



CITY
OF
DULUTH

**PROCEEDINGS OF THE
CITY COUNCIL
2010**

OFFICIAL PROCEEDINGS

Special meeting of the Duluth City Council held on Monday, January 4, 2010, 6:00 p.m. in the Lake Superior Ballroom, Duluth Entertainment Convention Center, Duluth, Minnesota.

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

Absent: None -- 0

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ELECTION OF OFFICERS

Councilor Anderson was elected president upon a unanimous vote.

Councilor Gardner was elected vice president upon a unanimous vote.

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MOTIONS AND RESOLUTIONS

Resolution 10-0005, approving proposed amendments to the specifications for the civil service classification of assessor office coordinator; Resolution 10-0006, approving proposed specifications for the new civil service classification of building and grounds maintenance supervisor, and specifying contract benefits for same; and Resolution 10-0007, approving proposed specifications for the new civil service classification of energy coordinator and specifying contract benefits for same, were introduced by Councilor Gardner.

Councilor Gardner moved to table the resolutions until the next council meeting, which motion was seconded and unanimously carried.

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

RESOLVED, that the proper city officials are authorized to accept grant from the Georgia-Pacific, LLC, as evidenced by a letter, a copy of which is on file in the office of the city clerk as Public Document No. 10-0104-01, in the amount of \$5,000, said funds to be deposited in Fund 210, Agency, 030, Organization 3165, Revenue Source 4270, which will be used for supporting the Duluth fire department's confined space response.

Resolution 10-0001 was unanimously adopted.

Approved January 4, 2010

DON NESS, Mayor

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INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the second 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).

Councilor Stauber moved to table the ordinance until the next council meeting, which motion was seconded and unanimously carried.

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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.

Councilor Stauber moved to table the ordinance until the next council meeting, which motion was seconded and unanimously carried.

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

Mayor Ness presented the 2010 State of the City Address (Public Document No. 10-0104-02.)

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

JEFFREY J. COX, City Clerk

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, January 11, 2010, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: None -- 0

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

10-0111-01 Don Garofalo application for concurrent use permit for illuminated awnings, facade mounted clock and benches at 103-107 East Superior Street. -- Planning commission

10-0111-02 The following communications regarding the proposed rezoning on Park Point (09-0707R and 09-060-O): (a) Jan Cohen; (b) Dan O'Neill (supported by 116 signatures); (c) LM Shabatura. -- Received

10-0111-12 The following communications regarding the proposed to Minnesota Power special use permit for an electric power substation near the intersection of Swan Lake and Krueger Junction roads (10-0024R and 10-0025R): (a) Kyle and Dawn Claus; (b) Tom Gustafson (supported by 43 signatures); (c) David L. McCuskey; (d) Lynn R. Mertes; (e) Minnesota Power; (f) Carleen Ronchetti. -- Received.

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REPORTS FROM OTHER OFFICERS

10-0111-03 Clerk application to the Minnesota gambling control board for exemption from lawful gambling license (raffle) from Rotary Club of Duluth Harbortown MN USA, Inc., on April 14, 2010. -- Received

10-0111-11 Planning division land use supervisor copy of notice from Park Point Properties of withdrawal of application for rezoning on Park Point (09-0707R and 09-060-O). -- Received

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REPORTS OF BOARDS AND COMMISSIONS

10-0111-04 Duluth airport authority minutes of November 17, 2009, meeting. -- Received

10-0111-05 Duluth economic development authority minutes of November 18, 2009, meeting. -- Received

10-0111-06 Duluth public arts commission minutes of November 16, 2009, meeting. -- Received

10-0111-07 Duluth transit authority:

(a) Financial statement summary for September 2009;

(b) Minutes of October 28, 2009, meeting. -- Received

10-0111-08 Entertainment and convention center authority minutes of December 22, 2009, meeting. -- Received

10-0111-09 Parks and recreation commission minutes of November 18, 2009, meeting. -- Received

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

10-0111-10 Spirit Mountain recreation area authority minutes of October 15, 2009, meeting. -- Received

At this time, 7:02 p.m., the public hearing regarding the intent to issue capital improvement bonds was called to order.

At this time, 7:03 p.m., no one appeared who wished to be heard and the public hearing was closed.

OPPORTUNITY FOR CITIZENS TO BE HEARD

KL Lewis informed the council of a public safety issue at the new intersection by Super One on Highway 53 and that the snow removal Downtown has not been done, making it dangerous for pedestrians and those with a disability. She suggested a revenue source for the city by issuing tickets for those not shoveling their sidewalks.

RESOLUTIONS TABLED

Councilor Gardner moved to remove Resolution 09-0778, approving proposed specifications for the new civil service classification of payroll coordinator and specifying contract benefits for same; Resolution 10-0005, approving proposed amendments to the specifications for the civil service classification of assessor office coordinator; Resolution 10-0006, approving proposed specifications for the new civil service classification of building and grounds maintenance supervisor, and specifying contract benefits for same; and Resolution 10-0007, approving proposed specifications for the new civil service classification of energy coordinator and specifying contract benefits for same, from the table, which motion was seconded and unanimously carried.

Resolutions 09-0778, 10-0005, 10-0006 and 10-0007 were adopted as follows:

RESOLVED, that the proposed specifications for the new civil service classification of payroll coordinator, which were approved by the civil service board on October 20, 2009, and which are filed with the city clerk as Public Document No. 10-0111-13, are approved; that said classification shall be subject to the city's collective bargaining agreement with its confidential unit employees; and that pay range for said classification shall be Range 10A. 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 09-0778 was unanimously adopted.

Approved January 11, 2010

DON NESS, Mayor

RESOLVED, that the proposed amendments to the specifications for the civil service classification of assessor office coordinator, which were approved by the civil service board on December 1, 2009, and which are filed with the city clerk as Public Document No. 10-0111-14, are approved; that said classification shall remain subject to the city's collective bargaining agreement with its basic unit employees, that the pay range will change from Pay Range 131 to Pay Range 132. 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 10-0005 was unanimously adopted.

Approved January 11, 2010

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

DON NESS, Mayor

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RESOLVED, that the proposed specification for the new civil service classification of building and grounds maintenance supervisor, which were approved by the civil service board on October 20, 2009, and which are filed with the city clerk as Public Document No. 10-0111-15, are approved; that said classification shall be subject to the city's collective bargaining agreement with its supervisory unit employees; and that pay range for said classification shall be ranges 1050-1075. The proper city officials are authorized to execute and implement an agreement with the union to provide for employing one or unit members consistent with this resolution.

Resolution 10-0006 was unanimously adopted.

Approved January 11, 2010

DON NESS, Mayor

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RESOLVED, that the proposed specifications for the new civil service classification of energy coordinator, which were approved by the civil service board on September 1, 2009, and which are filed with the city clerk as Public Document No. 10-0111-16, are approved; that said classification shall be subject to the city's collective bargaining agreement with its basic unit employees; and that pay range for said classification shall be Range 33. 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 10-0007 was unanimously adopted.

Approved January 11, 2010

DON NESS, Mayor

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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.

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

Jan Karon expressed her appreciation that the planning commission upheld the comprehensive plan by using the plan as a guide for planning and development and thanked the citizens in the community for working hard to inform the neighborhood about the development and now the developers will continue to invest in the community that will benefit both them and the community.

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

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Councilor Stauber moved to consider Ordinance 09-060 at this time, which motion was seconded and unanimously carried.

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INTRODUCTION AND CONSIDERATION OF ORDINANCE

ORDINANCE TABLED

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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 remove the ordinance from the table, which motion was seconded and unanimously carried.

Councilor Stauber moved to withdraw the ordinance from the agenda and return it to the administration, which motion was seconded and unanimously carried.

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MOTIONS AND RESOLUTIONS

The following entitled resolution was read for the first time:

BY PRESIDENT ANDERSON

10-0012 - RESOLUTION AMENDING THE STANDING RULES - TIME OF MEETINGS.

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CONSENT AGENDA

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

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

WHEREAS, the use and management agreement between the city of Duluth, Minnesota (the city), and Spirit Mountain recreation area authority (the authority), dated as of March 28, 2003, provides that the authority shall not enter into any lease purchase agreement without the written approval of the city council; and

WHEREAS, the authority proposes to enter into a lease purchase agreement for the purchase, design and installation of an Alpine Coaster and construction of a ticket/concession building and parking lot.

RESOLVED, that the city council hereby approves the authority entering into a lease purchase agreement with Beacon Bank in the approximate amount of \$2,340,150 for the purchase, design and installation of an Alpine Coaster, construction of a ticket/concession building and parking lot and costs of issuance for the lease purchase agreement.

Resolution 10-0003 was unanimously adopted.

Approved January 11, 2010

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, on sale Sunday license, and 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:

Joel's, LLC (Mexico Lindo), 600 East Superior Street, with Felipe Mata, 100 percent owner.

Resolution 10-0008 was unanimously adopted.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Approved January 11, 2010
DON NESS, Mayor

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

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

Resolution 10-0009 was unanimously adopted.

Approved January 11, 2010
DON NESS, Mayor

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RESOLVED, that the proper city officers 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. 10-0111-17, with Nelson & Company, Inc., for the leasing of the Endion Station building for the operation of an advertising agency that provides strategic planning to clients for marketing and advertising, rents payable therefor being paid to the city's general fund under General Fund 110, Department 121, Organization 1217-2120, Revenue Source 4623.

Resolution 10-0018 was unanimously adopted.

Approved January 11, 2010
DON NESS, Mayor

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WHEREAS, the chief administrative officer upon the direction of the mayor has recommended the appointment of Brian Hanson to the position of director of business and community development; 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 Brian Hanson to the position of director of business and community development for the city of Duluth.

Resolution 10-0029 was unanimously adopted.

Approved January 11, 2010
DON NESS, Mayor

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RESOLVED, that city officials are hereby authorized to enter into a professional services agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 10-0111-18, with Duluth Independent School District No. 709, for the development and implementation of the safe routes to schools education, encouragement and enforcement program in accordance with Minnesota department of transportation agreements nos. 93807 and 93808 and resolutions 08-0751 and 08-0752, for an amount not to exceed \$55,000, and payable from the Permanent Improvement Fund 411, Department/Agency 035, Object 5441, Project No. P10655TR.

Resolution 10-0017 was unanimously adopted.

Approved January 11, 2010
DON NESS, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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RESOLVED, that the proper city officials are hereby authorized to enter into a contract with SEH, Inc., to perform professional engineering services for design engineering and construction inspection of the concrete pavement rehabilitation (CPR) projects (19th Avenue East from Superior Street to Eighth Street, and 24th Avenue West from Michigan Street to Skyline Parkway) and the intersection improvement project (Piedmont Avenue and First Street) in the amount of \$80,000, payable from the Street Improvement Fund 0440, Department/ Agency 038, Object 5530, city project nos. 0822TR, 0826TR and 0758TR respectively.

Resolution 10-0010 was unanimously adopted.

Approved January 11, 2010

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into the third amendment to Contract #20273, a copy of which is on file in the office of the city clerk as Public Document No. 10-0111-19, with Advanced Engineering and Environmental Services, Inc., to update the city's water utility cost of service and rate design study and to increase the amount thereof by \$28,346, payable from the Water Fund 510, Agency 500, Organization 1915, Object 5310.

Resolution 10-0015 was unanimously adopted.

Approved January 11, 2010

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to execute an application for, and if selected, implement a grant from the environmental protection agency through the Great Lakes restoration initiative and administered by the Minnesota pollution control agency in the amount of \$91,500 for a project entitled: *Miller and Coffee Creek Sediment Management Site*, funds to be deposited in Fund 0535-500-1915-4210-01 and to execute any documents required to be executed to accept such grant.

Resolution 10-0019 was unanimously adopted.

Approved January 11, 2010

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to execute an application for, and if selected, implement a grant from the environmental protection agency through the Great Lakes restoration initiative and administered by the Minnesota pollution control agency in the amount of \$239,705 for a project entitled: *Amity Bank and Upper Graves Road Tributary Restoration*, funds to be deposited in Fund 0535-500-1915-4210-01 and to execute any documents required to be executed to accept such grant.

Resolution 10-0020 was unanimously adopted.

Approved January 11, 2010

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to accept a grant from the state of Minnesota, commissioner of public safety, office of justice programs, in the amount

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

of \$335,000 and to execute a grant agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 10-0111-20, for the purpose of supporting the operations of the Lake Superior drug and gang task force for 2010, funds to be deposited in Fund 215-200-2263-4210-02.

Resolution 10-0014 was unanimously adopted.

Approved January 11, 2010

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 Secret Service (USSS) for participation by the city of Duluth in a new USSS 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. 10-0111-21.

Resolution 10-0021 was unanimously adopted.

Approved January 11, 2010

DON NESS, Mayor

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The following resolutions were also considered:

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

Section 1. Under and pursuant to the authority contained in Minnesota Statutes, Chapter 475 and Section 475.521 (collectively the "act"), the city is authorized to issue general obligation capital improvement bonds to provide funds for capital improvements pursuant to a capital improvement plan approved by the council on December 21, 2009 (the plan).

Section 2. The city council held a public hearing on January 11, 2010, on the city's intention to issue bonds in 2010 in an amount not to exceed \$2,240,000 for the purposes set forth in the notice of public hearing. All persons who desired to speak at the public hearing were heard and written comments were accepted.

Section 3. The council hereby finds and determines that it is necessary, expedient, and in the best interests of the city's residents that the city issue, sell and deliver its general obligation capital improvement bonds, Series 2010 (the bonds), in an amount not to exceed \$2,240,000, 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 of the bonds.

Section 4. (a) The city clerk shall publish a notice of intent to issue capital improvement bonds in substantially the form on file as Public Document No. 10-0111-22 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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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 10-0004 was adopted upon the following vote:

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

Nays: Councilor Stauber -- 1

Approved January 11, 2010

DON NESS, Mayor

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Resolutions 10-0024 and 10-0025, granting and denying, respectively, a special use permit to Minnesota Power for an electric power substation near the intersection of Swan Lake Road and Krueger Junction Road, were introduced by Councilor Stauber for discussion.

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

Dennis Jensen, Paul Ostazeski, Tom Gustafson, Dave McCuskey, Robin Mertes, Gayle Peterson, Ron Kropf, Cathy Gustafson and Tara Gallagher spoke against the special use permit for the following reasons: there are residential property owners adjacent to the proposed power substation; it does not fit in the neighborhood; it belongs in the nearby industrial park; it will impact the values of the homes in the area; it does not preserve the natural beauty of the neighborhood; the noise factor will be consistent during the whole year and all day long; this is a random pattern of development; there is no buffer or screening on the east side of the property; larger and taller power poles will be constructed; Minnesota Power has not been forthright with the long term purpose of this property; questioned why the other sites that Minnesota Power considered did not work; Duluth should work hard to keep the suburban neighborhoods green and the property in question is a wetland.

Pat Mullen, representing Minnesota Power, explained that this area is properly zoned suburban for their request and that they have listened to the neighbors' concerns. He went on to explain there is growth occurring in this part of the city which limits the available site space in the area. Mr. Mullen stated that this substation will be built to relieve two substations that are overloaded in peak times and will service the customers in that area.

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

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

Nays: Councilors Fedora and Fosle -- 2

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Resolution 10-0013, setting legislative priorities for the 2010 legislative session, was introduced by President Anderson for discussion.

Councilor Fedora questioned why there were an additional seven priorities stated in the resolution when the council was not given any information on some of these projects.

Councilor Fedora moved to split the resolution into two parts for more information on the seven additional initiatives, which motion was seconded and unanimously carried.

Resolution 10-0013(a) was adopted as follows:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

The city council finds as follows:

- (a) The city administration and council wish to establish a clear set of priorities with respect to legislative initiatives which the city supports in the 2010 legislative session; and
- (b) The city administration and council have devoted meeting time and discussion to the city legislative priorities; and
- (c) The city administration and council choose to express support for legislative initiatives that are of vital interest to the community; and
- (d) The city administration and council have established priorities among legislative issues designating two items as the city's top priorities and designating seven items as initiatives which are to receive city support.

NOW, THEREFORE, BE IT RESOLVED, that the city staff and elected officials will take the lead role in advancing the following legislative initiatives as city priorities for the 2010 legislative session.

(a) The city requests an allocation of state bond proceeds in the amount of \$8.5 million for the construction of the east interceptor sanitary sewer overflow storage facilities to ensure that the city complies with terms of a consent decree entered into with the federal environmental protection agency and Minnesota pollution control agency which requires non-discharge of wastewater into Lake Superior (The city also supports the Western Lake Superior Sanitary District bonding request for \$2.75 million to construct the Polk Street station sanitary sewer overflow storage facilities.); and

(b) The city requests an allocation of state bond proceeds in the amount of \$11.7 million to complete Phase 2 of the Duluth Airport Terminal facilities project which will be completed with grant funds to be awarded by the federal aviation administration.

Resolution 10-0013(a) was unanimously adopted.

Approved January 11, 2010

DON NESS, Mayor

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Councilor Fedora moved to table Resolution 10-0013(b) for more information, which motion was seconded and carried upon the following vote:

Yeas: Councilors Boyle, Cuneo, Fedora, Fosle, Gardner, Gauthier, Hartman and President Anderson – 8

Nays: Councilor Stauber – 1

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RESOLVED, that city officials are hereby authorized to enter into a three-year professional services agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 10-0111-23, with Out There Advertising, Inc., for furnishing strategic and tactical services to:

(a) Develop messages to effectively promote public awareness of the Duluth public works and utilities department's services and product safety; and

(b) Provide media purchasing services for the natural gas utility; all in accordance with the firm's qualifications and proposal dated September 28, 2009; funding not to exceed \$84,900 in 2010, \$85,000 in 2011 and \$85,000 in 2012, and a total contract amount of \$254,900, payable from Gas Fund 520, Agency 500, Organization 1940-2430, Object 5340.

Resolution 10-0016 was adopted upon the following vote:

Yeas: Councilors Boyle, Cuneo, Fedora, Fosle, Gardner, Gauthier, Hartman and Stauber -- 8

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Nays: None -- 0
Abstention: President Anderson -- 1
Approved January 11, 2010
DON NESS, Mayor

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Resolution 10-0028, authorizing loan guaranty agreements with lending institutions pertaining to the private sewer service program, was introduced by Councilor Fosle.

Councilor Fosle moved to return the resolution to the administration per their request, which motion was seconded and unanimously carried.

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RESOLVED, that the city of Duluth hereby accepts a gift in the amount of \$10,000 from Allen and Janice Willman and that the council, on behalf of the city, extends its sincere gratitude for this generous gift.

FURTHER RESOLVED, that the proper city officials are authorized, in accordance with the conditions of the donors, to use the gifted funds to purchase and care for police canines, and for the training of canines and police handlers; funds deposited in Fund 210-030-3123-4660.

Resolution 10-0022 was unanimously adopted.
Approved January 11, 2010
DON NESS, Mayor

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RESOLVED, that the city of Duluth hereby accepts a gift in the amount of \$7,500 from Amsoil, Inc., and that the council, on behalf of the city, extends its sincere gratitude for this generous gift.

FURTHER RESOLVED, that the proper city officials are authorized, in accordance with the conditions of the donor, to use the gifted funds to purchase and care for police canines, and for the training of canines and police handlers; funds deposited in Fund 210-030-3123-4660.

Resolution 10-0026 was unanimously adopted.
Approved January 11, 2010
DON NESS, Mayor

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RESOLVED, that the city of Duluth hereby accepts a gift in the amount of \$5,000 from Judy French and that the council, on behalf of the city, extends its sincere gratitude for this generous gift.

FURTHER RESOLVED, that the proper city officials are authorized, in accordance with the conditions of the donor, to use the gifted funds to purchase and care for police canines, and for the training of canines and police handlers; funds deposited in Fund 210-030-3123-4660.

Resolution 10-0027 was unanimously adopted.
Approved January 11, 2010
DON NESS, Mayor

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

INTRODUCTION AND CONSIDERATION OF ORDINANCES

ORDINANCES TABLED

INTRODUCED BY COUNCILOR STAUBER

09-059 (10009) - 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).

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

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

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INTRODUCED BY COUNCILOR STAUBER

09-062 (10010) - 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.

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

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

Yeas: Councilors Boyle, Cuneo, Fedora, Gardner, Gauthier, Hartman, Stauber and President Anderson – 8

Nays: Councilor Fosle – 1

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The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR GAUTHIER

10-001 - AN ORDINANCE AMENDING CHAPTER 47, VEHICLES FOR HIRE, AMENDING SECTION 47-16 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

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BY COUNCILORS GARDNER AND CUNEO

10-002 - AN ORDINANCE AMENDING SECTION 34-40 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO SMOKING PROHIBITIONS.

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The meeting was adjourned at 8:00 p.m.

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

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

ORDINANCE NO. 10009

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).

The city of Duluth does ordain:

Section 1. The city of Duluth does ordain that development within the boundaries of Traditional Neighborhood District Number 1 shall be governed by and regulated in accordance with Public Document No. 03-0324-15 entitled "Ramsey Village Neighborhood Documents of Implementation," as amended by Ordinance No. 9635 and Ordinance No. 9753, be further amended to:

Allow a change in Public Document No. 03-0324-15 to allow Type VIII structures (mixed use building residential with commercial space) on Lots 14, 15 and 16, Block 190, West Duluth, Seventh Division.

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: February 14, 2010)

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

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

Nays: None -- 0

Passed January 11, 2010
Approved January 11, 2010
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

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ORDINANCE NO. 10010

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 city of Duluth does ordain:

Section 1. That Section 50-30 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 50-30. Location of required parking spaces in front yards; front yard variance.

(a) Off street parking space may be located within the required front yard of any C or M district, but no parking lot shall be located nearer than 50 feet to any S or R district;

(b) In any R district, parking in the front yard shall be limited to the parking area-R district except where the use is authorized by special use permit pursuant to Article IV of this Chapter, in which case the parking area shall be approved in conjunction with the approval of the special use;

(c) In any R district the parking area shall be surfaced in a dust free, hard surface type material such as concrete or bituminous, or pervious paving materials. Aggregate

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

materials, compressed aggregates or other similar type surfaces shall not be permitted. All parking areas shall comply with this clause after August 15, 2009. The requirements of this clause shall not apply to any parking area lawfully in existence on June 1, 2009;

(d) Parking areas located in rear yards may be surfaced with aggregate materials, compressed aggregates or other similar type surfaces. All parking areas shall comply with this clause after August 15, 2009. The requirement of this clause shall not apply to any parking area lawfully in existence on June 1, 2009;

(e) On any lot in any R district where the parking area-R district is of insufficient size or configuration to allow for compliance with the off street parking requirements of this chapter, or other laws or regulations, or on a corner lot, 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. The hardship requirement shall not apply to corner lots. For purposes of this Section a hardship exists when it can be demonstrated that circumstances exist which are unique to the property and which were not created by either the current or prior owner. Economic considerations, in whole or part, shall not constitute a hardship. The application for variance shall include a site plan that provides an accurate depiction of the lot size, configuration, and requested variance area. The variance shall be granted only upon compliance with the following additional conditions, and any other 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:

(1) Except on a corner lot, on a lot with frontage of less than 50 feet, only one parking area may be located outside the parking area-R district. On a lot with frontage of 50 feet or greater, such parking area, including any driveway areas leading to it, shall not exceed an additional 30 percent of the front yard;

(2) On a corner lot the variance may allow for compliance with the off street parking requirements of this chapter, or other laws or regulations. On a lot with frontage of 50 feet or greater, no variance may allow a parking area, including any driveway area leading to it, to exceed an additional 30 percent of the front yard;

(3) The proposed parking area shall be located in its entirety upon the lot and shall not encroach into the street line or across any abutting lot line unless such abutting lot and the subject lot are under the same ownership and the abutting lot is not occupied by a dwelling unit. Where the proposed parking area will encroach into any unimproved area of a street, the variance shall expire upon improvement of the street.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: February 14, 2010)

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

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

Nays: Councilor Fosle -- 1

ATTEST:
JEFFREY J. COX, City Clerk

Passed January 11, 2010
Approved January 11, 2010
DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, January 25, 2010, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: None -- 0

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The minutes of council meetings held on November 9, 19 and 23, 2009, were approved upon a unanimous vote.

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

10-0125-01 Sharon Kangas and Mardi Bagley, et al, (seven signatures), petition to reclassify from R-2 to C-1 the Lots 1, 2 and the westerly 25 feet of Lot 3, including 25.5 feet of vacated Branch Street, Block 53, Endion Division of Duluth. -- Assessor

10-0125-02 Park Point Properties, LLC, et al. (two signatures), petition to reclassify from R-1-c to R-2 the Lots 51-60, St. Louis Avenue, Upper Duluth. -- Assessor

10-0125-03 Miller-Dwan Foundation, by William M. Burns, attorney, communications regarding the proposed reclassification of property located at the southwest corner of Rice Lake Road and Pecan Avenue (10-004-O). -- Received

10-0125-09 Eric Viken communication regarding the proposed Glenwood Street reconstruction project (10-0056R). -- Received

10-0125-04 The following communications regarding the proposed Minnesota Power special use permit for an electric power substation near the intersection of Swan Lake and Krueger Junction roads (10-0024R and 10-0025R): (a) Tara Gallagher; (b) Thomas Gustafson; (c) Dave McCuskey. -- Received

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REPORTS FROM OTHER OFFICERS

10-0125-05 Assessor:

(a) Affidavit of mailing of notice of public hearing being held on February 9, 2010, 2:30 p.m., in 106A City Hall, regarding the reassessment of costs for 1996 street improvement (Contract #7015);

(b) Letters of:

(1) Insufficiency regarding petition to reclassify from R-2 to C-1 the Lots 1, 2 and the westerly 25 feet of Lot 3, including 25.5 feet of vacated Branch Street, Block 53, Endion Division of Duluth;

(2) Sufficiency regarding petition to reclassify from R-1-c to R-2 the Lots 51-60, St. Louis Avenue, Upper Duluth. -- Received

10-0125-06 Purchasing agent emergency services report awarded to Carlson Construction (\$25,000-\$30,000) for thawing and repair of a frozen pool at the Polar Shore Exhibit at the Lake Superior Zoo, pursuant to Section 41-27 of the Duluth City Code. -- Received

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REPORTS OF BOARDS AND COMMISSIONS

10-0125-07 Duluth airport authority unaudited balance sheet of October 31, 2009. -- Received

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

10-0125-08 Duluth public arts commission minutes of December 21, 2009, meeting. --
Received

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At this time, 7:02 p.m., the public hearing on the analysis of impediments to fair housing plan began.

Keith Hamre, manager of the community development division, reviewed the requirement for this hearing and the nature of it. He reviewed that, through input and analysis, the five impediments identified are: lack of information and education; housing discrimination against a protected class; special needs populations are overlooked; housing code enforcement and loss of affordable housing units.

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

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OPPORTUNITY FOR CITIZENS TO BE HEARD

Jay Cole spoke of his concerns of: funding for general assistance medical care (GAMC) from the state; that an organization that the city is involved with took what he felt was discriminatory action against him and the need for more solar use in the city.

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RESOLUTIONS TABLED

Councilor Stauber moved to remove resolutions 10-0024 and 10-0025, granting and denying, respectively, a special use permit to Minnesota Power for an electric power substation near the intersection of Swan Lake Road and Krueger Junction Road, from the table, which motion was seconded and unanimously carried.

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

Paul Ostazeski, Gayle Peterson and Tom Gustafson supported Resolution 10-0025 for the reasons of: this is a residential neighborhood; the Airpark is only a mile away and is where this substation belongs; Minnesota Power has identified another lot that would technically work, but feels it is too expensive; there is a need to look out for the residents; Minnesota Power is taking valuable privately owned land; the request is against the comprehensive plan; winter cover hides the wet lands that would be affected; the substation will be about the size of a football field; more specifics of why the other sites will not work have not been brought forth; over 20 households are unanimous in opposing this and a realtor has stated that this will decrease property values.

Pat Mullen, representing Minnesota Power, spoke of their support for Resolution 10-0024, for the reasons of: there is the need for this substation to relieve two neighboring substations that become overloaded during peak hours; after carefully considering seven potential sites over the past year, only this one meets all the criteria for this substation and after meeting with residents recently Minnesota Power agrees to five clarifications and compromises to better accommodate the neighbors' concerns.

Councilor Gauthier moved to amend Resolution 10-0024 by inserting the following language to the end of the resolution:

“the land use supervisor must also consider the following:

(1) The only vegetation cleared on the 17+ acre parcel that Minnesota Power owns would be what is absolutely necessary for the construction of the substation, access road and electrical lines;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

(2) The current plan includes the planting of two rows of evergreen trees along the west side of the property. Minnesota Power agrees that once the substation is constructed, they will determine if additional trees are needed near the substation or potentially along neighbor's property;

(3) Minnesota Power acknowledges that its substation construction plans are subject to the special use permit under consideration here tonight and they have no plans to develop any other part of the parcel for storage or any other use. They agree that any additional future use of the property beyond the needs of the substation and its power lines be considered and approved by the Duluth City Council;

(4) Minnesota Power will investigate the possibility of, and make reasonably efforts to, move the substation footprint further to the south and west;

(5) Minnesota Power agrees to install all low-noise transformers at the site,"

which motion was seconded and carried unanimously.

Councilors Gauthier and Gardner expressed concerns of: a belief that this is the first step of the industrialization of a neighborhood; this is against preserving a neighborhood; it has not been demonstrated that Lot 2, while difficult, would be impossible; the industrial park would be a more appropriate site and a reasonable compromise; in the granting of a special use permit, the council needs to weigh the effect that granting the permit would have on the quality of life of its citizens and there is an industrial park close by.

Resolution 10-0024, as amended, was adopted as follows:

RESOLVED, that:

(a) The city council grants the request for a special use permit submitted by Minnesota Power for an electric power substation on property near Swan Lake Road and Krueger Junction Road and legally described as:

The E 1/2 of the NE 1/4 of the SW 1/4 of Section 7, Twp 50N, Rng 14W, except one acre for school and except that part north of the old Swan Lake Road and west of the Krueger Road; and

(b) Pursuant to Section 50-32 and Section 50-35(cc) 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 city planning commission, at their regular meeting on December 8, 2009, considered the petition's effect on the comprehensive plan and property values in the neighborhood (FN 09119); 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 4-4 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 an electric power substation subject to the following conditions:

(a) That the project be limited to, constructed and maintained according to the following documents drafted by Minnesota Power and shown on Public Document No. 10-0125-10;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

(1) "Proposed Site Location for Airpark 115/34.5/14kV Substation - Exhibit A" dated 10/26/2009; and

(2) "Minnesota Power Airpark Substation Tree Screening Plan - Exhibit B";

(b) 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 IV; the land use supervisor must also consider the following:

(1) The only vegetation cleared on the 17+ acre parcel that Minnesota Power owns would be what is absolutely necessary for the construction of the substation, access road and electrical lines;

(2) The current plan includes the planting of two rows of evergreen trees along the west side of the property. Minnesota Power agrees that once the substation is constructed, they will determine if additional trees are needed near the substation or potentially along neighbor's property;

(3) Minnesota Power acknowledges that its substation construction plans are subject to the special use permit under consideration here tonight and they have no plans to develop any other part of the parcel for storage or any other use. They agree that any additional future use of the property beyond the needs of the substation and its power lines be considered and approved by the Duluth City Council;

(4) Minnesota Power will investigate the possibility of, and make reasonably efforts to, move the substation footprint further to the south and west;

(5) Minnesota Power agrees to install all low-noise transformers at the site.

Resolution 10-0024, as amended, was adopted upon the following vote:

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

Nays: Councilors Gardner and Gauthier -- 2

Approved January 25, 2010

DON NESS, Mayor

- - -

Resolution 10-0025 failed upon the following vote (Public Document No. 10-0125-11):

Yeas: Councilors Gardner and Gauthier -- 2

Nays: Councilors Boyle, Cuneo, Fedora, Fosle, Hartman, Stauber and President Anderson -- 7

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President Anderson moved to remove Resolution 10-0013(b), setting legislative priorities for the 2010 legislative session, from the table, which motion was seconded and unanimously carried.

Councilor Stauber expressed the concern that with the state budget crisis, the city should concentrate on its two top priorities.

Resolution 10-0013(b) was adopted as follows:

The city council finds as follows:

(a) The city administration and council wish to establish a clear set of priorities with respect to legislative initiatives which the city supports in the 2010 legislative session; and

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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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

(d) The city administration and council have established priorities among legislative issues designating two items as the city's top priorities and designating seven items as initiatives which are to receive city support.

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

(a) Support sustained funding for the local government aid formula;

(b) Support for a bonding request for the Northern Lights Express which will re-establish passenger rail service between Minneapolis and Duluth;

(c) Support for a bonding request to finance the acquisition and renovation of certain historic properties and construction of a new Children's Museum in Duluth's Lincoln Park neighborhood;

(d) Support expansion of the Spirit Mountain recreation area authority board from seven to nine directors and support the St. Louis County request for state bond proceeds to finance regional ski and recreation area facilities;

(e) Support a request for state bond proceeds to recapitalize the Port Development Assistance Program;

(f) Support a request for state bond proceeds to capitalize a public housing rehabilitation fund to be administered by the Minnesota housing finance agency;

(g) Support legislation to establish a historic preservation tax credit to encourage redevelopment of historic structures in the state.

Resolution 10-0013(b) was adopted upon the following vote:

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

Nays: Councilors Fedora, Fosle and Stauber -- 3

Approved January 25, 2010

DON NESS, Mayor

- - -

UNFINISHED BUSINESS

Resolution 10-0012, by President Anderson, amending the standing rules - time of meetings, was introduced for discussion.

Councilor Stauber expressed concerns that staff members have to remain for the agenda session and many of them will be on overtime longer and that with some councilors getting off earlier from their work, they too will have to wait longer.

Resolution 10-0012 was adopted as follows:

BY PRESIDENT ANDERSON:

RESOLVED, that Rule 1(b) of the Standing Rules of the Duluth City Council is hereby amended to read as follows:

(b) Agenda meetings shall be held at 5:15 p.m. on each Thursday preceding a regular meeting of the council unless such agenda meeting falls on a legal holiday, in which case the president shall set another time and date for such agenda meeting and shall give notice of such time and date to each member of the council at least three days prior to such meeting. The council president may cancel or reschedule any agenda meeting by giving notice to each member of the council at least three days prior to the scheduled date of such meeting.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Resolution 10-0012 was adopted upon the following vote:

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

Nays: Councilors Fedora, Fosle and Stauber -- 3

Approved January 25, 2010

DON NESS, Mayor

- - -

At this time, Councilor Gardner moved to suspend the rules to consider Ordinance 10-002, 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:

BY COUNCILORS GARDNER AND CUNEO

10-002 (10011) - AN ORDINANCE AMENDING SECTION 34-40 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO SMOKING PROHIBITIONS.

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

Nikki Townsend, Tracy Morgahn and Dennis Jensen expressed support for the ordinance for reasons of: people are smoking cigarettes right in front of you when you get off a bus; it is unhealthy, unappealing and inconsiderate for citizens and visitors; it makes the bus stops more appealing and healthy; students for the East Hillside Patch Organization spent last summer taking surveys and advocating for nonsmoking at the Holiday Center; secondhand smoking is unhealthy; there are individuals with asthma at the bus stops that are affected by this; there is an extreme amount of cigarette butts at bus stops and the Duluth Transit Authority (DTA) has worked with the Greater Downtown Council to make this a positive change.

Celia Sheer felt that while this is good goal, it should be corrected by education instead of delegating it to the government to correct. She questioned the rationale for 15 feet versus some other measurement and who will be enforcing this.

Councilors Fedora and Fosle expressed concerns of: with this ordinance affecting all bus shelters, it does not affect bus stops, so the city might be creating a "slippery slope," where there might be a movement to prohibit smoking at every single bus stop; in 2006 smoking was prohibited within 100 feet of a medical facility and not one ticket has been issued, therefore it is likely that this also will not be enforceable and this will be just another wasted ordinance on the books.

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

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

Nays: Councilors Fedora and Fosle -- 2

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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

RESOLVED, that the assessment roll levied to defray the assessable portion of the 132 West 12th Street sewer and water extension (Contract #5436; assessable amount: \$58,493.95), to be deposited into Fund 410, is hereby confirmed.

Resolution 10-0057 was unanimously adopted.

Approved January 25, 2010

DON NESS, Mayor

- - -

RESOLVED, that the assessment roll levied to defray the assessable portion of sidewalk patch 2009 (Contract #5438; assessable amount: \$11,064.57), to be deposited into Fund 410, is hereby confirmed.

Resolution 10-0058 was unanimously adopted.

Approved January 25, 2010

DON NESS, Mayor

- - -

RESOLVED, that the assessment roll levied to defray the assessable portion of the 2009 street preservation, West Superior Street from 40th Avenue West to Garfield Avenue (Contract #7104; assessable amount: \$207,317.25), to be deposited into Fund 440, is hereby confirmed.

Resolution 10-0059 was unanimously adopted.

Approved January 25, 2010

DON NESS, Mayor

- - -

RESOLVED, that the assessment roll levied to defray the assessable portion of the 2009 street preservation - Cody Street (Contract #7106; assessable amount: \$25,080.66), to be deposited into Fund 440, is hereby confirmed.

Resolution 10-0061 was unanimously adopted.

Approved January 25, 2010

DON NESS, Mayor

- - -

RESOLVED, that the assessment roll levied to defray the assessable portion of the 2009 street preservation - Kenwood Avenue (Contract #7105; assessable amount: \$84,170.20), to be deposited into Fund 440, is hereby confirmed.

Resolution 10-0062 was unanimously adopted.

Approved January 25, 2010

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to renew the existing Contract #20352 with Inter-City Oil Company, Inc., the fourth year of a five-year contract, for the purchase and delivery of both bulk and service station fuels as needed during year 2010, for an amount not to exceed \$1,080,000, payable from Fleet Services Fund 660, Department/Agency 015, Object 5212.

Resolution 10-0033 was unanimously adopted.

Approved January 25, 2010

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby issues the following

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

temporary on sale 3.2 percent malt liquor license, subject to departmental approvals with any specific restrictions:

College of St. Scholastica, 1200 Kenwood Avenue, for February 6, 2010, with Luke Moravec, manager.

Resolution 10-0034 was unanimously adopted.

Approved January 25, 2010

DON NESS, Mayor

- - -

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

(a) On November 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 Hacienda Del Sol, Inc., d/b/a Hacienda Del Sol, 319 East Superior Street, and has submitted its report to the city council of the city of Duluth as Public Document No. 10-0125-12;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on January 25, 2010, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 10-0125-12 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of Hacienda Del Sol, Inc., d/b/a Hacienda Del Sol, 319 East Superior Street, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the city council impose a \$500 civil penalty 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 10-0041 was unanimously adopted.

Approved January 25, 2010

DON NESS, Mayor

- - -

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

(a) On November 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 Ridgeview Country Club, 700 West Redwing Street, and has submitted its report to the city council of the city of Duluth as Public Document No. 10-0125-13;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on January 25, 2010, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 10-0125-13 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of Ridgeview Country Club, 700 West Redwing Street, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the city council impose a \$500 civil penalty and that payment of \$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 10-0042 was unanimously adopted.

Approved January 25, 2010

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

DON NESS, Mayor

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RESOLVED, that city officials are hereby authorized to contract with Maney International, Inc., for the purchase and delivery of OEM (original equipment manufacturer) parts, supplies and labor as needed during year 2010 for the fleet services division in accordance with existing specifications at an estimated amount of \$53,000, terms net 30, discount 35 percent current price list for parts, FOB destination, payable as follows:

- (a) \$45,000 (labor) from Fleet Services Fund 660, Department/Agency 015, Object 5221; and
- (b) \$8,000 (other) from Fleet Services Fund 660, Department/Agency 015, Object 5404.

Resolution 10-0048 was unanimously adopted.
 Approved January 25, 2010
 DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to enter into a three year software maintenance agreement with New World Systems Corporation, said agreement to be substantially in the form of Public Document No. 10-0125-14 on file in the office of the city clerk, for \$140,076 plus sales tax of \$1,926.05 (specific to this agreement) at a combined total amount not to exceed \$142,002.05 in year 2010, payable from the following accounts:

	Amount	Fund	Department/ Agency	Organization	Object
(a)	\$100,408.90	General 110	125	1214	5309
(b)	\$10,814.22	Water 510	500	1915	5201
(c)	\$16,221.33	Gas 520	500	1915	5201
(d)	\$9,566.42	Sewer 530	500	1915	5201
(e)	\$4,991.18	Stormwater 535	535	1915	5201

Resolution 10-0054 was unanimously adopted.
 Approved January 25, 2010
 DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to enter into a first amendment to an agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 10-0125-15, to the CDBG program to assist income-eligible homeowners to repair or replace lateral sewer lines that are contributing to sewer overflows into Lake Superior with the Housing and Redevelopment Authority of Duluth (HRA), extending the term of the agreement to June 30, 2010.

Resolution 10-0038 was unanimously adopted.
 Approved January 25, 2010
 DON NESS, Mayor

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RESOLVED, that the proper city officials are authorized to make the following fund transfers in the Federal Program Fund 262, Agency 020, Object 5434, HUD-funded community development accounts as set forth below:

2009 CDBG Program - Fund 262 - Project CD09CD Account Revised 2009

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

2009 CDBG Program - Fund 262 - Project CD09CD					
Account Revised 2009					
Subproject	Activity	Project	Amount	New Grant	Difference
PFAC	PF02	CD street assessments	15,000	27,370	12,370
ADMC		Contingency	5,711	-0-	(5,711)
ADMC	AD01	Program administration	535,200	528,541	(6,659)

Resolution 10-0044 was unanimously adopted.

Approved January 25, 2010

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 that part of Allendale Avenue in the Woodland Avenue Gardens Division lying north of the easterly extension of the north line of Lot 24, Block 4, Colman Park 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 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 the easement for utility purposes as noted in (c) below; and

(c) Minnesota Power has requested a utility easement be retained over the entire vacation area to preserve access to an existing power distribution line; and

(d) The city planning commission, at its January 12, 2010, regular meeting, did recommend, unanimously, vacating the petitioned street, subject to retaining a utility easement over the entire vacation area; and

(e) The city council of the city of Duluth approves the vacation of the following, and retaining a utility easement over the entire vacation area, both more particularly described on Public Document No. 10-0125-16:

That part of Allendale Avenue in the Woodland Avenue Gardens Division lying north of the easterly extension of the north line of Lot 24, Block 4, Colman Park Division; 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 10-0060 was unanimously adopted.

Approved January 25, 2010

DON NESS, Mayor

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RESOLVED, that Contract C20309 with MSA Professional Services, Inc., for professional engineering services for the Lakeside interceptor SSO storage facility at Endion Pump Station be hereby amended for additional engineering services related to storage facility feasibility study, Phase I, and Phase II environmental assessment study and additional sewer modeling in the estimated amount of \$4,366.85, for a new total of \$486,975.85, payable from Sanitary Sewer Fund 0530, Agency 500, Organization 1905, Object 5533, City Project No. 0558SN.

Resolution 10-0032 was unanimously adopted.

Approved January 25, 2010

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

DON NESS, Mayor

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RESOLVED, that city officials are hereby authorized to contract with Hawkins, Inc., for the purchase and delivery of 145 tons of liquid hydrofluorosilicic acid in accordance with specifications and the vendor's low bid of \$108,025 plus 6.875 percent sales tax of \$7,426.72 for a combined total of \$115,451.72, terms net 30, FOB destination, payable from the Water Fund 510, Agency 500, Organization 1955 and Object 5216-03.

Resolution 10-0035 was unanimously adopted.

Approved January 25, 2010

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 6.875 percent sales tax of \$11,127.19, for a combined total of \$172,977.19, terms net 30, FOB destination, payable from the Water Fund 510, Agency 500, Organization 1955, Object 5216-04.

Resolution 10-0036 was unanimously adopted.

Approved January 25, 2010

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 \$102,630 plus 6.875 percent sales tax of \$7,055.81 for a combined total of \$109,685.81, terms net 30, FOB destination, payable from the Water Fund 510, Agency 500, Organization 1955, Object 5216-05.

Resolution 10-0037 was unanimously adopted.

Approved January 25, 2010

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Max Gray Construction, Inc., for the construction of a vehicle storage facility for the maintenance operations division at the tree farm site located on Riley Road in Duluth in accordance with the city's specifications and the contractor's low bid of \$278,700, terms net 30, payable from Capital Improvements Fund 450, Department/Agency 030, Object 5520, Project No. CP 2007-OT-709.

Resolution 10-0040 was unanimously adopted.

Approved January 25, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to pay to State Farm Insurance as subrogee of Emily Bandli the sum of \$10,768.79 in full and final settlement of the claim which arose out of a failure of a city sanitary sewer main occurring near 803 North 57th Avenue West on August 28, 2009; payment to be made from the Self Insurance Fund 610-036-1653-5841.

Resolution 10-0043 was unanimously adopted.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Approved January 25, 2010
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute an application for, and if selected, implement a grant from the environmental protection agency through the Great Lakes restoration initiative and administered by the Minnesota pollution control agency in the amount of \$375,000 for a project entitled: *Restoring Stream Trout in Buckingham Creek*, funds to be deposited in Fund 0535-500-1900-4210-01, and to execute any documents required to be executed to accept such grant.

Resolution 10-0047 was unanimously adopted.

Approved January 25, 2010
DON NESS, Mayor

- - -

RESOLVED, city officials are hereby authorized to contract with Service Electric of Superior, Inc., for completing small electrical work for the department of public works and utilities during year 2010, 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 \$50,000, payable as follows:

(a) \$40,000 from Water Fund 510, Department/Agency 500, Organization 1955, Object 5404;

(b) \$10,000 from Water Fund 510, Department/Agency 500, Organization 1955, Object 5220.

Resolution 10-0049 was unanimously adopted.

Approved January 25, 2010
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute an application for, and if selected, implement a grant from the environmental protection agency through the Great Lakes restoration initiative and administered by the Minnesota pollution control agency in the amount of \$360,000 for a project entitled: *RSPT - Reaching Out to Reach Our Mission*, funds to be deposited in Fund 0535-500-1900-4210-01, and to execute any documents required to be executed to accept such grant.

Resolution 10-0050 was unanimously adopted.

Approved January 25, 2010
DON NESS, Mayor

- - -

RESOLVED, that pursuant to Section 61 of the Charter, the city council hereby expresses its intent to cause the following portion of the street named below to be improved as part of the city's 2010/2011 municipal state aid project and hereby requests that the mayor prepare or cause to have prepared plans, specifications and estimates therefor, and file such plans and estimates with the special assessment board, together with a recommendation as to what portion of the cost 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 assessments:

Glenwood Street from 43rd Avenue East to 60th Avenue East.

Resolution 10-0052 was unanimously adopted.

Approved January 25, 2010

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

DON NESS, Mayor

- - -

RESOLVED, that Resolution 09-0748 adopting a typical section design for the Glenwood Street reconstruction be amended and 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) 38 feet in width, to include two 11-foot driving lanes, one ten-foot parking lane, and a six-foot curb reaction distance on the side with no parking. One side will be signed no parking; sidewalks will be provided on both sides of the street.

- (1) Total width is 38 feet;
- (2) Two 11-foot driving lanes are primarily for motor vehicles;
- (3) Parking allowed on only one side of the street;
- (4) Curb reaction distance of six feet on side without parking;
- (5) Standard width city sidewalks and boulevards on both the north and south

sides of the street.

Resolution 10-0056 was unanimously adopted.

Approved January 25, 2010

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, effective upon installation of signing as such, on the following street:

The south side of Glenwood Street from 43rd Avenue East to 60th Avenue East.

Resolution 10-0053 was unanimously adopted.

Approved January 25, 2010

DON NESS, Mayor

- - -

RESOLVED, that in accordance with the provisions of Section 33-97 of the Duluth City Code, 1959, as amended, the following alternate side parking zone is hereby established:

21st Avenue West from Second Street to Third Street.

Resolution 10-0055 was unanimously adopted.

Approved January 25, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officers are authorized and directed to execute the agreement filed as Public Document No. 10-0125-17 between the city of Duluth and Community Action Duluth.

Resolution 10-0046 was unanimously adopted.

Approved January 25, 2010

DON NESS, Mayor

- - -

The following resolutions were also considered:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Resolution 10-0065, approving job specifications for the appointed department head position of chief information officer and specifying contract benefits for same, was introduced by Councilor Boyle for discussion.

Councilor Fosle opposed the resolution for reasons of: this is funded because another position will not be funded, and then later it will be said that the city really needed that original position and it appears that the city is getting top heavy.

Resolution 10-0065 was adopted as follows:

RESOLVED, that the job specifications for the appointed department head position of chief information officer, which is filed with the city clerk as Public Document No. 10-0125-18, is approved; that said appointed position shall be subject to the city's collective bargaining agreement with its supervisory unit employees; and that pay range for said appointed position shall be ranges 1135-1170. The proper city officials are authorized to execute and implement an agreement with the union to provide for employing one unit member consistent with this resolution.

Resolution 10-0065 was adopted upon the following vote:

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

Nays: Councilor Fosle -- 1

Approved January 25, 2010

DON NESS, Mayor

- - -

RESOLVED, that the city council objects to the reclassification to nonconservation and sale of the following tax forfeited parcels (FN 10006) by the board of county commissioners of Saint Louis County:

Parcel ID and legal description	Location	Reason
010-0440-00420 010-0440-00650 Centerdale Division, Lots 1-10, 11-14	north side of West Third Street between Wheeler Field and the DM&IR Railroad (Denfeld)	acquire for addition to Wheeler Field Park
010-4570-01720 West Park Division, Block 16, Lot 10	north side of Vernon Street near West Third Street (Lincoln Park)	36 inch storm sewer pipe crossing entire parcel

Resolution 10-0063 was unanimously adopted.

Approved January 25, 2010

DON NESS, Mayor

- - -

WHEREAS, the Housing and Community Development Act of 1974, as amended, and the regulations promulgated there under require its grantees, such as the city of Duluth, to have in place an analysis of impediments to fair housing and fair housing plan in order to receive funding under the community development block grant (CDBG) program, as well as other federal funding programs.

NOW, THEREFORE, BE IT RESOLVED, that the city of Duluth hereby approves the Duluth 2010 analysis of impediments to fair housing and fair housing plan, a copy of which is on file with the city clerk as Public Document No. 10-0125-19.

Resolution 10-0066 was unanimously adopted.

Approved January 25, 2010

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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. 10-0125-20, with the Historic Union Depot, Inc. (Depot), in an amount not to exceed \$151,800, payable from Fund 258-030-5436-03.

Resolution 10-0030 was adopted upon the following vote:

Yeas: Councilors Boyle, Cuneo, Fedora, Fosle, Gardner, Gauthier, Stauber and President Anderson -- 8

Nays: None -- 0

Abstention: Councilor Hartman -- 1

Approved January 25, 2010

DON NESS, Mayor

- - -

Resolution 10-0051, approving budget and cost sharing formula of Minneapolis - Duluth/Superior passenger rail alliance and authorizing payment of city's cost share of \$48,000, was introduced by President Anderson for discussion.

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

Ken Buehler spoke in support of the resolution for reasons of: at the senate transportation committee meeting where there were many other entities looking for funding, this project was the only one that has gone beyond the study phase; this project is three to four years ahead of those looking for funding for their studies; this project ranks number two in the state rail plan and a lot of the passengers who will be using this will be those who are not currently traveling by another means, therefore they are new passengers.

Councilors Fedora and Fosle expressed concerns of how the budget for this project is being spent with part of this budget being paid to lobbyists and this will be an extremely expensive project.

Resolution 10-0051 was adopted as follows:

RESOLVED, that the city council hereby approves the 2010 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. 10-0125-21, 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 2010 budget in the amount of \$48,000 in conformance with Section VI-A. of City Agreement No. 20580, said sum to be payable from Fund 258-030-5436-09.

Resolution 10-0051 was adopted upon the following vote:

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

Nays: Councilors Fedora, Fosle and Stauber -- 3

Approved January 25, 2010

DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

RESOLVED, that the city council hereby amends Resolution 09-0007, as amended, retaining Maki and Overom, Chartered, to provide legal services to the city related to a gaming matter, increasing the amount by \$250,000 for a new total amount not to exceed \$310,000, payable from Fund 256, Department 030, Object 5304 and authorizes the proper city officials to execute a second amendment to professional services agreement substantially the same as that on file in the office of the city clerk as Public Document No. 10-0125-22.

Resolution 10-0064 was adopted upon the following vote:

Yeas: Councilors Cuneo, Fedora, Fosle, Gardner, Gauthier, Hartman and President Anderson -- 7

Nays: Councilor Stauber -- 1

Abstention: Councilor Boyle -- 1

Approved January 25, 2010

DON NESS, Mayor

- - -

RESOLVED, that Contract C20886 with MSA Professional Services, Inc., for professional engineering services for Highland Pump Station improvements, be hereby amended to include engineering services for design and construction of a new 1,000,000 gallon elevated water storage tank in the estimated amount of \$403,165 for a new total of \$583,515, payable from Water Bond Fund 0511, Agency 500, Object 5532, City Project No. 0768WA.

Resolution 10-0031 was unanimously adopted.

Approved January 25, 2010

DON NESS, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR STAUBER

10-004 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NO. 34 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-B, ONE-FAMILY RESIDENTIAL, TO S, SUBURBAN, PROPERTY LOCATED AT THE SOUTHWEST CORNER OF RICE LAKE ROAD AND PECAN AVENUE (MILLER-DWAN FOUNDATION/CITY OF DULUTH).

- - -

INTRODUCED BY COUNCILOR STAUBER

10-006 - AN ORDINANCE AUTHORIZING A PURCHASE AGREEMENT AUTHORIZING SALE OF PROPERTY AT RICE LAKE ROAD AND PECAN AVENUE TO THE MILLER-DWAN HOSPICE HOUSE FOUNDATION, LLC, FOR AN ADOLESCENT MENTAL HEALTH FACILITY.

- - -

The following entitled ordinance was read for the second time:

INTRODUCED BY COUNCILOR CUNEO

10-001 (10012) - AN ORDINANCE AMENDING CHAPTER 47, VEHICLES FOR HIRE, AMENDING SECTION 47-16 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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

- - -

The meeting was adjourned at 8:35 p.m.

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10011

BY COUNCILORS GARDNER AND CUNEO:

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

The city of Duluth does ordain:

Section 1. That Section 34-40 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 34-40. Smoking--prohibited in certain places.

(a) For purposes of this Section "smoking" shall be defined as provided in Minnesota Statutes Section 144.413, Subd. 4, and as the same may from time to time be amended;

(b) Smoking is prohibited at the following locations:

(1) Anywhere smoking is prohibited by the Minnesota Clean Indoor Air Act;

(2) Inside any Duluth Transit Authority transit shelter;

(3) Within 15 feet from the nearest point of any Duluth Transit Authority transit shelter which displays at least two signs visible from the exterior of the shelter providing notice of the smoking restriction, said 15 feet measured in a straight line of constant elevation;

(4) Anywhere in Wade Stadium that is open to the public except in designated smoking areas;

(c) Any person violating this Section is guilty of a petty misdemeanor or may be penalized under Chapter 12 of the Duluth City Code, 1959, as amended;

(d) Signage to enforce the provisions of this ordinance shall be approved by the city of Duluth police chief.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: March 7, 2010)

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

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

Nays: Councilors Fedora and Fosle -- 2

ATTEST:
JEFFREY J. COX, City Clerk

Passed January 25, 2010
Approved January 25, 2010
DON NESS, Mayor

- - -

ORDINANCE NO. 10012

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

AN ORDINANCE AMENDING CHAPTER 47, VEHICLES FOR HIRE, AMENDING SECTION 47-16 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

The city of Duluth does ordain:

Section 1. That Section 47-16 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 47-16. Definitions.

For the purpose of this Article, the following words shall have the meanings respectively ascribed to them by this Section:

Ambulance. A motor vehicle which is designed and intended to be used for providing transportation of a wounded, injured, sick, invalid or incapacitated human being, or an expectant mother.

Ambulance service. The transportation by ambulance for a wounded, injured, sick, invalid, or incapacitated human being, or an expectant mother, which is regularly offered or provided to the public by any person.

Limousine. An unmarked, luxury class automobile which carries passengers for hire, driven by a uniformed chauffeur, subject to call only from its own garage or central place of business, and the use of which results in customers being billed at an hourly, daily or trip rate that is greater than the current taxi-meter rate for a comparable trip.

Motor vehicle and street or highway. As defined in Section 33-1 of this Code.

Taxicab. Any motor vehicle used for the purpose of transporting any passengers for hire over and upon any street or highway in the city, except any of the following:

(a) Any motor carrier of passengers which is operated under a permit from the department of transportation of the state or special transportation service provider certified by the department of transportation of the state pursuant to Minnesota Statute 174.29 et. seq., and using a driver who is qualified pursuant to Minnesota Rules Chapter 8840, when transporting a person requiring an accessible vehicle for any purpose;

(b) Any ambulance, used for providing ambulance service and which is operated under authority of a license issued by the state board of health;

(c) Any motor vehicle operated by the Duluth transit authority under authority of Laws of Minnesota 1969, Chapter 720;

(d) A limousine as defined herein;

(e) A transportation vehicle operated by a federal, state, county, municipal or school district governmental unit in conjunction with a program sponsored or run by such governmental unit;

(f) Any motor vehicle providing transportation services to a federal, state, county, municipal or school district governmental unit pursuant to a written, extended term, contract between said transportation provider and the governmental unit;

(g) Any motor vehicle used for recreational or sightseeing rides under a license issued pursuant to Article II of this Chapter.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: March 7, 2010)

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

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

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed January 25, 2010
Approved January 25, 2010
DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, February 8, 2010, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: None – 0

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

10-0208-01 DBU Properties, LLC, petition to vacate existing utility easement in its entirety and reestablish a new 18 foot wide utility easement measured perpendicularly from the east boundary of Outlot A, Oneota Industrial Park, First Addition (No. 359900156). -- Assessor

10-0208-02 Duluth Area Family YMCA Heritage Foundation, Inc., by LHB, Inc., application for concurrent use permit for entrance canopy element and existing slat elements on the Third Avenue West and First Street facades. -- Planning commission

10-0208-03 A&L Properties acceptance of concurrent use permit granted by Ordinance No. 9991 on August 24, 2009. -- Received

10-0208-15 Sharyn Boothe communication regarding reclassification and sale of land in the area of Pecan Avenue and Rice Lake Road to Miller-Dwan Foundation (10-004-O and 10-006-O). -- Received

10-0208-16 The following communications regarding proposed snow removal requirements for residential rental property.(10-009-O): (a) Alan Amatuzio; (b) Andy Black; (c) Tony Ciardelli; (d) Peter Eggert; (e) Eric Hillman; (f) Alicia Johnson; (g) Josh and Bridget Friday; (h) DeAnn Paulson; (i) John and Sara Perry; (j) Rod Raymond; (k) ShipRock Management, Inc.; (l) Andy Weyrauch; (m) Jerry Zink. -- Received

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REPORTS FROM OTHER OFFICERS

10-0208-04 Clerk applications to the Minnesota gambling control board for exemption from lawful gambling licenses (raffles) from: (a) Holy Family Catholic Church on September 11, 2010; (b) Lakehead Racing Association on July 18, 2010; (c) St. Louis and Carlton County of Pheasants Forever on April 16, 2010. -- Received

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REPORTS OF BOARDS AND COMMISSIONS

10-0208-05 Board of zoning appeals minutes of September 22, 2009, meeting. -- Received

10-0208-06 Building appeal board minutes of December 9, 2009, meeting. -- Received

10-0208-07 Commission on disabilities minutes of December 2, 2009, meeting. -- Received

10-0208-08 Duluth airport authority minutes of December 15, 2009, meeting. -- Received

10-0208-09 Duluth economic development authority minutes of December 16, 2009, meeting. -- Received

10-0208-10 Duluth transit authority: (a) Income statement for October 2009; (b) Minutes of December 2, 2009, meeting. -- Received

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

- 10-0208-11 Entertainment and convention center authority minutes of January 26, 2010, meeting. -- Received
10-0208-12 Library board minutes of November 24, 2009, meeting. -- Received
10-0208-13 Parks and recreation commission minutes of December 9, 2009, meeting. -- Received
10-0208-14 Planning commission minutes of December 8, 2009, meeting. -- Received

- - -

OPPORTUNITY FOR CITIZENS TO BE HEARD

Anna Peterson cited statistics and potential problems with cellular towers and wind turbines on the North Shore bird migration corridor that follows the shoreline of Lake Superior.

- - -

Kelly Boedighaimer expressed frustration that the council passed a resolution approving a special use permit for the construction of a cell tower on 78th Avenue East without giving the public enough notice or time to present information to the council on why the tower would be harmful to bird migration and requested that the council overturn that resolution so that the environmental advisory council and the planning commission could evaluate the application.

- - -

At this time, President Anderson moved to consider Ordinance 10-004 and Ordinance 10-006, which motion was seconded and unanimously carried.

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR STAUBER

10-004 (10013) - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NO. 34 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-B, ONE-FAMILY RESIDENTIAL, TO S, SUBURBAN, PROPERTY LOCATED AT THE SOUTHWEST CORNER OF RICE LAKE ROAD AND PECAN AVENUE (MILLER-DWAN FOUNDATION/CITY OF DULUTH).

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

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INTRODUCED BY COUNCILOR STAUBER

10-006 (10014) - AN ORDINANCE AUTHORIZING A PURCHASE AGREEMENT AUTHORIZING SALE OF PROPERTY AT RICE LAKE ROAD AND PECAN AVENUE TO THE MILLER-DWAN HOSPICE HOUSE FOUNDATION, LLC, FOR AN ADOLESCENT MENTAL HEALTH FACILITY.

Councilor Stauber moved to amend the ordinance by deleting the name "Miller-Dwan Hospice House Foundation, LLC" and inserting the name "Miller-Dwan Foundation Hospice House, LLC" wherever it appears in the ordinance, which motion was seconded and unanimously carried.

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

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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 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 makes the following findings of fact:

(a) On December 2, 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 J&J Jauss, Inc. (Gary Liquors), 1431 Commonwealth Avenue, and has submitted its report to the city council of the city of Duluth as Public Document No. 10-0208-17;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on February 8, 2010, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 10-0208-17 regarding any suspension, revocation and/or civil penalty relating to the off sale intoxicating liquor license of J&J Jauss, Inc. (Gary Liquors), 1431 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: that the city council impose a \$500 civil penalty payable within 60 days of final council action with no portion of which shall be stayed.

Resolution 10-0070 was unanimously adopted.

Approved February 8, 2010

DON NESS, Mayor

- - -

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

(a) On December 2, 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 Bunsie, Inc., d/b/a Spirit Bottle Shoppe, 5801 Grand Avenue, and has submitted its report to the city council of the city of Duluth as Public Document No. 10-0208-18;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on February 8, 2010, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 10-0208-18 regarding any suspension, revocation and/or civil penalty relating to the off sale intoxicating liquor license of Bunsie, Inc., d/b/a Spirit Bottle Shoppe, 5801 Grand Avenue, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the city council impose a \$600 civil penalty payable within 60 days of final council action.

Resolution 10-0071 was unanimously adopted.

Approved February 8, 2010

DON NESS, Mayor

- - -

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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

(a) On December 2, 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 Golden Eagle Liquors, LLC, d/b/a Sportsmen's Liquor, 3904 Grand Avenue, and has submitted its report to the city council of the city of Duluth as Public Document No. 10-0208-19;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on February 8, 2010, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 10-0208-19 regarding any suspension, revocation and/or civil penalty relating to the off sale intoxicating liquor license of Golden Eagle Liquors, LLC, d/b/a Sportsmen's Liquor, 3904 Grand Avenue, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the city council impose a \$850 civil penalty payable within 60 days of final council action with no portion of which shall be stayed; a one day license suspension to be served on the second Monday following council action; and payment of the \$250 civil penalty that was stayed for one year pursuant to Resolution 09-0066, payable within 60 days of final council action.

Resolution 10-0072 was unanimously adopted.

Approved February 8, 2010

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 Harbortown Rotary, Ruffed Grouse Society 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 10-0075 was unanimously adopted.

Approved February 8, 2010

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:

Kozy Bar, LLC (Kozy Bar), 129 East First Street, transferred from Black River Mills, Inc. (Kozy Bar), same address.

Resolution 10-0076 was unanimously adopted.

Approved February 8, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to contract with Dakota Supply Group, Inc., for the purchase and delivery of water meters and related items needed by utility operations division for the automated meter reading system for \$91,833.60 plus \$6,313.56 sales tax for a total amount of \$98,147.16, terms net 30, FOB destination, payable

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

BY COUNCILOR STAUBER

10-009 - AN ORDINANCE AMENDING SECTION 29A-32 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO OFF STREET PARKING REQUIREMENTS FOR RESIDENTIAL RENTAL PROPERTY.

- - -

BY COUNCILOR STAUBER

10-012 - AN ORDINANCE AMENDING THE NEED FOR POS CERTIFICATE AND AUTHORIZING ASSESSMENT FOR UNPAID COSTS THEREOF, AMENDING SECTIONS 43-3.24.2 AND 43-33.4 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

- - -

INTRODUCED BY COUNCILOR HARTMAN

10-003 - AN ORDINANCE AUTHORIZING RECONVEYANCE OF PROPERTY IN THE WEST DULUTH AREA TO THE STATE OF MINNESOTA.

- - -

The meeting was adjourned at 7:30 p.m.

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

- - -

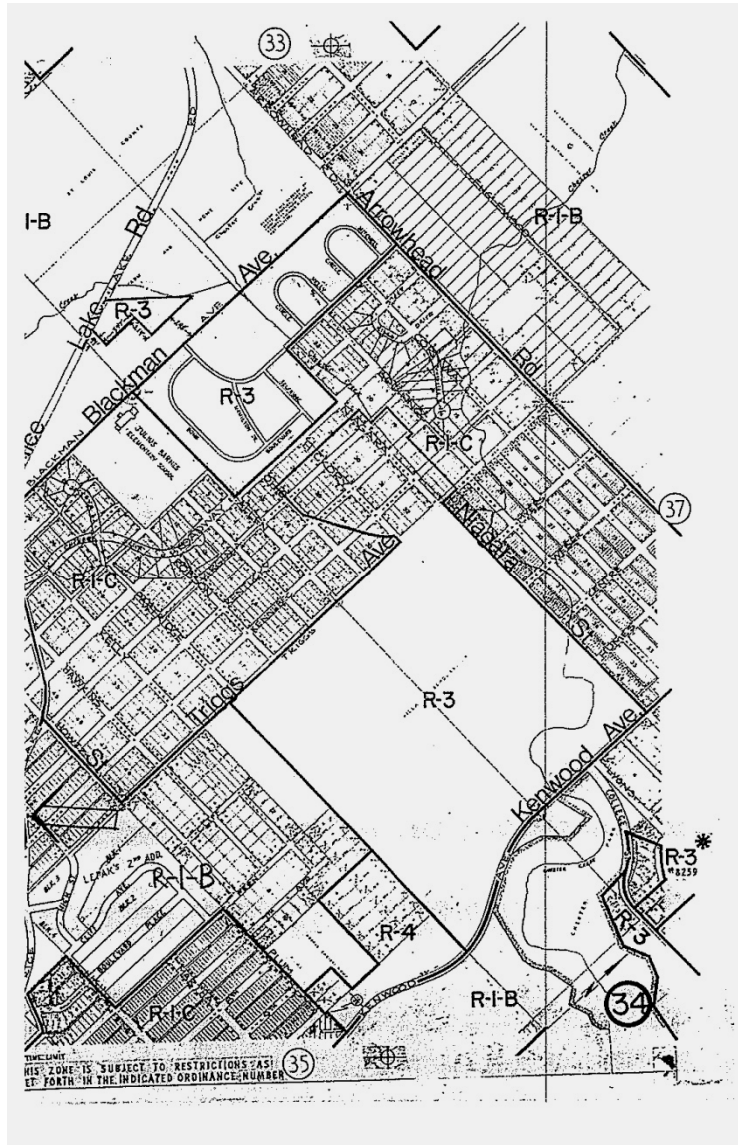
ORDINANCE NO. 10013

AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NO. 34 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-B, ONE-FAMILY RESIDENTIAL, TO S, SUBURBAN, PROPERTY LOCATED AT THE SOUTHWEST CORNER OF RICE LAKE ROAD AND PECAN AVENUE (MILLER-DWAN FOUNDATION/ CITY OF DULUTH).

The city of Duluth does ordain:

Section 1. That the approximately five acres of the subject property located at the southwest corner of Rice Lake Road and Pecan Avenue, be reclassified from R-1-b, one family residential, to S, suburban, and that Plate No. 34 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:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010



(Reference File No. 10003)

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: March 28, 2010)

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

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

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed February 8, 2010
Approved February 8, 2010
DON NESS, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

ORDINANCE NO. 10014

AN ORDINANCE AUTHORIZING A PURCHASE AGREEMENT AUTHORIZING SALE OF PROPERTY AT RICE LAKE ROAD AND PECAN AVENUE TO THE MILLER-DWAN FOUNDATION HOSPICE HOUSE, LLC, FOR AN ADOLESCENT MENTAL HEALTH FACILITY.

The city of Duluth does ordain:

Section 1. That pursuant to the requirements of Section 2-176 of the Duluth City Code, 1959, as amended, the city council finds that:

(a) The planning commission manifested their approval of the proposed sale of the property described in that agreement on file in the office of the city clerk as Public Document No. 10-0208-22 by approval of the rezoning of said property for the project thereby finding that the sale to the Miller-Dwan Foundation Hospice House, LLC, their use in accordance with said agreement to facilitate development of an adolescent mental health facility conforms to the city's comprehensive plan; and

(b) The city assessor has provided an estimate of value for said property indicating that, given the limitations of use contained in the agreement, the proposed sale price is not less than the estimated market value of the property; and

(c) The city council finds that the sale of the property described in Public Document No. 10-0208-22 to the Miller-Dwan Foundation Hospice House, LLC, will further the important city interest of promoting the mental health of the city's children, adolescent and college-age residents on an out-patient basis and providing assistance to such citizens who are in need of help in dealing with mental health issues.

Section 2. That, pursuant to the provisions of Section 2-177.4 of the Duluth City Code, 1959, as amended, the proper city officials are hereby authorized to enter into a purchase agreement substantially in the form of that on file in the office of the city clerk as Public Document No. 10-0208-22 authoring the sale by quit claim deed of the property therein described to the Miller-Dwan Foundation Hospice House, LLC, for the amount of \$13,300, said sum to be payable to Fund 110, Agency 700, Organization 1420, Object 4640.

Section 3. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: March 28, 2010)

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

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

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed February 8, 2010
Approved February 8, 2010
DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, February 22, 2010, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: None -- 0

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

10-0222-01 The following communications regarding proposed snow removal requirements for residential rental property (10-009-O): (a) Davy Jones; (b) Rod Lubiani; (c) Denette Lynch. -- Received

- - -

REPORTS FROM THE ADMINISTRATION

10-0222-02 Chief administrative officer notification of special assessment board rule change regarding solid waste disposal annual assessments with regard to tax forfeited property, pursuant to Section 45-75 of the Duluth City Code. -- Received

- - -

REPORTS FROM OTHER OFFICERS

10-0222-03 Assessor letter of sufficiency of petition to vacate existing utility easement in its entirety and re-establish a new 18 foot wide utility easement measured perpendicularly from the east boundary of Outlot A, Oneota Industrial Park, First Addition (No. 359900156). -- Received

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REPORTS OF BOARDS AND COMMISSIONS

10-0222-04 Housing and redevelopment authority of Duluth minutes of: (a) September 29; (b) September 30; (c) October 27; (d) November 24, 2009, meetings. -- Received

10-0222-05 Seaway port authority of Duluth minutes of: (a) May 28; (b) June 25; (c) August 27; (d) October 8; (e) November 19, 2009, meetings. -- Received

10-0222-06 Spirit Mountain recreation area authority minutes of: (a) December 17; (b) December 28, 2009, meetings. -- Received

- - -

REPORTS OF COUNCIL COMMITTEES

President Anderson acknowledged that the council received this evening the report from the council's ambulance/emergency services task force (Public Document No. 10-0222-17) and thanked the members for all the time and effort that they put into putting this report together.

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OPPORTUNITY FOR CITIZENS TO BE HEARD

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Kay L. Lewis commented on: the need for a safety rail fence and ladders out of the water behind the Duluth Entertainment Convention Center (DECC) and that a good shovel-ready federally funded program would be the use of Asian carp meal as fertilizer.

- - -

Carol Herman spoke on her concern of the Lower Kenwood neighborhood where a private school received a federally funded playground grant and that the neighborhood is not being allowed to use the playground.

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

RESOLVED, that the appropriate city officials are hereby authorized to allocate \$12,700 from the reserve for capital improvements fund balance in the tourism tax fund to the Great Lakes Aquarium to aid with state mandated escalator repairs.

Resolution 10-0098 was unanimously adopted.

Approved February 22, 2010

DON NESS, Mayor

- - -

RESOLVED, that the assessment roll levied for reassessment of a canceled street assessment - street improvement (Plat 3350, Parcel 00950, Contract #7015; assessable amount - \$750), to be deposited into Fund 330, is hereby confirmed.

Resolution 10-0101 was unanimously adopted.

Approved February 22, 2010

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Liscomb Hood Mason Company for property insurance from February 16, 2010, through February 15, 2011, the third of four one-year renewal options, covering 48 city-owned structures, miscellaneous equipment and business personal property in accordance with its quote of \$79,085.33, terms net 30, payable as follows:

Amount	Self Insurance Fund	Department/Agency	Organization	Object
\$1,581.71	0610	036	1650	5360
\$59,229.17	0610	036	1651	5360
\$7,908.53	0610	036	1652	5360
\$1,581.71	0610	036	1653	5360
\$790.85	0610	036	1654	5630
\$7,993.36	0610	036	1656	5360

Resolution 10-0095 was unanimously adopted.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Approved February 22, 2010
DON NESS, Mayor

- - -

RESOLVED, that the proposed amendments to the specifications for the civil service classification of labor relations specialist, which were approved by the civil service board on January 5, 2010, and which are filed with the city clerk as Public Document No. 10-0222-07, are approved. This classification shall remain subject to the city's collective bargaining agreement with its confidential unit employees and compensated at Pay Range 10A.

Resolution 10-0082 was unanimously adopted.

Approved February 22, 2010
DON NESS, Mayor

- - -

RESOLVED, that the proposed amendments to the specifications for the civil service classification of animal control officer, which were approved by the civil service board on January 19, 2010, and which are filed with the city clerk as Public Document No. 10-0222-08, are approved. This classification shall remain subject to the city's collective bargaining agreement with its basic unit employees and compensated at Pay Range 24.

Resolution 10-0083 was unanimously adopted.

Approved February 22, 2010
DON NESS, Mayor

- - -

RESOLVED, that the proposed amendments to the specifications for the civil service classification of water plant operator C, which were approved by the civil service board on January 19, 2010, and which are filed with the city clerk as Public Document No. 10-0222-09, 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 10-0084 was unanimously adopted.

Approved February 22, 2010
DON NESS, Mayor

- - -

RESOLVED, that the proposed specifications for the new civil service classification of manager, parks and recreation, which were approved by the civil service board on October 20, 2009, and which are filed with the city clerk as Public Document No. 10-0222-10, are approved; that said classification shall be subject to the city's collective bargaining agreement with its supervisory unit employees; and that pay range for said classification shall be ranges 1105-1130. The proper city officials are authorized to execute and implement an agreement with the union to provide for employing one or more unit members consistent with this resolution.

Resolution 10-0094 was unanimously adopted.

Approved February 22, 2010
DON NESS, Mayor

- - -

RESOLVED, that the job specifications for the appointed position of community relations officer, which is filed with the city clerk as Public Document No. 10-0222-11, is approved.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Resolution 10-0103 was unanimously adopted.
Approved February 22, 2010
DON NESS, Mayor

- - -

RESOLVED, that the job specifications for the appointed position of communications and policy officer, which is filed with the city clerk as Public Document No. 10-0222-12, is approved.

Resolution 10-0104 was unanimously adopted.
Approved February 22, 2010
DON NESS, Mayor

- - -

BE IT RESOLVED, that the city of Duluth act as the legal sponsor for project(s) contained in the business development infrastructure application to be submitted on 02-26-2010 and that the mayor and clerk are hereby authorized to apply to the department of employment and economic development for funding of this project on behalf of city of Duluth.

BE IT FURTHER RESOLVED, that the city of Duluth has the legal authority to apply for financial assistance, and the institutional, managerial, and financial capability to ensure adequate construction, operation, maintenance and replacement of the proposed project for its design life.

BE IT FURTHER RESOLVED, that the city of Duluth has not violated any federal, state or local laws pertaining to fraud, bribery, kickbacks, collusion, conflict of interest or other unlawful or corrupt practice.

BE IT FURTHER RESOLVED, that if approved by the state, acceptance thereof is subject to further resolution of the council accepting the grant and authorizing execution of the grant agreement with the state of Minnesota for the above-referenced project(s) and designating the sources of the matching funds and the amount to be committed from each source.

BE IT FURTHER RESOLVED, that upon approval of its application by the state, the city of Duluth will commit no less than \$500,000 towards the local match requirement, which shall be funded by the Duluth economic development authority and the Duluth seaway port authority.

BE IT FURTHER RESOLVED, the city of Duluth certifies that it will comply with all applicable laws, regulations, and rules of the Business Development Infrastructure Application.

NOW, THEREFORE, BE IT RESOLVED, that the city certifies that it will comply with all applicable laws and regulations as stated in all contract agreements it accepts.

Resolution 10-0093 was unanimously adopted.
Approved February 22, 2010
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to enter into a cooperative agreement (Public Document No. 10-0222-13) with the Duluth airport authority (DAA) relating to a DEED grant for the construction of infrastructure on Duluth International Airport property commonly known as the North Business Development Area in an amount not to exceed \$250,000, payable from Fund 255, Department 020, Object 5447.

Resolution 10-0080 was unanimously adopted.
Approved February 22, 2010

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

DON NESS, Mayor

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THE CITY COUNCIL FINDS:

- (a) That the city of Duluth is under consent decree orders to eliminate sanitary sewer overflows;
- (b) The east interceptor is one of the overflow points that the city is mandated to eliminate;
- (c) The estimated cost of Phase II of the east interceptor sanitary sewer overflow storage facility (8.3 million gallon storage tank, demolition of existing Lift Station No. 6 and removal of contaminated soil) is estimated to be \$13,300,000 with \$4,000,000 being funded by a grant from WIF funds. The remaining \$9,300,000 is 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 the east interceptor sanitary sewer overflow storage facility, Phase II, as described in the application.

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

FURTHER RESOLVED, that the city of Duluth estimates the loan amount to be \$9,300,000 or the as-bid cost 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 10-0085 was unanimously adopted.

Approved February 22, 2010

DON NESS, Mayor

- - -

THE CITY COUNCIL FINDS:

- (a) That the city of Duluth is under consent decree orders to eliminate sanitary sewer overflows;
- (b) The east interceptor is one of the overflow points that the city is mandated to eliminate;
- (c) The estimated cost of Phase III of the East interceptor sanitary sewer overflow storage facility (diversion structure piping and sewer, maintenance building, public restroom and landscaping) is estimated to be \$5,750,000 with \$4,000,000 being funded by a grant from WIF funds. The remaining \$1,750,000 is 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 the east interceptor sanitary sewer overflow storage facility, Phase III, as described in the application.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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

FURTHER RESOLVED, that the city of Duluth estimates the loan amount to be \$1,750,000 or the as-bid cost 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 10-0086 was unanimously adopted.

Approved February 22, 2010

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. 10-0222-14, with Infor Global Solutions (Michigan), Inc., for the licensing, installation, use and support of its computerized asset maintenance and management system in connection with the city's wastewater collection and transmission system in the amount of not to exceed \$278,625.96, payable from the Clean Water Surcharge Fund 532, Department/Agency 500, Object 520, Requisition No. 10-0107.

Resolution 10-0096 was unanimously adopted.

Approved February 22, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into Amendment No. I (Public Document No. 10-0222-15) to City Contract No. 20454 (State Contract No. BO2328) with the state of Minnesota through its commissioner of public safety, division of homeland security and emergency management, for providing services as a hazardous materials chemical assessment team extending the term thereof through June 30, 2011, and increasing the compensation payable to the city by an additional \$90,000; funds to be deposited in Fund 110-150-1505-4210-02.

Resolution 10-0088 was unanimously adopted.

Approved February 22, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept overtime reimbursement funds for Duluth police department participation in a methamphetamine reduction initiative from the Northeast Law Enforcement Administrators Council through its fiscal agent the city of Chisholm, in an amount estimated not to exceed \$22,000 and to be applied for on an as needed basis through December 31, 2011, funds to be deposited in Fund 215-200-2287-4209-02.

Resolution 10-0092 was unanimously adopted.

Approved February 22, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officers are authorized to enter into a lease agreement, a copy of which is on file in the office of the city clerk as Public Document No. 10-0222-16 with St. Louis County for joint use the impound lot located at 2503 Rice Lake Road in the amount of

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

\$2,800 per year, payable from the Fund 110-160-1610-5412.

Resolution 10-0097 was unanimously adopted.

Approved February 22, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept the donation of unconditional monetary gifts from the Duluth Library Foundation during 2010 for use by the Duluth public library, said gifts to be deposited in Fund 240, Agency 300, Organization SG80, Revenue Source 4660, and, on behalf of the city, thank the Duluth Library Foundation for their generous gifts.

Resolution 10-0087 was unanimously adopted.

Approved February 22, 2010

DON NESS, Mayor

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The following resolution was also considered:

Resolution 10-0100, authorizing the proper city officials to proceed with the parks master plan based upon the guiding principles document, was introduced by Councilor Gardner.

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

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INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR FEDORA

10-005 - AN ORDINANCE TO AMEND THE BUDGET OF THE CITY OF DULUTH FOR THE YEAR 2010; ELIMINATING THE HUMAN RESOURCES DEPARTMENT BY TRANSFERRING THE FUNCTION INTO THE LEGISLATIVE AND EXECUTIVE DEPARTMENT; ELIMINATING THE PLANNING AND CONSTRUCTION SERVICES DEPARTMENT BY TRANSFERRING THE PLANNING DIVISION INTO THE LEGISLATIVE AND EXECUTIVE DEPARTMENT AND TRANSFERRING THE CONSTRUCTION SERVICES AND INSPECTION DIVISION INTO THE FIRE DEPARTMENT; AND TRANSFERRING \$98,100 FROM PUBLIC ADMINISTRATION DEPARTMENT AND \$174,100 FROM THE PLANNING DIVISION INTO BUSINESS AND COMMUNITY DEVELOPMENT DEPARTMENT.

- - -

INTRODUCED BY COUNCILOR FOSLE

10-013 - AN ORDINANCE AUTHORIZING ESTABLISHMENT OF BUS ONLY LANES ON STREETS AND ALLOWING ESTABLISHMENT OF THE HOURS WHEN SUCH DESIGNATION SHALL BE IN EFFECT, ADDING A NEW SECTION 33-19 OF THE CODE.

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

Kay L. Lewis expressed her concern that half the year there is not enough lanes and then during the summer months tourists are not familiar with the roadways and that it should be kept the way it is.

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

The following entitled ordinances were read for the second time:

BY COUNCILOR STAUBER

10-009 (10015) - AN ORDINANCE AMENDING SECTION 29A-32 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO OFF STREET PARKING REQUIREMENTS FOR RESIDENTIAL RENTAL PROPERTY.

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

Kay L. Lewis expressed concern that the existing snow shoveling of sidewalks be enforced.

Councilor Stauber noted that this basically is a housekeeping ordinance, in that if a landlord is required to have off street parking, then that parking lot has to be cleared so the tenants can park there.

Councilors Fedora and Fosle expressed concerns of: this ordinance is for a very small portion of the properties that need to clear snow; the city cannot even enforce the existing snow clearing ordinance; currently the city does not tell residents how soon they need to clear their driveway or business, but the ordinance is mandating it within 72 hours after the end of every snowfall; there is no definition of a "significant" snowfall; snow bank creep makes the keeping of parking spaces more difficult and access to renters' alley parking may be impeded with the city not getting to plow alleys for many days after a large snow fall.

