregate principal amount not to exceed \$2,240,000, pursuant to the plan, the act and Minnesota Statutes, Chapter 475;

(c) The city will issue the bonds if no petition requesting a vote on the issuance of the bonds signed by voters equal to five percent of the 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 2.02 of this resolution.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

2.02 The council shall hold a public hearing on the issuance of the bonds at 7:00 p.m. on January 11, 2010. The city clerk is authorized and directed to cause the notice of public hearing, substantially in the form on file in the office of the city clerk as Public Document No. 09-1221-32, to be published in the official newspaper of the city or a newspaper of general circulation in the jurisdiction of the city not less than 14 days nor more than 28 days prior to the date set for the public hearing.

2.03 The administrative staff of the city and its agents are hereby authorized to take such further action necessary to carry out the intent and purpose of this resolution and the requirements of the act.

Resolution 09-0759 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Krause and President Gilbert -- 7

Nays: Councilor Stauber -- 1

Absent: Councilor Gardner -- 1

Approved December 21, 2009

DON NESS, Mayor

- - -

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 2010 in an amount up to \$2,268,000 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 \$132,000.

Section 3. The capital equipment to be financed includes those items of equipment set forth on the list (Public Document No. 09-1221-28), which list of equipment is hereby approved for purchase in 2010.

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.

Resolution 09-0760 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Krause and President Gilbert -- 7

Nays: Councilor Stauber -- 1

Absent: Councilor Gardner -- 1

Approved December 21, 2009

DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Resolution 09-0767, by Councilor Fedora, requesting the North Shore Scenic Railroad move empty and unused rail cars to areas of track that do not obstruct the public's view of Lake Superior, was introduced for discussion.

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

Christine Penny, who lives on Congdon Boulevard, spoke in support of the resolution for reasons of: the train cars block access to their neighbors, it is ugly looking; the public cannot get to the street; she did not buy property on a railroad storage yard and one has to drive a mile and a half to get around these cars.

Ken Buehler, representing the North Shore Scenic Railroad, stated that: his approval to allow these railroad cars on these tracks was not a good decision; the railroad cars adjacent to the Lakewalk will be removed this coming Wednesday evening; the railroad cars would not normally be there, but this year the bridge before Knife River is being replaced and the funding received from railroad track rental will be used for repairing railroad ties.

Mr. Buehler respond to councilors questions and concerns.

Resolution 09-0767 was adopted as follows:

BY COUNCILOR FEDORA:

RESOLVED, that the city council hereby requests that the North Shore Scenic Railroad move empty and unused rail cars under its jurisdiction to areas of track that do not obstruct the public's view of Lake Superior, specifically the areas of track between the city of Duluth and Knife River and surrounding 18th Avenue East and 21st Avenue East.

Resolution 09-0767 was adopted upon the following vote:

Yeas: Councilors Fedora, Fosle, Krause, Stauber and President Gilbert -- 5

Nays: Councilors Anderson, Cuneo and Eckenberg -- 3

Absent: Councilor Gardner -- 1

Approved December 21, 2009

DON NESS, Mayor

- - -

Resolution 09-0778, approving proposed specifications for the new civil service classification of payroll coordinator and specifying contract benefits for same, was introduced by Councilor Cuneo for discussion.

Councilor Cuneo moved to table the resolution because of Councilor Gardner's concerns, which motion was seconded and unanimously carried.

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WHEREAS, Regulation 24 CFR Part 91 issued by the U.S. department of housing and urban development (HUD) requires the city to submit and receive HUD approval of a five-year consolidated plan and an annual action plan as part of a HUD-approved five-year consolidated plan for the city of Duluth; and

WHEREAS, Title 1 of the Housing and Community Development Act of 1974, as amended, establishes a community development block grant (CDBG) program for the purpose of developing viable urban communities by providing decent housing and suitable living environment and expanding economic opportunities and preventing and/or eliminating conditions of slum and blight, principally for persons of low and moderate income; and

WHEREAS, the city of Duluth desires to continue to carry out HUD-funded programs.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

NOW, THEREFORE, BE IT RESOLVED, that the FY 2010-2014 city of Duluth consolidated plan for housing and community development and the FY 2010 annual Action Plan required by HUD federal legislation are hereby adopted and approved.

BE IT FURTHER RESOLVED, that the city of Duluth hereby makes a finding that expenditures as set forth in Resolution 09-0755 are necessary and appropriate and, further, that said expenditures for the CDBG program will serve to assist low and moderate income individuals/families (no less than 70 percent as described in federal regulations) and/or serve to prevent or eliminate conditions of slum or blight in the community.

BE IT FURTHER RESOLVED, that the city of Duluth hereby makes a finding that expenditures as set forth in resolutions 09-0756 and 09-0757 are necessary and appropriate and, further, that said expenditures for the HOME and ESG programs will serve to assist low and moderate income people.

BE IT FURTHER RESOLVED, that the city of Duluth and its officials are authorized and directed to assume full responsibility for assuring that its community development program is carried out in full compliance with the provisions of the acts implementing the programs and all regulations of HUD issued pursuant thereto and authorizing appropriate city officials to execute any documents with HUD to implement the program. This authorization shall also apply to existing programs with the city and HUD under the HUD CDBG, HOME and emergency shelter grant programs.

Resolution 09-0754 was unanimously adopted.