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

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

Nays: Councilors Fedora, Fosle and President Anderson -- 3

- - -

INTRODUCED BY COUNCILOR STAUBER

10-012 (10016) - AN ORDINANCE AMENDING THE NEED FOR POS CERTIFICATE AND AUTHORIZING ASSESSMENT FOR UNPAID COSTS THEREOF, AMENDING SECTIONS 43-3.24.2 AND 43-33.4 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

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

- - -

INTRODUCED BY COUNCILOR HARTMAN

10-003 (10017) - AN ORDINANCE AUTHORIZING RECONVEYANCE OF PROPERTY IN THE WEST DULUTH AREA TO THE STATE OF MINNESOTA.

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

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The meeting was adjourned at 7:37 p.m.

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10015

BY COUNCILOR STAUBER:

AN ORDINANCE AMENDING SECTION 29A-32 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO OFF

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

STREET PARKING REQUIREMENTS FOR RESIDENTIAL RENTAL PROPERTY.

The city of Duluth does ordain:

Section 1. That Section 29A-32 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 29A-32. Licenses--terms and conditions.

(a) Each license or copy thereof or placard at least 3"x5" with the same information noted below in this subparagraph shall be displayed in a conspicuous place so that it can be seen and read by a person outside the building and within the common way or near the main entrance of the dwelling and shall state the name, e-mail address and telephone number of the owner or managing agency, if applicable, which is managing the dwelling. Any permitted license rental will ensure there is a local point of contact (within a 25 mile radius) available on such license. No license shall be transferred to another dwelling or rental unit;

(b) If there is a change in either ownership or management of a dwelling, the person or agency managing such dwelling prior to such change in ownership or management shall give written notice of the name and address of the new owner and/or manager to the building official;

(c) A new license shall be issued to the dwelling for the remainder of the license period with the name of the new manager and/or owner upon payment of the required fee and submission of all required application forms;

(d) Any licensed one family or two family dwellings in a district zoned R-1-a, R-1-b or R-1-c shall provide a minimum of two off street parking spaces. In addition, for each additional bedroom in excess of three, there shall be provided one additional off street parking space. Any off street parking spaces shall comply with the standards for off street parking set forth in Section 50-26. The number of required off street parking spaces shall be determined by the building official at the time of licensure. The owner shall ensure that all required off street parking spaces are cleared of snow to at least the required dimension of such spaces within 72 hours after the end of every snowfall;

(e) Except as otherwise provided in this Section, any licensed one family or two family dwelling, lawfully existing on September 1, 2007, may continue to be so used even though such use does not conform to the provisions of this Section. If the number of bedrooms is increased in a licensed one family or two family dwelling located in a district zoned R-1-a, R-1-b or R-1-c after September 1, 2007, the off street parking requirements of this Section shall apply to the entire licensed property. If the license for such nonconforming use is revoked or lapses for any period of time, any subsequent licensed use must comply with all provision of this Chapter;

(f) Expired pursuant to Ordinance No. 9909;

(g) Expired pursuant to Ordinance No. 9909;

(h) Expired pursuant to Ordinance No. 9909;

(i) In all residentially zoned districts restrictions shall not apply to short term licenses. Except as otherwise provided, the building official may issue short term licenses for a period not to exceed 12 consecutive months. A short term license may not be issued more frequently than once in any three year period.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Such short term licenses shall be applied for in the same manner as other rental licenses and all rental requirements for such dwelling unit shall otherwise meet all rental licensing requirements. A short term license may be issued for any single family or two family dwelling under the following circumstances:

- (1) The owner is the current occupant of the dwelling unit, and
- (2) For professional, educational or military service reasons the owner intends to reside in another community located at least 50 miles from the dwelling unit, and
- (3) The owner provides sufficient evidence of such intention to temporarily relocate to the building official. Such evidence may include, but is not limited to written offers of employment, employment transfer directives, letter of acceptance from an educational institution, or military orders.

A short term license may be extended for an additional six months period provided that an application for extension is received prior to the expiration of the short term license and adequate evidence justifying such an extension is submitted with the application. The building official shall act upon such application for extension within 15 business days of delivery of the application.

The action of the building official is subject to appeal as provided in Section 29A-34;

- (j) Expired pursuant to Ordinance No. 9909.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: April 11, 2010)

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

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

Nays: Councilors Fedora, Fosle and President Anderson -- 3

Passed February 22, 2010

Approved February 22, 2010, pursuant to Section 12 of the Duluth City Charter.

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ORDINANCE NO. 10016

BY COUNCILOR STAUBER:

AN ORDINANCE AMENDING THE NEED FOR POS CERTIFICATE AND AUTHORIZING ASSESSMENT FOR UNPAID COSTS THEREOF, AMENDING SECTIONS 43-3.24.2 AND 43-33.4 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

The city of Duluth does ordain:

Section 1. That Section 43-3.24.2 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

43-3.24.2. Point of sale certificate or POS certificate. A certificate issued by the director upon his or her determination either that the plumbing materials and equipment as installed and operating in the subject building are in compliance with the requirements of Section 43-31 below, that the building on the subject property does not have a basement or a cellar of any kind, or that the plumbing and equipment related to said building is not in compliance with the requirements of Section 43-31 below but the director determines that the building

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

and building sewer is not contributing any material or observable amounts of unpolluted water to the public wastewater collection system and is not likely to do so in the future.

Section 2. That Section 43-33.4 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 43-33.4. Repairs required at time of sale.

(a) This Section 43-33.4 applies to transfers of ownership of or of possessory rights in property which property is required to be served by the city's public sanitary sewer, as set out in Section 43-16, or its successor;

(b) Unless there is then in effect a valid POS certificate pertaining to such property, upon the signing and acceptance of a legally binding offer to purchase or at least 30 days before a transfer of title to, or the entering into of a contract for deed for, or contract for sale of, real estate, which sale, transfer or contract gives a party other than the seller or transferor a right of possession, whichever occurs first, the seller or transferor shall notify the director of the date of the proposed sale or transfer closing and arrange for a building sewer inspection to determine whether the property requires a sump pump, building sewer trap removal, and footing drain disconnect in order to be in compliance with this Chapter. The seller or transferor shall pay an inspection fee to city in advance of the inspection to defray the city's costs of such inspection in an amount established from time to time by resolution of the city council. No person shall sell, transfer or enter in a contract for deed for or contract for sale of real estate, which sale, transfer or contract gives a party other than the seller or transferor a right of possession in any property, nor shall any person purchase, accept transfer of or enter into any contract for deed or contract for sale of real property as a transferee which sale, transfer or contract results in such person acquiring a right of possession in any property unless the director has been so notified and the property so inspected, except as provided for in subsection (e) below. The seller or transferor may choose to utilize an inspector other than the city inspector to perform said inspection, providing the inspector is bonded and meets the qualifications as a licensed plumbing contractor in the city of Duluth, holds a Class S-C wastewater license and passes a city administered training course. The private inspector must make certification that the building either needs a sump pump or that there is a sump pump in place and properly functioning or that no sump pump is required. No fee except a nominal filing fee to the city will be required under these circumstances;

(c) If a building sewer contains a house trap and the footing drains are active, the trap shall be removed. If the property requires footing drain disconnections and sump pump installation, it shall be done. The required repairs shall be completed within 90 days of the date of the inspection referred to in subparagraph (b) above. If they are satisfactorily completed, the director shall issue a POS certificate with regard to footing drain contribution only but such POS certificate shall not evidence total compliance with all of the requirements of Section 43-31(a) above. If the required repairs are not satisfactorily completed within said 90 day period, the owner or customer shall be charged a monthly surcharge of \$250 each month until the repairs are satisfactorily completed;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

(d) If, upon the inspection provided for in subparagraph (b) above, the director determines that the property qualifies, the director shall issue or cause to be issued a POS certificate which shall be valid for the proposed sale or transfer related to that inspection and for any other such sale or transfer occurring within one year of said proposed sale or transfer unless the director determines in the exercise of his or her discretion that there is sufficient reason to believe that said POS certificate does not accurately represent the existing condition of the property in question. Provided, however, if the director has issued a POS certificate because the building served by sanitary sewer on the subject property does not have a basement or cellar, said certificate shall continue to be valid unless and until revoked by the director upon the director's determination in the exercise of his or her discretion that there is sufficient reason to believe that said POS certificate does not accurately represent the existing condition of the property in question;

(e) In the event that the director receives notice of a proposed sale or transfer and request for city inspection which complies with the requirements of subsection (b) above, but the department fails to complete the inspection required by this Section prior to the date of the proposed closing contained in the notice or the date of the actual closing, whichever is later, the director shall provide a temporary waiver of the inspection requirement contained in subsection (b) above which shall be effective until the department shall offer to perform the required inspection on the property during ordinary business hours; the department shall attempt to make reasonable accommodation to the schedule of the acquiring party. Such waiver shall be subject to the acquiring party agreeing in writing to allow representatives of the department to enter upon the property for the purposes of making the inspection and shall be effective only until date the department proposes to make such inspection. Upon the inspection being made under this subsection, the property inspected and the acquiring party shall be subject to the requirements of this Article as if the inspection had been made prior to closing;

(f) In the event that neither the seller or transferor nor the acquiring party shall have paid for the inspection provided for in paragraph (b) above within 30 days of the date of closing on the sale or transfer of the subject property, the city shall have the right to assess the amount owed against the property in the manner set forth in this Section, which property shall be deemed to have been benefitted thereby;

(g) On or before June 1 of each year, the director shall transmit to the city assessor a list of properties upon which inspections have been performed and with regard to which the payment therefore has not been made 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;

(h) 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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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 (g) above;

(i) 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;

(i) 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 3. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: April 4, 2010)

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

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

Nays: None -- 0

Passed February 22, 2010
Approved February 22, 2010
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10017

AN ORDINANCE AUTHORIZING RECONVEYANCE OF PROPERTY IN THE WEST DULUTH AREA TO THE STATE OF MINNESOTA.

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 market value for the parcel under consideration. Such estimate is on file in the office of the property manager;

(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 reconveyance pursuant to Article XXXIII of Chapter 2 of the Code;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

(d) As per Section 2-177.4 of the Code, the city council finds that conveyance of the property described in Section 2 below to the state of Minnesota at less than market value (no cost) will make said property available for resale and return said property to the property tax roles.

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:

That part of Lots 6-16, rearrangement of Block 23, HUNTER'S GRASSY POINT ADDITION TO DULUTH, lying westerly of the following described line:

Beginning at a point on the northerly line of Lot 6 distant 79.46 feet easterly of the northwest corner thereof; thence deflecting to the right and continuing southeasterly along a straight line to a point on the northerly line of Lot 10 distant 125.00 feet easterly of the northwest corner thereof; thence deflecting to the right and continuing southerly in a straight line to a point on the southerly line of Lot 16 distant 125.00 feet easterly of the southwest corner thereof and there terminating. Subject to street easements for the street platted as Monroe Avenue, now referred to as 63rd Avenue West, and the street platted as Seventh Street, now referred to as Natchez Street, as shown on the plat of rearrangement of Block 23, HUNTER'S GRASSY POINT ADDITION TO DULUTH.

Section 3. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: April 4, 2010)

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

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

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed February 22, 2010
Approved February 22, 2010
DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, March 8, 2010, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: None -- 0

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

10-0308-01 Duluth Teachers Credit Union petition to vacate alley adjoining that part of Lot 1, Block 11 lying northerly of the westerly extension of the southerly line of the northerly 11 feet of Lot 8, Block 1, and the northerly 11 feet of Lot 8, Block 1; Lots 6 and 7, Block 1; and Lot 5, Block 1, except the northerly 19 feet thereof; and the alley adjoining Lots 1 - 6, Block 2, and Lots 1 - 6, Block 11, together with that portion of the alley lying southerly of the easterly extension of the south line of Lot 1, Block 2, to the centerline of the alley between Block 1, 2 and 11, and lying northerly of the easterly extension of the north line of Lot 1, Block 11, to the centerline of the alley between Block 1, 2 and 11, all in Myers and Whipples Addition to Duluth.
-- Assessor

10-0308-02 Minnesota state auditor audit report for Duluth/North Shore Sanitary District for the year ended December 31, 2008. -- Received

10-0308-03 Mike Akervik communications regarding the proposed ordinance authorizing establishment of bus only lanes on streets and allowing establishment of the hours when such designation shall be in effect (10-013-O). -- Received

10-0308-12 Dave and Ann Kreager communication regarding the proposed agreement for the production, promotion and management of the Bentleyville Tour of Lights in the years 2010, 2011 and 2012 (10-0099R). -- Received

10-0308-13 John Letourneau, Jr., communication regarding the proposed agreement with MSA Professional Services, Inc., to provide engineering services for the rehabilitation/reconstruction of five lift stations in the amount of \$263,317 (10-0107R). -- Received

10-0308-27 Local 101 International Association of Firefighters communication regarding the proposed amendment to the civil service classification of firefighter (10-0129R). -- Received

10-0308-14 The following communications regarding the proposed complete streets policy (10-0128R): (a) Community Action Duluth; (b) Claire Kirch; (c) David R. Wheat; (d) YMCA. -- Received

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REPORTS FROM OTHER OFFICERS

10-0308-04 Assessor affidavit of mailing of notice of public hearing at 7:00 p.m. on March 10, 2010, to be held in the Council Chamber, Third Floor, City Hall, regarding the proposed street improvement of Glenwood Street from 43rd to 60th avenues East. -- Clerk

10-0308-05 Clerk applications to the Minnesota gambling control board for exemption from lawful gambling licenses (raffle) from: (a) St. James Church on May 28, 2010; (b) United Northern Sportsmen on April 23, 2010. -- Received

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

10-0308-06 Community development manager communication regarding a request from Northern Community Land Trust for an exception to the HOME program conflict of interest regulations. -- Received

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REPORTS OF BOARDS AND COMMISSIONS

10-0308-07 Duluth airport authority: (a) Balance sheet of November 30, 2009; (b) Minutes of: (1) January 19; (2) February 1, 2010, meetings. -- Received

10-0308-08 Duluth public arts commission minutes of January 11, 2010, meeting. -- Received

10-0308-09 Duluth transit authority: (a) Financial statement of November, 2009; (b) Minutes of December 30, 2009, meeting. -- Received

10-0308-10 Library board minutes of January 26, 2010, meeting. -- Received

10-0308-11 Parks and recreation commission minutes of January 13, 2010, meeting. -- Received

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OPPORTUNITY FOR CITIZENS TO BE HEARD

Jay Cole urged citizens to show their support for the Google project and with the selling of the jail there could be potential for many new jobs in Duluth.

- - -

RESOLUTION TABLED

Councilor Gardner moved to remove Resolution 10-0100, authorizing the proper city officials to proceed with the parks master plan based upon the guiding principles document, from the table, which motion was seconded and unanimously carried.

Resolution 10-0100 was adopted as follows:

RESOLVED, that the proper city officers are hereby authorized to proceed with the parks master plan based upon the guiding principles document that is on file in the office of the city clerk as Public Document No. 10-0308-15.

Resolution 10-0100 was unanimously adopted.

Approved March 8, 2010

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

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 \$56,056, from Capital Bond Fund 450, Agency 030, Object 5520, Project No. CP2010 10-08-B, for providing professional engineering services to the city of Duluth in connection with

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

replacement of structural floor slabs at 1532 West Michigan Street; 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. 10-0308-16.

Resolution 10-0090 was unanimously adopted.

Approved March 8, 2010

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 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 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 10-0109 was unanimously adopted.

Approved March 8, 2010

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, 2010, subject to departmental approvals:

Blazin Wings, Inc. (Buffalo Wild Wings), 1307 Miller Trunk Highway.

Resolution 10-0110 was unanimously adopted.

Approved March 8, 2010

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby issues the following on sale intoxicating liquor license, on sale Sunday license, dancing license and 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:

Clyde Industrial Park, Inc. (Clyde Iron Works Restaurant & Bar), 2920 West Michigan Street, with Alessandro Giuliani, 100 percent stockholder.

Resolution 10-0114 was unanimously adopted.

Approved March 8, 2010

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the issuance of the following on sale intoxicating liquor 2:00 a.m. beverage license for the period ending August 31, 2010:

Hell's Kitchen Duluth, Inc. (Hell's Burgers), 310 Lake Avenue South.

Resolution 10-0130 was unanimously adopted.

Approved March 8, 2010

DON NESS, Mayor

- - -

RESOLVED, that the appointment by Mayor Ness of Nancy R. Aronson Norr to the Duluth economic development authority for a term expiring on May 26, 2014, replacing Brian Hanson, who resigned, is confirmed.

Resolution 10-0105 was unanimously adopted.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Approved March 8, 2010
DON NESS, Mayor

- - -

RESOLVED, that the city council of Duluth hereby approves the transfer to 218-228 (Duluth 5 Plex), LLC, a limited liability company owned and operated by Center City Housing Corporation, of the interest of Women's Transitional Housing Coalition, Inc., with respect to a HOME program grant agreement and corresponding notes and mortgages between city and Women's Transitional Housing Coalition, Inc., dated November 21, 1994, (City Contract No. 17203) in the amount of \$65,000, and a HOME program loan agreement and corresponding notes and mortgages between city and Women's Transitional Housing Coalition, Inc., dated May 25, 1994, (City Contract No. 17071) in the amount of \$155,000.

Resolution 10-0115 was unanimously adopted.

Approved March 8, 2010
DON NESS, Mayor

- - -

RESOLVED, that the city council of Duluth hereby approves the transfer to the 1431 (Duluth Triplex), LLC, a limited liability company owned and operated by Center City Housing Corporation, of the interest of Women's Transitional Housing Coalition, Inc., with respect to a grant agreement and corresponding notes and mortgages between city and Women's Transitional Housing Coalition, Inc., dated August 8, 1995, (City Contract No. 17460) in the amount of \$163,275.

Resolution 10-0116 was unanimously adopted.

Approved March 8, 2010
DON NESS, Mayor

- - -

RESOLVED, that:

(a) The city council grants the request for a special use permit submitted by Nick Limberopoulos, Crown Castle USA Inc., representing Pinnacle Towers Acquisition, LLC, and AT&T, for a multi-tenant (four total) wireless communications facility including a 60-foot tall monopole, fenced compound with a communications equipment platform on property owned by the state of Minnesota (tax forfeited land) legally described as a 1,600 square foot site located within the SW1/4 of Section 31, Twp 50N, Rng 14W; and

(b) Pursuant to Section 50-32 and Section 50-35(ff) 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 February 16, 2010, considered the petition's effect on the comprehensive plan and property values in the neighborhood (FN 10002) and voted unanimously to recommend approval of the petitioned for wireless communications facility, with conditions; and

(d) 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 60-foot tall monopole and fenced compound with a communications equipment platform subject to the following conditions:

(a) The site improvements be limited to, constructed and maintained according to

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

the following documents titled "DLTHMNU2085, 40th and Haines Road, AT&T UMTS Wood Pole Replacement" prepared by Black & Veatch, dated 11/23/2009, sheets C-2 and C-3, and Sheet C-1 received 2/8/2010 and shown on Public Document No. 10-0308-17; and

(b) That the applicant secure all permits required by federal, state, county or city laws and regulations; and

(c) Any alternations 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 IV.

Resolution 10-0122 was unanimously adopted.

Approved March 8, 2010

DON NESS, Mayor

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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 Bayfront District 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 Bayfront District small area plan, proposes to amend the comprehensive land use plan - future land use map; and

(d) The city planning commission has reviewed the Bayfront District small area plan and the proposed future land use map amendment, conducted a public hearing on February 16, 2010, 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 Bayfront District small area plan as identified in Public Document No. 10-0308-18(a).

BE IT FURTHER RESOLVED, that the adopted comprehensive land use plan - future land use map, is amended as identified in Public Document No. 10-0308-18(b) and shown as Map Amendment #1 Bayfront District small area plan, future land use and attached to this resolution.

Resolution 10-0123 was unanimously adopted.

Approved March 8, 2010

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 the contract on file of the city clerk as Public Document No. 10-0308-19, 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 worker program services and older American program as defined in the local workforce investment plan, for the term beginning April 1, 2010, and ending March 31, 2015. 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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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. City officials authorized to execute the contracts are the mayor, city clerk, city attorney, city auditor and manager of workforce development.

Resolution 10-0125 was unanimously adopted.

Approved March 8, 2010

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. 10-0308-20, with, and accept funds from, St. Louis County to provide Minnesota family investment program and diversionary work program employment and training services in an amount not less than \$1,009,526 for the period January 1, 2010, through December 31, 2010. Monies received under this agreement will be deposited in Fund 268, Agency 031, Organization 6235 (MFIP) and 6236 (DWP).

Resolution 10-0126 was unanimously adopted.

Approved March 8, 2010

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. 10-0308-21, with, and accept funds from, St. Louis County to provide Minnesota innovation fund 2010 transportation and short term training services in an amount not less than \$24,301.36 for the period January 1, 2010, through December 31, 2010. Monies received under this agreement will be deposited in Fund 268, Agency 031, Organization 6228.

Resolution 10-0127 was unanimously adopted.

Approved March 8, 2010

DON NESS, Mayor

- - -

RESOLVED, that Resolution 09-0471 to Salo Engineering, Inc., for professional engineering services for the reconstruction of Glenwood Street from 43rd to 60th avenues East be amended by the amount of \$63,446.73 for a new total of \$513,688.10. The increase will be payable from Permanent Improvement Fund 0411, Department/Agency 035, Object 5530, City Project No. 0647TR.

Resolution 10-0081 was unanimously adopted.

Approved March 8, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a lease agreement with New Cingular Wireless PCS, LLC, substantially the same as that on file in the office of the city clerk as Public Document No. 10-0308-22, for the location and operation by New Cingular of wireless communication equipment on the Orphanage Water Tower, payments to be paid to the Water Fund 510, Agency 500, Revenue Source 4809.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Resolution 10-0112 was unanimously adopted.
 Approved March 8, 2010
 DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Viele Contracting, Inc., for the fourth and final contract year, for the purchase and delivery of an estimated 24,383 tons of Class 5 gravel, 1,000 tons of 3/4-inch crushed washed rock, 300 tons of rip-rap and 100 tons of bedding sand for public works and utilities and street maintenance projects in year 2010 for a total of \$196,152.39 plus \$13,485.48 sales tax, for a combined total amount of \$209,637.87, terms net 30, FOB destination and payable as follows:

(a) \$143,965.97 from Requisition No. 10-0112				
Amount	Fund	Agency	Organization	Object
\$64,784.68	Water Fund 510	500	1945	5224
\$14,396.60	Gas Fund 520	500	1945	5224
\$43,189.79	Sewer Fund 530	500	1945	5224
\$21,594.90	Stormwater Fund 535	500	1945	5224
(b) \$65,671.90 from Requisition 10-0071				
Amount	Fund	Agency	Organization	Object
\$40,736.48	General Fund 110	121	1217-2140	5224
\$24,935.42	Street Improvement Projects 2010 Project No. 0820R	038		5224

Resolution 10-0118 was unanimously adopted.
 Approved March 8, 2010
 DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into Agreement No. 96128 with MN/DOT, on file with the office of the city clerk as Public Document No. 10-0308-23, with the Minnesota department of transportation to provide reimbursement to the city of Duluth in the amount of \$1,200 for utility relocation costs for the I-35 reconstruction project, S.P. 6982-290 (T.H. 35).

Resolution 10-0120 was unanimously adopted.
 Approved March 8, 2010
 DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to accept Grant Agreement No. EMW-2009-FO-06915 from the U.S. department of homeland security, federal emergency management agency, assistance to firefighters grant program, operations and safety grant in the amount of \$32,812, said funds to be deposited in Fund 210, Agency, 030, Organization 3174, Revenue Source 5580, for the purpose of purchasing two turnout gear washing machines, a respiratory fit testing machine and four pulse carbon monoxide monitors, and committing \$8,203 as the city's local share cost of said grant, said sum to be paid from Fund 110, Agency 0150, Organization 1502, Revenue Source 5241.

Resolution 10-0113 was unanimously adopted.
 Approved March 8, 2010
 DON NESS, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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RESOLVED, that pursuant to the authority of Section 33-19 of the Duluth City Code, 1959, as amended, the southeasterly parking lane of Grand Avenue from Carlton Street to Central Avenue is hereby temporarily designated as a bus only lane from 7:00 A.M. to 9:00 A.M., Monday through Friday and the northwesterly parking lane of Grand Avenue from Carlton Street to Central Avenue is hereby designated as a bus only lane from 3:00 P.M. to 5:30 P.M., Monday through Friday.

FURTHER RESOLVED, that this resolution and the designation made thereby shall not be effective during such times as the state of Minnesota department of transportation's project to reconstruct Interstate Highway 35 from Fifth Avenue West to Boundary Avenue is suspended for the winter and the signage required by Section 33-19 of the City Code has been removed or covered by authority of the director of public works and utilities.

FURTHER RESOLVED, that this resolution and the designation made thereby shall cease to be effective on the earlier of the determination by the city engineer that the reconstruction of Interstate Highway 35 from Fifth Avenue West to Boundary Avenue has been substantially completed or November 1, 2011.

Resolution 10-0131 was unanimously adopted.

Approved March 8, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officers are hereby authorized to execute an agreement substantially the same as that on file in the office of the city clerk as Public Document No. 10-0308-24 between the city of Duluth and Bentleyville Tours of Lights, Inc., a Minnesota nonprofit corporation, providing for the production, promotion and management of the 2010, 2011 and 2012 Bentleyville Tour of Lights, fees to be deposited into the city's Fund 0237, Agency 015, Revenue Source 4623.

Resolution 10-0099 was unanimously adopted.

Approved March 8, 2010

DON NESS, Mayor

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RESOLVED, that the proper city officers are hereby authorized to execute a facility use agreement with Independent School District #709, substantially the same as that on file in the office of the city clerk as Public Document No. 10-0308-25, for the use of Washington Center, rooms 107, 110, 114 and 116, at an annual cost of \$8,400 for a three year term beginning March 9, 2010, and ending August 31, 2013; funds to be deposited into Fund 110-121-1217-2120-4622.

Resolution 10-0102 was unanimously adopted.

Approved March 8, 2010

DON NESS, Mayor

- - -

The following resolutions were also considered:

Resolution 10-0124, authorizing city officials to contract with Northern Business Products, Inc., for the purchase of office furnishings in various city locations for a total amount of \$79,533.51, was introduced by Councilor Cuneo for discussion.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Councilor Stauber stated that while office furniture needs to be replaced, when the budget is so tight that it is not a good time to spend this much money on these items.

Chief Administrative Officer David Montgomery reviewed that the city is only buying what is needed and that the city works hard to reuse and shuffle furniture between offices.

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

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

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

- - -

Resolution 10-0128, by Councilor Cuneo, providing for a complete streets policy and requesting city staff to develop implementation strategies to increase the usability of all streets for all appropriate modes of travel for citizens of all income levels, all ages and all abilities in Duluth, was introduced for discussion.

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

David Piphon thanked the council for addressing complete streets, which will improve the safety for all modes of travel in Duluth. He continued by saying the city needs to improve the safety for bikers as prevention is the key to a lot of bike injuries by providing a bike lane.

Jim Skoog explained that the statewide health improvement program has given a grant to Northeastern Minnesota for nine pilot sites addressing the issues of tobacco and physical activity. He continued by saying that the city of Duluth has a community activity intervention working with Fit City Duluth and they have an adopted action plan for a citywide complete street policy that applies to new construction and reconstruction of all city streets within Duluth.

Carol Andrews stated that improving the infrastructure takes a lot of lead time to process a plan for what can be done for the streets years ahead of time and encouraged people to save money by biking and walking to their destination.

Resolution 10-0128 was adopted as follows:

BY COUNCILOR CUNEO:

WHEREAS, the city of Duluth wishes to ensure that all users of our transportation system are able to travel safely and conveniently on all streets and roadways within the public right-of-way in Duluth; and

WHEREAS, all users includes citizens of all income levels, all ages and all abilities, including but not limited to young children, families, senior citizens, those with limited mobility, vision and hearing; and

WHEREAS, a policy which recognizes and addresses the needs of all potential user groups in a comprehensive manner is hereinafter referred to as the "complete streets policy"; and

WHEREAS, automobile, pedestrian, transit and bicycle connectivity are all part of Duluth's goal of having a interconnected transportation system; and

WHEREAS, the city of Duluth wants the absolute best value for the taxpayers funds put into street construction and reconstruction; and

WHEREAS, integrating sidewalks, bike facilities, transit amenities, and appropriate crossings into the initial design of street projects avoids the expense of retrofits later; and

WHEREAS, streets are a critical component of public space and play a major role in establishing the image and identity of a city and its neighborhoods, providing a key framework for current and future development; and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

WHEREAS, complete streets have public health benefits, such as encouraging physical activity and improving air quality, by providing the opportunity for more people to walk and bike safely; and

WHEREAS, a complete streets policy will solicit significant public input from those who both live on and use the streets; and

WHEREAS, communities that support active living strive to create amenities that will enhance the quality of life of its residents, improve the physical and social environment in ways that attract businesses and workers, and contribute to economic development; and

WHEREAS, because, according to the national weather service, the average first measurable snowfall in Duluth is October 24 and the average last measurable snowfall is April 27 (a span of more than six months), a complete streets policy should encourage design that allows for snow removal in ways that limit the impact on any particular group of users; and

WHEREAS, complete streets are essential in providing safe routes to school for children; and

WHEREAS, an acceptable complete streets policy and implementation strategy may include the following:

(a) Specifies that "all users" includes pedestrians, bicyclists, skaters, motorcycles and motor scooters, transit vehicles, motorized and non-motorized wheelchairs and other users and includes users of all ages and abilities, including young children, families, senior citizens and those with limited mobility, vision or hearing;

(b) Recognizes the need for flexibility because all streets are different and all user needs will be considered;

(c) Shall apply to both the construction of new street, the reconstruction of existing streets and incorporate certain maintenance operations when appropriate and practical and may address issues of design, planning and operations of the entire right-of-way;

(d) Requires any exceptions to the provisions of the complete streets plan to be specific and sets a clear procedure that requires a process involving cross-department consultation for any approval of exceptions;

(e) Encourages the use of the latest and best design standards, including traffic calming where appropriate;

(f) Encourages environmentally friendly elements to be incorporated into road design and construction;

(g) Requests that complete streets projects fit in with the context of the community;

(h) Calls for the review and, if necessary, the revision of any local ly-developed design manuals to encompass the safety of all users;

(i) Provides for training of planners and engineers in balancing the needs of diverse users;

(j) Creates new data collection procedures to track how well the streets are serving all users; and

WHEREAS, the Duluth comprehensive land use plan which is being implemented with the development of the unified development chapter of the city of Duluth Legislative Code, supports the concepts of sustainability, walkability and livability contained in a complete streets policy.

NOW, THEREFORE, BE IT RESOLVED, by the city council of Duluth, that it supports the implementation of a complete streets policy in Duluth and requests city staff to develop a policy and implementation plan and report back to the council by June 15, 2010.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

FURTHER RESOLVED, that the mayor's complete streets task force work with city staff, including public works, planning, police, fire, human rights and other appropriate city offices and community organizations such as the metropolitan interstate commission, the Duluth transit authority, and other appropriate agencies, to develop a complete streets policy and a plan for how to implement such a policy that would include all forms of motorized and non-motorized transportation in the planning of future new and reconstructed city streets.

FURTHER RESOLVED, that the city of Duluth should make using complete streets principles a priority when working with other government agencies, including St. Louis County and the state of Minnesota, in developing street designs for streets controlled by other agencies within the city limits of Duluth.

FURTHER RESOLVED, that the city council commits to including a complete streets policy and principles in all appropriate future transportation plans.

Resolution 10-0128 was unanimously adopted.

Approved March 8, 2010

DON NESS, Mayor

- - -

Resolution 10-0129, approving proposed amendments to the specifications for the civil service classification of firefighter, was introduced by Councilor Boyle for discussion.

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

Erik Simonson reviewed the history of the candidate physical ability test (CPAT) which is specific to future hires in the fire department and is important to the department as it ensures the new employees have the physical ability specific to being firefighters. He explained that the CPAT requires very specific and expensive equipment to administer the test and Lake Superior College (LSC) purchased the equipment and has been administering the test, but now LSC is not willing to administer the tests any further due to the high cost of the licensing fees. Mr. Simonson requested the council not to amend the resolution by removing the requirement for CPAT and hopefully the parties will come to an agreement.

Mr. Montgomery stated that the administration would like to see CPAT back in the job description and hopefully something can be worked out with LSC, but he explained that with the CPAT requirement in the job description, the city cannot hire off the list as there currently is nowhere in Minnesota to administer the CPAT test. He emphasized that both the fire department and the administration want the CPAT included in the job description, but the administration wants a third party to administer the test.

John Strongitharm, fire chief, explained that LSC does not want to participate in the CPAT program any longer because of the expense of the fees and negotiations with LSC have not been successful in getting them to administer the test.

To Councilor Gauthier's question, Chief Strongitharm replied that the city would like to have a third party doing the testing instead of the city doing the testing and the hiring. He also stated that the city does not want to take on the added liability and the concern of the perception of fairness with firefighters testing other firefighters.

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

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

Nays: Councilors Boyle, Cuneo, Fedora, Fosle, Gauthier and Stauber -- 6

Resolution 10-0129 failed upon the following vote (Public Document No. 10-0308-26):

Yeas: Councilors Fedora, Fosle, Stauber and President Anderson -- 4

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Nays: Councilors Boyle, Cuneo, Gardner, Gauthier and Hartman -- 5

- - -

RESOLVED, that the city council recognizes the great benefit of ultra high speed broadband connectivity technology and the positive impact it would have on the community and hereby supports the city administration, in cooperation with community partners, to submit an application to Google to become a new test market for ultra high speed broadband connectivity.

Resolution 10-0119 was unanimously adopted.

Approved March 8, 2010

DON NESS, Mayor

- - -

Resolution 10-0107, authorizing an agreement with MSA Professional Services, Inc., to provide engineering services for the rehabilitation/reconstruction of five lift stations in the amount of \$263,317, was introduced by Councilor Gauthier.

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

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INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR STAUBER

10-014 - 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-2, TWO-FAMILY RESIDENTIAL, PROPERTY LOCATED BETWEEN MINNESOTA AVENUE AND SAINT LOUIS AVENUE FROM 16TH STREET TO 200 FEET SOUTHERLY (PARK POINT PROPERTIES).

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

Janice Cohen asked the council to look at the area on Park Point as a complete picture and voiced concern that a variance will come forward for apartments when there are already plenty of empty houses and apartments on Park Point.

Gloria Dunleavy voiced her concern that the developer wants to put as much as possible on a small lot and that the city needs to be responsible on how to develop on Park Point.

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INTRODUCED BY COUNCILOR STAUBER

10-015 - AN ORDINANCE GRANTING TO FANNIE ROSE, LLC, A CONCURRENT USE PERMIT FOR PLACEMENT OF RETRACTABLE AWNINGS, LIGHT FIXTURES AND BENCHES IN THE RIGHT-OF-WAY OF EAST SUPERIOR STREET AND NORTH FIRST AVENUE EAST ABUTTING PROPERTY AT 101-107 EAST SUPERIOR STREET.

- - -

The following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR FEDORA

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

10-005 (10018) - AN ORDINANCE TO AMEND THE BUDGET OF THE CITY OF DULUTH FOR THE YEAR 2010; ELIMINATING THE HUMAN RESOURCES DEPARTMENT BY TRANSFERRING THE FUNCTION INTO THE LEGISLATIVE AND EXECUTIVE DEPARTMENT; ELIMINATING THE PLANNING AND CONSTRUCTION SERVICES DEPARTMENT BY TRANSFERRING THE PLANNING DIVISION INTO THE LEGISLATIVE AND EXECUTIVE DEPARTMENT AND TRANSFERRING THE CONSTRUCTION SERVICES AND INSPECTION DIVISION INTO THE FIRE DEPARTMENT; AND TRANSFERRING \$98,100 FROM PUBLIC ADMINISTRATION DEPARTMENT AND \$174,100 FROM THE PLANNING DIVISION INTO BUSINESS AND COMMUNITY DEVELOPMENT DEPARTMENT.

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

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INTRODUCED BY COUNCILOR FOSLE

10-013 (10019) - AN ORDINANCE AUTHORIZING ESTABLISHMENT OF BUS ONLY LANES ON STREETS AND ALLOWING ESTABLISHMENT OF THE HOURS WHEN SUCH DESIGNATION SHALL BE IN EFFECT, ADDING A NEW SECTION 33-19 OF THE CODE.

Councilor Fosle moved passage of the ordinance and the same was adopted on a unanimous vote.

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The meeting was adjourned at 8:30 p.m.

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

- - -

ORDINANCE NO. 10018

AN ORDINANCE TO AMEND THE BUDGET OF THE CITY OF DULUTH FOR THE YEAR 2010; ELIMINATING THE HUMAN RESOURCES DEPARTMENT BY TRANSFERRING THE FUNCTION INTO THE LEGISLATIVE AND EXECUTIVE DEPARTMENT; ELIMINATING THE PLANNING AND CONSTRUCTION SERVICES DEPARTMENT BY TRANSFERRING THE PLANNING DIVISION INTO THE LEGISLATIVE AND EXECUTIVE DEPARTMENT AND TRANSFERRING THE CONSTRUCTION SERVICES AND INSPECTION DIVISION INTO THE FIRE DEPARTMENT; AND TRANSFERRING \$98,100 FROM PUBLIC ADMINISTRATION DEPARTMENT AND \$174,100 FROM THE PLANNING DIVISION INTO BUSINESS AND COMMUNITY DEVELOPMENT DEPARTMENT.

The city of Duluth does ordain:

Section 1. That Ordinance 10007 passed and approved December 21, 2009, is hereby amended as follows:

Increase:

Department 110-
Legislative and executive\$1,561,900
Department 150-

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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

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

Nays: None -- 0

ATTEST:

JEFFREY J. COX, City Clerk

Passed March 8, 2010

Approved March 8, 2010

DON NESS, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, March 22, 2010, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: President Anderson -- 1

Vice President Gardner presided in the absence of President Anderson.

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The minutes of council meetings held on December 7 and 21, 2009, and January 4, 11 and 25, 2010, were approved upon a unanimous vote.

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

10-0322-01 A&A Investments, LLC, et al. (seven signatures), petition to reclassify from R-1 to C-5 Lot 1, Block 3, Central Acres, Second Division of Duluth. -- Assessor

10-0322-02 Semper Development, et al. (ten signatures), petition to vacate the west side of 12th Avenue East between East Superior and East First streets. -- Assessor

10-0322-03 Takk for Maten/Kippis Restaurant application for concurrent use permit for portion of sidewalk area at 100 East Superior Street. -- Planning commission

10-0322-23 UFCW #1116 communication regarding the proposed acceptance of a donation from Sam's Club on behalf of Bentleyville Tour of Lights, Inc. (10-0108R). -- Received

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REPORTS FROM OTHER OFFICERS

10-0322-04 Assessor:

(a) Affidavit of mailing of notice of special assessment board public hearing on Tuesday, April 13, 2010, in Room 106A, City Hall, on reassessment of delinquent garbage and levying of assessments against real estate specially benefitted by such improvement;

(b) Letters or sufficiency of petitions to:

(1) Reclassify from R-1 to C-5 Lot 1, Block 3, Central Acres, Second Division of Duluth;

(2) Vacate alley adjoining that part of Lot 1, Block 11 lying northerly of the westerly extension of the southerly line of the northerly 11 feet of Lot 8, Block 1, and the northerly 11 feet of Lot 8, Block 1; Lots 6 and 7, Block 1; and Lot 5, Block 1, except the northerly 19 feet thereof; and the alley adjoining Lots 1 - 6, Block 2, and Lots 1 - 6, Block 11, together with that portion of the alley lying southerly of the easterly extension of the south line of Lot 1, Block 2, to the center line of the alley between Block 1, 2 and 11, and lying northerly of the easterly extension of the north line of Lot 1, Block 11, to the centerline of the alley between Block 1, 2 and 11, all in Myers and Whipples Addition to Duluth;

(c) Letter of insufficiency of petition to vacate the west side of 12th Avenue East between East Superior and East First streets. -- Received

10-0322-05 Clerk applications to the Minnesota gambling control board for exemption from lawful gambling licenses (bingo) from Order of AHEPA Sam G. Solon Chapter No. 267 on: (a) May 23, 2010, at the Radisson Hotel; (b) November 21, 2010, at the Holiday Inn Duluth. -- Received

10-0322-06 Purchasing agent emergency order awarded to Northland Construction for repair of the Lakewalk in the amount of \$213,162. -- Received

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

- - -

REPORTS OF BOARDS AND COMMISSIONS

- 10-0322-24 Alcohol, gambling and tobacco commission minutes of: (a) November 4, 2009; (b) December 2, 2009; (c) January 6, 2010; (d) February 3, 2010, meetings. -- Received
- 10-0322-07 Entertainment and convention center authority minutes of February 23, 2010, meeting. -- Received
- 10-0322-08 Duluth human rights commission minutes of December 9, 2009, meeting. -
- Received
- 10-0322-09 Duluth public arts commission minutes of February 22, 2010, meeting. --
Received

- - -

OPPORTUNITY FOR CITIZENS TO BE HEARD

Robert McGovern reviewed the contents of a report he compiled, entitled *City of Duluth 2010 Annual Budget - A Review of the Public Administration Section* (Public Document No. 10-0322-22).

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RESOLUTIONS TABLED

Councilor Stauber moved to remove Resolution 10-0124, authorizing city officials to contract with Northern Business Products, Inc., for the purchase of office furnishings in various city locations for a total amount of \$79,533.51, from the table, which motion was seconded and unanimously carried.

Councilor Stauber moved to refer the resolution back to the administration, which motion was seconded and unanimously carried.

- - -

Councilor Gauthier moved to remove Resolution 10-0107, authorizing an agreement with MSA Professional Services, Inc. to provide engineering services for the rehabilitation/reconstruction of five lift stations in the amount of \$263,317, from the table, which motion was seconded and unanimously carried.

Resolution 10-0107 was adopted as follows:

THE CITY COUNCIL FINDS:

- (a) That the city of Duluth desires to develop plans and specifications for the rehabilitation/reconstruction of five sanitary sewer lift stations;
- (b) That the city desires to hire a consultant engineer to provide the engineering services required for the design and construction administration for Lift Stations #3, #8, #9, #14 and #23;
- (c) That MSA Professional Services, Inc., was rated as the top-ranked firm of the four firms that submitted proposals for engineering services in connection with this project.

RESOLVED, that 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 \$263,317, is payable from Sanitary Sewer Fund 0530, Department 500, Organization 1905, Object 5533, with \$134,317 for City Project 0857SN (2010 lift station improvements) and \$129,000 for City Project 0858SN (2011 lift station improvements).

Resolution 10-0107 was unanimously adopted.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Approved March 22, 2010
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 Gardner moved passage of the consent agenda, which motion was seconded and unanimously carried.

BY COUNCILOR FEDORA:

WHEREAS, there are established zones within the city that prohibit parking between the hours of 2:00 a.m. and 6:00 a.m.; and

WHEREAS, the no parking time limit was established prior to the bar closing time moving to 2:00 a.m.; and

WHEREAS, concerns have been expressed by bar owners with establishments located within these zones for employees to be able to continue to park and work past closing.

THEREFORE, BE IT RESOLVED, that the city council requests that city staff review changing the no parking time limit within these zones to 3:00 a.m. until 6:00 a.m., refer the issue to the parking commission for study and recommendation and, if possible, bring a recommendation back to council for consideration.

Resolution 10-0150 was unanimously adopted.

Approved March 22, 2010

DON NESS, Mayor

- - -

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

(a) On February 3, 2010, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of 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. 10-0322-10;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on March 22, 2010, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 10-0322-10 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.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that a \$1,000 civil penalty and a one day liquor license suspension be imposed with the following conditions:

(a) That a \$1,000 fine be due and payable within 30 days of final council action; \$250 represents a previously stayed fine that was violated and \$750 represents a new civil penalty for the current offense;

(b) That the one day liquor suspension be stayed for a period of one year from council action, and that the stay be forgiven if no further violations of a similar nature occur for a period of one year from council action.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Resolution 10-0133 was unanimously adopted.
Approved March 22, 2010
DON NESS, Mayor

- - -

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

(a) On February 3, 2010, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Range Restaurants, LLC, d/b/a Grizzly's Grill & Saloon, 1722 Miller Trunk Highway, and has submitted its report to the city council of the city of Duluth as Public Document No. 10-0322-11;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on March 22, 2010, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 10-0322-11 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of Range Restaurants, LLC, d/b/a Grizzly's Grill & Saloon, 1722 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 a \$500 civil penalty be imposed with the following conditions; that \$250 of the penalty be due and payable within 30 days of final council action, and that \$250 of the penalty be stayed for a period of one year from council action, and that the stay be forgiven if no further violations of a similar nature occur for a period of one year from council action.

Resolution 10-0134 was unanimously adopted.
Approved March 22, 2010
DON NESS, Mayor

- - -

RESOLVED, that the proper city officers are hereby authorized to enter into a two year lease agreement for 2010 and 2011 between the city of Duluth and Kegler's, Inc., DBA Incline Station, for the leasing of ten parking spaces in the parking lot immediately west of Sixth Avenue and below First Street for an annual consideration of \$4,920 to be paid from Fund 505-015-1481-5441, said lease agreement filed as Public Document No. 10-0322-12.

Resolution 10-0135 was unanimously adopted.
Approved March 22, 2010
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 7, 2010, with Deb Stephan, manager.

Northland Vietnam Veterans Association, Bayfront Park, for August 13, 14 and 15, 2010, the serving ceasing at 10:00 p.m. with Kathy Camps, manager.

Resolution 10-0136 was unanimously adopted.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Approved March 22, 2010
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
American Legion Post #71	5814 Grand Avenue

Resolution 10-0138 was unanimously adopted.

Approved March 22, 2010
DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with MacQueen Equipment, Inc., for the purchase and delivery of a 2010 Trackless Series Model MT6 municipal tractor with options in accordance with Minnesota State Contract #442441, Release #T-652(5), specifications and pricing in the amount of \$123,629 (includes freight) plus \$8,499.49 sales tax, for a total amount of \$132,128.49, terms net 30, FOB Duluth, payable as follows:

(a) \$53,030.49 from the Capital Equipment Fund 250, Department/Agency 015, Organization 2009, Object 5580, Project #CE250-V904;

(b) \$79,098 from the Capital Equipment Fund 250, Department/Agency 015, Organization 2010, Object 5580, Project #CE250-V1004.

Resolution 10-0144 was unanimously adopted.

Approved March 22, 2010
DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Northstar International, Inc., d.b.a. Astleford International Trucks, for the purchase and delivery of two 2011 International Model 7600 tandem axle cab and chassis units for the fleet services division in accordance with Minnesota State Contract #440949, Release #T-647 (5), specifications and pricing in the amount of \$192,714.44, plus \$12,526.44 sales tax plus \$250 license registration and tax exempt plates for a combined total amount of \$205,490.88, terms net 30, FOB destination, payable from the Capital Equipment Fund 250, Department/Agency 015, Organization 2010, Object 5580, Project CE250-V1003.

Resolution 10-0145 was unanimously adopted.

Approved March 22, 2010
DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the transfer of the off sale intoxicating liquor for the period ending August 31, 2010, subject to departmental approvals, the payment of sales and property taxes and further subject to the approval of the liquor control commissioner:

Super One Liquor, LLC (Super One Liquor), 210 North Central Avenue, with James A. Miner, Jr., chief manager, and Theresa A. Lorentz, treasurer, transferred from Liberty Enterprises, Inc. (Liberty Liquor), same address.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Resolution 10-0149 was unanimously adopted.
Approved March 22, 2010
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. 10-0322-13, are confirmed.

Resolution 10-0106 was unanimously adopted.
Approved March 22, 2010
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a joint powers agreement pertaining to the housing tax credit program, substantially in the form of the copy on file in the office of the city clerk as Public Document No. 10-0322-14, with the Minnesota housing finance agency (Minnesota housing) for the year 2011.

Resolution 10-0137 was unanimously adopted.
Approved March 22, 2010
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 the utility easement dedicated on Outlot A, ONEOTA INDUSTRIAL PARK, FIRST ADDITION; and

(b) Pursuant to Section 100 of the City Charter and Article IV of Chapter 45 of the Duluth City Code, 1959, as amended, such petition was duly referred to the city planning commission 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; and

(c) The city planning commission, at its March 9, 2010, regular meeting, did recommend, unanimously, vacating the petitioned utility easement (FN 10015); and

(d) The city council of the city of Duluth approves the vacation of the following and more particularly described on Public Document No. 10-0322-15:

That part of the utility easement dedicated on Outlot A, ONEOTA INDUSTRIAL PARK, FIRST ADDITION, that is northwesterly of a line drawn parallel to and 18 feet northwesterly of the southeast lot line of said Outlot A; 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 utility easement to be vacated.

Resolution 10-0139 was unanimously adopted.
Approved March 22, 2010
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute an amendment to Grant Agreement OR-807 filed as Public Document No. 10-0322-16(a) and an amendment to Grant Agreement OR-821 filed as Public Document No. 10-0322-16(b) between the city of Duluth and the state of Minnesota, department of natural resources.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Resolution 10-0151 was unanimously adopted.

Approved March 22, 2010

DON NESS, Mayor

- - -

RESOLVED, that the city of Duluth hereby recommends and requests that the Minnesota state department of transportation and the federal highway administration of the U.S. department of transportation approve the award of a contract to Roen Salvage Company for the sheet pile retaining wall rehabilitation at the Clure Public Marine Terminal for the engineering division for its low bid of \$5,057,427.05, to include the base bid and add alternates 1 and 2, payable out of Fund 0411, Department/Agency 035, Object 5530, City Project No. PI2010-0868TR, Minnesota Project No. ES-10ES (069), State Project No. 118-080-040.

Resolution 10-0121 was unanimously adopted.

Approved March 22, 2010

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. 10-0322-17 with the St. Louis and Lake counties regional railroad authority to amend the Lakewalk Trail license agreement for the construction and operation of the Lakewalk recreational trail from 47th Avenue East to 60th Avenue East at nominal cost.

Resolution 10-0132 was unanimously adopted.

Approved March 22, 2010

DON NESS, Mayor

- - -

RESOLVED, that it is deemed necessary for public convenience and safety and it is hereby ordered that Glenwood Street from 43rd Avenue East to 60th Avenue East (City Project No. 0647TR/0244TR) 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 \$4,600,000 payable from Permanent Improvement Fund 0411, Agency 035, Object 5530. The funding sources for this project will be as follows: \$980,000 from federal aid funds, \$1,828,700 from municipal state aid funds, \$535,000 from Water Fund 0510, \$177,300 from Stormwater Utility Fund 0520, \$563,200 from Sanitary Sewer Fund 0530 and \$515,800 from Street Improvement Fund 0440, assessable to benefitting properties.

FURTHER RESOLVED, that assessment shall be levied upon lands benefitting per the preliminary assessment roll (Public Document No. 10-0322-18) and may be paid in 15 annual installments at prime plus 1.50 percent interest.

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 10-0141 was unanimously adopted.

Approved March 22, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into Agreement No. 96163, on file with the office of the city clerk as Public Document No. 10-0322-19, with Mn/DOT to provide compensation to the city of Duluth for road life consumed as part of the

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

T.H. 23, 35, 53, 61 and 535 detours, S.P. 6925-127 (T.H. 61 = 103), S.P 6982-290 (T.H. 35 = 390), Federal Project No. IM-BHIM-NH-BHNNH 6910 (123), in the estimated amount of \$14,931.01, payable to Fund 411.

Resolution 10-0147 was unanimously adopted.

Approved March 22, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into Mn/DOT Agreement No. 96195, a copy of which is on file with the office of the city clerk as Public Document No. 10-0322-20, with Mn/DOT to provide compensation to the city of Duluth for road life consumed as part of the T.H. 61 detour, S.P. 6925-129 (T.H. 61 = 103), Federal Project No. BHNH-TEA 0061 (316), in the estimated amount of \$2,222.64 payable to Fund 411.

Resolution 10-0148 was unanimously adopted.

Approved March 22, 2010

DON NESS, Mayor

- - -

BY COUNCILOR FOSLE:

RESOLVED, that pursuant to Section 43-70(b) of the Duluth City Code, the Duluth City Council hereby amends the Fond du Lac grinder pump fee to the amount of \$12 per month, which fee shall be effective for wastewater user fee billings sent out after March 31, 2010.

Resolution 10-0142 was unanimously adopted.

Approved March 22, 2010

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 2010 in accordance with city specifications and Polaris' quote of \$32,695.75, terms net 30, payable from the General Fund 110, Department/Agency 121, Organization 1218, Object 5404.

Resolution 10-0143 was unanimously adopted.

Approved March 22, 2010

DON NESS, Mayor

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The following resolutions were also considered:

WHEREAS, April 1, 2010, is Census Day in the United States; and

WHEREAS, every ten years, the United States conducts a census – as required by the Constitution (Article I, Section 2) with the goal of the census being to count everyone residing in the United States: in all 50 states, the District of Columbia, Puerto Rico and U.S. territories. All residents of the United States must be counted, including people of all ages, races, ethnic groups, citizens and non-citizens. The first census was conducted in 1790 and has been carried out every decade since; and

WHEREAS, the city of Duluth recognizes the equal importance of each resident in the 2010 census count; and

WHEREAS, the census is easy, important and safe. Every census bureau worker takes a lifetime oath to protect confidentiality and ensure that data identifying respondents or their households not be released or shared for a period of 72 years; and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

WHEREAS, the city of Duluth understands the tremendous impact of census data on elected offices – both state and federal levels – as districts are redrawn each decade and congressional seats apportioned based on population; and

WHEREAS, each year the federal government allocates more than \$400 billion to state and local governments which is based, in part, on census data. Census data is used to determine the need for additional social services, block grants and other grant programs essential to many communities. Census data affects a diverse range of initiatives, from justifying the need for an after-school program to the designation of urban revitalization areas; and

WHEREAS, an accurate count of Duluth's and the state of Minnesota's residents is critical to ensure Duluth and Minnesota gain the maximum advantage when competing for federal dollars, making plans for future initiatives and projects and reapportioning state and federal elected seats.

NOW, THEREFORE, BE IT RESOLVED, that the city of Duluth supports the 2010 Decennial Census and encourages the participation of all Duluth residents in order to increase participation among all populations and to achieve an accurate and complete census count in Duluth.

Resolution 10-0140 was unanimously adopted.

Approved March 22, 2010

DON NESS, Mayor

- - -

Resolution 10-0108, authorizing acceptance of a donation from Sam's Club in the amount of \$6,000 on behalf of Bentleyville Tour of Lights, Inc., was introduced for discussion.

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

Tamara Jones and Jim Gleb, representatives for the United Food and Commercial Workers Union, spoke in opposition to the resolution for reasons of what they felt was a company that: exploits its workers through wage and hour laws; pays low wages; does not support its local community through loop holes in many local tax codes; affects the loss of local businesses and jobs, and paid \$54 million to settle a lawsuit in the state of Minnesota.

Resolution 10-0108 was adopted as follows:

RESOLVED, that the proper city officials are hereby authorized to accept a donation from Sam's Club on behalf of Bentleyville Tour of Lights, Inc., in the amount of \$6,000 to be used towards the cost of Duluth police department traffic control services during the 2009 Bentleyville Tour of Lights, funds to be deposited in Fund 110-160-1610-4650.

Resolution 10-0108 was adopted upon the following vote:

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

Nays: Councilor Gauthier -- 1

Absent: President Anderson -- 1

Approved March 22, 2010

DON NESS, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

INTRODUCED BY COUNCILOR FEDORA

10-018 - AN ORDINANCE CLARIFYING THE COMMUNITY ARTS SET-ASIDE TO APPLY ONLY TO FUNDS GENERATED BY THE CITY, AMENDING SECTION 20-19 OF THE CODE.

- - -

INTRODUCED BY COUNCILOR STAUBER

10-017 - AN ORDINANCE GRANTING TO DULUTH AREA FAMILY YMCA HERITAGE FOUNDATION, INC., A CONCURRENT USE PERMIT FOR PLACEMENT OF AN ENTRANCE CANOPY AND 37 ARCHITECTURAL SLATS PROJECTING INTO THE WEST FIRST STREET AND NORTH THIRD AVENUE WEST RIGHTS-OF-WAY ABUTTING THE YMCA BUILDING AT 302 WEST FIRST STREET.

- - -

INTRODUCED BY COUNCILOR GAUTHIER

10-016 - AN ORDINANCE CREATING A DULUTH PUBLIC UTILITIES COMMISSION, ESTABLISHING MEMBERSHIP AND POWERS AND DUTIES THEREOF AND AUTHORIZING SAID COMMISSION TO ESTABLISH VARIOUS UTILITY RATES, AMENDING CHAPTERS 2, 43 AND 48 OF THE CODE.

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

David Ross, executive director of the Duluth Area Chamber of Commerce, spoke in support of the ordinance.

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The following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR STAUBER

10-014 (10020) - 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-2, TWO-FAMILY RESIDENTIAL, PROPERTY LOCATED BETWEEN MINNESOTA AVENUE AND ST. LOUIS AVENUE FROM 16TH STREET TO 200 FEET SOUTHERLY (PARK POINT PROPERTIES).

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

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

Nays: Councilor Gauthier -- 1

Absent: President Anderson -- 1

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INTRODUCED BY COUNCILOR STAUBER

10-015 (10021) - AN ORDINANCE GRANTING TO FANNIE ROSE, LLC, A CONCURRENT USE PERMIT FOR PLACEMENT OF RETRACTABLE AWNINGS, LIGHT FIXTURES, AND BENCHES IN THE RIGHT-OF-WAY OF EAST SUPERIOR STREET AND NORTH FIRST AVENUE EAST ABUTTING PROPERTY AT 101-107 EAST SUPERIOR STREET.

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

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The meeting was adjourned at 7:28 p.m.

JEFFREY J. COX, City Clerk

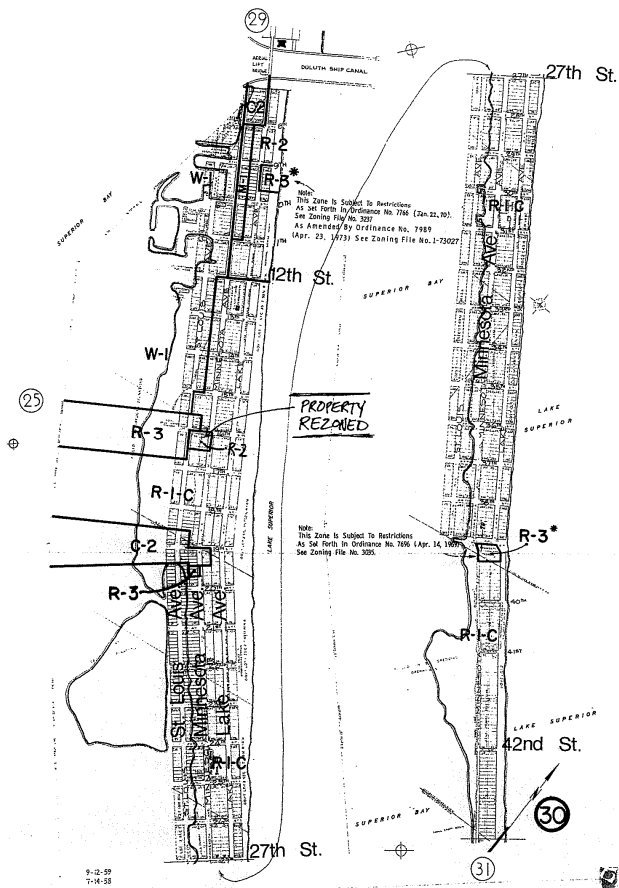
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ORDINANCE NO. 10020

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-2, TWO-FAMILY RESIDENTIAL, PROPERTY LOCATED BETWEEN MINNESOTA AVENUE AND SAINT LOUIS AVENUE FROM 16TH STREET TO 200 FEET SOUTHERLY (PARK POINT PROPERTIES).

The city of Duluth does ordain:

Section 1. That the 0.9 acres of the subject property located between Minnesota Avenue and Saint Louis Avenue from 16th Street to 200 feet southerly, be reclassified from R-1-c, one-family residential, to R-2, two-family residential, and that Plate No. 30 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. 10013)

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: May 9, 2010)

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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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

Nays: Councilor Gauthier -- 1

Absent: President Anderson -- 1

Passed March 22, 2010

Approved March 22, 2010

DON NESS, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

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ORDINANCE NO. 10021

AN ORDINANCE GRANTING TO FANNIE ROSE, LLC, A CONCURRENT USE PERMIT FOR PLACEMENT OF RETRACTABLE AWNINGS, LIGHT FIXTURES AND BENCHES IN THE RIGHT-OF-WAY OF EAST SUPERIOR STREET AND NORTH FIRST AVENUE EAST ABUTTING PROPERTY AT 101-107 EAST SUPERIOR 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 granted to Fannie Rose, LLC, and its successors in interests, referred to herein as the permittees, to install and maintain retractable awnings, building-mounted light fixtures, and benches, referred to herein as the private improvements, unto and over the following described areas of the public easement and to temporarily occupy such easement for such purpose: that part of the right of way of the East Superior Street and North First Avenue East adjoining Lot 17 and westerly 1/2 of Lot 19, East Superior Street, Duluth Proper First Division 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, as shown in Public Document No. 10-0322-21(a).

Section 2. Before this ordinance shall be effective for any purpose whatsoever, the permittee shall file with the city clerk: a duly executed and acknowledged written acceptance of the terms of this ordinance and a certificate of insurance approved as to form by the city attorney evidencing that the permittee has in force insurance meeting the following requirements:

Comprehensive general liability insurance policy shall be maintained in force by permittee 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 permittee's activities occurring upon or within the public easement occupied pursuant to this ordinance whether said activities are performed by employees or agents under contract to permittee. 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. The certificate shall also reference this ordinance by number. 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.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

The permittee shall further cause a current version of the required insurance certificate to be filed with the city clerk while the permission granted by this ordinance is exercised.

Section 3. The permit granted by this ordinance may be terminated at any time by the city official exercising departmental authority of the public easement if the city of Duluth determines to use the area occupied by the permittee for any purpose in accordance with the duly dedicated public easement or other lawful use. Unless a shorter notice period is necessitated by emergency circumstances, or the violation of the conditions set forth in this ordinance, giving the permittee 30 days written notice and delivered via electronic transmission, facsimile transmission or standard United States Postal Service mail delivery to the last known electronic address, facsimile number or mailing address of the permittee shall be sufficient notice of termination.

Upon notice of termination, permittee shall remove the private improvements within 30 days, all at the expense and cost of the permittee, and without right to claim from the city of Duluth, or any of its officers, agents or servants, any compensation or reimbursement for damages of any kind whatsoever.

Section 4. By accepting the terms of this ordinance, the permittee 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 the existence of the private improvements, or any act or omission of the permittee, its employees, agents, and assigns and agree that the private improvements shall be so constructed and at all times maintained so as in no way to interfere with or damage any portion of the public improvements or other public utilities now or to be hereinafter located in any part of said public easement. The permittee further agrees that the city of Duluth shall not be liable for damage caused to the private improvements while the city is engaged in repairs, maintenance or replacement to the public improvements or public utilities, including any snow removal operations, and agrees to pay to the city of Duluth all extra costs of installation of any sewers, gas mains, water mains, pipes, conduits, or other public utilities made necessary by the presence of the private improvements in the public easement.

Section 5. The permittee shall, at its expense, protect, support, temporarily disconnect, or remove from the public easement, the private improvements when required by city officials by reason of snow removal, traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines and tracks, the installation or repair of any other type of structures or improvements by governmental agencies, when acting in a governmental or proprietary capacity.

Section 6. The permittees shall further observe the following conditions:

(a) Upon any sale or transfer of permittee's interest in the permit granted by this ordinance, the permittee shall provide written notice to the city clerk within five days of such transfer. The permittee's successor in interest shall file with the city clerk within ten days of such transfer a duly executed and acknowledged written acceptance of the terms of this ordinance and the certificate of insurance required in Section 2, above.

(b) This permit is subject to termination by the city of Duluth for failure to comply with the terms and conditions of this permit. Giving the permittees ten days written notice, delivered as provided in Section 3, above, shall be sufficient notice of termination. Upon termination, permittee shall remove the private improvements as provided in Section 4, above;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

(c) Permittee's use of the public easement shall be limited to the private improvements shown on attachments A and B in the February 16, 2010, staff report to the planning commission, FN 10010 (Public Document No. 10-0322-21(b));

Section 7. The term of this ordinance shall expire on June 1, 2015.

Section 8. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: April 25, 2010)

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

Yeas: Councilors Boyle, Cuneo, Fedora, Fosle, Gauthier, Hartman, Stauber and Vice President Gardner -- 8

Nays: None -- 0

Absent: President Anderson -- 1

ATTEST:

JEFFREY J. COX, City Clerk

Passed March 22, 2010
Approved March 22, 2010
DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, April 12, 2010, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: None -- 0

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The minutes of council meetings held on February 8 and 22, 2010, were approved upon a unanimous vote.

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

10-0412-01 Amazing Grace Bakery and Café concurrent use permit application to retain fence in front of establishment at 394 South Lake Avenue. -- Planning commission

10-0412-02 Semper Development, et al. (two signatures), further petition to vacate the west side of 12th Avenue East between East Superior and East First streets. -- Assessor

10-0412-03 University of Minnesota petitions to vacate:

(a) The westerly 80 feet of Clover Street off Woodland Avenue, Clover Hill Division;

(b) West Griggs Place off Woodland Avenue, Clover Hill Division. -- Assessor

10-0412-04 Eli Miletich communication regarding the proposed ordinance creating a Duluth public utilities commission (10-016-O). -- Received

10-0412-05 Park Point Properties appeal of planning commission denial for a variance of the required minimum lot size in a Class 1 general development shoreland at 16th Street between Minnesota and St. Louis avenues (10-0192R and 10-0193R). -- Committee 2 (planning and economic development)

10-0412-17 The following communications regarding appeal of Park Point Properties to approve a variance of the required minimum lot size in a Class 1 general development shoreland at 16th Street between Minnesota and St. Louis avenues (10-0192R and 10-0193R): (a) Janice Cohen; (b) Alan Dartanyan; (c) Katie Gooder; (d) Joyce and Elizabeth Hooper; (e) Hamilton M. Smith; (f) Paul Treuer. -- Received

10-0412-16 The following communications regarding proposed granting of a special use permit to AT&T for a 190 foot wireless communications monopole and associated ground equipment at 110 Spring Street (10-0146R): (a) AT&T; (b) Mike Flaherty. -- Received

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REPORTS FROM OTHER OFFICERS

10-0412-06 Assessor letters of sufficiency of petitions to:

(a) Reclassify from R-2 to C-1 the Lots 1, 2 and the westerly 25 feet of Lot 3, including 25.5 feet of vacated Branch Street, Block 53, Endion Division of Duluth;

(b) Vacate:

(1) West Griggs Place off Woodland Avenue, Clover Hill Division;

(2) West side of 12th Avenue East between East Superior and East First streets;

(3) Westerly 80 feet of Clover Street off Woodland Avenue, Clover Hill Division. -- Received

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

10-0412-07 Budget manager submitting 2009 general fund reconciled budget report, pursuant to Ordinance No. 10007. -- Received

10-0412-08 Building official appeal of the board of zoning appeals decision to affirm an administrative decision of the building official pertaining to the interpretation of the definition of a sign to allow installation of precast panels with an inscription in the west wall of the proposed eastern high school at 301 North 40th Avenue East (Duluth Public Schools). -- Committee 2 (planning and economic development)

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REPORTS OF BOARDS AND COMMISSIONS

10-0412-09 Board of zoning appeals minutes of January 26, 2010, meeting. -- Received

10-0412-10 Duluth airport authority minutes of February 23, 2010, meeting. -- Received

10-0412-11 Duluth transit authority: (a) Financial statement for January 2010; (b) Minutes of January 27, 2010, meeting. -- Received

10-0412-12 Entertainment and convention center authority minutes of March 30, 2010, meetings. -- Received

10-0412-13 Library board minutes of February 23, 2010, meeting. -- Received

10-0412-14 Parks and recreation commission minutes of February 10, 2010, meeting. -- Received

10-0412-15 Spirit Mountain recreation area authority minutes of February 18, 2010, meetings. -- Received

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OOPPORTUNITY FOR CITIZENS TO BE HEARD

Richard Mc Govern presented a document (Public Document No. 10-0412-40) regarding local governmental aid and the 2010 annual budget. He commented that: tax increases should be avoided; the Duluth general fund public administration exceeds the other six cities he studied; the city should examine cost per resident values; reducing inefficient spending reduces taxes for the citizens; the lack of job performance reviews and an internal auditor contributes to the high cost of resident values.

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Stanley Hendrickson expressed his frustration in dealing with the city and the inflow and infiltration inspection program at his house. He cited the history on this issue and stated that he feels that he should be treated better.

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Anthony Fillman stated that he is deeply opposed to the front yard parking ordinance. He noted that: the economy requires more than one car in a family; this ordinance targets smaller sized properties and unfairly targets low income housing that can only afford small houses; it divides property owners into two groups - the large property owners and smaller property owners, where this ordinance causes a big hardship, and this ordinance belongs in the 1950's.

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Daniel Matthes stated that he received a letter telling him that he was parked illegally on his own property that has been paved for 40 years. He agrees that people should not park on the grass and that this problem should be addressed directly and not by changing a definition.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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Judy Gordon spoke on behalf of Carol Burns who lives on Water Street. She noted that she is: a supporter of the Lakewalk; most Lakewalk users are using the street due to the construction of the holding tank that is being done, which causes an unsafe environment; residents are worried about hitting a pedestrian when backing out of their garage and that the city should make an investment of a Lakewalk along Water Street for the safety of its citizens.

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

RESOLVED, that the proper city officials are hereby authorized to contract with Erling R. Hansen General Contractor, Inc., for the renovation of Fire Station No. 1 at 602 West Second Street in Duluth, Minnesota, for the housing and relocation of the city's housing inspection/fire prevention unit in accordance with the vendor's low specification bid of \$249,600, payable from the Capital Improvements Fund 450, Department/Agency 030, Object 5520, Project CP2009-0909B.

Resolution 10-0154 was unanimously adopted.

Approved April 12, 2010

DON NESS, Mayor

- - -

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

(a) On March 3, 2010, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of George's Liquor, Inc., d/b/a George's Liquor, 1340 West Arrowhead Road, and has submitted its report to the city council of the city of Duluth as Public Document No. 10-0412-19;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on April 12, 2010, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 10-0412-19 regarding any suspension, revocation and/or civil penalty relating to the off sale intoxicating liquor license of George's Liquor, Inc., d/b/a George's Liquor, 1340 West Arrowhead Road, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the city council impose a \$500 civil penalty and that payment of \$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 10-0161 was unanimously adopted.

Approved April 12, 2010

DON NESS, Mayor

- - -

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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

(a) On March 3, 2010, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of 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. 10-0412-20;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on April 12, 2010, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 10-0412-20 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: that the city council impose a \$1,000 civil penalty and a one day liquor suspension with the following conditions: payment of \$1,000 be due and payable within 60 days of council action; \$250 represents a previously stayed fine that was violated and \$750 represents a new civil penalty for the current offense; that the one day liquor suspension be stayed for a period of one year and be abated if no same or similar violations occur during that one year period from council action.

Resolution 10-0162 was unanimously adopted.

Approved April 12, 2010

DON NESS, Mayor

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

Grandma's Marathon - Duluth, Inc., Canal Park Drive and Buchanan Street, for June 18-20, 2010, with Scott Kennan, manager, with the music and serving ending at 1:00 a.m.

Resolution 10-0163 was unanimously adopted.

Approved April 12, 2010

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 pending departmental approvals with any specific restrictions:

PDL of Duluth, Inc. (Club Saratoga), 331 Canal Park Drive, for June 19, 2010, from 8:00 a.m. until 3:00 p.m.

Resolution 10-0172 was unanimously adopted.

Approved April 12, 2010

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 May 1, 2010, with Don Hoag, manager.

Resolution 10-0190 was unanimously adopted.

Approved April 12, 2010

DON NESS, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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RESOLVED, that the proposed amendments to the specifications for the civil service classification of parking meter monitor, which were approved by the civil service board on March 16, 2010, and which are filed with the city clerk as Public Document No. 10-0412-21, are approved. This classification shall remain subject to the city's collective bargaining agreement with its basic unit employees and compensated at Pay Range 18.

Resolution 10-0160 was unanimously adopted.

Approved April 12, 2010

DON NESS, Mayor

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RESOLVED, that the proposed specifications for the new civil service classification of executive assistant, which were approved by the civil service board on March 16, 2010, and which are filed with the city clerk as Public Document No. 10-0412-22, are approved; that said classification shall be subject to the city's collective bargaining agreement with its confidential unit employees; and that pay range for said classification shall be Range 9. The proper city officials are authorized to execute and implement an agreement with the union to provide for employing one or more unit members consistent with this resolution.

Resolution 10-0165 was unanimously adopted.

Approved April 12, 2010

DON NESS, Mayor

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BY PRESIDENT ANDERSON:

RESOLVED, that the city council hereby expresses that it is the sense of the council that all councilors should be members of all council committees.

Resolution 10-0023 was unanimously adopted.

Approved April 12, 2010

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Roen Salvage Company for the sheet pile retaining wall rehabilitation at the Clure Public Marine Terminal, including add alternate Nos. 1 and 2, in the amount of \$5,057,427.05, payable out of Fund 0411, Department/Agency 025 and 035 (\$3,000,000 ARRA and \$2,057,427.05 by the port authority), Object 5530, City Project No. PI2010-0868TR, Minnesota Project No. ES-10ES (069), State Project No. 118-080-040.

Resolution 10-0156 was unanimously adopted.

Approved April 12, 2010

DON NESS, Mayor

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THE CITY COUNCIL FINDS:

(a) That the city of Duluth is undertaking a project to construct the Lakewalk extension, Phase IV, in 2012;

(b) The estimated cost for design and construction of the Lakewalk extension, Phase IV, is \$767,928. Federal enhancement funds (\$526,342) are currently programmed for construction in 2012. 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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

application (Public Document No. 10-0412-23) 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 Lakewalk extension, Phase IV, 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 \$181,189.50 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 10-0166 was unanimously adopted.

Approved April 12, 2010

DON NESS, Mayor

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THE CITY COUNCIL FINDS:

(a) That the city of Duluth is undertaking a project to construct the Lakewalk extension, Phase IV, in 2012;

(b) The estimated cost for design and construction of the Lakewalk extension, Phase IV, is \$767,928. Federal enhancement funds (\$526,342) are currently programmed for construction in 2012. The Minnesota department of natural resources (DNR) has grant monies available through its regional trails 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 grant application (Public Document No. 10-0412-24) 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 Lakewalk extension, Phase IV, 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 \$120,793 and is available on a 50 percent/50 percent local matching basis, and has matching funds available.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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 10-0167 was unanimously adopted.

Approved April 12, 2010

DON NESS, Mayor

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THE CITY COUNCIL FINDS:

(a) That the city of Duluth is undertaking a project to construct the Lakewalk extension, Phase V, in 2012;

(b) The estimated cost for design and construction of the Lakewalk extension, Phase V, is \$942,500. Federal enhancement funds (\$650,000) are currently programmed for construction in 2012. 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 (Public Document No. 10-0412-25) 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 Lakewalk extension, Phase V, 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 \$219,375 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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

411 West First Street
Duluth, MN 55802
Resolution 10-0168 was unanimously adopted.
Approved April 12, 2010
DON NESS, Mayor

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THE CITY COUNCIL FINDS:

(a) That the city of Duluth is undertaking a project to construct the Lakewalk extension, Phase V, in 2012;

(b) The estimated cost for design and construction of the Lakewalk extension, Phase V, is \$942,500. Federal enhancement funds (\$650,000) are currently programmed for construction in 2012. The Minnesota department of natural resources (DNR) has grant monies available through its regional trails 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 grant application (Public Document No. 10-0412-26) 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 Lakewalk extension, Phase V, 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 \$146,000 and is available on a 50 percent/50 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 10-0169 was unanimously adopted.
Approved April 12, 2010
DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to apply for and, if selected, implement a grant from the legislative-citizen commission on Minnesota resources in an amount anticipated to be \$150,000 for a project entitled: *Reaching Out to Reach Our Mission*; funds to be deposited in Fund 0535-500-1900-4220-02 and to execute any documents required to be executed to accept such grant.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Resolution 10-0170 was unanimously adopted.
Approved April 12, 2010
DON NESS, Mayor

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RESOLVED, that pursuant to Section 61 of the Duluth City Charter, the city council hereby expresses its intent to cause the following portions of the streets named below to be preserved as part of the city's 2010 street preservation projects, 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 assessments:

- o Glenwood Street from 43rd Avenue East to Jean Duluth Road;
- o 43rd Avenue East from Superior Street to Glenwood Street;
- o Eighth Street from 40th Avenue West to Central Avenue;
- o Superior Street from Tenth Avenue East to 21st Avenue East;
- o Mall Drive from Haines Road to Burning Tree Road;
- o Minnesota Avenue from 13th Street to 40th Street.

Resolution 10-0182 was unanimously adopted.
Approved April 12, 2010
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with NPL Construction Company for construction of high pressure gas mains and services in various locations for the engineering division. NPL Construction Company had the lowest responsible bid of \$407,446, payable out of Gas Fund 520, Department/Agency 500, Organization 1905, Object 5533, City Project No. 0884GS.

Resolution 10-0184 was unanimously adopted.
Approved April 12, 2010
DON NESS, Mayor

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RESOLVED, that the city of Duluth does hereby accept on behalf of the general public the dedication of those easements for highway purposes described on that document on file in the office of the city clerk as Public Document No. 10-0412-27 from St. Louis County, Minnesota, in connection with the improvement of Arrowhead Road in the vicinity of Rice Lake Road (south) and Arlington Avenue at no cost to city.

Resolution 10-0186 was unanimously adopted.
Approved April 12, 2010
DON NESS, Mayor

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RESOLVED, that in accordance with Section 33-125 of the Duluth City Code, 1959, as amended, the city council hereby indicates that on Monday, April 26, 2010, at 7:00 PM in the council chambers on the third floor in City Hall, the council will conduct a public hearing regarding whether to designate West Niagara Street in the vicinity of the College of St. Scholastica as a residential permit parking zone, as manifested by the map on Public Document No. 10-0412-28.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

FURTHER RESOLVED, that the city clerk is hereby directed to mail notice of such hearing by addressing such notice to occupant at each address within or abutting the parking areas of the streets so proposed to be designated.

Resolution 10-0157 was unanimously adopted.

Approved April 12, 2010

DON NESS, Mayor

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RESOLVED, that in accordance with Section 33-125 of the Duluth City Code, 1959, as amended, the city council hereby indicates that on Monday, April 26, 2010, at 7:00 PM in the council chambers on the third floor in City Hall, the council will conduct a public hearing regarding whether to designate 46th Avenue West between Fourth Alley and Fourth Street in the vicinity of Denfeld High School as a residential permit parking zone, as manifested by the map on Public Document No. 10-0412-29.

FURTHER RESOLVED, that the city clerk is hereby directed to mail notice of such hearing by addressing such notice to occupant at each address within or abutting the parking areas of the streets so proposed to be designated.

Resolution 10-0158 was unanimously adopted.

Approved April 12, 2010

DON NESS, Mayor

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RESOLVED, that in accordance with Section 33-88 of the Duluth City Code, 1959, as amended, the north side of Raleigh Street from 59th Avenue West to the alley between 59th Avenue West and 60th Avenue West be designated as no parking during school hours 7:00 AM - 4:00 PM. This resolution will take effect upon installation of the appropriate signs.

Resolution 10-0159 was unanimously adopted.

Approved April 12, 2010

DON NESS, Mayor

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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 19, 2010, 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 10-0164 was unanimously adopted.

Approved April 12, 2010

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to execute an agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 10-0412-30, with the Northeast Law Enforcement Administrators Council (NLEAC) for joint use of equipment purchased by NLEAC through the targeted-

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

methamphetamine initiative COPS program to reduce methamphetamine use in the city of Duluth.

Resolution 10-0171 was unanimously adopted.
Approved April 12, 2010
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with ISD No. 709 to provide law enforcement officers in the public schools, said agreement to be substantially in the form of that on file in the office of the city clerk as Public Document No. 10-0412-31; payments from the school district to be deposited in Fund 110, Department 160, Organization 1610, Source 4261.

Resolution 10-0173 was unanimously adopted.
Approved April 12, 2010
DON NESS, Mayor

- - -

WHEREAS, there is a public safety need to provide radio communication interoperability within our border counties and along our borders with Canada; and

WHEREAS, the federal government has made available a demonstration grant called the border interoperability demonstration grant program (BIDP); and

WHEREAS, the BIDP grant will allow us to develop a means of communication interoperability between Minnesota and Canadian public safety agencies along our international border, at our international ports and within border counties; and

WHEREAS, the regional radio board has worked with the state of Minnesota, department of public safety, the counties within the regions and the jurisdictions within the counties to complete a comprehensive application for this grant.

THEREFORE, BE IT RESOLVED, that the Duluth City Council hereby supports the grant application as needed and necessary for the citizens of our region and the public safety agencies serving those citizens.

FURTHER RESOLVED, that it is the intention of the city, upon the approval of this grant, to assist the regional radio board with the management and implementation of the grant.

Resolution 10-0175 was unanimously adopted.
Approved April 12, 2010
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute an agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 10-0412-32, with Lake Superior College providing for the sharing of law enforcement data at no cost.

Resolution 10-0176 was unanimously adopted.
Approved April 12, 2010
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute an agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 10-0412-33, with the city of Virginia as fiscal agent for the Northeast Law Enforcement Administrators Council (NLEAC), accepting \$200,493 to fund one officer position

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and related costs for a period of three years, said officer to provide assistance in investigating the manufacture, sale and use of methamphetamine and other related drugs in the Duluth area on behalf of the Lake Superior drug and gang task force and NLEAC, funds to be deposited in Fund 215-200-2293-4209-02.

Resolution 10-0183 was unanimously adopted.

Approved April 12, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a lease agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 10-0412-34, with Duluth and North Shore Railroad, d/b/a North Shore Scenic Railroad, for the use of Municipal Lot D located under the Interstate 35 freeway between Fourth and Fifth avenues West for parking for the patrons of its excursion trains operating from the St. Louis County Heritage and Arts Center for the period June 1, 2010, through September 30, 2010, at no cost to the railroad.

Resolution 10-0152 was unanimously adopted.

Approved April 12, 2010

DON NESS, Mayor

- - -

RESOLVED, that this resolution rescinds Resolution 92-0219, adopted on March 16, 1992, by the Duluth City Council, which authorized the Duluth Softball Players Association, Inc., to collect a \$15 player's fee from all players in softball leagues that are administered by the city's parks and recreation division (Resolution 92-0219 rescinded Resolution 08-0645, which was adopted August 14, 1986, Resolution 08-0645 replaced Resolution 08-0341, which was adopted May 2, 1983).

Resolution 10-0187 was unanimously adopted.

Approved April 12, 2010

DON NESS, Mayor

- - -

RESOLVED, that the city is hereby authorized to collect a \$100 per team fee from all teams playing in adult softball leagues in 2010 that are administered by the city's parks and recreation division, fee proceeds shall be used for capital improvements, maintenance and repairs at the city-owned Wheeler Field Athletic Complex, funds to be deposited into Fund 210-030-3190-4420-11.

Resolution 10-0188 was unanimously adopted.

Approved April 12, 2010

DON NESS, Mayor

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The following resolutions were also considered:

Resolution 10-0181, approving the budget for the fiscal year May 1, 2010, to April 30, 2011, in the amount of \$5,036,310 for the Spirit Mountain recreation area authority, was introduced by Councilor Fedora.

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

John Ramos reviewed the history on the capital improvements at Spirit Mountain. He felt that earmarked capital improvement money is being used for operational costs, which

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

means that no capital improvements will be done this year. Mr. Ramos noted that the need for these replacements would not go away, but the money will, and that the maintenance costs for the new alpine coaster and water pipeline will increase the need for capital improvement. He urged the council to keep the contract intact.

Resolution 10-0181 was adopted as follows:

RESOLVED, that the budget for the fiscal year May 1, 2010, to April 30, 2011, in the amount of \$5,036,310 as set out in the budget on file with the city clerk as Public Document No. 10-0412-18, for the Spirit Mountain recreation area authority is hereby approved.

FURTHER RESOLVED, the \$225,000 in the restricted repair and replacement account shall be made available for general operating expenses as needed for fiscal year 2011. Construction of the Alpine Coaster shall fulfill the obligation of the authority to expend monies for necessary repairs and replacements to the recreation facilities.

FURTHER RESOLVED, the city acting through the city treasurer, shall make available a line of credit up to \$350,000, to be drawn upon as needed, to assist in the management of cash flow within the budget as approved, same to be repaid in full (to a zero balance) by October 31 of that year. Interest at a rate of 4.00 percent per annum shall be charged on drawn funds. The city treasurer shall determine the forms, procedures and supporting documentation that will be required to draw on the line of credit. Such transactions shall be subject to audit and public disclosures.

Resolution 10-0181 was unanimously adopted.

Approved April 12, 2010

DON NESS, Mayor

- - -

Resolution 10-0153, approving a collective bargaining agreement between city of Duluth and Local 66 of AFSCME, represented by AFSCME Minnesota Council 5, for the year 2010, was introduced by Councilor Fedora for discussion.

Councilors Fedora and Stauber commented at length that they felt that there were several items in the contract that the administration should be looking at to change in future contracts to save tax dollars for the citizens of Duluth, such as stand-by pay and overtime, which the state auditor has red flagged.

Chief Administrative Officer David Montgomery reviewed the collective bargaining approach for settlement of financial uncertainties that the city is faced with until there can be clarity as to the financial status of the city.

Resolution 10-0153 was adopted as follows:

RESOLVED, that the proper city officials are hereby authorized to execute and implement a collective bargaining agreement with Local 66 of AFSCME, represented by AFSCME Minnesota Council 5, containing the same terms and conditions, and being in the same form (except for typographic or insubstantial corrections) as the contract on file with the city clerk as Public Document No. 10-0412-39, covering the year 2010.

Resolution 10-0153 was adopted upon the following vote:

Yeas: Councilors Boyle, Cuneo, Fosle, Gardner, Gauthier, Hartman and President Anderson -- 7

Nays: Councilors Fedora and Stauber -- 2

Approved April 12, 2010

DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Resolution 10-0155, by Councilor Boyle, appointing _____ to the civil service board, was introduced for discussion.

Councilor Boyle moved to amend the resolution to insert the name "Marshall Stenersen" in the blanks, which motion was seconded and carried upon the following vote:

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

Nays: Councilors Fedora, Fosle and Stauber -- 3

Councilor Fosle moved to amend the resolution by replacing the name of "Marshall Stenersen" with the name "Mary Nienabar," which motion was seconded and discussed.

Councilor Fedora expressed concern that several councilors received money from the AFSCME Council 5 Political Action Committee, of which Mr. Stenersen was the political director.

Councilor Fosle's amendment failed upon the following vote:

Yeas: Councilors Fedora, Fosle and Stauber -- 3

Nays: Councilors Boyle, Cuneo, Gardner, Gauthier, Hartman and President Anderson -- 6

Resolution 10-0155, as amended, was adopted as follows:

BY COUNCILOR BOYLE:

RESOLVED, that the Duluth City Council hereby appoints Marshall Stenersen to the civil service board for a term expiring on March 31, 2016.

Resolution 10-0155, as amended, was adopted upon the following vote:

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

Nays: Councilors Fedora and Fosle -- 2

Approved April 12, 2010

DON NESS, Mayor

- - -

Resolution 10-0146, granting a special use permit to AT&T for a 190 foot wireless communications monopole and associated ground equipment at 110 Spring Street (James Cheshire), was introduced by Councilor Stauber for discussion.

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

Richard Mc Govern stated that he opposes this resolution because this area is well known as a premier migratory flyway in the Upper Midwest and that this tower would act like a wall to migratory birds flying at night.

Councilor Gauthier stated that he had concerns over the resolution because it seems that AT&T comes up with the need for another new tower every couple of months.

James Cheshire, agent for AT&T, stated that this tower is primarily for "in building coverage" and that it will also be for 3g and 911 coverage for customers. He also explained at length the reason why this particular site was chosen versus co-locating on another tower.

Councilor Cuneo expressed a concern that there be a list of neutral criteria for approval of cell towers before any further approvals be given.

Councilor Fosle said that he surveyed the residents of the Riverside neighborhood and the majority of the residents were alright with the cell tower being built.

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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Yeas: Councilors Boyle, Cuneo, Gardner and Gauthier -- 4

Nays: Councilors Fedora, Fosle, Hartman, Stauber and President Anderson -- 5

Resolution 10-0146 was adopted as follows:

RESOLVED, that:

(a) The city council grants the request for a special use permit submitted by James Cheshire, Wireless Planning LLC, representing AT&T, for a multi-tenant (four total) wireless communications facility including a 190 foot tall monopole, 60 foot x 60 foot fenced compound, and 12 foot by 20 foot communications equipment building on property leased from Tate & Lyle Ingredients Americas, Inc., and legally described as part of Government Lot 3, Section 23, Twp 49N, Rng 15W, lying between the southeasterly line of the Burlington Northern Railroad and the harbor line; and

(b) Pursuant to Section 50-32 and Section 50-35(ff) 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 March 9, 2010, considered the petition's effect on the comprehensive plan and property values in the neighborhood and voted 5-3 to recommend approval of the petitioned for wireless communications facility, with conditions; and

(d) 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 190 foot tall monopole, 60 foot x 60 foot fenced compound and 12 foot by 20 foot communications equipment building subject to the following conditions:

(a) The site improvements be limited to, constructed and maintained according to the documents titled "AT&T Site Number DL2147, Morgan Park" prepared by Ulteig Engineers, dated 01/15/2010, sheets DL2147-T01, DL2147-C01, DL2147-C02, DL2147-L01, DL2147-S02, DL2147-S04 and shown on Public Document No. 10-0412-35; and

(b) That the applicant secure all permits required by federal, state, county or city laws and regulations; and

(c) Any alternations 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 IV.

Resolution 10-0146 was adopted upon the following vote:

Yeas: Councilors Boyle, Fedora, Fosle, Gardner, Gauthier, Hartman, Stauber and President Anderson -- 8

Nays: Councilor Cuneo -- 1

Approved April 12, 2010

DON NESS, Mayor

- - -

Resolution 10-0191, of intent to approve issuance of a concurrent use permit across Second Street for the existing tunnel to the historic county jail building, was introduced by Councilor Stauber.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Councilor Hartman moved to amend the first paragraph of the resolution by inserting the words "nation, state," after the phrase "is of historical significance to the," which motion was seconded and unanimously carried.

Resolution 10-0191, as amended, was adopted as follows:

WHEREAS, the city council believes the old county jail, located on the north side of West Second Street and west of Fifth Avenue West extended, which is no longer used as the county's jail facility and is therefore surplus to its needs, is of historical significance to the nation, state, city and county and to its citizens and the city wishes to encourage its preservation and redevelopment; and

WHEREAS, there has existed for many years a tunnel from said building to the St. Louis County Courthouse but no documentation has been found authorizing its use of the city's easement for Second Street; and

WHEREAS, the appropriate mechanism to gain formal approval of the existence and use of the tunnel is a concurrent use permit if the owner applies for and the city approves the grant thereof; and

WHEREAS, the county has found an entity committed to purchase and redevelop the jail building in a historically respectful manner who wishes to close on the purchase of the property by April 16, 2010, but who needs to secure assurances that necessary authorizations for the continued existence of and its use of the tunnel will be in place by that date; and

WHEREAS, time requirements flowing from the City Charter and the City Code would not allow a concurrent use permit for the tunnel to be approved prior to April 16; and

WHEREAS, the city council wishes to encourage and facilitate the redevelopment of the old jail property and believes that, given the long history of its existence, it would be appropriate to indicate its intention to approve a concurrent use permit for said tunnel upon appropriate request therefore.

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth hereby indicates its intent to approve issuance of a concurrent use permit, in the city's normal form, for the existing tunnel from the old county jail, located on the north side of West Second Street west of Fifth Avenue West extended to the St. Louis County Courthouse, upon appropriate application therefore by the property owner.

Resolution 10-0191, as amended, was unanimously adopted.

Approved April 12, 2010

DON NESS, Mayor

- - -

Resolutions 10-0192 and 10-0193, granting and denying, respectively, a water resource management ordinance variance requested by Park Point Properties seeking to reduce the minimum lot area needed to build four single family homes and three duplexes on property at 16th Street between Minnesota Avenue and Saint Louis Avenue, were introduced by Councilor Stauber for discussion.

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

Jan Cohen, Pete Clure and Elizabeth Hooper spoke in support of Resolution 10-0193 for reasons of: there is no hardship in this request for a variance; the planning commission voted this variance down; this eliminates over half of the parking on Minnesota Avenue for homeowners who need on street parking; more people living on the point will adversely affect the quality of life and this is changing the rules too late in the development process.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Tom Reistad (representing the applicant) and Paul Kellner spoke in support of Resolution 10-0192 for reasons of: this project has been going on for several months; there have been many public meetings for the community; there have been letters to the residents on the point explaining what this development is about; there will be over \$1 million spent on wages to develop this project; the new UDC will not have the lot requirement that is currently required and thus needing this variance and this plan is reducing the number of dwelling units that is allowed by the zoning.

Councilors Gauthier, Gardner and Cuneo supported Resolution 10-0193 for reasons of: supporting the neighborhood; as to what the new development chapter will allow has not been determined yet; the infrastructure is already strained and the only thing definite at this time is that it is not allowed under the current code.

Councilors Fosle and Stauber supported Resolution 10-0192 for reasons of: the planning commission has approved this change to the unified development chapter and the Minnesota department of natural resources (DNR) has loosened their rules.

Resolution 10-0192, granting a variance, failed upon the following vote (Public Document No. 10-0412-36):

Yeas: Councilors Fedora, Fosle, Stauber and President Anderson -- 4

Nays: Councilors Boyle, Cuneo, Gardner, Gauthier and Hartman -- 5

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Resolution 10-0193, denying the variance, was adopted as follows:

BY COUNCILOR STAUBER:

RESOLVED, that the city council finds the following facts:

(a) Park Point Properties applied for a variance pursuant to Duluth City Code Section 51-30 seeking a reduction in the required minimum lot area needed to construct dwellings in a class two, general development shoreland district. City Code Section 51-29(e) requires a minimum of 10,000 square feet of lot area for each building and the applicant has petitioned for a reduction to 5,000 square feet of lot area for each single-family dwelling to be constructed and 6,000 square feet of lot area for each two-family dwelling to be constructed with the proposal to construct four single-family dwellings and three two-family dwellings on the subject site; and

(b) Pursuant to Duluth City Code 51-30 an applicant for a variance must demonstrate the existence of a hardship and that no variance shall be granted that compromises the general purposes or intent of Article III of Chapter 51 of the Duluth City Code and that no variance shall be approved that results in adverse consequences to the environment; and

(c) Planning department staff recommended to the city planning commission that the requested variance be denied because Chapter 51 of the Duluth City Code does not allow this type of variance and because the applicant has not demonstrated a hardship; and

(d) After conducting a public hearing, the city planning commission considered Park Point Properties' variance request at its March 9, 2010, regular meeting; and

(e) The city planning commission unanimously denied variance request because Chapter 51 of the Duluth City Code does not allow this type of variance and because the applicant has not demonstrated a hardship; and

(f) Park Point Properties has filed an appeal of the city planning commission denial to the city council pursuant to Duluth City Code Section 51-10(d).

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

RESOLVED FURTHER, that Park Point Properties' appeal is denied and the action of city planning commission sustained because Chapter 51 of the Duluth City Code does not allow this type of variance and because the applicant has not demonstrated a hardship.

Resolution 10-0193 was adopted upon the following vote:

Yeas: Councilors Boyle, Cuneo, Gardner, Gauthier and Hartman -- 5

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

Approved April 12, 2010

DON NESS, Mayor

- - -

Resolution 10-0189, by councilors Stauber, Hartman and Fedora, adding an initiative to support revisions to Minnesota Statutes Section 471.345, subd. 13, to the city's legislative agenda for 2010, was introduced.

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

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Resolution 10-0174, by Councilor Gauthier, of support for the Minnesota Health Plan, was introduced for discussion.

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

Marlene Hart, Jerry Challman, Joel Sipress, Carl Sack, Buddy Robinson and Vicki Sanville expressed support for the resolution for reasons of: this resolution would bring down the cost of health care; it would eliminate insurance waste and greatly reduce drug prices; household premiums will be based on the ability to pay; it will slash employee and retiree care liability; it will be able to hold the government responsible for health care; this is a universal public health insurance program; it would be the end of health insurance tied to a job; the money saved for city retiree health care could be used for projects in Duluth; the savings for the city of Duluth would be approximately \$8.5 million less than it is now; it would be beneficial for new small businesses not having to supply health insurance and there is a need to look at the health of our community.

Councilor Gardner moved to amend the resolution by deleting the fifth and sixth paragraphs, which motion was seconded and carried unanimously.

Councilors supporting the resolution commented at length as to the merits of this resolution.

Councilors Fedora and Fosle expressed concerns that: in the bill, the city would still be making health care payments, just that they would be to the state; that there would be a business health tax; the plan would be no cost sharing where studies have shown that when there are deductibles and co-pays that individuals are more efficient with their health care dollars; that there have been no state hearings yet at the legislature; there are too many unanswered questions; there are other programs like Minnesota Health Share that have an economical package with good coverage; the city should wait until next year until there is an actual bill drafted; there is no way to pay for this plan at this time and it is felt by some that this will raise taxes.

Resolution 10-0174, as amended, was adopted as follows:

BY COUNCILOR GAUTHIER:

WHEREAS, approximately 7,000 Duluth residents are without health insurance; and

WHEREAS, approximately 71 percent of those people who are without health insurance are employed or under employed; and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

WHEREAS, the Minnesota health plan would lower the cost of insurance through a single payer system for all Minnesota residents; and

WHEREAS, the Minnesota health plan would reduce the need for unnecessary emergency room visits thus reducing the related costs; and

WHEREAS, 37 legislators are co-authors of the Minnesota health plan.

THEREFORE, BE IT RESOLVED, that the Duluth City Council hereby supports the Minnesota health plan.

FURTHER RESOLVED, that the council hereby directs the council president to inform area legislators of the council's support for the Minnesota health plan and urge them to vote in the affirmative for the Minnesota health plan.

Resolution 10-0174, as amended, was adopted upon the following vote:

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

Nays: Councilors Fedora, Fosle and Stauber -- 3

Approved April 12, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officers are authorized to enter into a agreement, a copy of which is on file in the office of the city clerk as Public Document No. 10-0412-37 with the Junior League of Duluth, Inc., for the reconstruction of Playfront Park at its current location at no cost to the city.

Resolution 10-0185 was unanimously adopted.

Approved April 12, 2010

DON NESS, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR STAUBER

10-020 - AN ORDINANCE AMENDING SECTION 44-2 OF THE DULUTH CITY CODE, 1959, AS AMENDED, AMENDING THE DEFINITION OF "SIGN" AND PROVIDING FOR SEPARATE SECTION NUMBERS FOR EACH DEFINITION.

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

Ryan Mears, member of the board of zoning appeals (BZA), commented on how the BZA decides hardships in granting a variance and where in this particular situation the school district had an issue with the definition of what is a "sign" under the current ordinance. He further explained at length the basis for this current ordinance and suggested changes.

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INTRODUCED BY COUNCILOR FOSLE

10-019 - AN ORDINANCE AMENDING SECTION 34-30 OF THE DULUTH CITY CODE, 1959, AS AMENDED, REGARDING TRESPASSING.

- - -

INTRODUCED BY COUNCILOR FOSLE

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

10-021 - AN ORDINANCE AMENDING SECTION 40-12 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO USER CHARGE FOR EXCESSIVE CONSUMPTION OF POLICE SERVICES.

- - -

The following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR FEDORA

10-018 (10022) - AN ORDINANCE CLARIFYING THE COMMUNITY ARTS SET-ASIDE TO APPLY ONLY TO FUNDS GENERATED BY THE CITY, AMENDING SECTION 20-19 OF THE CODE.

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

- - -

INTRODUCED BY COUNCILOR STAUBER

10-017 (10023) - AN ORDINANCE GRANTING TO DULUTH AREA FAMILY YMCA HERITAGE FOUNDATION, INC., A CONCURRENT USE PERMIT FOR PLACEMENT OF AN ENTRANCE CANOPY AND 37 ARCHITECTURAL SLATS PROJECTING INTO THE WEST FIRST STREET AND NORTH THIRD AVENUE WEST RIGHTS-OF-WAY ABUTTING THE YMCA BUILDING AT 302 WEST FIRST STREET.

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

- - -

INTRODUCED BY COUNCILOR GAUTHIER

10-016 - AN ORDINANCE CREATING A DULUTH PUBLIC UTILITIES COMMISSION, ESTABLISHING MEMBERSHIP AND POWERS AND DUTIES THEREOF AND AUTHORIZING SAID COMMISSION TO ESTABLISH VARIOUS UTILITY RATES, AMENDING CHAPTERS 2, 43 AND 48 OF THE CODE.

Councilor Gauthier moved to table the ordinance, which motion was seconded and unanimously carried.

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

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10022

AN ORDINANCE CLARIFYING THE COMMUNITY ARTS SET-ASIDE TO APPLY ONLY TO FUNDS GENERATED BY THE CITY, AMENDING SECTION 20-19 OF THE CODE.

The city of Duluth does ordain:

Section 1. That Section 20-19 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 20-19. Community arts set-aside.

(a) That there is hereby established a community arts set-aside of one percent of the cost of all new building construction projects costing in excess of

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

the city's current capitalization level for buildings and structures, funded in whole or in part by city funds for the furtherance of arts projects in the city. Upon the approval of any such project, an amount equal to the set-aside shall be transferred by the city auditor from the fund accounting for the building construction project to the municipal arts fund; provided, however, in the event that the project is funded in part by another entity, the city shall make every effort to secure an additional one percent of such entity's contribution to the project for the municipal arts fund; provided further, however, that the city's contribution to the municipal arts fund shall be limited to the set-aside on its share of the project costs;

(b) For the purposes of this Section, the phrase "city funds" shall mean all funds coming from or passing through the city's treasury for which the city is required to account under the generally accepted accounting principals except funds received by the city from governmental, public or private sources for the purpose of defraying all or a portion of the cost of the new building construction project or the proceeds of bonds to be repaid solely from pledging the revenues from the new building construction project.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: May 16, 2010)

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

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

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed April 12, 2010
Approved April 12, 2010
DON NESS, Mayor

- - -

ORDINANCE NO. 10023

AN ORDINANCE GRANTING TO DULUTH AREA FAMILY YMCA HERITAGE FOUNDATION, INC., A CONCURRENT USE PERMIT FOR PLACEMENT OF AN ENTRANCE CANOPY AND 37 ARCHITECTURAL SLATS PROJECTING INTO THE WEST FIRST STREET AND NORTH THIRD AVENUE WEST RIGHTS-OF-WAY ABUTTING THE YMCA BUILDING 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 granted to Duluth Area Family YMCA Heritage Foundation, Inc., and its successors in interests, referred to herein as the permittee, to install and maintain an entrance canopy and 37 architectural slats, referred to herein as the private improvements, unto and over the following described areas of the public easement and to temporarily occupy such easement for such purpose: that part of the rights-of-way of West First Street and North Third Avenue West adjoining Lots 50, 52 and 54, Duluth Proper First Division, as the same

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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.

Section 2. Before this ordinance shall be effective for any purpose whatsoever, the permittee shall file with the city clerk: a duly executed and acknowledged written acceptance of the terms of this ordinance and a certificate of insurance approved as to form by the city attorney evidencing that the permittee has in force insurance meeting the following requirements:

Comprehensive general liability insurance policy shall be maintained in force by permittee 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 permittee's activities occurring upon or within the public easement occupied pursuant to this ordinance whether said activities are performed by employees or agents under contract to permittee. 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. The certificate shall also reference this ordinance by number. 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.

The permittee shall further cause a current version of the required insurance certificate to be filed with the city clerk while the permission granted by this ordinance is exercised.

Section 3. The permit granted by this ordinance may be terminated at any time by the city official exercising departmental authority of the public easement if the city of Duluth determines to use the area occupied by the permittee for any purpose in accordance with the duly dedicated public easement or other lawful use. Unless a shorter notice period is necessitated by emergency circumstances, or the violation of the conditions set forth in this ordinance, giving the permittee 30 days written notice and delivered via electronic transmission, facsimile transmission or standard United States Postal Service mail delivery to the last known electronic address, facsimile number or mailing address of the permittee shall be sufficient notice of termination.

Upon notice of termination, permittee shall remove the private improvements within 30 days, all at the expense and cost of the permittee, and without right to claim from the city of Duluth, or any of its officers, agents or servants, any compensation or reimbursement for damages of any kind whatsoever.

Section 4. By accepting the terms of this ordinance, the permittee agrees to save harmless and defend and indemnify the city of Duluth against any claims or demand which may arise against the city of Duluth by reason of the existence of the private improvements, or any act or omission of the permittee, its employees, agents, and assigns and agree that the private improvements shall be so constructed and at all times maintained so as in no way to interfere with or damage any portion of the public improvements or other public utilities now or to be hereinafter located in any part of said public easement. The permittee further agrees that the city of Duluth shall not be liable for damage caused to the private improvements while the city is engaged in repairs, maintenance or replacement to the public improvements or public utilities, including any snow removal operations, and agrees to pay to the city of Duluth all extra costs of installation of any sewers, gas mains, water mains, pipes, conduits or other public utilities made necessary by the presence of the private improvements in the public easement.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Section 5. The permittee shall, at its expense, protect, support, temporarily disconnect or remove from the public easement, the private improvements when required by city officials by reason of snow removal, traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines and tracks, the installation or repair of any other type of structures or improvements by governmental agencies, when acting in a governmental or proprietary capacity.

Section 6. The permittees shall further observe the following conditions:

(a) Upon any sale or transfer of permittee's interest in the permit granted by this ordinance, the permittee shall provide written notice to the city clerk within five days of such transfer. The permittee's successor in interest shall file with the city clerk within ten days of such transfer a duly executed and acknowledged written acceptance of the terms of this ordinance and the certificate of insurance required in Section 2, above;

(b) This permit is subject to termination by the city of Duluth for failure to comply with the terms and conditions of this permit. Giving the permittees ten days written notice, delivered as provided in Section 3, above, shall be sufficient notice of termination. Upon termination, permittee shall remove the private improvements as provided in Section 4, above;

(c) Permittee's use of the public easement shall be limited to the private improvements shown on attachments A, B and C in the March 9, 2010, staff report to the planning commission, FN 10016 (Public Document No. 10-0412-38);

Section 7. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: May 16, 2010)

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

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

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed April 12, 2010
Approved April 12, 2010
DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, April 26, 2010, 7:00 p.m. in Room 303, City Hall, Duluth, Minnesota.

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

Absent: None -- 0

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The minutes of council meetings held on March 8 and 22, 2010, were approved upon a unanimous vote.

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

10-0426-01 Amazing Grace Bakery and Café withdrawing concurrent use permit application to retain fence in front of establishment at 394 South Lake Avenue and requesting a sidewalk obstruction permit at the same address. -- Planning commission

10-0426-07 The following communications regarding the proposed support for a temporary schedule change for the Aerial Lift Bridge (10-0216R): (a) Dennis Hoelscher (2); (b) Sea Service, LLC (2). -- Received

10-0426-08 The following communications regarding the proposed vacation of part of the alley southwest of the intersection of Kenwood Avenue and Arrowhead Road (10-0222R and 10-0223R): (a) Barbara Brooks (2); Duluth Teachers Credit Union, by William M. Burns, attorney (2); (c) Mary Gallegos; (d) Emily Orum and Mike Badger. -- Received

10-0426-09 The following communications regarding the rental licensing 300 foot rule (10-023-O): (a) Gayle Ankarlo; (b) Barbara Brooks; (c) Gerald Cleveland; (d) Shane Doesken; (e) Mike and Deb Hennessy; (f) Sharon Nelson; (g) Warren T. Olsen; (h) Tara Zajac. -- Received

10-0426-10 The following communications regarding the proposed approval of the Duluth economic development authority's purchase of the Temple Opera, Norshor Theater and Norshor Annex buildings (10-0227R): (a) Micki Agar; (b) Dan Ahonen; (c) Arlene Anderson; (d) Dylan Anderson; (e) Suzie Baer; (f) Heidi Bakk-Hansen; (g) Samantha Balmer; (h) Alicia Bauers; (i) Jason Beckman; (j) Benjamin Berg; (k) Harley Blake; (l) Dave Blustin; (m) Bianca Box; (n) Scott Braaten; (o) Carolyn Brede; (p) Trevor Browne; (q) Sarah Butler; (r) Laurel Chapman; (s) Patrick Colvin; (t) Heather Davern; (u) Shana David-Massett and Tim Massett; (v) Kathy Dockter; (w) David Dolliver; (x) Sara Duke; (y) Jessica Eaton; (z) Kala M. Edwards; (aa) Arne Elofsen; (bb) Kraig Erickson; (cc) Rebecca Frestedt; (dd) Elizabeth Fryberger Pritchett; (ee) Andrew George; (ff) Adu Gindy; (gg) John M. Glendenning, Jr.; (hh) Mark T. (Marco) Good; (ii) Dave and Betty Gordon; (jj) Ben Grams; (kk) Adam Guggemos; (ll) Terry Guggenbuehl; (mm) Kelley (Bassett) Gundale; (nn) Tim Hagley; (oo) Vicki Hanson; (pp) Sterling Harris; (qq) Helen Herrick; (rr) Jessie Heydt-Nelson; (ss) Sarah Hoheisel; (tt) Lisa Holliday; (uu) Will Hurst; (vv) Andy Iwanin; (ww) Katy Jablonski; (xx) Sherry Jacobi; (yy) Mandie Johnson; (zz) Tamara Jones; (aaa) Andy Kadlec; (bbb) Elen Kaldor; (ccc) Dan Kamben; (ddd) Claire Kirch; (2); (eee) Joe Kmiech; (fff) Ruth Knezevich; (ggg) Amy Konczak; (hhh) Pamela Lake; (iii) Bill Lamb; (jjj) Donn Larson; (kkk) Steve Lasky; (lll) Heather Larson; (mmm) Melissa LaTour; (nnn) Jon Leppala; (ooo) Joan Lindgren; (ppp) Yvette Little; (qqq) Scott Longaker; (rrr) Bruce Ludwig; (sss) Chris Marshall; (ttt) Lorande MCleete; (uuu) Patrick Arden McNally; (vvv) Janet Meany; (www) Dan Mettner; (xxx) Serina Modec-

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Halverson; (yyy) Matt Muecke; (zzz) Jessica Myshack; (aaaa) Becky Nelson;(bbbb) Bethany Nelson; (cccc) Mary Ness; (dddd) Nathan J. Ness; (eeee) Jim Ojala; (ffff) Jan and Einar Olafsson; (gggg) Jessica Olson; (hhhh) Jim Olson; (iiii) Wendy Olson; (jjjj) Ellen Palmer; (kkkk) Sarah Paro; (llll) Michael R. Pennington; (mmmm) Carri Priley; (nnnn) Sherry Ribaud; (oooo) Linda Riddle; (pppp) Erik Riker-Coleman; (qqqq) Haley Rogers; (rrrr) Barbara Savage; (ssss) Wendy Schwartz; (tttt) Richard Sheff; (uuuu) Gayle M. Streier; (vvvv) Adam Swanson; (wwww) Tracey Tellor; (xxxx) Terese Tomanek; (yyyy) Ryan Van Slooten; (zzzz) MaryRose Varo; (aaaaa) Helen Velishek; (bbbbb) Sandra Wade; (ccccc) Sue and Bill Ward; (ddddd) Steve West; (eeeeee) Nancy Whitehead; (fffff) Kati Winkler; (ggggg) Susan Wiste; (hhhhh) Cathy Wright; (iiiiii) Renee Wynne. -- Received

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REPORTS OF BOARDS AND COMMISSIONS

10-0426-02 Commission on disabilities minutes of March 3, 2010, meeting. -- Received

10-0426-03 Duluth public arts commission minutes of: (a) March 15; (b) April 5, 2010, meetings. -- Received

10-0426-04 Duluth human rights commission minutes of March 10, 2010, meeting. -- Received

10-0426-05 Planning commission minutes of: (a) March 9; (b) March 23, 2010, meetings. -- Received

10-0426-06 Spirit Mountain recreation area authority minutes of: (a) March 18; (b) March 29, 2010, meetings. -- Received

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At this time, 7:02 p.m., President Anderson closed the council meeting and declared open the public hearing on the proposed designation of West Niagara Street as a residential permit parking zone.

David Yapel noted that he initiated the petition process, reviewing that over the last couple of years there has developed in this residential area a trend of 30 to 40 students and faculty parking on this two block stretch on any given day. He commented that excessive speeds and encroachments on driveways is common and desired to return this street to a quiet residential street.

At this time, 7:04 p.m., President Anderson declared this hearing closed and declared open the public hearing on the proposed designation of 46th Avenue West as a residential permit parking zone.

No one appeared who wished to be heard and at 7:03 p.m. President Anderson declared the public hearing closed and resumed the regular council meeting.

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OPPORTUNITY FOR CITIZENS TO BE HEARD

Barbara Guy spoke of her concerns relative to some adverse conditions associated with HRA housing conditions.

- - -

Scot Bol, Rebecca Covington, Donn Larson, Jessica Olson and Bill Dinan spoke on their reasons for supporting ranked choice voting and thanked the council for having an upcoming presentation on it.

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Karen Lewis asked the council to review the rules for awnings and banners hung over the street as to the appropriateness before incorrect ones are installed.

- - -

MOTIONS AND RESOLUTIONS

The following entitled resolution was read for the first time:

BY PRESIDENT ANDERSON

10-0196 - RESOLUTION AMENDING THE STANDING RULES - ORDER OF BUSINESS FOR ALL MEETINGS EXCEPT ANNUAL ORGANIZATION MEETING.

- - -

CONSENT AGENDA

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

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

RESOLVED, that the assessment levied for reinstatement of canceled garbage assessment at 312 South 73rd Avenue West is set. The total assessable amount is \$1,241.98 (contracts: 2005310, 2006310, 200731 and 2008310) and this assessment is hereby confirmed.

Resolution 10-0224 was unanimously adopted.

Approved April 26, 2010

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Citon Computer Corporation for the purchase and delivery of Lenovo computer hardware (laptops) and related equipment for various city departments and divisions as needed in year 2010 at prices equal to or less than Minnesota's state contract price with Lenovo (United States), Inc., C#441948, WSCA #B27168, Release C-905(5), for a total estimated amount not to exceed the budget allocation of \$150,000, payable from General Fund 110, Department/Agency 700, Organization 1420, Object 5580.

Resolution 10-0177 was unanimously adopted.

Approved April 26, 2010

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Twin Port Mailing, from May 1, 2010, through April 30, 2011, with four one-year renewal options, for postage (\$250,000) and mailing (\$48,576) services for various departments in accordance with specifications and the vendor's bid, for a total estimated amount of \$298,576, terms net 30, and payable from various funds, agencies, organizations and objects.

Resolution 10-0201 was unanimously adopted.

Approved April 26, 2010

DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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, 2010, and ending April 30, 2011, 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. 10-0426-11.

Resolution 10-0204 was unanimously adopted.

Approved April 26, 2010

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, 2010, and ending April 30, 2011, 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. 10-0426-12.

Resolution 10-0205 was unanimously adopted.

Approved April 26, 2010

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, 2010, and ending March 31, 2011, subject to departmental approvals and the payment of sales and property taxes:

Order of Owls, Nest #1200, 118 East Second Street.

Resolution 10-0206 was unanimously adopted.

Approved April 26, 2010

DON NESS, Mayor

- - -

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

College of St. Scholastica, 1200 Kenwood Avenue, for April 30, 2010, with Luke Moravec, manager.

Resolution 10-0207 was unanimously adopted.

Approved April 26, 2010

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the temporary expansion of the designated serving area of the following on sale intoxicating liquor licenses, subject to departmental approvals, with any specific restrictions:

Grandma's, Inc. (Grandma's Saloon & Grill), 522 Lake Avenue South, for June 19, 2010, with the serving and music ceasing at 1:00 a.m.

Resolution 10-0208 was unanimously adopted.

Approved April 26, 2010

DON NESS, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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RESOLVED, that city officials are hereby authorized to contract with SHI International, Inc., for the purchase and delivery of computer software and hardware as needed in year 2010 in accordance with Minnesota State Contract #436392, Release C-816(5), specifications and pricing, not to exceed the budget allocation of \$300,000, terms net 30, FOB destination, payable from various funds, departments/agencies, organizations, objects.

Resolution 10-0211 was unanimously adopted.
Approved April 26, 2010
DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Insight Public Sector, Inc., for the purchase and delivery of computer hardware and related products as needed in year 2010 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 10-0212 was unanimously adopted.
Approved April 26, 2010
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. 10-0426-13, with CRW Systems, Inc., for the licensing, installation, use and support of its land management software system (TRACKiT) for the city's centralized land management system in an amount not to exceed \$313,420.81, payable as follows:

- (a) \$120,000.00 from Capital Equipment Fund 250, Department/Agency 015, Organization 2008, Object 5580, Project No. CE250-E802;
- (b) \$63,420.81 from Capital Equipment Fund 250, Department/Agency 015, Organization 2009, Object 5580, Project No. CE250-E903;
- (c) \$130,000.00 from Capital Equipment Fund 250, Department/Agency 015, Organization 2010, Object 5580, Project No. CE250-E1004.

Resolution 10-0213 was unanimously adopted.
Approved April 26, 2010
DON NESS, Mayor

- - -

RESOLVED, that the appointment by Mayor Ness of Lorenda M. Ingersoll to the housing and redevelopment authority of Duluth for a term expiring on January 5, 2015, replacing Carol Bearheart, is confirmed.

Resolution 10-0195 was unanimously adopted.
Approved April 26, 2010
DON NESS, Mayor

- - -

RESOLVED that the proper city officials are authorized to make the following fund increases in the Federal Program Fund 262, Agency 020, Object 5434, HUD-funded community development account as set forth below:

2010 CDBG Program - Fund 262 - Project CD10CD Account Revised 2010

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Sub-project	Activity	Project	Amount	New Grant	Difference
ADM	5434	Contingency		\$10,698	\$10,698

Resolution 10-0202 was unanimously adopted.
 Approved April 26, 2010
 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, 2010 HUD-funded community development account as set forth below:

2010 HOME Program - Fund 260 - Project CD10HM					
Sub-project	Activity	Project	Amount	New Grant	Difference
CH03	1228	East Side housing	\$112,321	\$105,868	(\$6,453)
AD03	AD01	Program administration	\$79,000	\$78,283	(\$ 717)
					\$7,170

Resolution 10-0203 was unanimously adopted.
 Approved April 26, 2010
 DON NESS, Mayor

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RESOLVED, that the city council finds the following:

(a) Miner's, Inc., has submitted to the city council a request for C-5 plan approval, in accordance with Section 50-140 of the City Code, for a 10,211 square foot building addition and associated parking lot expansion, as well as relocation of a driveway and ground sign as a result of the realignment of Mall Drive by the Minnesota department of transportation all on property located at 5401 Burning Tree Road (Burning Tree Division, Block 1, Lot 1); and

(b) Said permit application was duly referred to the city planning commission for a study, report and public hearing at their April 13, 2010, 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 Miner's, Inc., for amendment of a C-5 plan for 5401 Burning Tree Road, including a 10,211 square foot building addition and associated parking lot expansion, as well as relocation of a driveway and ground sign as a result of the realignment of Mall Drive by the Minnesota department of transportation, subject to the following conditions:

(1) The project be limited to, constructed and maintained according to the following documents drafted by DSGW and referred to as "Miller Hill Super One Store #576 Addition" and as identified as Public Document No. 10-0426-14:

(A) Site plan (Sheet A1.1) dated February 25, 2010, revised 4-12-2010;
 (B) Landscape plan (Sheet A1.2) dated February 25, 2010, revised 4-12-2010;

(C) Exterior elevations (Sheet A5.1) dated February 25, 2010;
 (D) Erosion control and grading (Sheet C1.0) dated February 25, 2010, revised 4-7-2010;

(E) Stormwater pollution prevention plan (prepared by Bocht Engineering) dated February 25, 2010, revised April 7, 2010; and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

(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

(e) Approval is also granted for the following variances, which are authorized by Section 50-143:

(1) To construct 32 additional parking stalls for the building expansion rather than the required 39 stalls, bring the total number of stalls on the site to 305; and

(2) To reduce the parking lot landscape setbacks for Mall Drive as shown on the plans listed in Section (d) of this resolution.

Resolution 10-0215 was unanimously adopted.

Approved April 26, 2010

DON NESS, Mayor

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RESOLVED, that the city of Duluth act as the legal sponsor for the projects described in Grant Agreement No. BDPI-10-0002-O-FY10 from the state of Minnesota department of employment and economic development and that the proper city officials are authorized to accept said grant in the amount of \$500,000, said funds to be deposited in Fund 255, for the purpose of constructing roads and utilities on the site of the former Atlas Cement Plant, subject to receiving a commitment from the Duluth Seaway Port authority in the amount of at least \$188,000 to provide a portion of the local matching funds required by said grant.

RESOLVED, that the city of Duluth has the legal authority to apply for financial assistance, and the institutional, managerial and financial capability to ensure adequate construction, operation, maintenance and replacement of the proposed project for its design life.

RESOLVED, that the city of Duluth has not violated any federal, state, or local laws pertaining to fraud, bribery, kickbacks, collusion, conflict of interest or other unlawful or corrupt practice.

RESOLVED, that the city of Duluth commits no less than \$500,000 towards the local match requirement subject to the aforesaid commitment from the Duluth Seaway Port authority.

RESOLVED, that the city of Duluth certifies that it will comply with all applicable laws, regulations, and rules of the business development infrastructure application.

RESOLVED, that the city certifies that it will comply with all applicable laws and regulations as stated in all contract agreements it accepts.

Resolution 10-0220 was unanimously adopted.

Approved April 26, 2010

DON NESS, Mayor

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RESOLVED, that the city council makes the following findings:

(a) Section 45-4.1 of the Duluth City Code, 1959, as amended, allows the city council, by resolution, to allow the placement of objects or material on the public sidewalks or boulevard areas where the city council finds that such objects will not substantially interfere with pedestrian traffic and that the placement of such objects is beneficial to the public welfare; and

(b) Takk for Maten/Kippis Restaurant has requested permission to place tables and chairs on the sidewalk of the Superior Street right-of-way of property located at 11 East

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Superior Street, described as Superior Street right-of-way adjoining Lots 1 and 3, East Superior Street, Duluth Proper First Division; and

(c) Section 45-4.1, the city planning commission, at its regular meeting on April 13, 2010, reviewed this request and considered the comments and recommendations of the director of public works and recommends the conditional placement of the tables and chairs.

RESOLVED FURTHER, based upon the above noted findings, that Takk for Maten/Kippis Restaurant is hereby permitted to place certain exterior furnishings, described below, on or within the sidewalk area of the right-of-way of East Superior Street of the city of Duluth and the exterior furnishings be limited to that area immediately adjacent to the Takk for Maten/Kippis Restaurant, subject to the following conditions:

(a) The exterior furnishings permitted by this resolution are limited to the following: no more than five tables, 12 chairs, server station and decorative fencing for boundary delineation;

(b) The table and seating area and server station area shall be delineated from the public pedestrian way by a decorative fence. This decorative fence shall be removed during all times that tables and chairs are not in place as well as when the restaurant is not open for business;

(c) All exterior furnishings to be placed on the sidewalk shall be approved in writing by the city architect, whose approval shall not be unreasonably withheld. The purpose of this review and approval is to ensure that the exterior furnishings are complimentary to the design character of the area and to protect the public's safety;

(d) The exterior furnishings permitted shall be located such that a public pedestrian walkway be maintained that is not less than six feet in width as measured from any permanent or temporary obstructions including, but not limited to, fire hydrants, lamp posts, flower planters and newspaper stands;

(e) That the placement of exterior furnishings shall be located according to the criteria above only during the hours of operation of Takk for Maten/Kippis Restaurant and shall be removed from the sidewalk when the business is closed;

(f) That the applicant shall be responsible for policing refuse in the immediate area, which includes removing all food and beverage spills from the sidewalk surface;

(g) No amplified music shall be used in the sidewalk obstruction area;

(h) That the applicant be on notice that this permit is not exclusive, and that the city may require the permittee to remove the exterior furnishings for specific events conducted in the East Superior Street area; the areas described above shall be open to the general public; and the general public shall have the right to occupy tables and chairs in the area subject to this permit without making a purchase from the permittee, so long as said members of the general public are orderly and violate no provisions of the law;

(i) This permit shall be in effect until the lease currently held by Takk for Maten/Kippis Restaurant is terminated or transferred to another party, at which time renewal may be requested; and

(j) This permit is subject to revocation by a resolution of the city council and 14 days notice to the permittee for failure to maintain the terms and conditions of this permit or at the discretion of the city.

RESOLVED FURTHER, that before this resolution shall be effective for any purpose whatsoever, the aforesaid permittee shall file with the city clerk: a duly executed and acknowledged written acceptance of the terms of this resolution; a certificate of insurance approved as to form by the city attorney evidencing that the permittee has in force insurance

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

meeting the following requirements:

(a) A comprehensive general liability insurance policy shall be maintained in force by permittee in an amount not less than \$500,000 for injuries or death and in an amount not less than \$500,000 for property damage or \$1,500,000 single limit coverage. Such coverage shall include all permittee activities occurring on the permitted premise whether said activities are performed by employees or agents under contract to permittee. 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.

RESOLVED FURTHER, the approval was made because of the city planning commission's findings that the exterior furnishings will not substantially interfere with pedestrian traffic and that said furnishings will be beneficial to the public welfare if the conditions in paragraphs (a) through (j) are observed.

Resolution 10-0221 was unanimously adopted.

Approved April 26, 2010

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into a service agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 10-0426-15, with Duluth Sister Cities International, Inc., (DSCI) in an amount not to exceed \$20,000, payable from Fund 258, Agency 030, Account 5436-05.

Resolution 10-0180 was unanimously adopted.

Approved April 26, 2010

DON NESS, Mayor

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THE CITY COUNCIL FINDS:

(a) 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;

(b) That studies have shown that major improvements are needed for the Highland elevated water tank;

(c) That the estimated cost of improvements to the Highland elevated water tank is \$3,010,165, and that the Minnesota public facilities authority may have loan monies available to finance the project costs;

(d) And, to receive this money, the city must submit required information and enter into a loan 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 the Highland elevated water tank as described in the application.

FURTHER RESOLVED, that the city of Duluth has the legal authority to apply for the money, and has 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 \$3,010,165 or the as-bid costs of the project.

FURTHER RESOLVED, that the city hereby expresses its official intent to use proceeds

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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 10-0198 was unanimously adopted.
Approved April 26, 2010
DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to execute an agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 10-0426-16, between the city of Duluth and the Duluth Softball Players Association, Inc., a Minnesota nonprofit corporation, for the operation of the Wheeler Field Softball Complex concessions during the 2010 softball season at no cost to either party.

Resolution 10-0197 was unanimously adopted.
Approved April 26, 2010
DON NESS, Mayor

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RESOLVED, that the proper city officials are authorized to accept \$47,002 from the Arrowhead Library System for use in 2010 by the Duluth public library to purchase library materials and access to on-line resources, said sum to be deposited in Fund 110-121-1218-4654-02.

Resolution 10-0217 was unanimously adopted.
Approved April 26, 2010
DON NESS, Mayor

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The following resolutions were also considered:

RESOLVED, that city officials are hereby authorized to contract with Northland Constructors of Duluth, LLC, and Ulland Brothers, Inc., for the purchase of bituminous material, hot mix (fine), as needed from June 1, 2010, through May 31, 2011, for the street maintenance division in accordance with the St. Louis County's bid specifications and vendors' bids as listed below:

	Base Amount	Sales Tax	Totals
Northland Constructors of Duluth, LLC (\$48.50/ton)	\$560,621.20	\$38,542.71	\$599,163.91
Ulland Brothers, Inc. (\$47.41/ton)	\$606,848.00	\$41,720.80	\$648,568.80
Totals	\$1,167,469.20	\$80,263.51	\$1,247,732.71

The combined total amount of \$1,247,732.71, based on estimated tonnage of 11,560, terms net 30, is payable as follows:

- (a) Requisition 10-0089:
 - (1) \$335,531.79, from General Fund 110, Department/Agency 121, Organization 1217-2140, Object 5222;
 - (2) \$263,632.12, from Street Improvement Program Fund 440, Department/Agency 038, Object 5222, Project No. SIP2010-0820B.
- (b) Requisition 10-0233:
 - (1) \$648,568.80 from Street Improvement Program Fund 440, Department/Agency 038, Object 5222, Project No. SIP2010-0820B.

Resolution 10-0199 was adopted upon the following vote:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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

Nays: None -- 0

Abstention: Councilor Fedora -- 1

Approved April 26, 2010

DON NESS, Mayor

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Resolution 10-0228, by councilors Fedora, Fosle and Stauber, requesting investigation pertaining to DEDA's purchase agreement with Templecorp, Inc., for the Temple Opera, Norshor Theater and Norshor Annex buildings, was introduced for discussion.

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Councilor Fedora moved to suspend the rules to also consider Resolution 10-0227, approving DEDA's purchase agreement with Templecorp, Inc., for the Temple Opera, Norshor Theater and Norshor Annex buildings, at this time, which motion was seconded and unanimously carried.

Councilor Fedora moved that the rules be suspended to hear speakers on the issue, which motion was seconded and unanimously carried.

Richard McGovern spoke in support of Resolution 10-0228 for the reasons of: there has not been sufficient analysis for this purchase; the city would be paying premium dollars for this building and a private developer should be purchasing this building, not the city.

Kristi Stokes, Trevor Kaldor, Karen Lewis and Pam Kramer spoke in support of Resolution 10-0227 and in opposition to Resolution 10-0228 for the reasons of: this is a golden opportunity for the community; this location has the potential to shine with the development of the Old Downtown area; restored theaters have played a key role in the revitalization of Downtown communities across the country; the theater has fond memories for many individuals; nearly 4,000 individuals have joined a Facebook page to save the Norshor and have pledged volunteer time and money; while there will need to be structural changes and/or improvements that will need to be addressed, the city should proceed with this purchase; the Old Downtown strategic plan, the arts based revitalization plan, the Downtown historic district study, the preservation development initiative, the East Downtown Hillside and Waterfront charette all called for the restoration of the Norshor; many communities do not have an historic theater anymore and historic tax credits are available from the state.

Councilors Fedora, Fosle and Stauber spoke in support of Resolution 10-0228 for the reasons of: a site assessment, which is a detailed analysis of the property to determine any unforeseen problems, and a MAI appraisal, which is a detailed appraisal of the property, which quantify and qualify what the citizens of Duluth are acquiring, are not too much to ask for on a purchase of \$ 2.6 million; Northland Consulting engineers have expressed concerns of estimates for weatherproofing to be in the range of \$900 thousand to \$1 million and to bring the building up to code compliance could add another \$1 to \$1.5 million, without professional fees; in 2001, there were extensive concerns from DEDA about purchasing the Norshor, relative to the financial implications, code violations, historic preservation implications, the availability of potential grants, anticipated revenues and costs, etc., and it was unanimously denied; the administration and council at their recent workshop agreed about the need for long-range planning, with public input, which has not happened here; concern that a nonprofit would qualify for the development tax credits and that down the road costs for maintenance and repairs would be taken from the tourism or general funds.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Councilors Boyle, Cuneo, Gardner, Gauthier and Hartman spoke in support Resolution 10-0227 for the reasons of: getting rid of a strip club speaks volumes as another form of value; if you do not invest in a community, you will not develop; this is a beloved landmark in the community; this will save \$1.6 million on skywalk construction; this is the last piece in the development of the historic district; over 130 e-mails have been received on this issue and 95 percent were supportive; there are state and federal rehabilitation tax credits available now; there would be a natural corridor for the skywalk to come through this building; regardless of the potential issues that may arise with the building structure, the majority of Duluthians heard from want the council to proceed with the purchase and this purchase has nothing to do with general fund expenditures that could be adversely affected because this is tax increment economic development funding, meant to be spent on development.

Mayor Ness expressed appreciation for the diligence of review that the council has done, but noted a concern about what effect the delays with the proposed studies would have on the deal going forward and thus falling apart. He gave examples of why the council should look at the big picture of how this building fits into the revival of the Old Downtown district.

Resolution 10-0228, requesting further investigation, failed upon the following vote (Public Document No. 10-0426-17):

Yeas: Councilors Fedora, Fosle and Stauber -- 3

Nays: Councilors Boyle, Cuneo, Gardner, Gauthier, Hartman and President Anderson -- 6

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Resolution 10-0227, approving DEDA's purchase agreement, was adopted as follows:

RESOLVED, that pursuant to the requirements of Resolution No. 09-0342, the city council hereby approves the agreement, a copy of which is on file in the office of the city clerk as Public Document No. 10-0426-18, between the Duluth economic development authority (DEDA) and Templecorp, Inc., for the purchase of the Temple Opera, Norshor Theater and Norshor Annex buildings for \$2,600,000, which agreement was authorized by DEDA pursuant to its Resolution No. 10D-20.

Resolution 10-0227 was adopted upon the following vote:

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

Nays: Councilors Fedora, Fosle and Stauber -- 3

Approved April 26, 2010

DON NESS, Mayor

- - -

RESOLVED, that the city council hereby accepts an additional \$385,000 in neighborhood stabilization program (NSP) funds from the Minnesota housing finance agency and authorizes proper city officials to enter into an amendment to the NSP grant agreement increasing the total grant award to \$1,985,000, and that proper city officials are authorized to enter into a first amendment to the Northern Communities Land Trust NSP grant agreement, Contract No. 20896, Resolution No. 09-0228, increasing the amount awarded to the Northern Communities Land Trust (NCLT) by \$385,000.

Resolution 10-0200 was unanimously adopted.

Approved April 26, 2010

DON NESS, Mayor

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Resolutions 10-0209 and 10-0210, affirming and reversing, respectively, the decision of the board of zoning appeals relating to the definition of "sign" provided in the Duluth Legislative Code Section 44-2(t) (ISD #709 re: 301 North 40th Avenue East), were introduced by Councilor Stauber for discussion.

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

Kerry Leider, representing Independent School District No. 709, spoke in support of Resolution 10-0210, for the reasons of: he did not feel the intent of the Code relating to signs was to prohibit architectural inscription like what is on top of the St. Louis County Courthouse; this feature on the new eastern high school is not a sign, just an architectural inscription pressed into the stone; it faces the field, not Superior Street or 40th Avenue East and it is not lighted or highlighted and only reads "the foundation of every state is the education of its youth."

Councilors discussed at length such aspects of: the time line for starting work on this; waiting for the ordinance change that would allow for this versus reversing the decision of the board of zoning appeals and the school district attempting to give the council their interpretation of the Code.

Councilor Gauthier moved to table resolutions 10-0209 and 10-0210, which motion was seconded and carried upon the following vote:

Yeas: Councilors Fosle, Gardner, Gauthier, Stauber and President Anderson -- 5

Nays: Councilors Boyle, Cuneo, Fedora and Hartman -- 4

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Councilor Stauber moved to suspend the rules to consider Ordinance 10-020 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

10-020 (10025) - AN ORDINANCE AMENDING SECTION 44-2 OF THE DULUTH CITY CODE, 1959, AS AMENDED, AMENDING THE DEFINITION OF "SIGN" AND PROVIDING FOR SEPARATE SECTION NUMBERS FOR EACH DEFINITION.

Councilor Stauber moved to amend Section 44-2.20 of the ordinance by inserting the phrase, "and has been approved by the governing body of the public entity" after the proposed new phrase, "permanent feature," which motion is seconded and carried unanimously.

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

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Resolution 10-0219, vacating a 20 foot wide building line easement on the south side of East First Street west of 12th Avenue East for Semper Development, LTD., and Walgreens, was introduced by Councilor Stauber.

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

Doran Whitledge and Karen Lewis spoke in opposition to this resolution for the reasons of: you cannot expect Walgreens Corporation to carry about preserving our historic buildings or grand trees that make Duluth special and beautiful; so much character of Duluth will be sacrificed for this parking lot; bigger and better for Walgreens is not bigger and better for

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Duluth and could consideration be given to move the houses that will be needed for this project.

John Kohler, representing the applicant, responded to a councilor question, noting that because Walgreens owns the present location it will be maintaining it until it is sold.

Resolution 10-0219 was adopted as follows:

RESOLVED, that:

(a) The city council finds a sufficient petition was filed with the city clerk requesting the vacation of the building line easement on Lots 4-8, Block 16, Banning & Ray's Subdivision and Lots 7 and 8, Block 18, Portland 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 and the city planning commission found that the petitioned building line easement is useless; and

(c) The city planning commission, at its April 13, 2010, regular meeting, recommended approval of the proposed vacation; and

(d) The city council of the city of Duluth approves the vacation of the building line easement described in paragraph (a) above and depicted on Public Document No. 10-0426-19; and

(e) That the city clerk is, pursuant to Section 100(b)(7) of the Home Rule Charter of the city of Duluth, 1912, as amended authorized to record, with the register of deeds and/or the registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution and Public Document No. 10-0426-19 showing the portion of the building line easement to be vacated.

Resolution 10-0219 was unanimously adopted.

Approved April 26, 2010

DON NESS, Mayor

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Resolutions 10-0222 and 10-0223, approving and denying, respectively, the vacation of part of the alley southwest of the intersection of Kenwood Avenue and Arrowhead Road and retaining a utility easement over the entire vacation area (Duluth Teachers Credit Union), were introduced by Councilor Stauber for discussion.

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

Diane Schubert, Barbara Brooks, Pat Trachta, Marlene Zwak, Stanley Beckman and Diane Sorensen spoke in support of Resolution 10-0223 for the reasons of: this issue has been going on for many years; this area is already very congested; with this vacation, the residential streets will become busier; use the commercial lot without this vacation; without alleys there are no safe alternatives for walking; safety is the main concern here; by vacating these alleys you are eliminating any leverage to negotiate with the developers; many times this has come to the council with a denial recommendation from the planning commission; this intersection has the most accidents of the whole city; the neighbors are not opposed to a commercial operation there but not one to the magnitude of a Walgreens; by allowing this vacation it sets up a much larger footprint into the residential neighborhood and a history of the actions and statements from the credit union was reviewed.

Jerry Allen, representing the Duluth Teachers Credit Union Board of Directors, and Bill Burns, their counsel, supported Resolution 10-0222 for the reasons of: this vacation is only for

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

a small part of the alley; this request is not part of any other plan, past or present, to expand the commercial site to residential property; this vacation allows for a more site sensitive development, in harmony with the residential neighborhood; the Code directs that alleys that are not useful for traffic purposes can and should be vacated; alleys are not boundaries or barriers and a big box retailer is not a tenant that is being sought.

Councilors Fedora and Hartman supported Resolution 10-0222 for the reasons of: the area that is requested has large evergreens and is the furthest thing from an alley; this is not an alley at this time, nor is it ever expected to be and the staff report recommends that the area requested be vacated.

Councilors Stauber, Gardner, Gauthier and Boyle supported Resolution 10-0223 for the reasons of: the previous denial of a vacation was the only leverage preventing Walgreens from developing this property; the response as to why the credit union wants this vacation is not specific enough; there has not been a trust relationship between the neighbors and the property owners, where they have been talking to each other and the planning commission opposed this 7 to 1.

Resolution 10-0222, granting the vacation, failed upon the following vote (Public Document No. 10-0426-20):

Yeas: Councilors Fedora and Hartman -- 2

Nays: Councilors Boyle, Cuneo, Fosle, Gardner, Gauthier, Stauber and President Anderson -- 7

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Resolution 10-0223, denying the vacation, 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 the alley adjoining Blocks 1, 2 and 11, Myers & Whipples Addition, that is adjoining Lots 1-6, Block 11, except that part adjoining the southerly 14 feet of Lot 8 and all of Lots 9 and 10, Block 1, Myers and Whipples Addition; and

(b) Pursuant to Section 100 of the City Charter and Article IV of Chapter 45 of the Duluth City Code, 1959, as amended, such petition was duly referred to the city planning commission, 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 vehicular and pedestrian purposes, but the alley is needed for utility purposes as noted in (c) below; and

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

(d) The city planning commission, at its April 13, 2010, regular meeting, recommended denial of the vacation petition; and

(e) The city council, having considered all of the information in the record denies the petition as the applicant has failed to demonstrate that the alley is useless for the purposes for which it was dedicated.

Resolution 10-0223 was adopted upon the following vote:

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

Nays: Councilors Fedora and Hartman -- 2

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Approved April 26, 2010
DON NESS, Mayor

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Resolution 10-0229, by councilors Stauber and Fedora, amending Resolution 89-0323, establishing the Duluth economic development authority, said amendment related to council approval for expenditures, was introduced for discussion.

Chief Administrative Officer David Montgomery requested that this be tabled to discuss the issue further.

Councilor Stauber felt that the council should be the authority to make definitions.

Resolution 10-0229 was adopted as follows:

BY COUNCILORS STAUBER AND FEDORA:

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) Resolution 89-0323 has been further amended by Resolution 89-0323, Resolution 98-0949, Resolution 99-0239, Resolution 02-0606, Resolution 04-0202, Resolution 04-0215, and Resolution 09-0342;

(c) The above-referenced resolutions are hereinafter collectively referred to as the DEDA establishment resolution;

(e) The Duluth City Council desires to further amend the DEDA establishment resolution.

NOW, THEREFORE, BE IT RESOLVED, that paragraph 19 of the DEDA establishment resolution is hereby amended 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. For the purposes of this resolution, "expenditure" shall mean the following: payments; loans; guarantees made by DEDA; grants made by DEDA, forgiveness or reduction of amounts owed to DEDA under contract; loans or transfers between DEDA funds including interfund loans from tax increment financing districts; hiring of staff or contracted personnel where the cost to DEDA in any year exceeds \$100,000; any sale of personal or real property where the difference between the lower of the market value or the cost and the sale price exceeds \$100,000; or any other DEDA decision involving the disbursement of an amount exceeding \$100,000 provided, however, that the term "expenditure" shall not apply to the issuance of industrial development bonds.

Resolution 10-0229 was adopted upon the following vote:

Yeas: Councilors Boyle, Cuneo, Fedora, Fosle, Gardner, Gauthier, Stauber and President Anderson -- 8

Nays: Councilor Hartman -- 1

Approved April 26, 2010, pursuant to Section 12 of the Duluth City Charter.

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Resolution 10-0179, adopting an elected official out-of-state travel policy, was introduced by President Anderson for discussion.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Councilor Stauber felt that the council president should be approving council out of state travel and moved to amend the elected official out of state travel policy by adding the following to the end of the resolution:

“subject to the policy being revised to strike the first sentence of paragraph 1 and instead insert the following:

The out-of-state event, workshop, conference or assignment must be approved in advance by the council president for out-of-state travel by the mayor and city councilors, and by the council vice president for the council president, except that international travel by city councilors must be approved in advance by the city council at an open meeting. Decisions regarding out-of-state travel may be appealed to the entire city council. Approval of such travel will be recorded on the council agenda under ‘Presentation of Petitions and Other Communications,’” which motion was seconded and discussed.

Councilor Cuneo expressed concern with the council president approving the mayor’s out of state travel.

Councilor Stauber’s amendment carried as follows:

Yeas: Councilors Boyle, Fedora, Fosle, Gardner, Gauthier, Hartman, Stauber and President Anderson -- 8

Nays: Councilor Cuneo -- 1

Resolution 10-0179, as amended, was adopted as follows:

RESOLVED, that pursuant to Minnesota Statute 471.661, the city of Duluth elected official out-of-state travel policy, a copy of which is on file in the office of the city clerk as Public Document No. 10-0426-21, is hereby adopted subject to the policy being revised to strike the first sentence of paragraph 1 and instead insert the following:

The out-of-state event, workshop, conference or assignment must be approved in advance by the council president for out-of-state travel by the mayor and city councilors, and by the council vice president for the council president, except that international travel by city councilors must be approved in advance by the city council at an open meeting. Decisions regarding out-of-state travel may be appealed to the entire city council. Approval of such travel will be recorded on the council agenda under “Presentation of Petitions and Other Communications.”

Resolution 10-0179, as amended, was unanimously adopted.

Approved April 26, 2010, pursuant to Section 12 of the Duluth City Charter.

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Resolution 10-0194, confirming the appointment of Paul M. Johnson as chief information officer for the city of Duluth, was introduced by President Anderson for discussion.

Councilors Gardner and Gauthier expressed concerns that: it is not clear what the purpose of this position is; the administration may be getting top heavy; there needs to be more information relative to the need for this position; other positions that the community really wants are not being filled and the requested updated organizational chart has not been supplied to the council.

Councilor Fosle supported the resolution, stating that if the city is expending huge amounts of money for specialized software, the best selection of one program’s expenditure is well worth having this position filled.

Mr. Montgomery reviewed the history and need for this position in management information operations and that the city is severely backed up in setting direction and solutions in this area.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Councilor Gauthier moved the table the resolution, which motion was seconded and carried as follows:

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

Nays: Councilors Cuneo, Fedora and Fosle -- 3

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Resolution 10-0216, by Councilor Gardner, of support for temporary schedule change for the Aerial Lift Bridge during the period May 3 through October 31, was introduced for discussion.

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

David Poulin, president of the Park Point Community Club, expressed support for the resolution for the reasons of: the heavy traffic that accesses the point in the summer months; this would reduce congestion and the Coast Guard supports this.

Don Nelson, Dexter Nelson, Barry Leblanc, Peter Dahl, opposed the resolution for the reasons of: charter fishermen would request that the resolution exempts their vessels from this bridge lifting restriction; the charter fishing industry is heavily dependent upon customers arriving on time and, when large group charters are late, limited bridge lifting could delay their whole day; there are about 4,000 individuals who participate in charter fishing and there is a need for about six more lifts than are currently being proposed; the bridge only has to go up about 20 feet for charter fishing boats, with about three minutes for each lift; this may force some charter businesses to dock in Superior and lessen the Duluth tourism traffic; and occasionally someone gets sick and there is a need to have an unscheduled return.

Ryan Bemus, supervisor of the Aerial Lift Bridge, responded to numerous councilor questions relative to past practices, the Coast Guard schedule and who actually is initiating this change.

Councilor Fedora opposed the resolution for the reason that this policy is hurting the charter fishing industry, which generates a very large amount of tourism.

Councilor Fosle moved to amend the resolution to add the following language to the last paragraph: "conditioned upon the U.S. Coast Guard revising its April 9, 2010, approval to exempt commercial charter fishing vessels from the schedule," which motion was seconded.

Councilor Gardner reviewed that during the summer months the records show that approximately 15,000 vehicles cross the bridge; that over 80 percent of the vessels are commercial boats and privately owned yachts, with 20 percent of those vessels being ocean going vessels or lakers; that there is a lot of wear and tear on the bridge and that the police and fire departments and the Vista Fleet supports this change.

Councilor Gauthier moved to call the question, which motion was seconded and carried upon the following vote:

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

Nays: Councilor Fedora -- 1

The amendment failed upon the following vote:

Yeas: Councilors Fedora, Fosle, Hartman and Stauber -- 4

Nays: Councilors Boyle, Cuneo, Gardner, Gauthier and President Anderson -- 5

Councilor Gauthier suggested that the Coast Guard be approached to modify this schedule.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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

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

Nays: Councilors Gardner and Gauthier -- 2

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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 2010 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 10-0218 was unanimously adopted.

Approved April 26, 2010

DON NESS, Mayor

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INTRODUCTION AND CONSIDERATION OF ORDINANCES

ORDINANCE TABLED

INTRODUCED BY COUNCILOR GAUTHIER

10-016 (10024) - AN ORDINANCE CREATING A DULUTH PUBLIC UTILITIES COMMISSION, ESTABLISHING MEMBERSHIP AND POWERS AND DUTIES THEREOF AND AUTHORIZING SAID COMMISSION TO ESTABLISH VARIOUS UTILITY RATES, AMENDING CHAPTERS 2, 43 AND 48 OF THE CODE.

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

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

Jennifer Julsrud felt that most municipal utilities across the state are governed by a commission or board and that this should have been enacted decades ago.

Councilor Gauthier moved to amend the ordinance as follows:

(a) Amend Section 2-184(a)(1) of the ordinance to increase the number of city councilors on the commission from "two" to "three," with the additional councilor's term being one year;

(b) Amend Section 2-184(a)(2) of the ordinance to:

(1) Decrease the number of citizens members from "five" to "four";

(2) Delete the language "mayor and confirmed by the";

(3) Decrease the number of citizens members with two year terms from "two"

to "one";

(c) Amend the third sentence in Section 2-187 of the ordinance by inserting the language, "adopted by the affirmative vote of at least six councilors" before the phrase, "veto the rate modifications";

which motion was seconded and discussed.

Councilor Gauthier reviewed at length the history on preparing this ordinance and his viewpoints of disagreement with the mayor and some councilors on certain aspects and the rationale for his amendment.

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

At this time, 10:55 p.m., Councilor Fedora moved to suspend the rules to extend the council meeting until 11:30 p.m., which motion was seconded and unanimously carried.

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Councilors Stauber and Fedora had the following concerns: that the commission would be composed of five knowledgeable citizens not any councilors; that the administration stepped out of bounce on this issue; that the six vote majority only provides insulation to councilors and should be a simple majority and the council needs to be accountable.

Mr. Montgomery expressed that he did not feel the version of the ordinance that the administration brought forward usurps council authority.

The amendment carried as follows:

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

Nays: Councilors Fedora and Fosle -- 2

Councilor Stauber moved to amend the ordinance by amending Section 2-187 to decrease "six" councilors to "five" councilors, which motion was seconded and failed as follows:

Yeas: Councilors Fedora, Fosle, Stauber and President Anderson -- 4

Nays: Councilors Boyle, Cuneo, Gardner, Gauthier and Hartman -- 5

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

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

Nays: Councilors Fedora, Fosle and Stauber -- 3

- - -

The following entitled ordinances were read for the first time:

BY PRESIDENT ANDERSON AND COUNCILOR FEDORA

10-023 - AN ORDINANCE AMENDING SECTION 29A-27, AND REPEALING SECTION 29A-32.1, OF CHAPTER 29A OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO THE RENTAL LICENSING 300 FOOT RULE.

- - -

BY COUNCILORS GAUTHIER, GARDNER AND HARTMAN

10-022 - AN ORDINANCE ADDING A NEW SECTION 34-17 TO THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO PREDATORY OFFENDER RESIDENCY RESTRICTIONS.

- - -

The following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR FOSLE

10-019 (10026) - AN ORDINANCE AMENDING SECTION 34-30 OF THE DULUTH CITY CODE, 1959, AS AMENDED, REGARDING TRESPASSING.

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

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INTRODUCED BY COUNCILOR FOSLE

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

10-021 (10027) - AN ORDINANCE AMENDING SECTION 40-12 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO USER CHARGE FOR EXCESSIVE CONSUMPTION OF POLICE SERVICES.

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 11:27 p.m.

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10024

AN ORDINANCE CREATING A DULUTH PUBLIC UTILITIES COMMISSION, ESTABLISHING MEMBERSHIP AND POWERS AND DUTIES THEREOF AND AUTHORIZING SAID COMMISSION TO ESTABLISH VARIOUS UTILITY RATES, AMENDING CHAPTERS 2, 43 AND 48 OF THE CODE.

The city of Duluth does ordain:

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

Article XXXV. Duluth Public Utilities Commission.

Sec. 2-182. Statement of purpose--Duluth public utilities commission.

The city council of the city hereby finds that the management and operation of the city's water, natural gas, sanitary sewer and stormwater utility systems has become more complex and is in need of expertise and continuity in long-term planning to effectively manage and guide future development of the utilities and the rate structures related thereto and that it is appropriate to secure expertise not only from elected officials but also from citizens of the city having expertise and experience to bring to those processes and therefore that it is appropriate to create a Duluth public utilities commission which shall have the membership and the powers and duties hereinafter set forth.

Sec. 2-183. Same--Creation.

There is hereby created the Duluth public utilities commission which shall have the membership and the powers and duties hereinafter set forth in this Article.

Sec. 2-184. Same--Membership.

(a) The membership of the commission shall consist of seven commissioners who shall be appointed to the membership of said commission as hereinafter set forth. No member shall serve more than two consecutive terms or portions thereof on the commission:

(1) Three members shall be city councilors appointed by the council. Initially one such councilor shall be appointed for a one year term, one shall be appointed for a two year term and one such councilor shall be appointed for a three year term. Thereafter all councilors shall be appointed for three year terms, provided, however that councilors shall serve only as long as they continue to hold such office or, unless removed from membership on the

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

commission by the affirmative vote of a majority of the city councilors then serving on the city council, excluding the subject councilor;

(2) Four members of the commission shall be appointed by the city council. Said members shall be residents of the city of Duluth, shall be responsible to pay charges to the city for the use of at least two of the utilities regulated by the commission and shall be chosen for their expertise in the areas of utility operations, finance and utility construction or other relevant experience. Initially one such commissioner shall be appointed for a one year term, one shall be appointed for a two year term and two shall be appointed for a three year term. Thereafter all commissioners shall be appointed for three year terms. All terms shall expire on March 31 of the appropriate year. When a vacancy occurs in said commission, by means of resignation, death, or removal from the city, such vacancy shall be filled for the unexpired term. If a commissioner shall be found to have failed or neglected to perform the duties of a commissioner, the Mayor with the approval of the city council may remove such commissioner from office and the vacancy created thereby shall be filled for the unexpired term;

(b) Commissioners shall serve without compensation;

(c) Within 20 days after all of the commissioners have been appointed, the commission shall meet and organize and adopt, and thereafter may amend, such rules and regulations for the conduct of the commission as the commission shall deem to be in the public interest and most likely to advance, enhance, foster and promote the purposes of this ordinance [Article]. At such meeting and at all subsequent meetings of the commission, five commissioners shall constitute a quorum for the transaction of business, provided that at least two such commissioners shall be city councilors;

(d) The commissioners shall elect from among their membership a president and vice president and shall also elect a secretary who, may or may not be a member of said commission. No two of such offices shall be held by one commissioner. The officers shall have their duties and powers usually attendant upon such offices and such other duties and powers not inconsistent therewith as may be provided by the commission.

Sec. 2-185. Staff support; consultants.

(a) Staff support, including clerical services and incidental expenses, shall, whenever practical, be provided by such city staff personnel and from such funds as shall be directed by the director of public works and utilities;

(b) In the event that services, such as consulting services, are not reasonably available from the city, the commission may request that the city hire consultants to provide necessary staff services and may request that a particular person or firm be hired to provide such services.

Sec. 2-186. Commission authority.

In furtherance of the purposes set forth in Section 2-182, the commission shall have the following authority:

(a) To establish such internal rules and regulations as the commission shall deem advantageous for its internal operations;

(b) To establish rates to be charged for the provision of water service, natural gas service, sanitary sewer service and stormwater utility service,

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provided that any resolution establishing any such rate or rates shall include findings of fact setting forth the justification for the newly established rates;

(c) To establish rates to be charged by the city for the following services:

- (1) Gas furnace comfort policy fee;
- (2) Gas furnace or other appliance service;
- (3) Inflow and infiltration non-inspection or noncompliance surcharge per month;
- (4) Point of sale inspection fee;
- (5) Violation or noncompliance service charge;
- (6) Water hydrant usage;
- (7) Water, natural gas and sanitary sewer service tapping fees;
- (8) Fees for the right of access to and the right to connect to existing water, natural gas and sanitary sewer mains;

(d) To approve and recommend to the city council for its approval an annual budget for the water utility, the natural gas utility, the sanitary sewer utility and the stormwater utility; and

(e) To develop and recommend to the city council a municipal utility plan for the future development and extension of the water utility, the natural gas utility, the sanitary sewer utility and the stormwater utility.

Sec. 2-187. City council review; veto.

Before any rates approved by the commission pursuant to paragraphs (b) or (c) of Section 2-186 above shall take effect for any purpose whatsoever, a full, true and correct copy of the commission's resolution approving such rates shall be filed in the office of the city clerk and there remain on file as a public document for at least one week before the holding of a regular meeting of the city council. It is hereby made the duty of the city clerk to report to the council at any regular meeting thereof concerning the filing of said resolution. The council may, by a resolution adopted by the affirmative vote of at least six councilors, veto the rate modifications proposed by such resolution at any such meeting. If the council votes to veto said rate modification, the rates last approved shall continue in force and effect until modified in accordance with the provision of this Article. If such rate increase is not vetoed at such meeting, the rates approved by the commission's resolution shall go into effect on the date specified in the commission's resolution or the day after such council meeting, whichever is later.

Section 2. That Section 43-4 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 43-4. User charge system established.

For the purpose of distributing among users within the city the charges made to the city by the WLSSD for the cost of the city's proportionate share of the operation, maintenance, including replacement and debt service of WLSSD wastewater facilities for the purpose of recovering from users the cost of operation, maintenance, including replacement and debt service of city wastewater facilities and for services rendered and benefits conferred by WLSSD and city facilities, the Duluth public utilities commission is hereby authorized to establish a wastewater facility user charge system.

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Section 3. That Section 43-11 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 43-11. Rate established for cost of city wastewater system.

For the purpose of recovering from users the cost of operation, maintenance (including replacement) and debt service of the city's wastewater facilities, the Duluth public utilities commission is authorized to establish a customer charge and a user charge based upon the volume of wastewater discharged to the city's wastewater facilities system and determined as in Section 43-7, which shall be collected by the city beginning with meter readings made on February 12, 1979, and thereafter.

Revisions to the customer charge and the user charge may be made from time to time by resolution of the commission.

Section 4. 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, upon the effective date of this ordinance, the Duluth public utilities commission shall be authorized to create a clean water surcharge upon each customer and user. 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.

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Section 5. That Section 43-12.1 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 43-12.1. Surcharge for noncompliance.

In the event that the director is denied or refused access to any building in violation of Section 43-33.1 below or that any building is found to be in violation of Section 43-31 below for more than 90 days, a surcharge in an amount established by the Duluth public utilities commission by resolution or in an amount calculated in accordance with a methodology approved by the Duluth public utilities commission by resolution shall be added to the wastewater facilities user charge otherwise established pursuant to this Article and billed to said property each month until such refusal, denial or noncompliance has been cured.

Section 6. That Section 43-65 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 43-65. Definitions.

For the purpose of this Article, the following words and phrases shall have the meanings given them in this Section:

Budget. The budget of the stormwater utility. The budget shall include yearly operating and maintenance costs, capital costs, debt service and amounts necessary to meet unanticipated costs.

Capital costs. Costs reasonably incurred in connection with providing capital improvements to the system or any portion thereof, including but not limited to:

- (a) Acquisition of all property, real or personal and all interests in connection therewith, including all rights-of-way and easements therefor;
- (b) Physical construction, installation and testing, including the costs of labor, services, materials, supplies and utility services used in connection therewith;
- (c) Architectural, engineering, legal and other professional services;
- (d) Expenses of obtaining permits or approvals before construction or other project charges which become due during construction;
- (e) Any miscellaneous expenses incidental to a project.

Debt service. The principal and interest necessary to pay an indebtedness of the city related to the stormwater utility in any year.

Director. The director of public works or the director's designee.

Dwelling unit. A single unit that provides complete, independent living facilities for one or more persons including permanent provision for living, sleeping, eating, cooking and sanitation.

Equivalent residential unit or ERU. The average impervious area of residential property per dwelling unit located within the city.

ERU rate. A utility fee charged on each ERU as established by resolution of the Duluth public utilities commission as provided herein.

Impervious area. Roofed and paved areas, including, but not limited to, areas covered by roofs, roof extensions, patios, porches, driveways, sidewalks, parking areas and athletic courts.

Nonresidential property. Developed property that is classified by the city assessor as property types 3 and 5 pursuant to Minnesota Statutes Section

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273.13. Property that has a mixture of residential and nonresidential uses shall be considered nonresidential.

Operating and maintenance costs. The current paid or accrued expenses of operation, maintenance and current repair of the system, as calculated in accordance with sound accounting practices and includes, without limitation, administrative expenses, labor, the cost of materials and supplies used for current operations and charges for the accumulation of appropriate reserves for current expenses not annually incurred but which are such as may be reasonably expected to be incurred in accordance with sound accounting practices.

Residential property. Developed property that is classified by the city assessor as land use types 1, 4 and 2a pursuant to Minnesota Statutes Section 273.13.

Stormwater drainage system or system. The existing constructed and natural stormwater drainage facilities and channels of the city and all improvements thereto which are the property and responsibility of the utility, to be operated by the utility to, among other things, conserve water, control discharges necessitated by rainfall events, incorporate methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over-drainage, environmental degradation and water pollution or otherwise affect the quality and quantity of discharge from such system.

Stormwater utility or utility. The utility created by this article to operate, maintain and improve the stormwater drainage system.

Utility fee. A utility fee authorized by Minnesota law and this Article which is established to pay for operations and maintenance, extension and replacement and debt service.

Section 7. That Section 43-66 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 43-66. Rates and charges.

(a) The stormwater utility shall charge utility fees as provided in this Article to recover from property benefitting from the system the capital costs, debt service, operation and maintenance costs of stormwater facilities in the city. Subject to the limitations contained in this Section, this Article shall apply to all property in the city of Duluth;

(b) Utility fees shall be based upon the amount of impervious area on the benefitting property and shall be computed as provided in this Article. Each parcel of property within the city shall be categorized as residential, nonresidential, or undisturbed property. The utility fees for each type of property shall be as follows:

(1) The utility fee for residential property shall be the ERU rate multiplied by the number of dwelling units existing on the property;

(2) The utility fee for nonresidential property shall be the ERU rate multiplied by the numerical factor obtained by dividing the total impervious area for a nonresidential property by one ERU. The minimum utility fee for any nonresidential property shall be equal to one ERU rate;

(3) Undisturbed parcels of land shall be exempt from the utility fee;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

(c) The Duluth public utilities commission shall, by resolution, adopt a schedule of utility fees sufficient to produce revenue equal to the budget of the stormwater utility. The resolution shall state the utility fee rate per ERU;

(d) The director shall gather impervious area data on residential property within the city and calculate an ERU value. The utility fees shall be based on this ERU value. In determining the ERU value, the director shall not be required to measure and consider all residential property in the city, but shall consider a reasonable sample representing areas throughout the city. The director shall further investigate nonresidential properties within the city to determine the impervious area on each property. The determination of impervious area made by the director shall be conclusive unless modified by the adjustment procedure set forth in this Article. The director shall endeavor to investigate and reestablish an ERU value for the city every five years after the effective date of this ordinance;

(e) Public rights-of-way and airport runways and taxiways shall be exempt from utility fees;

(f) The utility fees established by this Article are the joint and several responsibility of the owner, lessee and the occupant of each lot or parcel subject to the fee. The director shall cause monthly bills to be sent for each lot or parcel and shall develop a billing and collection system for said fees. Bills may be combined with other city utility bills. The Duluth public utilities commission may provide for penalties and interest for late payments in the resolution establishing the utility fee rate;

(g) Delinquent utility fees shall be collected as provided in Minnesota Statutes 444.075, Subd. 3, in the same manner as taxes against the property and may also be collected in an action at law against the owner, lessee or the occupant of the parcel. On or before July 1 of each year, the director shall transmit to the city assessor a list of all delinquent stormwater utility fees for the preceding calendar year and the parcels which each delinquent fee relates to. Upon receipt of such list, the city assessor shall prepare a delinquent utility fee roll containing, in columns, the name of the owner, if known, of each lot or parcel where utility fees are delinquent, a description of each lot or parcel and the amount of delinquent utility fees from the previous year. On or before August 1 of each year, the city assessor shall certify the delinquent utility fee roll to the city council. The city clerk shall send 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 the property stating the amount of the utility fee due, a description of the property, that the utility fees are due and payable before October 1 of that year and that the delinquent utility fee roll is on file in the office of the city clerk. If the city council finds the roll to be proper and correct, it shall by resolution confirm the roll on or before October 1. The confirming resolution shall contain a collection fee added to each amount due to reimburse the city for its administrative costs of collection. On or before the tenth day of October each year, the city treasurer shall file with the county auditor a certified statement of all delinquent utility fees under this Article, describing the land affected and giving the amount of the fee, with a ten percent penalty added, after which the

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

delinquent fee shall be processed in the same manner as an assessment under the provisions of Chapter 70 of the City Charter.

Section 8. That Section 43-70 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 43-70. Maintenance fees and user charges.

(a) User charges for wastewater facility users in the Fond du Lac sanitary sewer area shall be those established pursuant to Article II of this Chapter, except that residences without water meters shall pay a wastewater user charge based on a water consumption of 800 cubic feet of water per month;

(b) In addition to the wastewater user fee, buildings serviced by publicly owned grinder pumps shall be subject to a grinder pump maintenance fee established by Duluth public utilities commission resolution, which shall be billed and collected with the wastewater user fee.

Section 9. That Section 48-14 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 48-14. Charges for water and gas--basis of computation--notice of rate changes.

Charges for supplying water and gas shall be made on the basis of such rates for meter registration, demand charges and service charges as may be authorized from time to time by the Duluth public utilities commission. The department shall, at the time of any change in the rate schedules, deliver to each applicant a copy of the new schedule of rates.

All water or gas sold shall be metered, except for fire protection and other specially authorized supplies, provided, that appropriate charges may be made for unmetered water or gas taken or wasted by unauthorized means or by leaks or through meters improperly registering.

Section 10. Notwithstanding the authority granted to the Duluth public utilities commission pursuant to this ordinance to establish rates and charges for the provision of various commodities, the use of various utility facilities and the provision of various services, until such time as the commission shall have established such rates and charges, the rates and charges as previously established by the city for the provision of such commodities, the use of such facilities and the provision of such services shall continue to be in force.

Section 11. This ordinance shall take effect 30 days from and after its passage and publication or upon the first meeting of the Duluth public utilities commission, whichever is later. (Effective date: September 7, 2010)

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

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

Nays: Councilors Fedora, Fosle and Stauber -- 3

ATTEST:
JEFFREY J. COX, City Clerk

Passed April 26, 2010
Approved April 26, 2010
DON NESS, Mayor

- - -

ORDINANCE NO. 10025

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

AN ORDINANCE AMENDING SECTION 44-2 OF THE DULUTH CITY CODE, 1959, AS AMENDED, AMENDING THE DEFINITION OF "SIGN" AND PROVIDING FOR SEPARATE SECTION NUMBERS FOR EACH DEFINITION.

The city of Duluth does ordain:

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

Sec. 44-2. Definitions.

For the purposes of this Chapter the following words and phrases shall have the meanings respectively ascribed to them by the following sections.

Sec. 44-2.1. Animated sign.

An animated sign is one which has any moving, rotating or otherwise physically animated part (as distinguished from lights that give the appearance of animation by flashing, blinking or fluctuating) but does not include changeable message signs which are stationary for a continuous time period of at least four seconds in each eight-second period.

Sec. 44-2.2. Awning sign.

Awning sign means any sign affixed to an awning, as such term is defined in Section 4506 of the Uniform Building Code, 1982 Edition.

Sec. 44-2.3. Changeable message signs (CMS).

Any off premise advertising sign, display or device which changes the message or copy on the sign by means of electronic rotation or panels or slats. CMS's are considered outdoor advertising signs and must comply with all requirements applicable to outdoor advertising signs. This includes a flashing sign that is off premise.