Approved December 21, 2009

DON NESS, Mayor

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WHEREAS, City Council Resolution No. 09-0754, adopted December 21, 2009, approved the FY 2010-2014 consolidated plan for housing and community development and the FY 2010 annual action plan; and

WHEREAS, the secretary of HUD is authorized to make grants to cities and/or counties to finance local community development programs, approved in accordance with the provisions of Title I of said act, as well as grants under the Cranston-Gonzales National Affordable Housing Act of 1990, as amended, (the HOME program) and the Stewart B. McKinney Homeless Assistance Act of 1987, as amended (the emergency shelter grant - ESG - program);

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are hereby authorized to make and submit appropriate documentation to HUD for those projects and corresponding funding levels as set forth below:

2010 CITY OF DULUTH COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)
PROGRAM-FUND 262, AGENCY 020, OBJECT 5434, PROJECT CD10CD

<u>SUBPROJECT</u>	<u>ACTIVITY</u>	<u>AMOUNT</u>	<u>PROJECTS</u>
<u>HOUSING PROJECTS</u>			
HOUS	1734	\$1,053,500	Duluth property rehabilitation program - HRA
HOUS	1291	\$ 66,654	FAIM IDA housing counseling/downpayment assistance - Community Action Duluth
HOUS	1091	\$ 208,376	Duluth weatherization program - AEOA
HOUS	2270	\$ 187,200	Duluth energy efficiency program - NCLT
<u>ECONOMIC DEVELOPMENT PROJECTS</u>			
ECDV	2412	\$ 160,000	SOAR Duluth At Work - SOAR Career Solutions

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

ECDV	1244	\$ 112,500	CHUM support services for employment - Churches United in Ministry
ECDV	2805	\$ 40,000	NYS JET (jobs, education and training) - Neighborhood Youth Services
ECDV	2264	\$ 18,207	Growing Neighborhood Businesses - Northeast Entrepreneur Fund, Inc. *Plus \$61,793 from Fund 263, revenue that has already been realized by the program
<u>PUBLIC FACILITY IMPROVEMENT PROJECTS</u>			
PFAC	PF01	\$ 42,020	Curb ramp accessibility and sidewalk improvements
PFAC	PF02	\$ 250,000	Memorial Park Community Center - SVCNDA/ISD #709
PFAC	1343	\$ 279,450	Damiano accessibility project - Damiano of Duluth
<u>PUBLIC SERVICE PROJECTS</u>			
PSVC	1244	\$ 75,000	Duluth Hunger Project - CHUM
PSVC	1929	\$ 77,000	Primary health care services - Lake Superior Community Health Center
PSVC	1348	\$ 20,000	Clothes That Work and Social Services - Damiano Center
PSVC	2511	\$ 25,000	Emergency heating assistance - Salvation Army
PSVC	1974	\$ 35,000	LIFELINE Expressway of Youth Services - Life House
PSVC	134A	\$ 34,000	Housing access program - Damiano of Duluth
PSVC	2509	\$ 32,000	Battered women's shelter program - Safe Haven Shelter and/or AICHO
PSVC	251A	\$ 54,000	Transitional housing program - Salvation Army and/or WCDO
PSVC	1168	\$ 87,213	Youth Development Collaborative: Valley Youth Center, Grant Community School Collaborative, Boys and Girls Club, YMCA Mentor Duluth Collaborative, YWCA Girls and Youth programs
PSVC	1226	\$ 20,000	Permanent supportive housing - Women's Community Development Organization/ CCHC
<u>PLANNING/PROGRAM ADMINISTRATION</u>			
ADMC	AD01	\$ 502,000	CDBG program administration
ADMC	AD02	\$ 60,000	Neighborhood revitalization planning
ADMC	AD06	\$ 20,000	Irving Neighborhood revitalization plan - SVCNDA
ADMC	AD07	\$ 5,000	Keene's Creek and Irving Park plan
ADMC	AD08	\$ 15,000	Design improvements for Sixth Avenue East - Fit City Duluth
ADMC	AD09	\$ 10,000	Center for Social Justice - Center for Social Justice, Inc.
ADMC	AD10	\$ 10,000	LPBG business loan fund - Lincoln Park Business Group
		\$3,547,700	Total

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

BE IT FURTHER RESOLVED, that the following are hereby designated as the financial resources for the above program:

SOURCE OF FUNDING

Year 2010	CDBG grant - city	\$3,061,420
Year 2007	CDBG grant - city	\$ 180,000
Year 2008	CDBG grant - city	\$ 53,895
Year 2009	CDBG grant - city	\$ 203,805

Total \$3,499,120

BE IT FURTHER RESOLVED, that the proper city officials are authorized to make the following transfers in prior year community development accounts:

	Original <u>Budget</u>	Amount <u>of Change</u>	Revised <u>Budget</u>
<u>2007 CD07CD</u>			
PFAC-PF04 Harbor Highlands Infrastructure	\$180,000	-\$180,000	-0-
<u>2008 CD08CD</u>			
ECDV-2264 Growing neighborhood businesses	\$ 80,000	-\$ 5,000	\$ 75,000
PFAC-PF01 Curb ramp accessibility and sidewalks	\$180,000	-\$ 47,145	\$132,855
PSVC-134A Housing access program	\$ 20,000	-\$ 1,750	\$ 18,250
<u>2009</u>			
PFAC-PF01 Curb ramp accessibility and sidewalks	\$170,000	-\$170,000	-0-
Bal.Sh.2220 Lien repayments	\$ 33,805	-\$ 33,805	-0-
\$437,700 - Total amount reprogrammed			

BE IT FURTHER RESOLVED, that the city of Duluth and its officials are authorized and directed to assume full responsibility for assuring that its community development program is carried out in full compliance with the provisions of the acts implementing the programs and all regulations of HUD issued pursuant thereto. This authorization shall also apply to existing programs with the city and HUD under the HUD CDBG, HOME and ESG programs.

BE IT FURTHER RESOLVED, that the appropriate city officials are authorized to execute the appropriate agreements with these agencies upon receipt of HUD funds.