Sec. 44-2.4. Double or triple faced sign.

A double or triple faced sign is any sign having displays on an integral structure which has two or three faces which are either back to back or "V" or triangular shaped with no internal angle of more than 60 degrees.

Sec. 44-2.5. Electronic signs (ES).

An off premise advertising sign, display or device that changes the message copy on the sign by means of light emitting diodes (LED's), fiber optics, light bulbs or other illumination devices with the display area.

Sec. 44-2.6. Ground sign.

Ground sign means any sign, other than a pole sign, which is supported vertically by a structure attached to the ground.

Sec. 44-2.7. Flashing sign.

Flashing sign shall mean a sign which has direct illumination which is not kept constant in intensity at all times when in use, or which exhibits sudden or marked changes in lighting effects. Signs with direct illumination which indicate the time, temperature, date or other public service information shall not be considered flashing signs.

Sec. 44-2.8. Direct illumination.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Direct illumination means illumination by light sources which are effectively visible, either directly or through a translucent material, as a part of the sign and illuminate outward therefrom.

Sec. 44-2.9. Indirect illumination.

In direct illumination means illumination which is derived from light sources which are not visible to intended viewers of the sign but which illuminate the sign by being directed at the sign's reflective face.

Sec. 44-2.10. Marquee sign.

Marquee sign means any sign affixed to a marquee, as such term is defined in Section 414 of the Uniform Building Code, 1982 Edition.

Sec. 44-2.11. Mobile sign.

Mobile sign means any sign so constructed as to permit movement from place to place, whether on wheels or otherwise.

Sec. 44-2.12. Off premises sign.

Off premises sign means a sign which directs attention to a business, product, service or entertainment not conducted, sold or offered upon the premises where such sign is located.

Sec. 44-2.13. On premises sign.

On premises sign means a sign which directs attention to the name of the building or the name of the building management firm or to a business, principal product, service or entertainment conducted, sold or offered upon the premises where such sign is located.

Sec. 44-2.14. Pole sign.

Pole sign means any free standing, elevated sign erected on a pole or poles connected to the ground and which is less than 60 square feet in area.

Sec. 44-2.15. Political sign.

Political sign means any sign which directs attention to an issue in an election or to either the name of a candidate running for election to a public office or the name of the office for which he is a candidate, or both.

Sec. 44-2.16. Projecting sign.

Projecting sign means a sign which is affixed to the outside of an exterior wall of any building and which extends more than 18 inches from the building wall face.

Sec. 44-2.17. Property owner opinion sign.

Property owner opinion sign means a sign which conveys a noncommercial message.

Sec. 44-2.18. Pylon.

Pylon means a decorative extension above the roof line of a building which is designed as an integral part of such building and which is constructed of masonry or is completely enclosed by the same material as the main exterior walls of such building.

Sec. 44-2.19. Roof sign.

Roof sign means any sign erected, constructed or maintained above and connected to the roof of any building. For purposes of this Section a penthouse, elevator housing or any structure housing mechanical equipment of any kind shall not be deemed a part of the roof of any building.

Sec. 44-2.20. Sign.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Sign means any letter, word, symbol, model, printed, projected or affixed device, poster, picture, reading matter or representation in the nature of an advertisement, announcement, direction or informative device including its structure or component parts, which is located outdoors, when more than one square foot in area; but shall not be deemed to include inscriptions on any publically owned building when such inscription is incorporated into the architectural design as a permanent feature and has been approved by the governing body of the public entity, or temporary parks and recreation signs permitted pursuant to Chapter 35 of this Code, or overhead banners and devices regulated under Article III of Chapter 45 of this Code, or to any street name sign, public directional, utility or transportation sign, or motor vehicle traffic signs of any kind when officially placed, or to advertising or other information affixed to any motor vehicle, provided that such vehicle's primary use is not as a stationary advertising device. The area of a sign includes the space inside a continuous line drawn around and enclosing all letters, designs and background material, except that the area of a double or triple faced sign shall be the area of the largest face, and the area of a spherical sign shall be the area of the outline against the horizon formed by the largest dimension thereof.

Sec. 44-2.21. Wall sign.

Wall sign means a sign which is affixed to the outside of an exterior wall of any building when such sign extends no more than four feet above the top of such exterior wall and is parallel thereto, and when such sign projects no more than 18 inches from the building wall face or from a parapet constructed thereon. Signs painted directly on the surface material of a building shall be considered a wall sign only if limited in content to the name of the principal firm or establishment located in such building or the name of the building's management firm.

Sec. 44-2.22. Height.

The height of a sign shall be the vertical distance from the average finished grade directly below the sign to the uppermost point on the sign or sign structure, whichever is higher.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: May 30, 2010)

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

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

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed April 26, 2010
Approved April 26, 2010
DON NESS, Mayor

- - -

ORDINANCE NO. 10026

AN ORDINANCE AMENDING SECTION 34-30 OF THE DULUTH CITY CODE, 1959, AS AMENDED, REGARDING TRESPASSING.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

The city of Duluth does ordain:

Section 1. That Section 34-30 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 34-30. Trespass.

No person shall do any of the following acts unless he is a public official or peace officer engaged in a good faith effort to carry out his duties:

(a) Trespass upon the premises of another and, without claim of right, refuse to depart therefrom upon demand of the lawful possessor;

(b) Tamper with or get into or upon a motor vehicle without the permission of the owner or rightful user of the motor vehicle;

(c) Get into or upon, or ride in a motor vehicle knowing it is being operated by another without the permission of the owner;

(d) Occupy or enter the premises of another while knowing, or having reasonable grounds to know, that such entering or occupying will be in violation of the wishes of the lawful possessor of the premises;

(e) Enter or occupy the dwelling of another without claim of right or consent of the owner or another who has a right to give consent, except in an emergency situation;

(f) Cross into or enter any public or private area lawfully cordoned off by or at the direction of a public official or peace officer when such officer or official reasonably determines it is necessary to so cordon off said area in the performance of the official duties of the responsible authority such officer or official represents. As used in this clause an area may be "cordoned off" through the use of tape, barriers or other means conspicuously placed and identifying the area as being restricted by a public official or peace officer and identifying the responsible authority. It is an affirmative defense to a charge under this clause that a public official or peace officer of the responsible authority permitted entry into the restricted area. Provided that when the responsible authority determines that its official duties no longer require the area to be cordoned off, the responsible authority shall remove said tape, barriers or other means from the area.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: May 30, 2010)

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

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

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed April 26, 2010
Approved April 26, 2010
DON NESS, Mayor

- - -

ORDINANCE NO. 10027

AN ORDINANCE AMENDING SECTION 40-12 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO USER

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

CHARGE FOR EXCESSIVE CONSUMPTION OF POLICE SERVICES.

The city of Duluth does ordain:

Section 1. That Section 40-12 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 40-12. Subsequent police responses; liability.

If, after a written notice is served pursuant to this Article, a subsequent police response or responses are necessary to the same location or address within a 90 day period, then each such subsequent response or responses shall be deemed a special security assignment. Responsible persons who had previously received a notice of warning shall be jointly and severally liable for a police services fee for a special security assignment. The city reserves its rights to seek reimbursement for actual costs and damages exceeding \$1,000 through other legal remedies or procedures.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: May 30, 2010)

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

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

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed April 26, 2010
Approved April 26, 2010
DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, May 10, 2010, 7:00 p.m. in Room 303, City Hall, Duluth, Minnesota.

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

Absent: None -- 0

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

10-0510-01 Lakehead Boat Basin, Inc., and Marine Service, Inc., by William Burns, attorney, petition to reclassify from M-1 and R-2 to R-4, Lots 170, 172, 174, 176, 178 and 180, Upper Duluth Lake Avenue, and Lots 169, 171, 173, 175, 177 and 179, Upper Duluth Minnesota Avenue. -- Assessor

10-0510-02 Minnesota state auditor audit reports for:

(a) Duluth transit authority for the years ending December 31, 2009 and 2008;

(b) Spirit Mountain recreation area authority for the years ending April 30, 2009 and 2008. -- Received

10-0510-03 Fannie Rose, LLC, acceptance of terms, conditions and provisions of concurrent use permit granted by Ordinance 10021 on March 22, 2010. -- Received

10-0510-04 The following communications regarding the proposed ordinance pertaining to predatory offender residency restrictions (10-022-O): (a) William Lynch; (b) Sue Olson (2). -- Received

10-0510-05 The following communications regarding the proposed temporary schedule change for the Aerial Lift Bridge (10-0216R): (a) Canal Park Business Association; (b) Dona J. Jago; (c) Donn Larson; (d) Barry LeBlanc; (e) Bob Ouellette; (f) Thomas Rauschenfels; (g) Pete Ravinski; (h) Scott Wolff; (i) Jan Cohen. -- Received

10-0510-06 The following communications regarding the rental licensing 300 foot rule (10-023-O): (a) Dan Ahonen; (b) Pat and Wayne Altrichter; (c) Carol Andrews; (d) Colleen Belk; (e) Jeff Borling; (f) Patrice Bradley; (g) Terry Bronniche; (h) Jennifer L.A. Fellman; (i) Mary Gallegos; (j) Jim Gearns; (k) Mark Ham; (l) Sue Harney; (m) Carrie Heffernan; (n) Voula Heffernan; (o) Joyce Hickman; (p) Stacy Jensen; (q) John Jereczek; (r) Tad Johnson; (s) Tadd Johnson and Emily Johnson; (t) Mona Johnson-Cheslak; (u) Patricia Moe; (v) Yvonne Patterson; (w) Sandy Robinson; (x) Bard Russ; (y) Matt Ryan; (z) Sean Stepan (3); (aa) Richard Tahtinen; (bb) John M. Vigen; (cc) Roger Wedin; (dd) Andy Wheeler; (ee) Nathan Wheeler; (ff) David Worley; (gg) Jane Worley. -- Received

10-0510-16 The following communications regarding the proposed temporary re-opening of the northbound lane of Lakeview Drive at Snively Road (10-0259R): (a) Dan Gliszinski; (b) Janice Gliszinski; (c) Tom Hanson; (d) Elizabeth Wahman; (e) Steven M. Dastoor; (f) Lise Lunge-Larsen and Steve Kuross; (g) Celeste Curley-Black and Gary Black; (h) Jovita and David Jondahl; (i) Susan Beasy Latto. -- Received

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REPORTS FROM OTHER OFFICERS

10-0510-07 Assessor affidavit of mailing of notice of:

(a) Informational meeting to be held from 4:30 p.m. to 6:00 p.m., Wednesday, May 5, 2010; and public hearing by the special assessment board at 5:00 p.m. on Wednesday,

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

May 12, 2010, in the mayor's reception room, 4th floor, City Hall, regarding the proposed construction for the 2010 street preservation - Glenwood Street, 43rd Avenue East, Eighth Street, Superior Street, Mall Drive and Minnesota Avenue: Estimated assessable construction cost \$3.7 million with assessable costs calculated at \$15.75 per front foot;

(b) Postponement of informational meeting of May 5; and public hearing of May 12, by the special assessment board regarding proposed construction of 2010 mill and overlay for Minnesota Avenue until the condition of the public sanitary system can be verified;

(c) Public hearing to be held at 2:30 p.m., Tuesday, May 11, 2010, in Room 106A, City Hall, by the special assessment board for the reassessment of canceled assessment according to Chapter 231, Article 2, H.F. 2163: Omnibus tax bill regarding 1998 demolition - razing, Contract No. 4949 for property described as Plat 4520 Parcel 11520 (817 North 56th Avenue West): Reassessment \$2,733.75 at 9.5 percent interest for five years. -- Received

10-0510-08 Parks and recreation division manager extension of rental agreement with Community Action Duluth for Memorial Community Recreation Center, 5315 Grand Avenue, from May 1 through September 1, 2010, pursuant to Section 2-35, Duluth City Code. -- Mayor for execution

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REPORTS OF BOARDS AND COMMISSIONS

10-0510-09 Building appeal board minutes of: (a) January 13; (b) March 10, 2010, meetings. -- Received

10-0510-10 Duluth airport authority minutes of March 23, 2010, meeting. -- Received

10-0510-11 Duluth economic development authority minutes of March 17, 2010, meeting. -- Received

10-0510-12 Duluth transit authority minutes of February 24, 2010, meeting. -- Received

10-0510-13 Entertainment and convention center authority minutes of April 27, 2010, meeting. -- Received

10-0510-14 Housing and redevelopment authority minutes of: (a) January 26: (1) Annual; (2) Regular; (b) February 23, 2010, meetings. -- Received

10-0510-15 Library board minutes of March 23, 2010, meeting. -- Received

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RESOLUTIONS TABLED

Councilor Stauber moved to remove Resolution 10-0189, by councilors Stauber, Hartman and Fedora, adding an initiative to support revisions to Minnesota Statutes Section 471.345, subd. 13, to the city's legislative agenda for 2010, from the table, which motion was seconded and unanimously carried.

Resolution 10-0189 was adopted as follows:

BY COUNCILORS STAUBER, HARTMAN AND FEDORA:

RESOLVED, that the following initiative be added to the city legislative priorities agenda for 2010: support for revisions to Minnesota Statutes Section 471.345, subd. 13, which would remove the loophole which currently allows municipalities to award non-bid guaranteed energy-savings contracts to qualified providers.

Resolution 10-0189 was unanimously adopted.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Approved May 10, 2010
DON NESS, Mayor

- - -

Councilor Gauthier moved to remove Resolution 10-0194, confirming the appointment of Paul M. Johnson as chief information officer for the city of Duluth, from the table, which motion was seconded and unanimously carried.

Resolution 10-0194 was adopted as follows:

WHEREAS, the chief administrative officer upon the direction of the mayor has recommended the appointment of Paul M. Johnson to the position of chief information 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 Paul M. Johnson to the position of chief information officer for the city of Duluth.

Resolution 10-0194 was unanimously adopted.

Approved May 10, 2010
DON NESS, Mayor

- - -

Councilor Gardner moved to remove Resolution 10-0216, of support for temporary schedule change for the Aerial Lift Bridge during the period May 3 through October 31, from the table, which motion was seconded and unanimously carried.

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

Peter Dahl, Barry LeBlanc, Dexter Nelson, Thomas Cheetham, David Dahl, Tom Meierhoff and Don Nelson expressed concern with the resolution that: the schedule was done backwards, if you really want to make a schedule, make it based on the ships; if you left enough time in between for traffic to clear, you would not be having to perform double lifts; at most it takes two minutes for a charter vessel to clear the bridge; the charter fishing captains were not involved in the initial discussions on this issue; the charter operators are responsible for the safety of their passengers to determine when to get off the lake; the car traffic is the problem that needs to be addressed; with this change, the charter businesses will relocate to Superior; there are groups that charter the fishing boats that also spend a lot of money on Duluth hotels and restaurants, that will now spend dollars in Superior; the time period study should have started from 7:30 a.m. instead of 7:00 a.m., because most charters go out by 7:00 a.m.; charter passengers spend between \$400 and \$700, and not to be waiting for a bridge lift; all parties involved should be meeting to work out a plan that will work, starting next year; the problem is the vehicular traffic; with these limited entry times, there is a risk of a collision with multiple vessels coming from both directions at the same time; if the charter businesses go to Superior, tenants will be lost in the marina and businesses in the canal area will suffer because tourists come because of this marina action; there will be enough problems with the freeway reconstruction, so this should be studied for one year and a half hour is a long time to be waiting.

Dennis Hoelscher, Bruce Rutherford, Scott Miller, representing the Canal Park Business Association, Dave Poulin, president of the Park Point Community Club, Frank Puglisi, Ralph Kellner and Ellen Dunlap supported the resolution for the reasons of: each season the bridge goes up over 5,000 times; in the months from December to March, over a half million vehicles

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

crossed over it; every time that bridge goes up, Park Point is an island that is cut off from emergency services; 1,500 residents, 650 homes, two nursing homes, two churches, a motel, two very large apartment buildings, two large marinas, the Coast Guard and the Army Reserve Station are jeopardized when the bridge goes up; if the Vista Fleet is able to accommodate this, the charter businesses should also be able to; every half hour should be a reasonable time period to work from; the Canal Park Business Association supports this resolution; the constant raising of the bridge is what causes the traffic back-ups; if you are late for a plane or bus, you wait longer than a half hour for the next one; the Park Point Community Club supports this resolution; the sailing group has for years been coordinating their need for bridge lifts; tourists will not return with the traffic problems associated with numerous bridge lifts; the council should accept the Coast Guard's expertise in this and when there is a line up on both sides of the bridge, there are hundreds of individuals delayed and affected.

Councilor Gardner moved to amend the resolution by adding the following language:

"FURTHER RESOLVED, that the council requests that within 30 days of the expiration of the temporary schedule on October 31, 2010, city administration meet with the Coast Guard and community stakeholders, including charter boat captains, to evaluate data, assess the effectiveness of the schedule to determine whether it should be permanently implemented, and if so deemed, to discuss any changes the group determines are appropriate and necessary,"

which motion was seconded and carried unanimously.

Councilors Fosle and Stauber opposed the resolution for reasons of: the process to develop the proposed schedule was flawed, with the charter fishermen finding out about this issue just a couple weeks ago, so they are not likely to want to work with the city; this could be a safety issue with 10-15 boats trying to go through at the same time, thus delaying the time that vehicles, especially emergency vehicles, can get to the point; it is a tourist attraction to have that Lakewalk by the charter fishing vessels and consideration should be given to the difference between the pleasure crafts and the business vessels.

Resolution 10-0216, as amended, was adopted as follows:

BY COUNCILOR GARDNER:

WHEREAS, the city council recognizes the need for efficiency and management of traffic congestion between the Canal Park business district and Minnesota Point and the need for water vessel access under the Aerial Lift Bridge; and

WHEREAS, the city council acknowledges receipt of preliminary approval from the U.S. Coast Guard to test a new schedule starting May 3, 2010, through October 31, 2010, whereby between the hours of 6:00 a.m. and 9:00 p.m., seven days per week, the bridge will open on the hour and half hour for smaller water vessels, will open on signal for all vessels from 9:00 p.m. to 6:00 a.m., and at all times for federal, state and local government vessels used for public safety, vessels in distress, commercial vessels engaged in rescue or emergency salvage operations, vessels engaged in pilot duties, vessels seeking shelter from severe weather and all commercial vessels 300 gross tons or greater.

THEREFORE, BE IT RESOLVED, that the city council hereby approves the implementation of this temporary schedule for the Aerial Lift Bridge for the 2010 navigation season.

FURTHER RESOLVED, that the council requests that within 30 days of the expiration of the temporary schedule on October 31, 2010, city administration meet with the Coast Guard and community stakeholders, including charter boat captains, to evaluate data, assess the

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

effectiveness of the schedule to determine whether it should be permanently implemented, and if so deemed, to discuss any changes the group determines are appropriate and necessary.

Resolution 10-0216, as amended, was adopted upon the following vote:

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

Nays: Councilors Fedora, Fosle and Stauber -- 3

Approved May 10, 2010

DON NESS, Mayor

- - -

UNFINISHED BUSINESS

BY PRESIDENT ANDERSON:

RESOLVED, that Rule 7 of the Standing Rules of the Duluth City Council is hereby amended to read as follows:

Rule 7. ORDER OF BUSINESS FOR ALL MEETINGS EXCEPT ANNUAL ORGANIZATION MEETING.

Upon the appearance of a quorum, the council shall then proceed to the business before it in the following order:

1. Roll call;
2. Pledge of allegiance;
3. Approval of minutes of previous meeting(s);
4. Presentation of petitions and other communications;
5. Reports from the administration;
6. Reports from other officers;
7. Reports of boards and commissions;
8. Reports of council committees;
9. Reports of council open issues;
10. Opportunity for citizens to be heard;
11. Unfinished business;
12. New business, motions, resolutions;
13. Introduction and consideration of ordinances;
14. Councilor questions and comments;
15. Councilor preview of upcoming business.

Any citizen desiring to be heard may be given three minutes for such purpose and with the unanimous consent of members of the council then present, such citizen may be heard on the same subject for such additional period of time as may be permitted by the presiding officer.

Resolution 10-0196 was unanimously adopted.

Approved May 10, 2010

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 Anderson moved passage of the consent agenda, which motion was second-

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

ed and unanimously carried.

RESOLVED, that the assessment roll levied to defray the assessable portion of demolitions (#5439 – Fund 110) at the following locations is set forth below:

- (a) 106 South Blackman – assessable amount: \$6,864.53;
- (b) 2412 West First Street – assessable amount: \$7,283.52;
- (c) 323 East Ninth Street – assessable amount: \$8,410.53;
- (d) 615 East Tenth Street – assessable amount: \$6,930.84;
- (e) 1330 Fern Avenue – assessable amount: \$9,360.39;
- (f) 2410 Florence Avenue – assessable amount: \$1,496.88.

The total assessable amount is \$40,346.69 and this assessment roll is hereby confirmed.

Resolution 10-0235 was unanimously adopted.

Approved May 10, 2010

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Altec Industries, Inc., for the purchase and delivery of an aerial lift bucket truck (Model LRV55 aerial device installed on a 2011 International Model 4300 cab and chassis unit) for the fleet services division in accordance with the vendor's specifications and low bid of \$128,158 plus sales tax of \$8,810.86 for a total combined amount of \$136,968.86, terms net 30, FOB destination, and payable from Capital Equipment Fund 250, Department/Agency 015, Organization 2010, Object 5580, Project No. CE250-V1004.

Resolution 10-0239 was unanimously adopted.

Approved May 10, 2010

DON NESS, Mayor

- - -

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

- (a) On April 7, 2010, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of S&D Enterprises, Inc., d/b/a Gopher Bar & Grill, 402 North Central Avenue, and has submitted its report to the city council of the city of Duluth as Public Document No. 10-0510-17;
- (b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on May 10, 2010, the city council considered the records and evidence submitted;
- (c) The finding of facts as set forth in Public Document No. 10-0510-17 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of S&D Enterprises, Inc., d/b/a Gopher Bar & Grill, 402 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 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 10-0250 was unanimously adopted.

Approved May 10, 2010

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 Lake Superior Marine Museum

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Association, Northern Lights Foundation 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 10-0251 was unanimously adopted.

Approved May 10, 2010

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:

Schneider's Kitchen, Inc. (G B Schneider Co), 4602 Grand Avenue, with Gary Schneider, 100 percent stockholder, transferred from Grandma's Grand Avenue, Inc. (Grandma's Saloon & Grill), same address.

Resolution 10-0252 was unanimously adopted.

Approved May 10, 2010

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:

Marshall School, 1215 Rice Lake Road, for July 16, 2010, with Deb Stephan, manager.

College of St. Scholastica, John Baggs Memorial Scholarship, 1200 Kenwood Avenue, for June 12, 2010, with Ken Kolquist, manager.

Resolution 10-0253 was unanimously adopted.

Approved May 10, 2010

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	Roscoe's Pioneer Bar, 323 West First Street

Resolution 10-0254 was unanimously adopted.

Approved May 10, 2010

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. 10-0510-18, with the state of Minnesota, department of natural resources, authorizing the city to perform certain

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

maintenance at the Clyde Avenue (Munger Access) and Rice's Point boat launch sites, in consideration of \$1,500 to be paid by the department of natural resources to the city. Reimbursements received shall be deposited into public administration department, maintenance operations division, General Fund 110, Department 121, Division 1217-2140, Revenue Source 4654-02.

Resolution 10-0231 was unanimously adopted.

Approved May 10, 2010

DON NESS, Mayor

- - -

BE IT RESOLVED, that pursuant to Minnesota Statutes 204B.16, the following locations are designated as polling places for the August 10, 2010, state primary election and November 2, 2010, for the state general election:

POLLING PLACE LIST

POLLING PLACE	ADDRESS
1. St. Michael's Catholic Church (lower level)	4901 East Superior Street
2. Lakeside Presbyterian Church (lower level)	4430 McCulloch Street
3. Lutheran Church of the Good Shepherd (lower level)	1325 North 45th Avenue East
4. Faith Lutheran Church (lower level)	1814 North 51st Avenue East
5. Lakeview Covenant Church (lower level)	1001 Jean Duluth Road
6. Woodland Community Club	3211 Allendale Avenue
7. Glen Avon Presbyterian Church	2105 Woodland Avenue
8. Duluth Congregational Church	3833 East Superior Street
9. Pilgrim Congregational Church	2310 East Fourth Street
10. U.M.D. Kirby Student Center	1120 Kirby Drive
11. Kenwood Lutheran Church	324 West Cleveland Street
12. Chester Park United Methodist Church (lower level)	819 North 18th Avenue East
13. Mt. Olive Lutheran Church (lower level)	2010 East Superior Street
14. Temple Israel	1602 East Second Street
15. Trinity Lutheran Church	1108 East Eight Street
16. Peace Church (Tenth Avenue entrance)	1015 East 11th Street
17. First United Methodist Church (Lakeview social hall)	230 East Skyline Parkway
18. Central Hillside Community Center	12 East Fourth Street
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
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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

POLLING PLACE LIST

POLLING PLACE	ADDRESS
31. Faith Haven (recreation room)	4901 Grand Avenue
32. Elim Lutheran Church (social hall)	6101 Cody Street
33. Bayview Heights School (gym)	8702 Vinland Street
*34. Asbury Methodist Church	6822 Grand Avenue
35. Goodfellowship Community Center (warming area)	1242-88th Avenue West
36. Stowe School (Room 27)	715-101st Avenue West

* New polling site

BE IT FURTHER RESOLVED, that under the authority of Ordinance 8728, that an absentee ballot board shall be in effect and utilized as allowed for under Minnesota Statutes for the August 10, 2010, and November 2, 2010, elections.

BE IT FURTHER RESOLVED, that the proper city officials are hereby authorized to establish and post temporary handicapped parking zones for the August 10, 2010, and November 2, 2010, 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 10-0214 was unanimously adopted.

Approved May 10, 2010

DON NESS, Mayor

- - -

RESOLVED, that the city is hereby authorized to execute agreements with Blue Cross and Blue Shield of Minnesota, substantially the same as those on file in the office of the city clerk as Public Document No. 10-0510-19, under which that company will provide administrative services, network access and stop loss insurance to the city's group health plan during the 2010 calendar year for an estimated total cost of \$1,100,400, which shall be paid from the group health fund.

Resolution 10-0236 was unanimously adopted.

Approved May 10, 2010

DON NESS, Mayor

- - -

RESOLVED, that the city council approves settlement in the amount of \$100,000 of all claims or causes of actions asserted against the city of Duluth and its officers and employees in the matter venued in United States District Court for the District of Minnesota and identified as *James Croud as trustee for the next of kin of David Croud vs. St. Mary's Medical Center, et. al., Court File: 08-CV-5372 (PJS/JSM)*, and further authorizes the proper city officials to execute all documents necessary to conclude this matter on a full, final and complete basis, funds payable from Fund 610-036-1651-5841.

Resolution 10-0260 was unanimously adopted.

Approved May 10, 2010

DON NESS, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

- - -

RESOLVED, that the proper city officials are authorized to pay to American Family Insurance Group as subrogee of Dennis W. Bard the sum of \$25,596.37 in full and final settlement of the claim which arose out of a failure of a city sanitary sewer main occurring near 1720 West Page Street on December 20, 2008; payment to be made from the Self Insurance Fund 610-036-1653-5841.

Resolution 10-0225 was unanimously adopted.
Approved May 10, 2010
DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Ferguson Enterprises, Inc., d.b.a. Northern Water Works Supply, for the purchase and delivery of Waterous Pacer fire hydrants during year 2010 in accordance with the vendor's specifications and low bid of \$70,210.50 plus \$4,826.97 sales tax for a total amount of \$75,037.47, terms net 30, FOB destination, payable from the Water Fund 510, Department/Agency 500, Organization 1945, Object 5227.

Resolution 10-0240 was unanimously adopted.
Approved May 10, 2010
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 2010 by street maintenance crews in accordance with bid specifications and the vendor's low bid of \$105 per cubic yard of type #3A32 High Early concrete, for a total of \$47,250 plus \$3,248.44 sales tax, for an estimated combined total amount of \$50,498.44, terms net 30, FOB destination, payable from the General Fund 110, Department/Agency 121, Organization 1217-2140, Object 5224.

Resolution 10-0241 was unanimously adopted.
Approved May 10, 2010
DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Northstar International, Inc., d.b.a. Astleford International Trucks, for the purchase and delivery of a 16-foot construction van with a 2010 W42 Workhorse commercial chassis and Utilimaster van body with options and a standard warranty in accordance with the vendor's specifications and bid of \$54,850 plus \$75 parts book/owners manual plus \$3,570.14 vehicle tax plus \$125 tax-exempt license, registration and plates, for a total combined amount of \$58,620.14, terms net on delivery, FOB destination, and payable as follows: \$11,724.03 from Water Fund 510, Department/Agency 500, Organization 1905, Object 5580 and \$46,896.11 from Gas Fund 520, Department/Agency 500, Organization 1905, Object 5580.

Resolution 10-0242 was unanimously adopted.
Approved May 10, 2010
DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

RESOLVED, that city officials are hereby authorized to enter into a 54-month contract with Nortrax Equipment Company for the lease of 16 John Deere Model 772G motor graders beginning with the first winter season of November 1, 2010, through April 30, 2011, in accordance with vendor specifications and quote of \$311,916.16 plus \$21,444.24 sales tax for a total amount of \$333,360.40, terms advance payment, FOB destination, and payable from General Fund 110, Department/Agency 121, Organization 1217-2140, Object 5415; and continuing for five winter seasons for a total contract amount not to exceed \$1,666,802.

Resolution 10-0246 was unanimously adopted.

Approved May 10, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with SEH, Inc., to perform professional engineering services for investigation, hydraulic modeling, replacement design and construction inspection involving the replacement of the Keene Creek culvert under Cody Street in the amount of \$182,000, payable out of Stormwater Utility Fund 0535, Department/Agency 500, Organization 1930, Activity 2230, Object 5303, City Project No. 0895ST.

Resolution 10-0255 was unanimously adopted.

Approved May 10, 2010

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with A.G. O'Brien Plumbing and Heating Company for the Phase II repairs on the steam tunnel infrastructure at Duluth City Hall, 411 West First Street, in accordance with specifications and contractor's low bid of \$168,300, terms net 30, payable from Capital Improvements Fund 450, Department/Agency 030, Object 5520, Project No. CP2009-0926B.

Resolution 10-0256 was unanimously adopted.

Approved May 10, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to accept Grant Agreement No. 2010-SHSP-00567 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. 10-0510-20, in the amount of \$70,000, said funds to be deposited in Fund 210, Agency 030, Organization 3171, Revenue Source 4210-02, for the purpose of supporting the Duluth fire department's chemical assessment team.

Resolution 10-0226 was unanimously adopted.

Approved May 10, 2010

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Elk River Ford, Inc., for the tax-exempt purchase and delivery of six 2010 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 \$135,439.92, terms net 30, FOB destination, and payable as follows: \$109,205.87 from

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Capital Equipment Fund 250, Department/Agency 015, Organization 2009, Object 5580, Project No. CE250-V902 and \$26,234.05 from Capital Equipment Fund 250, Department/Agency 015, Organization 2010, Object 5580, Project No. CE250-V1001.

Resolution 10-0238 was unanimously adopted.

Approved May 10, 2010

DON NESS, Mayor

- - -

THE CITY COUNCIL FINDS:

(a) That Resolution 01-0704, adopted by the city council, designated portions of certain streets in the vicinity of Denfeld High School as a residential permit parking zone pursuant to Section 33-125 of the Duluth City Code, 1959, as amended; and

(b) The residents of an adjoining street (46th Avenue West south of Fourth Street and north of the alley between Grand Avenue and Fourth Street) have submitted a petition requesting to be included in this zone; and

(c) A public hearing was held on April 26, 2010. After review of this matter, the city council has determined that the addition of such street segment to the residential permit parking zone is appropriate.

RESOLVED, that Resolution 01-0704 is hereby amended by designating the parking areas on both sides of 46th Avenue West south of Fourth Street and north of the alley between Grand Avenue and Fourth Street to the end of the public right-of-way for the residential permit parking zone be established by such resolution.

Resolution 10-0248 was unanimously adopted.

Approved May 10, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to award \$15,000 from the city's 2010 capital expenditures budget, Fund 110-700-1420-5530, to the Junior League of Duluth for Playfront Park pursuant to the matching provision of the city's neighborhood playground equipment revitalization program (established by Resolution 09-0439).

Resolution 10-0232 was unanimously adopted.

Approved May 10, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to award \$15,000 from the city's 2010 capital expenditures budget, Fund 110-700-1420-5530, to Neighborhood Housing Services of Duluth as fiscal agent for the Morgan Park Community Club pursuant to the matching provision of the city's neighborhood playground equipment revitalization program (established by Resolution 09-0439).

Resolution 10-0233 was unanimously adopted.

Approved May 10, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to award \$15,000 from the city's 2010 capital expenditures budget, Fund 110-700-1420-5530, to the Montessori School of Duluth as fiscal agent for the Morley Heights Neighborhood Association pursuant to

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

the matching provision of the city's neighborhood playground equipment revitalization program (established by Resolution 09-0439).

Resolution 10-0234 was unanimously adopted.
Approved May 10, 2010
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 2010, Chapter 203 - H.F. No. 2786, amending Laws 1973, Chapter 327, Section 2, subdivision 2, as amended, increasing the membership of the Spirit Mountain recreation area authority board from seven to nine members.

Resolution 10-0237 was unanimously adopted.
Approved May 10, 2010
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to pay \$50,000 to the Junior League of Duluth for structural modifications to Playfront Park for compliance with the Americans with Disabilities Act accessibility guidelines, funds payable from the city's capital improvement fund, Fund 110-700-1420-5530, Project No. citywide ADA compliance subproject ADA.

Resolution 10-0245 was unanimously adopted.
Approved May 10, 2010
DON NESS, Mayor

- - -

The following resolutions were also considered:

Councilor Gardner moved to suspend the rules to consider Ordinance 10-022 at this time, which motion was seconded and unanimously carried.

INTRODUCTION AND CONSIDERATION OF ORDINANCE

The following entitled ordinance was read for the second time:

BY COUNCILORS GAUTHIER, GARDNER AND HARTMAN
10-022 (10028) - AN ORDINANCE ADDING A NEW SECTION 34-17 TO THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO PREDATORY OFFENDER RESIDENCY RESTRICTIONS.

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

Carl Sack expressed concern if, when considering the ordinance, the council had any studies to back up the claim that these residency restrictions would make the city safer. He stated that he had seen data that residency restrictions make a city more threatened since those individuals go underground.

Police Chief Gordon Ramsay reviewed figures relative to level three sex offenders and the need for these restrictions.

The councilors commented at length about their support for this ordinance.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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

- - -

Resolution 10-0259, by Councilor Stauber, amending Resolution 09-0004 providing for the temporary re-opening of the northbound lane of Lakeview Drive At Snively Road, was introduced for discussion.

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

Bob Fryberger expressed opposition for the resolution for reasons of last year when there was construction work on Woodland Avenue, there were no complaints and the temporary closure previously approved and this year it is planned to be made a permanent closure, was to make this a safe residential neighborhood.

Councilor Stauber reviewed that while the city has approved that this street be closed temporarily and then permanently, this is a request from some neighbors for this temporary opening due to the construction on Woodland Avenue.

Resolution 10-0259 failed upon the following vote (Public Document No. 10-0510-21):

Yeas: Councilors Fosle and Stauber -- 2

Nays: Councilors Boyle, Cuneo, Fedora, Gardner, Gauthier, Hartman and President Anderson -- 7

- - -

Resolution 10-0258, by Councilor Stauber and President Anderson, increasing the parking meter time limits for all one hour Downtown parking meters to two hours, was introduced for discussion.

Councilor Stauber moved to table the resolution and to send it to the parking commission for their input, which motion was seconded and unanimously carried.

- - -

Resolution 10-0257, of intent to reform the housing code program and its enforcement, was introduced by Councilor Fosle for discussion.

- - -

Councilor Fosle moved to suspend the rules to consider Ordinance 10-023 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 PRESIDENT ANDERSON AND COUNCILOR FEDORA

10-023 - AN ORDINANCE AMENDING SECTION 29A-27, AND REPEALING SECTION 29A-32.1, OF CHAPTER 29A OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO THE RENTAL LICENSING 300 FOOT RULE.

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

Rick Ball and Bob Reichert, executive director and chair, respectively, of the Housing and Redevelopment Authority (HRA), Pam Kramer, executive director of the Duluth Local Initiatives Program, Karen Kilpo, Trent Wickman, Sandy Robinson, Myrna Matheson and Susan Schumacher expressed support for the resolution but not for the ordinance, for reasons of: the HRA supported the creation of the 300 foot ordinance; the HRA undertook the Campus Neighborhood Stabilization Initiative to re-stabilize the neighborhood; the HRA is working to

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

address student housing needs; there is a need to create a zoning overlay or some other type of protection that would allow for assurance that there would not be further erosion in the neighborhood; what the HRA is attempting to do would not be possible without retaining the 300 foot rule; stabilizing the neighborhoods and encouraging affordable housing opportunities for students is the goal; the 300 foot rule is working, even as a stop-gap measure; people are scared every time a house sells; up-keep of the whole neighborhood reflects on the integrity of the neighborhood; a decision was made, so until something else happens, this needs not to change; enrollment at the University of Minnesota - Duluth (UMD) has increased with no new on campus housing; behavior ordinances cannot be enforced; it is highly likely that a rental will never be a single family house again; the planning commission recommended in December 2003 the ground work for a density ordinance; student housing rental is a business that needs to be regulated; the 300 foot rule is working; before the 300 foot rule, the neighborhood balance changed and the neighborhood deteriorated.

Peter J. Mattson, Peter S. Mattson, Jerry Schlafer and Sean Stephan supported the resolution and/or the ordinance for reasons of: the "protected zone" created by the 300 foot rule has had a significant adverse affect on residential house sales; the 300 foot rule is discriminatory, unfair and needs to be repealed; if you live within 300 feet of a rental property, the right to rent that property is taken away and it is not based on any personal behavior or problem that you have had with the property and the situation has changed, so the temporary bandage is doing more harm than good.

Councilors Fedora and President Anderson supported the ordinance for reasons of: the council determined, and the police confirmed, that the focus should be on "behaviors" and it is having an impact; the resolution supports a lot more emphasis on front end licensing of rental homes to include inspections and off street parking; many individuals have been aggrievedly affected by the 300 foot rule; the building appeal board is frustrated with the 300 foot rule; the 300 foot rule does more harm than good and enforcement and reform of the housing code is the right track to solving this issue.

Councilors Gauthier, Gardner, Stauber, Hartman, Boyle and Cuneo spoke against the ordinance for reasons of: there are various negative aspects of the 300 foot rule; until legitimate concerns are addressed, they would oppose the repeal at this time; this a zoning issue; neighborhoods should not be taken over with rentals; UMD has not planned for additional on-campus housing; it was not intended that the hardship be that an owner cannot sell it unless it is allowed for rental; the proposed student incentive housing program will be a part of the new college town in Duluth and there needs to be good community input and process to get to the solution.

Resolution 10-0257 was adopted as follows:

WHEREAS, city council of the city of Duluth, Minnesota, has enacted ordinances with the goal to improve the quality of life and maintain safe housing stock; and

WHEREAS, the Housing Code and its enforcement is one of the tools used to provide safe housing stock; and

WHEREAS, there have been policies, staffing issues, code issues, court process issues and enforcement processes that have hindered Housing Code enforcement to a level below what the citizens expect; and

WHEREAS, the Housing Code, Fire Code, solid waste ordinance, abandoned property ordinance, crime free multi-housing, excessive police services and social host ordinance share a common mission of improving the quality of life in the city of Duluth.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

NOW, THEREFORE, BE IT RESOLVED, the city council hereby declares its intent to support the reform to the housing enforcement program as follows:

SECTION 1. SINGLE FAMILY DWELLINGS.

(a) In addition to the current rental license fees, a conversion fee will be charged to convert a single family home into a rental property. The fee will result in a priority inspection prior to license approval and occupancy. The conversion fee will be set by council;

(b) Rental properties will be licensed to a specific occupant load based on the number of bedrooms listed in the assessors records;

(c) The maximum number of bedrooms that can be licensed in a rental property will be limited by the amount of legal bedrooms or a square footage standard set by ordinance; whichever is less. The square footage standard sets a maximum number of bedrooms in a home based on its total square footage of living space. For example only, a minimum of 1,000 total square feet to license up to three bedrooms, 1,500 square feet for up to four bedrooms, etc.

SECTION 2. ADDRESSING COMPLAINTS.

(a) Complaints may trigger a full rental inspection. This change would give inspectors the latitude to look at the entire building if the complaint or condition of the building justifies a full inspection.;

(b) Explore parking requirements for rental properties for all residential districts. The existing parking requirements would remain unchanged at two off street parking spaces, plus one per bedroom;

(c) Increased use of the administration citation program for non-compliant properties, complaints and uncooperative owners.

SECTION 3. OTHER ENHANCEMENTS.

(a) Update the Housing Code (Chapter 29A) as necessary to streamline enforcement and update to current standards;

(b) Expand Chapter 29A from dwellings to all structures. This will allow inspectors to address blighted commercial properties;

(c) The new life safety division of the fire department provides enforcement of the Fire Code, Housing Code and solid waste and abandoned property ordinances. The merger of code enforcement function of existing buildings into one division will provide for unified code enforcement and reduce duplication of services. We also plan on having a police presence in the life safety division.

BE IT FURTHER RESOLVED, the city council hereby declares its intent to support quality of life initiatives through the direction set by the above initiatives as well previously enacted initiatives such as crime free multi-housing, administrative citations, excessive police services, social host ordinance and expanded solid waste ordinance enforcement.

Resolution 10-0257 was unanimously adopted.

Approved May 10, 2010

DON NESS, Mayor

- - -

The ordinance failed upon the following vote (Public Document No. 10-0510-23):

Yeas: Councilors Fedora, Fosle and President Anderson -- 3

Nays: Councilors Boyle, Cuneo, Gardner, Gauthier, Hartman and Stauber -- 6

- - -

RESOLVED, that the proper city officers are authorized and directed to execute the agreement filed as Public Document No. 10-0510-22 between the city of Duluth and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Community Action Duluth, revenues received to be deposited into General Fund 110, Department 121, Organization 1219, Revenue Source 4644.

Resolution 10-0244 was unanimously adopted.

Approved May 10, 2010

DON NESS, Mayor

- - -

Resolution 10-0247, authorizing a contract with KTM Paving, Inc., for the construction of Lakewalk extension, Phase 3, from 47th Avenue East to 60th Avenue East in the amount of \$451,988.14, was introduced by Councilor Gauthier.

Councilor Gauthier moved to table the resolution as per the request of the administration, which motion was seconded and unanimously carried.

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR STAUBER

10-007 - AN ORDINANCE DESIGNATING THE WESTON-TIFFANY GREYSOLON DU LHUT WINDOW A LOCAL HERITAGE PRESERVATION LANDMARK.

- - -

INTRODUCED BY COUNCILOR STAUBER

10-008 - AN ORDINANCE DESIGNATING THE WESTON-TIFFANY MINNEHAHA WINDOW A LOCAL HERITAGE PRESERVATION LANDMARK.

- - -

The meeting was adjourned at 9:59 p.m.

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10028

BY COUNCILORS GAUTHIER, GARDNER AND HARTMAN:

AN ORDINANCE ADDING A NEW SECTION 34-17 TO THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO PREDATORY OFFENDER RESIDENCY RESTRICTIONS.

The city of Duluth does ordain:

Section 1. That the Duluth City Code, 1959, as amended, is hereby amended by adding a new Section 34-17 which reads as follows:

Sec. 34-17. Predatory offenders residency--prohibited conduct.

(a) Findings and intent:

(1) Repeat predatory offenders present an extreme threat to the public safety. Predatory offenders are likely to use physical violence and to repeat their offenses, and most predatory offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of predatory offender victimization to society at large, while incalculable, unmistakably steep;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

(2) It is the intent of this Section to serve the city's compelling interest to promote, protect and improve the health, safety, and welfare of Duluth citizens by creating areas around locations where children regularly congregate in concentrated numbers wherein certain predatory offenders are prohibited from establishing temporary or permanent residence;

(b) Definitions. The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

(1) Designated predatory offender. Any person who has been categorized as a Level III predatory offender under Minnesota Statutes Section 244.052, a successor statute, or a similar statute from another state in which that person's risk assessment indicates a high risk of re-offense;

(2) Permanent residence. A place where a person abides, lodges, or resides for 14 or more consecutive days;

(3) Temporary residence. A place where a person abides, lodges or resides for a period of 14 or more days in the aggregate during any calendar year and which is not the person's permanent address, or a place where the person routinely abides, lodges, or resides for a period of four or more consecutive or non-consecutive days in any month and which is not the person's permanent residence;

(4) School. A public or nonpublic elementary or secondary school;

(5) Licensed child care center. A group child care center currently licensed by the St. Louis County, Minnesota public health and human services department;

(6) Public playground. A city-owned, improved outdoor area designed, equipped, and set aside for children's play and includes in that area such facilities as play equipment, surfacing, fencing, signs, internal pathways, internal land forms, vegetation and related structures;

(c) Predatory offenders prohibition; penalties; exceptions.

(1) Prohibited location of residence. It is unlawful for any designated predatory offender to establish a permanent residence or temporary residence within 2,000 feet of any school, licensed child care center or public playground;

(2) Measurement of distance. For purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the outer property line of the permanent residence or temporary residence to the nearest outer property line of the school, licensed child care center or public playground;

(3) Penalties. A person who violates this Section shall be punished by a fine of not exceeding \$1,000 or confinement for a term not exceeding 90 days, or be both such fine and confinement. Each day a person maintains a residence in violation of this ordinance constitutes a separate violation;

(4) Exceptions. A designated predatory offender residing within a prohibited area as described in Section 34-17(c)(1)-(2) does not commit a violation of this Section if any of the following apply:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

(A) The person established the permanent residence or temporary residence and reported and registered the residence pursuant to Minnesota Statutes sections 243.166 and 243.167, or a successor statute, prior to June 10, 2010;

(B) The person was a minor when he/she committed the offense and was not convicted as an adult;

(C) The person is a minor;

(D) The school, licensed child care center or public playground within 2,000 feet of the person's permanent residence was opened after the person established the permanent residence or temporary residence and reported and registered the residence pursuant to Minnesota Statutes sections 243.166 and 243.167, or a successor statute;

(E) The residence is also the primary residence of the person's parents, grandparents, siblings or spouse;

(F) The residence is a property purchased or leased by the Minnesota department of corrections prior to June 10, 2010.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: June 13, 2010)

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

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

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed May 10, 2010
Approved May 10, 2010
DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, May 24, 2010, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: None -- 0

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

10-0524-01 Jail Holdings, LLC, application for concurrent use permit for use of existing underground tunnel that connects 521 West Second Street to 100 North Fifth Avenue West. -- Planning Commission

10-0524-10 Sharon Kangas and Mardi Bagley communication regarding the proposed reclassification from R-2, two family residential, to C-1, commercial, property located at the southeast corner of 21st Avenue East and Superior Street (10-0288R and 10-025-O). -- Received

10-0524-23 Robert L. Ryan communication regarding the proposed amendment to the comprehensive land use plan - future land use map for the Woodland Middle School site (10-0278R). -- Received

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REPORTS FROM THE ADMINISTRATION

10-0524-24 Chief administrative officer communication regarding 2010 budget strategies. -- Received

Mr. Montgomery noted that now that the legislature is done and the local government aid is known, the status of the current budget and pending issues are in this report.

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REPORTS FROM OTHER OFFICERS

10-0524-02 Assessor letter of sufficiency for petition to reclassify from M-1 to R-2 and R-4 Upper Duluth, Lake Avenue, Lots 170-180, even numbered lots, and Upper Duluth, Minnesota Avenue, Lots 169-179, odd numbered lots. -- Received

10-0524-03 Building official appeals of board of zoning appeals denials of requests to:

(a) Allow parking beyond the parking area in a R District at:

(1) 1031 West Arrowhead Road (Paul and Heather Licke);

(2) 1020 West Arrowhead Road (Daniel Matthes);

(b) Relax the minimum front yard setback in a R-2 District from 25 feet to 15 feet for the construction of a new home at 130 West Eighth Street (Steve Marshall). -- Committee 2 (planning and economic development)

10-0524-04 Clerk applications for exempt permits (raffles) to the Minnesota gambling control board from: (a) Arrowhead Bowhunters Alliance for September 10, 2010; (b) Normanna Volunteer Fire Department, Inc., for September 16, 2010. -- Received

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REPORTS OF BOARDS AND COMMISSIONS

10-0524-05 Board of zoning appeals minutes of March 23, 2010, meeting. -- Received

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

10-0524-06 Commission on disabilities minutes of April 7, 2010, meeting. -- Received

10-0524-07 Duluth human rights commission minutes of April 14, 2010, meeting. -- Received

10-0524-08 Entertainment and convention center authority minutes of May 11, 2010, meeting. -- Received

10-0524-09 Planning commission minutes of April 13, 2010, meeting. -- Received

- - -

OPPORTUNITY FOR CITIZENS TO BE HEARD

Deb Anderson commented on communication 10-0524-03(b), noting that she is directly affected by the development of this property. She requested that the developer be required to stay within the rules so it does not adversely affect the sight lines, which was supported by the planning commission.

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RESOLUTION TABLED

Councilor Gauthier moved to remove Resolution 10-0247, authorizing a contract with KTM Paving, Inc., for the construction of Lakewalk extension, Phase 3, from 47th Avenue East to 60th Avenue East in the amount of \$451,988.14, from the table, which motion was seconded and unanimously carried.

Resolution 10-0247 was adopted as follows:

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with KTM Paving, Inc., for the construction of the Lakewalk extension, Phase 3, from 47th Avenue East to 60th Avenue East in the amount of \$451,988.14, payable out of Capital Improvement Fund 0450, Agency 030, Object 5530, City Project No. 0569TR.

Resolution 10-0247 was unanimously adopted.

Approved May 24, 2010

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

RESOLVED, that city officials are hereby authorized to enter into a professional services agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 10-0524-11 with Energy Management Solutions, Inc., for a comprehensive energy audit to survey and report survey findings, and recommend efficiency and conservation measures for 96 city of Duluth facilities by December 31, 2010, in accordance with the city of Duluth's request for proposals dated March 3, 2010, and the vendor's proposal dated April 5, 2010, for \$179,945, payable as follows:

(a) \$175,000 from Energy Management Fund 257, Department/Agency 025, Object 5319;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

(b) \$4,945 Energy Management Fund 257, Department/Agency 015, Object 5319.
Resolution 10-0262 was unanimously adopted.
Approved May 24, 2010
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:

Bong Heritage Center (Duluth Airshow), 4701 Grinden Avenue, for July 17-18, 2010, Ryan Kern, manager.

Resolution 10-0264 was unanimously adopted.
Approved May 24, 2010
DON NESS, Mayor

- - -

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

Nifty 50 Cruisers (Kia of Duluth Car Show and Time Trials), 350 Garfield Avenue, for August 22, 2010, with Ryan Kern, manager.

Resolution 10-0265 was unanimously adopted.
Approved May 24, 2010
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 pending departmental approvals with any specific restrictions:

Grandma's Sports Bar and Grill, Inc. (Grandma's Sports Garden), 425 Lake Avenue South, for June 19, 2010, from 5:00 p.m. to 9:00 p.m.

Resolution 10-0266 was unanimously adopted.
Approved May 24, 2010
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 2:00 a.m. beverage license for the period beginning September 1, 2010, and ending August 31, 2010, subject to departmental approvals and the payment of sales and property taxes:

Just Take Action, Inc. (Duluth Tycoon's), 132 East Superior Street, with Tim Nelson, 50 percent stockholder and Rod Raymond, 50 percent stockholder.

Resolution 10-0267 was unanimously adopted.
Approved May 24, 2010
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:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Grandma's Angie's, Inc. (Little Angie's Cantina), 11 East Buchanan Street, for June 19, 2010, with the serving ceasing at 2:00 a.m.

Resolution 10-0285 was unanimously adopted.

Approved May 24, 2010

DON NESS, Mayor

- - -

RESOLVED, that the Duluth City Council hereby approves of the Minnesota department of commerce issuing an amended currency exchange license to The Title Loan Company, Inc., dba Money Xchange, at 22 North Second Avenue West.

Resolution 10-0293 was unanimously adopted.

Approved May 24, 2010

DON NESS, Mayor

- - -

RESOLVED, that the city council makes the following findings:

(a) Section 45-4.1 of the Duluth City Code, 1959, as amended, allows the city council, by resolution, to allow the placement of objects or material on the public sidewalks or boulevard areas where the city council finds that such objects will not substantially interfere with pedestrian traffic and that the placement of such objects is beneficial to the public welfare; and

(b) Amazing Grace Bakery has requested permission to place tables and chairs and fencing on the sidewalk of the Buchanan Street right-of-way in front of the property located at 394 South Lake Avenue, described as Buchanan Street right-of-way adjoining Lots 1 and 3, and part of the vacated Buchanan Street right-of-way, Lowells Addition; and

(c) The city planning commission, at its regular meeting on May 11, 2010, reviewed this request and considered the comments and recommendations of the director of public works and recommends the conditional placement of the tables and chairs.

RESOLVED FURTHER, based upon the above noted findings, that Amazing Grace Bakery is hereby permitted to place certain exterior furnishings, described below, on or within the sidewalk area of the right-of-way of Buchanan Street of the city of Duluth and the exterior furnishings be limited to that area immediately adjacent to the Amazing Grace Bakery, subject to the following conditions:

(a) The exterior furnishings permitted by this resolution are limited to the following: no more than six tables, 24 chairs, server station and decorative perimeter fencing for boundary delineation;

(b) The exterior furnishings can remain in place even when the establishment is closed;

(c) All exterior furnishings to be placed on the sidewalk shall be approved in writing by the city architect, whose approval shall not be unreasonably withheld. The purpose of this review and approval is to ensure that the exterior furnishings are complimentary to the design character of the area and to protect the public's safety;

(d) The exterior furnishings permitted shall be located such that a public pedestrian walkway be maintained that is not less than six feet in width as measured from any permanent or temporary obstructions including, but not limited to, fire hydrants, lamp posts, flower planters and newspaper stands;

(e) Signs indicating public passage is permitted; shall be installed at each entrance to the delineated area;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

(f) That the applicant shall be responsible for policing refuse in the immediate area, which includes removing all food and beverage spills from the sidewalk surface;

(g) No amplified music shall be used in the sidewalk obstruction area;

(h) That the applicant be on notice that this permit is not exclusive, and that the city may require the permittee to remove the exterior furnishings for specific events conducted in the Canal Park area; the areas described above shall be open to the general public, the general public shall have the right to occupy tables and chairs in the area subject to this permit without making a purchase from the permittee, so long as said members of the general public are orderly and violate no provisions of the law;

(i) This permit shall be in effect until the lease currently held by Amazing Grace Bakery is terminated or transferred to another party, at which time renewal may be requested;

(j) This permit is subject to revocation by a resolution of the city council and 14 days notice to the permittee for failure to maintain the terms and conditions of this permit or at the discretion of the city.

RESOLVED FURTHER, that before this resolution shall be effective for any purpose whatsoever, the aforesaid permittee shall file with the city clerk: a duly executed and acknowledged written acceptance of the terms of this resolution; a certificate of insurance approved as to form by the city attorney evidencing that the permittee has in force insurance meeting the following requirements:

(a) A comprehensive general liability insurance policy shall be maintained in force by permittee in an amount not less than \$500,000 for injuries or death and in an amount not less than \$500,000 for property damage or \$1,500,000 single limit coverage. Such coverage shall include all permittee activities occurring on the permitted premise whether said activities are performed by employees or agents under contract to permittee. 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.

RESOLVED FURTHER, the approval was made because of the city planning commission's findings that the exterior furnishings will not substantially interfere with pedestrian traffic and that said furnishings will be beneficial to the public welfare if the conditions in paragraphs (a) through (j) are observed.

Resolution 10-0280 was unanimously adopted.

Approved May 24, 2010

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 West Griggs Place (formally Niagara Street) from the easterly line of the westerly 40 feet of Lot 2, Block 1, Clover Hill Division Extended, and the west line of Woodland Avenue and the alley between Lots 6 and 7, Block 17, and Lots 1 and 2, Block 16, Motor Line Division, and the alley within said Block 1, Clover Hill 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 (FN 10036), 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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

street and alleys are useless for vehicular and pedestrian purposes, but that the portions of the street and alley is needed for utility purposes as noted in (c) below; and

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

(d) The city planning commission, at its May 11, 2010, regular meeting, recommended approval of the vacation petition; and

(e) The city council of the city of Duluth approves the vacation of the following and retaining a utility easement over a portion of the vacation area, both more particularly described on Public Document No. 10-0524-12:

West Griggs Place (formally Niagara Street) from the easterly line of the westerly 40 feet of Lot 2, Block 1, Clover Hill Division Extended, and the west line of Woodland Avenue and the alley between Lots 6 and 7, Block 17, and Lots 1 and 2, Block 16, Motor Line Division, and the alley within said Block 1, Clover Hill Division; and

(f) That the city clerk is, pursuant to Section 100(b)(7) of the Home Rule Charter of the city of Duluth, 1912, as amended, authorized to record, with the register of deeds and/or the registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution and Public Document No. 10-0524-12 showing the portion of the street and alleys to be vacated and utility easement retained.

Resolution 10-0281 was unanimously adopted.

Approved May 24, 2010

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 westerly 80 feet of Clover Street and associated alleys, Clover Hill 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 (FN 10037), and such commission gave due notice of public hearing and did consider same in public hearing and, the city planning commission found that the properties on either side of this section of the Clover Street and alley easements and the property to which it currently leads is owned and maintained by the University of Minnesota and, the petitioned street and alleys are useless for vehicular and pedestrian purposes; and

(c) The city planning commission, at its May 11, 2010, regular meeting, recommended approval of the vacation petition; and

(d) The city council of the city of Duluth approves the vacation of the following vacation area, more particularly described on Public Document No. 10-0524-13:

The westerly 80 feet of Clover Street and associated alleys, Clover Hill Division; and

(e) That the city clerk is, pursuant to Section 100(b)(7) of the Home Rule Charter of the city of Duluth, 1912, as amended, authorized to record, with the register of deeds and/or the registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution and Public Document No. 10-0524-13 showing the portion of the street and alleys to be vacated.

Resolution 10-0283 was unanimously adopted.

Approved May 24, 2010

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to execute a settlement agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 10-0524-14, for a total amount of \$119,500 in settlement of the dispute venued in the state of Minnesota, District Court, Sixth Judicial District, and captioned *City of Duluth and Duluth Steam Cooperative Association v. Rovanco Piping Systems, Inc., and Roger Wierman, Court File No. 69DU-CV-08-2719*, funds to be deposited in Fund 540.

Resolution 10-0268 was unanimously adopted.

Approved May 24, 2010

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to execute an application for, and if selected, implement a grant from the Minnesota department of commerce office of energy security in an amount anticipated to be \$150,000 for the replacement of windows in City Hall, funds to be deposited in Fund 450-025-4209-01, and to execute any documents required to be executed to accept such grant.

FURTHER RESOLVED, that, if selected, the city is authorized to commit a required 50 percent match to grant, funds for which have been budgeted and are payable from the Capital Improvement Project Fund 450-030-5520.

Resolution 10-0284 was unanimously adopted.

Approved May 24, 2010

DON NESS, Mayor

- - -

BY PRESIDENT ANDERSON:

RESOLVED, that the city council hereby nominates Jack Salmela for the governor's consideration for appointment to the Minnesota department of natural resources Lake Superior coastal program coastal council; this nomination shall be effective immediately and remain active for one calendar year.

Resolution 10-0289 was unanimously adopted.

Approved May 24, 2010

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 2,564 gas meter piping sets in the Gary, Morgan Park, Smithville, Cody, Riverside and West Duluth neighborhoods for the customer service division in the amount of \$26,152.80, payable out of Gas Fund 520, Department/Agency 500, Organization 1905, Object 5535, City Project No. 0900GS.

Resolution 10-0272 was unanimously adopted.

Approved May 24, 2010

DON NESS, Mayor

- - -

RESOLVED, that pursuant to Section 61 of the Duluth City Charter, the city council hereby expresses its intent to cause Minnesota Avenue from 40th Street to 43rd Street to be preserved as part of the city's 2010 street preservation projects, and hereby requests that the mayor prepare or cause to have prepared plans, specifications and estimates therefor, and file such plans and specifications with the special assessment board, together with a

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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 assessments.

Resolution 10-0276 was unanimously adopted.

Approved May 24, 2010

DON NESS, Mayor

- - -

RESOLVED, by Resolution of Intent numbered 10-0182 the council did request improvements to portions of Glenwood Street from 43rd Avenue East to Jean Duluth Road, 43rd Avenue East from Superior Street to Glenwood Street, Eighth Street from 40th Avenue West to Central Avenue, Superior Street from Tenth Avenue East to 21st Avenue East and Mall Drive from Haines Road to Burning Tree Road; and to assess a portion of the costs thereof (city project nos. 0820TR, 0821TR, 0824TR, 0827TR and 0825TR).

FURTHER RESOLVED, that said work be done by contract and that the estimated cost of said improvement as estimated by the city engineer is \$2,399,118, payable from Street Improvement Fund 440, Agency 038, Object 5530, of which \$493,738 is by special assessment to benefitting properties.

FURTHER RESOLVED, that assessment shall be levied upon lands benefitting per the preliminary assessment roll and may be paid in five annual installments at prime rate plus 1.5 percent interest.

FURTHER RESOLVED, that the council order in subject project in accordance with the provisions of Section 61 of the City Charter and that said improvement is hereby ordered.

Resolution 10-0277 was unanimously adopted.

Approved May 24, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to enter into an agreement with the Minnesota department of public safety - fire marshal division, a copy of which amendment is on file in the office of the city clerk as Public Document No. 10-0524-15, pursuant to which the city's fire department would conduct inspections of hotels located within the city for compliance with Minnesota State Fire Code and the Minnesota State Fire Code interpretations of the state fire marshal.

Resolution 10-0261 was unanimously adopted.

Approved May 24, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute an agreement substantially the same as that on file in the office of the city clerk as Public Document No. 10-0524-16, with St. Louis County, all reimbursement payments to St. Louis County pursuant to this agreement shall be paid from Fund 215-200-2295-5447.

Resolution 10-0263 was unanimously adopted.

Approved May 24, 2010

DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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:

The north side of Birch Street east of Garfield Avenue to the easterly dead end.

Resolution 10-0269 was unanimously adopted.

Approved May 24, 2010

DON NESS, Mayor

- - -

RESOLVED, that in accordance with the provisions of Section 33-94 of the Duluth City Code, 1959, as amended, the following angle parking zone is created:

The north side of Superior Street, 180 feet west of Fourth Avenue East to 180 feet east of Fourth Avenue East.

Resolution 10-0270 was unanimously adopted.

Approved May 24, 2010

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. 10-0524-17, with Elert & Associates Networking Division, Inc., for Phase I needs assessment and conceptual design services in four distinctly different, but interrelated, city of Duluth projects - a port security surveillance system, an AVL/GPS (automatic vehicle location/global positioning system), a public safety radio system upgrade and a completed communication infrastructure (ring) - all in accordance with the firm's proposal (Exhibit A) and Minnesota State Professional and Technical Services Master Contract T902-TS (Exhibit B) at an amount not to exceed \$48,000, payable from General Fund 110, Department/Agency 700, Organization 1420, Object 5441.

Resolution 10-0271 was unanimously adopted.

Approved May 24, 2010

DON NESS, Mayor

- - -

THE CITY COUNCIL FINDS:

(a) That the residents of West Niagara Street west of Kenwood Avenue have submitted a petition requesting designation as a residential permit parking zone;

(b) After review of this matter the council has determined that the addition of such street segment to the residential permit parking zone is appropriate.

RESOLVED, that pursuant to Section 33, Article VIII of the Duluth City Code, 1959, as amended, the parking area on both sides of West Niagara Street west of Kenwood Avenue, designated on the map filed in the office of the city clerk as Public Document No. 10-0524-18, is hereby designated as a residential permit parking zone during each period from and including September 1 to and including June 15, between the times of 8:00 AM and 4:00 PM of any Monday through Friday therein.

Resolution 10-0274 was unanimously adopted.

Approved May 24, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to accept an emergency management planning grant agreement for Grant No. 2010-EMPG-00644, a copy of which is on file in the office of the city clerk as Public Document No. 10-0524-19, from the Minnesota

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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 10-0275 was unanimously adopted.

Approved May 24, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept a FY2010 Edward Byrne Memorial Justice Assistance Grant Program Award from the United States department of justice, bureau of justice assistance, office of justice programs, in the amount of \$65,731, to be used for state and local initiatives including the first witness program and St. Louis County drug court, and to help fund technical assistance, training, equipment, supplies, contractual support and criminal justice information systems for criminal justice; and further are authorized to execute any documents required to be executed to accept said grant, funds to be deposited in Fund 215-200-2295-4209-02.

Resolution 10-0279 was unanimously adopted.

Approved May 24, 2010

DON NESS, Mayor

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The following resolutions were also considered:

Resolution 10-0067, adopting heritage preservation guidelines for the Weston-Tiffany Greysolon du Lhut window; and Resolution 10-0069, adopting heritage preservation guidelines for the Weston-Tiffany Minnehaha window, were introduced by Councilor Stauber for discussion.

- - -

Councilor Stauber moved to suspend the rules to consider ordinances 10-007 and 10-008, at this time, which motion was seconded and unanimously carried.

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR STAUBER

10-007 (10029) - AN ORDINANCE DESIGNATING THE WESTON-TIFFANY GREYSOLON DU LHUT WINDOW A LOCAL HERITAGE PRESERVATION LANDMARK.

- - -

INTRODUCED BY COUNCILOR STAUBER

10-008 (10030) - AN ORDINANCE DESIGNATING THE WESTON-TIFFANY MINNEHAHA WINDOW A LOCAL HERITAGE PRESERVATION LANDMARK.

- - -

Councilor Stauber moved to suspend the rules to hear a speaker on this issue, which motion was seconded and unanimously carried.

Penny Clark, chair of heritage preservation commission, spoke in support of the resolutions and ordinances.

Resolutions 10-0067 and 10-0069 were adopted as follows:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

RESOLVED, that the city council hereby adopts the heritage preservation guidelines for the Weston-Tiffany Greysolon Du Lhut Window recommended by the city of Duluth heritage preservation commission, a copy of which is on file in the office of the city clerk as Public Document No. 10-0524-20.

Resolution 10-0067 was unanimously adopted.

Approved May 24, 2010

DON NESS, Mayor

- - -

RESOLVED, that the city council hereby adopts the heritage preservation guidelines for the Weston-Tiffany Minnehaha Window recommended by the city of Duluth heritage preservation commission, a copy of which is on file in the office of the city clerk as Public Document No. 10-0524-20.

Resolution 10-0069 was unanimously adopted.

Approved May 24, 2010

DON NESS, Mayor

- - -

Councilor Stauber moved passage of ordinances 10-007 and 10-009 and the same was adopted upon unanimous votes.

- - -

Resolution 10-0278, amending the comprehensive land use plan - future land use map for the Woodland Middle School site and along East Fourth Street from 14th Avenue East to 19th Avenue East, 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.

Kerry Leider, representing Independent School District No. 709, and Sandy Hoff spoke in support of the resolution for reasons of: this change would allow the school district to sell this location for a use other than an institutional one; disagreement on the preservation overlay on the Eighth Street right-of-way, which encumbers approximately five acres; the designation of historical white pines has a \$.5 million value that will diminish the school district's financing plan and affect development options; the school district is requesting support for this property being changed to "mixed use" and that the preservation area be kept as residential and any future developer will have to come back to the planning commission and city council.

Karen Schuder, Steve Schuder, Mark Poirer and Betsy Kneepkens opposed the resolution for reasons of: the neighbors oppose this and support land preservation designation for the old white pines because it serves as buffer to the neighborhood and reduces water runoff problems; the neighbors have submitted a plan for this area and support mixed commercial and residential use; the trees preserve the real estate value for the existing and future homes; there are developers that support this land use preservation; a University of Minnesota extension service survey said that 95 percent support natural open spaces in neighborhoods; citizens are concerned about maintaining the character of the neighborhood and limiting the traffic on residential streets; good planning is needed here and the neighborhood is willing to live with a compromise.

Councilor Fedora opposed the resolution, stating that while the higher value received by the school district from the sale of this property will reduce their long term financing, increase the tax base and thus reduce property taxes, there is a need to work to reduce the preservation status to a level that is more palatable for everyone.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Other councilors commented at length on their support for the resolution.
Resolution 10-0278 was adopted as follows:

RESOLVED, that the city council makes the following findings:

(a) The city council adopted the Duluth comprehensive land use plan on June 26, 2006, via Resolution 06-0491, which outlined the desired arrangement of land uses for the next 20 years; and

(b) The city planning division, which is implementing the comprehensive land use plan by developing new zoning regulations, looked at how zoning could encourage the development of new student housing in appropriate locations near existing commercial centers, within walking distance of university campuses and along major transit lines; and

(c) University students have expressed a desire to live in a type of student housing development which is currently unavailable in this market and that includes a mix of apartment-style housing with places to shop and dine; and

(d) The potential benefits of mixed-use development is that it can meet the market demand while alleviating pressures to convert single-family homes into multi-tenant housing in the traditional neighborhoods around the university campuses; and

(e) Local residents have expressed a strong desire to maintain the character of the traditional neighborhoods around the university campuses; and

(f) Independent School District 709 is proposing to close Woodland Middle School in either 2010 or 2013 as part of its long range facilities plan; and

(g) The city planning division held a public meeting on April 1, 2010, on the proposed amendments to the comprehensive land use plan - future land use map in which over 60 people attended; and

(h) Based on public comments received, the city planning division recommended to the city planning commission that the future land use map be amended for the Woodland Middle School site from institutional to neighborhood mixed use and preservation, and East Fourth Street be amended from 14th Avenue East to 19th Avenue East from traditional neighborhood and urban residential to neighborhood mixed use; and

(i) The city planning commission has reviewed the future land use amendment, conducted a public hearing on May 11, 2010, at their regular planning commission meeting, and recommends adoption of the proposed future land use map amendments.

BE IT FURTHER RESOLVED, that the adopted comprehensive land use plan - future land use map, is amended as identified in Public Document No. 10-0524-21.

Resolution 10-0278 was adopted upon the following vote:

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

Nays: Councilors Fedora and Fosle -- 2

Approved May 24, 2010

DON NESS, Mayor

- - -

RESOLVED, that pursuant to Resolution 10-0229, Resolution 10D-22 approved by the Duluth economic development authority (DEDA) at its meeting on May 19, 2010, regarding the lease termination agreement with The-Jet Company and Cirrus Design Corporation, a copy of which is on file in the office of the city clerk as Public Document No. 10-0524-22, is hereby approved.

Resolution 10-0282 was unanimously adopted.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Approved May 24, 2010
DON NESS, Mayor

- - -

Resolution 10-0288, denying a request to amend Chapter 50 of the Duluth City Code, 1959, as amended, Zoning District Map No. 38 as contained in the Appendix to Chapter 50, to provide for the reclassification from R-2, two-family residential, to C-1, commercial, property located at the southeast corner of 21st Avenue East and Superior Street (Mardi Bagley and Sharon Kangas), was introduced by Councilor Stauber for discussion.

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

Mardi Bagly spoke in opposition to the resolution for reasons of: the house is in extreme disrepair and foreclosure; the intent is for there to be a retail store/art gallery and also to teach art appreciation; there is plenty of off street parking in the rear of the building; it was previously a bed and breakfast; it has been labeled the "immigrant" house and they are looking to have it put on the national historical registrar; neighbors support this; a restriction could be put on the abstract where it can never be changed to something like a gas station.

Councilor Stauber moved to table the resolution for consideration with Ordinance 10-025 at the June 14 council meeting, which motion was seconded and unanimously carried.

- - -

Resolution 10-0287, by Councilor Hartman and President Anderson, requesting the parks and recreation commission study the feasibility of establishing primitive camping at the end of Minnesota Point, was introduced for discussion.

Councilors Gardner, Gauthier and Stauber opposed the resolution for reasons of: the residents have many serious issues with this proposal; this particular land has old white and red pines that are in danger; a lot of individuals go there for the display of nature; this is an environmentally sensitive land; already today, littering and enforcement is an issue and maybe unintentionally, but this resolution sends the message that the council supports this.

Councilor Hartman and President Anderson noted that this resolution is intentionally vague and is only a request to study the feasibility.

Resolution 10-0287 was adopted as follows:

BY COUNCILOR HARTMAN AND PRESIDENT ANDERSON:

WHEREAS, primitive camping is gaining popularity in the United States; and

WHEREAS, Lake Superior is already home to several primitive camping options such as Porcupine Mountain State Park in Ontonogan, Michigan, and Grant Portage State Park in Minnesota; and

WHEREAS, the public park land at the end of Minnesota Point/Park Point is precious and environmentally valuable recreational land for the people of Duluth and visitors alike; and

WHEREAS, increased awareness and measured use of this land will only help protect the old growth forest and other ecosystems of the park.

THEREFORE, BE IT RESOLVED, the city council hereby requests the Duluth parks and recreation commission to study the feasibility of establishing primitive camping at the end of Minnesota Point, past Sky Harbor Airport.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

BE IT FURTHER RESOLVED, the council requests the commission to view primitive camping as low impact camping with fire pits and centralized restroom and refuse facilities.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

FURTHER RESOLVED, the council requests the commission determine the physical limitations and possibilities for said campsites, the possible costs associated with establishing, operating and maintaining campsites, and other potential challenges and opportunities.

Resolution 10-0287 was adopted upon the following vote:

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

Nays: Councilors Gardner, Gauthier and Stauber -- 3

Approved May 24, 2010

DON NESS, Mayor

- - -

Resolution 10-0286, by President Anderson, amending the elected official out-of-state travel policy, was introduced for discussion.

Councilor Stauber reviewed the history on this issue and the recommendation from the League of Minnesota Cities.

Councilors commented at length as to their view points on this issue and what actually is the intent of what the council is looking to accomplish with the resolution.

Councilor Fedora moved to refer the resolution to the administration for them to accommodate the intent of the council, which motion was seconded and carried as follows:

Yeas: Councilors Boyle, Cuneo, Fedora, Fosle, Gardner, Gauthier, Hartman and Stauber -- 8

Nays: President Anderson -- 1

- - -

Resolution 10-0273, amending guidelines for the private sewer service grant program, was introduced by Councilor Gauthier for discussion.

Councilor Stauber expressed his concerns for not allowing homeowners to be reimbursed for their sweat equity.

Mr. Montgomery expressed a concern about determining the value and reputable bids.

Councilors discussed at length Councilor Stauber's and Mr. Montgomery's concerns.

Councilor Stauber moved to table the resolution, which motion was seconded and carried as follows:

Yeas: Councilors Boyle, Cuneo, Fosle, Stauber and President Anderson -- 5

Nays: Councilors Fedora, Gardner, Gauthier and Hartman -- 4

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR STAUBER

10-025 - AN ORDINANCE AMENDING CHAPTER 50, OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NO. 38 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-2, TWO-FAMILY RESIDENTIAL, TO C-1, COMMERCIAL, PROPERTY LOCATED AT THE SOUTHEAST CORNER OF 21ST AVENUE EAST AND SUPERIOR STREET (MARDI BAGLEY AND SHARON KANGAS).

- - -

INTRODUCED BY COUNCILOR STAUBER

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

10-026 - AN ORDINANCE AMENDING SECTION 50-35 OF THE DULUTH CITY CODE, 1959, AS AMENDED; PROVIDING FOR A SPECIAL USE PERMIT REGULATING WIRELESS TELECOMMUNICATIONS FACILITIES.

- - -

BY COUNCILORS STAUBER AND GARDNER

10-024 - AN ORDINANCE AMENDING SECTIONS 29A-38, 29A-39 AND 29A-40 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO MANDATORY RENTAL AGREEMENT DISCLOSURES.

- - -

The meeting was adjourned at 8:55 p.m.

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10029

AN ORDINANCE DESIGNATING THE WESTON-TIFFANY GREYSOLON DU LHUT WINDOW A LOCAL HERITAGE PRESERVATION LANDMARK.

The city of Duluth does ordain:

Section 1. That pursuant to Section 28A-4 of the Duluth City Code, 1959, as amended, the stained glass window known as the Weston-Tiffany Greysolon Du Lhut Window is designated a local heritage preservation landmark.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: June 27, 2010)

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

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

Nays: None -- 0

Passed May 24, 2010

Approved May 24, 2010

DON NESS, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10030

AN ORDINANCE DESIGNATING THE WESTON-TIFFANY MINNEHAHA WINDOW A LOCAL HERITAGE PRESERVATION LANDMARK.

The city of Duluth does ordain:

Section 1. That pursuant to Section 28A-4 of the Duluth City Code, 1959, as amended, the stained glass window known as the Weston-Tiffany Minnehaha Window is designated a local heritage preservation landmark.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: June 27, 2010)

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

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

Nays: None -- 0

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

ATTEST:

JEFFREY J. COX, City Clerk

Passed May 24, 2010
Approved May 24, 2010
DON NESS, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, June 14, 2010, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: None -- 0

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

10-0614-01 A&A Investments, LLC, et al. (eight signatures), petition to reclassify from R-1 to C-5 Lots 1, 2, 3 and 4, Block 3, Central Acres, Second Division of Duluth. -- Assessor

10-0614-02 Independent School District 709, et al., petitions to vacate:

(a) Portion of Chestnut Street in parts of Bryant Addition to Duluth, First Division and Centredale Addition to Duluth (five signatures);

(b) Portion of Elm Street in Blocks 2 and 4, Centredale Addition to Duluth (four signatures);

(c) Portion of alley between Blocks 1 and 2, Centredale Addition to Duluth (three signatures);

(d) Alley in Lot 18, Block 5, Bryant Addition Third Division (two signatures). -- Assessor

10-0614-03 Minnesota state auditor audit report for Duluth entertainment and convention center authority for the years ended December 31, 2009 and 2008. -- Received

10-0614-32 Mardi Bagley and Sharon Kangas communication regarding the proposed reclassification from R-2, two family residential, to C-1, commercial, property located at the southeast corner of 21st Avenue East and Superior Street (10-0288R and 10-025-O). -- Received

10-0614-16 Alison Clarke communications regarding the proposed intent to use tax increment financing for the Hillside Development housing development initiative (10-0294R). -- Received

10-0614-18 Ellen and Bill Hedenberg communications regarding the appeal of the board of zoning appeals' decision to deny an application for a variance from the front yard parking restrictions at 1031 West Arrowhead Road (10-0312R and 10-0313R). -- Received

10-0614-05 R. Komrska communication regarding the proposed ordering of the 2010 street preservation project: Minnesota Avenue from 13th Street to 43rd Street (10-0308R). -- Received

10-0614-33 Shelley Matthes communication regarding the appeal of the board of zoning appeals' decision to deny an application for a variance from the front yard parking restrictions at 1020 West Arrowhead Road (10-0314R and 10-0315R). -- Received

10-0614-34 Mike Saperstein communication regarding the proposed special use permit regulations for wireless telecommunications facilities (10-026-O). -- Received

10-0614-06 J. Witte communication regarding the proposed establishment of 12th Avenue East and 14th Avenue East from London Road to Fourth Street as two way streets (10-0311R). -- Received

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

10-0614-04 The following communications regarding the appeal of the board of zoning appeals' decision to deny an application for a variance from the minimum required front yard setback at 130 West Eighth Street (10-0295R and 10-0296R): (a) Deb Anderson; (b) J. Mark Borak and Rita E. Molitor -- Received

10-0614-17 The following communications regarding the proposed intent to sell Duluth Steam District No. 1 (10-0333R): (a) Duluth Steam Cooperative Association; (b) Jason Myers; (c) Richard Paulson. -- Received

10-0614-35 The following communications regarding the proposed increase to Downtown parking meter time limits (10-0258R): (a) Andy Goldfine; (b) Lynne Raschke. -- Received

- - -

REPORTS FROM OTHER OFFICERS

10-0614-07 Assessor:

(a) Affidavits of mailing of notice of special assessment board public hearings regarding the proposed:

(1) 2010 street preservation program on Minnesota Avenue from 13th Street to 43rd Street;

(2) Reassessment of canceled assessment for delinquent garbage (Contract Nos. 2005310, 2006310, 2007310 and 2008310; reassessment amount: \$1,626.14);

(b) Letter of sufficiency regarding petition to reclassify from R-1 to C-5 Lots 1, 2, 3 and 4, Block 3, Central Acres, Second Division of Duluth. -- Received

- - -

REPORTS OF BOARDS AND COMMISSIONS

10-0614-36 Alcohol, gambling and tobacco commission minutes of: (a) March 3, (b) April 7; (c) May 5, 2010, meetings. -- Received

10-0614-08 Board of zoning appeals minutes of April 27, 2010, meeting. -- Received

10-0614-09 Duluth economic development authority minutes of April 21, 2010, meeting. -- Received

10-0614-10 Duluth public arts commission minutes of April 19, 2010, meeting. -- Received

10-0614-11 Entertainment and convention center authority minutes of May 24, 2010, meeting. -- Received

10-0614-12 Housing and redevelopment authority of Duluth minutes of April 27, 2010, meeting. -- Received

10-0614-13 Library board minutes of April 27, 2010, meeting. -- Received

10-0614-19 Parking commission: (a) Recommendations regarding the proposed alterations to parking restrictions in the Downtown area: (1) Change no parking from 2:00 a.m. to 6:00 a.m. to 3:00 a.m. to 6:00 a.m. (10-0150R); (2) Change parking meter limits from one hour to two hours; (b) Minutes of: (1) April 20; (2) May 11, 2010, meetings. -- Received

10-0614-14 Special board of review minutes of May 18, 2010, meeting. -- Received

10-0614-15 Spirit Mountain recreation area authority minutes of April 15, 2010, meeting. -- Received

- - -

OPPORTUNITY FOR CITIZENS TO BE HEARD

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Jay Cole stated that solar energy would be good for the community and government could play a key role in making that happen by providing financing.

- - -

Joan Linski reviewed a feasibility study on the old growth on Park Point and voiced concern for the lack of understanding of the old growth area on the point by those who want to have a recreational area there. She stated that because of the fragility of this area it should be kept from primitive camping or thought of as a recreational area; as it would not boost the economy and would destroy a place where people visit to be inspired by nature. Ms. Linski added that Artist Point should be enjoyed by all and protected for generations to come.

- - -

Anita Stech invited the councilors and public to a civility training workshop that is sponsored by a nonpartisan and nonprofit organization to help groups with their listening and communication skills and to help solve problems.

- - -

RESOLUTIONS TABLED

Councilor Stauber moved to remove Resolution 10-0288, denying a request to amend Chapter 50 of the Duluth City Code, 1959, as amended, Zoning District Map No. 38 as contained in the Appendix to Chapter 50, to provide for the reclassification from R-2, Two-Family Residential, to C-1, Commercial, property located at the southeast corner of 21st Avenue East and Superior Street (Mardi Bagley and Sharon Kangas), from the table, which motion was seconded and unanimously carried.

- - -

Councilor Stauber moved to suspend the rules to consider Ordinance 10-025 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

10-025 - AN ORDINANCE AMENDING CHAPTER 50, OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NO. 38 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-2, TWO-FAMILY RESIDENTIAL, TO C-1, COMMERCIAL, PROPERTY LOCATED AT THE SOUTHEAST CORNER OF 21ST AVENUE EAST AND SUPERIOR STREET (MARDI BAGLEY AND SHARON KANGAS).

- - -

Resolution 10-0288 was adopted as follows:

RESOLVED, that the city council finds as follows:

(a) A petition has been submitted to rezone the property located at the southeast corner of 21st Avenue East and Superior Street (the site) from R-2, Two-Family Residential, to C-1, Commercial; and

(b) The comprehensive plan - future land use map identifies the site as "traditional neighborhood," which is described as houses oriented with shorter dimensions to the street and detached garages, four to eight dwellings per acre density, a mix of housing types at corners (i.e. town homes and four-plexes) and limited commercial (i.e. corner store), home-businesses, churches, schools; and

(c) C-1 zoning allows for the following purposes:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

- (1) Any use permitted in the R-4 apartment residential district;
- (2) Automobile parking lot or parking garage;
- (3) Bank;
- (4) Display room for merchandise to be sold at wholesale, where merchandise sold is stored elsewhere;
- (5) Clinic, medical and dental only occupying 10,000 square feet or less in total floor area;
- (6) Dressmaking, tailoring, shoe repairing, repair of household appliances and bicycles, dry cleaning and pressing, catering and bakery with sale of bakery products on the premises and other uses of a similar character; provided, that no use permitted in this paragraph shall employ more than five persons in a single shift on the premises, not including employees whose principal duties are off the premises or temporary seasonal employees;
- (7) Filling station;
- (8) Offices and office building;
- (9) Personal service uses, including barbershops, beauty parlors, photographic or art studios, messenger, taxicab, newspaper or telegraphic branch service stations, dry cleaning receiving stations, restaurants and other uses of a similar character;
- (10) Private school;
- (11) Retail store. In connection with such store there shall be no slaughtering of animals or poultry, nor commercial fish cleaning and processing on the premises;
- (12) Theater, not including drive-in theaters;
- (13) Laundromat;
- (14) Florist shop or greenhouse;

(d) In addition to the above uses, permitted uses in a C-1 zone include any use allowed in a R-4, Apartment Residential District, all of which are more intense than the "traditional neighborhood" future land use designated for the site in the comprehensive plan; and

(e) Rezoning the site to C-1 would not be consistent with good zoning practice as provided for in the Minnesota Municipal Planning Act and relevant case law.

RESOLVED FURTHER, that based upon the above findings, the petition submitted by Mardi Bagley and Sharon Kangas to rezone the property located at the southeast corner of 21st Avenue East and Superior Street from R-2, Two-Family Residential, to C-1, Commercial, is denied.

Resolution 10-0288 was unanimously adopted.

Approved June 14, 2010

DON NESS, Mayor

- - -

Ordinance 10-025 failed upon a unanimous vote (Public Document No. 10-0614-37).

- - -

Councilor Stauber moved to remove Resolution 10-0258, increasing the parking meter time limits for all one hour Downtown parking meters to two hours, from the table, which motion was seconded and unanimously carried.

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

John Simpson, chairperson of the parking commission, reviewed that the commission had reviewed this issue and unanimously decided not to recommend the change on the meters from one to two hours, or any time between the two, after hearing from the Downtown

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

businesses, police, Greater Downtown Council (GDC) and citizens, to prevent the employees from plugging the meters all day. He continued saying that customers should use the parking ramps if they are going to be Downtown for anything longer than an hour and it would be an added expense to the city to change 800 parking meters to add the allowed time and change the wording on the meters.

Kristi Stokes, representing the GDC, explained that the problems with Downtown parking deal with enforcement of the abuse by employees plugging the meters. She stated that the GDC transportation committee looked at one hour and 20 minutes as a compromise, but the expense would be huge. Ms. Stokes stated that there should be a comprehensive parking plan for the Downtown and the Canal Park area, including credit card readers.

Penny Perry stated that as a business owner in the Old Downtown area, any change would be detrimental to the businesses as the turnover does not happen and the enforcement does not happen quick enough to move the cars.

Councilors Gauthier, Boyle and Cuneo expressed concerns of: the need for a stated inconsistency between Downtown and Canal Park in parking meter length; that there needs to be a more comprehensive plan; financial questions would need to be considered and that making a change to a broken system without a larger vision on how to improve the business environment Downtown is not a good idea.

Councilor Stauber moved to amend the resolution to change the proposed increased time limit from "two hours" to "one hour and 20 minutes," which motion was seconded and carried unanimously

Resolution 10-0258, as amended, was adopted as follows:

BY COUNCILOR STAUBER AND PRESIDENT ANDERSON:

RESOLVED, that pursuant to the authority contained in Section 33-108 of the Duluth City Code, 1959, as amended, the city council hereby amends the time limits for parking meters within zones in the Downtown area between Sixth Avenue West and Fourth Avenue East and from Michigan Street to Second Street, increasing the time limit for all one hour meters to one hour and 20 minutes with hourly rates remaining the same.

Resolution 10-0258, as amended, was adopted upon the following vote:

Yeas: Councilors Fedora, Fosle, Gardner, Hartman, Stauber and President Anderson -- 6

Nays: Councilors Boyle, Cuneo and Gauthier -- 3

Approved June 14, 2010

DON NESS, Mayor

- - -

Councilor Gauthier moved to remove Resolution 10-0273, amending guidelines for the private sewer service grant program, from the table, which motion was seconded and unanimously carried.

Resolution 10-0273 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 09-0609 are hereby amended by substituting therefore those guidelines on file in the office of the city clerk as Public Document No. 10-0614-20 which are hereby adopted and approved.

Resolution 10-0273 was unanimously adopted.

Approved June 14, 2010

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 Anderson 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 agreement with the city of Duluth Supervisory Association, substantially the same as that on file in the office of the city clerk as Public Document No. 10-0614-22, which sets forth the terms and conditions of employment for the individual appointed as a grant funded assistant city attorney (community prosecutor), for the purpose of the grant funded project entitled *Blight and Nuisance Crimes, A Project to Improve Public Safety* (approved by Resolution 09-0592).

Resolution 10-0310 was unanimously adopted.

Approved June 14, 2010

DON NESS, Mayor

- - -

RESOLVED, that the appropriate city officials are hereby authorized to allocate \$6,800 from the reserve for capital improvements fund balance in the tourism tax fund to the Great Lakes Aquarium to complete state mandated escalator repairs.

Resolution 10-0321 was unanimously adopted.

Approved June 14, 2010

DON NESS, Mayor

- - -

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

(a) On May 5, 2010, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Lucky Break, Inc. (Horseshoe Billiards), 2415 West Superior Street, and has submitted its report to the city council of the city of Duluth as Public Document No. 10-0614-23;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on June 14, 2010, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 10-0614-23 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of Lucky Break, Inc. (Horseshoe Billiards), 2415 West Superior Street, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the city council impose a \$500 civil penalty and that payment of \$250 of the penalty be stayed for a period of one year from council action 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 10-0291 was unanimously adopted.

Approved June 14, 2010

DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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 19, 2010, with the serving ceasing at 3:00 p.m.

Chaser's of Duluth, Inc. (Bedrock Bar), 2023 West Superior Street, for June 19, 2010, with the music and serving ceasing at 9:00 p.m.

Hospitality Associates of Duluth, LLC (Aces on First), 113 West First Street, for July 9, 2010, (rain date July 16, 2010) from 6:00 p.m. to midnight.

Rosberg, Inc. (Roscoe's Pioneer Bar), 323 West First Street, for July 10, 2010, from 6:00 p.m. to midnight.

Clyde Industrial Park, Inc. (Clyde Iron Works Restaurant & Bar), 2920 West Michigan Street, for June 17, 2010, from 6:00 p.m. to 11:00 p.m.

Resolution 10-0316 was unanimously adopted.

Approved June 14, 2010

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the transfer of the 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:

Coffee Cabin, LLC (Afterburner Lounge), 4701 Grinden Drive, with Clint Deraas, 80 percent stockholder and Michael Deraas, 20 percent stockholder, transferred from Duluth Airport Authority (Afterburner Lounge), same address.

Resolution 10-0317 was unanimously adopted.

Approved June 14, 2010

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the transfer of the 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 Wick, Inc. (Pickwick Restaurant & Bar), 508 East Superior Street, with Tim Wright, 33-1/3 percent stockholder, Amy Wright, 33-1/3 percent stockholder, and Daniel Holm, 33-1/3 percent stockholder.

Resolution 10-0318 was unanimously adopted.

Approved June 14, 2010

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the transfer of stock of the following on sale intoxicating liquor license for the period ending August 31, 2010, subject to departmental approvals and the payment of sales and property taxes:

Rustic Bar, Inc. (Rustic Bar), 401 North Central Avenue, with George Gothner, 50 percent stockholder, and Jeff Flynn, 50 percent stockholder, replacing Robert Kervina.

Resolution 10-0319 was unanimously adopted.

Approved June 14, 2010

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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
Welch Center, Inc.	GB Schneider Co., 4602 Grand Avenue

Resolution 10-0320 was unanimously adopted.

Approved June 14, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute an agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 10-0614-24, with the Minnesota National Guard which establishes the policies and procedures by which the Minnesota National Guard will provide counterdrug support to the Duluth police department as authorized by applicable state and federal law and regulations.

Resolution 10-0322 was unanimously adopted.

Approved June 14, 2010

DON NESS, Mayor

- - -

RESOLVED, that the appointment by Mayor Ness to the Spirit Mountain recreation area authority of David Kohlhas, replacing Lisa Augustine who resigned, for a term expiring on June 30, 2011, is confirmed.

FURTHER RESOLVED, that the appointments by Mayor Ness to the Spirit Mountain recreation area authority of Veronica Nelson and Cory Salmela, for terms expiring on June 30, 2014, are confirmed.

Resolution 10-0302 was unanimously adopted.

Approved June 14, 2010

DON NESS, Mayor

- - -

RESOLVED, that the reappointments by Mayor Ness to the Duluth airport authority of John M. Eagleton and Roy A. Niemi for terms expiring on July 1, 2013, are confirmed.

Resolution 10-0303 was unanimously adopted.

Approved June 14, 2010

DON NESS, Mayor

- - -

RESOLVED, that the reappointment to the sanitary sewer board of the Western Lake Superior Sanitary District by Mayor Ness of William Majewski for a term expiring on July 1, 2013, is confirmed.

Resolution 10-0304 was unanimously adopted.

Approved June 14, 2010

DON NESS, Mayor

- - -

RESOLVED, that the reappointments to the entertainment and convention center

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

authority by Mayor Ness of James A. Laumeyer and Darlene Marshall for terms expiring on June 30, 2013, are confirmed.

Resolution 10-0307 was unanimously adopted.

Approved June 14, 2010

DON NESS, Mayor

- - -

BY PRESIDENT ANDERSON:

RESOLVED, that pursuant to the terms of membership contained in that certain joint powers agreement authorizing city participation in the Northeast Minnesota regional radio board (NMRRB), approved by Council Resolution 08-0662, Councilor Jay Fosle is hereby appointed to serve on the NMRRB for the year 2010.

FURTHER RESOLVED, that Fire Chief John Strongitharm is hereby appointed to serve as alternate to the NMRRB for the year 2010 and is authorized to act on behalf of the city in the absence of Councilor Fosle.

Resolution 10-0329 was unanimously adopted.

Approved June 14, 2010

DON NESS, Mayor

- - -

BY PRESIDENT ANDERSON:

RESOLVED, that the city of Duluth elected official out-of-state travel policy, adopted by Resolution 10-0179, is hereby replaced with the elected official out-of-state travel policy on file in the office of the city clerk as Public Document No. 10-0614-25.

Resolution 10-0332 was unanimously adopted.

Approved June 14, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to pay to Emily Bandli the sum of \$21,163.14 in full and final settlement of the claim which arose out of a failure of a city sanitary sewer main occurring near 803 North 57th Avenue West on August 28, 2009; payment to be made from the Self Insurance Fund 610-036-1653-5841.

Resolution 10-0299 was unanimously adopted.

Approved June 14, 2010

DON NESS, Mayor

- - -

RESOLVED, that the city council approves settlement in the amount of \$100,000 of all claims or causes of actions asserted against the city of Duluth and its officers and employees in that matter venued in the State District Court of Minnesota, Sixth Judicial District, and identified as *Auto-Owner's Insurance Company v City of Duluth, Court File No. 69DU-CV-10-774*, and further authorizes the proper city officials to execute all documents necessary to conclude this matter on a full, final and complete basis; funds payable from Fund 610, Department 036, Organization 1652, Object 5841.

Resolution 10-0301 was unanimously adopted.

Approved June 14, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Rice Lake Construction Group for the east interceptor sanitary sewer overflow storage

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

facility, Phase 2, in the amount of \$11,626,107, with \$4,000,000 funded by a WIF grant and the remaining \$7,626,107 payable from the Clean Water Fund 532, Department/Agency 500, Object 5532, City Project No. 0519SN.

Resolution 10-0309 was unanimously adopted.

Approved June 14, 2010

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Brock White Company, LLC, for the purchase and delivery of a CRAFCO EZ Series II 1000 base unit crack sealing trailer with options for the fleet services division in accordance with Minnesota State Contract #441112, Release #C810(5), specifications and pricing for a total amount of \$49,049.83 plus \$3,372.18 sales tax for a grand total of \$52,422.01, terms net 30, FOB destination, payable from the Capital Equipment Fund 250, Department/Agency 015, Organization 2010, Object 5580, Project No. CE250-V1003.

Resolution 10-0323 was unanimously adopted.

Approved June 14, 2010

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with MacQueen Equipment, Inc., for the purchase and delivery of a 2010 Vactor 2110 Plus Combination Sewer Machine with a positive displacement blower with options in accordance with Minnesota State Contract #442704, Release W-196(5), specifications and pricing for a total amount of \$371,066 less \$40,000 trade-in of Unit #2774 (1998 International Vactor) plus \$21,519.29 sales tax for a grand total of \$352,585.29, terms net 30, FOB destination, and payable as follows:

(a) \$176,292.65 from Sewer Fund 530, Department/Agency 500, Organization 1905, Object 5580;

(b) \$176,292.64 from Stormwater Fund 535, Department/Agency 500, Organization 1905, Object 5580.

Resolution 10-0324 was unanimously adopted.

Approved June 14, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with Levine & Son, Inc. for construction of an eight inch gas main replacement in Third Street from Eighth Avenue East to Lake Avenue and in Mesaba Avenue from West Third Street to West First Street in the amount of \$498,861.95, payable out of Gas Utility Fund 520, Department/Agency 500, Organization 1905, Object 5533, City Project No. 0838GS.

Resolution 10-0326 was unanimously adopted.

Approved June 14, 2010

DON NESS, Mayor

- - -

RESOLVED, that in accordance with the provisions of Section 33-17 of the Duluth City Code, 1959, as amended, the segment of 12th Avenue East between London Road and Fourth Street and the segment of 14th Avenue East between London Road and Fourth Street are no longer one way streets. This resolution will become effective only after said street segments have been posted with proper signage, striping and traffic signal modifications indicating the change in designation.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Resolution 10-0311 was unanimously adopted.
Approved June 14, 2010
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept, if awarded, a solar energy legacy grant from the Minnesota department of natural resources in an amount anticipated to be \$41,159.10 to be used to partially fund the purchase and installation of ten solar powered trash compaction and recycling units to be installed along the Duluth Lakewalk, funds to be deposited in Fund 257-015-4220, and to execute any documents required to be executed to accept such grant.

FURTHER RESOLVED, that, if selected, the city is authorized to commit a required 25 percent match to grant, anticipated to be \$13,719.70, funds for which have been budgeted and are payable from Fund 257-015-5580.

Resolution 10-0306 was unanimously adopted.
Approved June 14, 2010
DON NESS, Mayor

- - -

The following resolutions were also considered:

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

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

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

- (a) \$21,451.56 Water Fund 510, Department/Agency 500, Organization 1940-2400, Object 5310;
- (b) \$32,177.34 Gas Fund 520, Department/Agency 500, Organization 1940-2400, Object 5310;
- (c) \$18,976.38 Sewer Fund 530, Department/Agency 500, Organization 1940-2400, Object 5310;
- (d) \$9,900.72 Stormwater Fund 535, Department/Agency 500, Organization 1940-2400, Object 5310.

Resolution 10-0290 was adopted upon the following vote:

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

Nays: None -- 0

Abstention: Councilor Fedora -- 1

Approved June 14, 2010
DON NESS, Mayor

- - -

Resolution 10-0330, approving proposed amendments to the specifications for the civil service classification of labor relations specialist, was introduced by Councilor Boyle for discussion.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Councilors Gardner and Gauthier expressed concerns of: having contingency budget cuts that include library, parks and firefighters; that citizens want library hours, parks that are clean and emergency response services and that there is a perception that administrative staffing is getting too top heavy.

Chief Administrative Officer David Montgomery noted that this is a staff position, not a management position.

Resolution 10-0330 was adopted as follows:

RESOLVED, that the proposed amendments to the specifications for the civil service classification of labor relations specialist, which were approved by the civil service board on June 1, 2010, and which are filed with the city clerk as Public Document No. 10-0614-26, are approved; that said classification shall remain subject to the city's collective bargaining agreement with its confidential unit employees, that said pay range will change from Pay Range 10A to Pay Range 11. 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 10-0330 was adopted upon the following vote:

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

Nays: Councilors Gardner and Gauthier -- 2

Approved June 14, 2010

DON NESS, Mayor

- - -

Resolution 10-0294, of intent to support the use of tax increment financing for the Hillside development housing development initiative, 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.

Rob McCreedy, Rick Ball, executive director of the Housing and Redevelopment Authority (HRA), and Pam Kramer, executive director of Duluth Local Initiatives Support Corporation spoke, in support of the resolution noting: they have worked hard to put the best project forward, and they have worked with the neighborhood, HRA and the city planning staff in presenting the application to the state; the HRA board has approved a resolution of intent to support this project; this project would not proceed without the benefit of the tax increment financing district (TIF) revenue; this project creates affordable housing, historic preservation, removes blighted property and generates redevelopment; the HRA board would administer the tax increment district; it has been a long term vision in the neighborhood and it came out of the Downtown, Hillside and Waterfront charette, working through the neighborhood, embraced by the neighborhood and it has a small commercial component and this is a nationally known development corporation.

Councilor Fedora expressed concerns about the creation of more TIF districts and how it affects cash flow because the city is more hungry for cash due to less LGA and moved to amend the resolution by adding the following paragraph:

FURTHER RESOLVED, that the use of tax increment financing shall be contingent upon an agreement that the Housing and Redevelopment Authority of Duluth reimburse the city of Duluth annually an amount equal to the amount of property tax increment forfeited by the creation of the tax increment financing district related to the Hillside Development housing development,"

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

which motion was seconded and discussed.

Councilor Fedora felt that the HRA should be responsible for covering the loss of property tax revenue from this project.

Mr. Ball stated that there is funding coming through development phases on Hope 6, noting that the balance of money is earmarked for future homeownership. He stated that there would not be a need for TIF if the HRA had the money to support the project.

Mayor Ness stated that there is substantial redevelopment in the Central Hillside from the state and other sources that would not be available without the support of the city. He noted that tax revenue captured as increment from this project just does not happen, unless it passes the "but for" test for tax increment financing.

The amendment failed as follows:

Yeas: Councilors Fedora, Fosle and Stauber -- 3

Nays: Councilors Boyle, Cuneo, Gardner, Gauthier, Hartman and President Anderson -- 6

The developer described further details of the project and councilors supporting the project highlighted points.

Resolution 10-0294 was adopted as follows:

RESOLVED, that subject to approval of low income housing tax credit financing, verification of the need for gap financing that substantiates that the Hillside Development would not be able to proceed without the use of tax increment financing and the submittal of additional documentation which would support the statutory findings required to be made for approval of a tax increment financing plan, the Duluth City Council hereby expresses its non-binding intent to support the use of tax increment financing for the Hillside Development housing development initiative as described in Public Document No. 10-0614-27 on file in the office of the city clerk, to the extent necessary to meet the financial requirements of the development in compliance with state statutes.

Resolution 10-0294 was adopted upon the following vote:

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

Nays: Councilors Fedora and Fosle -- 2

Approved June 14, 2010

DON NESS, Mayor

- - -

Resolutions 10-0295 and 10-0296, affirming and reversing, respectively, the decision of the board of zoning appeals (BZA) to deny an application for a variance from the minimum required front yard Setback (Steve Marshall re: 130 West Eighth Street - proposed address), 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 unanimously carried.

Deb Anderson and Dianna Hunter urged the council to support the BZA decision, noting that the hardship is for the property owners, not the developer, by losing value on their property by losing the view of the lake for any future development.

Councilor Gardner moved to amend the first paragraph of Resolution 10-0296 by changing the minimum required front yard setback from "15" feet to "20" feet; which motion was seconded and discussed.

Councilor Gardner explained that this is intended as a compromise.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

The amendment carried unanimously.

Councilor Stauber moved to amend Resolution 10-0296 by inserting the hardship: “the council finds that the elevation for access constitutes a hardship” in subparagraph (a) of the first paragraph, which motion was seconded and discussed.

The amendment carried unanimously.

Resolution 10-0296, as amended, was adopted as follows:

BY COUNCILOR STAUBER:

RESOLVED, that the decision of the board of zoning appeals to deny a request for a variance to reduce the minimum required front yard setback from 25 feet to 20 feet for the construction of a new dwelling is reversed upon the following findings:

(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:

The council finds that the elevation for access constitutes a hardship.

(b) It is necessary for the preservation and enjoyment of a substantial property right and not merely a convenience;

(c) That granting a variance would not impair adequate light and air supply to adjacent properties, nor unreasonably increase traffic or diminish property values in the neighborhood.

RESOLVED FURTHER, that a variance from the Zoning Code is granted as requested by the applicant subject to the following condition:

(a) The recent property boundary survey must be filed with the building permit application.

Resolution 10-0296, as amended, was unanimously adopted.

Approved June 14, 2010

DON NESS, Mayor

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Resolution 10-0295 failed unanimously (Public Document No. 10-0614-29).

- - -

Resolutions 10-0312 and 10-0313, affirming and reversing, respectively, the decision of the board of zoning appeals to deny an application for a variance from the front yard parking restrictions (Paul and Heather Licke re: 1031 West Arrowhead Road); and resolutions 10-0314 and 10-0315, affirming and reversing, respectively, the decision of the board of zoning appeals to deny an application for a variance from the front yard parking restrictions (Daniel Matthes re: 1020 West Arrowhead Road), were introduced by Councilor Stauber for discussion.

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

Paul Lick requested support for Resolution 10-0313.

Councilor Stauber moved to table all of the resolutions so details could be worked out, which motion was seconded and failed upon the following vote:

Yeas: Councilors Boyle, Cuneo, Gardner and Stauber -- 4

Nays: Councilor Fedora, Fosle, Gauthier, Hartman and President Anderson -- 5

Councilor Stauber commented on the history of the issue of front yard parking and the current rules and the need to modify the rules for situations like Arrowhead Road.

Councilor Gardner moved to amend Resolution 10-0313 by inserting the hardship: “no access to the back of the property; the shape of the specific piece of property; cannot access

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

the rear of the property,” in subparagraph (a) of the first paragraph, which motion was seconded and carried as follows:

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

Nays: Councilor Stauber -- 1

Resolution 10-0313, as amended, as adopted as follows:

BY COUNCILOR STAUBER:

RESOLVED, that the decision of the board of zoning appeals to deny the application by Paul and Heather Licke for a variance from the Zoning Code restrictions for parking area, R District, to allow parking on an existing concrete pad in front of the dwelling located at 1031 West Arrowhead Road is reversed for the following reasons:

(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:

No access to the back of the property; the shape of the specific piece of property; cannot access the rear of the property.

RESOLVED FURTHER, that a variance from the Zoning Code is granted as requested by the applicant subject to the following conditions:

(a) Such parking area, including any driveway areas leading to it, shall be limited to the parking area depicted in the site plan provided with the application for variance and as depicted in Exhibit A (Public Document No. 10-0614-28) made a part hereof;

(b) The proposed parking area shall be located in its entirety upon the lot and shall not encroach into the street line or across any abutting lot line;

(c) The parking area shall be maintained with a hard surface that complies with City Code Section 50-30(c);

(d) This variance shall immediately expire upon conversion of the property to rental use;

(e) This variance expires upon construction of additional parking areas located within the allowed parking area, R District, including, but not limited to garage construction. All parking areas granted by this variance shall be removed and landscaping restored within 30 days following completion of the new parking area;

(f) The applicant shall cause a copy of this variance to be recorded with the St. Louis County recorder within 30 days of council action and a copy of the recorded document shall be filed with the building safety division within 30 days of receipt of the recorded document.

Resolution 10-0313, as amended, was adopted upon the following vote:

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

Nays: Councilor Stauber -- 1

Approved June 14, 2010

DON NESS, Mayor

- - -

Resolution 10-0312 failed upon the following vote (Public Document No. 10-0614-30):

Yeas: Councilor Stauber -- 1

Nays: Councilors Boyle, Cuneo, Fedora, Fosle, Gardner, Gauthier, Hartman and President Anderson -- 8

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Councilor Stauber moved to table resolutions 10-0314 and 10-0315, which motion was seconded and carried upon the following vote:

Yeas: Councilors Boyle, Cuneo, Gauthier, Gardner and Stauber -- 5

Nays: Councilors Fedora, Fosle, Hartman and President Anderson -- 4

- - -

Resolution 10-0300, establishing fees related to applications for special use permits for wireless telecommunications facilities, was introduced by Councilor Stauber for discussion.

- - -

Councilor Stauber moved to suspend the rules to consider Ordinance 10-026 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

10-026 (10031) - AN ORDINANCE AMENDING SECTION 50-35 OF THE DULUTH CITY CODE, 1959, AS AMENDED; PROVIDING FOR A SPECIAL USE PERMIT REGULATING WIRELESS TELECOMMUNICATIONS FACILITIES.

- - -

Councilor Stauber moved to suspend the rules to hear a speaker on this issue, which motion was seconded and unanimously carried.

Kelly Boedigheimer urged council support of this ordinance as the current ordinance is very weak when it comes to cell towers and this ordinance will protect the community and the bird migration corridor.

Councilor Stauber moved to table the resolution and ordinance, so that others on the other side of the issue could offer their input, which motion was seconded and failed upon the following vote:

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

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

Resolution 10-0300 was adopted as follows:

RESOLVED, that pursuant to Section 31-6(a) of the City Code and as provided in Section 50-35(ff)(8)(9) the following fees shall be collected:

(a) Special use permit application as provided in Section 50-35(ff)(9)(C) as follows:

(1) New tower: \$5,000;

(2) Modifying or co-locating on an existing tower or other suitable structure, where no increase in height of the tower or structure is required, or for a temporary facility: \$2,500;

(b) Consultant & expert evaluation initial escrow deposit as provided in 50-35(ff)(9)(D): \$8,500;

(c) Performance bond or other acceptable form of security as provided in Section 50-35(ff)(8)(S) as follows:

(1) Tower facility: \$75,000;

(2) Co-location on an existing tower or other structure: \$25,000.

Resolution 10-0300 was unanimously adopted.

Approved June 14, 2010

DON NESS, Mayor

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Councilor Cuneo moved to amend Section 50-35(ff)(7)(J)1. of the ordinance to delete the number "seven" and insert the number "six," which motion was seconded and carried unanimously.

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

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BU COUNCILORS STAUBER AND FOSLE:

RESOLVED, that the city council offers sincere thanks and recognition to all the financial donors who made the purchase and training of the Duluth Police K-9 Malikai possible.

FURTHER RESOLVED, that the city council hereby recognizes the exceptional training efforts of Malikai and his handler Officer Rebecca Kopp and congratulates them on their recent graduation from the Timothy Jones K-9 Training Center in St. Paul.

Resolution 10-0325 was unanimously adopted.

Approved June 14, 2010

DON NESS, Mayor

- - -

Councilor Gardner moved to suspend the rules to consider Resolution 10-0292 at this time, which motion was seconded and unanimously carried

Resolution 10-0292, accepting donation of Playfront equipment from the Junior League of Duluth, Inc., was introduced by Councilor Gardner for discussion.

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

Denise Bussa reviewed that the new playground in Bayfront has opened because of a great partnership with the city, community volunteers and businesses to help offset the costs and this will be a great showcase in the community for years to come.

Lori Sandelin recognized and thanked the city employees who helped with the project and their commitment to make the project a success.

Resolution 10-0292 was adopted as follows:

RESOLVED, that the city of Duluth does hereby accept the donation of playground equipment from the Junior League of Duluth, Inc., as installed by them on Playfront Park.

FURTHER RESOLVED, the city hereby expresses its appreciation for this donation on behalf of the city and its citizens.

Resolution 10-0292 was unanimously adopted.

Approved June 14, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Wagner Construction, Inc., for the reconstruction of Glenwood Street from 43rd Avenue East to 60th Avenue East in the amount \$4,145,880.12, payable out of Permanent Improvement Fund 0411, Department/Agency 035, Object 5530, City Project No. 0647TR.

Resolution 10-0298 was unanimously adopted.

Approved June 14, 2010

DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Resolution 10-0308, ordering the 2010 street preservation project: Minnesota Avenue from 13th Street to 43rd Street at an estimated cost of \$1,543,882, was introduced by Councilor Gauthier for discussion.

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

Dennis Hoelscher stated that there is confusion as to what actually will be done with the street, if there will be a total reconstruction and the infrastructure under the street. He noted that a couple of streets on Park Point are dirt and they need to be improved rather than resurfacing the existing streets and that there is a need to further look at what is under the street.

Councilors and the administration commented at length on the different methods of street improvements and the necessity for this respective improvement in this case and the amount of staff time that has been put into responding to the concerns or questions from the residents.

Councilor Fedora moved to call the question, which motion was seconded and unanimously carried.

Resolution 10-0308 was adopted as follows:

RESOLVED, that by resolutions of intent numbered 10-0182 and 10-0276, the council did request improvements to portions of Minnesota Avenue from 13th Street to 40th Street and from 40th Street to 43rd Street, respectively, and to assess a portion of the costs thereof.

FURTHER RESOLVED, that said work be done by contract and that the estimated cost of said improvement as estimated by the city engineer is \$1,543,882, payable from Street Improvement Fund 0440, Agency 035, Object 5530, of which \$338,755 is by special assessment to benefitting properties.

FURTHER RESOLVED, that said assessment shall be levied upon lands benefitting per the preliminary assessment roll and may be paid in five annual installments at the prime rate plus 1.5 percent interest.

FURTHER RESOLVED, that the council order in subject project in accordance with the provisions of Section 61 of the City Charter and that said improvement is hereby ordered.

Resolution 10-0308 was unanimously adopted.

Approved June 14, 2010

DON NESS, Mayor

- - -

Resolution 10-0333, of intent to sell DSD No. 1 to Veolia Energy North America Holdings, Inc., subject to conditions, was introduced by Councilor Gauthier for discussion.

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

Sheldon Christopherson, representing Operating Engineers Local 70, Tony Mancuso, president of the steam board, and Brad Clifford, North Star Development Corporation, expressed concerns of: putting the Downtown businesses in jeopardy, because the privatization of a utility has shown that the city cannot control costs anymore; the utility has done a fantastic, efficient job since 1979 when it was created; they have been able to maintain a viable price for Downtown businesses, which could be lost with this sale, because building owners will pass an increase on to the business tenants; this issue should go to voters to decide; the business community is running on a thin profit margin that would be adversely affected by a rate increase; the city should be concerned that there are new technological

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

efficiencies to be implemented that will save costs and the percentage of nonprofit entities in the district affects how the costs will be shared.

Mayor Ness and Mr. Montgomery reviewed at length that: while this company is a “for profit” business that it would not necessarily mean rate increases because of the efficiencies and new technologies that this company will bring to the ownership and management; this is an opportunity for the city to eliminate the huge carbon footprint that is there today; this is a chance to reduce the debt of the steam district on the city books and this can be an asset to the revitalization of that part of the city; these times require bold steps to provide core services versus running a steam plant; maintaining this old equipment is a huge operating liability of the city; this has been discussed for over a year and it is very important for the council to express their view.

City Attorney Gunnar Johnson reviewed the history of the steam plant and how it is not legally a “utility” under the definition of the City Charter.

Councilors Fosle and Fedora supported the resolution for reasons of: there are no upset customers here opposing this; this is not a binding resolution; this is similar to Councilor Cuneo’s resolution of a policy statement on “complete streets,” as this is only giving the administration and Veolia direction to keep working on this; Veolia has been in business for over 100 years and they have many success stories in other cities; the council would be kicking a gift horse in the mouth by not supporting this; letting the voters decide would be taking the easy way out; there was no vote in 1979 to purchase this and if others feel this is a “utility,” the legal issue of reviewing if this is a “utility” should not stop the council from supporting this resolution.

Councilor Fedora moved to amend the resolution by:

(a) Deleting the phrase “intention to approve the sale of the assets and business of: and replacing it with “support for selling”;

(b) Add the following paragraph to the resolution:

“FURTHER RESOLVED, that this resolution is not intended to resolve any process questions regarding the proposed sale,”

which motion was seconded and carried as follows:

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

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

Councilors Gardner, Cuneo, Hartman and Gauthier opposed the amended resolution for reasons of: concern for the liabilities of the bonds that were issued for the steam plant; this needs to be a community decision at the ballot box; there needs to be more information from this company as to what kind of investments this company is going to make in the steam plant; it was felt that this should be treated like a “utility” under the process of the Charter; it is not known what public resources are available for the steam plant to take advantage of; this is not like selling a large piece of equipment; there are questions about this company’s prior environmental legal decisions and the city bonded for this entity as being a “utility” and thus it should be treated as such.

Resolution 10-0333, as amended, failed upon the following vote (Public Document No. 10-0614-31):

Yeas: Councilors Fedora, Fosle and Stauber -- 3

Nays: Councilors Boyle, Cuneo, Gardner, Gauthier, Hartman and President Anderson -- 6

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

At this time, 10: 50 p.m., Councilor Fedora moved to suspend the rules to extend the meeting time till 11:30 p.m., which motion was seconded and unanimously carried.

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INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR FEDORA

10-027 - AN ORDINANCE AMENDING CHAPTER 31 OF THE DULUTH CITY CODE, 1959, AS AMENDED; ADDING A NEW SECTION 31-3 PROVIDING GENERAL REQUIREMENTS FOR CITY APPROVALS.

- - -

INTRODUCED BY COUNCILOR FEDORA

10-028 - AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF GENERAL OBLIGATION REVENUE BONDS OR NOTES OF THE CITY OF DULUTH IN THE MAXIMUM AMOUNT OF \$13,100,000 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 ordinance was read for the second time:

BY COUNCILORS STAUBER AND GARDNER

10-024 (10032) - AN ORDINANCE AMENDING SECTIONS 29A-38, 29A-39 AND 29A-40 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO MANDATORY RENTAL AGREEMENT DISCLOSURES.

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

Jill Rogers and Breite Garnatz expressed support for the ordinance for reasons of: a survey of 600 renters showed that 93 percent supported this smoking disclosure and this is a "win- win" City Code amendment for both renters and landlords.

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

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

Nays: Councilors Fedora and Fosle -- 2

- - -

The meeting was adjourned at 11:00 p.m.

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10031

AN ORDINANCE AMENDING SECTION 50-35 OF THE DULUTH CITY CODE, 1959, AS AMENDED; PROVIDING FOR A SPECIAL USE PERMIT REGULATING WIRELESS TELECOMMUNICATIONS FACILITIES.

The city of Duluth does ordain:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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;

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(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

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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;

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(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;

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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;

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(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;

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(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;

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(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;

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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) Wireless telecommunications facilities;

(1) Purpose and legislative intent. The Telecommunications Act of 1996 affirmed the city's authority concerning the placement, construction and modification of wireless telecommunications facilities. The city council of the city finds that wireless telecommunications facilities may pose significant concerns to the health, safety, public welfare, character and environment of the city and its inhabitants. The city also recognizes that facilitating the development of wireless service technology can be an economic development asset to the city and of significant benefit to the city and its residents. In order to insure that the placement, construction or modification of wireless telecommunications facilities is consistent with the city's land use policies, the city is adopting a single, comprehensive, wireless telecommunications facilities application and permit process. The intent of this Section 50-35(ff) is to minimize impact of wireless telecommunications facilities, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the city;

(2) Title. This Section 50-35(ff) shall be known and cited as the Wireless Telecommunications Facilities Siting Ordinance for the city of Duluth;

(3) Severability;

(A) If any word, phrase, sentence, part, section, subsection, or other portion of this Section 50-35(ff) or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this Section, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect;

(B) Any special use permit issued under this Section 50-35(ff) shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total, upon determination by the city;

(4) Definitions. For purposes of this Section 50-35(ff) and where not inconsistent with the context of a particular subsection, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section;

(A) Accessory facility or structure. Accessory facility or structure means an accessory facility or structure serving or being used in conjunction with wireless telecommunications facilities, and located on the same property or lot as the wireless telecommunications facilities, including but not limited to, utility or transmission equipment storage sheds or cabinets;

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(B) Applicant. Applicant means any wireless service provider submitting an application for a special use permit for wireless telecommunications facilities;

(C) Application. Application means all necessary and appropriate documentation that an applicant submits in order to receive a special use permit for wireless telecommunications facilities;

(D) Antenna. Antenna means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals;

(E) Co-location. Co-location means the use of an existing tower or structure to support antennae for the provision of wireless services. A replacement tower that is constructed on the same site as an existing tower will be considered a co-location as long as the new tower is no taller than the old tower and that the old tower is removed in a reasonably short time frame after the new tower is constructed;

(F) Commercial impracticability or commercially impracticable. Commercial impracticability or commercially impracticable means the inability to perform an act on terms that are reasonable in commerce; the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone, shall not deem a situation to be "commercial impracticable" and shall not render an act or the terms of an agreement "commercially impracticable";

(G) Completed application. Completed application means an application that contains all information and/or data necessary to enable an informed decision to be made with respect to an application;

(H) Council. Council means the city council of the city of Duluth;

(I) FAA. FAA means the federal aviation administration or its duly designated and authorized successor agency;

(J) FCC. FCC means the federal communications commission, or its duly designated and authorized successor agency;

(K) Height. Height means, when referring to a tower or structure, the distance measured from the pre-existing grade level to the highest point on the tower or structure, even if said highest point is an antenna or lightning protection device;

(L) Migratory bird flight path. Migratory bird flight path means the zone of jurisdictional land located from the Lake Superior and Saint Louis River shorelines to no less than two miles inland or where Skyline Parkway runs parallel to the shoreline, an area from the shoreline to Skyline Parkway or two miles inland, whichever is greater;

(M) Modification or modify. Modification or modify means the addition, removal or change of any of the physical and visually discernable components or aspects of a wireless facility, such as antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade or changeout of equipment for better or more modern

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equipment. Adding a new wireless carrier or service provider to a telecommunications tower or telecommunications site as a co-location is a modification. A modification shall not include the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without adding, removing or changing anything;

(N) NIER. NIER means non-ionizing electromagnetic radiation;

(O) Personal wireless facility. See definition for wireless telecommunications facilities;

(P) Personal wireless services or PWS or personal telecommunications service or PCS. Personal wireless services or PWS or personal telecommunications service or PCS shall have the same meaning as defined and used in the 1996 Telecommunications Act;

(Q) Repairs and maintenance. Repairs and maintenance means the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without the addition, removal or change of any of the physical or visually discernable components or aspects of a wireless facility that will add to the visible appearance of the facility as originally permitted;

(R) Special use permit. Special use permit means the official document or permit by which an applicant is allowed to file for a building permit to construct and use wireless telecommunications facilities as granted or issued by the city;

(S) Stealth or stealth technology. Stealth or stealth technology means to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such wireless telecommunications facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances;

(T) Telecommunications. Telecommunications means the transmission and/or reception of audio, video, data and other information by wire, radio frequency, light and other electronic or electromagnetic systems;

(U) Telecommunication site. See definition for wireless telecommunications facilities;

(V) Telecommunications structure. Telecommunications structure means a structure used in the provision of services described in the definition of wireless telecommunications facilities;

(W) Temporary. Temporary means temporary in relation to all aspects and components of this Section 50-35(ff), something intended to, or that does not exist for more than 90 days;

(X) Tower. Tower means any structure designed primarily to support an antenna for receiving and/or transmitting a wireless signal;

(Y) Wireless telecommunications facilities. Wireless telecommunications facilities means and includes a "telecommunications site"

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and "personal wireless facility." It means a structure, facility or location designed, or intended to be used as, or used to support antennas or other transmitting or receiving devices. This includes without limit, towers of all types and kinds and structures, including, but not limited to, buildings, church steeples, silos, water towers, signs or other structures that can be used as a support structure for Antennas or the functional equivalent of such. It further includes all related facilities and equipment such as cabling, equipment shelters and other structures associated with the site. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, SMR, paging, 911, personal communications services (PCS), commercial satellite services, microwave services and any commercial wireless telecommunication service not licensed by the FCC;

(5) Overall policy and desired goals for special use permits for wireless telecommunications facilities. In order to ensure that the placement, construction and modification of wireless telecommunications facilities protects the city's health, safety, public welfare, environmental features, the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in this Section 50-35(ff), the city hereby adopts an overall policy with respect to a special use permit for wireless telecommunications facilities for the express purpose of achieving the following goals:

(A) Requiring a special use permit for any new, co-location or modification of a wireless telecommunications facility;

(B) Implementing an application process for person(s) seeking a special use permit for wireless telecommunications facilities;

(C) Establishing a policy for examining an application for and issuing a special use permit for wireless telecommunications facilities that is both fair and consistent;

(D) Promoting and encouraging, wherever possible, the sharing and/or co-location of wireless telecommunications facilities among service providers;

(E) Promoting and encouraging, wherever possible, the placement, height and quantity of wireless telecommunications facilities in such a manner, including but not limited to the use of stealth technology, to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such wireless telecommunications facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances;

(F) That in granting a special use permit, the city has found that the facility shall be the most appropriate site as regards being the least visually intrusive among those available in the city;

(6) Special use permit for wireless telecommunications facilities required; exceptions;

(A) Except as otherwise provided by this sub-section no person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of, wireless telecommunications facilities as of

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July 25, 2010, without having first obtained a special use permit for wireless telecommunications facilities;

(B) All legally permitted wireless telecommunications facilities, constructed as permitted, existing on or before July 25, 2010, shall be allowed to continue as they presently exist, provided however, that any visible modification of an existing wireless telecommunications facility will require the complete facility and any new installation to comply with this Section 50-35(ff);

(C) Any repair and maintenance of a wireless facility does not require an application for a special use permit;

(D) The following shall be exempt from this Section 50-35(ff):

1. The city's fire, police, department of transportation or other public service facilities owned and operated by the city or those owned and operated by St. Louis County, the state or federal government;

2. Any facilities expressly exempt from the city's siting, building and permitting authority;

3. Over-the-air reception devices including the reception antennas for direct broadcast satellites (DBS), multichannel multipoint distribution (wireless cable) providers (MMDS), television broadcast stations (TVBS) and other customer-end antennas that receive and transmit fixed wireless signals that are primarily used for reception;

4. Facilities exclusively for private, non-commercial radio and television reception and private citizen's bands, licensed amateur radio and other similar non-commercial telecommunications;

5. Facilities exclusively for providing unlicensed spread spectrum technologies (such as IEEE 802.11a, b, g (Wi-Fi) and Bluetooth) where the facility does not require a new tower;

(7) Special use permit applications; requirements. In addition to the requirements set forth in this Section 50, Article IV, the following additional requirements apply to applications for special use permits for wireless telecommunications facilities:

(A) The city may reject applications not meeting the requirements of this Section 50-35(ff) or as authorized by Minnesota Statutes Section 15.99;

(B) Any and all representations made by the applicant to the city on the record during the application process, whether written or verbal, shall be deemed a part of the application and may be relied upon in good faith by the city;

(C) An application for a special use permit for wireless telecommunications facilities shall be signed on behalf of the applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information;

(D) The application must include documentation verifying the applicant's right to proceed as proposed on the site. This would require an executed copy of the lease with the landowner or landlord or a signed letter

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acknowledging authorization. If the applicant owns the site, a copy of the ownership record is required;

(E) The application shall include a written statement:

1. That the applicant's proposed wireless telecommunications facilities shall be maintained in a safe manner, and in compliance with all conditions of the special use permit, without exception, unless specifically granted relief by the city in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable city, state and federal laws, rules and regulations;

2. That the construction of the wireless telecommunications facilities is legally permissible, including, but not limited to, the fact that the applicant is authorized to do business in the state;

(F) Where a certification is called for in this Section 50-35(ff), such certification shall bear the signature and seal of an appropriate registered professional licensed in the state;

(G) In addition to all other required information as stated in this Section 50-35(ff), all applications for the construction or installation of new wireless telecommunications facilities or modification of an existing facility shall contain the following information:

1. A descriptive statement of the objective(s) for the new facility or modification including and expanding on a need such as coverage and/or capacity requirements;

2. Documentation that demonstrates and proves the need for the wireless telecommunications facility to provide service primarily and essentially within the city. Such documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites that demonstrate a significant gap in coverage and/or if a capacity need, including an analysis of current and projected usage;

3. The name, address and phone number of the person preparing the report;

4. The name, address, and phone number of the property owner and applicant, and to include the legal name of the applicant. If the site is a tower and the owner is different than the applicant, provide name and address of the tower owner;

5. The postal address and tax map parcel number of the property;

6. The zoning district or designation in which the property is situated;

7. The size of the property stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines;

8. The location of nearest residential structure;

9. The location, size and height of all existing and proposed structures on the property which is the subject of the application;

10. The type, locations and dimensions of all proposed and existing landscaping and fencing;

11. The azimuth, size and center-line height location of all proposed and existing antennae on the supporting structure;

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12. The number, type and model of the antenna(s) proposed with a copy of the specification sheet;

13. The make, model, type and manufacturer of the tower and design plan stating the tower's capacity to accommodate multiple users;

14. A site plan describing the proposed tower and antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;

15. The frequency, modulation and class of service of radio or other transmitting equipment;

16. The actual intended transmission power stated as the maximum effective radiated power (ERP) in watts;

17. Signed documentation such as the "Checklist to Determine Whether a facility is Categorically Excluded" found in Appendix A of the FCC publication titled "A Local Government Official's Guide to Transmitting Antenna RF Emission Safety: Rules, Procedures and Practical Guidance" dated June 2, 2000 to verify that the wireless telecommunication facility with the proposed installation will be in full compliance with the current FCC RF Emissions guidelines (NIER). If not categorically excluded, a complete RF Emissions study is required to provide verification;

18. A signed statement that the proposed installation will not cause physical or RF interference with other telecommunications devices;

19. A copy of the FCC license applicable for the intended use of the wireless telecommunications facilities;

20. A copy of the geotechnical sub-surface soils investigation, evaluation report and foundation recommendation for a proposed or existing tower site and if existing tower or water tank site, a copy of the installed foundation design;

21. Certification documentation of structural analysis, including calculations that the telecommunication facility tower and foundation and attachments, rooftop support structure, water tank structure, and any other supporting structure as proposed to be utilized are designed and will be constructed to meet all city, state and federal structural requirements for loads, including wind and ice loads;

22. A written copy of an analysis, completed by a qualified individual or organization, to determine if the proposed new tower or existing structure intended to support wireless facilities is in compliance with FAA Regulation Part 77 and if it requires lighting. This requirement shall also be for any existing structure or building where the application increases the height of the structure or building. If this analysis determines that an FAA determination is required, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided with the application;

23. If the proposal is for a co-location or modification on an existing tower, the applicant is to provide signed documentation of the tower condition such as an ANSI report as per Annex E,

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Tower Maintenance and Inspection Procedures, ANSI/TIA/EIA-222F or most recent version;

24. A demonstration that the facility will be sited so as to minimize visual intrusion as much as possible, given the facts and circumstances involved and will thereby have the least adverse visual effect on the environment and its character and on the residences in the area of the wireless telecommunications facility;

25. A written description and drawing showing how the applicant shall effectively screen from view the base and all related equipment and structures of the proposed wireless telecommunications facility;

26. If a new tower, proposal for a new antenna attachment to an existing structure, or other modification will add to a visual impact, the application shall include a Visual Impact Assessment, which shall include the following:

i. If the application is for a new tower or seeks to increase the height of an existing structure , a computer generated “zone of visibility map” at a minimum of one mile radius from the proposed structure, with and without foliage to illustrate locations from which the proposed installation may be seen;

ii. Photo simulations of before and after views from key viewpoints both inside and outside of the city as may be appropriate, including but not limited to state highways and other major roads; state and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided concerning the appropriate key sites at the pre-application meeting. The applicant shall also provide a map showing the locations of where the pictures were taken and distance from the proposed structure;

iii. A written description of the visual impact of the proposed facility including, and as applicable, the tower base, guy wires, fencing and accessory buildings from abutting and adjacent properties and streets as relates to the need or appropriateness of screening;

(H) All applications for the construction or installation of a new tower facility shall also contain the following additional information and comply with the following additional requirements:

1. A written report demonstrating the applicant’s meaningful efforts to secure shared use of existing tower(s) or the use of alternative buildings or other structures within the city. Copies of written requests and responses for shared use shall be provided to the city in the application, along with any letters of rejection stating the reason for rejection;

2. Prior to the public hearing on the application the applicant shall hold a balloon test. The applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a three (3) foot in diameter brightly colored balloon at the maximum height of the proposed new tower. The dates, (including a second date, in case of poor visibility on the initial date) times and location of this balloon test shall be advertised by the applicant seven and 14 days in advance of the first test date in a newspaper with a general circulation in the city.

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The applicant shall inform the city's land use supervisor, in writing, of the dates and times of the test, at least 14 days in advance. The balloon shall be flown for at least four consecutive hours sometime between 7:00 a.m. and 4:00 p.m. on the dates chosen. The primary date shall be on a weekend, but in case of poor weather on the initial date, the secondary date may be on a weekday. A report with pictures from various locations of the balloon shall be provided with the application;

3. A written report examining the feasibility of designing the proposed tower to accommodate future demand for at least four additional commercial applications, for example, future co-locations;

(l) The following standards shall apply to the location of wireless telecommunications facilities:

1. Wireless telecommunications facilities shall be located, sited and erected in accordance with the following priorities, one being the highest priority and six being the lowest priority:

i. On existing towers or other structures on city owned properties;

ii. On existing towers or other structures on other property in the city;

iii. A new tower on city owned properties;

iv. A new tower on properties in areas zoned for industrial use;

v. A new tower on properties in areas zoned for commercial use;

vi. A new tower on properties in areas zoned for residential use;

2. If the proposed site is not proposed for the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred by the applicant if the permit were not granted for the proposed site;

3. An applicant may not by-pass sites of higher priority by stating the site proposed is the only site leased or selected. An application shall address co-location as an option. If such option is not proposed, the applicant must explain to the reasonable satisfaction of the city why co-location is commercially or otherwise impracticable. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of commercial impracticability or hardship;

4. The applicant shall submit a written report demonstrating the applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If appropriate, based on selecting a site of lower priority, a detailed written explanation as to why sites of a higher priority were not selected shall be included with the application;

5. The city may approve any site located within an area in the above list of priorities, provided that the city finds that the

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proposed site is in the best interest of the health, safety and welfare of the city and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood;

(J) It is the policy of the city to prefer locating on existing towers or others structures without increasing the height. The applicant shall submit a comprehensive report inventorying existing towers and other suitable structures within two miles of the location of any proposed new tower, unless the applicant can show that some other distance is more reasonable and demonstrate conclusively why an existing tower or other suitable structure cannot be used;

(K) An applicant intending to locate on an existing tower or other suitable structure shall document the intent of the existing owner to permit its use by the applicant. Shared use shall consist only of the minimum antenna array technologically required to provide service primarily and essentially within the city, to the extent practicable, unless good cause is shown;

(L) The applicant shall submit documentation justifying the total height of any tower, facility and/or antenna requested and the basis therefore. Documentation in the form of propagation studies must include all backup data used to perform at requested height and a minimum of ten feet lower height to allow verification of this height need. Such documentation will be analyzed in the context of the justification of the height needed to provide service primarily and essentially within the city, to the extent practicable, unless good cause is shown;

(M) If lighting is required, applicant shall provide a plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under state and federal regulations;

(8) General requirements applicable to all wireless telecommunications facilities;

(A) To the extent that the holder of a special use permit for wireless telecommunications facilities has not received relief, or is otherwise exempt from appropriate state or federal agency rules or regulations, then the holder of such special use permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any state or federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards;

(B) To the extent that applicable rules, regulations, standards and provisions of any state or federal agency, including but not limited to the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting and security are changed or are modified during the duration of a special use permit for wireless telecommunications facilities, then the holder of such special use permit shall conform the permitted wireless telecommunications facilities to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of 24 months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity;

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(C) The wireless telecommunications facility and any and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and to harmonize with the natural surroundings; this shall include the utilization of stealth or concealment technology as may be required by the city. facilities located within the migratory bird flight path shall utilize stealth or concealment technology;

(D) All utilities at a wireless telecommunications facilities site shall be installed underground whenever possible and in compliance with all laws, ordinances, rules and regulations of the city, including specifically, but not limited to, the city and state building and electrical codes, where appropriate;

(E) At a telecommunications site, an access road, turn-around space and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion;

(F) All wireless telecommunications facilities shall be constructed, operated, maintained, repaired, provided for removal of, modified or restored in strict compliance with all current applicable technical, safety and safety-related codes adopted by the city, state, or United States, including but not limited to the most recent editions of the ANSI Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health and land use codes. In the event of a conflict between or among any of the preceding, the more stringent shall apply;

(G) A holder of a special use permit granted under this Section 50-35(ff) shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the city or other governmental entity or agency having jurisdiction over the applicant;

(H) The holder of a special use permit shall notify the city of any intended modification of a wireless Telecommunication facility and shall apply to the city to modify, relocate or rebuild a wireless telecommunications facility;

(I) All new towers shall be structurally designed to accommodate at least four additional antenna arrays equal to those of the applicant and located as close to the applicant's antenna as possible without causing interference. This requirement may be waived, provided that the applicant, in writing, demonstrates that the provisions of future shared usage of the tower is not technologically feasible, is commercially impracticable or creates an unnecessary and unreasonable burden, based upon:

1. The foreseeable number of FCC licenses available for the area;

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2. The kind of wireless telecommunications facilities site and structure proposed;

3. The number of existing and potential licenses without wireless telecommunications facilities spaces/sites;

4. Available space on existing and approved towers;

5. New guyed towers are prohibited;

(J) Tower condition inspections shall be conducted every three years for a guyed tower and five years for monopoles and self-supporting towers. All inspections shall be documented in a report such as an ANSI report as per Annex E, Tower Maintenance and Inspection Procedures, ANSI/TIA/EIA-222F or most recent version. The inspection report shall be provided to the building official within two days of a request by the city for such records;

(K) The owner of a proposed new tower, and the owner's successors in interest, shall negotiate in good faith for the shared use of the proposed tower by other wireless service providers in the future, and shall:

1. Respond within 60 days to a request for information from a potential shared-use applicant;

2. Negotiate in good faith concerning future requests for shared use of the new tower by other telecommunications providers;

3. Allow shared use of the new tower if another telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference;

(L) No tower constructed after July 25, 2010, including allowing for all attachments, shall exceed that height which shall permit operation without required artificial lighting of any kind in accordance with city, state or federal statute, law, code, rule or regulation;

(M) No tower constructed after July 25, 2010, including allowing for all attachments, shall exceed 75 feet in height within the migratory bird flight path;

(N) Wireless telecommunications facilities shall not be artificially lighted or marked, except as required by law;

(O) Towers shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this Section 50-35(ff);

(P) Wireless telecommunications facilities and antennas shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. All antennas, towers and other supporting structures, including guy anchor points and wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with. Transmitters and telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them;

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(Q) Wireless telecommunications facilities shall contain a sign no larger than four square feet in order to provide adequate notification to persons in the immediate area of the presence of RF radiation or to control exposure to RF radiation within a given area. A sign of the same size is also to be installed to contain the name(s) of the owner(s) and operator(s) of the antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. On tower sites, an FCC registration site as applicable is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted;

(R) All proposed towers and any other proposed wireless telecommunications facility structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the following distances: A distance equal to the height of the proposed tower or wireless telecommunications facility structure plus ten percent of the height of the tower or structure, or the existing setback requirement of the underlying zoning district, whichever is greater. Any accessory structure shall be located so as to comply with the applicable minimum setback requirements for the property on which it is situated;

(S) The applicant and the owner of record of any proposed wireless telecommunications facilities property site shall, at its cost and expense, be jointly required to execute and file with the city a bond, or other form of security acceptable to the city as to type of security and the form and manner of execution, in an amount which shall be set in accordance with Section 31-6(a) of this Code, and with such sureties as are deemed sufficient by the city to assure the faithful performance of the terms and conditions of this Section 50-35(ff) and conditions of any special use permit issued. The full amount of the bond or security shall remain in full force and effect throughout the term of the special use permit and until any necessary site restoration is completed to restore the site to a condition comparable to that, which existed prior to the issuance of the original special use permit;

(T) A holder of a special use permit for wireless telecommunications facilities shall secure and at all times maintain for the duration of the special use permit commercial general liability insurance for personal injuries, death and property damage, and umbrella insurance coverage in the following amounts: \$1,000,000 per occurrence/\$2,000,000 aggregate;

1. For a wireless telecommunications facility on city property, the policy shall specifically include the city and its officers, employees, agents and consultants as additional insureds. The amounts of such coverage shall be established as a condition of the special use permit and shall be consistent with the liability limits provided in Minnesota Statutes Section 466.04;

2. The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the state and with a Best's rating of at least A;

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3. The insurance policies shall contain an endorsement obligating the insurance company to furnish the building official with at least 30 days prior written notice in advance of the cancellation of the insurance;

4. Renewal or replacement policies or certificates shall be delivered to the building official at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace;

5. No permit necessary to the site preparation or construction of a permitted wireless telecommunications facilities may be issued until the holder of the special use permit shall file with the city building official a copy of the required policies or certificates representing the insurance in the required amounts;

6. Notwithstanding the requirements noted in this subsection no insurance shall be required in those instances where the city, county, state or a federal agency applies for and secures a special use permit for wireless telecommunications facilities;

(U) All special use permits approved for wireless telecommunication facilities located on city property after July 25, 2010, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the city, and its officers, employees, agents and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal or restoration of said facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the city, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the city. An indemnification provision will not be required in those instances where the city itself applies for and secures a special use permit for wireless telecommunications facilities;

(9) Application review process; retention of expert assistance; fees; and reimbursement by applicant;

(A) There shall be a pre-application meeting. The purpose of the pre-application meeting will be to address issues that will help to expedite the review and permitting process. A pre-application meeting shall also include a site visit if there has not been a prior site visit for the requested site;

(B) An applicant shall submit to the city the number of completed applications determined to be needed at the pre-application meeting;

(C) At the time that an application is submitted for a special use permit for a new tower, or for modifying or co-locating on an existing tower or other suitable structure, where no increase in height of the tower or structure is required, or for a temporary facility, the applicant shall pay the

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applicable non-refundable application fee which shall be set in accordance with Section 31-6(a) of this Code;

(D) The city may hire any consultant or expert necessary to assist the city in reviewing and evaluating the application, including the construction and modification of the site, once permitted, and any site inspections. An applicant shall deposit with the city funds sufficient to reimburse the city for all reasonable costs of consultant and expert evaluation and consultation to the city in connection with the review of any application including where applicable, the lease negotiation, the pre-approval evaluation, and the construction and modification of the site, once permitted. The initial deposit shall be shall be set in accordance with Section 31-6(a) of this Code;

(E) The placement of the deposit with the city shall precede the pre-application meeting. The city will maintain a separate escrow account for all such funds. The city's consultants shall invoice the city for its services related to the application. The total amount of the funds needed for the review of the application may vary depending on the scope and complexity of the project, the completeness of the application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification. If at any time during the process this escrow account has a balance less than \$2,500, the applicant shall immediately, upon notification by the city, replenish said escrow account so that it has a balance of at least \$5,000. Such additional escrow funds shall be deposited with the city before any further action or consideration is taken on the application. In the event that the amount held in escrow by the city is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall, upon request of the applicant, be refunded to the applicant;

(F) Except as provided in this subsection, a public hearing shall be held by the city as required by Section 50-32.2. In order that the city may notify nearby landowners, the application shall contain the names and address of all landowners whose property is located within 750 feet of any property line of the lot or parcel on which the new wireless telecommunications facilities are proposed to be located;

(G) The land use supervisor may administratively approve an application to co-locate on an existing tower or other structure or a modification at an existing site, as long as there is no proposed increase in the height of the tower or structure, including attachments thereto;

(H) At any stage prior to issuing a special use permit the city may require such additional information as it deems necessary;

(I) The city may refer any application or part thereof to any advisory, other committee or commission for a nonbinding recommendation;

(J) After the public hearing and after formally considering the application, the city may approve, approve with conditions, or deny a special use permit. The burden of proof for the granting of the permit shall always be upon the applicant;

(K) Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the city may disapprove an application for any of the following reasons:

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1. Conflict with safety and safety-related codes and requirements;

2. Conflict with the historic nature or character of a neighborhood or historical district;

3. The use or construction of wireless telecommunications facilities which is contrary to an already stated purpose of a specific zoning or land use designation;

4. The placement and location of wireless telecommunications facilities which would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees and agents of the city, or employees of the service provider or other service providers;

5. Conflicts with the provisions of this Section 50-35(ff);

6. The failure of the applicant to provide additional requested information in sufficient time for the city to comply with the requirements of Minnesota Statutes Section 15.99;

(L) Except for necessary building permits, once a special use permit has been granted, no additional zoning approvals shall be required by the city for the wireless telecommunications facilities covered by the special use permit;

(10) Enforcement;

(A) In order to verify that the holder of a special use permit for wireless telecommunications facilities and any and all lessees, renters, and licensees of wireless telecommunications facilities, place and construct such facilities, including towers and antennas, in accordance with all applicable technical, safety, fire, building, and zoning codes, laws, ordinances and regulations and other applicable requirements, the city may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, towers, antennas and buildings or other structures constructed or located on the permitted site;

(B) Under the following circumstances, the city may declare the wireless telecommunications facility a public nuisance and take all available enforcement actions including, but not limited to, revocation of the special use permit:

1. The wireless telecommunications facility has been abandoned. For purposes of this paragraph a facility is deemed abandoned if it is not used as wireless telecommunications facility for a period exceeding ninety consecutive 90 days or a total of 180 days in any 365 day period, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall commence within 90 days;

2. The wireless telecommunications facility fall into such a state of disrepair and creates a health or safety hazard;

3. The wireless telecommunications facility has been located, constructed, repaired, maintained or modified without first obtaining the required special use permit, or in any manner that constitutes a violation of this Section 50-35(ff);

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4. For a violation of the conditions and provisions of the special use permit;

(C) If the city determines that the wireless telecommunication facility is a public nuisance, the building official shall notify the holder of the special use permit in writing and order the correction of the violation or removal of the facility;

(D) If the order requires removal of the wireless telecommunication facility the holder of the special use permit, or its successors or assigns, shall dismantle and remove such facility and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within the deadline provided for in the order to remove. If the owner of the property upon which the wireless telecommunications facilities are located wishes to retain any access roadway to the wireless telecommunications facilities, the owner may do so with the approval of the land use supervisor;

(E) Notwithstanding anything in this subsection to the contrary, the building official may approve a temporary extension of the order, for no more 90 days, during which time a suitable plan for the repair, sale, removal, conversion or relocation of the affected wireless telecommunications facilities shall be developed by the holder of the special use permit, subject to the approval of the city, and an agreement to such plan shall be executed by the holder of the special use permit and the city. If such a plan is not developed, approved and executed within the 90 day time period, then the city exercise all available legal rights;

(F) The holder of the special use permit for wireless telecommunications facilities may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with an order of the building official or this Section 50-35(ff);

(G) If compliance or substantial progress towards compliance with the order has not been made by the compliance deadline, the city may exercise any legal remedies available to secure compliance with the order at the sole expense of the owner or special use permit holder;

(11) Relief and appeal;

(A) Any applicant desiring relief, waiver or exemption from any aspect or requirement of this Section 50-35(ff) may request such, provided that the relief or exemption is contained in the submitted application for either a special use permit, or in the case of an existing or previously granted special use permit a request for modification of its tower and/or facilities. Such relief may be temporary or permanent, partial or complete. The burden of proving the need for the requested relief, waiver or exemption is solely on the applicant to prove. The applicant shall bear all costs of the city in considering the request and the relief, waiver or exemption. No such relief or exemption shall be approved unless the applicant demonstrates by clear and convincing evidence that if granted, the relief, waiver or exemption will have no significant affect on the health, safety and welfare of the city, its residents and other service providers;

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(B) Any order of the building official or final administrative decision of the land use supervisor may be appealed as provided in Section 50-17 of the Code;

(C) Any final decision of the city may be appealed as provided in Minnesota Statutes Section 462.361;

(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 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: July 25, 2010)

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

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

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed June 14, 2010
Approved June 14, 2010
DON NESS, Mayor

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

ORDINANCE NO. 10032

BY COUNCILORS STAUBER AND GARDNER:

AN ORDINANCE AMENDING SECTIONS 29A-38, 29A-39 AND 29A-40 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO MANDATORY RENTAL AGREEMENT DISCLOSURES.

The city of Duluth does ordain:

Section 1. That Section 29A–38 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 29A-38. Definitions.

Unless otherwise provided in this Section, the definitions contained in sections 29A-1 and 29A-27 of this Chapter shall apply to this Article. In addition, for purposes of this Article the following words and phrases shall have the meanings respectively ascribed to them by this Section:

(a) Disorderly behavior. Any of the following activities:

(1) A nuisance event as defined in Section 40-10 of this Code;

or

(2) A violation of Chapter 49 of this Code or any state statute or federal law related to the ownership, possession or use of a firearm; or

(3) Illegal drug related activity including, but not limited to the illegal possession, manufacture, sale, distribution, purchase, use or possession with intent to manufacture, sell or distribute a controlled substance as defined in the Controlled Substance Act [21U.S.C. 802] or possession of drug paraphernalia as provided in Minnesota Statutes Section 152.092. A tenant shall be deemed to be in possession of a controlled substance if any amount is located in the tenant's rental unit even if the tenant denies knowledge of the controlled substance unless the tenant provides a notarized statement made under oath by a person, other than the tenant or a member of the tenant's household, that the controlled substance was in their possession and the tenant had no knowledge of the controlled substance; or

(4) Any violation of Chapter 34 of this Code; or

(5) Any act that jeopardizes the health, safety and welfare of the landlord, the landlord's agent or other tenants, or guests of tenants of a licensed premise;

(6) Any act that is prohibited by the smoking policy for the premises on which the dwelling is located;

(7) The following circumstances shall be deemed to be exceptions to the definition of disorderly behavior:

(A) An "emergency call" within the definition of Minnesota Statutes Section 609.78 and Subd. 3, will not be considered an instance of disorderly behavior when the victim and suspect are "family or household members" as defined in the Domestic Abuse Act, Minnesota Statutes, Section 518B 01, Subd. 2 (b) and there exists a report of domestic abuse as defined in the Domestic Abuse Act, Minnesota Statutes Section 518B 01, Subd. 2 (a);

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

(B) An “emergency call” within the definition of Minnesota Statutes Section 609.78, Subd. 3, will not be considered an instance of disorderly behavior if the call is a result of a tenant or guest of a tenant taking action to seek emergency assistance that is protected by Minnesota State Statute 504B.205;

(b) Guest of the tenant. Any person present at the licensed premise by either the express or implied consent of a tenant;

(c) Licensed premise. A rental unit, all common areas of the building in which a rental unit is located, all accessory structures and improvements located upon the real property, and the real property upon which a rental unit is located;

(d) Tenant. The lessee pursuant to a rental agreement and any member of the lessee’s household;

(e) Smoking policy disclosure. A disclosure of the smoking policy for the premises on which the dwelling is located. The disclosure must state whether smoking is prohibited on the premises, allowed on the entire premises (except where prohibited by other federal, state or local law) or allowed in limited areas on the premises. If the smoking policy allows smoking in limited areas on the premises, the disclosure must identify the areas on the premises where smoking is allowed.

Section 2. That Section 29A–39 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 29A-39. Crime-free and smoking policy disclosure rental agreement provisions required; exceptions.

All rental agreements for any rental unit licensed as required by Article II, except for residential facilities licensed by the state, shall be assumed to contain the crime-free and smoking policy disclosure provisions of Section 29A-40.

Section 3. That Section 29A–40 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 29A-40. Licensee duties; mandatory rental agreement terms.

(a) It shall be the responsibility of any tenant to ensure that all tenants and all guests of a tenant while on or about the licensed premise not engage in disorderly behavior;

(b) The licensee shall cause the commencement of an unlawful detainer or other eviction proceedings pursuant to the provisions of state law if a tenant violates the provisions of clause (c) of this Section on three or more occasions during a 12 month period;

(c) Except for rental agreements related to occupancy of a state licensed residential facility, and except as otherwise preempted by federal or state laws and regulations, all rental agreements for the occupancy of a rental unit entered into on or after January 1, 2009, shall be assumed to contain the following provisions:

(1) No tenant or guest of a tenant shall engage in disorderly behavior while on or about the licensed premise;

(2) No tenant or guest of a tenant shall aid or abet disorderly behavior occurring on or about the licensed premise;

(3) No tenant or guest of a tenant shall conspire with others to engage in disorderly behavior on or about the licensed premise;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

(4) No tenant shall permit a guest of the tenant to engage in disorderly behavior on or about the licensed premise;

(5) Any violation of paragraphs 1-4, above, shall constitute a material violation of the rental agreement and shall constitute good cause for the immediate termination of the rental agreement;

(d) The licensee, prior to the commencement of the term of the rental agreement shall provide to the lessee(s) a written notice that contains the definition of disorderly behavior as provided by Section 29A-38(a), above, and the provisions of clause (c) of this Section and shall maintain a written acknowledgment signed by the lessee(s) acknowledging receipt of such notice;

(e) Prior to entering into any rental agreement, the licensee shall cause a criminal background check to be conducted on all prospective adult tenants. The criminal background check shall include a search for all misdemeanor, gross misdemeanor and felony convictions as follows:

(1) A state criminal history check covering the last three years and which utilizes the most recent update of the state criminal history files; or

(2) A criminal history check covering the last three years from the prospective tenant's previous state of residence, if available, if the prospective tenant is moving directly from another state; or

(3) Criminal history check from this state and the prospective tenant's prior state(s) of residence, if available, covering the three year period prior to commencement of the tenancy if the prospective tenant's current period of residency in the state has been for less than a period of three consecutive years;

(f) The licensee, prior to the commencement of the term of any rental agreement beginning on or after July 14, 2010, must include a smoking policy disclosure as part of the rental agreement.

Section 4. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: July 25, 2010)

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

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

Nays: Councilors Fedora and Fosle -- 2

ATTEST:
JEFFREY J. COX, City Clerk

Passed June 14, 2010
Approved June 14, 2010
DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, June 28, 2010, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: None -- 0

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

10-0628-01 Minnesota state auditor:

(a) Duluth airport authority audit report for the years ended December 31, 2009, and 2008;

(b) Western Lake Superior Sanitary District management and compliance report for the year ended December 31, 2009. -- Received

10-0628-12 Luke C. Meints communication regarding Enger Tower lighting (10-0356R). -- Received

10-0628-09 The following communications regarding the proposed special use permit for ISD 709 for an off-site parking lot at 40th Avenue East and Luverne Street (10-0348R):

(a) Ron Guimont; (b) Barbara Walcome. -- Received

10-0628-10 The following communications regarding the proposed unified development chapter (10-030-O): (a) Todd Johnson; (b) Scott W. Marshall; (c) Carolyn Sundquist. -- Received

10-0628-11 The following communications regarding the proposed reclassification from M-1 and R-2 to R-4 the property located between Lake Avenue and Minnesota Avenue, Tenth Street and 240 feet southerly (10-0350R and 10-032-O): (a) Pam Griggs; (b) Sally Rauschenfels; (c) Andrew Slade. -- Received

10-0628-13 The following communications regarding the proposed reclassification to nonconservation and sale of tax forfeited parcels needed for ISD 709's western middle school by St. Louis County (10-0355R): (a) Karen Heisick; (b) Arnelle and Larry Monson. -- Received

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REPORTS FROM OTHER OFFICERS

10-0628-02 Assessor letter of sufficiency regarding petitions to vacate portions of Chestnut Street in parts of Bryant Addition to Duluth, First Division and Centredale Addition to Duluth; Elm Street in Blocks 2 and 4, Centredale Addition to Duluth; alley between Blocks 1 and 2, Centredale Addition to Duluth; and the alley in Lot 18, Block 5, Bryant Addition Third Division. -- Received

10-0628-03 Clerk applications for exempt permits (raffles) to the Minnesota gambling control board from: (a) Duluth Amateur Hockey Association for January 10, 2011; (b) St. Margaret Mary Church for September 19, 2010. -- Received

10-0628-04 Parks and recreation division manager notice of intent to close the following parks at 10:00 p.m., pursuant to Section 35-9.3 of the Duluth City Code: Lincoln Park, Harrison Community Recreation Center and Park Point Recreation Area. -- Received

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

REPORTS OF BOARDS AND COMMISSIONS

10-0628-05 American Indian commission minutes of April 19, 2010, meeting. -- Received

10-0628-06 Building appeal board minutes of May 12, 2010, meeting. -- Received

10-0628-07 Commission on disabilities minutes of May 5, 2010, meeting. -- Received

10-0628-08 Seaway Port authority of Duluth minutes of: (a) January 27; (b) February 24; (c) March 25; (d) April 13, 2010, meetings. -- Received

- - -

OPPORTUNITY FOR CITIZENS TO BE HEARD

Jeff Jackson, former member of the planning commission and a member of the board of zoning appeals, commented that the final version of the united development chapter had not been available that long for review and that the planning commission should have spent time to review how it would affect existing businesses.

- - -

Karen Lewis commented that: all Downtown one way avenues should be changed to two way; the Fourth Street and Lake Avenue intersection is very dangerous and needs a signal light and a stairway by the Minnesota Surplus business causes dust and grit to fall into the former restaurant location.

- - -

Edward Alspach questioned why the council chamber was remodeled given the economy at this time.

- - -

RESOLUTIONS TABLED

Councilor Stauber moved to remove resolutions 10-0314 and 10-0315, affirming and reversing, respectively, the decision of the board of zoning appeals to deny an application for a variance from the front yard parking restrictions (Daniel Matthes re: 1020 West Arrowhead Road), from the table, which motion was seconded and unanimously carried.

Resolution 10-0314 failed upon a unanimous vote (Public Document No. 10-0628-14).

- - -

Councilor Gauthier moved to amend the subparagraph (a) of the first paragraph of Resolution 10-0315, to insert the hardship, "no access to the back of the property," which motion was seconded and unanimously carried.

Resolution 10-0315, as amended, was adopted as follows:

BY COUNCILOR STAUBER:

RESOLVED, that the decision of the board of zoning appeals to deny the application by Daniel and Shelley Matthes for a variance from the zoning code restrictions for parking area, R District, to allow parking on an existing paved area in front of the dwelling located at 1020 West Arrowhead Road is reversed for the following reasons:

(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:

No access to the back of the property.

RESOLVED FURTHER, that a variance from the zoning code is granted as requested by the applicant subject to the following conditions:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

(a) Such parking area, including any driveway areas leading to it, shall be limited to the parking area depicted in the site plan provided with the application for variance and as depicted in Exhibit A (Public Document No. 10-0628-29) made a part hereof;

(b) The proposed parking area shall be located in its entirety upon the lot and shall not encroach into the street line or across any abutting lot line;

(c) The parking area shall be maintained with a hard surface that complies with City Code Section 50-30(c);

(d) This variance shall immediately expire upon conversion of the property to rental use;

(e) This variance expires upon construction of additional parking areas located within the allowed parking area, R District, including, but not limited to garage construction. All parking areas granted by this variance shall be removed and landscaping restored within 30 days following completion of the new parking area;

(f) The applicant shall cause a copy of this variance to be recorded with the St. Louis County recorder within 30 days of council action and a copy of the recorded document shall be filed with the building safety division within 30 days of receipt of the recorded document.

Resolution 10-0315, as amended, was unanimously adopted.

Approved June 28, 2010

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

RESOLVED, that the assessment roll levied for reassessment of canceled razing at 817 North 56th Avenue West (Contract #4949; assessable amount - \$2,733.75), to be deposited into Fund 110, is hereby confirmed.

Resolution 10-0352 was unanimously adopted.

Approved June 28, 2010

DON NESS, Mayor

- - -

RESOLVED, that the assessment roll levied for reassessment of canceled garbage assessments (contracts 2005310, 2006310, 2007310 and 2008310; Fund 110) at 4223 Peabody Street; the total assessable amount is \$1,626.14 and this assessment roll is hereby confirmed.

Resolution 10-0354 was unanimously adopted.

Approved June 28, 2010

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:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Grandma's Angie's, Inc. (Little Angie's Cantina), 11 East Buchanan Street, for July 29-31, 2010, with the serving ceasing at 2:00 a.m.

Resolution 10-0337 was unanimously adopted.

Approved June 28, 2010

DON NESS, Mayor

- - -

RESOLVED, that the city's construction Contract No. 20972 with Johnson Wilson Construction is hereby amended, thereby authorizing change orders No. 1, 2, 3 and 4, for additional necessary work performed in modifications of the Polar Shores exhibit at the Lake Superior Zoo, for an increase of \$204,066, and a total contract amount of \$598,366, payable from the Capital Improvements Fund 450, Department/Agency 030, Object 5520, Project No. CP2007-OT0713.

Resolution 10-0357 was unanimously adopted.

Approved June 28, 2010

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 July 17 and 18, and August 7 and 8, 2010, with John Vaydich, manager.

Resolution 10-0358 was unanimously adopted.

Approved June 28, 2010

DON NESS, Mayor

- - -

RESOLVED, that the reappointments by Mayor Ness to the heritage preservation commission of Timothy Meyer (preservation professional) and Carolyn Sundquist (at large), for terms expiring on March 31, 2013, are confirmed.

FURTHER RESOLVED, that the appointments by Mayor Ness to the heritage preservation commission of Wayne Gannaway (preservation professional) and David Woodward (at large), replacing Maryanne Norton and Tony Dierckins who resigned, for terms expiring on March 31, 2012, are confirmed.

Resolution 10-0230 was unanimously adopted.

Approved June 28, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proposed amendments to the specifications for the civil service classification of code plan review consultant, including a title change to land use technician, which were approved by the civil service board on January 5, 2010, and which are filed with the city clerk as Public Document No. 10-0628-15, are approved; that said classification shall remain subject to the city's collective bargaining agreement with its basic unit employees, that the pay range will change from Pay Range 27 to Pay Range 28. The proper city officials are authorized to execute and implement an agreement with the union to provide for employing one or more unit members consistent with this resolution.

Resolution 10-0334 was unanimously adopted.

Approved June 28, 2010

DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

RESOLVED, that the proper city officials are hereby authorized to execute an agreement with DEDA, substantially in the form of that on file in the office of the city clerk as Public Document No. 10-0628-16, which allows DEDA to participate during 2010 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 10-0336 was unanimously adopted.
 Approved June 28, 2010
 DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute an agreement with the Duluth economic development authority (DEDA), substantially the same as that on file in the office of the city clerk as Public Document No. 10-0628-17, under which certain DEDA property will be insured under the city's property and boiler insurance policies for the period from February 16, 2010, to February 16, 2011, and for which DEDA shall reimburse the city in an amount not to exceed \$12,358.83, to be deposited in Fund 610-036-1656-4904.

Resolution 10-0338 was unanimously adopted.
 Approved June 28, 2010
 DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter in a skywalk agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 10-0628-18, with SMDC Medical Center, f/k/a Miller-Dwan Medical Center, Inc., pertaining to the extension of the skywalk across a portion of the 218 East First Street property.

Resolution 10-0349 was unanimously adopted.
 Approved June 28, 2010
 DON NESS, Mayor

- - -

RESOLVED, that the city council objects to the reclassification to nonconservation and sale of the following tax forfeited parcels (FN 10040) by the board of county commissioners of Saint Louis County:

Parcel ID and legal description	Location	Reason
010-1500-00070 010-1500-00340 Englewood Farms Division all of Lots 7, 8, 9, and northerly 218-30/100 feet of Lot 10 and all of Lots 34-37	north side of Arrowhead Road at East Branch of Chester Creek crossing (Kenwood)	trout stream protection
010-2710-01775 010-2710-01820 Lands in the City of Duluth Section 6, Twp 50N, Rng 14W N 1/2 of NE 1/4 of SE 1/4, except hwy easement, and N 1/2 of S 1/2 of SE 1/4 of SE 1/4, except hwy easement	west side of Rice Lake Road, north of Airport Road (airport)	inside Airport Runway Safety Zone A

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Parcel ID and legal description	Location	Reason
010-2710-04300 Section 18, Twp 50N, Rng 14W E 1/2 of SE 1/4 of NE 1/4 of NE 1/4	900 feet west and 600 feet south of the intersection of Swan Lake Road and Arrowhead Road (Duluth Heights)	planned roadway corridor (Joshua Avenue)

Resolution 10-0351 was unanimously adopted.
Approved June 28, 2010
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
010-2230-00310 Home Acres First Division Block 1, Lot 31	west side of Joshua Avenue 900 feet north of Page Street (Duluth Heights)	planned roadway corridor (Joshua Avenue)

Resolution 10-0353 was unanimously adopted.
Approved June 28, 2010
DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, a copy of which is on file in the office of the city clerk as Public Document No. 10-0628-19, with SEH, Inc., to provide professional engineering services for the feasibility study and cost analysis of the Lakewalk East extension, phases IV and V, from 60th Avenue East to Brighton Beach, for an estimated amount of \$46,900, payable from the Capital Improvement Fund 450, Department/Agency 030, Object 5530, City Project No. 0645TR.

Resolution 10-0328 was unanimously adopted.
Approved June 28, 2010
DON NESS, Mayor

- - -

RESOLVED, that Insituform Technologies USA, Inc., be and hereby awarded a contract for the cured-in-place-pipe (CIPP) rehabilitation of sanitary sewers for Lift Station No. 16 sewershed for the engineering division in accordance with its low specification bid of \$862,233.70, terms net 30, FOB job site, payable from the Clean Water Fund 532, Department/Agency 500, Object 5533, Project Number 0903SN.

Resolution 10-0343 was unanimously adopted.
Approved June 28, 2010
DON NESS, Mayor

- - -

RESOLVED, that the original purchase order with Nortrax Equipment Company is hereby increased by leasing four additional John Deere Model 772G graders for an additional

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

amount of \$58,148.55 the first winter season, and \$83,340.10 for each of the succeeding four winter seasons for a total increase of \$391,508.95, terms advance payment, FOB destination, and payable from General Fund 110, Department/Agency 121, Organization 1217-2140, Object 5418.

Resolution 10-0344 was unanimously adopted.

Approved June 28, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute an agreement with the state of Minnesota, department of public safety, bureau of criminal apprehension, substantially the same as that on file in the office of the city clerk as Public Document No. 10-0628-20, under which the city attorney's office shall have access to the Criminal Justice Data Communication Network and providing terms and conditions therefore, at no cost to city.

Resolution 10-0340 was unanimously adopted.

Approved June 28, 2010

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to enter into a contract defined as proprietary based on the letter (Public Document No. 10-0628-21) on file with the office of the city clerk, with Mine Safety Appliances Company for the purchase and delivery of its patented system of vests/plate carriers and plates and pouches for the Duluth police department for a total amount of \$36,085.01, payable from Duluth Police Grant Programs Fund 215, Department/Agency 025, Organization 2288, Object 5241.

Resolution 10-0342 was unanimously adopted.

Approved June 28, 2010

DON NESS, Mayor

- - -

RESOLVED, that the city's consultant Agreement No. 20949 with Hoisington Koenig Group, Inc., is hereby amended, said Amendment No. 1 to be substantially in the form of Public Document No. 10-0628-22 on file in the office of the city clerk, by extending the contract completion date through December 31, 2010, to allow consultant to provide professional services in the completion of Phase 4, action and final master plan, related to the parks and recreation master plan, for an increase of \$30,850, and a total contract amount not to exceed \$112,800, payable from General Fund 110, Department/Agency 700, Organization 1420, Object 5530, Project No. CM100-OT0817.

Resolution 10-0346 was unanimously adopted.