Resolution 09-0755 was unanimously adopted.

Approved December 21, 2009

DON NESS, Mayor

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WHEREAS, City Council Resolution No. 09-0754, adopted December 21, 2009, approved the FY 2010-2014 consolidated plan for housing and community development and the FY 2010 annual action plan; and

WHEREAS, the secretary of HUD is authorized to make grants to cities and/or counties to finance local community development programs, approved in accordance with the provisions of Title I of said act, as well as grants under the Cranston-Gonzales National Affordable Housing Act of 1990, as amended, (the HOME program) and the Stewart B. McKinney Homeless Assistance Act of 1987, as amended (the emergency shelter grant - ESG - program).

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are hereby authorized to make and submit appropriate documentation to HUD for those projects and corresponding funding levels as set forth below:

2010 HOME PROGRAM - FUND 260, AGENCY 020, OBJECT 5434, PROJECT CD10HM

<u>SUB-PROJECT</u>	<u>ACTIVITY</u>	<u>PROJECTS</u>	<u>AMOUNT</u>
GN10	1736	Homeless rental assistance program (TBRA)- HRA	
			\$ 37,000
GN10	1737	TBRA administration - HRA	\$ 3,000
CH10	2270	Housing predevelopment - NCLT	\$ 22,000
CH101	1226	Housing redevelopment - Center City Housing	\$ 15,000
CH10	1227	WCDO properties - Center City Housing Corp.	\$150,000
CH10	2271	Rehabilitation - resale - NCLT	\$450,000
CH10	1228	East Side housing rehabilitation - Center City Housing Corporation	\$119,249
GN10	AD03	Program administration (city)	\$ 79,000

Total	\$875,249
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BE IT FURTHER RESOLVED, the following are hereby designated as the financial sources for the above program:

Year 2010	HOME grant	\$820,000
Year 2008 & 2009	Program income and reprogrammed	<u>\$ 55,249</u>
Total		\$875,249

BE IT FURTHER RESOLVED, that the proper city officials are authorized to make the following transfers in prior year community development accounts:

		<u>Original</u>	<u>Amount</u>	<u>Revised</u>
		<u>Budget</u>	<u>of Change</u>	<u>Budget</u>
<u>2008 CD08HM</u>				
08CD02	Predevelopment	\$17,320	-\$ 6,928	\$10,392
<u>2009 CD09HM</u>				
Bal. Sh. 2220	Lien repayments	\$48,321	-\$48,321	-0-
	\$55,249 - Total amount reprogrammed			

BE IT FURTHER RESOLVED, that the city of Duluth and its officials are authorized and directed to assume full responsibility for assuring that its community development program is carried out in full compliance with the provisions of the acts implementing the programs and all regulations of HUD issued pursuant thereto. This authorization shall also apply to existing programs with the city and HUD under the HUD CDBG, HOME and ESG programs.

BE IT FURTHER RESOLVED, that the appropriate city officials are authorized to execute the appropriate agreements with these agencies upon receipt of approval of HUD funds.

Resolution 09-0756 was unanimously adopted.

Approved December 21, 2009

DON NESS, Mayor

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WHEREAS, City Council Resolution No. 09-0754, adopted December 21, 2009, approved the FY 2010-2014 consolidated plan for housing and community development and the FY 2010 annual action plan; and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

WHEREAS, the secretary of HUD is authorized to make grants to cities and/or counties to finance local community development programs, approved in accordance with the provisions of Title I of said act, as well as grants under the Cranston-Gonzales National Affordable Housing Act of 1990, as amended, (the HOME program) and the Stewart B. McKinney Homeless Assistance Act of 1987, as amended (the emergency shelter grant - ESG - program);

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are hereby authorized to make and submit appropriate documentation to HUD for those projects and corresponding funding levels as set forth below:

2010 ESG PROGRAM - FUND 262, AGENCY 020, OBJECT 5434, PROJECT CD10ES

<u>SUBPROJECT</u>	<u>PROJECTS</u>	<u>AMOUNT</u>
1244	CHUM stabilization services for homeless	\$ 37,000
2109	MACV - Duluth	\$ 19,000
2509	Battered Women's Shelter programs-Safe Haven and/or AICHO	\$ 23,000
2511	Transitional housing-Salvation Army and/or WCDO	
	\$ 41,000	
	Program administration - city	<u>\$ 5,000</u>
	Total	\$125,000

BE IT FURTHER RESOLVED, that the following is hereby designated as the financial resource for the above program:

<u>Source of funding</u>	
2010 ESGP grant	<u>\$125,000</u>
Total	\$125,000

BE IT FURTHER RESOLVED, that the city of Duluth and its officials are authorized and directed to assume full responsibility for assuring that its community development program is carried out in full compliance with the provisions of the acts implementing the programs and all regulations of HUD issued pursuant thereto. This authorization shall also apply to existing programs with the city and HUD under the HUD CDBG, HOME and ESG programs.

BE IT FURTHER RESOLVED, that the appropriate city officials are authorized to execute the appropriate agreements with these agencies upon receipt of approval of HUD funds.

Resolution 09-0757 was unanimously adopted.

Approved December 21, 2009

DON NESS, Mayor

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RESOLVED, that the proper city officials are authorized to enter into a job incentive program agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 09-1221-20, with Cookie Temptations in an amount not to exceed \$20,000, payable from 2005 Federal Program Fund 263 - community development - Agency 020, Object 5434.

Resolution 09-0769 was unanimously adopted.

Approved December 21, 2009

DON NESS, Mayor

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Resolution 09-0773, vacating ensign street from Church Place to a point 128.5 feet west of Chambersburg Avenue and retaining an easement for pedestrian and utility purposes over the entire vacation area (ISD 709), was introduced by Councilor Stauber for discussion.

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

Scott Kuiti and Penny Turcott expressed concerns of: the unsafe cut through traffic through the Piedmont Plaza parking lot; the design of this school is not a safely designed plan; this was once turned down, why is it back again; the real reason for this request has not been told and the welfare of the children is not the school district's main goal.

Tom Ochocki, chair of the board of trustees for Christ Lutheran Church, Mark Wiita, president of Christ Lutheran Church, Carolyn Lofald, resident and member of the site council for Piedmont School, Pastor Chris Schroder, Christ Lutheran Church, Kerry Leider, School District No. 709, and Jim Carlson expressed support for the resolution for reasons of: the church voted unanimously to work with the school district to make Piedmont the elementary school in the neighborhood; the planning commission unanimously voted for this; businesses and the neighborhood support this school project; the church supports moving their parsonage for the school to have the area for parking; the area of Ensign Street being vacated is not essential for vehicular and nursing home needs and the safety for children getting to the playground area is the primary need here.

Councilor Krause expressed his opposition for reasons of: the potential traffic flow problems with only one access to and from apartment complexes and the nursing home and the church and increased traffic through the business parking lot.

Resolution 09-0773 was adopted as follows:

RESOLVED, that:

(a) The city council finds a sufficient petition was filed with the city clerk requesting the vacation of that part of Ensign Street from the east line of Church Place to a point 128.5 feet west of Chambersburg Avenue; 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, 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 easement will be useless for transportation purposes in the future, but a public purpose exists for use of the entire width of the street easement for pedestrian and utility purposes, based on the findings in (c) and (d) below; and

(c) Ensign Street is traversed by a municipal water line, a municipal gas line, an electric power line and a telephone communications line; and

(d) Ensign Street provides an important pedestrian link between the neighborhoods east of Chambersburg Avenue and the services offered in the commercial and mixed-use areas west of the school; and

(e) The city planning commission, at its December 8, 2009, regular meeting, did approve, unanimously, vacating the petitioned street, subject to retaining a pedestrian and utility easement over the entire vacation area; and

(f) The city council of the city of Duluth approves the vacation of the following and as more particularly described on Public Document No. 09-1221-29:

That part of Ensign Street in Huseby's Division, First Addition, except the westerly 198 feet thereof and except the easterly 128.5 feet lying west of the westerly line of Chambersburg Avenue; and

That part of Ensign Street in the NE 1/4 of the NW 1/4 of the SE 1/4 of Section 30, Twp 50N, Rng 14W, including that part platted as Auditors Plat No. 32, except the westerly 198

feet thereof and except the easterly 128.5 feet lying west of the westerly line of Chambersburg Avenue; and

(g) That the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution together with a plat showing the portion of the street to be vacated and easement retained.

Resolution 09-0773 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Stauber and President Gilbert -- 6

Nays: Councilor Krause -- 1

Abstention: Councilor Fosle -- 1

Absent: Councilor Gardner -- 1

Approved December 21, 2009

DON NESS, Mayor

- - -

Resolution 09-0748, adopting typical section design for the Glenwood Street reconstruction project, was introduced by Councilor Fosle for discussion.

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

Bob Loubek, Thomas Buhr, Jr., and Byron Johnson expressed concerns of: the vast majority of the residents on Glenwood Street supported the plan that did not include a bike path, but the administration is advocating the bike path option; bikers do not necessarily live on this street or will not be paying this assessment; a small special interest group should not take precedence over the residents; Option 1 allowed for a boulevard where snow could be plowed onto; a modified plan (Public Document No. 09-1221-10(a)) could satisfy all sides, where there would be a ten foot lane for two way traffic of runners, bikers, etc., that it also allows for two sided parking and safe 12 foot driving lanes; there is need for parking on both sides of the street; if parking is allowed only on one side, there will be a snow removal problem; with alternate side parking, bicyclists have adequate room on the side opposite of the parking; put in a bike lane on 43rd Avenue East when it is improved, because it can connect to the Lakewalk and the huge hill on Glenwood, west of 43rd Avenue East, does not have a bike lane, so why is it needed.

Susan Koschak, chair of the Minnesota department of transportation (Mn/DOT) non-motorized transportation committee, Drew Digby, chair of the Active Living Committee of Fit City Duluth, Ellen Pillsbury, Bob Houle, Jennifer Bergum, Pete Langr, Dudley Edmundson, James Gittemeier, transportation planner with the Duluth-Superior metropolitan interstate council (MIC), Eric Viken, Jeff Crowe and Mimi Stender, executive director of Fit City Duluth, expressed support for the resolution for reasons of: it is important to improve streets for the benefits of all users; having bike lanes is safer for bikers and motorists; cities that have bike lanes bring life to a city; this is a component of the comprehensive plan; this plan encompasses safety concerns, parking needs and biking; besides this specific project, bike lanes should be incorporated throughout the city; this would help in reducing the city's carbon footprint; more and more people are using bicycles for work or enjoyment; there are more individuals than the residents that use this street; this might be the best option for this street, because right now, bikers are weaving in and out of parked cars to let cars go by; this plan is the best compromise; the MIC designated Glenwood Street as a bike route in 1987 and it was signed as a bike route in 2008; this street is a major connector from one neighborhood to another; the streets here are not conducive to bike riding, that is why this is needed and cyclists are forced to use sidewalks which is also dangerous.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Councilors Fosle, Krause and Stauber expressed concerns of: if the city finished the Munger Trail through the city, this would not be needed; this proposed 17 blocks of bike lane does not connect to any other bike lanes; you do not see much bike traffic taking on the hill on Glenwood; under this plan, one driving lane is driving down the center of the road, which is unsafe; snow will be dumped on the sidewalk under this plan; the majority of residents on this street do not want the bike lanes and the council should not be told that they “need” to vote on the issue this evening.