Approved June 28, 2010

DON NESS, Mayor

- - -

WHEREAS, the Arrowhead Bowhunters Alliance (ABA) is the contract agent for the 2010 seasonal deer hunt; and

WHEREAS, the ABA has requested boundary modifications to some of the current designated hunting areas; and

WHEREAS, the ABA has also received complaints from city residents regarding deer damaging property in areas located outside of the current designated hunting areas; and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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 2010 season.

THEREFORE, BE IT RESOLVED, that pursuant to Section 6-77(d)(1) of the Duluth City Code, the city council hereby designates the areas depicted with yellow outline on maps 1 - 15 of Public Document No. 10-0628-23 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 2010 seasonal hunt.

FURTHER RESOLVED, that those boundary changes denoted by blue cross hatching within the designating hunting areas as outlined in red, as shown on maps 1- 15 of Public Document No. 10-0628-23 on file in the office of the city clerk, are hereby approved.

Resolution 10-0347 was unanimously adopted.

Approved June 28, 2010

DON NESS, Mayor

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The following resolutions were also considered:

Resolution 10-0362, by Councilor Fedora, establishing no parking from 3 a.m. to 6 a.m. on streets in Downtown Duluth, was introduced for discussion.

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

Karen Lewis expressed a concern for those living in these areas, which is very crowded, that they will have difficulty finding parking spaces with this parking regulation.

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

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Resolution 10-0348, granting a special use permit to ISD 709 for an off-site vehicle parking lot at the southeast corner of 40th Avenue East and Luverne Street, was introduced by Councilor Stauber for discussion.

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

Brian Ronstrom spoke in opposition to the resolution for reasons of: this is too small of a site for a high school; there are many zoning, parking, set back and other problems; 40th Avenue East is a very busy traffic avenue and there is enough room for their parking on the site without going across the street.

Councilor Fedora moved to amend the resolution by adding the following subparagraph:

“(g) That access/egress to the parking lot be allowed on 40th Avenue East only and that no access/egress be allowed on Luverne Street,” which motion was seconded and carried unanimously.

Councilor Stauber moved to amend the resolution by adding the following subparagraph:

“(h) That the parking lot shall be utilized by ISD 709 staff only during approved parking times, excluding when the lot is open to the general public,” which motion was seconded and discussed.

Kerry Leider, representing Independent School District 709, commented that he felt that this should be a school district administrative matter as other issues at this site have been resolved versus a condition of the special use permit.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Councilors Fedora and Gauthier expressed concerns that they did not feel it was an unreasonable condition, as it has been done in other situations.

The amendment failed as follows:

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

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

Councilors Stauber and Gauthier opposed the resolution for reasons of: parking lots should not be allowed in residential neighborhoods; the school district knew full well that they would need to spill over into the neighborhood and the school district has disregard for the zoning regulations.

Resolution 10-0348, as amended, was adopted as follows:

RESOLVED, that:

(a) The city council grants the request for a Section 50-35(hh) special use permit submitted by ISD 709 for an 84-vehicle parking lot at the southeast corner of 40th Avenue East and Luverne Street and legally described as London Addition, Block 10, that part of Lots 1-5 and 12-16 lying north of the railroad; and

(b) Pursuant to Section 50-32 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 June 8, 2010, 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 10047).

FURTHER RESOLVED, that the city council of the city of Duluth approves a special use permit for an 84-vehicle parking lot at the southeast corner of 40th Avenue East and Luverne Street, subject to the following conditions:

(a) The project be constructed and maintained according to the documents provided by Architectural Resources, Inc., titled "40th Avenue East Parking, ISD 709," and as amended by the conditions in (b) below:

(1) Proposed Site Plan (Sheet SW 2.1) dated 4/22/2010;

(2) Proposed Landscape Plan (Sheet SW 2.2) dated 4/22/2010;

(3) Proposed Storm Drainage Plan (Sheet C 2.1) dated 4/22/2010, and shown on Public Document No. 10-0628-28;

(b) The applicant provide an amended site plan and landscape plan showing the following amendments and that construction of site improvements may not commence until the land use supervisor provides written approval that the amendments have been appropriately designed:

(1) Provision of a decorative fence to be located east of the screening vegetation and extending from the southerly right-of-way line of Luverne Street to the northwesterly right-of-way line of the railroad;

(2) Provision of a sidewalk not less than five feet in width connecting the northwest corner of the parking lot to the public sidewalk at the intersection of 40th Avenue East and Luverne Street;

(c) The parking lot be available for use by the general public when not in use for official school functions;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

(d) The parking lot be signed at all vehicular and pedestrian entrances indicating the closure of the parking lot from 10 p.m. until 6 a.m., except for official school functions;

(e) The applicant secure all permits required by federal, state, county or city laws and regulations;

(f) 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;

(g) That access/egress to the parking lot be allowed on 40th Avenue East only and that no access/egress be allowed on Luverne Street.

Resolution 10-0348, as amended, was adopted upon the following vote:

Yeas: Councilors Boyle, Cuneo, Fedora, Fosle and Hartman -- 5

Nays: Councilors Gardner, Gauthier, Stauber and President Anderson -- 4

Approved June 28, 2010

DON NESS, Mayor

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Resolution 10-0350, 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 M-1, Manufacturing, and R-2, Two-Family Residential, to R-4, Apartment Residential, property located between Lake Avenue and Minnesota Avenue, Tenth Street and 240 feet southerly (Johnson, Lakehead Boat Basin), 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.

LeAnn Rutherford, Malcom McCutcheon, Joe Medlin, Carl Sherman, Kevin Kelleher, Tom Ward, Barb Peyton, Keith Brakke, John LaForge, Sally Rauschenfels, Warren Howe, Betsy Warnygora and Andrew Slade supported the resolution for reasons of: the concern that this neighborhood is all about community; need to share and be neighborly with natural resources; variances are piecemeal and irrevocable; zoning laws need to be followed; the planning commission unanimously opposed this development; for financial reasons, this one of a kind asset is being progressively eroded; at the expense of a residential neighborhood development, homeowners will move out, tourists and commercial developers will move in and the quality of life on Park Point will be altered forever; with the recent new condo that has been built there, residents close to it had their property values lowered; jobs could be created here by building townhouses not a hotel; Park Point has strong bonds as a neighborhood; the plan violates the 35 foot height restriction; the future and vision for Park Point is at question here; this is a traditional neighborhood; there is already a lot of traffic there; it is not good planning that access to a commercial zone would be through a residential zone; a proposed underground parking lot would have to be built in the water table; hotels disrupt a neighborhood with noise, traffic, excess lighting, etc.; this size of a hotel would never be allowed in any other residential neighborhood; this is an arbitrary change of spot zoning; Park Point residents have been squeezed out with development and the location is already zoned for a manufacturing operation.

Councilor Stauber moved to table the resolution so that it could be considered with companion Ordinance 10-032 on July 12, which motion was seconded and unanimously carried.

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Resolution 10-0355, approving the proposed reclassification to nonconservation and sale of tax forfeited parcels needed for ISD 709's western middle school by the board of commissioners of Saint Louis County (April 19, 2010, reclassification), was introduced by Councilor Stauber for discussion.

Councilor Stauber expressed concerns of: 21 of the 70 acres are in reservation, which is the highest classification of protected land; all 70 acres are in the sensitive land overlay, which has very tight restrictions of what it can be used for and the environmental assessment worksheet (EAW) has been challenged in court and he has not been supplied a copy of the EAW, as requested.

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

Mr. Leider noted that the district is not currently impacting these protected properties until the council decides these issues.

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

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

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

Resolution 10-0355 was adopted as follows:

RESOLVED, that the city council approves the reclassification to nonconservation and sale of the tax forfeited parcels (FN 10056) needed for ISD 709's western middle school by the board of county commissioners of Saint Louis County, such parcels listed in Public Document No. 10-0628-24.

Resolution 10-0355 was adopted upon the following vote:

Yeas: Councilors Boyle, Cuneo, Fedora, Fosle, Gauthier, Hartman and President Anderson -- 7

Nays: Councilors Gardner and Stauber -- 2

Approved June 28, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute an agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 10-0628-25, with the Rotary Club of Duluth for the city to accept up to \$100,000 for the construction of interior and exterior lighting to illuminate Enger Tower, said sum payable to Fund 450.

Resolution 10-0356 was unanimously adopted.

Approved June 28, 2010

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 Harbor Drive on July 28 - August 2, 2010, in the area shown on Public Document No. 10-0628-26 to coincide with Visit Duluth's special events license for Tall Ships Duluth 2010, provided that all alcoholic beverages consumed outside of the designated serving areas of licensed establishments be consumed only from paper or plastic cups.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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 10-0297 was unanimously adopted.

Approved June 28, 2010

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: 308 - 103rd Avenue West, legally described as Lots 14 and 15, Block 99, Home Park Division of New Duluth, notice by certified mail to Deborah A. Lorenz, 302 Commonwealth Avenue, Apt. 3, Duluth MN 55808-2158, signed by Deborah A. Lorenz on July 3, 2009; and

Parcel 2: 531 South 64th Avenue West, legally described as Lots 14, 15 and 16, Block 20, Hunters Grassy Point Addition, notice by registered mail to all known heirs of John R. and Marie Sabrowski and Leland and Louis Tangen and advertised in the Duluth News-Tribune on April 23, 2010 and April 30, 2010; and

Parcel 3: 1312 North 56th Avenue West, legally described as Lot 6, Block 17, West Duluth Sixth Division, notice by certified mail to Brian L. Premo, 1312 North 56th Avenue West, Duluth MN 55807, signed by Patricia Premo on July 2, 2009; and

Parcel 4: 611 North 22nd Avenue West, legally described as south 35 feet of north 70 feet of Lot 353 and south 25 feet of north 70 feet of east 1/2 of Lot 355, Block 155, Duluth Proper Second Division, notice by certified mail to Debra J. Anderson, 712 - Ninth Avenue, Two Harbors MN 55616, signed by David A. Cooley on March 1, 2010; and

Parcel 5: 2832 West Third Street, legally described as Lot 1, Block 4, Gays Division, notice by certified mail to Deutsche Bank National Trust Co., c/o Jackson & Associates, Inc., 4199 Campus Drive, Suite 700, Irvine CA 92612 Attn: Steve Tran, signed by Amy Bryson on July 24, 2009; and

Parcel 6: 911 North 23rd Avenue West, legally described as Lots 1, 2 and 3 and that part of Lot 4, Block 2, Spaldings Addition and the east 1/2 of Lot 375, Block 181, Duluth Proper Second Division lying within 73-82/100 feet of the northerly line of said Lot 4, Block 2, Spaldings Addition, notice by certified mail to Susan Nordstrom, 4828 Woodland Avenue, Duluth MN 55803, signed by S. Nordstrom on October 5, 2007; and

Parcel 7: 27 North 23rd Avenue West, legally described as south 35 feet of north 70 feet of east 48-1/2 feet of Lot 370, Block 50, Duluth Proper Second Division, notice by certified mail to Terry L. and Linda K. Blotti, 518 North 27th Avenue West, Duluth MN 55806, returned marked "unclaimed," advertised in the Duluth News Tribune on August 28, 2009 and August 29, 2009; and

(b) All such orders are now final; and

(c) The cost for demolition of the structures has been estimated to not exceed \$56,000, and there is a current unobligated balance in Fund 110-150-1504-5453 of \$59,829.79; and

(d) Fire escrow monies are being held for the removal of structures on parcels 3, 4, 5 and 6 in the amount of \$101,727.58.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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 10-0341 was unanimously adopted.

Approved June 28, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officers are authorized and directed to execute the agreement filed as Public Document No. 10-0628-27 between the city of Duluth and the Greater Downtown Council.

Resolution 10-0360 was unanimously adopted.

Approved June 28, 2010

DON NESS, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR FEDORA

10-028 - AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF GENERAL OBLIGATION REVENUE BONDS OR NOTES OF THE CITY OF DULUTH IN THE MAXIMUM AMOUNT OF \$13,100,000 FOR THE IMPROVEMENT OF THE MUNICIPAL SEWER UTILITY UPON TERMS AND CONDITIONS TO BE PROVIDED BY RESOLUTION OF THE CITY COUNCIL AND PLEDGING REVENUES FOR THE PAYMENT THEREOF.

- - -

INTRODUCED BY COUNCILOR FEDORA

10-033 - AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF GENERAL OBLIGATION REVENUE BONDS OR NOTES OF THE CITY OF DULUTH IN THE MAXIMUM AMOUNT OF \$5,500,000 FOR THE IMPROVEMENT OF THE MUNICIPAL WATER UTILITY UPON TERMS AND CONDITIONS TO BE PROVIDED BY RESOLUTION OF THE CITY COUNCIL AND PLEDGING REVENUES FOR THE PAYMENT THEREOF

- - -

INTRODUCED BY COUNCILOR STAUBER

10-030 - AN ORDINANCE REPEALING CHAPTER 18, RELATING TO EROSION AND SEDIMENT CONTROL; CHAPTER 28A, RELATING TO HERITAGE PRESERVATION; CHAPTER 44, RELATING TO THE REGULATION OF SIGNS; AND CHAPTER 51, RELATING TO THE REGULATION OF WATER RESOURCES; AND AMENDING CHAPTER 50, RELATING TO ZONING, OF THE DULUTH CITY CODE, 1959, AS AMENDED, AND REPEALING SECTIONS 3, 4, 5, 6, 7, 8 AND 9 OF ORDINANCE 1809.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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

Todd Johnson expressed his concerns of: the proposed changes to sign regulations will be challenged in court and there is a need for better definitions in the Code.

Carolyn Sundquist, vice chairperson of the heritage preservation commission expressed concerns of: that Section 2 would repeal the current the heritage preservation chapter of the City Code and would replace it with language that is unacceptable by the Minnesota historical society's state historic preservation office; this would likely lead to the decertification of the city of Duluth as a certified local government, which is reflected in their letter (Public Document No. 10-0628-10(c)); that the local heritage preservation commission (HPC) is a regulatory commission and the current chapter of the Code conforms to federal and state rules and the principles of the comprehensive plan would be lost with the changes being proposed.

Chief Administration Officer David Montgomery commented that the city feels that the letter from the state historical society is their preliminary assessment and that the administration is in discussions with that office.

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INTRODUCED BY COUNCILOR STAUBER

10-032 - 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 M-1, MANUFACTURING, AND R-2, TWO-FAMILY RESIDENTIAL, TO R-4, APARTMENT RESIDENTIAL, PROPERTY LOCATED BETWEEN LAKE AVENUE AND MINNESOTA AVENUE, TENTH STREET AND 240 FEET SOUTHERLY (JOHNSON, LAKEHEAD BOAT BASIN).

- - -

INTRODUCED BY COUNCILOR FOSLE

10-029 - AN ORDINANCE AMENDING CHAPTER 6, ARTICLE IX, OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO DANGEROUS DOGS.

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

Karen Lewis expressed concern that the ordinance has "teeth" and also needs clear definitions that describe situations.

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BY COUNCILOR GARDNER

10-034-O - AN ORDINANCE AMENDING CHAPTER 5, ARTICLE IV, OF THE DULUTH CITY CODE, 1959, AS AMENDED PERTAINING TO ADULT BOOKSTORES AND ADULT ENTERTAINMENT ESTABLISHMENTS.

- - -

The following entitled ordinance was read for the second time:

INTRODUCED BY COUNCILOR FEDORA

10-027 (10033) - AN ORDINANCE AMENDING CHAPTER 31 OF THE DULUTH CITY CODE, 1959, AS AMENDED; ADDING A NEW SECTION 31-3 PROVIDING GENERAL REQUIREMENTS FOR CITY APPROVALS.

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

- - -

The meeting was adjourned at 8:55 p.m.

JEFFREY J. COX, City Clerk

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

ORDINANCE NO. 10033

AN ORDINANCE AMENDING CHAPTER 31 OF THE DULUTH CITY CODE, 1959, AS AMENDED; ADDING A NEW SECTION 31-3 PROVIDING GENERAL REQUIREMENTS FOR CITY APPROVALS.

The city of Duluth does ordain:

Section 1. That Chapter 31 of the Duluth City Code, 1959, as amended, is amended by adding a new Section 31-3 to read as follows:

Sec. 31-3. Requirements for city approvals.

(a) A license, permit or other city approval or authorization of any kind may be granted only to an applicant who:

(1) Has complied with all relevant statutory, Charter and ordinance requirements; and

(2) Has paid all fees, charges, taxes, special assessments and other debts or obligations that are due from the applicant and payable to the city regarding any matter; and

(3) Is in compliance with all ordinance requirements and attached conditions regarding other city approvals that have been granted to the application for any matter;

(b) The requirements of paragraphs (a)(2) and (a)(3) may be waived in the following circumstances:

(1) The applicant has provided sufficient safeguards to assure payment of debts or compliance with city requirement within a reasonable time after the city approval; or

(2) Enforcement of the requirements would result in a significant hardship to the applicant through no fault of the applicant or would result in an otherwise unfair situation; or

(3) The applicant is another political subdivision or public authority created pursuant to Minnesota law.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: August 1, 2010)

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

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

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed June 28, 2010
Approved June 28, 2010
DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, July 12, 2010, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: None -- 0

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

10-0712-01 Jarrod B. Novotny, et al. (four signatures), petition to vacate North 44th Avenue East between Dodge Street and Dodge Street Alley (Lot 16, Block 109, and Lot 9, Block 108, London Addition to Duluth). -- Assessor

10-0712-02 James and Maria Wood concurrent use permit application for the south facing boulevard of 26th Street South, including city property and sidewalk abutting 2601 Minnesota Avenue, Lot 141, Lower Duluth. -- Planning commission

10-0712-03 The following communications regarding the proposed reclassification from M-1 and R-2 to R-4 the property located between Lake Avenue and Minnesota Avenue, Tenth Street and 240 feet southerly (10-0350R and 10-032-O): (a) Nancy Anderson; (b) NL Andrus; (c) Barbara Brown; (d) Janice Cohen; (e) Scherrie Fostor and Peter Van Dyken; (f) Molly Haugen; (g) Christi Haun; (h) Jeff and Patricia Hoffstrom; (i) Troy Hoesktre; (j) Lakehead Marina/Park Point Hotel, by William M. Burns, attorney (2); (k) Lisa McKhann; (l) Kristelle Miller; (m) Jessica Olson; (n) Gratia Pitcher; (o) Sally Rauschenfels (supported by 576 signatures); (p) Rachael Richie; (q) John and Nancy Sedgwick; (r) Jeff and Laura Stuermer (2); (s) Carla Tamburro; (t) Andy Tveter; (u) Dick and Barbara West; (v) Cheryl Graham; (w) Peter Krieger; (x) Linda Peplinski. -- Received

10-0712-12 The following communications regarding the proposed unified development chapter (10-030-O): (a) Lamar Advertising; (b) Dennis Lamkin; (c) Minnesota historical society; (d) Todd Signs. -- Received

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REPORTS FROM OTHER OFFICERS

10-0712-04 Assessor:

(a) Assessment roll of solid waste collection expenses during the period of March 1, 2009, to June 1, 2010, for which the licensed collector has not been reimbursed;

(b) Letter of sufficiency regarding petition to vacate North 44th Avenue East between Dodge Street and Dodge Street Alley (Lot 16, Block 109, and Lot 9, Block 108, London Addition to Duluth). -- Received

10-0712-05 Clerk applications for exempt permits to the Minnesota gambling control board from: (a) Neighborhood Housing Services (raffle) for September 18, 2010; (b) St. Mary Star of the Sea Catholic Church (bingo, raffle) on: (1) November 21, 2010; (2) April 10, 2011; (c) St. Michael's Church (bingo, raffle) for October 23 and 24, 2010. -- Received

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REPORTS OF BOARDS AND COMMISSIONS

10-0712-11 Board of zoning appeals minutes of May 25, 2010, meeting. -- Received

10-0712-06 Duluth airport authority minutes of May 25, 2010, meeting. -- Received

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

10-0712-07 Duluth transit authority: (a) March 2010 financial statement; (b) Minutes of April 28, 2010, meeting. -- Received

10-0712-08 Entertainment and convention center authority minutes of June 29, 2010, meeting. -- Received

10-0712-09 Housing and redevelopment authority: (a) Audit report for the year ended September 30, 2009; (b) Minutes of May 25, 2010, meeting. -- Received

10-0712-10 Western Lake Superior Sanitary District comprehensive annual financial report for the year ended December 31, 2009. -- Received

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OPPORTUNITY FOR CITIZENS TO BE HEARD

Justin Gramenz voiced concern that the new proposed unified development chapter is not zoning friendly and could interfere with urban agriculture and requested the city to look at empty lots and implement an agriculture overlay district that would be useful to Duluth.

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RESOLUTION TABLED

Councilor Stauber moved to remove Resolution 10-0350, 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 M-1, Manufacturing, and R-2, Two-family Residential, to R-4, Apartment Residential, property located between Lake Avenue and Minnesota Avenue, Tenth Street and 240 feet southerly (Johnson, Lakehead Boat Basin), from the table, which motion was seconded and unanimously carried.

Councilor Stauber moved to suspend the rules to consider Ordinance 10-032 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:

10-032 - 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 M-1, MANUFACTURING, AND R-2, TWO-FAMILY RESIDENTIAL, TO R-4, APARTMENT RESIDENTIAL, PROPERTY LOCATED BETWEEN LAKE AVENUE AND MINNESOTA AVENUE, TENTH STREET AND 240 FEET SOUTHERLY (JOHNSON, LAKEHEAD BOAT BASIN).

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

Troy Hoekstra, developer, Craig Olson, representing the trades unions, Darik Carlson, Joel Johnson, development property owner; Ryan Kiefer and Bill Burns, supported the rezoning for reasons of: the project development team has tried to communicate with the neighborhood and address the facts and myths that surround this project; this is an \$8 million investment into the city; the traffic impact is minimal; property values will more than likely increase and not be driven down by this hotel; utility capacity will not be adversely affected; this project will use local trades, contractors, equipment, supplies and trucks; Duluth needs

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

these 57 full time jobs for ten months, as 40 percent of the trade unions' membership is laid off; the need to look at the economic impact that this could have on the trade unions in Duluth; a community store, which has not been mentioned, is part of the plan which is needed and would be good for Park Point and the good things that could come from it; this is a turn back on a significant investment and this development has committed to doing something right and this is not spot zoning, it would be a transitional zoning from a manufacturing zone on one side to R-1 on the other side.

Bob Feiro, Brian Grover, Joe Medlin, Jeff Stuermer, Kevin Kelleher, Sally Rauschenfels, Carl Sherman, Debra Taylor, Joel Sipress, Scott Wolff, Jan Karon, Kim Maki, attorney for homeowners, Tessa Olson and Andrew Slade opposed the rezoning for reasons of: this is a unique residential neighborhood; it has been a family neighborhood for a generation; approving this zoning change would send a strong signal to developers who would want property on Park Point; changes that have been done on the point have been done without variances or special use permits; concern as to why does development always need variances and zoning changes when there is a comprehensive plan in place; the current condominium that was built on the 900 block has changed the neighborhood forever, with views of the harbor and privacy for neighbors gone; living next to the condominium has reduced one owner's property value by \$44,000; the planning commission voted unanimously against this rezoning; the project does not comply with the comprehensive plan; Phase II expansion of this hotel would encroach into the next block and affect many more neighbors; there should be a small area plan for this neighborhood; there is a need to preserve the community south of the canal; development must be appropriately in scale for the neighborhood and be true to the comprehensive plan; there is a petition of 565 signatures of Park Point residents against the rezoning for a hotel; the hotel plans are not in final form, because of the height restriction and difficulty for underground parking, so the final design is unknown; the hotel could be built on the marina site that is zoned for such a use; the developer knew the challenge of building on that site and should be following the rules; rezoning should only be considered for land use, not for revenue or jobs; there are other housing options for this property; the council is voting on the rezoning and not the project, which potentially could change after a rezoning change; the amount of additional property taxes from the developer is questionable and the developer has not talked directly to the residents living close to this proposal.

Councilors Boyle, Cuneo, Gardner, Gauthier and President Anderson opposed the rezoning for reasons of: a development like what is currently being proposed, does not fit in that area or with the comprehensive plan; this is about how the council wants to see this particular part of Park Point developed; there needs to be a larger vision for this area; this project may be environmentally unfriendly; there is no buffer between this proposal and the residential neighborhood and the planning commission unanimously opposed this.

Councilors Fosle, Fedora, Hartman and Stauber supported the rezoning for reasons of: the existing manufacturing zoning could bring businesses that would be something that would not be good for the community; this is an experienced developer and construction company that knows how to do it right; many of the issues previously presented have been dispelled by independent research; this project would provide jobs and a tax base that would only help Duluth; this area was originally the commercial district for the city of Duluth; with the popularity of this area, individuals want to stay in this area; even some residents believe that eventually there will be hotels in this area; this will not be that dramatic of a negative effect on the neighborhood; R-4 is a more restrictive zoning than M-1, thus the list of what could be there

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

now is likely more offensive and instead of being against everything, citizens and the developer should be working together.

Ordinance 10-032 failed upon the following vote (Public Document No. 10-0712-16):

Yeas: Councilors Fedora, Fosle, Hartman and Stauber -- 4

Nays: Councilors Boyle, Cuneo, Gardner, Gauthier and President Anderson -- 5

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Resolution 10-0350 was adopted as follows:

RESOLVED, that the city council finds as follows:

(a) The comprehensive plan - future land use map identifies the site as "traditional neighborhood," which is described as houses oriented with shorter dimensions to the street and detached garages, four-eight dwellings per acre density, a mix of housing types at corners (i.e. town homes and four-plexes), and limited commercial (i.e. corner store), home-businesses, churches, schools; and

(b) The petitioned for R-4 zoning allows apartment buildings at a density of approximately 87 units per acre, which is much more intense than the comprehensive plan recommends (four-eight units per acre); and

(c) In addition to apartment buildings, uses permitted in R-4 include hotels, commercial rooming houses, rowhouses, nursing homes, elderly congregate housing facilities and private clubs, which are all more intense than the "traditional neighborhood" future land use designated in the comprehensive plan; and

(d) Rezoning to R-4 would not be consistent with good zoning practice as provided for in the Minnesota Municipal Planning Act and relevant case law; and

(e) On June 8, 2010, the Duluth city planning commission held a duly noticed public hearing on the proposal and voted 9-0 to recommend that the city council deny the rezoning request (FN 10043).

RESOLVED FURTHER, that based upon the above findings, the petition submitted by Joy and Joel Johnson, Lakehead Boat Basin, Inc., and Marine Service, Inc., to rezone 1.1 acres located south of Tenth Street between Lake Avenue and Minnesota Avenue, from M-1, Manufacturing, and R-2, Two-family Residential, to R-4, Apartment Residential, is denied.

Resolution 10-0350 was adopted upon the following vote:

Yeas: Councilors Boyle, Cuneo, Gardner, Gauthier and President Anderson -- 5

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

Approved July 12, 2010

DON NESS, Mayor

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At this time, councilors Gardner and Gauthier left the meeting.

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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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:

Minnesota State Police and Fire Softball Tournament, Wheeler Field, for July 31 and August 1, 2010, with Matt McShane, manager.

Lincoln Park Business Group (Lincoln Park Mountain Bike Challenge and Festival), Lincoln Park, for July 24, 2010, with Heath Hickok, manager.

Resolution 10-0373 was unanimously adopted.

Approved July 12, 2010

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 ARC Northland 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 10-0374 was unanimously adopted.

Approved July 12, 2010

DON NESS, Mayor

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RESOLVED, that proper city officials are hereby authorized to execute and implement a first amendment to agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 10-0712-13, with Elizabeth Thiede, independent licensed teacher, to continue to serve as a full time contract teacher to provide basic education instructional services to Workforce Investment Act program participants at the Duluth workforce center for the period July 1, 2010, through August 13, 2010, at an additional cost of \$3,500, for a new total amount not to exceed \$50,500; payment to be made from Fund 268.

Resolution 10-0364 was unanimously adopted.

Approved July 12, 2010

DON NESS, Mayor

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RESOLVED, that pursuant to Minnesota Statutes 204B.21, the following persons are hereby appointed as election judges in the respective precincts for the August 10, 2010, state primary election and the November 2, 2010, state general election, as listed in Public Document No. 10-0712-14.

RESOLVED FURTHER, that pursuant to Minnesota Statute, 204B.31(d), election judges shall be compensated at the rate of \$8 per hour and chairman election judges shall be also compensated \$15 for election day hours. In addition, election judges carrying supply returns shall be compensated for mileage at the rate of \$.50 per mile; payable from General Fund 121-1211-5441.

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 10-0370 was unanimously adopted.

Approved July 12, 2010

DON NESS, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Rice Lake Construction Group for construction of the east interceptor sanitary sewer overflow storage facility, Phase 3, diversion structure, storage facility landscaping, maintenance garage and restroom facility, for the engineering division in accordance with its low specification bid of \$6,883,000. \$4,000,000 will be funded by a WIF grant and the remaining \$2,883,000 will be paid from Clean Water Fund 532, Department/Agency 500, Object 5532, City Project No. 0891SN.

Resolution 10-0361 was unanimously adopted.

Approved July 12, 2010

DON NESS, Mayor

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RESOLVED, that Contract 19919 with MSA Professional Services, Inc., for professional engineering services for design, bidding and construction services for the rehabilitation/reconstruction of sanitary sewer lift stations be amended to increase the amount by \$24,115.54 for a new total of \$187,212.54. The increase will be payable out of Sanitary Sewer Fund 530, Department/Agency 500, Organization 1905, Object 5536, City Project No. 0170SN/0086SN/0085SN.

Resolution 10-0363 was unanimously adopted.

Approved July 12, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with CBI Services, Inc., for construction of the Highland 1,000,000 gallon elevated water storage tank in the amount of \$2,982,000, payable from Water Bond Fund 511, Department/Agency 500, Object 5532, City Project No. 0768WA.

Resolution 10-0369 was unanimously adopted.

Approved July 12, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Gridor Construction, Inc., for the Highland pump station improvements in the amount of \$992,050, payable from the Water Bond Fund 511, Department/Agency 500, Object 5532, City Project Number 0765WA.

Resolution 10-0371 was unanimously adopted.

Approved July 12, 2010

DON NESS, Mayor

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The following resolutions were also considered:

RESOLVED, that the proposed amendments to the specifications for the civil service classification of housing inspector, which were approved by the civil service board on June 1, 2010, and which are filed with the city clerk as Public Document No. 10-0712-15, are approved. This classification shall remain subject to the city's collective bargaining agreement with its basic unit employees and compensated at Pay Range 29.

Resolution 10-0368 was unanimously adopted.

Approved July 12, 2010

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

DON NESS, Mayor

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At this time, councilors Gardner and Gauthier returned to the meeting.

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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 between Tenth Avenue East and 12th Avenue East.

Proposed parking rate will be one quarter for 40 minutes with a two-hour limit.

The metered zone will consist of approximately 40 parking meters. 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 10-0367 was adopted upon the following vote:

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

Nays: Councilor Stauber -- 1

Approved July 12, 2010

DON NESS, Mayor

- - -

Resolution 10-0372, to establish a parking meter zone on the south side of St. Marie Street between University Drive and Maplewood Court, was introduced for discussion.

Councilor Fosle moved to refer this resolution back to the administration, as per their request, which motion was seconded and unanimously carried.

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR STAUBER

10-031 - AN ORDINANCE REZONING LANDS WITHIN THE CITY OF DULUTH.

- - -

INTRODUCED BY COUNCILOR HARTMAN

10-010 - AN ORDINANCE AUTHORIZING RECONVEYANCE OF PROPERTY IN THE RIVERSIDE AREA TO THE STATE OF MINNESOTA.

- - -

INTRODUCED BY COUNCILOR HARTMAN

10-011 - AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN CITY PROPERTY IN THE UPPER RIVERSIDE AREA TO THE SPIRIT VALLEY LAND COMPANY, LLC, FOR \$67,000.

- - -

The following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR FEDORA

10-028 (10034) - AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF GENERAL OBLIGATION REVENUE BONDS OR NOTES OF THE CITY OF DULUTH IN THE MAXIMUM AMOUNT OF \$13,100,000 FOR THE IMPROVEMENT OF THE MUNICIPAL

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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 Boyle, Cuneo, Fedora, Fosle, Gardner, Gauthier, Hartman and President Anderson -- 8

Nays: Councilor Stauber -- 1

- - -

INTRODUCED BY COUNCILOR FEDORA

10-033 (10035) - AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF GENERAL OBLIGATION REVENUE BONDS OR NOTES OF THE CITY OF DULUTH IN THE MAXIMUM AMOUNT OF \$5,500,000 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 Boyle, Cuneo, Fedora, Fosle, Gardner, Gauthier, Hartman and President Anderson -- 8

Nays: Councilor Stauber -- 1

- - -

INTRODUCED BY COUNCILOR STAUBER

10-030 - AN ORDINANCE REPEALING CHAPTER 18, RELATING TO EROSION AND SEDIMENT CONTROL; CHAPTER 28A, RELATING TO HERITAGE PRESERVATION; CHAPTER 44, RELATING TO THE REGULATION OF SIGNS; AND CHAPTER 51, RELATING TO THE REGULATION OF WATER RESOURCES; AND AMENDING CHAPTER 50, RELATING TO ZONING, OF THE DULUTH CITY CODE, 1959, AS AMENDED, AND REPEALING SECTIONS 3, 4, 5, 6, 7, 8 AND 9 OF ORDINANCE 1809.

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

Steve Paszko, representing Lamar Advertizing Company, requested that the ordinance be tabled to allow time for review of the total impact.

Councilor Stauber moved to table the ordinance, which motion was seconded and carried as follows:

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

Nays: Councilor Gauthier -- 1

- - -

INTRODUCED BY COUNCILOR FOSLE

10-029 (10036) - AN ORDINANCE AMENDING CHAPTER 6, ARTICLE IX, OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO DANGEROUS DOGS.

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

- - -

BY COUNCILOR GARDNER

10-034 - AN ORDINANCE AMENDING CHAPTER 5, ARTICLE IV, OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO ADULT BOOKSTORES AND ADULT ENTERTAINMENT ESTABLISHMENTS.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Councilor Gardner moved to table the ordinance so it could go before the planning commission for their review, which motion was seconded and unanimously carried.

- - -

The meeting was adjourned at 9:00 p.m.

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10034

AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF GENERAL OBLIGATION REVENUE BONDS OR NOTES OF THE CITY OF DULUTH IN THE MAXIMUM AMOUNT OF \$13,100,000 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 II of the east interceptor sanitary sewer overflow storage facility (construction of an 8.2 million gallon sewerage overflow prevention storage tank) as identified in the city's application to the authority (the "Phase II project") with the loan in the maximum amount of \$9,100,000. The city has also applied for and received a commitment from the authority for a loan and grant for the construction of Phase III of the east interceptor sanitary sewer overflow storage facility (installation of pumps and cleaning equipment in the east interceptor sanitary sewer overflow storage tank, installation of overflow relief piping, replacement of the existing pump station maintenance facility and public restroom and site landscaping) as identified in the city's application to the authority (the "Phase III project") with the loan in the maximum amount of \$4,000,000. (The Phase II project and the Phase III project are collectively referred to as 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 for the Project, and determines that it is necessary to issue general obligation sewer utility revenue bonds or notes, in one or more series, in the maximum aggregate amount of \$13,100,000 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 sewer utility portion of such bonds now outstanding in the amount of \$1,214,000; general obligation utilities revenue bonds dated December 1, 2002, the sewer utility portion of such bonds now outstanding in the amount of \$1,105,000; general obligation sewer utility revenue note dated December 12, 2003, now

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

outstanding in the amount of \$795,000; general obligation sewer utility revenue bonds dated December 1, 2004, now outstanding in the amount of \$2,935,000; general obligation sewer utility revenue bonds dated December 19, 2005, now outstanding in the amount of \$2,785,000; general obligation utilities revenue bonds dated December 19, 2006, the sewer utility portion of such bonds now outstanding in the amount of \$800,000; general obligation sewer utility revenue note dated July 12, 2007, now outstanding in the amount of \$1,903,000; general obligation water and sewer utility revenue bonds dated December 13, 2007, the sewer utility portion of such bonds now outstanding in the amount of \$1,910,000; 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 \$995,000; general obligation utilities revenue bonds dated February 19, 2009, the sewer utility portion of such bonds now outstanding in the amount of \$1,369,000; general obligation sewer utility revenue note dated August 3, 2009, authorized in the amount of \$796,835; general obligation sewer utility revenue note dated December 16, 2009, authorized in the amount of \$2,414,150; general obligation utilities revenue bonds dated December 17, 2009, the sewer utility portion of such bonds now outstanding in the amount of \$1,618,186. 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 September 1, 2002, December 1, 2002, December 12, 2003, December 1, 2004, December 19, 2005, December 19, 2006, July 12, 2007, December 13, 2007, February 19, 2009, August 3, 2009, December 16, 2009, and December 17, 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 notes of the city of Duluth, in one or more series, in the maximum amount of \$13,100,000, 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 or notes 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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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: August 15, 2010)

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

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

Nays: Councilor Stauber -- 1

ATTEST:
JEFFREY J. COX, City Clerk

Passed July 12, 2010
Approved July 12, 2010
DON NESS, Mayor

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ORDINANCE NO. 10035

AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF GENERAL OBLIGATION REVENUE BONDS OR NOTES OF THE CITY OF DULUTH IN THE MAXIMUM AMOUNT OF \$5,500,000 FOR THE IMPROVEMENT OF THE MUNICIPAL WATER UTILITY UPON TERMS AND CONDITIONS TO BE

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

PROVIDED BY RESOLUTION OF THE CITY COUNCIL AND PLEDGING REVENUES FOR THE PAYMENT THEREOF.

The city of Duluth does ordain:

Section 1. BOND PURPOSE AND AUTHORIZATION.

1.01 Under and pursuant to the provisions of Section 55 of the City Charter, Section 444.075 and Chapter 475 of Minnesota Statutes and other pertinent provisions of said Charter and Statutes, the city is authorized to issue its general obligation bonds to provide funds for the improvement of the municipal water utility plant, which bonds shall be a specific lien upon such plant and are payable primarily from net revenues, as hereinafter defined, to be derived from operation of the municipal water utility pledged for their payment. The city has applied for commitments from the Minnesota public facilities authority (the "authority") for loans for the rehabilitation of the highland pump station and for construction and equipping of a new highland water tank (collectively, the "project") as identified in the city's applications to the authority.

1.02 The city council hereby determines that it is in the best interest of the city and it is necessary to improve the municipal water utility through the Project, and determines that it is necessary to issue general obligation water utility revenue bonds or notes, in one or more series, in the maximum amount of \$5,500,000 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 \$1,026,000; general obligation utilities revenue bonds dated December 1, 2002, the water utility portion of such bonds now outstanding in the amount of \$835,000; general obligation utilities revenue note dated August 25, 2003, now outstanding in the amount of \$628,732; general obligation water utility revenue note dated July 23, 2004, now outstanding in the amount of \$1,415,000; general obligation utilities revenue bonds dated December 19, 2006, the water utility portion of such bonds now outstanding in the amount of \$950,000; 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 \$740,000; general obligation utilities revenue bonds dated February 19, 2009, the water utility portion of such bonds now outstanding in the amount of \$186,000; and general obligation water utility revenue note dated November 23, 2009, in an authorized amount of \$1,698,450. 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, August 25, 2003, July 23, 2004, December 19, 2006, December 13, 2007, February 19, 2009, and November 23, 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 notes of the city of Duluth, in one or more series, in the maximum amount of \$5,500,000, 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 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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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: August 15, 2010)

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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

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

Nays: Councilor Stauber -- 1

Passed July 12, 2010

Approved July 12, 2010

DON NESS, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

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ORDINANCE NO. 10036

AN ORDINANCE AMENDING CHAPTER 6, ARTICLE IX, OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO DANGEROUS DOGS.

The city of Duluth does ordain:

Section 1. That the title portion of Chapter 6, Article IX, of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Article IX. Dangerous Dogs.

The animal control authority shall be responsible for enforcement of Minnesota Statutes Chapter 347 within the city. In addition to the provisions of this Article, all dangerous and potentially dangerous dogs within the city are subject to regulation under Minnesota Statutes Chapter 347.

Section 2. That Section 6-91 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 6-91. Definitions.

For the purposes of this Article, the following words and phrases shall mean:

(a) Dangerous dog.

(1) A "dangerous dog" as defined by Minnesota Statutes Section 347.50, Subd. 2; or

(2) A dog that without provocation attacks or bites more than one person or domestic animal within a period of 24 hours; or

(3) A dog that without provocation attacks or bites any person during an incident in which another dog also participates in the attack; or

(4) Any dog that exhibits fresh bite wounds, is observed in a fight, or is found in other circumstances in which there are indications to any police officer or animal control officer that the dog has been intentionally used, trained or encouraged to fight with another animal;

(5) A dog that while running at large (as defined by Section 6-36 of this Chapter) attacks or bites any person or domestic animal and causes bodily harm;

(b) Potentially dangerous dog.

(1) A "potentially dangerous dog" as defined by Minnesota Statutes Section 347.50, Subd. 3;

(c) Attack. Any unprovoked aggressive approach by a dog within six feet or closer to any person for which a reasonable person connotes intent to inflict bodily harm shall be considered an attack; including, but not limited to, any

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

physical contact with a person or physical contact with any item the person is wearing or holding. Any person who is physically injured, or sustains damage to personal property, in an attempt to escape from or prevent an eminent attack by a dog shall be presumed to have been attacked;

(d) Proper enclosure. Proper enclosure means securely confined indoors or in a securely locked pen or structure suitable to prevent the animal from escaping and to provide protection for the animal from the elements. A proper enclosure does not include a porch, patio, or any part of a house, garage, or other structure that would allow the animal to exit of its own volition, or any house or structure in which windows are open or in which door or window screens are the only barriers which prevent the animal from exiting. Such enclosure shall not allow the egress of the animal in any manner without human assistance. A pen or kennel shall meet the following minimum specifications:

(1) Have a minimum overall floor size of 32 square feet;

(2) Sidewalls shall have a minimum height of five feet and be constructed of 9-gauge or heavier wire. Openings in the wire shall not exceed two inches, support posts shall be one and one-quarter inch or larger steel pipe buried in the ground 18 inches or more. When a concrete floor is not provided, the sidewalls shall be buried a minimum of 18 inches in the ground;

(3) A cover over the entire pen or kennel shall be provided. The cover shall be constructed of the same gauge wire or heavier as the sidewalls and shall also have no openings in the wire greater than two inches;

(4) An entrance/exit gate shall be provided and be constructed of the same material as the sidewalls and shall also have no openings in the wire greater than two inches. The gate shall be equipped with a device capable of being locked and shall be locked at all times when the animal is in the pen or kennel;

(e) Unprovoked. Unprovoked shall mean the condition in which the animal is not purposely excited, stimulated, agitated or disturbed. It shall be a rebuttable presumption that any attack on a child 14 years of age or younger for which a reasonable person connotes an intent to inflict bodily harm shall be considered to be unprovoked unless the child is engaged in the commission of a crime or illegal activity, including activities classified in Minnesota Statutes, Section 343, as cruelty to animals.

Section 3. That Section 6-92 of the Duluth City Code, 1959, as amended, is hereby amended as follows:

Sec. 6-92. Attack by a dog.

(a) It shall be unlawful for an owner to fail to restrain a dog from inflicting or attempting to inflict bodily injury to any person or other animal whether or not the owner is present. This Section shall not apply to an attack by a dog under the control of an on-duty law enforcement officer or to an attack upon an uninvited intruder who has entered the owner's home with criminal intent;

(b) If any police officer or animal control officer is witness to an attack by a dog upon a person or another animal, the officer may take whatever means the officer deems appropriate to bring the attack to an end and prevent further injury to the victim.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Section 4. That Section 6-93 of the Duluth City Code, 1959, as amended, is hereby amended as follows:

Sec. 6-93. Restrictions for potentially dangerous and dangerous dogs.

(a) Except as provided in Minnesota Statutes Section 347.51, Subd. 8, the animal control authority may place on owners of potentially dangerous or dangerous dogs any restrictions that the animal control authority deems necessary to ensure public safety;

(b) When outside its owner's dwelling, a potentially dangerous dog must be kept on a leash not exceeding six feet in length and must be under direct physical control or a responsible person at least 18 years old, or inside a physical fence or other secure enclosure to both restrain the potentially dangerous dog from coming into physical contact with the public and to prevent the public from coming into physical contact with that dog.

Section 5. That Section 6-94 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 6-94. Seizure of certain dogs.

Any dog shall be immediately seized and impounded if:

(a) After having been declared potentially dangerous or dangerous, the dog subsequently attacks, bites, chases, or threatens the safety of any human or domestic animal; or

(b) Fourteen days after having received notice that the dog is potentially dangerous or dangerous, the owner has not complied with all of the requirements ordered by the animal control authority; or

(c) The dog bites or attacks a person or domestic animal while running at large in violation of Duluth City Code Section 6-36, is unlicensed, or is not properly vaccinated against rabies virus at the time the dog bites or attacks a person or domestic animal.

Section 6. That Section 6-95 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 6-95. Disposition of seized dogs.

Provided that the animal control authority does not order and require that the dog be euthanized; a dog seized under this Article may be reclaimed if, within 14 days, the owner of the dog:

(a) Provides proof of compliance with all restrictions and requirements ordered by the animal control authority; and

(b) Pays all fees associated with the impound, care and keeping of the dog; or

(c) Files an appeal of the order of the animal control authority and the dog owner complies with all requirements of keeping the dog under this Article, and Minnesota Statutes Chapter 347 if applicable, as well as paying all fees associated with the impound, care and keeping of the dog and fulfilling any conditions ordered by the administrative hearing officer.

Section 7. That Section 6-96 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 6-96. Concealing of potentially dangerous and dangerous dogs.

No person shall harbor, hide or conceal or refuse to present to the animal control authority any dog which has been declared potentially dangerous or

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

dangerous by the court, law enforcement officer, or the animal control authority, which has been ordered into custody for quarantine, euthanasia or other disposition.

Section 8. That Section 6-97 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 6-97. Authority to order euthanasia; procedure.

(a) The animal control authority, is authorized to order, as part of the disposition of the case, that the dog be euthanized based on one or more of the following findings of fact:

(1) The dog is dangerous as demonstrated by a vicious attack, an unprovoked attack, an attack without warning or multiple attacks; or

(2) The owner, if known, of the dangerous dog has demonstrated an inability or unwillingness to control the dog in order to prevent injury to persons or other animals;

(b) Procedure. The court or the animal control authority, after having determined that a dog is dangerous, may proceed in the following manner:

(1) The animal control authority shall cause one owner of the dog, if known, to be notified in writing or in person that the dog is dangerous and that an order is issued requiring the dangerous dog to be euthanized. If the dog is not already impounded, the animal control authority shall order the dog seized. The owner, if known, shall be notified and shall be given 14 days to appeal this order by requesting, in writing, a hearing before the administrative hearing officer for a review of this determination;

(2) If no appeal is filed, the orders issued will stand and the animal control authority may euthanize the dangerous dog;

(3) Nothing in this Section shall prevent the animal control authority from ordering the immediate destruction of a rabies-suspected animal pursuant to Chapter 6, Article III, of the Duluth City Code.

Section 9. That Section 6-98 of the Duluth City Code, 1959, as amended, is hereby repealed in its entirety.

Section 10. That Section 6-99 of the Duluth City Code, 1959, as amended, is hereby repealed in its entirety.

Section 11. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: August 15, 2010)

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

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

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed July 12, 2010
Approved July 12, 2010
DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

OFFICIAL PROCEEDINGS

Special meeting of the Duluth City Council held on Thursday, July 15, 2010, 6:20 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Boyle, Gardner, Gauthier, Hartman, Stauber and President Anderson -- 6

Absent: Councilors Cuneo, Fedora and Fosle -- 3

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INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

BY COUNCILOR FEDORA

10-037 - AN ORDINANCE AMENDING ORDINANCE 10-030-O RELATING TO THE UNIFIED DEVELOPMENT CHAPTER, AMENDING SECTION 50-20.3.

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INTRODUCED BY COUNCILOR STAUBER

10-036 - AN ORDINANCE AMENDING ORDINANCE 10-030-O RELATING TO THE UNIFIED DEVELOPMENT CHAPTER, AMENDING SECTION 50-15.2, SECTION 50-18.1, TABLE 50-19.8, TABLE 18.3-3, SECTION 50-20.3, SECTION 50-26.4, TABLE 50-27.2; TABLE 50-35.1, SECTION 50-36.2, SECTION 50-36.3, SECTION 50-37.8, SECTION 50-37.14, SECTION 50-41.69.

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BY PRESIDENT ANDERSON AND COUNCILOR STAUBER

10-035 - AN ORDINANCE AMENDING ORDINANCE 10-030-O RELATING TO THE UNIFIED DEVELOPMENT CHAPTER AND AMENDING SECTION 50-14.6, SECTION 50-15.2, SECTION 50-24.3A, TABLE 50-24-2, SECTION 50-24.4.

- - -

The meeting was adjourned at 6:40 p.m.

JEFFREY J. COX, City Clerk

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, July 19, 2010, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: Councilor Fedora -- 1

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

10-0719-02 Joyce Hickman communication regarding the proposed intent for a higher education small area plan in the UMD and St. Scholastica area (10-0388R). -- Received

10-0719-01 The following communications regarding the proposed unified development chapter (10-030-O; 10-035-O; 10-036-O and 10-037-O): (a) Canal Park Business Association; (b) Jack Curtis; (c) Drew Digby; (d) Janet Draper; (e) Steve Filipovich; (f) Mary Gallegos; (g) Lamar Advertising (2); (h) Bill Majewski; (i) Christine Penney; (h) Bob Riechert; (k) Sandy Robinson; (l) St. Luke's; (m) Kimberly Sannes; (n) Jesse Schomberg; (o) Doug Stevens; (p) Todd Signs. -- Received

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At this time, 7:07 p.m., the public hearing on a proposed additional licensing requirement for adult bookstores and adult entertainment establishments was declared open. No appeared who wished to be heard and at this time, 7:08 p.m., the public hearing was declared closed.

- - -

OPPORTUNITY FOR CITIZENS TO BE HEARD

Karen Lewis expressed concerns: that all avenues in the Downtown should be changed to two-way as a first step with no changes to the streets; regarding productions at Bayfront Park, recent events should have been drawing a good attendance, but did not, which needs to be looked at from the standpoint of the promoters' books, event performers and the public.

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MOTIONS AND RESOLUTIONS

CONSENT AGENDA

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

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

BY COUNCILOR FEDORA:

WHEREAS, the use of the substance commonly referred to as K2, a blend of herbs treated with synthetic marijuana which when inhaled can produce hallucinogenic effects, has raised public safety concerns nationally; and

WHEREAS, while the drug enforcement agency is currently reviewing the chemical properties of K2, it is currently unregulated and sold over the counter.

THEREFORE, BE IT RESOLVED, that the city council hereby requests that the Duluth

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

police department provide the council with information regarding the sale and use of K2 within the city of Duluth to help determine whether regulation is needed.

Resolution 10-0398 was unanimously adopted.

Approved July 19, 2010

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the temporary expansion of the designated serving area of the following on sale intoxicating liquor licenses, subject to departmental approvals, with any specific restrictions:

D&D Enterprises of Cloquet, Inc. (Mr. D's Bar and Grill), 5622 Grand Avenue, for August 4-6, 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 August 6 and 20, 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 August 4-6, 2010, with the serving starting at 6:00 p.m. and music and serving ceasing at 1:00 a.m.

Sir Benedicts III, Inc. (Sir Benedict's Tavern), 805 East Superior Street, for July 31, 2010, from 10:00 a.m. to 1:00 a.m.

Player's Grandstand, Inc. (Player's Grandstand), 4024 Grand Avenue, for August 7, 2010, from 7:00 p.m. to 1:00 a.m.

Historic Union Depot, Inc. (The Depot), 506 West Michigan Street, for September 3, 2010, from 4:00 p.m. to 8:00 p.m.

Resolution 10-0380 was unanimously adopted.

Approved July 19, 2010

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:

Duluth-Superior GLBT Pride, Inc. (Duluth-Superior GLBT Pride Festival), Bay-front Park, for September 4, 2010, with Carolyn Reisberg, manager.

Resolution 10-0381 was unanimously adopted.

Approved July 19, 2010

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 beginning August 1, 2010, ending August 31, 2010, subject to departmental approvals and the payment of sales and property taxes:

RRR Restaurants, Inc. (R Bar), 21 North Fourth Avenue West, with Ronald Rushmeyer, 100 percent stockholder.

Resolution 10-0382 was unanimously adopted.

Approved July 19, 2010

DON NESS, Mayor

- - -

RESOLVED, that original Purchase Order No. 2010-00000277 with SHI (Software House International) is hereby adjusted to allow for the purchase and delivery of computer

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

software to run a virtual server environment in accordance with Minnesota State Contract #436392, Release C-816(5), specifications and pricing, for a total amount of \$88,332.75 plus sales tax of \$4,696.66 for a combined total amount of \$93,029.41, terms net 30, FOB destination, payable as follows:

(a) \$46,514.71 from Energy Management Fund 257, Department/Agency 025, Object 5580, Project No. DOEGrant-Data;

(b) \$18,035.32 from General Fund 110, Department/Agency 700, Organization 1420, Object 5201; and

(c) \$28,479.38 from Clean Water Fund 532, Department/Agency 500, Object 5201.

Resolution 10-0393 was unanimously adopted.

Approved July 19, 2010

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to enter into a contract with Charter Fiberlink CC VII, LLC, said contract to be substantially in the form of Public Document No. 10-0719-03 on file in the office of the city clerk, for the purchase of network transport bandwidth to the city's facility at 520 Garfield Avenue in Duluth, based on Minnesota State Contract No. 438002, Release No. T-674-5, for a total amount of \$65,800 plus sales tax of \$4,523.75 for a combined total amount of \$70,323.75, payable as follows:

(a) \$17,580.94 from Water Fund 510, Department/Agency 500, Organization 1915, Object 5320;

(b) \$17,580.93 from Gas Fund 520, Department/Agency 500, Organization 1915, Object 5320;

(c) \$17,580.94 from Sewer Fund 530, Department/Agency 500, Organization 1915, Object 5320; and

(d) \$17,580.94 from Stormwater Fund 535, Department/Agency 500, Organization 1915, Object 5320.

Resolution 10-0394 was unanimously adopted.

Approved July 19, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with JSO Technology, LLC, for the purchase of network hardware necessary for the city's enterprise asset management systems in the amount of \$59,429.79, payable from the Clean Water Fund 532, Department/Agency 500, Activity 5580.

Resolution 10-0395 was unanimously adopted.

Approved July 19, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Hewlett Packard for the purchase of server hardware to run a virtualized server environment for a total amount of \$57,356.65, payable from ARRA Grant Fund 257, Department/Agency 025, Object 5580, and out of Clean Water Fund 532, Department/Agency 500, Object 5580.

Resolution 10-0396 was unanimously adopted.

Approved July 19, 2010

DON NESS, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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RESOLVED, that the proposed specifications for the new civil service classification of water plant operator D, which were approved by the civil service board on May 4, 2010, and which are filed with the city clerk as Public Document No. 10-0719-04, 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 24. 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 10-0391 was unanimously adopted.

Approved July 19, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proposed specifications for the new civil service classification of facility projects specialist, which were approved by the civil service board on June 1, 2010, and which are filed with the city clerk as Public Document No. 10-0719-05, are approved; that said classification shall be subject to the city's collective bargaining agreement with its basic unit employees; and that pay range for said classification shall be Range 33. 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 10-0392 was unanimously adopted.

Approved July 19, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to enter into a first amendment to the housing investment fund program agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 10-0719-06, with American Indian Community Housing Organization (AICHO) making the loan obligation non-recourse to AICHO and AICHO, LLC, and acknowledging that the mortgage in favor of the city is executed by AICHO, LLC.

Resolution 10-0305 was unanimously adopted.

Approved July 19, 2010

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city of Duluth (the city) act as the legal sponsor for the project contained in the redevelopment grant program application to be submitted no later than August 2, 2010, and that the mayor and the city clerk are hereby authorized to apply to the department of employment and economic development (DEED) for a grant in the amount of \$664,780 for funding of this project on behalf of the J&S Partnership, LLP, industrial park project, subject to receipt of a binding commitment from J&S Partnership, LLP, to fund the city's local share commitment.

BE IT FURTHER RESOLVED, that the city has the legal authority to apply for financial assistance, and the institutional, managerial and financial capability to ensure adequate project administration.

BE IT FURTHER RESOLVED, that the city hereby commits to provide no less than \$664,780 in a qualified matching contribution to be provided by J&S Partnership, LLP.

BE IT FURTHER RESOLVED, that the city has not violated any federal, state, and local laws pertaining to fraud, bribery, graft, kickbacks, collusion, conflict of interest, or other

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

unlawful or corrupt practices.

BE IT FURTHER RESOLVED, that upon approval of its application by the state, the mayor and clerk may enter into a grant agreement with the state of Minnesota for the above referenced project, and that the city certifies that it will comply with all applicable laws and regulation as stated in the grant agreement.

Resolution 10-0399 was unanimously adopted.

Approved July 19, 2010

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 term of that draft contract on file in the office of the city clerk as Public Document No. 10-0719-07, with St. Louis County to provide supported work services to Minnesota family investment program (MFIP) participants for the period July 1, 2010, through June 30, 2011, in an amount expected to be \$86,540.33 and not to exceed \$259,621. 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 10-0397 was unanimously adopted.

Approved July 19, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to pay to American Family Insurance, subrogee for Dennis Bard the sum of \$25,596.37 in full and final settlement of the claim which arose out of a break in a city watermain occurring near 1720 West Page Street on December 20, 2008; payment to be made from the Self Insurance Fund 610-036-1652-5841.

Resolution 10-0339 was unanimously adopted.

Approved July 19, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Interstate Improvement, Inc., for 2010 concrete pavement rehabilitation in the amount of \$1,235,868.50, payable out of Street Improvement Fund 440, Department/Agency 038, Object 5530, City Project No. 0822TR.

Resolution 10-0377 was unanimously adopted.

Approved July 19, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Lametti & Sons, Inc., for the rehabilitation of bridges 92277A through 92277K in the amount of \$937,775, payable out of Permanent Improvement Fund 411, Department/Agency 035, Object 5530, City Project No. 0540TR, S.A.P 118-080-039.

Resolution 10-0378 was unanimously adopted.

Approved July 19, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Ulland Brothers, Inc., for the 2010 street preservation program in the amount of

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

\$3,003,379.29, payable out of Street Improvement Fund 440, Department/Agency 038, Object 5530, City Project No. 0820TR.

Resolution 10-0379 was unanimously adopted.
Approved July 19, 2010
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a second amendment to water tower site lease agreement with Clearwire US, LLC, for the Proctor Water Tower, substantially in the form of that on file in the office of the city clerk as Public Document No. 10-0719-08 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 10-0390 was unanimously adopted.
Approved July 19, 2010
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 4, 2010, 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 10-0383 was unanimously adopted.
Approved July 19, 2010
DON NESS, Mayor

- - -

BE IT RESOLVED, that pursuant to Section 8-22(b) of the Duluth City Code, the Duluth City Council hereby authorizes consumption of alcoholic beverages in public places on portions of Ramsey Street, Bristol Street and 57th Avenue West between Grand Avenue and Central Avenue from August 4 - 6, 2010, 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 10-0384 was unanimously adopted.
Approved July 19, 2010
DON NESS, Mayor

- - -

The following resolutions were also considered:

Resolution 10-0327, transferring monies from community investment trust fund for the street reconstruction, preservation and maintenance program, was introduced by Councilor Cuneo.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Councilor Cuneo moved to return the resolution to the administration, per their request, which motion was seconded and unanimously carried.

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Resolution 10-0385, authorizing city officials to contract with Superior Glass, Inc., for the east and south facade window replacement at City Hall in Duluth for a total amount of \$749,845, was introduced by Councilor Cuneo.

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

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

Nays: Councilor Fosle -- 1

Absent: Councilor Fedora -- 1

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Resolution 10-0386, authorizing city officials to contract with Duluth Superior Erection, Inc., for the construction of a handicap accessible baseball field at Harrison Community Center in Duluth, Minnesota, for a total amount of \$105,000, was introduced by Councilor Cuneo.

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

Eddie Gleeson, Kevin Thorson and Katlyn Jenkins spoke in support of the resolution, noting the need for this equipment.

Resolution 10-0386 was adopted as follows:

RESOLVED, that a city contract is hereby awarded to Duluth Superior Erection, Inc., for the construction of a handicap-accessible baseball field located at the Harrison Community Center, 3002 West Third Street, in Duluth, Minnesota, in accordance with city specifications and the contractor's low bid of \$105,000, terms net 30, payable as follows:

(a) \$80,000 from General Fund 110, Department/Agency 700, Organization 1420, Object 5530, Project No. CM100-0913; and

(b) \$25,000 from General Fund 110, Department/Agency 700, Organization 1420, Object 5530, Project No. CM100-ADA.

Resolution 10-0386 was unanimously adopted.

Approved July 19, 2010

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to enter into a professional architectural and engineering contract, said contract to be substantially in the form of Public Document No. 10-0719-09 on file in the office of the city clerk, with Collaborative Design Group, Inc., for the design, engineering, contract documents and construction administration associated with the rehabilitation and lighting of Enger Tower for an amount not to exceed \$93,480, inclusive of reimbursable expenses of \$3,950, terms net 30, payable from Capital Improvements Fund 450, Department/Agency 030, Object 5520, Project No. CP2010 - ENGRTR.

Resolution 10-0387 was unanimously adopted.

Approved July 19, 2010

DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Resolution 10-0375, authorizing full-time permanent firefighters employed by the city while on duty to solicit charitable contributions from motorists, was introduced by Councilor Boyle for discussion.

Councilor Stauber felt a concern that this would put various city departments and the tax payers at odds. In addition, he felt that this should have been brought forward sooner to determine which charitable organization would be chosen.

Councilors commented on aspects of this specific resolution and future decisions of what other organization could be chosen with the administration and representatives of the fire department.

Resolution 10-0375 as adopted as follows:

RESOLVED, that pursuant to Chapter 227 - H.F. No. 3017 of the Laws of Minnesota for 2010, the city by resolution hereby permits that full-time permanent firefighters employed by the city while on duty may solicit charitable contributions from motorists when the following conditions are met:

(a) The solicitation complies with Minn. Stat. §465.90 and is conducted pursuant to policies and procedures set forth by the city fire chief;

(b) The solicitation results in no additional costs to the city, including but not limited to, overtime costs;

(c) The solicitation is for one charitable organization selected by the city council;

(d) Said charitable organization shall be selected annually by resolution of the city council based on the following process and criteria:

(1) There shall be a public call for charitable organizations that are qualified under Section 501(c)(3) of the Internal Revenue Code and are registered as charities under Minnesota law to send a written request for consideration to the city council via the city clerk's office;

(2) Thereafter, the city council shall select one charitable organization for that year based on the benefit to the city, the organization's financial need and the organization's plans for the use of the solicited funds.

FURTHER RESOLVED, that all charitable donations for said charitable organization collected by the city during said solicitation period shall be deposited directly into a financial account created and controlled exclusively by said charitable organization.

FURTHER RESOLVED, that the city council selects the Muscular Dystrophy Association (MDA) as said charitable organization for 2010 because the MDA meets all qualifications and the council schedule does not permit a full selection process as described above.

Resolution 10-0375 was adopted upon the following vote:

Yeas: Councilors Boyle, Cuneo, Fosle, Gardner, Gauthier, Hartman and President Anderson -- 7

Nays: Councilor Stauber -- 1

Absent: Councilor Fedora -- 1

Approved July 19, 2010

DON NESS, Mayor

- - -

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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

next 20 years and included a higher education overlay identifying areas for commercial and student housing development; and

(b) The city planning commission held a special meeting and public hearing on the Unified Development Chapter of the city of Duluth Legislative Code on June 22, 2010, at which the commission voted unanimously to recommend that the city council fund a higher education small area plan for the neighborhoods and commercial areas near the University of Minnesota - Duluth and College of St. Scholastica campuses; and

(c) The purpose of the higher education small area plan is to conduct a more detailed study of the neighborhoods and commercial areas near the University of Minnesota – Duluth and College of St. Scholastica campuses than is provided for in the comprehensive land use plan through an assessment of current demographics, land use, zoning, transportation, environmental characteristics, natural resources inventory and relevant market analysis that will form the basis for the plan recommendations and implementation strategy; and

(d) Over 15,000 students attend the University of Minnesota – Duluth and College of St. Scholastica which, along with Lake Superior College, generates \$500 million a year into the local economy and benefits the creative economy as well; and

(e) The city administration and planning staff are fully supportive of this initiative aimed at addressing the impacts and opportunities that large institutions of higher education such as these can create for the surrounding community.

BE IT FURTHER RESOLVED, that a higher education small area plan for the neighborhoods and commercial areas near the University of Minnesota – Duluth and College of St. Scholastica campuses be initiated and funded for completion in 2011.

Resolution 10-0388 was unanimously adopted.

Approved July 19, 2010

DON NESS, Mayor

- - -

Resolution 10-0345, authorizing agreement with Arshia Khan and Imtiaz Mohamed to allow connection to WLSSD's Lakeside interceptor, was introduced by Councilor Gauthier for discussion.

Councilor Fosle had concerns about if this was the North Shore interceptor because everybody on the North Shore is still paying on their septic systems there and would be paying on this also.

Councilor Fosle moved to table the resolution until questions could be answered, which motion was seconded by Councilor Stauber and carried upon the following vote:

Yeas: Councilors Cuneo, Fosle, Hartman, Stauber and President Anderson -- 5

Nays: Councilors Boyle, Gardner and Gauthier -- 3

Absent: Councilor Fedora -- 1

- - -

RESOLVED, that the Duluth City Council hereby makes the following findings:

(a) That communities across the United States have designated August 3, 2010, 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.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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 *27th Anniversary National Night Out* on August 3, 2010, 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 10-0400 was unanimously adopted.

Approved July 19, 2010

DON NESS, Mayor

- - -

Resolution 10-0389, by Councilor Gardner, amending Resolution 09-0742 adopting license, permit and fee charges for 2010; adding adult entertainment establishment annual license fee, was introduced.

Councilor Gardner moved to table the resolution to coincide with the ordinance, which motion was seconded by Councilor Fosle and unanimously carried.

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INTRODUCTION AND CONSIDERATION OF ORDINANCES

ORDINANCE TABLED

INTRODUCED BY COUNCILOR STAUBER

10-030 - AN ORDINANCE REPEALING CHAPTER 18, RELATING TO EROSION AND SEDIMENT CONTROL; CHAPTER 28A, RELATING TO HERITAGE PRESERVATION; CHAPTER 44, RELATING TO THE REGULATION OF SIGNS; AND CHAPTER 51, RELATING TO THE REGULATION OF WATER RESOURCES; AND AMENDING CHAPTER 50, RELATING TO ZONING, OF THE DULUTH CITY CODE, 1959, AS AMENDED, AND REPEALING SECTIONS 3, 4, 5, 6, 7, 8 AND 9 OF ORDINANCE 1809.

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

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

Todd Johnson, Todd Signs, Al Katz, Steve Rasko Nancy Schuldt, James Gittermeier and Ethan Perry spoke, noting; concern about the 10:00 p.m. shut down for facial lighting reference; there is a need to table the ordinance for people to better understand it and have questions answered; even with details to be ironed out, do not delay the adoption of the ordinance beyond the next meeting; the sections dealing with energy efficient buildings; conservation design; stormwater management are very good; the environmental advisory council should not be eliminated; this code coincides with the Metropolitan Interstate Council's long range transportation plan which is good and that the tree commission supports this ordinance and amendments relating to trees.

Councilor Fosle moved to suspend the rules to consider Ordinance 10-037 at this time, which motion was seconded and unanimously carried.

- - -

The following entitled ordinance was read for the second time:

BY COUNCILOR FEDORA

10-037-O - AN ORDINANCE AMENDING ORDINANCE 10-030-O, RELATING TO THE UNIFIED DEVELOPMENT CHAPTER, AMENDING SECTION 50-20.3.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Councilors discussed at length the process on how they wished to proceed.

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

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

Nays: Councilor Gauthier -- 1

Absent: Councilor Fedora -- 1

- - -

Councilor Stauber moved to suspend the rules to consider Ordinance 10-036 at this time, which motion was seconded and unanimously carried.

- - -

The following entitled ordinance was read for the second time:

INTRODUCED BY COUNCILOR STAUBER

10-036 - AN ORDINANCE AMENDING ORDINANCE 10-030-O RELATING TO THE UNIFIED DEVELOPMENT CHAPTER, AMENDING SECTION 50-15.2, SECTION 50-18.1, TABLE 50-19.8, TABLE 18.3-3, SECTION 50-20.3, SECTION 50-26.4, TABLE 50-27.2; TABLE 50-35.1, SECTION 50-36.2, SECTION 50-36.3, SECTION 50-37.8, SECTION 50-37.14, SECTION 50-41.69.

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

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

Nays: Councilor Gardner and Gauthier -- 2

Absent: Councilor Fedora -- 1

- - -

Councilor Stauber moved to suspend the rules to consider Ordinance 10-035 at this time, which motion was seconded and unanimously carried.

- - -

The following entitled ordinance was read for the second time:

BY PRESIDENT ANDERSON AND COUNCILOR STAUBER

10-035 - AN ORDINANCE AMENDING ORDINANCE 10-030-O RELATING TO THE UNIFIED DEVELOPMENT CHAPTER AND AMENDING SECTION 50-14.6, SECTION 50-15.2, SECTION 50-24.3A, TABLE 50-24-2, SECTION 50-24.4.

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

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

Nays: Councilor Gardner and Gauthier -- 2

Absent: Councilor Fedora -- 1

- - -

Councilor Stauber moved to amend Ordinance 10-030 as follows:

(a) Add a subsection 50-25.9.B.2(g) to read as follows:

“(g) With the approval of the appropriate city staff (land use supervisor or city forester), developers should have the option of meeting the tree replacement requirement by putting equivalent funds into a dedicated city tree account. The amount of funds should be calculated based on the cost to the city of hiring contractors to plant the number of required replacement trees”;

(b) Add a subsection 50-25.9.B.6 to read as follows:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

“6. For development of forested areas over five acres, with the approval of the appropriate city staff, the total diameter of trees removed should be able to be estimated based on measuring the diameter of trees in representative sample plots. The plots should be scattered throughout the area to be cleared and should cover no less than ten percent of the entire area. All special tree species in the forest must be measured”;

(c) In Section 50-41.297, delete the numbers “12” and “eight” and insert “ten” and “six,” respectively;

(d) In Section 50-41.305, delete “Black ashes” and insert “American elms,” which motion was seconded and discussed.

To councilor questions, City Attorney Gunnar Johnson informed the council that if this amendment passes, then the amended ordinance would be considered a first reading this evening.

Councilor Fosle moved to amend the amendment by striking (c), which motion was seconded and failed upon the following vote:

Yeas: Councilors Fosle and Gardner -- 2

Nays: Councilors Boyle, Cuneo, Gauthier, Hartman, Stauber and President Anderson -- 6

Absent: Councilor Fedora -- 1

Councilor Stauber’s amendment carried as follows:

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

Nays: Councilor Fosle -- 1

Absent: Councilor Fedora -- 1

Councilor Stauber moved to retable the ordinance, as amended, which motion was seconded and unanimously carried.

- - -

The following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR STAUBER

10-031 - AN ORDINANCE REZONING LANDS WITHIN THE CITY OF DULUTH.

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

- - -

INTRODUCED BY COUNCILOR HARTMAN

10-010 (10037) - AN ORDINANCE AUTHORIZING RECONVEYANCE OF PROPERTY IN THE RIVERSIDE AREA TO THE STATE OF MINNESOTA.

- - -

INTRODUCED BY COUNCILOR HARTMAN

10-011 (10038) - AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN CITY PROPERTY IN THE UPPER RIVERSIDE AREA TO THE SPIRIT VALLEY LAND COMPANY, LLC, FOR \$67,000.

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

Brian Hanson, department director of business and community development, answered councilor questions and specifics of the ordinances.

Councilor Hartman moved passage of both ordinances and the same were adopted upon unanimous votes.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

- - -

[Editor's Note: Ordinance No. 10038 was reconsidered and tabled at the August 16, 2010, council meeting and returned to the administration at the August 30, 2010, council meeting.]

- - -

RESOLUTION RECONSIDERED

At this time, Councilor Hartman moved to reconsider Resolution 10-0345 because he felt that this couple would prefer to have this resolved now versus another month, which motion was seconded by Councilor Gauthier and discussed.

Councilors Fosle and Stauber expressed concerns of: it is unknown if this is the North Shore connector; that if this is the North Shore connector, that someone would be allowed to tap into it; those North Shore residents who have already spent a great deal of money will have to be paying more and there is no indication that this is an emergency with raw sewage involved.

The reconsideration motion carried as follows:

Yeas: Councilors Boyle, Cuneo, Gardner, Gauthier and Hartman -- 5

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

Absent: Councilor Fedora -- 1

Councilor Fosle moved to retable the resolution, which motion was seconded and failed as follows:

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

Nays: Councilors Boyle, Gardner, Gauthier and Hartman -- 4

Absent: Councilor Fedora -- 1

Resolution 10-0345 was adopted as follows:

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, a copy of which is on file in the office of the city clerk as Public Document No. 10-0719-10, with Arshia Khan and Imtiaz Mohamed allowing them to connect their property located at 2732 London Road to the Western Lake Superior Sanitary District's Lakeside interceptor, subject to the approval of the district and setting forth conditions therefore.

Resolution 10-0345 was adopted upon the following vote:

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

Nays: Councilor Fosle -- 1

Absent: Councilor Fedora -- 1

Approved July 19, 2010

DON NESS, Mayor

- - -

The meeting was adjourned at 9:00 p.m.

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10037

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

**AN ORDINANCE AUTHORIZING RECONVEYANCE OF
PROPERTY IN THE RIVERSIDE AREA TO THE STATE OF
MINNESOTA.**

The city of Duluth does ordain:

Section 1. That the city council hereby finds that:

(a) In 1988, the state of Minnesota conveyed the below-described property to the city, which property had been forfeited to the state for nonpayment of real property taxes, at no cost to the city pursuant to the authority of Minnesota Statutes Section 282.01, Subd. 1a, to be used "exclusively for parks and recreation purposes in connection with the Spirit Mountain ski and recreation area;"

(b) The property described in Section 2 below, is hereby determined to be surplus to the city's future needs;

(c) Notwithstanding the provisions of Article XXXIII of Chapter 2 of the Duluth City Code, 1959, as amended (the Code), Minnesota Statutes Section 282.01, Subd. 1d, requires that, under such circumstances, the city reconvey the property to the state of Minnesota.

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:

That part of the west 350.00 feet of Government Lot 1, Section 23, Township 49 North, Range 15 West of the Fourth Principal Meridian described as follows:

Beginning at the intersection of the west line of said Government Lot 1 and the southerly right-of-way of the Northern Pacific Short Line Railroad; thence northeasterly along said railroad right-of-way a distance of 200.00 feet; thence southeasterly at right angles with said railroad right-of-way to the intersection with a line which lies 350.00 feet east of and parallel with the west line of said Government Lot 1; thence southerly along said parallel line to the northerly right-of-way line of the former Old Duluth transfer railway; thence southwesterly along said railroad right-of-way to the south line of said Government Lot 1 to the southwest corner of said Government Lot 1; thence northerly along the west line of said Government Lot 1 to the point of the beginning and there ending. (2746-00245) (part of)

Ironton First Division

Block G, Lots 1-16 (2520-12350)

Block H, Lots 8-16 (2520-12580)

Block I, Lots 8-16 (except railroad)(2520-12670)(part of)

Block J, Lots 1-16 (except railroad)(2520-12830)

Ironton Second Division

Block 28 Lots 1-39 (including part of vacated Kinney Street adjacent to Lots 38 and 39)(2530-05260).

Section 3. This ordinance shall take effect 30 days from and after its passage and publication. (Effective date: August 22, 2010)

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

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

Nays: None -- 0

Absent: Councilor Fedora -- 1

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

ATTEST:
JEFFREY J. COX, City Clerk

Passed July 19, 2010
Approved July 19, 2010
DON NESS, Mayor

- - -

ORDINANCE NO. 10038

AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN CITY PROPERTY IN THE UPPER RIVERSIDE AREA TO THE SPIRIT VALLEY LAND COMPANY, LLC, FOR \$67,000.

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 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 \$67,000 for the listing of parcels as is shown in Section 2 below, which estimated market value is hereby established as the price for the property involved.

Section 2. That the proper city officials are hereby authorized to sell and convey the following described property, by quit claim deed, to the Spirit Valley Land Company, LLC, for the amount of \$67,000:

Ironton Second Division (former DWP railroad right-of-way)

Block 25, Lots 1-13 (lying within 50 feet on either side of the centerline of the DWP railroad right-of-way) (2530-04350)

Block 26, Lots 1-28 (lying within 50 feet on either side of the centerline of the DWP railroad right-of-way) (2530-04672)

Block 27, Lots 1-9 (2530-04990)

Block 27, Lots 10-27 (lying within 50 feet on either side of the centerline of the DWP railroad right-of-way) (2530-05082)

Block 29, Lots 4-19 (except that part lying northerly of a line parallel to and 50 feet northerly of the centerline of the former DWP railroad right-of-way) (2530-05680)

Block 30, Lots 22-29 (except that part lying northerly of a line parallel to and 50 feet northerly of the centerline of the former DWP railroad right-of-way) (2530-06050)

Block 35, Lots 1-20 (except that part lying northerly of a line parallel to and 50 feet northerly of the centerline of the former DWP railroad right-of-way) (2530-06740)

Block 36, Lots 1-8 (2530-06940)

Block 38, Lots 1-20 (2530-07460)

Block 43, Lots 20-32 (lying within 50 feet on either side of the centerline of the DWP railroad right-of-way) (2530-08802)

with funds received to be deposited into Fund 110, Agency 700, Organization 1420, Object 4640-02 and further to execute all documents necessary with regard to said conveyances.

Section 3. The authorization granted by this ordinance shall be subject to the Spirit Valley Land Company, LLC, entering into a contract for private development with the Housing and Redevelopment Authority of Duluth, Minnesota, in a form acceptable to the city's attorney, committing said company to develop a mixed commercial residential master planned

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

development or other legally permissible development on property which includes the property to be conveyed.

Section 4. The aforesaid deed of conveyance shall include a condition requiring that should such development project not commence within ten years from the approval date of this ordinance that the property sold shall revert to the city with the sale price to be refunded to the buyer.

Section 5. The deed of conveyance authorized by this ordinance shall reserve to the city an easement for utility and trail purposes over, across and under the northerly 50 feet of the former Duluth, Winnipeg and Pacific Railway as measured from the centerline of said rail line and being more specifically described as:

Commencing at the southwest corner of said IRONTON SECOND DIVISION; thence on an assumed bearing of north 89 degrees 37 minutes 07 seconds east, along the south line of said IRONTON SECOND DIVISION, a distance of 10.31 feet to the center line of existing trail as traveled upon the former Duluth Winnipeg and Pacific Railroad right-of-way to Winnipeg Canada also known as Canadian Northern Railroad the point of beginning of said southeasterly line; thence north 30 degrees 17 minutes 11 seconds east, along said centerline, a distance of 1,350.92 feet; thence northeasterly, a distance of 818.75 feet, along said centerline, along a tangential curve, concave to the southeast, having a central angle of 37 degrees 31 minutes 44 seconds and a radius of 1,250.00 feet; thence north 67 degrees 48 minutes 55 seconds east, along said centerline; a distance of 188.80 feet; thence northeasterly, a distance of 1,061.76 feet, along said centerline, along a tangential curve concave to the northwest, having a central angle of 62 degrees 42 minutes 57 seconds and a radius of 970.00 feet; thence north 05 degrees 05 minutes 58 seconds east, along said centerline, a distance of 73.68 feet to the north line of said IRONTON SECOND DIVISION and there terminating.

The northwest sideline of said easement shall be prolonged or shortened to terminate on the west line of said IRONTON SECOND DIVISION and on the said north line of IRONTON SECOND DIVISION.

Section 6. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: August 22, 2010)

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

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

Nays: None -- 0

Absent: Councilor Fedora -- 1

ATTEST:
JEFFREY J. COX, City Clerk

Passed July 19, 2010
Approved July 19, 2010
DON NESS, Mayor

[Editor's Note: Ordinance No. 10038 was reconsidered and tabled at the August 16, 2010, council meeting and returned to the administration at the August 30, 2010, council meeting.]

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, August 16, 2010, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: None -- 0

- - -

The minutes of council meetings held on April 12 and 26 and May 10, 2010, were approved upon a unanimous vote.

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

10-0816-01 Gary Bartsias, et al. (two signatures) petition to vacate the south end of Viewcrest Avenue; Lots 14 and 15, Block 3, and Lot 1 and a portion of Lot 8, Block 4, Riverside. -- Assessor

10-0816-02 J&S Partnership, LLP, aka J&S Partnership, and J&SV, LLC, et al., by William M. Burns, attorney, petitions for:

(a) Rezoning from M-1, Manufacturing, to C-5, Planned Commercial, the lower side of property between 44th and 46th avenues West and Grand Avenue (four signatures);

(b) Vacation of alley and easements between the lower side of property between 44th and 46th avenues West and Grand Avenue (one signature). -- Assessor

10-0816-03 Miners, Inc., by DSGW, Inc., petition to vacate 225 feet of alley between 208 and 210 North Central Avenue and 5300 Bristol Street. -- Assessor

10-0816-04 Minnesota state auditor management and compliance report of the city of Duluth for the year ended December 31, 2009. -- Received

10-0816-34 Penny Clark communication regarding the proposed City Hall window replacement (10-0385R). -- Received

10-0816-05 The following communications regarding the proposed unified development chapter (10-030-O; 10-035-O; 10-036-O, 10-037-O and 10-042-O):

(a) Hartel's/DBJ Disposal; (b) Jeff Hofslund; (c) Donald Horak; (d) Jeff Jackson; (e) Troy Moen; (f) Jaclyn Nelson; (g) Michelle K. Olson; (h) Randy Schold; (i) Verizon Wireless, by Jaymes D. Littlejohn, attorney. -- Received

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REPORTS FROM OTHER OFFICERS

10-0816-06 Assessor:

(a) Affidavit of mailing of notice of the levying of assessments against properties for unpaid delinquent stormwater and/or street lighting fees;

(b) Letter of sufficiency regarding petition to vacate 225 feet of alley between 208 and 210 North Central Avenue and 5300 Bristol Street. -- Received

10-0816-07 Building official appeal of the board of zoning appeals decision to deny a request to allow the installation of an additional 60 square feet of signage to an existing oversized off premise sign in a scenic area at 2120 London Road (Nick G. Patronas). -- Committee 2 (planning and economic development)

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

10-0816-08 Clerk applications for exempt permits (raffles) to the Minnesota gambling control board from: (a) Animal Allies Humane Society on October 2, 2010; (b) Arrowhead Zoological Society, dba Lake Superior Zoological Society on September 23, 2010; (c) Duluth East Athletic Association on May 2, 2011; (d) March of Dimes Foundation on October 28, 2010. -- Received

10-0816-09 Parks and recreation division manager agreement amendment with the Greater Downtown Council for Movies in the Park, pursuant to Section 2-35 of the Duluth City Code. -- Received

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REPORTS OF BOARDS AND COMMISSIONS

10-0816-17 Alcohol, gambling and tobacco commission minutes of June 2, 2010, meeting. -- Received

10-0816-10 Board of zoning appeals minutes of June 22, 2010, meeting. -- Received

10-0816-11 Charter commission minutes of April 14, 2010, meeting. -- Received

10-0816-12 Commission on disabilities minutes of June 2, 2010, meeting. -- Received

10-0816-13 Duluth airport authority: (a) Minutes of June 29, 2010, meeting; (b) Unaudited balance sheet dated May 31, 2010. -- Received

10-0816-14 Duluth public arts commission minutes of: (a) May 17; (b) June 21, 2010, meetings. -- Received

10-0816-15 Spirit Mountain recreation area authority minutes of June 17, 2010, meeting. -- Received

10-0816-16 Tree commission update on the Park Point pine forest next to Sky Harbor Airport. -- Received

- - -

OPPORTUNITY FOR CITIZENS TO BE HEARD

Carlyle Eckart noted that every year the rules change for each parking lot and people are using the parking lots for partying and selling food and alcohol. He questioned what the laws are in the city parking lots in regards to the vendors being in the parking lots.