Councilors reviewed with staff the process in meeting with the public and discussed the various options.

Councilor Fedora moved to amend subparagraph (a) of the resolution, by deleting the words from “to include” to “no parking,” deleting subparagraphs (2), (3) and (4); and adding the words “that the council will be voting on the remaining issues at their January 25, 2010, meeting,” which motion was seconded and discussed.

Councilor Fedora felt that with this amendment, the council would set the “footprint” of a 44 foot wide road, so the engineering office and the consultant can start work on the design and then meet and work through the bike lane issue.

Councilors Stauber, Eckenberg and President Gilbert expressed concerns relative to the amendment of: that the sidewalk will be right up next to the street; snow will be pushed up on the sidewalk and if the snow is pushed onto the sidewalk, legally residents do not have to remove it.

The amendment failed as follows:

Yeas: Councilors Cuneo, Fedora and Krause -- 3

Nays: Councilors Anderson, Eckenberg, Fosle, Stauber and President Gilbert -- 5

Absent: Councilor Gardner -- 1

Councilor Cuneo moved to amend the resolution to delete everything after the words “44 feet in width” in subparagraph (a) and delete the rest of the resolution after the words “total width is 44 feet” in subparagraph (a)(1), which motion was seconded and discussed.

Chief Administrative Officer David Montgomery noted that the administration has taken into account several of the key considerations of the neighborhood.

Councilors Fosle and Krause expressed concerns that this will lead to the council being involved with setting each street’s design and the neighborhood has spoken as to what they want; which is totally different than what is being proposed.

The amendment carried as follows:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora and President Gilbert -- 5

Nays: Councilors Fosle, Krause and Stauber -- 3

Absent: Councilor Gardner -- 1

Resolution 09-0748, as amended, was adopted as follows:

RESOLVED, that the Duluth City Council adopts the following typical section for the reconstruction of Glenwood Street from 43rd Avenue East to 60th Avenue East (City Project No. 0647TR/0244TR, S.P. 118-162-013):

(a) 44 feet in width;

(1) Total width is 44 feet.

Resolution 09-0748, as amended, was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora and President Gilbert -- 5

Nays: Councilor Fosle, Krause and Stauber -- 3

Absent: Councilor Gardner -- 1

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Approved December 21, 2009
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to contract with Custom Fire Apparatus, Inc., for the tax-exempt purchase and delivery of a triple combination fire pumper truck in accordance with its modified bid of \$446,707, terms net 30, FOB destination, payable as follows:

Amount	Capital Equipment Fund	Department/ Agency	Organization	Object	Account No.
\$315,500	250	015	2008	5580	CE250-V802
\$131,207	250	015	2009	5580	CE250-V901

Resolution 09-0721 was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle and President Gilbert -- 6

Nays: Councilors Krause and Stauber -- 2

Absent: Councilor Gardner -- 1

Approved December 21, 2009

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept a grant from the John S. and James L. Knight Foundation in the amount of \$160,000, with a grant term of December 7, 2009, through December 31, 2010, to be used to leverage the Bill and Melinda Gates Foundation grant approved by city council Resolution 09-0496, to purchase 21 laptop computers to be used at three library locations and to fund a new computer training position for a period of two years, funds to be deposited in Fund 210-030-3114-4270.

FURTHER RESOLVED, that the proper city officials are authorized to execute a grant agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 09-1221-30.

Resolution 09-0758 was unanimously adopted.

Approved December 21, 2009

DON NESS, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR STAUBER

09-059 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, AMENDING PUBLIC DOCUMENT NO. 03-0324-15 ENTITLED "RAMSEY VILLAGE NEIGHBORHOOD DOCUMENTS OF IMPLEMENTATION" (SVCNDA).

- - -

INTRODUCED BY COUNCILOR STAUBER

09-062 - AN ORDINANCE AMENDING SECTION 50-30 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO FRONT YARD PARKING FOR USES AUTHORIZED BY SPECIAL USE PERMIT.

- - -

The following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR FEDORA

09-057 (10005) - AN ORDINANCE DETERMINING THE SUM TO BE RAISED BY TAXATION FOR THE SPECIAL TAXING DISTRICT, DULUTH TRANSIT AUTHORITY, FOR THE YEAR 2010.

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

- - -

INTRODUCED BY COUNCILOR FEDORA

09-058 (10006) - AN ORDINANCE DETERMINING THE SUM TO BE RAISED BY TAXATION FOR GENERAL PURPOSES FOR THE YEAR 2010.

Councilor Fedora expressed concerns of: the city is increasing its tax base by adding 32 positions at a time of economic uncertainty; the city should be looking at other alternatives instead of spending more; there could be further contraction of local governmental aid from the state and if further financial situations occur the city will have to lay off employees, which is damaging to those employees and the city.

Mr. Montgomery clarified specifics of the budget and reviewed that 26 of the 32 new employees were previously budgeted and approved.

Councilor Fedora moved for a vote on the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fosle and President Gilbert -- 5

Nays: Councilors Fedora, Krause and Stauber -- 3

Absent: Councilor Gardner -- 1

- - -

INTRODUCED BY COUNCILOR FEDORA

09-061 (10007) - AN ORDINANCE SETTING THE BUDGET FOR THE FISCAL YEAR 2010 APPROPRIATION MONIES FOR THE SUPPORT OF THE CITY GOVERNMENT, PUBLIC UTILITIES, AND PUBLIC ENTERPRISE FUNDS AND FOR OTHER PURPOSES.

Councilor Fedora moved for a vote on the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fosle and President Gilbert -- 5

Nays: Councilors Fedora, Krause and Stauber -- 3

Absent: Councilor Gardner -- 1

- - -

INTRODUCED BY COUNCILOR FOSLE

09-056 (10008) - AN ORDINANCE ESTABLISHING A PROGRAM TO CONTROL INTRODUCTION OF FATS, OILS AND GREASE INTO THE SANITARY SEWER SYSTEM, AMENDING VARIOUS DEFINITIONS IN CHAPTER 43 OF THE CODE AND ADDING A NEW DIVISION 2 TO ARTICLE VI OF CHAPTER 43 OF THE CODE.

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

- - -

COUNCILOR QUESTIONS AND COMMENTS

As per the standing rules, Councilor Anderson announced that he is a candidate for the office of council president for the year 2010.

Councilor Cuneo, in the absence of Councilor Gardner, announced that she is a candidate for the office of council vice president for the year 2010.

- - -

The meeting was adjourned at 10:09 p.m.

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10005

AN ORDINANCE DETERMINING THE SUM TO BE RAISED BY TAXATION FOR THE SPECIAL TAXING DISTRICT, DULUTH TRANSIT AUTHORITY, FOR THE YEAR 2010.

The city of Duluth does ordain:

Section 1. The sum to be raised by taxation for the year 2010 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.

Section 3. That this ordinance shall take effect January 1, 2010.

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Krause, Stauber and President Gilbert -- 8

Nays: None -- 0

Absent: Councilor Gardner -- 1

Passed December 21, 2009

Approved December 21, 2009

ATTEST:
JEFFREY J. COX, City Clerk

DON NESS, Mayor

- - -

ORDINANCE NO. 10006

AN ORDINANCE DETERMINING THE SUM TO BE RAISED BY TAXATION FOR GENERAL PURPOSES FOR THE YEAR 2010.

The city of Duluth does ordain:

Section 1. The sum to be raised by taxation for the year 2010 for general operations is hereby determined to be the sum of \$17,176,100 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 \$11,265,100.

Section 3. For the pay of debt, there will be levied for the general obligation debt fund the sum of \$5,401,500.

Section 4. For the pay of debt for the Duluth transit bonds, there will be levied the sum of \$87,400.

Section 5. 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 \$422,100.

Section 6. That this ordinance shall take effect January 1, 2010.

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fosle and President Gilbert -- 5

Nays: Councilors Fedora, Krause and Stauber -- 3

Absent: Councilor Gardner -- 1

Passed December 21, 2009

Approved December 21, 2009

DON NESS, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10007

AN ORDINANCE SETTING THE BUDGET FOR THE FISCAL YEAR 2010 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, 2010, 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.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

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 \$3,611,600 from the gas and steam public utility funds to the general fund for administrative services; comprised of \$3,490,600 or seven percent of the gross revenues of the gas utility fund to the general fund; and \$121,000 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 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 2010.

GENERAL FUND		
110	Legislative and executive - total	\$2,463,800
116	Human resources - total	\$929,900
117	Management information systems - total	\$2,197,200
121	Public administration - total	\$18,570,900
125	Finance - total	\$3,016,000
132	Planning and construction services - total	\$2,301,700
135	Business and development resources - total	\$300,200
150	Fire - total	\$13,119,900

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

GENERAL FUND		
160	Police - total	\$17,781,100
500	Public works - total	\$1,919,100
700	Transfers and other functions - total	\$12,935,600
	Total general fund	\$75,535,400

PUBLIC ENTERPRISE		
503	Golf fund - total	\$1,887,100
505	Parking fund - total	\$3,420,200

PUBLIC UTILITIES		
510	Water fund - total	\$12,285,100
520	Gas fund - total	\$50,510,300
530 and 532	Sewer and clean water fund - total	\$18,219,900
535	Stormwater fund - total	\$4,201,200
540	Steam fund - total	\$6,368,000
550	Street lighting - total	\$1,187,400

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, 2010.

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fosle and President Gilbert -- 5

Nays: Councilors Fedora, Krause and Stauber -- 3
Absent: Councilor Gardner -- 1

Passed December 21, 2009
Approved December 21, 2009
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

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ORDINANCE NO. 10008

AN ORDINANCE ESTABLISHING A PROGRAM TO CONTROL INTRODUCTION OF FATS, OILS AND GREASE INTO THE SANITARY SEWER SYSTEM, AMENDING VARIOUS DEFINITIONS IN CHAPTER 43 OF THE CODE AND ADDING A NEW DIVISION 2 TO ARTICLE VI OF CHAPTER 43 OF THE CODE.

The city of Duluth does ordain:

Section 1. That Chapter 43 of the Duluth City Code, 1959, as amended, is hereby amended by renumbering Section 43-3.1 as Section 43-3.11 and by the addition of a new Section 43-3.1 which reads as follows:

43-3.1. Best management practices program (BMP program). A program conforming to the requirements set forth in Section 43-50.1(b) below which establishes practices and procedures for addressing FOG issues as they affect a wastewater facility.

Section 2. That Section 43-3.6 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

43-3.6.

(a) Classes of uses. The division of wastewater facility users by waste characteristics, and process or discharge similarities;

(b) Domestic user. Those users which discharge exclusively domestic strength wastewater as defined in Section 43-3.40 below or wastewater which contains characteristics so similar to domestic strength wastewater as to be capable of treatment in the same manner as domestic strength wastewater;

(c) Nondomestic wastewater user. A user which discharges wastewater other than domestic wastewater.