- - -

Art Johnston stated that he did not realize that Ordinance No. 10038 had passed, regarding a conveyance of land. He stated that there was no notification to adjacent property owners, that it is a highly used trail and asked the council to rescind that ordinance.

- - -

Jim Larson, forester and representing the tree commission, expressed concern over the Sky Harbor Airport and the conflict of the Park Point pine forest. He noted the concerns of: the scoping document is the predecessor to the environmental assessment; there is a federal aviation study going on right now and topping of trees.

- - -

Harvey Johnson expressed a concern that a healthy tree was cut down for the Lakewalk extension through Lester Park and that there should be a city noise ordinance.

- - -

Karen Lewis expressed concerns of: that there should be an investigation of the Blues Festival accounting and their operations; at Amity Creek and other swimming holes there should be an inspection of the diving holes to remove the rocks that are injuring the people swimming and helicopters at the tall ships festival were too close to ships and people.

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Will Munger expressed opposition to the sale of the DWP line, noting that: neighbors were not aware of what was going on; it should not be done because the developer will not be able to duplicate the rail line; it is a great trail system; running a road into that area will take a wide sweep of land to duplicate the trail; the developer does not have the financial ability to do all that he says he will; the developer has no track record in other projects and has not been required to show how he is going to do the project.

- - -

Councilor Stauber moved to reconsider Ordinance No. 10038, which motion was seconded by Councilor Hartman and discussed.

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

Kris Ridgewell, Spirit Valley Citizen Neighborhood Development Association, felt that the developer could have had more meetings to better explain the proposal and answer questions.

The motion for reconsideration passed unanimously.

- - -

ORDINANCE RECONSIDERED

INTRODUCED BY COUNCILOR HARTMAN

10038 - AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN CITY PROPERTY IN THE UPPER RIVERSIDE AREA TO THE HOUSING AND REDEVELOPMENT AUTHORITY OF DULUTH FOR \$67,000.

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

- - -

RESOLUTIONS TABLED

Councilor Fedora moved to remove Resolution 10-0362, establishing no parking from 3 a.m. to 6 a.m. on streets in Downtown Duluth, from the table, which motion was seconded and unanimously carried.

Councilor Fedora stated that the resolution would allow bar employees and customers who are in bars until 2:00 not to be in violation of the 2:00 a.m. parking laws.

Councilor Fedora moved to amend the resolution to:

(a) Delete all of the streets listed except:

(1) Superior Street: Sixth Avenue West to Tenth Avenue East (both sides);

and

(2) First Street: Sixth Avenue West to Third Avenue East (both sides);

(b) Change the avenues affected on Superior Street from "Sixth Avenue West" to "Third Avenue West" and from "Tenth Avenue East" to "Fourth Avenue East";

(c) Change the avenues affected on First Street from "Sixth Avenue West" to "Fourth Avenue West" and from "Third Avenue East" to "Second Avenue East";

(d) Add to the list: "Fourth Street: Fifth Avenue East to Sixth Avenue East (both sides)";

which motion was seconded and unanimously carried.

Councilor Gardner voiced concern on the expense of having to replace signs and this is not a practical change since there has not been any ground swell from the bar owners. She

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

continued saying that it would be more practical to issue permits to allow parking after 2:00 a.m.

Councilor Gauthier felt that this calls for a reconfiguration for plowing, adding to overtime and why not those individual use ramps.

Resolution 10-0362, as amended, was adopted as follows:

BY COUNCILOR FEDORA:

RESOLVED, that in accordance with the provisions of Section 33-94 of the Duluth City Code, 1959, as amended, the following no parking 2 a.m. to 6 a.m. zones will be changed to no parking 3 a.m. to 6 a.m.:

Superior Street: Third Avenue West to Fourth Avenue East (both sides);

First Street: Fourth Avenue West to Second Avenue East (both sides);

Fourth Street: Fifth Avenue East to Sixth Avenue East (both sides).

FURTHER RESOLVED, that these restrictions shall apply to where there is legal parking only and that the zone changes shall take effect upon the installation of signs indicating the new time limits.

Resolution 10-0362, as amended, was unanimously adopted.

Approved August 16, 2010

DON NESS, Mayor

- - -

Councilor Cuneo moved to remove Resolution 10-0385, authorizing city officials to contract with Superior Glass, Inc., for the east and south facade window replacement at City Hall in Duluth for a total amount of \$749,845, from the table, which motion was seconded and unanimously carried.

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

Penny Clark expressed concerns that: the heritage preservation commission (HPC) never approved this particular design; that the state historic preservation officer (SHIPO) does not approve the proposed design and that the city should not be voting on these windows as they do not fit the historical detail that is required by the state.

Councilors discussed at length extensively with Ms. Clark, City Attorney Gunnar Johnson and City Architect Terry Groshong the HPC's concerns.

Resolution 10-0385 was adopted as follows:

RESOLVED, that a city contract is hereby awarded to Superior Glass, Inc., for the replacement of the east and south facade windows of Duluth City Hall in accordance with city specifications and the contractor's low bid of \$749,845, terms net 30, and payable as follows:

(a) \$282,000 from Capital Improvements Fund 450, Department/Agency 030, Object 5520, Project No. CP 2009-0904B;

(b) \$467,845 from Capital Improvements Fund 450, Department/Agency 030, Object 5520, Project No. CP 2010-1004B.

Resolution 10-0385 was unanimously adopted.

Approved August 16, 2010

DON NESS, Mayor

- - -

Councilor Gardner moved to remove Resolution 10-0389, amending Resolution 09-0742 adopting license, permit and fee charges for 2010; adding adult entertainment

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

establishment annual license fee, from the table, which motion was seconded and unanimously carried.

- - -

Councilor Gardner moved to suspend the rules to consider Ordinance 10-034 at this time, which motion was seconded and unanimously carried.

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCE

ORDINANCE TABLED

BY COUNCILOR GARDNER

10-034 (10043) - AN ORDINANCE AMENDING CHAPTER 5, ARTICLE IV, OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO ADULT BOOKSTORES AND ADULT ENTERTAINMENT ESTABLISHMENTS.

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

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

- - -

Resolution 10-0389 was adopted as follows:

BY COUNCILOR GARDNER:

RESOLVED, that Resolution 09-0742 adopting license, permit and fee charges for 2010 be amended by adding the following fee, pursuant to Section 5-20 of the Duluth City Code:

Clerk	
License, Permit, Fee Name	2010 Fee
Adult entertainment establishment annual license fee	\$500.00

Resolution 10-0389 was unanimously adopted.

Approved August 16, 2010

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

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 \$3,860,000 general obligation street improvement bonds, Series 2002D, dated September 1, 2002 (the "2002 bonds"). The 2002 bonds were issued to finance street improvements through the city's 2002 street improvement program.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Section 2. The 2002 bonds are substantially in the form prescribed by Resolution 02-0560 duly adopted by the council on August 22, 2002 (hereinafter referred to as the "2002 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 2002 bonds maturing on and after February 1, 2012 (the "redeemed bonds"), of which \$2,045,000 in principal amount is outstanding and is hereby called for prepayment and redemption on February 1, 2011 (the "redemption date").

Section 4. The council hereby transfers \$2,045,000 from the community investment trust fund (Fund 256) to the 2002 improvement bond account (the "debt service account") within the street improvement debt service fund for the prepayment and redemption of the redeemed bonds. The monies hereby appropriated shall be transferred to the debt service account within 30 days of passage and approval of this resolution.

Section 5.

(a) The funds transferred in Section 4 hereof in the amount of \$2,045,000 together with the monies previously deposited in the debt service account in the amount of \$291,931.88 shall be segregated and shall constitute a separate trust fund to be used for no purpose other than the payment of the principal of the 2002 bonds maturing on February 1, 2011, interest on the 2002 bonds due on February 1, 2011, and the principal of the redeemed bonds called for prepayment and redemption on the redemption date.

(b) It is hereby found and determined that the funds transferred and on deposit in the debt service account in the amount of \$2,336,931.88 will be sufficient to pay the interest (\$46,931.88) on the 2002 bonds to the redemption date, the principal of the 2002 bonds maturing on February 1, 2011 (\$245,000) and the outstanding principal of the redeemed bonds (\$2,045,000) 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. 10-0816-18, 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 2002 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 10-0419 was unanimously adopted.

Approved August 16, 2010

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 2010 debt service tax levy with a transfer of monies from the community investment trust fund (Fund 256) (the "CIT fund").

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

NOW, THEREFORE, BE IT RESOLVED, by the city council of the city, as follows:

The council hereby transfers \$3,620,670 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, 2011, and February 1, 2012. The monies hereby appropriated shall be transferred to the debt service fund within 30 days of passage and approval of this resolution.

Resolution 10-0420 was unanimously adopted.

Approved August 16, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into the addendum to DEDA Contract No. 06 0865 480, previously assigned to city, a copy of which addendum is on file in the office of the city clerk as Public Document No. 10-0816-19, with Duluth Grand, LLC, temporarily modifying the payment obligations thereunder and extending the time for payment.

Resolution 10-0421 was unanimously adopted.

Approved August 16, 2010

DON NESS, Mayor

- - -

RESOLVED, that Resolution No. 10-0213 is hereby amended by deleting Public Document No. 10-0426-13 therefrom and by substituting Public Document No. 10-0830-33, on file in the office of the city clerk, therefore.

Resolution 10-0432 was unanimously adopted.

Approved August 16, 2010

DON NESS, Mayor

- - -

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

Duluth Softball Players Association, Wheeler Field, for August 28 and 29, 2010, with John Vaydich, manager.

Resolution 10-0415 was unanimously adopted.

Approved August 16, 2010

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:

Duluth Playhouse, Inc. (Centennial Celebration), 211 East Superior Street, for August 21, 2010, with Christine Seitz, manager.

Resolution 10-0416 was unanimously adopted.

Approved August 16, 2010

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 Program for Aid to Victims of Sexual Assault and does hereby waive the 60 day waiting period which it has to object to the issuance of said exemptions.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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 10-0417 was unanimously adopted.

Approved August 16, 2010

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	Roscoe's Pioneer Bar, 323 West First Street
	R Bar, 21 North Fourth Avenue West
	North Pole Bar, 5606 Raleigh Street

Resolution 10-0418 was unanimously adopted.

Approved August 16, 2010

DON NESS, Mayor

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RESOLVED, that the appointments by Mayor Ness to the deferred compensation plan commission of Marlene Van Puymbrouck (confidential unit), for a term expiring on March 31, 2011, and Don Hoag (supervisory unit), for a term expiring on March 31, 2014, replacing Norma Johnson and John Beyer, respectively, who resigned, are confirmed.

Resolution 10-0366 was unanimously adopted.

Approved August 16, 2010

DON NESS, Mayor

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RESOLVED, that the appointment by Mayor Ness to the Duluth airport authority of Suzanne Ross for a term expiring on July 1, 2011, replacing Nancy Norr who resigned, is confirmed.

Resolution 10-0409 was unanimously adopted.

Approved August 16, 2010

DON NESS, Mayor

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RESOLVED, that the proposed specifications for the new civil service classification of contract management and compliance administrator, which were approved by the civil service board on August 3, 2010, and which are filed with the city clerk as Public Document No. 10-0816-20, are approved; that said classification shall be subject to the city's collective bargaining agreement with its basic unit employees; and that pay range for said classification shall be Range 135. The proper city officials are authorized to execute and implement an agreement with the union to provide for employing one or more unit members consistent with this resolution.

Resolution 10-0434 was unanimously adopted.

Approved August 16, 2010

DON NESS, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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RESOLVED, that the proper city officials are hereby authorized to enter into a Minnesota historical and cultural grant agreement with the Minnesota Historical society, substantially in the form of that on file in the office of the city clerk as Public Document No. 10-0816-21(a), accepting a grant in the amount of \$225,000, related to a rehabilitation program of the Old St. Louis County Jail, payable into Fund 262 020-4220-02.

FURTHER RESOLVED, that the proper city officials are hereby authorized to enter into Minnesota historical and cultural subgrant agreement with Jail Holdings, LLC, substantially in the form of that on file in the office of the city clerk as Public Document No. 10-0816-21(b), to implement the rehabilitation program of the Old St. Louis County Jail, in the amount of \$225,000 payable from Fund 262 020-5434.

Resolution 10-0376 was unanimously adopted.

Approved August 16, 2010

DON NESS, Mayor

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RESOLVED, that the proper city officials are authorized to enter into a first amendment to the 2007 community development block grant program agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 10-0816-22(a), with American Indian Community Housing Organization (AICHO), in part extending the time for completion of project construction, requiring that the mortgage by AICHO, LLC, in favor of AICHO be assigned to the city, and acknowledging that and making the grant non-recourse as to AICHO and AICHO, LLC.

FURTHER RESOLVED, that the proper city officials are authorized to enter into a first amendment to the 2008 HOME program agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 10-0816-22(b), with AICHO, making the grant nonrecourse as to AICHO and AICHO, LLC.

FURTHER RESOLVED, that the proper city officials are authorized to enter into a forbearance agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 10-0816-22(c), with AICHO and AICHO, LLC, pursuant to which the city agrees to forbear from exercising foreclosure for a five year period commencing on the first day on which the last qualified rehabilitation expenditure which is generating historic tax credits for the project achieves placement in service.

Resolution 10-0413 was unanimously adopted.

Approved August 16, 2010

DON NESS, Mayor

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RESOLVED, that the proper city officials are authorized to make the following fund transfer in the Federal Program Fund 262, Agency 025, Object 5434, HUD-funded community development accounts as set forth below:

2008 CDBG Program - Fund 262 - Project CDBG-R					
Account Revised 2008					
Sub-project	Activity	Project	Amount	New Grant	Difference

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

2008 CDBG Program - Fund 262 - Project CDBG-R Account Revised 2008					
Sub-project	Activity	Project	Amount	New Grant	Difference
Curb	Curb ramps	Sidewalk accessibility	\$300,000	\$127,876	\$427,876
Sewer	Sewer line	Second Street sewer rehabilitation	\$350,000	(\$127,876)	\$222,124

Resolution 10-0414 was unanimously adopted.
 Approved August 16, 2010
 DON NESS, Mayor

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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. 10-0816-23, with Senior Service America, Inc., (SSAI) to serve Duluth residents age 55 and older with work experience training and services in the amount of \$354,718 for the period of July 1, 2010, through June 30, 2011. 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 10-0401 was unanimously adopted.
 Approved August 16, 2010
 DON NESS, Mayor

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RESOLVED, that city officials are hereby authorized to contract with Monarch Paving Company, a division of Mathy Construction Company, for the purchase of 1,650 tons of fine cold mix asphalt during the contract period of June 1, 2010, through May 31, 2011, in accordance with specifications and the vendor's bid of \$55 per ton for 1,650 tons, for a total of \$90,750 plus \$6,239.07 sales tax, for a combined total of \$96,989.07, payable from:

Requisition	Amount	Fund	Department/ Agency	Organization	Object
10-0074	\$41,146.88	General Fund 110	121	1217-2140	5222
10-0118	\$33,505.31	Water Fund 510	500	1945	5222
10-0118	\$5,584.22	Gas Fund 520	500	1945	5222
10-0118	\$11,168.44	Sewer Fund 530	500	1945	5222
10-0118	\$5,584.22	Stormwater 535	500	1945	5222

Resolution 10-0243 was unanimously adopted.
 Approved August 16, 2010
 DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to apply jointly with the Duluth Seaway Port authority to the U.S. department of transportation for a surface transportation discretionary ("TIGER II") grant in the estimated amount of \$19,700,000 to fund capital improvement and development of docks C and D and improved port access, and to

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

develop a new warehouse to be owned and managed by the port authority, and also to fund road improvements at First Street and Piedmont Avenue (City Project No. 0758TR).

FURTHER RESOLVED, the city hereby pledges to fund the local matching share of the proposed improvement to the First Street and Piedmont Avenue intersection, total cost of which is estimated to be \$500,000, and which local matching share is estimated to be \$100,000, from municipal state aid funds.

Resolution 10-0404 was unanimously adopted.

Approved August 16, 2010

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into a contract with JMF Construction, Inc., for the 2010 sanitary and storm manhole adjustment program for the apparent low bid of \$73,205, payable out of Sanitary Sewer Fund 0530 and Stormwater Fund 0535, Agency 500, Organization 1905, Object 5535, city project nos. 0601SN/0602ST.

Resolution 10-0405 was unanimously adopted.

Approved August 16, 2010

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with Salo Engineering, Inc., to perform professional engineering services for design engineering of the Ivanhoe Street reconstruction project (49th Avenue East to 54th Avenue East) in the amount of \$79,520.52, payable from Street Improvement Project Fund 440, Department 038, Object 5530, City Project No. 0851TR.

Resolution 10-0422 was unanimously adopted.

Approved August 16, 2010

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with Salo Engineering, Inc., to perform professional engineering services for design and construction engineering of the 36th Avenue East reconstruction project (Superior Street to Fourth Street) in the amount of \$129,711.51, payable from Permanent Improvement Fund 411, Department/Agency 035, Object 5530, City Project No. 0356TR, to be reimbursed from municipal state aid and utility funds.

Resolution 10-0423 was unanimously adopted.

Approved August 16, 2010

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with Ayres Associates, Inc., to perform professional engineering services for design and construction engineering of the Anderson Road reconstruction project (Haines Road to Chambersburg Avenue) in the amount of \$307,901, payable from Permanent Improvement Fund 411, Department 035, Object 5530, City Project No. 0357TR, to be reimbursed from federal, municipal state aid and utility funds.

Resolution 10-0424 was unanimously adopted.

Approved August 16, 2010

DON NESS, Mayor

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

RESOLVED, that the proper city officials are hereby authorized to execute an agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 10-0816-24, with the Minnesota department of natural resources to accept a grant through the Lake Superior coastal program in the amount of \$32,492 for the project entitled: GPS survey and realignment of sanitary and stormwater structures in Duluth's GIS, a 51 percent required match to grant shall be made in the form of staff labor and equipment used on the project, funds to be deposited in Fund 535-500-1900-4210-01.

Resolution 10-0430 was unanimously adopted.

Approved August 16, 2010

DON NESS, Mayor

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RESOLVED, that the program guidelines for the city's commercial/industrial energy conservation program, approved as Public Document No. 07-0129-16 pursuant to Resolution No. 07-0083, are hereby amended by the substitution therefore of those amended guidelines on file in the office of the city clerk as Public Document No. 10-0816-25, which amendment makes multi-family housing eligible to participate in the program and extends the maximum "pay-back" period for program expenditures from 10 to 15 years.

Resolution 10-0431 was unanimously adopted.

Approved August 16, 2010

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to accept five ICOP Model 20/20-W in-car cameras through the Minnesota department of public safety, office of traffic safety, in-car camera grant program, which program is administered by the Minnesota Sheriffs' Association, and to execute any documents required to be executed to accept said grant.

FURTHER RESOLVED, that the city is authorized to commit a required match of \$500, funds for which have been budgeted and are payable to the Minnesota Sheriffs' Association from Fund 250-15-2010-5580-CE250-B1001.

Resolution 10-0410 was unanimously adopted.

Approved August 16, 2010

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to execute an agreement substantially the same as that on file in the office of the city clerk as Public Document No. 10-0816-26 with the Housing and Redevelopment Authority of Duluth, Minnesota (HRA) to accept a total of \$292,001.60 to fund one police officer position for and over a period of five years, said officer who will work with HRA to improve social conditions which may otherwise foster drug use, criminal activities and other abuses or public disruptions at Duluth HRA public housing sites, said sum to be payable to Fund 215-200-2293-4263.

Resolution 10-0411 was unanimously adopted.

Approved August 16, 2010

DON NESS, Mayor

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RESOLVED, that the proper city officers are hereby authorized to execute an agreement substantially the same as that on file in the office of the city clerk as Public Document No. 10-0816-27 with the United States Marshals Service (USMS) pursuant to the

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Presidential Threat Protection Act of 2000 (Public L. 106-544, §6, December 6, 2000, 114 Stat. 2718, 28 U.S.C. § 566) for participation in a regional fugitive task force for the purpose of locating and apprehending persons who have active state and federal warrants for their arrest.

Resolution 10-0412 was unanimously adopted.

Approved August 16, 2010

DON NESS, Mayor

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The following resolutions were also considered:

RESOLVED, that city officials are hereby authorized to contract with both Coons Aggregate Supply (a division of Wissota Sand and Gravel) and Ulland Brothers, Inc., for the purchase and delivery of 9,000 tons of washed sand in accordance with the city's specifications and each vendor's low bid - (a) \$42,360 from Coons Aggregate Supply; and (b) \$49,000 from Ulland Brothers, Inc. - for a combined total of \$91,360 plus sales tax of \$6,281, for a combined total amount of \$97,641, payable from the General Fund 110, Department/Agency 121, Organization 1217-2140, Object 5223-02.

Resolution 10-0406 was adopted upon the following vote:

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

Nays: None -- 0

Abstention: Councilor Fedora -- 1

Approved August 16, 2010

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. 10035 adopted July 12, 2010 (the "ordinance"), ordered the issuance, sale and delivery of a general obligation water utility revenue note in the maximum amount of \$5,500,000 of the City, for the payment of the costs of rehabilitation of the Highland pump station and for construction and equipping of a new Highland water tank. The PFA has authorized a loan to the city in the amount of \$1,371,653 for the rehabilitation of the Highland pump station structure, including removing the four existing pumps and installing new heating, ventilating and air conditioning equipment, MCC and SCADA equipment, plumbing, electrical, two split case pumps and 800 lineal feet of watermain (the "project"). The construction and equipping of a new Highland water tank will be financed pursuant to the ordinance at a future date.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

1.03 The general obligation water utility revenue note to be issued under the ordinance shall be issued in the principal amount of \$1,371,653 (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. 10-1016-30, for the project to the PFA pursuant to a Minnesota public facilities authority bond purchase and project loan agreement dated July 15, 2010, 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. 10-0816-30 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 \$1,371,653, in fully registered form and lettered and numbered R-1. Interest on the note shall be at the rate of 1.258% per annum. Principal and interest payments shall be made in the respective years and amounts set forth on Exhibit A to the note, subject to adjustment as provided in the loan agreement. If the principal and interest payments are paid by check and mailed to the registered holder of the note, such payment shall be mailed by the city at least five business days prior to the payment date.

2.02 the note shall be prepared for execution in accordance with the approved form and shall be signed by the manual signature of the mayor and attested by the manual signature of the clerk. In case any officer whose signature shall appear on the note shall cease to be an officer before delivery of the note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. All actions of the officers of the city regarding the loan agreement, including but not limited to, the officers of the city executing the loan agreement, are ratified, confirmed and approved as of the date of the loan agreement.

2.03. The city will cause to be kept at its offices a register in which, subject to such reasonable regulations as the city may prescribe, the city shall provide for the registration of transfers of ownership of the note. The note shall be initially registered in the name of the PFA and shall be transferable upon the register by the PFA in person or by its agent duly authorized in writing, upon surrender of the note, together with a written instrument of transfer satisfactory to the clerk, duly executed by the PFA or its duly authorized agent.

2.04. Delivery of the note shall be made at a place mutually satisfactory to the city and the PFA. The note shall be furnished by the city without cost to the PFA. The note, when prepared in accordance with this resolution and executed, shall be delivered to the PFA by and under the direction of the treasurer. Disbursement of the proceeds of the note shall be made pursuant to the loan agreement.

2.05. In the event of an inconsistency between a provision of this resolution and a provision of the loan agreement, the provision of the loan agreement shall govern.

Section 3. Revenues, accounts and covenants.

3.01 The city council covenants and agrees with the PFA and with its taxpayers that it will impose and collect just and equitable charges for all use and for the availability of all facilities of the municipal 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.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

The city will place all such charges, when collected, and all money received from the sale of any facilities or equipment of the municipal water utility in a separate water utility operating account within the public utility water fund maintained under Section 54 of the City Charter. Except as provided in this section, this account shall be used only to pay claims duly approved and allowed for payment of expenses which, under generally accepted accounting principles, constitute normal, reasonable and current expenses of operating and maintaining the municipal water utility, and to maintain such reasonable reserves for such expenses as the proper city official shall determine to be necessary from time to time in accordance with policies established by the city council. Sums from time to time on hand in this account, in excess of sums required to make such payments and maintain such reserves, constitute the net revenues which are herein pledged and appropriated first to pay the principal of and interest on all water utility bonds or notes when due.

3.02 The city hereby creates a separate construction account (the "construction account") within the public utility water fund to which there shall be credited the proceeds of the note as received, together with investment income thereon and any additional funds which may be available and are appropriated for improvements to the project. This account shall be used only to pay expenses duly approved and allowed which, under generally accepted accounting principles, constitute capital expenditures for the completion of the project and costs of the issuance of the note.

3.03 Until the note issued hereunder is fully paid or duly called for redemption, or otherwise discharged, the city will also maintain a separate debt service account (the "water debt service fund") in the public utility water fund to be used solely for the payment of the principal and interest, as such principal and interest become due and payable, on the note and on any other bonds or notes which have been or may be issued and made payable from said net revenues of the water utility. All investment income on funds in the water debt service fund are pledged to payment of the note and other bonds and notes payable from the water debt service fund. The treasurer shall transfer from the water utility operating account to the water debt service fund amounts of the net revenues sufficient for the payment of all interest and principal then due on the note and other bonds and notes payable from the water debt service fund. Such transfers shall be made at the times and in the amounts determined by the treasurer, in accordance with policies established by resolutions of the city council.

3.04 Surplus utility revenues from time to time received in the water utility operating account, in excess of payments due from and reserves required to be maintained in the water utility operating account and in the water debt service fund, may be used for necessary capital expenditures for the improvement of the municipal water utility, for the prepayment and redemption of bonds or notes constituting a lien on the municipal water utility, and for any other proper municipal purpose consistent with policies established by resolutions of the city council.

3.05 A. In the event the monies and payments appropriated to the water debt service fund are insufficient to pay principal of and interest on the note and the bonds and notes payable from such fund as the same become due, the city is required by law and by contract with the holders of the note and such bonds and notes and hereby obligates itself to levy and cause to be extended, assessed and collected any additional taxes found necessary for full payment of the principal of and interest on the note.

B. The full faith and credit and taxing powers of the city are irrevocably pledged for the prompt and full payment of the principal of and interest on the note, as such principal and interest respectively become due. However, the net revenues of the water utility appropriated to the water debt service fund are estimated to be not less than five percent in

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

B. The city shall use its best efforts to comply with any federal procedural requirements which may apply in order to effectuate the designation made by this section.

Section 5. Certificate of proceedings.

5.01 The clerk is directed to file with the county auditor a certified copy of this resolution and such other information as the county auditor may require, and to obtain from the county auditor a certificate stating that the Note herein authorized has been duly entered on his register.

5.02 The officers of the city are authorized and directed to prepare and furnish to the purchaser and to bond counsel certified copies of all proceedings and records of the city relating to the authorization and issuance of the note and other affidavits and certificates as may reasonably be requested to show the facts relating to the legality and marketability of the note as such facts appear from the official books and records of the officers' custody or otherwise known to them. All of such certified copies, certificates and affidavits, including any heretofore furnished, constitute representations of the city as to the correctness of facts recited therein and the actions stated therein to have been taken.

Resolution 10-0425 was adopted upon the following vote:

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

Nays: Councilor Stauber -- 1

Approved August 16, 2010

DON NESS, Mayor

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

Section 1. Note purpose and authorization.

1.01 Under and pursuant to the provisions of Section 55 of the City Charter, Minnesota Statutes, Section 444.075 and Chapter 475, and other pertinent provisions of said Charter and statutes, the city is authorized to issue its general obligation bonds or notes to provide funds for the payment of costs of improvements to the municipal sewer utility, which bonds or notes shall be a specific lien upon the sewer utility and are payable primarily from net revenues to be derived from the operation of the municipal sewer utility and pledged for their payment. The city has applied for and received a commitment from the Minnesota public facilities authority (the "PFA") for a loan for the project, as hereinafter defined.

1.02 The city council has, by Ordinance No. 10034 adopted July 12, 2010 (the "ordinance"), ordered the issuance, sale and delivery of a general obligation sewer utility revenue note in the maximum amount of \$13,100,000 of the city (i) for the payment of the costs of improvements to the municipal sewer utility through the construction of Phase III of the East interceptor sanitary sewer overflow storage facility (installation of pumps and cleaning equipment in the East interceptor sanitary sewer overflow storage tank, installation of overflow relief piping, replacement of the existing pump station maintenance facility and public restroom and site landscaping) (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 in the maximum amount of \$4,000,000; and (ii) for the payment of the costs of improvements to the municipal sewer utility through the construction of Phase II of the East interceptor sanitary sewer overflow storage facility (construction of an 8.2 million gallon sewerage overflow prevention storage tank) (the "Phase II project") as identified in the city's application to the PFA, and for the payment of part of the

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

interest cost of the bond or note in the maximum loan amount of \$9,100,000. The Phase II project will be financed through the issuance of a separate revenue note.

1.03 The city has applied for and received a grant from the state of Minnesota's wastewater infrastructure fund, in the amount of \$4,000,000 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 \$3,753,059 (the "note") to pay the portion of the costs of the project, not paid by such grant funds.

1.04 The council hereby determines that the project is a project for the purpose of designing, constructing, repairing or replacing structures or facilities, including sanitary sewage overflow storage and for the purpose of attaining compliance with federal or state inflow and infiltration standards, within the meaning of City Code Section 43-11.1(7), and thus the costs of the project and debt service of the note which paid costs of the project are eligible costs to be paid from the clean water fund created under City Code Section 43-11.1 (the "clean water fund").

1.05 The city hereby authorizes the issuance and sale of the note, in substantially the form on file in the office of the clerk as Public Document No. 10-0816-31, for the project to the PFA pursuant to a Minnesota public facilities authority bond purchase and project loan agreement dated July 15, 2010, 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. 10-0816-31 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 \$3,753,059, in fully registered form and lettered and numbered R-1. Interest on the note shall be at the rate of 1.258% per annum. Principal and interest payments shall be made in the respective years and amounts set forth on Exhibit A to the note, subject to adjustment as provided in the loan agreement. If the principal and interest payments are paid by check and mailed to the registered holder of the note, such payment shall be mailed by the city at least five business days prior to the payment date.

2.02 The note shall be prepared for execution in accordance with the approved form and shall be signed by the manual signature of the mayor and attested by the manual signature of the clerk. In case any officer whose signature shall appear on the note shall cease to be an officer before delivery of the note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. All actions of the officers of the city regarding the loan agreement, including but not limited to, the officers of the city executing the loan agreement, are ratified, confirmed and approved as of the date of the loan agreement.

2.03. The city will cause to be kept at its offices a register in which, subject to such reasonable regulations as the city may prescribe, the city shall provide for the registration of transfers of ownership of the note. The note shall be initially registered in the name of the PFA and shall be transferable upon the register by the PFA in person or by its agent duly authorized in writing, upon surrender of the note, together with a written instrument of transfer satisfactory to the clerk, duly executed by the PFA or its duly authorized agent.

2.04. Delivery of the Note shall be made at a place mutually satisfactory to the city and the PFA. The note shall be furnished by the city without cost to the PFA. The note, when prepared in accordance with this resolution and executed, shall be delivered to the PFA by and under the direction of the treasurer. Disbursement of the proceeds of the note shall be made pursuant to the loan agreement.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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 "2010B construction account") within the public utility sewer fund to which there shall be credited the proceeds of the note as received, together with investment income thereon, all grant funds for the project and any additional funds which may be available and are appropriated for improvements to the project. This account shall be used only to pay expenses duly approved and allowed which, under generally accepted accounting principles, constitute capital expenditures for the completion of the project and costs of the issuance of the note.

3.03 Until the note issued hereunder is fully paid or duly called for redemption, or otherwise discharged, the city will also maintain a separate debt service account (the "sewer debt service fund") in the public utility sewer fund to be used solely for the payment of the principal and interest, as such principal and interest become due and payable, on the note and on any other bonds or notes which have been or may be issued and made payable from said net revenues of the sewer utility. The council further authorizes the use of monies on deposit in the clean water fund to pay the principal of and interest on the note. All investment income on funds in the sewer debt service fund are pledged to payment of the note and other bonds and notes payable from the sewer debt service fund. The treasurer shall transfer from the sewer utility operating account and the clean water fund to the sewer debt service fund amounts of the net revenues and monies from the clean water fund sufficient for the payment of all interest and principal then due on the note. Such transfers shall be made at the times and in the amounts determined by the treasurer, in accordance with policies established by resolutions of the city council.

3.04 surplus utility revenues from time to time received in the sewer utility operating account, in excess of payments due from and reserves required to be maintained in the sewer utility operating account and in the sewer debt service fund, may be used for necessary capital

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expenditures for the improvement of the municipal sewer utility, for the prepayment and redemption of bonds or notes constituting a lien on the municipal sewer utility, and for any other proper municipal purpose consistent with policies established by resolutions of the city council.

3.05 A. In the event the monies and payments appropriated to the sewer debt service fund are insufficient to pay principal of and interest on the note and the other bonds and notes payable from such fund as the same become due, the city is required by law and by contract with the holders of the note and such bonds and notes and hereby obligates itself to levy and cause to be extended, assessed and collected any additional taxes found necessary for full payment of the principal of and interest on the note.

B. The full faith and credit and taxing powers of the city are irrevocably pledged for the prompt and full payment of the principal of and interest on the note, as such principal and interest respectively become due. However, the net revenues of the sewer utility appropriated to the sewer debt service fund are estimated to be not less than five percent in excess of the principal of and interest on the note and the other bonds and notes payable from such fund, and accordingly, no tax is levied at this time.

3.06 Monies on deposit in the 2010B 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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

would cause the Note to be federally guaranteed within the meaning of Section 149(b) of the Internal Revenue Code of 1996, as amended (the "code").

C. The city hereby covenants not to use the proceeds of the note, or to cause or permit them to be used, in such a manner as to cause the note to be a "private activity bond" within the meaning of sections 103 and 141 through 150 of the code.

4.03 If the city determines that the Note does not qualify for exemption from the federal arbitrage rebate requirements under Section 148(f) of the Code, the city agrees to cause the calculations and payments to the United States to be made pursuant to Section 148 of the code and treasury regulations relating thereto.

Section 5. Certificate of proceedings.

5.01 The clerk is directed to file with the county auditor a certified copy of this resolution and such other information as the county auditor may require, and to obtain from the county auditor a certificate stating that the Note herein authorized has been duly entered on his register.

5.02 The officers of the city are authorized and directed to prepare and furnish to the purchaser and to bond counsel certified copies of all proceedings and records of the city relating to the authorization and issuance of the note and other affidavits and certificates as may reasonably be requested to show the facts relating to the legality and marketability of the note as such facts appear from the official books and records of the officers' custody or otherwise known to them. All of such certified copies, certificates and affidavits, including any heretofore furnished, constitute representations of the city as to the correctness of facts recited therein and the actions stated therein to have been taken.

Resolution 10-0426 was adopted upon the following vote:

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

Nays: Councilor Stauber -- 1

Approved August 16, 2010

DON NESS, Mayor

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

Section 1. Note purpose and authorization.

1.01 Under and pursuant to the provisions of Section 55 of the City Charter, Minnesota Statutes, Section 444.075 and Chapter 475, and other pertinent provisions of said Charter and statutes, the city is authorized to issue its general obligation bonds or notes to provide funds for the payment of costs of improvements to the municipal sewer utility, which bonds or notes shall be a specific lien upon the sewer utility and are payable primarily from net revenues to be derived from the operation of the municipal sewer utility and pledged for their payment. The city has applied for and received a commitment from the Minnesota public facilities authority (the "PFA") for a loan for the project, as hereinafter defined.

1.02 The city council has, by Ordinance No. 10034 adopted July 12, 2010 (the "ordinance"), ordered the issuance, sale and delivery of a general obligation sewer utility revenue note in the maximum amount of \$13,100,000 of the city (i) for the payment of the costs of improvements to the municipal sewer utility through the construction of Phase II of the East interceptor sanitary sewer overflow storage facility (construction of an 8.2 million gallon sewerage overflow prevention storage tank) (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 in the maximum

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loan amount of \$9,100,000; and (ii) for the payment of the costs of improvements to the municipal sewer utility through the construction of Phase III of the East interceptor sanitary sewer overflow storage facility (installation of pumps and cleaning equipment in the East interceptor sanitary sewer overflow storage tank, installation of overflow relief piping, replacement of the existing pump station maintenance facility and public restroom and site landscaping) (the "Phase III 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 in the maximum loan amount of \$4,000,000. The Phase III project will be financed through the issuance of a separate revenue note.

1.03 The city has applied for and received a grant from the state of Minnesota's wastewater infrastructure fund, in the amount of \$4,000,000 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 \$9,087,385 (the "note") to pay the portion of the costs of the project, not paid by such grant funds.

1.04 The council hereby determines that the Project is a project for the purpose of designing, constructing, repairing or replacing structures or facilities, including sanitary sewage overflow storage and for the purpose of attaining compliance with federal or state inflow and infiltration standards, within the meaning of City Code Section 43-11.1(7), and thus the costs of the project and debt service of the note which paid costs of the project are eligible costs to be paid from the clean water fund created under City Code Section 43-11.1 (the "clean water fund").

1.05 The city hereby authorizes the issuance and sale of the note, in substantially the form on file in the office of the clerk as Public Document No. 10-0816-32, for the project to the PFA pursuant to a Minnesota public facilities authority bond purchase and project loan agreement dated July 15, 2010, 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. 10-0816-32 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 \$9,087,385, in fully registered form and lettered and numbered R-1. Interest on the note shall be at the rate of 1.258% per annum. Principal and interest payments shall be made in the respective years and amounts set forth on Exhibit A to the note, subject to adjustment as provided in the loan agreement. If the principal and interest payments are paid by check and mailed to the registered holder of the note, such payment shall be mailed by the city at least five business days prior to the payment date.

2.02 The note shall be prepared for execution in accordance with the approved form and shall be signed by the manual signature of the mayor and attested by the manual signature of the clerk. In case any officer whose signature shall appear on the note shall cease to be an officer before delivery of the note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. All actions of the officers of the city regarding the loan agreement, including but not limited to, the officers of the city executing the loan agreement, are ratified, confirmed and approved as of the date of the loan agreement.

2.03. The city will cause to be kept at its offices a register in which, subject to such reasonable regulations as the city may prescribe, the city shall provide for the registration of transfers of ownership of the note. The note shall be initially registered in the name of the PFA and shall be transferable upon the register by the PFA in person or by its agent duly authorized

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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 "2010A construction account") within the public utility sewer fund to which there shall be credited the proceeds of the note as received, together with investment income thereon, all grant funds for the project and any additional funds which may be available and are appropriated for improvements to the project. This account shall be used only to pay expenses duly approved and allowed which, under generally accepted accounting principles, constitute capital expenditures for the completion of the project and costs of the issuance of the note.

3.03 Until the note issued hereunder is fully paid or duly called for redemption, or otherwise discharged, the city will also maintain a separate debt service account (the "sewer debt service fund") in the public utility sewer fund to be used solely for the payment of the principal and interest, as such principal and interest become due and payable, on the note and on any other bonds or notes which have been or may be issued and made payable from said net revenues of the sewer utility. The council further authorizes the use of monies on deposit in the clean water fund to pay the principal of and interest on the note. All investment income on funds in the sewer debt service fund are pledged to payment of the note and other bonds and notes payable from the sewer debt service fund. The treasurer shall transfer from the sewer utility operating account and the clean water fund to the sewer debt service fund

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amounts of the net revenues and monies from the clean water fund sufficient for the payment of all interest and principal then due on the note. Such transfers shall be made at the times and in the amounts determined by the treasurer, in accordance with policies established by resolutions of the city council.

3.04 Surplus utility revenues from time to time received in the sewer utility operating account, in excess of payments due from and reserves required to be maintained in the sewer utility operating account and in the sewer debt service fund, may be used for necessary capital expenditures for the improvement of the municipal sewer utility, for the prepayment and redemption of bonds or notes constituting a lien on the municipal sewer utility, and for any other proper municipal purpose consistent with policies established by resolutions of the city council.

3.05 A. In the event the monies and payments appropriated to the sewer debt service fund are insufficient to pay principal of and interest on the note and the other bonds and notes payable from such fund as the same become due, the city is required by law and by contract with the holders of the note and such bonds and notes and hereby obligates itself to levy and cause to be extended, assessed and collected any additional taxes found necessary for full payment of the principal of and interest on the note.

B. The full faith and credit and taxing powers of the city are irrevocably pledged for the prompt and full payment of the principal of and interest on the note, as such principal and interest respectively become due. However, the net revenues of the sewer utility appropriated to the sewer debt service fund are estimated to be not less than five percent in excess of the principal of and interest on the Note and the other bonds and notes payable from such fund, and accordingly, no tax is levied at this time.

3.06 Monies on deposit in the 2010A 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

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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(f)(C) of the treasury regulations, relating to exception from rebate for certain proceeds to be used to finance construction expenditures, the city hereby reasonably expects that with respect to the available construction proceeds of the note, the following spending requirements will be met:

(i) 10% of the available construction proceeds of the note will be spent for the governmental purpose of the note within six months of the date of closing and delivery of the note;

(ii) 45% of such proceeds will be spent for such purposes within the one-year period beginning on such date;

(iii) 75% of such proceeds will be spent for such purposes within the 18-month period beginning on such date; and

(iv) 100% of such proceeds will be spent for such purposes within the two-year period beginning on such date;

subject to an exception for reasonable retainage of 5% of the available construction proceeds of the note, and that 100% of the available construction proceeds of the note will be spent within three years from the date of closing and delivery of the note.

B. The city shall use its best efforts to comply with any federal procedural requirements which may apply in order to effectuate the designation made by this section.

Section 5. Certificate of proceedings.

5.01 the clerk is directed to file with the county auditor a certified copy of this resolution and such other information as the county auditor may require, and to obtain from the county auditor a certificate stating that the note herein authorized has been duly entered on his register.

5.02 the officers of the city are authorized and directed to prepare and furnish to the purchaser and to bond counsel certified copies of all proceedings and records of the city relating to the authorization and issuance of the note and other affidavits and certificates as may reasonably be requested to show the facts relating to the legality and marketability of the note as such facts appear from the official books and records of the officers' custody or otherwise known to them. All of such certified copies, certificates and affidavits, including any heretofore furnished, constitute representations of the city as to the correctness of facts recited therein and the actions stated therein to have been taken.

Resolution 10-0427 was adopted upon the following vote:

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

Nays: Councilor Stauber -- 1

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Approved August 16, 2010
DON NESS, Mayor

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Resolution 10-0429, by councilors Fedora and Hartman, of support for renaming the main United States Post Office in Duluth for Dennis Hughes, was introduced for discussion.

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

John Keturi and Chuck Koenig urged the council to support this resolution to rename the post office and honor Dennis Hughes because he served the post office for 30 plus years, including ten years as the postmaster; he is a Vietnam and Desert Storm war veteran medic who has received a silver star and purple heart and he has performed a great deal of quiet civic volunteering.

Resolution 10-0429 was adopted as follows:

BY COUNCILORS FEDORA AND HARTMAN:

WHEREAS, the United States Postal Service has recently allowed the naming of federal post offices for individuals and organizations; and

WHEREAS, a group of supporters desire to have the main post office in Duluth renamed for Mr. Dennis Hughes; and

WHEREAS, Mr. Dennis Hughes, a Duluth resident, is the retired postmaster of Duluth, having served ten years in that position, is a decorated war veteran and continues to volunteer and serve several veterans organizations in the community.

THEREFORE, BE IT RESOLVED, that the city council, in recognition of the service Mr. Dennis Hughes has provided to the country and his community, hereby supports the renaming of the main United States Post Office within the city for Mr. Dennis Hughes and requests that the city's federal legislative representatives take the necessary steps to initiate the process of renaming.

Resolution 10-0429 was unanimously adopted.

Approved August 16, 2010
DON NESS, Mayor

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Resolution 10-0407, by Councilor Boyle, appointing _____ to the Seaway Port authority of Duluth, replacing Thomas Clure, was introduced for discussion.

Councilor Boyle moved to amend the resolution, by inserting the name "Rick Revoir" into the blanks, which motion was seconded, noting his financial background as an important attribute for this appointment, which motion was unanimously carried.

Resolution 10-0407, as amended, was adopted as follows:

BY COUNCILOR BOYLE:

RESOLVED, that the city council hereby appoints Rick Revoir to the Seaway Port authority of Duluth for a term expiring on October 10, 2012, replacing Thomas Clure who resigned.

Resolution 10-0407, as amended, was unanimously adopted.

Approved August 16, 2010
DON NESS, Mayor

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Resolution 10-0408, by Councilor Boyle, appointing members to the Duluth public utilities commission, was introduced for discussion.

Councilor Boyle moved to amend the councilor part of the resolution by deleting "Todd Fedora" and inserting "Jay Fosle," which motion was seconded and unanimously carried.

Councilor Boyle, chairperson of the council's personnel committee, recommended the following for the at large representatives: Patrick Huston, John Bruggeman, Linda Ross Sellner and Jennifer Vossen Julsrud.

Councilors voted the Ballot No. 1 section of their ballots, which were tabulated as follows:

Councilor Boyle:	John Bruggeman and Patrick Huston
Councilor Cuneo:	John Bruggeman and Patrick Huston
Councilor Fedora:	Robert A. Prusak and Patrick Huston
Councilor Fosle:	Robert A. Prusak and Patrick Huston
Councilor Gardner:	John Bruggeman and Patrick Huston
Councilor Gauthier:	John Bruggeman and Robert A. Prusak
Councilor Hartman:	John Bruggeman and Robert A. Prusak
Councilor Stauber:	Robert A. Prusak and Patrick Huston
President Anderson:	John Bruggeman and Patrick Huston

Councilors voted the Ballot No. 2 section of their ballots, which were tabulated at follows:

Councilor Boyle:	Linda Ross Sellner and Jennifer Vossen Julsrud
Councilor Cuneo:	Linda Ross Sellner and Jennifer Vossen Julsrud
Councilor Fedora:	Robert A. Prusak and Gordon L. Grant
Councilor Fosle:	Robert A. Prusak and Gordon L. Grant
Councilor Gardner:	Linda Ross Sellner and Jennifer Vossen Julsrud
Councilor Gauthier:	Linda Ross Sellner and Jennifer Vossen Julsrud
Councilor Hartman:	Linda Ross Sellner and Jennifer Vossen Julsrud
Councilor Stauber:	Robert A. Prusak and Gordon L. Grant
President Anderson:	Robert A. Prusak and Jennifer Vossen Julsrud

Councilor Boyle moved to amend the resolution by inserting the names of "Patrick Huston," "John Bruggeman," "Linda Ross Sellner" and "Jennifer Vossen Julsrud" as the at large representatives, which motion was seconded and carried as follows:

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

Nays: Councilors Fedora and Fosle -- 2

Resolution 10-0408, as amended, was adopted as follows:

BY COUNCILOR BOYLE:

RESOLVED, that the city council hereby appoints the following individuals to the Duluth public utilities commission, pursuant to Ordinance No. 10024:

NAME	TERM EXPIRATION DATE
Councilor Kerry Gauthier (city councilor)	3/31/2011
Councilor Jay Fosle (city councilor)	3/31/2012
Councilor Daniel Hartman (city councilor)	3/31/2013
John Bruggeman (at large)	3/31/2011

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

NAME	TERM EXPIRATION DATE
Jennifer Vossen Julsrud (at large)	3/31/2012
Patrick Huston (at large)	3/31/2013
Linda Ross Sellner (at large)	3/31/2013

Resolution 10-0408, as amended, was adopted upon the following vote:

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

Nays: Councilors Fedora and Fosle -- 2

Approved August 16, 2010

DON NESS, Mayor

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Resolution 10-0402, vacating portions of streets and alleys and accepting a dedication of a portion of an alley in preparation for construction of a private access road to western middle school (ISD 709), was introduced by Councilor Stauber for discussion.

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

Kris Ridgewell expressed support for the resolution because it has the least impact on the residential neighborhood; the planning commission unanimously approved it; the city gets to retain the utility easements and there is no cost to the city.

Resolution 10-0402 was adopted as follows:

RESOLVED, that:

(a) The city council finds sufficient petitions were filed with the city clerk requesting the vacation of the following:

- (1) Part of Elm Street between Blocks 2 and 4, Centredale Division,
- (2) Part of the alley between Blocks 1 and 2, Centredale Division,
- (3) Part of Chestnut Street west of Atlantic Avenue,
- (4) The alley west of Lot 11, Block 6, Bryant Addition; and

(b) Pursuant to Section 100 of the City Charter and Article IV of Chapter 45 of the Duluth City Code, 1959, as amended, such petitions were duly referred to the city planning commission (FN 10061), and such commission gave due notice of public hearing and did consider same in public hearing and the city planning commission found that the petitioned streets and alleys are either useless for vehicular, pedestrian, and utility purposes now or will be when the adjacent homes, owned by the applicant, are removed, but that portions of the petitioned streets are needed for utility purposes as noted in (c) below; and

(c) The city engineer has requested retention of utility easements in a portion of Elm Street for a water distribution pipe and a portion of Chestnut Street for a sanitary sewer collection pipe; and

(d) The city has also received an offer to dedicate to the city of Duluth an easement for a 16 foot wide alley connecting Chestnut Street alley to Vernon Street; and

(e) The city planning commission, at its July 13, 2010, regular meeting, recommended approval of the vacation petitions, retention of utility easements and alley dedication; and

(f) The city council of the city of Duluth approves the vacation of the following, subject to retaining utility easements over portions of the streets, both more particularly described below and on Public Document No. 10-0816-29(a):

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

(1) Vacating that part of the southeasterly 33 feet of Elm Street, CENTREDALE ADDITION TO DULUTH, city of Duluth, St. Louis County, Minnesota, lying between the northwesterly extension of the southwesterly line of Lot 27, Block 4, of said CENTREDALE ADDITION and the northwesterly extension of a line 38 feet northeasterly of and parallel with the southwesterly line of Lot 32 of said Block 4; TOGETHER WITH that part of the northwesterly 33 feet of Elm Street, CENTREDALE ADDITION TO DULUTH, city of Duluth, St. Louis County, Minnesota, lying between the southeasterly extension of the southwesterly line of Lot 18, Block 2, of said CENTREDALE ADDITION and the southeasterly extension of the northeasterly line of Lot 23 of said Block 2; subject to the retention of a utility easement in that part of the northwesterly 17 feet of the southeasterly 33 feet of vacated Elm Street, CENTREDALE ADDITION TO DULUTH, city of Duluth, St. Louis County, Minnesota, lying between the northwesterly extension of the southwesterly line of Lot 27, Block 4, of said CENTREDALE ADDITION and the northwesterly extension of a line 38 feet northeasterly of and parallel with the southwesterly line of Lot 32 of said Block 4; TOGETHER WITH the southeasterly three feet of the northwesterly 33 feet of vacated Elm Street, CENTREDALE ADDITION TO DULUTH, city of Duluth, St. Louis County, Minnesota lying between the southeasterly extension of the southwesterly line of Lot 18, Block 2, of said CENTREDALE ADDITION and the southeasterly extension of the northeasterly line of Lot 23 of said Block 2; and

(2) Vacating all that part of the alley between Block 1 and Block 2, CENTREDALE ADDITION TO DULUTH, lying northeasterly of the northwesterly extension of the southwesterly line of Lot 18, Block 2, extended; city of Duluth, St. Louis County, Minnesota; and

(3) Vacating that part of Chestnut Street lying southwesterly of a line beginning at a point on the northerly extension of the West line of Lot 11, Block 1, extended north 16.50 feet and being the centerline of said Chestnut Street, to the northeast corner of Lot 12 of said Block 1; all in CENTREDALE ADDITION TO DULUTH, city of Duluth, St. Louis County, Minnesota; TOGETHER WITH that part of Chestnut Street lying west of the northerly extension of the east line of Lot 10, Block 5, CENTREDALE ADDITION TO DULUTH and 50 feet northeasterly of the original rail alignment of the Duluth Missabe & Iron Range Railway; TOGETHER WITH all of Chestnut Street in BRYANT ADDITION TO DULUTH, FIRST DIVISION, city of Duluth, St. Louis County, Minnesota; subject to the retention of a utility easement in that part of vacated Chestnut Street lying between the northerly extension of the west and east lines of Lot 10, Block 1, CENTREDALE ADDITION TO DULUTH, city of Duluth, St. Louis County, Minnesota; TOGETHER WITH that part of vacated Chestnut Street lying southwesterly of a line beginning at a point on the northerly extension of the west line Lot 11, Block 1, extended north 16.50 feet and being the centerline of said Chestnut Street, to the northeast corner of Lot 12 of said Block 1; all in CENTREDALE ADDITION TO DULUTH, city of Duluth, St. Louis County, Minnesota; and

(4) All that part of the east 16 feet of Lot 18, Block 5, BRYANT ADDITION TO DULUTH, THIRD DIVISION, lying southerly of the south line of the adjacent alley in Block 6, BRYANT ADDITION TO DULUTH, extended west, city of Duluth, St. Louis County, Minnesota; and

(g) The city council of the city of Duluth accepts, on behalf of the general public, the dedication of that alley easement more particularly described as follows and on Public Document No. 10-0816-29(b): the north 114.50 feet of the west 16 feet of the east 25 feet of

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Lot 18, Block 5, BRYANT ADDITION TO DULUTH, THIRD DIVISION, city of Duluth, St. Louis County, Minnesota; and

(h) That the vacations approved pursuant to this resolution are hereby conditioned upon the dedication described in (g) above; and

(i) That the city clerk is, pursuant to Section 100 (b)(7) of the Home Rule Charter of the city of Duluth, 1912, as amended authorized to record, with the register of deeds and/or the registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution and Public Document No. 10-0816-29(c) showing the portions of the streets and alleys to be vacated, utility easements retained and alley dedicated.

Resolution 10-0402 was adopted upon the following vote:

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

Nays: Councilor Stauber -- 1

Approved August 16, 2010

DON NESS, Mayor

- - -

Resolution 10-0428, by Councilor Stauber and President Anderson, of intent to review the wireless telecommunications industry's concerns with those provisions of the unified development chapter relating to wireless telecommunications special use permits, was introduced for discussion.

Councilors Stauber, Fedora, Cuneo and President Anderson supported the resolution for reasons of: the two sides on this issue are not that far apart; it is felt by the sign industry that they got left out during the development of the unified development chapter (UDC), so it is imperative to hear from all sides on an issue; providers were not invited to the discussion on this issue at the planning commission or this council and this resolution is only to review their concerns.

Councilors Fosle, Gardner, Gauthier and Boyle opposed the resolution for reasons of: this has gone through the planning commission and there has been time for interested parties to review it; those in the business should be aware of what is going on around them; the industry's request guts the city ordinance; the planning commission unanimously approved the proposed ordinance; the industry makes \$25,000 from one antenna on one tower each month and this issue is not "one-sided."

Resolution 10-0428 failed upon the following vote (Public Document No. 10-0816-28):

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

Nays: Councilors Boyle, Fosle, Gardner, Gauthier and Hartman -- 5

- - -

RESOLVED, that the proper city officials are hereby authorized to accept, if awarded, a Minnesota's Lake Superior coastal program STAR grant from the Minnesota department of natural resources in an amount anticipated to be \$5,000 to be used to increase public awareness of Emerald Ash Borer, funds to be deposited in Fund 110-121-1219-4220-02, and to execute any documents required to be executed to accept such grant.

FURTHER RESOLVED, that, if selected, the city is authorized to commit a required 100 percent match of \$5,000; funds which have been budgeted and are payable from Fund 110-121-1219.

Resolution 10-0403 was unanimously adopted.

Approved August 16, 2010

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

DON NESS, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

Councilor Fedora moved to suspend the rules to consider Ordinance 10-030, at this time, which motion was seconded and unanimously carried.

- - -

The following entitled ordinance was read for the second time:

INTRODUCED BY COUNCILOR STAUBER

10-030 (10044) - AN ORDINANCE REPEALING CHAPTER 18, RELATING TO EROSION AND SEDIMENT CONTROL; CHAPTER 28A, RELATING TO HERITAGE PRESERVATION; CHAPTER 44, RELATING TO THE REGULATION OF SIGNS; AND CHAPTER 51, RELATING TO THE REGULATION OF WATER RESOURCES; AND AMENDING CHAPTER 50, RELATING TO ZONING, OF THE DULUTH CITY CODE, 1959, AS AMENDED, AND REPEALING SECTIONS 3, 4, 5, 6, 7, 8 AND 9 OF ORDINANCE 1809.

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

Bob Reichert, Ethan Perry and Jeff Jackson commented that: that good work has gone into this ordinance but cautioned the council not to lose sight of the neighborhoods and consider supporting a small area plan for neighborhoods; they expressed support for the ordinance noting the aspects of implementing the visions and principles of the comprehensive plan and that more information needs to be given out to the public as to the components of this ordinance.

Councilors discussed aspects of how current situations would be grandfathered in.

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ORDINANCES TABLED

INTRODUCED BY COUNCILOR STAUBER

10-036 (10041) - AN ORDINANCE AMENDING ORDINANCE 10-030-O RELATING TO THE UNIFIED DEVELOPMENT CHAPTER, AMENDING SECTION 50-15.2, SECTION 50-18.1, TABLE 50-19.8, TABLE 18.3-3, SECTION 50-20.3, SECTION 50-26.4, TABLE 50-27.2; TABLE 50-35.1, SECTION 50-36.2, SECTION 50-36.3, SECTION 50-37.8, SECTION 50-37.14, SECTION 50-41.69.

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

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

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BY COUNCILOR FEDORA

10-037 (10039) - AN ORDINANCE AMENDING ORDINANCE 10-030-O, RELATING TO THE UNIFIED DEVELOPMENT CHAPTER, AMENDING SECTION 50-20.3.

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

Councilors Gardner and Gauthier opposed the ordinance because current banks will not be affected by this and that it is only for new banks.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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

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

Nays: Councilors Gardner and Gauthier -- 2

- - -

BY PRESIDENT ANDERSON AND COUNCILOR STAUBER

10-035 (10042) - AN ORDINANCE AMENDING ORDINANCE 10-030-O RELATING TO THE UNIFIED DEVELOPMENT CHAPTER AND AMENDING SECTION 50-14.6, SECTION 50-15.2, SECTION 50-24.3A, TABLE 50-24-2, SECTION 50-24.4.

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

Councilors Gauthier, Gardner, Hartman and Cuneo opposed the ordinance for reasons of: increased parking standards minimally doubles the spaces needed for developments; this adversely affects impervious surfaces; with limited space, developers will not be willing or able to create new housing; this will decrease the amount of parking credits that could be used; it is not practical for the density in R-2 areas; parking needs to be addressed in the small area plan; the neighborhoods do not need more parking lots; the UDC allows developers to be creative and have flexibility relative to parking and the UDC as written should be given a chance before this restriction is enacted.

Councilors discussed with staff the affects of this ordinance.

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

Yeas: Councilors Boyle, Fedora, Fosle, Stauber and President Anderson -- 5

Nays: Councilors Cuneo, Gardner, Gauthier and Hartman -- 4

- - -

The following entitled ordinances were read for the first time:

BY COUNCILOR FEDORA

10-041 - AN ORDINANCE ADDING A NEW SECTION 34-42 TO THE DULUTH CITY CODE, 1959, AS AMENDED, REGARDING THE PROHIBITION OF SYNTHETIC CANNABINOIDS.

- - -

INTRODUCED BY COUNCILOR STAUBER

10-038 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, ZONING DISTRICT MAP NO. 28 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-B, ONE-FAMILY RESIDENTIAL, AND R-2, TWO-FAMILY RESIDENTIAL, TO C-5, PLANNED COMMERCIAL, THE REAR HALF OF PROPERTY LOCATED AT 323-335 EAST CENTRAL ENTRANCE (A+A INVESTMENTS AND KENNETH LARSON).

- - -

BY COUNCILOR STAUBER

10-042 - AN ORDINANCE AMENDING ORDINANCE 10-030-O RELATING TO THE UNIFIED DEVELOPMENT CHAPTER, AMENDING SECTION 50-27.1, SECTION 50-27.3, SECTION 50-27.4, SECTION 50-38.7, SECTION 50-41.244, SECTION 50-41.277, SECTION 50-41.282, SECTION 50-41.290 AND TABLE 50-27-2.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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

Todd Johnson expressed concerns of: that on some streets it is a C-2 zone on one side and on the other it is a M-1 zone; you can only have a bigger sign in the Downtown or mall areas; each meeting with planning produces new confusion/questions; while they talk about grandfathering-in existing buildings, signs are not to be grandfathered-in and in an industrial district you can only have smaller signs, which does not make sense.

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BY COUNCILORS STAUBER AND BOYLE

10-039 - AN ORDINANCE AMENDING SECTION 34-40 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO SMOKING PROHIBITIONS IN CITY PARKS AND PLAYGROUNDS.

- - -

INTRODUCED BY COUNCILOR FOSLE

10-040 - AN ORDINANCE AMENDING SECTION 8-24 OF THE DULUTH CITY CODE, 1959, AS AMENDED RELATING TO GAMBLING IN LICENSED ESTABLISHMENTS.

- - -

Discussion returned to Ordinance 10-030.

Councilors and staff discussed various individual situations relative to the components of the ordinance.

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

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ORDINANCE TABLED

INTRODUCED BY COUNCILOR STAUBER

10-031 (10040) - AN ORDINANCE REZONING LANDS WITHIN THE CITY OF DULUTH.

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

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

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The meeting was adjourned at 10:25 p.m.

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10039

BY COUNCILOR FEDORA:

AN ORDINANCE AMENDING ORDINANCE 10-030-O, RELATING TO THE UNIFIED DEVELOPMENT CHAPTER, AMENDING SECTION 50-20.3.

The city of Duluth does ordain:

Section 1. That Section 50-20.3 of Ordinance No. 10-030-O, Section 6, be amended to read as follows:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

50-20.3. Commercial uses.

A. Adult entertainment establishment.

All adult entertainment establishments shall comply with MSA 617.242 and Chapter 5 of this Code;

B. Agriculture, general.

1. No killing or dressing of poultry, rabbits or other small or large animals, fish or creatures shall be permitted, other than the animals, fish or creatures raised on the premises and that such killing or dressing is done in an accessory building located not less than 200 feet from any lot line;
2. All buildings and enclosures, including fences, for the feeding, breeding or milking of large livestock or small animals, such as poultry, rabbits, fish and other similar animals, but not including pasturing and grazing, of such animals, must be located not less than 200 feet from any lot line;

C. Automobile and light vehicle repair and service.

3. No displays or storage of merchandise, parts or refuse may be located closer than 20 feet from any public right-of-way;
4. A dense urban screen must be installed and maintained along all side and rear property lines abutting a residential or mixed use district;
5. All areas for outdoor storage of automobiles or light vehicles shall be screened from adjacent properties by a dense urban screen regardless of the use on the adjacent property;

D. Automobile or light vehicle sales, rental or storage.

In the MU-C district, the use is permitted when located at least 100 feet from any R district;

E. Bank.

1. In the MU-N district, banks are limited to no more than two drive-through windows and one drive-through lane for ATM services on the premises;
2. Any drive-through lane that is located between a bank and a residential district or structure shall be buffered from the residential district or structure by a dense urban screen and shall not be open past 10:00 p.m.;
3. Banks in the F-1, F-3, F-5, F-6, F-7, F-8 or F-9 districts may not have drive-through facilities;

F. Bed and breakfast.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

This is a primary use of land, and the owner need not reside in the use. The use shall:

1. Have no more than 12 habitable units;
2. If located in a residential zone district, the use shall appear outwardly to be a one-family dwelling, giving no appearance of a business use other than allowed signs;
3. If located in a residential zone district, the use shall have no greater impact on surrounding public areas or infrastructure or natural resources than a fully occupied private home with house guests;
4. Be located on a lot or tract containing a minimum of 0.6 acre;
5. Contain a minimum of 1,500 square feet of area on the first floor of the main building;
6. Dining areas shall not exceed five seats per habitable unit. In addition to resident guests, only guests of resident guests shall be permitted to dine in a bed and breakfast, or guests participating in meetings or other private events hosted by the facility when other overnight guests are not present, not to exceed the approved seating capacity of the facility. For-profit events on the premises that involve a total number of participants in excess of the approved dining area seating capacity shall be limited to six days per year and shall be restricted to the period of October 15 through June 15;
7. Shall not have signage exceeding 12 square feet in size, and any signage shall complement the architecture of the structure;
8. Shall limit each guest stay to a maximum of 21 consecutive days;

G. Building materials sales.

1. Outdoor storage is limited to ten percent of the parcel's land area, and shall not be permitted in any required front yard area;
2. Each such area shall be screened from view from any ground floor window or door on any adjacent property, and from all adjacent rights-of-way, by an opaque fence or wall between six feet and eight feet in height. The fence may exceed eight feet in height where the difference in grade between the property line or right-of-way and the outdoor storage area makes a taller fence necessary to effectively screen the area;
3. A landscaped earth berm may be used instead or in combination with a required fence or wall;

H. Day care facility.

1. In the R-1 district, this must be either (a) a facility licensed by the state serving 12 or fewer persons, or (b) a group family day care facility licensed by the state to serve 14 or fewer children;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

2. In the remaining districts where this use is permitted, the use must be either (a) a facility licensed by the state serving not more than 16 persons, or (b) a group family day care facility licensed by the state to serve 14 or fewer children;
3. In the RR-1 and RR-2 districts this use and related parking facilities and structures are limited to no more than 20 percent of the lot or parcel area;

I. Filling station.

1. No displays or storage of merchandise, parts or refuse may be located closer than 20 feet from any public right-of-way;
2. A dense urban screen must be installed and maintained along all side and rear property lines abutting a residential or mixed use district;

J. Mini-storage facility.

This use shall comply with the following standards:

1. The use shall be contained within an enclosed building or buildings;
2. If the use abuts a residential zone district on any property line, building architecture shall employ sloped roofs and shall display wall relief features and colors commonly found in residential construction;
3. The use shall be designed so that doors to individual storage units do not face any abutting street frontage;
4. At least 50 percent of the wall surface area of any wall facing an abutting public street shall be faced with brick or split-block materials. Exposed concrete masonry unit (CMU) construction is not permitted on those facades;
5. Hours of public access to mini-storage units abutting one or more residential zone districts shall be restricted to the period from 6:00 a.m. to 10:00 p.m.;
6. Signage shall be limited to one 40 square feet illuminated pole and 20 square feet of non-illuminated wall signage. Signs shall not be located closer than ten feet to the front property line and no closer than 50 feet to any side property line;
7. In the RR-1 district, there shall be a minimum of 50 feet of landscaped or naturally vegetated buffer from all property lines;
8. In the R districts a dense urban screen shall be installed along all side and rear property lines;

K. Office.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

1. In the MU-I district, offices are limited to those in support of the permitted institutional uses in the district; general offices unrelated to the activities of those institutions are not permitted;
2. In the MU-B district, offices are limited to those in support of the permitted industrial uses in that zone district; general offices unrelated to the activities of those institutions are not permitted;
3. In the F-6 district, offices may not have drive-through facilities;

L. Other outdoor entertainment or recreation use not listed.

1. No circus ground, carnival ground, event ground, or amusement park shall be approved within 300 ft. of an R-C, RR-2 or R district;

M. Parking lot or parking garage (primary use).

1. In the MU-C district, any parking garage shall be located at least 50 feet from any RC, RR or R district;
2. In F-1, F-2, F-3, F-4, F-5, F-6, F-8 and F-9 districts, only parking lots (not parking garages) are permitted as primary uses;
3. No portion of any parking lot or parking garage may be used for outdoor storage or junk, salvage items, inoperable motor vehicles or unlicensed retail or wholesale activities;

N. Restaurant (no drive-in/ drive-through).

In the R-2 district, no use shall exceed 5,000 square feet in gross floor area.

O. Restaurant (with drive-in/drive-through).

Drive through lanes must be located at least 25 feet from the boundary of any RR or R district and impacts along the boundary with those districts shall be buffered through the use of a dense urban screen;

P. Seasonal camp or cabin.

1. In the R-C and RR-1 districts, buildings shall be located not less than 200 feet from any R district;
2. In the R-C district, the design of the site shall preserve the rural character by:
 - (a) Separating each camp or cabin site by at least 50 feet, measured from the closest points on each tent or cabin area;
 - (b) Preserving all natural vegetation not required to be removed for access roads, trails or public safety;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

- (c) Using gravel or pervious paving, rather than impervious materials, for all access road and driveways serving fewer than 25 camp or cabin sites;

Q. Tourist or trailer camp.

When located in a flood plain, this use is limited to trailers without foundations that can be easily moved should flooding occur;

R. Veterinarian or animal hospital.

- 1. In the R-C and RR-1 districts, this use is permitted provided that service is limited to large livestock/large animal care and any building or enclosure so used shall be located not less than 100 feet from any lot line;
- 2. In the R-2, R-P, MU-N and MU-C districts, this use is permitted provided that practice is limited to the treatment of small animals (household pets, i.e. dogs, cats, birds, that are ordinarily permitted in the house for company) and that all aspects of the facility are totally contained (including kennel runs and exercise areas) within a soundproof building with adequate ventilation.

Section 2. That this ordinance shall be operative only if Ordinance 10-030-O is passed, shall be consolidated into Ordinance 10-030-O for publication, and take effect and be in force on the same date as Ordinance 10-030-O. (Effective date: November 19, 2010)

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

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

Nays: Councilors Gardner and Gauthier -- 2

ATTEST:
JEFFREY J. COX, City Clerk

Passed August 16, 2010
Approved August 16, 2010
DON NESS, Mayor

- - -

ORDINANCE NO. 10040

AN ORDINANCE REZONING LANDS WITHIN THE CITY OF DULUTH.

The city of Duluth does ordain:

Section 1. That on November 19, 2010, all lands lying within the city of Duluth are rezoned as follows:

- (a) S Suburban districts are rezoned to Residential Rural 1 (RR-1);
- (b) S-2 Suburban Residential Districts are rezoned to Residential Rural 2 (RR-2);
- (c) R-1-a One-Family Residential Districts are rezoned to Residential Traditional(R-1);
- (d) R-1-b One Family Residential Districts are rezoned to Residential Traditional (R-1);

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

- (e) R-1-c One-Family Residential Districts are rezoned to Residential Traditional (R-1);
- (f) R-2 Two-Family Residential Districts are rezoned to Residential Traditional (R-1);
- (g) R-3 Apartment Residential Districts are rezoned to Residential Urban (R-2);
- (h) R-4 Apartment Residential Districts are rezoned to Mixed Use Neighborhood (MU-N);
- (i) C-1 Commercial Districts are rezoned to Mixed Use Neighborhood (MU-N);
- (j) C-2 Highway Commercial Districts are rezoned to Mixed Use Neighborhood (MU-N);
- (k) C-3 Shopping Center Districts are rezoned to Mixed Use Neighborhood (MU-N);
- (l) C-4 Business Center Commercial Districts are rezoned to Mixed Use Commercial (MU-C);
- (m) C-5 Planned Commercial Districts are rezoned to Mixed Use Commercial (MU-C);
- (n) M-1 Manufacturing Districts are rezoned to Mixed Use Business Park (MU-B);
- (o) M-2 Manufacturing Districts are rezoned to Industrial General (I-G);
- (p) W-1 Waterfront Districts are rezoned to Industrial Waterfront (I-W);
- (q) IP Industrial Park Districts are rezoned to Mixed Use Business Park (MU-B);
- (r) Downtown Waterfront Mixed Use-Design Review District is rezoned to Mixed Use Neighborhood (MU-N);
- (s) Medical Center District is rezoned to Mixed Use Institutional (MU-I);
- (t) Medical Center Link District is rezoned to Urban Residential (R-2);
- (u) I-T Industrial-Technology District is rezoned to Mixed Use Business Park (MU-B);
- (v) TND Traditional Neighborhood Districts are rezoned to Residential Planned (R-P).

Section 2. That this ordinance shall take effect and be in force 60 days from and after its passage and publication. (Effective date: November 19, 2010)

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

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

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed August 16, 2010
Approved August 16, 2010
DON NESS, Mayor

- - -

ORDINANCE NO. 10041

AN ORDINANCE AMENDING ORDINANCE 10-030-O RELATING TO THE UNIFIED DEVELOPMENT CHAPTER, AMENDING SECTION 50-15.2, SECTION 50-18.1, TABLE 50-19.8, TABLE 18.3-3, SECTION 50-20.3, SECTION 50-26.4, TABLE 50-27.2; TABLE 50-35.1, SECTION 50-36.2, SECTION 50-36.3, SECTION 50-37.8, SECTION 50-37.14, SECTION 50-41.69.

The city of Duluth does ordain:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Section 1. That Section 50-15.2 of Ordinance No. 10-030-O, Section 6, be amended to read as follows:

50-15.2. Mixed Use-Neighborhood (MU-N) (Formerly R-4 and C-1).

A. Purpose.

The MU-N district is established to accommodate a mix of neighborhood-scale, neighborhood serving non-residential uses and a range of residential uses located in close proximity. This district accommodates both horizontal (uses located in separate structures) and vertical (uses located in the same building) types of mixed use. Non-residential uses may include small-scale retail, service and professional offices that provide goods and services to the residents of the surrounding neighborhood, as shown in Table 50-19.8;

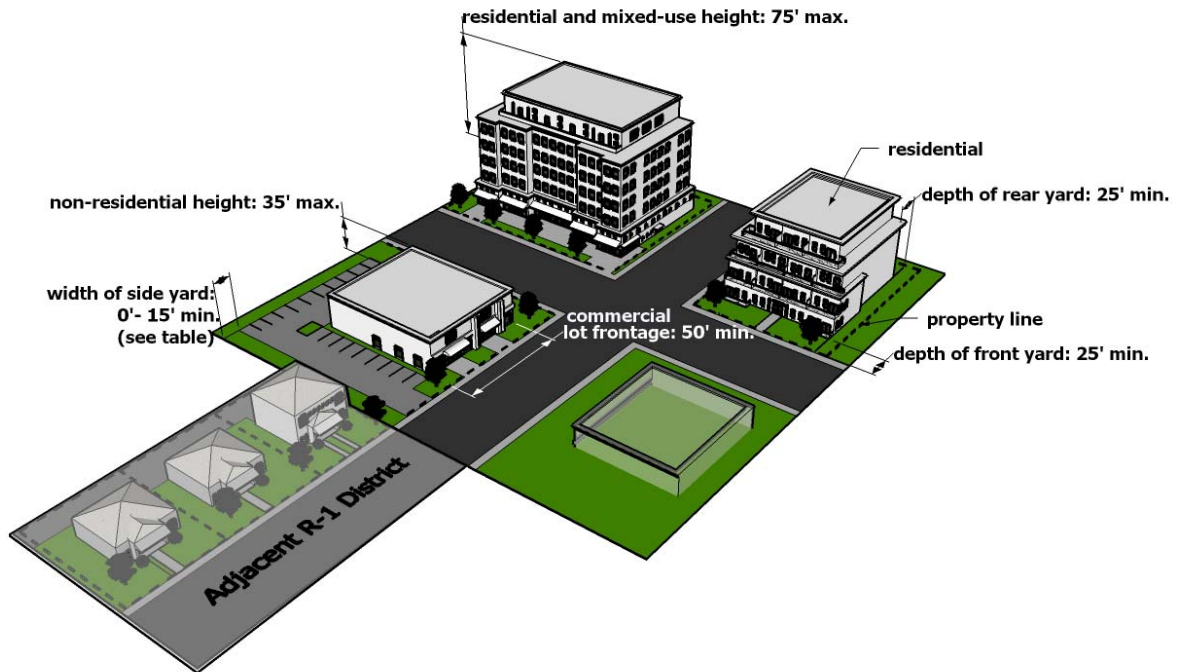
TABLE 50-15.2-1 MU-N DISTRICT DIMENSIONAL STANDARDS		
		LOT STANDARDS
Minimum lot area per family	One-family	4,000 sq. ft.
	Two-family	2,500 sq. ft.
	Multi-family	500 sq. ft.
	Efficiency unit	380 sq. ft.
	Townhouse or live-work dwelling	2,200 sq. ft.
No lot of record containing 5,000 sq. ft. or less shall be used except for a one-family dwelling or a permitted non-dwelling use		
Minimum lot frontage	One-family, two-family, or townhouse dwelling	30 ft.
	Multi-family or non-residential	50 ft.
SETBACKS, MINIMUM		
Minimum depth of front yard	One-family, non-residential, and mixed use	The smaller of 25 ft. or average of adjacent developed lots facing the same street
Minimum width of side yard	Non-residential use adjacent to residential district or use	15 ft.
	Non-residential use adjacent to non-residential district or use	0 ft.
	Multi-family adjacent to single-family district or use	10 ft.
	Multi-family adjacent to multi-family district or use	0 ft.
Minimum depth of rear yard		25 ft.
BUILDING STANDARDS		
Maximum height of building	Non-residential use	35 ft.
	Residential or mixed use (general)	75 ft.
	Residential or mixed use (within 200 ft. of R-1)	35 ft.
	Residential or mixed use (within 200 ft. of R-2)	50 ft.

Section 50.21 *Dimensional Standards* contains additional regulations applicable to this district.

B. Example.



C. Illustration.



D. Planning commission approval required.

A planning review by the planning commission, pursuant to the procedures in Article 5, shall be required for all residential development or redevelopment on land zoned MU-N and located within one and one-half (1.5) mile of land occupied, owned or related to a college or university and zoned MU-I, as shown on the following map, except for (1) one-family and two-family dwellings, and (2) any residential development where all of the dwelling units are restricted by development agreement or covenant for occupancy by those aged 50 and over or for affordable housing development projects funded by federal or state housing funds. The planning review is intended to mitigate the impacts of potential student use on the adjacent residential neighborhood. Development may not proceed until the planning commission has approved the project through planning review;

E. Development standards.

The plan for the development shall be approved only if the planning commission finds that it meets the following criteria:

1. Resident parking spaces shall be provided at the ratio of one space per bedroom;

2. Visitor parking spaces shall be provided at the rate of 15% of required resident parking spaces;
3. No residential balcony, patio or deck shall be located on any side of the property facing and within 200 ft. of an R-1 or R-2 district;
4. Vehicle ingress and egress shall be located in a manner that avoids or minimizes impacts to residents in adjacent R-1 and R-2 districts and that reduces the potential for pedestrian-vehicular conflicts;
5. Commercial development shall be concentrated on major roads, not on streets intended primarily for neighborhood traffic;
6. The adjustment to required off-street parking provided in Section 50-24.3 may be utilized.

Section 2. That Section 50-18.1 of Ordinance No. 10-030-O, Section 6, be amended to read as follows:

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

A. General.

1. Purpose statement.

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

2. NR-O map.

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

- (a) For wetlands, there is no official wetlands map. All lands in the city that meet the definition of wetlands in Article 6 are considered wetlands for the purposes of this Section;

- (b) For flood plains, the flood boundary and floodway map for Duluth, Minnesota, published with an effective date of February 1, 1980, by the U.S. department of housing and urban development, and all subsequent amendments thereto. Determinations of flood plain status on individual properties shall be made based on the official version of this map on file with the city;
- (c) For shorelands, boundaries shall be based on (i) waters shown as protected on the map and inventory of protected waters in Duluth prepared by the DNR commissioner pursuant to Chapter 199, Laws of Minnesota, 1979, and (ii) selected waters that the city has added to the commissioner's survey as being worthy of shoreland protection. All of these waters are shown on the NR-O map as currently revised as of *[insert effective date of ordinance]*;
- (d) Where interpretation is needed as to the exact location of any boundary as shown on an official map, the city engineer shall make the necessary interpretation based on available technical data, and, in the case of flood plains, based particularly on elevations on the regional flood profile or hydraulic modeling data;
- (e) The NR-O map may be amended in the future, and any revisions shall become effective upon adoption of the revised NR-O map as an amendment to this Chapter;

B. Wetlands.

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

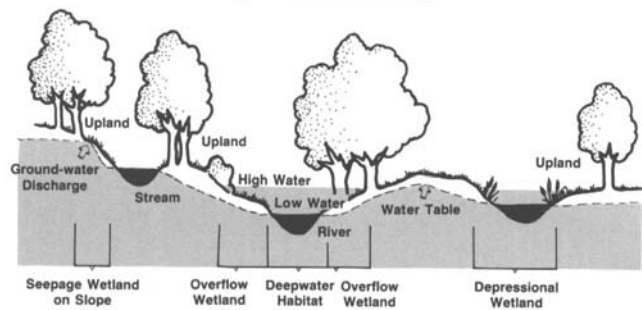


Figure 50-18.1-1: Typical Inland Wetland

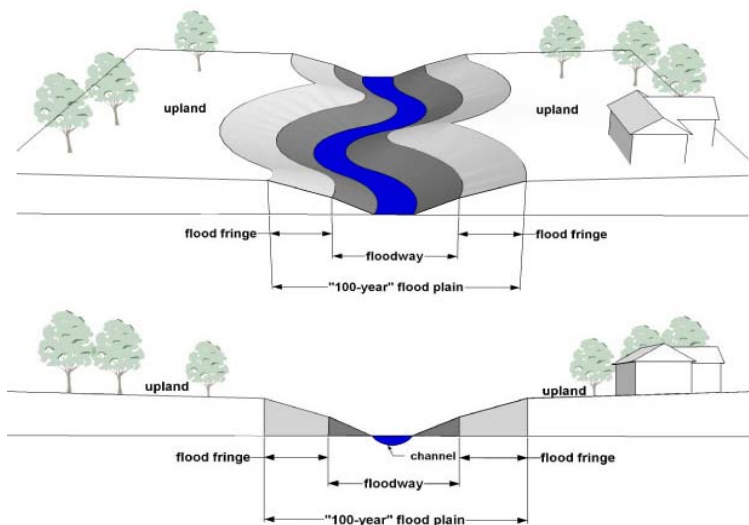
Graphic taken from *Floodplain Management in the United States: An Assessment Report*, prepared for the Federal Interagency Floodplain Management Task Force 1992.

1. The building official shall require each permit applicant to specify on the permit application whether or not the proposed site contains wetlands. Regardless of the answer given, if the building official has reasonable grounds to believe the site contains wetlands, the official shall make a determination as to the existence of wetlands. In making that determination, the building official may require any of the following:

- (a) Require the applicant to submit to submit a complete wetland delineation as outlined in WCA and performed by a professional wetland delineator, including information such as soil analysis, surveys of vegetation and engineering or hydrological data, to aid in the determination;
- (b) Conduct a site inspection and evaluation;
- (c) Consult with the city engineer, St. Louis County Soil and Water Conservation District, Board of Water and Soil Resources, and other available wetland experts;
- (d) Use any other reasonable method to determine if the site contains wetlands;

C. Flood plains.

This Section shall apply to all lands within the city that are shown as flood plains on the NR-O map. All lands within flood plains shall be divided into floodway districts, flood fringe districts, or general flood plain districts. For purposes of relating those districts to plats and lots within the city, the NR-O map shall be used as a working map in the administration of the flood plain controls unless it is clearly shown that there is an inconsistency between the flood boundary and floodway map and said NR-O map, in which case the flood boundary and floodway map shall control;



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

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1. Compliance.

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

2. Uses and special use permits – floodway.

(a) Permitted uses.

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

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

(b) Special uses.