Section 3. That Chapter 43 of the Duluth City Code, 1959, as amended, is hereby amended by the addition of a new Section 43-3.11.1 which reads as follows:

43-3.11.1. FOG. Fats, oil and grease derived or containing any biological substance or process.

Section 4. That Chapter 43 of the Duluth City Code, 1959, as amended, is hereby amended by the addition of a new Section 43-3.11.2 which reads as follows:

43-3.11.2. Food service facility (FSF). Any facility which prepares or serves food for commercial sale or distribution to any members of the public.

Section 5. That Chapter 43 of the Duluth City Code, 1959, as amended, is hereby amended by the addition of a new Section 43-3.11.3 which reads as follows:

43-3.11.3. Food grinder. Any device installed in the plumbing or sewage system for the purpose of grinding food waste or food preparation by-products for the purpose of disposing it into the sewer system.

Section 6. That Section 43-3.12.1 of the Duluth City Code, 1959, as amended, is hereby amended by the addition of a new section 43-3.12.1 which reads as follows:

43-3.12.1. Grease interceptor. A device designed to remove FOG consisting of a baffled and partitioned vault that is installed in-ground and outside the building which it serves.

Section 7. That Chapter 43 of the Duluth City Code, 1959, as amended, is hereby amended by the addition of a new Section 43-3.12.2 which reads as follows:

43-3.12.2. Grease trap. A device designed to remove FOG located within the kitchen of a FSF.

Section 8. That Chapter 43 of the Duluth City Code, 1959, as amended, is hereby amended by the addition of a new Section 43-3.29.1 which reads as follows:

43-3.29.1. Renovation. Any remodeling of, reconstruction of or modification of an FSF for which a building permit is required under the Minnesota State Building Code.

Section 9. That Chapter 43 of the Duluth City Code, 1959, as amended, is hereby amended by the addition of a new Section 43-3.30.1 which reads as follows:

43-3.30.1. Sanitary sewer overflow (SSO). An overflow, spill or diversion or release of wastewater from or caused by any blockage, disruption or damage to either a private or public sanitary sewer line, that causes wastewater to reach any waters of Minnesota or the United States, or any private or public property.

Section 10. That Section 43-3.37 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

43-3.37. Total suspended solids (TSS). Total suspended solids in wastewater as determined under standard laboratory procedures as set forth in standard methods as defined in Section 43-3.34 above.

Section 11. That Section 43-3.40 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

43-3.40. Wastewater. That portion of the spent water of a community which is polluted water. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions.

(a) Domestic strength wastewater. Wastewater having an average daily suspended solids concentration of not more than 300 mg./1., an average daily BOD of not more than 300 mg./1., an average daily phosphorus concentration of not more than 7 mg./1. and an average daily hexane soluble matter (grease and oil) concentration of not more than 40 mg./1;

(b) Nondomestic strength wastewater. All wastewater other than domestic strength wastewater.

Section 12. That Chapter 43 of the Duluth City Code, 1959, as amended, is hereby amended by the addition of a new Section 43-3.40.1, which reads as follows:

43-3.40.1. Wastewater collection and transmission system (WCTS). Any system of publicly owned sewer pipes, lift stations and storage tanks utilized in the transmission of wastewater from a privately owned sewer system to a wastewater treatment facility.

Section 13. That Article VI of Chapter 43 of the Duluth City Code, 1959, as amended is here amended by designating existing Section 43-39 through 43-50 as "Division 1. General

Provisions,” and that a new Division 2 be added to said Article VI which reads as follows:

Division 2. FOG Program.

Sec. 43-50.1. FOG program participation required.

(a) As of the effective date of this ordinance and thereafter, no FSF shall discharge any substance of any kind into any portion of a WTCS facility except in accordance with a BMP program which has been approved by the director in writing;

(b) The city shall, from time to time, establish by resolution the minimum standards for the content of a BMP program;

(c) No FSF shall discharge any substance of any kind into any portion of a wastewater facility which is not in conformance with the BMP program for that FSF.

Sec. 43-50.2. FOG prohibitions.

The following prohibitions apply to all FSFs:

(a) Installation of food grinders in a plumbing or sewage system in any new construction or renovation of a structure designed to house a FSF;

(b) Discharge any wastewater containing FOG into a wastewater facility except in compliance with the BMP program for that facility;

(c) Introduction of any additives into the wastewater system for the purpose of emulsifying FOG or biologically or chemically treating any substance introduced into any wastewater facility for purpose of treatment or pretreatment of wastewater, unless a specific written authorization by the director is obtained;

(d) Discharge of wastewater from dishwashers to any grease interceptor or grease trap;

(e) Discharge of wastewater at temperatures in excess of 140° F to any grease interceptor or grease trap;

(f) Operation of grease interceptors if the unit has accumulated waste, both FOG and food solids, accounting for 25 percent or more of its wetted depth measured from the static water level to the interior tank bottom, with FOG and solids accumulation, exceeding 25 percent of the total operating depth of the grease interceptor;

(g) Discharge of any FOG or any other solid materials removed from the grease control device to a WCTS.

Sec. 43-50.3. FOG interceptors installation requirements.

(a) Except as provided for in Section 43-50.5 below, any structure designed for or intended to be used for an FSF must have a grease interceptor installed prior to discharging any wastewater into a WTCS facility. Such grease interceptor must be constructed on the property occupied by the structure in a location outside of any building which allows unrestricted access at any time to city representatives for the purposes of inspection, sampling and testing. Such grease interceptor must comply with all conditions as set forth in the state of Minnesota Administrative Code, Sec 4715.1115 Exterior Grease Interceptors;

(b) Property owners of new commercial construction structure designed to house multiple FSFs on a single parcel shall be responsible to install and maintain a single grease interceptor to serve each individual FSF tenant unless a property owner demonstrates to the director that it is not practically possible to install and maintain a single grease interceptor to serve each individual FSF located in the

structure in which case the director has the discretion to approve a plan for such structure providing for more than one grease interceptor or a combination of grease interceptors and grease traps to service such property, which approval shall be in writing. Said approved plan shall include the minimum number of grease interceptors and grease traps that can reasonably serve the structure and the BMP program shall specifically include service for all approved grease intercepts and grease traps;

(c) The owner of any structure occupied by more than one FSF shall be jointly and severally liable with the owner of each FSF served by any grease interceptor or any grease trap for the servicing and maintenance of that grease interceptor or grease trap and for any servicing and maintenance of any wastewater facility located downstream from said structure to remove any accumulations of FOG therefrom;

(d) The director may require existing FSFs and owners of structures in which such FSFs are located which have been identified as introducing FOG in the any portion of the wastewater system, and which introduction of FOG, in whole or in combination with other FOG contributors, has been responsible for causing the need for the city to clean such portion of the wastewater system more than twice in a single calendar year to install grease interceptors or other FOG equipment as deemed necessary to comply with this ordinance. Such installation shall be completed and operational within 180 days of notice by the director.

Sec. 43-50.4. Maintenance and cleaning of grease interceptors.

In the maintaining and routine cleaning of grease interceptors and any other grease control device, the owner of the FSF and the owner of the structure in which it is located, if different from the owner of the FSF shall be responsible for the proper removal and disposal by appropriate means of the captured material. If not performed by personnel under the direct control and direction of any such owner, such removal and haul shall be performed by currently licensed waste disposal firms.

Sec. 43-50.5. Exception from grease interceptor requirements.

If the owner of any FSF or of any structure in which an FSF is located or is to be located demonstrates to the reasonable satisfaction of the director that installation of a grease interceptor is not feasible, the director may grant an exception allowing such owner to install grease traps or other alternative treatment technology which will in his or her discretion adequately control the release of FOG from the FSF or the structure into the wastewater system.. The FSF bears the burden of demonstrating that the installation of a grease interceptor is not feasible. The request for an exemption shall include the following information if relevant:

(a) Evidence of a lack of available exterior space necessary to place an interceptor relative to the location of sewer main and easement;

(b) Evidence of a lack of adequate slope for gravity flow between kitchen plumbing fixtures in the FSF and the wastewater facilities;

(c) Description and specifications of the alternative grease control equipment that will be installed;

(d) Evidence that the size, available seating or type of food preparation does not generate any significant volume of FOG.

Sec. 43-50.6. Charge for remedial maintenance or repair of the city or WLSSD WCTS.

(a) In the event that the owner of an FSF or the owner of any structure in which an FSF is located is found to have contributed to the partial or complete obstruction of a wastewater facility resulting from the discharge of wastewater or waste containing FOG and that the City or the WLSSD is required to act immediately to control a public health hazard because of such blockage, such owner shall be required to reimburse the city, the WLSSD or both for all costs of abating such condition. In situations where there are multiple owners identified as contributing to FOG causing such obstruction, the director will apportion the cost of the cleanup, maintenance or repair costs on a prorated basis, based on each owner's percentage share of the average total sanitary sewer charges for all such owners. Further should inspection, testing or other sampling activity by the city confirm that any user is contributing excessive FOG (including other harmful ingredients) and is causing the repair or extraordinary maintenance activity to maintain the integrity of the WCTS, the director or the WLSSD may require retrofitting of the structure with grease interceptors or grease traps, including testing facilities and access thereto sufficient to resolve the problem;

(b) The costs for curing any private sewer lateral failures and SSOs, including cleaning and other maintenance, caused in whole or in part by FOG introduced into the wastewater treatment facilities by any FSF, alone or in conjunction with any other party, are the responsibility of the owner of the FSF and the owner of any structure in which the FSF contributing the FOG to wastewater system is located.

Sec. 43-50.7. Penalties and assessments for FOG program noncompliance.

In the event that the owner of an FSF or the owner of any structure in which an FSF is located is found to have failed to comply with the provisions of this division, the following penalties or assessments or both may be applied:

(a) For introduction of FOG into any wastewater facility resulting in obstruction to said facility or in an SSO:

(1) The city may disconnect water and sewer service to the FSF and to the structure in which the FSF is located;

(2) City may impose a fine of not more than \$1,000 per month until such owner demonstrates that the subject FSF or structure is in compliance with the requirements of this Division;

(b) For failure to maintain records as required by the BMP program for any FSF, or failing or refusing to timely comply with any request for records required to be provided to the director, a fine of up to \$100 per day until such records are provided;

(c) For failure to pass the FOG inspection due to lack of or ineffective FOG equipment the director may:

(1) Require the subject FSF to install additional FOG equipment as necessary to resolve the problem;

(2) Change the sewer rate class of the FSF to reflect the presence of the excessive FOG contribution by the FSF.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2009

Section 14. This ordinance, except for the portion of Section 13 thereof numbered as Section 43-50.1 shall take effect 30 days from and after its passage and publication.

Section 15. The portion of Section 13 of this ordinance numbered as Section 43-50.1 shall take effect 30 days from and after its passage and publication or on April 1, 2010, whichever is later. (Effective date: April 1, 2010)

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

Yeas: Councilors Anderson, Cuneo, Eckenberg, Fedora, Fosle, Krause, Stauber and President Gilbert -- 8

Nays: None -- 0

Absent: Councilor Gardner -- 1

Passed December 21, 2009
Approved December 21, 2009
DON NESS, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

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