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

- (i) Structures accessory to a permitted use;
- (ii) Mining, extraction and storage of sand, gravel and other materials;
- (iii) Marina or yacht club or accessory residential boat dock;
- (iv) Railroad yard or shipyard and related facilities, electric power transmission lines, major utilities or wireless communication towers and minor utilities and accessory wireless antennas attached to existing structures;
- (v) Bulk storage not listed elsewhere;
- (vi) Placement of fill or construction of fences;
- (vii) Tourist trailer or camp;
- (viii) Water-dependent manufacturing, light or heavy, and water-dependent bulk storage or wholesaling not listed elsewhere;

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- (ix) Structural works for flood control such as levees, dikes, and floodwalls constructed to any height where the intent is to protect individual structures;
 - (x) Other uses consistent with the stated purposes and provisions of this Section 50.18.1.C;
- (c) Standards for special use permits.

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

- (i) The proposed use or structure will not cause any increase in the stage of the 100-year or regional flood or cause an increase in flood damages in the reach or reaches affected;
- (ii) Any fill deposited in the floodway shall be no more than the minimum amount necessary to grade or landscape, shall not in any way obstruct the flow of flood waters and shall be protected from erosion by the planting of vegetative ground cover, the use of rip rap or other method approved by the city;
- (iii) Accessory structures are not designed for human habitation, shall be constructed and placed on the building site so as to offer the minimum obstruction to the flow of flood waters, shall be constructed whenever possible with the longitudinal axis parallel to the direction of flood flow, shall be placed approximately on the same flood flow lines as those of adjoining structures and shall be floodproofed to the flood protection elevation in accordance with the State Building Code;
- (iv) The building official may require that floodproofed accessory structures meet the following additional standards, if the building official determines that compliance is necessary to carry out the stated purposes of this Section 50-18.1.c:
 - (1) The structure must be adequately anchored to prevent flotation, collapse or lateral movement of the structure and shall be designed to equalize hydrostatic flood forces on exterior walls;
 - (2) Any mechanical and utility equipment in a structure must be elevated to or above the regulatory flood protection elevation or properly floodproofed;
 - (3) The structure must be constructed to allow water to flow through it in case of flooding;
- (v) The use will not include the storage or processing of materials that are, in time of flooding, flammable, explosive or injurious to human, animal or plant life. All materials or equipment stored shall be readily removable from the area within the time available after a flood warning;

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- (vi) Any structural works for flood control that will change the course, current, or cross-section of wetlands or public waters shall comply with state standards and regulations;
 - (vii) Any levee, dike or floodwall constructed in the floodway shall not cause an increase to the 100-year or regional flood, based on technical analysis that assumes equal conveyance or storage loss on both sides of a waterway;
3. Uses and special use permits – flood fringe.
- (a) Permitted uses.

Those uses listed in Table 50-19-8 as permitted uses in the zone district where the property is located, provided that the building official determines that:

- (i) All structures, including accessory structures, shall be elevated so that a structure's lowest floor is above the regulatory flood protection elevation. The structure's design and as-built condition in relation to the regulatory flood protection elevation must be certified by a professional engineer or architect licensed in Minnesota;
 - (ii) Any non-residential basements below the regulatory flood protection elevation will be structurally dry floodproofed in accordance with the State Building Code;
 - (iii) As an alternative to elevation, accessory structures that constitute a minimal investment and that do not exceed 500 sq. ft. may be internally floodproofed in accordance with Section C.2(c)(iv) and (v) above;
 - (iv) Any placement of fill with a cumulative volume in excess of 1,000 cubic yards at any one time may only be used to elevate a structure in accordance with this subsection (a);
 - (v) Any stored materials or equipment shall be elevated on fill to the regulatory flood protection elevation;
- (b) Special uses.

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

- (i) Any fill deposited in the floodway shall be no more than the minimum amount necessary to grade or landscape, shall not in any way obstruct the flow of flood waters and shall be protected

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- from erosion by the planting of vegetative ground cover, the use of rip rap or other method approved by the city;
- (ii) The use will not include the storage or processing of materials that are, in time of flooding, flammable, explosive or injurious to human, animal or plant life. All materials or equipment stored shall be readily removable from the area within the time available after a flood warning;
 - (c) Standards for all flood fringe uses.
 - (i) All new principal structures must have vehicular access at or above an elevation not more than two ft. below the regulatory flood protection elevation. If a variance to this requirement is granted, limitations on the period of use or occupancy of the structure for times of flooding may be specified.
 - (ii) Flood plain developments shall not adversely affect the hydraulic capacity of the channel and adjoining flood plain;
4. General flood plain district.
- (a) Permitted uses.
 - (i) The uses listed in subsection C.2(a) above shall be permitted uses;
 - (ii) All other uses shall be subject to the floodway/flood fringe evaluation criteria below and the resulting designation shall be used in determining uses;
 - (iii) Land determined to be in the floodway pursuant to subsection (a)(ii) shall have those permitted and special uses listed in Section 50-18.C.2 above;
 - (iv) Land determined to be in the flood fringe pursuant to subsection (a)(ii) shall have those permitted and special uses listed in Section 50-18.C.3 above;
 - (b) Procedures for floodway and flood fringe determinations within the general flood plain district:
 - (i) The applicant shall submit appropriate information to a designated engineer or other expert person or agency for technical assistance in determining whether the proposed use is in the floodway or flood fringe district and to determine the regulatory flood protection elevation. Procedures consistent with Minnesota Regulations 1983, Parts 6120.5000 – 6120.6200 and 44 Code of Federal Regulations Part 65 shall be followed in this expert evaluation. The designated engineer or expert is strongly encouraged to discuss the proposed technical evaluation methodology with the respective DNR Area Hydrologist prior to commencing the analysis. The designated engineer or expert shall:
 - (1) Estimate the peak discharge of the regional flood;

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- (2) Calculate the water surface profile of the regional flood based upon a hydraulic analysis of the stream channel and overbank areas;
 - (3) Compute the floodway necessary to convey or store the regional flood without increasing flood stages more than 0.5 foot. A lesser stage increase than 0.5 foot shall be required if, as a result of the additional stage increase, increased flood damages would result. An equal degree of encroachment on both sides of the stream within the reach shall be assumed in computing floodway boundaries;
 - (ii) The city engineer shall present the technical evaluation and findings to the city council. The city council must formally accept the technical evaluation and the recommended floodway and/or flood fringe district boundary and that the proposed use is allowed in the area where it is proposed, or deny the permit application. Prior to official action the city council may submit the application and all supporting data and analyses to FEMA, the DNR or the planning commission for review and comment. Once the floodway and flood fringe district boundaries have been determined, and assuming the proposed use is allowed in the area where it is proposed, the city council shall refer the matter to staff who shall process the permit application consistent with the applicable provisions of this section 50-18.1.C;
5. Public utilities, railroads, roads and bridges.
- (a) All public utilities and facilities such as gas, electrical, sewer and water supply systems, with the exception of sumps and wet wells, to be located in the floodway or flood fringe shall be floodproofed in accordance with the State Building Code or elevated to above the regulatory flood protection elevation;
 - (b) Railroad tracks, roads and bridges to be located within the floodway or flood fringe shall comply with subsections 2 and 3 above, as applicable. Elevation to the regulatory flood protection elevation shall be provided where failure or interruption of these transportation facilities would result in danger to the public health or safety or where such facilities are essential to the orderly functioning of the area. Minor or auxiliary roads or railroads may be constructed at a lower elevation where failure or interruption of transportation services would not endanger the public health or safety;

D. Shorelands.

In furtherance of the policies declared by the state legislature, waters in the city have been classified as general development waters (GD), natural environment waters (NE) or coldwater rivers (CW). The shoreland overlay applies to lands within 1,000

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ft. of Lake Superior or within 300 feet of rivers, creeks, streams and tributaries and floodplains, as designated on the NR-O map. If a parcel or development lies only partially within a shoreland area, only the portion of the property within the shoreland is subject to these provisions;

1. Shoreland permit required;

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

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

2. Standards for shoreland permit.

- (a) Erosion and sediment control technologies shall be required for any land disturbing activity that disrupts a surface area of 3,000 square feet or more;
- (b) Grading and filling of more than 250 square feet or placement of more than ten cubic yards of material within the shore impact zone shall only be permitted if a plan for erosion control, storm water management and shoreline buffer restoration is approved by the city and effectively implemented;
- (c) Impervious surfaces shall be designed and constructed to minimize and control runoff and erosion into the regulated waters;
- (d) Any removal of natural vegetation shall be designed to prevent erosion into regulated waters and to preserve shoreland aesthetics;
- (e) Removal of trees or shrubs in a contiguous patch, strip, row or block is prohibited in shore impact zones;
- (f) The project does not result in the proposed building being located in a shore or bluff impact zone;
- (g) Natural vegetation shall be restored to the extent feasible after any project is complete;

3. Dimensional standards.

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

4. Uses and special use permits.

- (a) Those permitted and special uses shown in Table 50.19.8, subject to the issuance of any shoreland permit required by subsection D.1 and compliance with the standards of subsection D.2, except as listed

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below. Agricultural uses are not permitted in the shore impact zone. Within shoreland areas that are outside of the shore impact zone, agricultural uses are permitted if steep slopes are maintained in permanent vegetation or the land is operated under an approved conservation plan from the St. Louis County Soil and Water Conservation District;

- (b) All industrial uses, including mining, extraction and storage, on coldwater rivers or natural environmental waters require a special use permit pursuant to Article 5. The application for a special use permit must include a thorough evaluation of the topographic, vegetation and soils conditions on the site.

Table 50-18.1.D-1: Minimum Shoreland Area Standards			
Standards	General Development Waters ^[1]	Natural Environmental Waters	Coldwater River
Minimum setbacks from Ordinary High Water Level or highest known water level, whichever is higher			
<i>Residential structures</i>	75 ft.	150 ft.	200 ft.
<i>Public, institutional, and civic; commercial; and industrial structures</i>	200 ft.	200 ft.	200 ft.
<i>Commercial, mixed use, & industrial structures in the harbor, shown in Figure 50-18.1.-3^[2]</i>	25 ft.	N/A	N/A
<i>Impervious surfaces^[3]</i>	50 ft.	75 ft.	100 ft.
Lowest floor elevation above Ordinary High Water Level or highest known water level, whichever is higher	3 ft.		
Width of naturally vegetative buffer	50 ft.		

[1] All Lake Superior shoreland is classified as general development waters.
 [2] 0 ft. setback for grain elevators, cranes, loading bins, and other equipment necessary for loading and unloading, including impervious surface necessary to support these activities.
 [3] Public trails no more than 10 ft. wide may be constructed within these setbacks, provided that a minimum amount of natural vegetation is removed and provided that permits are obtained from the DNR and MPCA, if required.

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

5. Subdivisions.

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

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

6. Nonconforming lots of record.

Lots of record in the office of the county recorder on *[insert effective date of ordinance]* may be allowed an exception from the structure setback requirement in subsection D.3. If the lot of record cannot be developed under the setback requirements of subsection D.3, then:

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

E. Storm water management and erosion control.

1. Goals and purpose.

(a) The federal Clean Water Act (CWA) requires that municipal storm water discharges be authorized under the national pollution discharge elimination system (NPDES). The city is allowed to discharge its storm water under coverage provided by a CWA municipal separate storm sewer system general permit (MS4 permit). As part of the requirements of the permit, the city is required to develop a storm water pollution prevention program (MS4 program) with specific goals requiring:

- (i) Non-degradation of all city waters;
- (ii) Restrictions to special designated waters in the city, including: (a) Lake Superior (which is an MPCA designated outstanding value resource water with both restricted discharge and impaired water designations); (b) St. Louis River (which is an MPCA

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designated impaired water and area of concern; and (c) 16 trout streams designated by the DNR;

- (b) The goals described in the city’s MS4 program pertaining to illicit discharge detection and elimination, construction-site runoff controls, and post-construction runoff treatment are incorporated into this Chapter by reference;
- (c) The purpose of this Section 50-18.1.E is to establish regulations to comply with the federal CWA and the city’s MS4 permit and to achieve the goals stated in the city’s MS4 program;

2. Temporary erosion and sediment controls.

(a) Applicability.

This Section 50-18.1.E.3 applies to all land disturbing activities within the city, except those specifically exempt in this section and those subject to a superseding or preemptive state or federal law. This section shall be deemed to supplement, but not to conflict with, the applicable provisions of the State Building Code;

(b) Requirements.

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

Table 50-18.1.E-1: Temporary Erosion and Sediment Controls				
Land Area Disturbed ▶	≤ 3,000 sq. ft. ^[1]	> 3,000 and ≤ 10,000 sq. ft. ^[2]	> 10,000 sq. ft. and < 1 acre	≥ 1 acre
Development Plan Measures Required ▼				
Temporary erosion and sediment controls to prevent any off-site migration of sediment	✓			
Site specific Erosion and Sediment Control Plan (ESCP) and ESCP Permit from city engineer		✓	✓	
Site specific Storm Water Pollution Prevention Plan (SWPPP) meeting MPCA NPDES Permit requirements for Construction Activity				✓
MPCA NPDES/State Disposal System Construction Storm Water Permit				✓
MS4 Statement of Compliance from city engineer			✓	✓

[1] If the city engineer determines that the proposed development is in a vulnerable area and may cause the degradation of the waters connected to the city’s storm water system, then the provisions

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applicable to land disturbance areas between 3,000 and 10,000 sq. ft. shall apply.

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

(c) Authority to waive.

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

3. Permanent water quality and discharge rate controls.

(a) Applicability.

(i) This Section 50-18.1.E.3 applies to all land disturbing activities within the city, except those specifically exempt in this section and those subject to a superseding or preemptive state or federal law. This section shall be deemed to supplement, but not to conflict with provisions of the State Building Code;

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

(b) General requirements.

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

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

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

[2] A pavement resurfacing or pavement rehabilitation project is exempt where: (a) no new impervious

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surface is created; and (b) no change to configuration of the site occurs; and (c) no change to land-use occurs.

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

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

(c) Authority to waive.

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

(d) Shoreland requirements.

(i) In addition to the requirements in subsection (b) above, no residential development or redevelopment within a shoreland shall result in impervious surface area exceeding 25 percent of the lot area unless the owner (a) submits a development plan including water quality treatment and (b) obtains an MS4 statement of compliance by the city engineer;

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

(e) Water quality treatment requirements.

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

(i) Treatment requirements.

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

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

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Redevelopment	> 1 acre	50% TSS removal
[1] Refer to additional requirements under Section 3(e)(iii) Pollutant Removal		

(ii) Storm water flow volume reduction.

Storm water flow volume reduction shall be provided to the maximum extent practicable. Refer to the Minnesota Storm Water Manual. Volume reduction techniques may include:

- (1) Infiltration into the ground;
- (2) Evaporation or transpiration;
- (3) Storage for re-use;
- (4) Enhanced infiltration swales, filter strips, or disconnected impervious area;
- (5) Other demonstrable methods that reduce volume;

(iii) Pollutant removal.

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

(f) Runoff rate control.

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

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

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	all storm events	flow rates for all storm events
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- (g) General design criteria.
 - (i) New minor system drainage systems shall be designed to efficiently convey the peak discharge rates for a ten-year flow;
 - (ii) New major system drainage systems shall be designed to efficiently convey the peak discharge rates for a 100-year flow;
 - (iii) The 100-year rainfall event or 100-year peak flow shall be evaluated to ensure that no damage occurs to adjacent properties for all systems;
 - (iv) The storm water management systems for any new or redevelopment project shall maintain at least three ft. of freeboard between the anticipated 100-year high water elevation and the minimum building opening;
 - (v) Consideration may be given for treating existing untreated impervious areas diverted to the site and included in the control area for analysis if it is in the best interest of the city;
 - (vi) All impervious areas shall be considered connected and curve numbers shall not be weighted for impervious areas except under special circumstances;
 - (vii) 95 percent of all newly added impervious surface shall be directed to the water quality treatment area. If it is impractical to direct 95 percent of the added impervious surface to water quality area, alternate methods may be used in combination so long as 95 percent is treated and all peak flow requirements are fulfilled;
 - (viii) Flow shall not be diverted from one major or minor system to another major or minor system;
 - (ix) When storm water management plans involve directing runoff from a site, it shall be the responsibility of the applicant to obtain from adjacent property owners any necessary easements or other property interests concerning flowage of water to a point where the storm water enters a major system;
 - (x) Adequate measures shall be taken to prevent uncontrolled drainage across lot lines;

4. General storm water restrictions.

- (a) Applying fertilizer, pesticides or any chemicals on impervious surfaces, within any part of storm water drainage system or any drainage way, within 25 feet of any wetland edge or ordinary high water level or bank edge of any drainage course, or within any water resource buffer area is prohibited;
- (b) Sweeping, raking, blowing or otherwise placing yard waste, unless the yard waste is securely contained, in the street, ditch, gutter, storm inlet,

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- catch basin or any part of any drainage way or other area that would allow yard waste to enter the storm drainage system is prohibited;
- (c) Yard waste segregated for pickup must be securely contained until removed;
 - (d) Topsoil and erodible soil stockpiles shall be distributed within three days or covered to prevent erosion of the stockpile;
5. Ownership and maintenance.
- (a) Maintenance of temporary erosion and sediment control practices.

During the period of a land disturbing activity, the person engaging in the construction shall be responsible for installing and maintaining erosion and sediment control practices. After construction is completed, the owner of the property shall be responsible for installing and maintaining erosion and sediment control practices;
 - (b) Ownership.
 - (i) All components of the storm water management system shall be constructed, owned, operated and maintained by the developer or owner(s) to their confluence with the major system or city owned minor system;
 - (ii) In the case of developments in which right-of-way is transferred to public ownership, the storm drain system within the city right-of-way shall be owned and maintained by the city. Storm water treatment facilities and ponds shall be in common space and shall be owned and maintained by the developer or the owners of the development. Storm water treatment facilities shall not be located in the public right-of-way;
 - (c) Owner inspection and maintenance.
 - (i) Storm water management facilities shall be designed to minimize maintenance and provide maintenance access. All facilities shall have a plan of operation and maintenance that assures continued effective removal of runoff pollutants and accumulated sediment. The developer or the owner(s) shall be responsible for inspection, maintenance and reporting for all non-publicly owned storm water management facilities associated with the development. Copies of the inspection records shall be maintained by the developer or owner for a period of six years. Copies of all inspection records shall be provided to the city upon request;
 - (ii) For the purposes of inspection during construction monitoring, the permittee shall:
 - (1) Submit an inspection log to the city on the first day of each month during the entire duration of construction;

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- (iii) For the purposes of ongoing monitoring and maintenance after construction is complete, the owner shall conduct inspections on all non-publicly owned structural components and all non-structural components (including swales and pond areas) of the storm water management system;
 - (1) Submit a written report approved by an engineer summarizing findings and maintenance needs;
 - (2) Submit a written report of work completed to maintain storm water facilities. Work must be completed within three months of annual inspection.

Section 3. That Ordinance 10-030-O, Section 6, be amended by amending Table 50-19-8 (use table) to identify a recycling collection point (primary use) located in the Mixed-Use Business Zone District (MU-B) as a special use rather than a permitted use.

Section 4. That Ordinance 10-030-O, Section 6, be amended by replacing Table 50-18.3-3 in its entirety with the following table:

Exhibit 50-18.3-3 Designated Historic Landmarks				
Name	Location	Type	Designation Date	
			National	Duluth
Aerial Lift Bridge	Lake Ave over Duluth Ship Canal	Bridge	5/22/1973	4/11/1993
Bergetta Moe Bakery	716 E. Superior St.	Building	6/3/1976	
Bridge No. 5757	MN Hwy. 23 over Mission Creek	Bridge	6/26/1998	
Building for Women	32 E. 1 st St.	Building		7/21/1999
Stewart Creek Stone Arch Bridge (Bridge No. L-6007)	Skyline Pkwy. over Stewart Creek	Bridge	11/06/1989	
Chester Terrace	1210 - 1232 E. 1st St.	Building	11/19/1980	
Chester & Clara Congdon Estate (Glensheen)	3300 London Rd.	Building	8/15/1991	
Dandrea Building	102-108 E. Superior St.	Building		2/11/1998
DeWitt-Seitz Building	394 Lake Ave S.	Building	9/05/1985	
Duluth Central High School	Lake Ave. and 2nd St	Building	11/09/1972	4/11/1993
Duluth City Hall (Former)	132 E Superior St	Building		6/27/1997
Duluth City Police Headquarters & Jail (Former)	126 E Superior St	Building		6/27/1997
Duluth Missabe & Iron Range Depot (Endion)	100 Lake Place	Building	4/16/1975	
Duluth Public Library	101 W 2nd St	Building	5/05/1978	11/02/1991
Duluth South Breakwater Inner Lighthouse	South Breakwater	Building	8/04/1983	
Duluth Union Depot	5th Ave W & Michigan St	Building	12/09/1971	11/02/1991
E. College St. & E. 7 th St. & Irving Pl.	E. College St. & E. 7 th St. & Irving Pl.	Streets		7/3/2000
Endion School	1801 E 1st St	Building	2/10/1983	
Fire House No. 1	1st Ave E & 3rd St	Building	5/12/1975	
Fitger Brewing Company	1600 E. Superior St	Building	2/09/1984	
Former Lester	106 N. 54 th Ave. E.	Building		9/18/1998

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Exhibit 50-18.3-3 Designated Historic Landmarks				
Name	Location	Type	Designation Date	
			National	Duluth
Park/Lakeside Branch Library (Lakeside Lester Park Community Club)				
Former Lincoln Library	2229 W 2nd St	Building		1/28/1996
Former KBJR Building	230 E. Superior St.	Building		6/9/1999
Former Woodland Branch Library	3732 Woodland Ave.	Building		7/22/1998
Hacienda del Sol	319 E. Superior St.	Building		7/21/1999
Harry C & Marjory Congdon Dudley Residence	3600 London Rd	Building		6/09/1996
Hartley Building	740 E Superior St	Building	12/22/1989	
Independent School District #709	215 N. 1 st Ave. E.	Building		6/4/1999
Irving School	101 N 56th Ave W	Building	11/20/1992	4/11/1993
Killorin Residence	2708 Branch St	Building		11/27/2000
Kitchi Gammi Club	831 E Superior St	Building	4/16/1975	
Lakewood Pumping Station	8130 Congdon Blvd.	Building		9/18/1998
Lester River Bridge (Bridge No. 5772)	London Rd (MN HWY 61) over Lester River	Bridge	9/06/2002	
Masonic Temple Building	203 E Superior St	Building		11/02/1991
Minnesota Point Lighthouse	Minnesota Point	Building	12/27/1974	8/27/1995
Munger Terrace	405 Mesabi Ave	Building	12/12/1976	
Music Centers Inc.	132 E. Superior St.	Building		10/13/1999
Oliver G. Traphagen House (Redstone)	1509-1511 E Superior St	Building	4/04/1975	
Sacred Heart Cathedral School	206 W 4th St	Building	6/26/1986	
Sacred Heart Cathedral	211 W 4th St	Building	6/26/1986	8/27/1995
Saint Mark's African Methodist Episcopal Church	530 N 5th Ave E	Building	4/16/1991	
Shel/Don Reproduction Center	124 E. Superior St.	Building		8/11/1999
St. Louis Co. Heritage and Arts Center	506 W. Michigan St.	Building		4/28/1999
Thomas Wilson Shipwreck	Duluth Harbor	Shipwreck	7/23/1992	
U.S. Fisheries Station-Duluth	6008 London Rd	Building	11/28/1978	
USS Essex Shipwreck	Lake Superior (Estimate)	Shipwreck	4/14/1994	
William A. Irvin	Minnesota Slip, Duluth Harbor	Freighter	7/13/1989	
Wirth Building	13 W Superior St	Building	7/25/1991	

Section 5. That Section 50-20.3 of Ordinance No. 10-030-O, Section 6, be amended to read as follows:

50-20.3. Commercial uses.

A. Adult entertainment establishment.

All adult entertainment establishments shall comply with MSA 617.242 and Chapter 5 of this Code;

B. Agriculture, general.

1. No killing or dressing of poultry, rabbits or other small or large animals, fish or creatures shall be permitted, other than the animals, fish or creatures raised on the premises and that such killing or dressing is done in an accessory building located not less than 200 feet from any lot line;
2. All buildings and enclosures, including fences, for the feeding, breeding or milking of large livestock or small animals, such as poultry, rabbits, fish and other similar animals, but not including pasturing and grazing, of such animals, must be located not less than 200 feet from any lot line;

C. Automobile and light vehicle repair and service.

1. No displays or storage of merchandise, parts or refuse may be located closer than 20 feet from any public right-of-way;
2. A dense urban screen must be installed and maintained along all side and rear property lines abutting a residential or mixed use district;
3. All areas for outdoor storage of automobiles or light vehicles shall be screened from adjacent properties by a dense urban screen regardless of the use on the adjacent property;

D. Automobile or light vehicle sales, rental or storage.

In the MU-C district, the use is permitted when located at least 100 feet from any R district;

E. Bank.

1. In the MU-N district, banks are limited to no more than one drive-through window and one drive-through lane on the premises;
2. Any drive-through lane that is located between a bank and a residential district or structure shall be buffered from the residential district or structure by a dense urban screen and shall not be open past 10:00 p.m.;
3. Banks in the F-1, F-3, F-5, F-6, F-7, F-8 or F-9 districts may not have drive-through facilities;

F. Bed and breakfast.

This is a primary use of land, and the owner need not reside in the use. The use shall:

1. Have no more than 12 habitable units;
2. If located in a residential zone district, the use shall appear outwardly to be a one-family dwelling, giving no appearance of a business use other than allowed signs;
3. If located in a residential zone district, the use shall have no greater impact on surrounding public areas or infrastructure or natural resources than a fully occupied private home with house guests;
4. Be located on a lot or tract containing a minimum of 0.6 acre;
5. Contain a minimum of 1,500 square feet of area on the first floor of the main building;
6. Dining areas shall not exceed five seats per habitable unit. In addition to resident guests, only guests of resident guests shall be permitted to dine in a bed and breakfast, or guests participating in meetings or other private events hosted by the facility when other overnight guests are not present, not to exceed the approved seating capacity of the facility. For-profit events on the premises that involve a total number of participants in excess of the approved dining area seating capacity shall be limited to six days per year and shall be restricted to the period of October 15 through June 15;
7. Shall not have signage exceeding 12 square feet in size, and any signage shall complement the architecture of the structure;
8. Shall limit each guest stay to a maximum of 21 consecutive days;

G. Building materials sales.

1. Outdoor storage is limited to ten percent of the parcel's land area, and shall not be permitted in any required front yard area;
2. Each such area shall be screened from view from any ground floor window or door on any adjacent property, and from all adjacent rights-of-way, by an opaque fence or wall between six feet and eight feet in height. The fence may exceed eight feet in height where the difference in grade between the property line or right-of-way and the outdoor storage area makes a taller fence necessary to effectively screen the area;
3. A landscaped earth berm may be used instead or in combination with a required fence or wall;

H. Day care facility.

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1. In the R-1 district, day care facilities are limited to those serving 14 or fewer persons;
2. In the RR-1 and RR-2 districts, this use and related parking facilities and structures other than driveways are limited to no more than 20 percent of the lot or parcel area;

I. Filling station.

1. No displays or storage of merchandise, parts or refuse may be located closer than ten feet from any public right-of-way;
2. A dense urban screen must be installed and maintained along all side and rear property lines abutting a residential or mixed use district;

J. Mini-storage facility.

This use shall comply with the following standards:

1. The use shall be contained within an enclosed building or buildings;
2. If the use abuts a residential zone district on any property line, building architecture shall employ sloped roofs and shall display wall relief features and colors commonly found in residential construction;
3. The use shall be designed so that doors to individual storage units do not face any abutting street frontage;
4. At least 50 percent of the wall surface area of any wall facing an abutting public street shall be faced with brick or split-block materials. Exposed concrete masonry unit (CMU) construction is not permitted on those facades;
5. Hours of public access to mini-storage units abutting one or more residential zone districts shall be restricted to the period from 6:00 a.m. to 10:00 p.m.;
6. Signage shall be limited to one 40 square feet illuminated pole and 20 square feet of non-illuminated wall signage. Signs shall not be located closer than ten feet to the front property line and no closer than 50 feet to any side property line;
7. In the RR-1 district, there shall be a minimum of 50 feet of landscaped or naturally vegetated buffer from all property lines;
8. In the R districts a dense urban screen shall be installed along all side and rear property lines;

K. Office.

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1. In the MU-I district, offices are limited to those in support of the permitted institutional uses in the district; general offices unrelated to the activities of those institutions are not permitted;
2. In the MU-B district, offices are limited to those in support of the permitted industrial uses in that zone district; general offices unrelated to the activities of those institutions are not permitted;
3. In the F-6 district, offices may not have drive-through facilities;

L. Other outdoor entertainment or recreation use not listed.

1. No circus ground, carnival ground, event ground, or amusement park shall be approved within 300 feet of an R-C, RR-2 or R district;

M. Parking lot or parking garage (primary use).

1. In the MU-C district, any parking garage shall be located at least 50 feet from any RC, RR or R district;
2. In F-1, F-2, F-3, F-4, F-5, F-6, F-8 and F-9 districts, only parking lots (not parking garages) are permitted as primary uses;
3. No portion of any parking lot or parking garage may be used for outdoor storage or junk, salvage items, inoperable motor vehicles or unlicensed retail or wholesale activities;

N. Restaurant (no drive-in/ drive-through).

In the R-2 district, no use shall exceed 5,000 square feet in gross floor area;

O. Restaurant (with drive-in/drive-through).

Drive through lanes must be located at least 25 feet from the boundary of any RR or R district and impacts along the boundary with those districts shall be buffered through the use of a dense urban screen;

P. Seasonal camp or cabin.

1. In the R-C and RR-1 districts, buildings shall be located not less than 200 feet from any R district;
2. In the R-C district, the design of the site shall preserve the rural character by:
 - (a) Separating each camp or cabin site by at least 50 feet, measured from the closest points on each tent or cabin area;
 - (b) Preserving all natural vegetation not required to be removed for access roads, trails or public safety;

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- (c) Using gravel or pervious paving, rather than impervious materials, for all access road and driveways serving fewer than 25 camp or cabin sites;

Q. Tourist or trailer camp.

When located in a flood plain, this use is limited to trailers without foundations that can be easily moved should flooding occur;

R. Veterinarian or animal hospital.

1. In the R-C and RR-1 districts, this use is permitted provided that service is limited to large livestock/large animal care and any building or enclosure so used shall be located not less than 100 feet from any lot line;
2. In the R-2, R-P, MU-N and MU-C districts, this use is permitted provided that practice is limited to the treatment of small animals (household pets, i.e. dogs, cats, birds, that are ordinarily permitted in the house for company) and that all aspects of the facility are totally contained (including kennel runs and exercise areas) within a soundproof building with adequate ventilation;

Section 6. That Section 50-26.4 of Ordinance No. 10-030-O, Section 6, be amended to read as follows:

50-26.4. Fences and walls.

A. Fence/wall height.

1. General front yard standards.
 - (a) No fence or wall located between the principal structure on a lot and the front property line shall exceed 4 ft. in height.
 - (b) Chain link fences, fences that are electrically charged, fences constructed of barbed or razor wire and fences constructed of temporary plastic fencing (snow fences) are prohibited;
 - (c) Prohibitions on electrically charged fences shall not apply to fences used to protect gardens and landscaping on residential lots. Prohibitions on electrically charged fences and fences constructed of barbed or razor wire shall not apply to fences used to enclose livestock on bona fide farms and those serving a public or quasi-public institution for public safety or security purposes;
2. General side and rear yard standards.

Fences that are electrically charged, and those constructed of barbed or razor wire shall be prohibited.

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(a) This prohibition shall not apply to electrically charged fences used to protect gardens and landscaping on residential lots;

(b) This prohibition shall not apply to fences used to enclose livestock on bona fide farms and those serving a public or quasi-public institution for public safety or security purposes;

3. Residential zone districts.

The maximum height of a fence or wall within required side and rear yard area is eight feet. The maximum height for fences and walls for entry gates at the residential subdivision entrance shall be eight feet;

4. Mixed use and special purpose zone districts.

The maximum height of a fence or wall within required side and rear yard area is eight feet, but the land use supervisor may approve a fence or wall up to 12 feet in height where additional height is needed to provide adequate security because of topography or the nature of the material or equipment stored in the area;

5. Form districts.

The maximum height of a fence or wall within required side and rear yard area is eight feet, but the land use supervisor may approve a fence or wall up to 12 feet in height where additional height is to provide adequate security because of topography or the nature of the material or equipment stored in the area. Fences and walls are not permitted in required front yard areas, except for wrought iron fences used to enclose outdoor patio or dining areas, in which case the maximum height of the fence shall be three feet;



Figure 50-26.4-A: Form District front setback wall height

6. Vacant property.

As an exception to other fence height limits, vacant property may be fenced with chain-link fencing not to exceed six feet in height when the purpose of such fencing is to prevent unauthorized dumping or soil disturbance that results in fugitive dust or nuisance conditions. Such fencing of vacant property shall not be construed to allow use of the property for outdoor storage;

B. Retaining walls.

1. Applicability.

The requirements of this Section apply to construction of new retaining walls in all districts, except for (a) retaining walls on proper-ties containing only one-family and two-family dwellings, and (b) retaining walls that will not be visible from neighboring sites or from a public street frontage;



Figure 50-26.4-B: Retaining wall terracing and articulation

2. Design standards.

All retaining walls shall comply with the following standards:

- (a) Retaining walls more than six feet tall shall be terraced to minimize visual impacts on residents, neighboring properties and the public realm;
- (b) Terracing shall be limited to three tiers;
- (c) A terrace at least four feet wide, with a maximum slope of 3:1, shall be provided between each tier to create pockets for landscaping. Reduced terrace depths may be administratively approved by the building official where site constraints limit the amount of space available to accommodate the minimum required width;
- (d) Terraces between retaining wall tiers shall be vegetated with permanent landscaping to screen retaining walls and provide visual interest unless soil conditions are determined by a licensed engineer to be unsuitable due to geologic hazards;
- (e) Retaining walls shall be stacked natural stone or faced with stone or earth-colored materials, textured and colored mechanically stabilized earth (MSE) blocks or other material compatible with the primary building materials;
- (f) Retaining walls constructed of railroad ties, timber and gabion-type materials are not allowed;

C. Materials and signs.

No fence, wall or retaining wall shall be constructed of scrap or waste materials unless those materials have been recycled or reprocessed into building materials for sale to the public. No sign may be posted on any fence, wall or retaining wall except for a property identification/management sign not exceeding one square foot in size;

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D. Alternate screening.

In lieu of compliance with the specific requirements of this section an owner may propose to the building official an alternative approach consistent with the intent of this Section. An alternative compliance approach is designed to provide flexibility in order to respond to unique site conditions or abutting or surrounding uses, and must not result in reductions in the amount or quality of required screening. The building official may approve a proposal under this section only if it is determined that the proposed alternative compliance achieves required screening to the same degree or better than the provisions of this section.

Section 7. That Table 50-27-2 of Ordinance No. 10-030-O, Section 6, be amended to read as follows:

Table 50-27-2: Sign Regulations for Specific Zone Districts		
Zone District	Type of Sign	Conditions on Sign
Residential Districts		
All residential districts	Construction contractor sign	Residential: 1 sign with maximum size 20 sq. ft. Non-residential: 1 sign with maximum size of 32 sq. ft. plus 16 sq. ft. to identify architects, engineers, or subcontractors. Not permitted in required front, side, or rear yard areas. Indirect illumination only. Must be removed 7 days after construction is complete.
	Home occupation sign	Maximum size: 20 sq. ft. in RC, RR-1 and RR-2. 1 sq. ft. in R-1 and R-2. Must be set back 20 ft. from front property line in RC, RR-1 and RR-2. Must be attached to building in R-1 and R-2. May not be illuminated.
	Nameplate	1 per dwelling. Maximum size: 2 sq. ft. in RC, RR-1, RR-2 and R-1. Indirect illumination only.
	Political sign or property owner opinion sign	Minimum setback from property lines and street or sidewalk improvements: 3 ft. If illuminated must comply with Section 50-31. Building permit required if more than 6 ft. tall.
	Property identification/management sign	Maximum size: 3 sq. ft. in RC, RR-1, RR-2 and R-1. 6 sq. ft. in R-2. No illumination or animation.
	Public assembly bulletin board	Maximum size: 25 sq. ft. Minimum setback from property lines: 10 ft. Indirect illumination.
	Real estate sign	Maximum size: 32 sq. ft. in RC, RR-1, and RR-2. 6 sq. ft. in R-1. In R-2, may contain name of building and/or management firm. Minimum setback from property lines; 10 ft, unless attached to a building. Must be removed within 7 days after sale, lease, or rental. No illumination.
	Recreational field sign	Directional sign: Maximum size: 20 ft. Maximum Height 10 ft. Building mounted sign: Maximum size 10 ft.

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Table 50-27-2: Sign Regulations for Specific Zone Districts

Zone District	Type of Sign	Conditions on Sign
		Each scoreboard sign may contain up to 10 sq. ft. of advertising. Indirect illumination only.
	Residential complex sign	In R-2 district only. 1 ground mounted sign constructed of individual letters and numbers attached to a structure that is similar in color, texture and material to the primary exterior of the complex buildings. Maximum height of 4 ft., maximum width of 8 ft., maximum depth of 1 ft. Minimum setback from property lines: 10 ft. Indirect illumination only.
	School (grades K-12) sign	1 wall identification sign not exceeding 32 sq. ft. Maximum height of wall identification sign shall be 16 ft. or top of wall, whichever is less. Corner lots limited to 2 wall identification signs per building. 1 freestanding ground sign not exceeding 32 sq. ft. in area and 8 ft. in height also allowed. Either the wall sign or the ground sign, but not both, may be illuminated. Flashing, animated and revolving signs are not permitted.
	Temporary sign	May not advertise on-going business activity. Maximum size: 6 sq. ft. Minimum setback from property lines and street and sidewalk improvements: 3 ft. Maximum length of use: 2 days. No illumination.
	Off-premises sign	Not permitted.
Mixed Use and Form Districts		
All residential uses	All signs permitted for residential uses in the R-2 district	
MU-N (formerly R-4 and C-1), MU-W, F-1, F-2, F-3, F-4, F-5, F-6 and F-9 Zones		
Non-residential uses	Awning sign	Permitted on first floor awnings only. Indirect illumination only, but no lighting apparatus shall be attached to the awning itself.
	Marquee signs	Maximum number: 1 for first street frontage plus 1 for any additional street frontage longer than 100 ft. Permanent signage shall be included. Changeable copy shall be limited to no more than 2/3 of the sign face.
	Pole sign	Maximum number: 1 for first street frontage plus 1 for any additional street frontage longer than 100 ft. Maximum height: 15 ft. Minimum height of sign face base above ground: 8 ft. (decorative planters without advertising and not more than 3 ft. above ground are permitted) for signs 8 ft. total in height and no more than 8 sq. ft. per sign face, no minimum clearance required. Maximum thickness: 30 in. (except spherical signs). Maximum sign area: 1 sign per pole, maximum 40 sq. ft. per sign face. The area of a double or triple faced pole sign shall be the area of the largest face. Location: If pole signs are located in the required front, side, or rear yards they shall not be closer than 100 ft. from any residential structure located in a residential zone. Not permitted on or projecting into or over any public street or utility easement. In the Form Districts, this type is limited for use with the Corridor, Cottage Commercial, and Iconic building types. Materials: Solid or composite finished wood, metal, masonry, neon, glass. Internally lit plastic

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Table 50-27-2: Sign Regulations for Specific Zone Districts

Zone District	Type of Sign	Conditions on Sign
		box signs are not permitted. Plastic and synthetics permitted only as separate alphanumeric characters or logos. Direct and indirect illumination permitted.
	Wall sign	Maximum aggregate sign size: 40 sq. ft. or 2 times the number of lineal ft. of the length the building wall where it is mounted, whichever is greater. Materials: Solid or composite finished wood, metal, masonry, neon, glass. Internally lit plastic box signs are not permitted. Plastic and synthetics permitted only as separate alphanumeric characters or logos. Direct and indirect illumination permitted.
	Portable A-frame sign	1 per street frontage.
	Monument	Maximum number: 1 for first street frontage plus 1 for any additional street frontage longer than 100 ft. Limited for use with the Corridor, Cottage Commercial, and Iconic building types. Maximum height of 6 ft., maximum area 48 sq. ft. per sign face. Setback from corners and driveways for vehicular site triangles. Materials: Solid or composite finished wood, metal, masonry, neon, glass. Internally lit plastic box signs are not permitted. Plastic and synthetics permitted only as separate alphanumeric characters or logos. Direct and indirect illumination permitted. Landscape at base of sign shall not be taller than 18 in. at mature height.
	Projecting sign	1 per each building façade facing a street, alley, or sidewalk. Maximum sign area: 150 sq. ft. or 1.5 times the number of lineal ft. of the wall where the sign is located, whichever is less. The area of a double faced projecting sign shall be the area of the largest face. Minimum height above sidewalk: 10 ft.; for signs projecting 2 ft. or less, 7 ft. Minimum height above street or alley: 16 ft. Shall not extend closer than 1 ft. to back of any curb or over any alley. Materials: Solid or composite finished wood, metal, masonry, neon, glass. Internally lit plastic box signs are not permitted. Plastic and synthetics permitted only as separate alphanumeric characters or logos. Direct and indirect illumination permitted.
	Window sign	Shall not block more than 30% of any window panel as measured by drawing a box around the outer edges of any typeface or image. Materials: Painted directly on the window, mounted neon on inside of window, or mounted sign on a wall inside the window area.
	Off-premises sign	Not permitted
MU-C (formerly C-5), F-7 and F-8 Zones		
	Awning sign Marquee sign Wall sign Portable A-frame sign	Same as for MU-N, MU-W, F-1, F-2, F-3, F-4, F-5, F-6 and F-9 zones.
	Projecting sign	1 per each building façade facing a street, alley, or sidewalk. Maximum sign area: 150 sq. ft. or 1.5 times the number of lineal ft. of the wall where the sign is located, whichever is less. The area of a double faced projecting sign shall be the area of the largest face. Minimum height above sidewalk: 10 ft.; for signs projecting less than 2 ft., 7 ft.

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Table 50-27-2: Sign Regulations for Specific Zone Districts

Zone District	Type of Sign	Conditions on Sign
		<p>Shall not extend closer than 1 ft. to back of any curb or over any alley. Materials: Solid or composite finished wood, metal, masonry, neon, glass. Internally lit plastic box signs are not permitted. Plastic and synthetics permitted only as separate alphanumeric characters or logos. Direct and indirect illumination permitted.</p>
	Window sign	<p>Shall not block more than 30% of any window panel as measured by drawing a box around the outer edges of any typeface or image. Materials: Painted directly on the window, mounted neon on inside of window, or mounted on a wall inside the window area.</p>
	Pole sign	<p><u>Maximum number: 1 for first street frontage plus 1 for any additional street frontage longer than 100 ft.</u> <u>Maximum height: 15 ft.</u> <u>Minimum height of sign face base above ground: 8 ft. (decorative planters without advertising and not more than 3 ft. above ground are permitted) for signs 8 ft. total in height and no more than 8 sq. ft. per sign face, no minimum clearance required.</u> <u>Maximum thickness: 30 in. (except spherical signs).</u> <u>Maximum sign area: 1 sign per pole, maximum area not exceeding 30 percent of the lineal street frontage on the street nearest the sign.</u> <u>The area of a double or triple faced pole sign shall be the area of the largest face.</u> <u>Location: If pole signs are located in the required front, side, or rear yards they shall not be closer than 100 ft. from any residential structure located in a residential zone. Not permitted on or projecting into or over any public street or utility easement.</u> <u>In the Form Districts, this type is limited for use with the Corridor, Cottage Commercial, and Iconic building types.</u> Materials: Solid or composite finished wood, metal, masonry, neon, glass. Internally lit plastic box signs are not permitted. Plastic and synthetics permitted only as separate alphanumeric characters or logos.</p>
	Off-premises sign	<p>Off-premises wall signs prohibited. All other off-premises signs subject to approval under Section 50-15.3.D</p>
	Monument sign	<p><u>Maximum number: 1 for first street frontage plus 1 for any additional street frontage longer than 100 ft.</u> <u>In the Form Districts, limited for use with the Corridor, Cottage Commercial, and Iconic building types.</u> <u>Maximum height of 6 ft., maximum area 48 sq. ft. per sign face.</u> <u>Setback from corners and driveways for vehicular site triangles.</u> Materials: Solid or composite finished wood, metal, masonry, neon, glass. Internally lit plastic box signs are not permitted. Plastic and synthetics permitted only as separate alphanumeric characters or logos. Direct and indirect illumination permitted. Landscape at base of sign shall not be taller than 18 in. at mature height.</p>
MU-I District		
	All signs permitted in the MU-N district	<p>Maximum sign area on any wall: Number of sq. ft. equal to the number of lineal ft. of the wall. All signs, including public signs, shall be approved by staff based on the consistency of the size, texture, and scale of signs with the character and scale of signs and development in the surrounding area. However, review and permits shall not be required for (a) property information/management signs less than 4 sq. ft., (b) political signs, and (c) property owner opinion signs.</p>
MU-B District		
	Wall signs, projecting	<p>Maximum sign size of wall and projecting signs: 5% of the total sq. ft. area of building façade on which they are placed. All wall signs attached to the building shall be flush mounted and</p>

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Table 50-27-2: Sign Regulations for Specific Zone Districts		
Zone District	Type of Sign	Conditions on Sign
	signs, and monument signs	shall not extend above the roof line. All monument signs must be architecturally designed and located directly at grade, shall be limited to 1 sign on each street frontage, shall be limited to 60 sq. ft. in area and eight ft. in height and shall be located no closer than 15 ft. from the property lines. Neon signs are not permitted. Direct and indirect illumination is permitted. Spotlighting of signs is permissible if the lighting is shielded so as to direct light to the sign only and the light source is not visible from the property lines. Flashing and animated signs are not permitted.
	Property identification/management sign	Maximum size: 4 sq. ft. Maximum height: 5 ft. No illumination, animation, or flashing.
	Off-premises signs	Not permitted.
Special Purpose Districts		
I-G and I-W Districts	All signs permitted in the MU-C district	On-premises signs only.
P-1 District	Construction contractor sign	Non-residential: 1 sign with maximum size of 32 sq. ft. plus 16 sq. ft. to identify architects, engineers, or subcontractors. No illumination or animation Must be removed 7 days after construction is complete
	Property identification/management sign	Maximum size: 6 sq. ft. in R-2 No illumination or animation
	Public assembly bulletin board	Maximum size: 25 sq. ft. Minimum setback from property lines: 10 ft Indirect illumination
	Recreational field sign	Directional sign: Maximum size: 20 ft. Maximum Height 10 ft. Building mounted sign: Maximum size 10 ft. Each scoreboard sign may contain up to 10 sq. ft. of advertising. Indirect illumination only
	Temporary sign	May not advertise on-going business activity. Maximum size: 6 sq. ft. Minimum setback from property lines and street and sidewalk improvements: 3 ft. Maximum length of use: 30 days. No illumination or animation.
	Off-premises sign	Not permitted

Section 8. That Table 50-35-1 of Ordinance No. 10-030-O, Section 6, be amended to read as follows:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

TABLE 50-35-1: PROCEDURES SUMMARY TABLE

Type of Application			Review, Decision, & Appeal Authority				
	Public Notice Required	Pre-Application Required	Staff	Land Use Supervisor	Historic preservation commission	Planning Commission	Council
R = Review D = Decision A = Appeal <> = Hearing N = Newspaper Notice S = Sign Notice M = Mail Notice							
Comprehensive Land Use Plan Amendment	N			R		<R>	D
UDC Text or Zoning Map Amendment							
Text Amendment	N			R		<R>	D
Map Amendment	N, S, M*	✓		R		<R>	D
District Plan Adoption/Amendment	S	✓		R		<D>	<A>
Subdivision Plat Approval							
Concept Plan		✓		R			
Preliminary Plat	S			R		<D>	
Final Plat				R		<D>	
Quick Plat/Registered Land Survey				R		D	
Vacation of Street	S, M	✓		R		<R>	D
Concurrent Use of Streets Permit	S	✓		R		<R>	D
Historic Resource Designation	M				<R>	R	D
Variance	S, M		R			<D>	<A>
Special Use Permit	S, M	✓		R		<D>	<A>
Interim Use Permit	S, M	✓		R		<R>	D
Planning Review							
General				D		<A>	
When required in Mixed Use Districts	S, M	✓		R		<D>	<A>
Sidewalk Use Permit				D		<A>	
Zoning Permit**			D			<A>	
Airport Environs Permit			D			<A>***	
Historic Construction/Demolition Permit	S				<D>		<A>
Building Permit****			D				
Certificate of Occupancy****			D			<A>	

* Mailed notice is required to affected property owners within 350 ft. when the amendment involves changes in district boundaries affecting an area of 5 acres or less.

**This category includes temporary use permit, shoreland permit, erosion and sediment control permit, sign permit, and fence permit

*** Appeals of Airport Environs Permits related to Duluth International Airport are heard by the airport board of adjustment.

**** Appeals heard by the building appeals board or the State Building Official.

Section 9. That Section 50-36.2 of Ordinance No. 10-030-O, Section 6, be amended to read as follows:

50-36.2. Planning commission.

A. Creation.

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The planning commission is that body authorized by MSA 462.354 and created by Ordinance 1809. In addition, the council hereby designates the planning commission as the board of adjustment authorized by MSA 462.354 and Section 27 of the City Charter. The planning commission shall have all powers authorized for a planning commission or a board of adjustment under the state law and this City Code. Procedures before the planning commission shall be governed by rules and regulations adopted by the commission. This Section is intended to comply with the provisions of MSA 462.354 as amended, and Section 27 of the City Charter, and shall be interpreted to comply with those provisions wherever possible;

B. Membership and terms.

Except as provided by Ordinance 9985, the planning commission shall consist of nine members, all of whom shall be citizens of the city and none of whom shall be a paid city employee, and all of whom shall be appointed by the mayor and with the consent of the council, and all of whom shall make and file with the city clerk an oath and affirmation as provided in Section 28 of the City Charter. Members shall be appointed for a term of four years, and the terms shall be staggered in accordance with Ordinance 9985. Vacancies shall be filled by appointment for the unexpired term only. Members of the board shall serve without compensation;

C. Meetings and proceedings.

1. All hearings of the planning commission shall be public and shall occur after 5:00 pm.;
2. The concurring vote of a majority of the members of the commission shall be sufficient to exercise any power granted to the planning commission by this Chapter;
3. The commission may delegate to a committee of the commission or to its secretary specific review and approval activities provided that it provides written criteria to guide the performance of the delegated duties, and the decisions made by the committee or secretary will be considered decisions of the commission;

D. Powers.

Except as otherwise provided in this Chapter or other law, the planning commission shall have the following powers within all zone districts:

1. Appeals.

To hear and decide appeals where an applicant alleges an error in any order, requirement, permit or decision made by the land use supervisor or the building official in the enforcement of any provisions of this Chapter, pursuant to Section 50-37.1.O. In the case of each appeal, the commission shall make written findings of facts and conclusions of law

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

giving the facts upon which it acted and its legal conclusions from such facts;

2. District plans.

To approve, approve with modifications, or deny applications for approval of a district plan in those districts where approval of such a plan is required prior to development, pursuant to Section 50-37.4;

3. Subdivision plats.

To approve, approve with modifications, or deny preliminary and final plats for the subdivision of land pursuant to Section 50-37.5 and in accordance with the state law;

4. Variances.

To approve, approve with modifications or deny applications for variances to the provisions of this Chapter as provided in Section 50-37.9;

5. Special use permits.

To approve, approve with conditions or deny applications for a special use permit pursuant to Section 50-37.10;

6. Planning review for certain districts.

Planning review in the MU-N, MU-C, MU-I and MU-W districts pursuant to Section 50-37.11;

7 Review and recommendation.

To review and comment on any application for which a review role for the commission is shown in Table 50-35-1.

Section 10. That Section 50-36.3 of Ordinance No. 10-030-O, Section 6, be amended to read as follows:

50-36.3. Historic preservation commission.

A. Membership.

The commission shall consist of seven voting members, all of whom are to be citizens of the city, five of whom will be appointed by the mayor with the approval of the council; one will be appointed by the county historical society, and one will be appointed by the planning commission. Members shall be persons who have demonstrated an interest in the historical, cultural or architectural development of the city or who own property within a historic preservation district. At least two of the five members appointed by the mayor shall be preservation-related professionals;

B. Powers.

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The historic preservation commission shall have the following powers:

7. Recommendation of historic preservation sites and districts to the city council;
8. Approve, approve with conditions or deny applications for historic construction and demolition permits pursuant to Section 50-37.14;
9. Recommend historic preservation guidelines specific to a landmark or district;
10. Make an annual report to the state historic preservation officer by October 31 of each year;
11. Conduct continuing survey of all areas, places, buildings, structures or similar objects in the city that the commission, on the basis of information available or presented to it, has reason to believe are or will be eligible for designation as historic preservation landmarks or districts;
12. Work for the continuing education of the citizens of the city with respect to the historic and architectural heritage of the city and keep current and public an official list of designated historic preservation landmarks and districts;
13. The commission may retain the services, on a permanent or part-time basis, of technical experts and other persons as may be required to perform the commission's duties;
14. The commission shall have authority to solicit gifts and contributions to be made to the city and to assist in the preparation of applications for grant funds to be made to the city for the purpose of historic preservation;
15. The commission may recommend to the council that certain properties eligible for designation as historic preservation landmarks or districts be acquired by gift, by negotiation or other legal means;
16. Upon final designation of a historic preservation landmark or district, adopt historic preservation guidelines specific to the landmark or district. Such guidelines shall detail allowable architectural and/or site modifications, essential features to be retained and any other criteria by which future proposals for modifications shall be judged. The United States secretary of the interior standards for treatment of historic properties shall be among the standards used to create such a program. These guidelines are intended to provide assurance to owners of properties within historic preservation landmarks or districts that any permit review process will be based on clear and objective standards rather than the taste of individual commission members;
17. The commission may nominate a historic preservation landmark or district to the national register of historic places, but only with the consent of the council.

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Section 11. That Section 50-37.8 of Ordinance No. 10-030-O, Section 6, be amended to read as follows:

50-37.8. Historic resource designation.

A. Application.

An application for historic resource designation shall be filed pursuant to Section 50-37.1.B;

B. Procedure.

1. Review and recommendation by historic preservation commission.

The commission shall review the application, submit the application to the planning commission, conduct an investigation and public hearing pursuant to Section 50-37.11, with public notice as required by Section 50-37.1.H, make a recommendation to council, and report on the historical, cultural and architectural significance of the buildings, structures, sites or objects proposed for designation. The report shall also attempt to determine the economic status of the property or properties by providing information such as assessed value, recent real estate transactions and other appropriate data. A copy of the report shall be sent to the state historic preservation officer for review and comment in accordance with MSA 471.193. Any comments made by the planning commission and state historic preservation officer regarding a proposed designation must be included in the commission's recommendation to the council;

2. Review and recommendation by planning commission.

The planning commission shall review the application, and make a recommendation to the historic preservation commission and council. In its review and recommendation, the commission shall consider potential effects on the surrounding neighborhood, economics, environment and other planning considerations;

3. Designation by council.

Upon receipt of the report and recommendation of the historic preservation commission, the council shall make a decision to approve, approve with modifications or deny the designation, in whole or part, based on the criteria in subsection C below. The council action shall be by ordinance;

4. Registration of historic sites.

The city clerk shall record or file with the county recorder the legal description of all properties affected by the council action. The city clerk shall also distribute an

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

official list of all locally designated historic preservation landmarks and districts to the land use supervisor and the state historic preservation officer;

[Note: Flow chart of process to be inserted here]

C. Criteria.

Historic preservation landmarks and districts shall only be designated when the property or properties are found to meet one of the following criteria:

1. It has character, interest or value as part of the development, heritage or cultural characteristics of the city, state, or the United States;
2. Its location was a site of a significant historical event;
3. It is identified with a person or persons who significantly contributed to the culture or development of the city, state, or the United States;
4. It embodies a distinguishing characteristic of an architectural type;
5. It is identified as the work of an architect or master builder whose individual work has influenced the development of the city or state;
6. It embodies elements of architectural design, detail, materials or craftsmanship that represents significant architectural innovation;
7. Its unique location or singular physical characteristics represents an established and familiar visual feature of a neighborhood, community or city.

Section 12. That Section 50-37.14 of Ordinance No. 10-030-O, Section 6, be amended to read as follows:

50-37.14. Historic construction/demolition permit.

This Section applies to applications for construction or demolition within a historic district or on a historic property listed in Section 50-18.3 where the city must confirm whether the application complies with the standards in Section 50-18.3 and with all other applicable provisions of this Chapter and state law.

A. Application.

An application for a historic construction/ demolition permit shall be filed pursuant to Section 50-37.1.B;

B. Procedure.

The application shall be reviewed by the historic preservation commission. The commission shall conduct a public hearing pursuant to Section 50-37.1.I, with public

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

notice as required by Section 50-37.1.H and make a decision to adopt, adopt with modifications, or deny the application based on the criteria in subsection C below;

[Note: Flow chart of process to be inserted here]

C. Criteria.

The commission shall approve the application, or approve it with modifications, if the commission determines that the application complies with all applicable provisions of this Chapter and state law and that the work to be performed shall not adversely affect the historic preservation landmark or district based on adopted historic preservation guidelines.

Section 13. That Section 50-41.69 of Ordinance No. 10-030-O, Section 6, be amended to read as follows:

69. DAY CARE FACILITY.

A private or public establishment licensed by the state that regularly provides one or more individuals with care, training, supervision, rehabilitation or developmental guidance on a regular basis, for periods less than 24 hours a day, for gain or otherwise, in a place other than the dependent's domicile. Primary services to be provided on a contract rather than drop-in basis, and shall be day-long in nature. Examples include day care for children, elderly, and individuals receiving mental health services.

Section 14. That this ordinance shall be operative only if Ordinance 10-030-O is passed, shall be consolidated into Ordinance 10-030-O for publication, and take effect and be in force on the same date as Ordinance 10-030-O. (Effective date: November 19, 2010)

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

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

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed August 16, 2010
Approved August 16, 2010
DON NESS, Mayor

- - -

ORDINANCE NO. 10042

BY PRESIDENT ANDERSON & COUNCILOR STAUBER:

AN ORDINANCE AMENDING ORDINANCE 10-030-O RELATING TO THE UNIFIED DEVELOPMENT CHAPTER AND AMENDING SECTION 50-14.6, SECTION 50-15.2, SECTION 50-24.3A, TABLE 50-24-2, SECTION 50-24.4.

The city of Duluth does ordain:

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Section 1. That Section 50-14.6 of Ordinance No. 10-030-O, Section 6, be amended to read as follows:

50-14.6. Residential-Urban (R-2) (formerly R-3 Apartment Residential).

A. Purpose.

The R-2 district is established to accommodate multi-family apartments and townhouses, in an urban setting. This district also allows for single-family detached dwellings, duplexes and group living accommodations as shown in Table 50-19.8. The district is intended primarily for locations closer to commercial and mixed use activity centers, and may serve as a transition between lower-density residential areas and more intense commercial and mixed use neighborhoods.

TABLE 50-14.6-1 R-2 DISTRICT DIMENSIONAL STANDARDS		
LOT STANDARDS		
Minimum lot area per family	One-family	4,000 sq. ft.
Minimum lot area per family	Two-family	2,500 sq. ft.
Minimum lot area per family	Multi-family	1,500 sq. ft.
Minimum lot area per family	Townhouse	2,200 sq. ft.
No lot of record containing 5,000 sq. ft. or less shall be used except for a one-family dwelling or a permitted non-dwelling use.		
Minimum lot frontage	One-family, two-family, and townhouse	30 ft.
	Multi-family and non-residential	50 ft.
SETBACKS, MINIMUM		
Minimum depth front yard	The smaller of 25 ft. or average of adjacent developed lots facing the same street	
Minimum width of side yard for buildings less than 3 stories	7 ft.	
Minimum width of side yard for building 3 stories or more	10 ft.	
Corner Lot: width of front side yard	Dwelling	15 ft.
	Detached accessory building	20 ft.
	Permitted non-residential building	25 ft.
Minimum depth of rear yard	25 ft.	
BUILDING STANDARDS		
Maximum height of building	45 ft.	

Section 50.21 *Dimensional Standards* contains additional regulations applicable to this district.

B. Example.

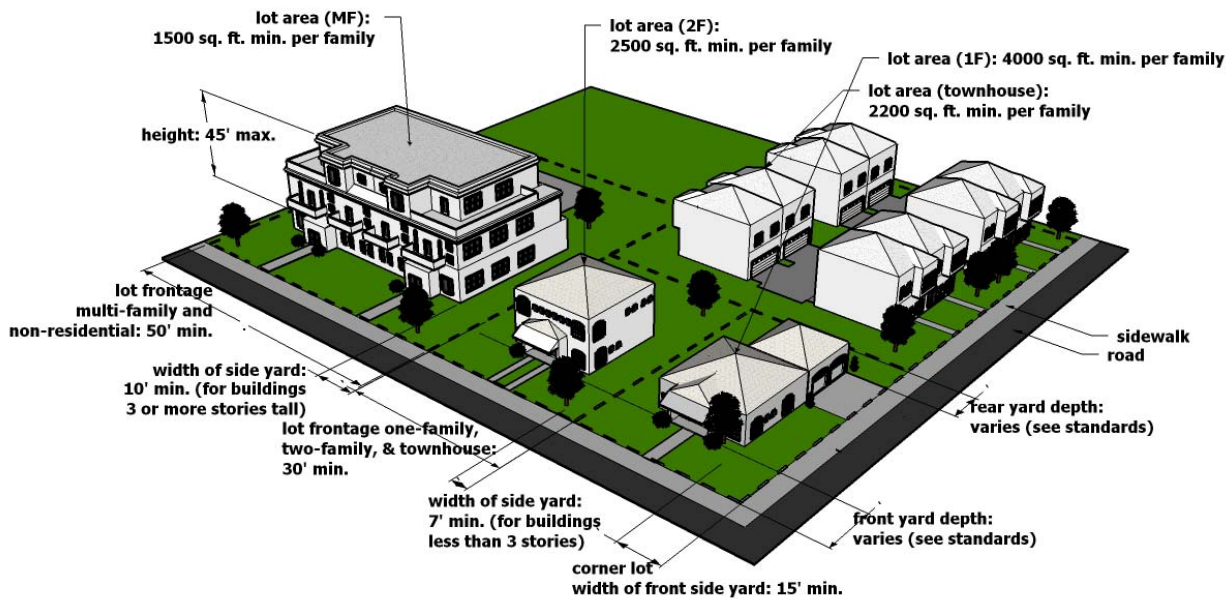
R-2 Example Building Form



C. Illustration.

R-2 Example Lot Layout

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D. Planning commission approval required.

A planning review by the planning commission, pursuant to the procedures in Article 5, shall be required for all residential development or redevelopment on land zoned R2 and located within one and one-half (1.5) mile of land occupied, owned or related to a college or university and zoned MU-I, as shown on the following map, except for (1) one-family and two-family dwellings, and (2) any residential development where all of the dwelling units are restricted by development agreement or covenant for occupancy by those aged 50 and over or for occupancy by those individuals and households protected by the federal Fair Housing Act amendments of 1988. The planning review is intended to mitigate the impacts of potential student use on the adjacent residential neighborhood. Development may not proceed until the planning commission has approved the project through planning review;

E. Development standards.

The plan for the development shall be approved only if the planning commission finds that it meets the following criteria:

1. Resident parking spaces shall be provided at the ratio of one space per bedroom;
2. Visitor parking spaces shall be provided at the rate of 15% of required resident parking spaces;
3. If the residential development or redevelopment is determined to have mitigated the impacts of potential student use in the adjacent residential neighborhood as provided in Section 50-14.6 (D) above, the development or redevelopment may adjust the above parking requirements as provided in 50-24.3 (A), if so eligible;
4. No residential balcony, patio or deck shall be located on any side of the property facing and within 200 ft. of an R-1 district;

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5. Vehicle ingress and egress shall be located in a manner that avoids or minimizes impacts to residents in adjacent R-1 district and that reduces the potential for pedestrian-vehicular conflicts.

Section 2. That Section 50-15.2 of Ordinance No. 10-030-O, Section 6, be amended to read as follows:

50-15.2. Mixed Use-Neighborhood (MU-N) (formerly R-4 and C-1).

A. Purpose.

The MU-N district is established to accommodate a mix of neighborhood-scale, neighborhood serving non-residential uses and a range of residential uses located in close proximity. This district accommodates both horizontal (uses located in separate structures) and vertical (uses located in the same building) types of mixed use. Non-residential uses may include small-scale retail, service and professional offices that provide goods and services to the residents of the surrounding neighborhood, as shown in Table 50-19.8.

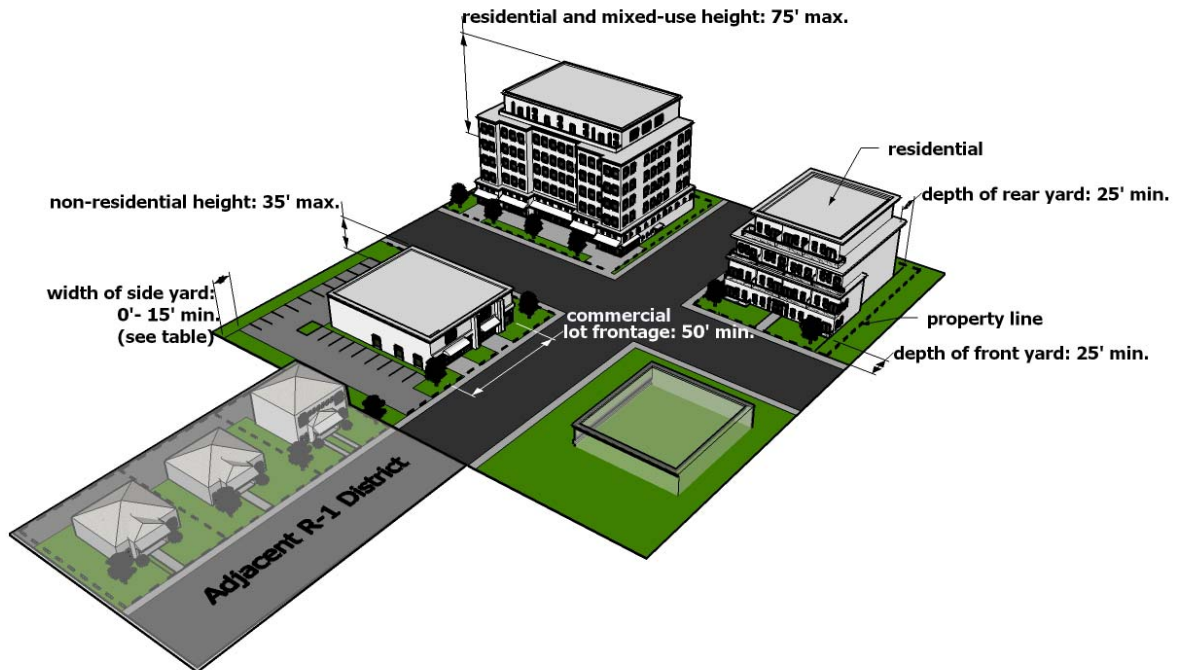
TABLE 50-15.2-1 MU-N DISTRICT DIMENSIONAL STANDARDS		
		LOT STANDARDS
Minimum lot area per family	One-family	4,000 sq. ft.
	Two-family	2,500 sq. ft.
	Multi-family	500 sq. ft.
	Efficiency unit	380 sq. ft.
	Townhouse or live-work dwelling	2,200 sq. ft.
No lot of record containing 5,000 sq. ft. or less shall be used except for a one-family dwelling or a permitted non-dwelling use		
Minimum lot frontage	One-family, two-family, or townhouse dwelling	30 ft.
	Multi-family or non-residential	50 ft.
SETBACKS, MINIMUM		
Minimum depth of front yard	One-family, non-residential, and mixed use	The smaller of 25 ft. or average of adjacent developed lots facing the same street
Minimum width of side yard	Non-residential use adjacent to residential district or use	15 ft.
	Non-residential use adjacent to non-residential district or use	0 ft.
	Multi-family adjacent to single-family district or use	10 ft.
	Multi-family adjacent to multi-family district or use	0 ft.
Minimum depth of rear yard		25 ft.
BUILDING STANDARDS		
Maximum height of building	Non-residential use	35 ft.
	Residential or mixed use (general)	75 ft.
	Residential or mixed use (within 200 ft. of R-1)	35 ft.
	Residential or mixed use (within 200 ft. of R-2)	50 ft.
Section 50.21 <i>Dimensional Standards</i> contains additional regulations applicable to this district.		

B. Example.

MU-N Example Building Form

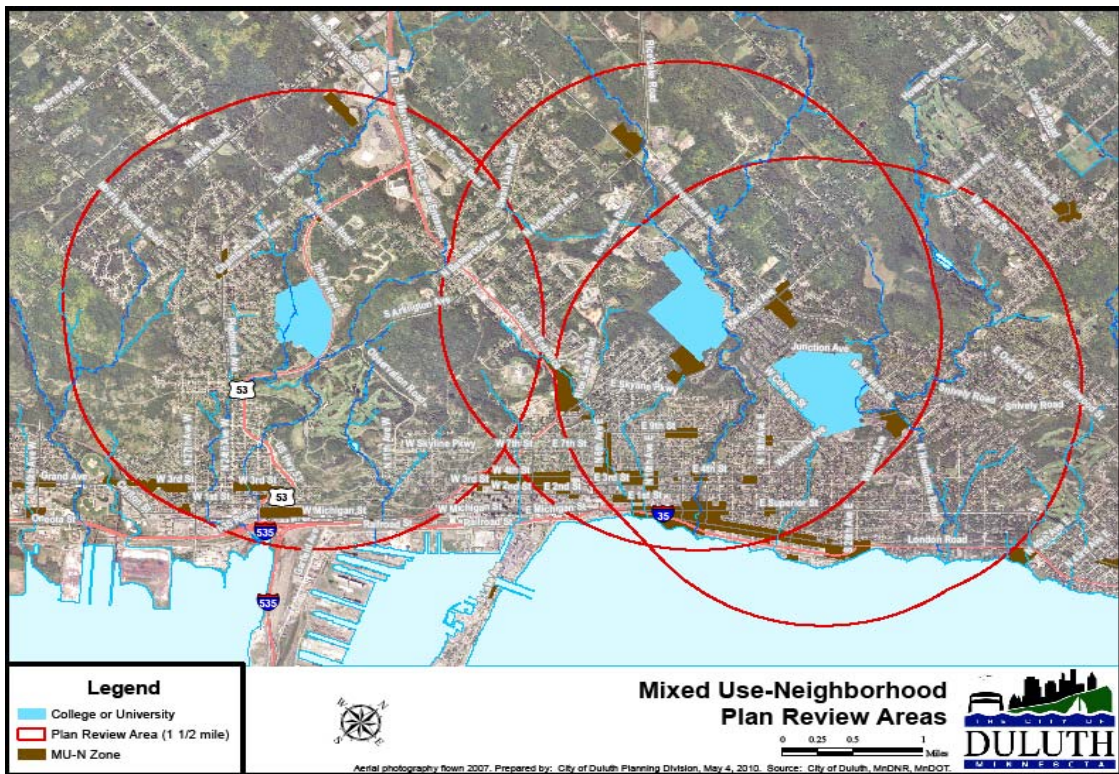


C. Illustration.



D. Planning commission approval required.

A planning review by the planning commission, pursuant to the procedures in Article 5, shall be required for all residential development or redevelopment on land zoned MU-N and located within one and one-half (1.5) mile of land occupied, owned or related to a college or university and zoned MU-I, as shown on the following map, except for (1) one-family and two-family dwellings, and (2) any residential development where all of the dwelling units are restricted by development agreement or covenant for occupancy by those aged 50 and over or for occupancy by those individuals and households protected by the federal Fair Housing Act amendments of 1988. The planning review is intended to mitigate the impacts of potential student use on the adjacent residential neighborhood. Development may not proceed until the planning commission has approved the project through planning review;



E. Development standards.

The plan for the development shall be approved only if the planning commission finds that it meets the following criteria:

1. Resident parking spaces shall be provided at the ratio of one space per bedroom;

2. Visitor parking spaces shall be provided at the rate of 15% of required resident parking spaces;
3. No residential balcony, patio or deck shall be located on any side of the property facing and within 200 ft. of an R-1 or R-2 district;
4. Vehicle ingress and egress shall be located in a manner that avoids or minimizes impacts to residents in adjacent R-1 and R-2 districts and that reduces the potential for pedestrian-vehicular conflicts;
5. Commercial development shall be concentrated on major roads, not on streets intended primarily for neighborhood traffic;
6. If the residential development or redevelopment is determined to have mitigated the impacts of potential student use in the adjacent residential neighborhood as provided in 50-15.2D, the development or redevelopment may adjust the parking requirements as provided in either 50-24.3A or 50-24.3B if eligible, but may not utilize both adjustments.

Section 3. That Section 50-24.3 of Ordinance No. 10-030-O, Section 6, be amended to read as follows:

50-24.3. Adjustment to required off-street parking.

The minimum parking requirements listed in Section 50-24.2 above shall be adjusted as follows:

A. Proximity to transit.

1. The minimum number of off-street parking spaces required for any development or redevelopment lands located within 1/4 mile of the existing Duluth Transit Authority routes, in operation for one year or more, may be reduced by 30%.
2. The minimum number of off-street parking spaces required for any development or redevelopment lands located within 1/2 mile of (a) any Duluth Transit Authority transit center, as indicated by a "T" on Exhibit 50-24.3-1, or (b) the intersection of Grand and Central Avenues in west Duluth, may be reduced by 20%.
3. If an existing transit route or center is eliminated or changed in location, any development approved in conformance with this Section 50-24.3 shall not be deemed nonconforming in terms of required parking.

B. Sharing of parking spaces.

1. General.

Where two land uses listed in separate use categories in Table 50-19.8 share a parking lot or structure, the total off-site parking required for those uses may be reduced by the factors shown in Table 50-24-2. Total off-street parking required shall be the sum of the two parking requirements

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for the two uses divided by the factors in Table 50-24-2. If uses in three or more categories of Table 50-19.8 share a parking lot or structure, the land use supervisor shall determine the parking reduction based on the relative sizes of the various uses and the reduction factors listed in Table 50-24-2.

Table 50-24.2: Shared Parking Reduction Factors					
Add the two parking requirements and divide by these factors					
Property Use	Multi-family Residential	Public, Institutional, or Civic	Food, Beverage, Indoor, Entertainment, or Lodging	Retail	Other Commercial
Public, Institutional, or Civic	1.1	1.0			
Food, Beverage, Indoor, Entertainment, or Lodging	1.1	1.2	1.0		
Retail	1.2	1.3	1.3	1.0	
Other Commercial	1.3	1.5	1.7	1.2	1.0

2. Additional sharing permitted for certain uses.

As an alternative to those reduction factors listed in Table 50-24-2, (a) up to 50% of the parking spaces required for food, beverage and indoor entertainment uses, and up to 100% of parking spaces required for religious assembly uses and elementary, middle, high school, university or college auditoriums may be used jointly by (b) any non-residential use not normally open, used or operated during the same hours as those listed in (a), or any non-residential use that has excess parking capacity based on the minimum off-street parking for that use. A written agreement assuring the continued availability of the parking spaces for the uses they serve shall be required on a form approved by the city and shall be filed with the application for a building permit.

Section 4. That Section 50-24.4 of Ordinance No. 10-030-O, Section 6, be amended to read as follows:

50-24.4. Maximum parking limit.

No more than 150% of the minimum required number off-street parking spaces, excluding the adjustments allowed in 50-24.3, shall be provided.

Section 5. That this ordinance shall be operative only if Ordinance 10-030-O is passed, shall be consolidated into Ordinance 10-030-O for publication, and take effect and be in force on the same date as Ordinance 10-030-O. (Effective date: November 19, 2010)

President Anderson moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Boyle, Fedora, Fosle, Stauber and President Anderson -- 5

Nays: Councilors Cuneo, Gardner, Gauthier and Hartman -- 4

Passed August 16, 2010

Approved August 16, 2010

DON NESS. Mayor

ATTEST:

JEFFREY J. COX. City Clerk

- - -

ORDINANCE NO. 10043

BY COUNCILOR GARDNER:

AN ORDINANCE AMENDING CHAPTER 5, ARTICLE IV, OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO ADULT BOOKSTORES AND ADULT ENTERTAINMENT ESTABLISHMENTS.

The city of Duluth does ordain:

Section 1. That Section 5-20 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 5-20. Applications; fees; expiration date; no transfers.

Applications for a license to own or operate an adult book store or adult entertainment establishment shall be made to the city clerk on forms provided by the city clerk. Each application shall state the name of the owner and manager and the location of the premises to be licensed and how far such premises is from the nearest church, school, public park, residential zone and public skywalk. Each application shall state whether the applicant, owner, or manager has been convicted of a misdemeanor, gross misdemeanor or felony relating to sex or obscenity offenses. The application shall be accompanied by a fee, which shall be set in accordance with Section 31-6(a) of this Code, for said license. Licenses issued pursuant to this Article shall expire on May 31 each year. No licenses issued pursuant to this Section may be transferred to another location or person.

Section 2. That Section 5-21 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 5-21. Licenses not to be issued and operation prohibited in certain places.

No license for the ownership or operation of an adult book store or adult entertainment establishment shall be issued and operation of any adult entertainment establishment shall not be allowed within the following areas:

- (a) Within 2,000 feet of a church, school, public park or building in which programmed, scheduled or supervised educational activity, recreational activity, religious training, behavioral guidance/correction activity or personal guidance counseling is regularly provided to children 12 years of age or younger;
- (b) Within 2,000 feet of a residential zone;
- (c) In an area that is within or fronts on public skywalk;
- (d) Within 2,000 feet of a pedestrian plaza;
- (e) Within 2,000 feet of another adult bookstore or adult entertainment establishment.

For purposes of this Section, distance shall be measured from the center of the closest doorway giving ingress or egress to the adult book store or adult entertainment establishment along a straight line to the closest boundary of the lot or parcel of property upon which is located the thing to which the measurement is made.

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The restrictions of (a) thru (e), above, and M.S.A. Section 617.242, or its successor, shall not apply to a location where an adult entertainment establishment that operated in a premises duly licensed for on sale intoxicating liquor sales or an adult book store had, on or before August 19, 2010, been legally operating at that location.

Section 3. That Section 5-22 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 5-22. Denial of license, suspension, revocation, appeal.

(a) Licenses shall be denied by the city clerk only for the following reasons:

(1) Failure to submit a fully completed application blank;
(2) Submission of an application blank which falsely states a material fact;

(3) Failure of the premises to be located in an area permitted by Section 5-21 of this Code;

(4) Failure to pay the application fee;
(5) Deterioration of the proposed licensed premises to the extent that the premises constitute a substantial hazard to the health or safety of its occupants. Such determination shall be made by the fire marshal, director of health, and building official using applicable health, fire and building codes; or

_____ (6) The applicant, owner, or manager has been convicted of a misdemeanor, gross misdemeanor or felony relating to sex or obscenity offenses;

(b) Licenses may be suspended or revoked by the city council only for the following reasons:

(1) Submission of an application blank which falsely states a material fact;

(2) Deterioration of the licensed premises to the extent that the premises constitute a substantial hazard to the health or safety of its occupants. Such determination shall be made by the fire marshal, director of public health, and building official using applicable health, fire and building codes;

(c) No license shall be suspended or revoked until after a full evidentiary hearing is held before the city council. The licensee shall receive at least ten days notice of such hearing and may be represented by counsel at such hearing and present any relevant evidence or arguments at such hearing. The council shall use standards set forth in Subsection (b) of this Section in reaching its decision;

(d) Any person denied a license by the city clerk may appeal therefrom to the city council by giving written notice of appeal to the city council within ten days of receiving notice of such denial. The council shall then hear the appeal within 14 days after notice of appeal is received. Appellant may be represented by counsel and may submit all relevant evidence and arguments concerning the matter. The council, after hearing all evidence and arguments, shall affirm or reverse the action of the clerk using standards set forth in Subsection (a) of this Section.

Section 4. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: October 3, 2010)

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

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

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed August 16, 2010
Approved August 16, 2010
DON NESS, Mayor

- - -

ORDINANCE NO. 10044

AN ORDINANCE REPEALING CHAPTER 18, RELATING TO EROSION AND SEDIMENT CONTROL; CHAPTER 28A, RELATING TO HERITAGE PRESERVATION; CHAPTER 44, RELATING TO THE REGULATION OF SIGNS; AND CHAPTER 51, RELATING TO THE REGULATION OF WATER RESOURCES; AND AMENDING CHAPTER 50, RELATING TO ZONING, OF THE DULUTH CITY CODE, 1959, AS AMENDED, AND REPEALING SECTIONS 3, 4, 5, 6, 7, 8 AND 9 OF ORDINANCE 1809.

The city of Duluth does ordain:

Section 1. That Chapter 18 of the Duluth City Code, 1959, as amended, relating to soil and erosion control, is hereby repealed in its entirety.

Section 2. That Chapter 28A of the Duluth City Code, 1959, as amended, relating to heritage preservation, is hereby repealed in its entirety.

Section 3. That Chapter 44 of the Duluth City Code, 1959, as amended, relating to the regulation of signs, is hereby repealed in its entirety.

Section 4. That Chapter 51 of the Duluth City Code, 1959, as amended, relating to water resource management, is hereby repealed in its entirety.

Section 5. That Sections 3, 4, 5, 6, 7, 8 and 9 of Ordinance 1809 are repealed in their entirety.

Section 6. That Chapter 50 of the Duluth City Code, 1959, as amended, is amended by deleting the language of the chapter as it existed prior to the effective date of this ordinance and by adopting the following language as Chapter 50 of the Duluth City Code, 1959, as amended:

CHAPTER 50.
UNIFIED DEVELOPMENT.
Article I. General Provisions.

50-1 How to use this unified development chapter.

1. Consult the zoning map. Consult the zoning map to identify the base zone district for your property. There are four types of base zone districts: Residential (R), Mixed Use (MU), Form (F) and Special Purpose (SP);

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2. Review your base zone district. Find the description of that base zone district in Article 2. In some cases there are special controls or procedures that apply to the base zone district;
3. Review the overlay zone districts. Also review Section 50-18 in Article 2 to determine if your property is included in any of the city's four overlay zone districts – the Natural Resources Overlay (NR-O), Airport Overlay (AO), Historic Resources Overlay (HR-O), or Skyline Parkway Overlay (SP-O). Each overlay includes additional development regulations that modify the base district regulations. It is particularly important that you review the Natural Resources Overlay in Section 50-18.1, because federal, state, or local environmental controls may determine what parts of the property may be developed;
4. Find permitted uses of property. Review the permitted use table in Article 3 to determine whether your proposed use of the property is permitted by right, or available as a special use, or is prohibited in your base zone district. Article 3 also contains use-specific standards that control how some uses may be developed or operated;
5. Review what development standards apply. Review Article 4 to determine what type and size of building may be constructed on your property and what quality standards will apply to the development. If your property is located in a Form District (one that begins with an "F"), only specific types of buildings will be allowed, and those building types are explained in Section 50-22. If your property is located in an R, MU, or SP district, the basic lot and building requirements are found in Section 50-21. The remaining provisions of Article 4 apply to all zone districts;
6. Find what procedures may be required. If your proposed use requires a special use permit, you will need to follow the process for obtaining that permit as described in Article 5. If your proposed development requires any other types of approvals (for example, a variance from setback requirements), those procedures are also described in Article 5.

50-2 Purpose.

The purpose of this unified development chapter is to protect public health, safety, and welfare and to implement the goals and objectives of the comprehensive land use plan using those authorities over the development, redevelopment, use, and occupancy of land, buildings, and structures, and over the protection of the environment, granted to the city by the state. This general purpose includes, but is not limited to, the following:

- (a) To provide for more sustainable development within the city by reducing carbon emissions, vehicle miles travelled, energy consumption, and water consumption, and by encouraging production of renewable energy and food production;
- (b) To control or eliminate soil erosion and sedimentation within the city;
- (c) To protect and enhance the city's attractions to residents, tourists and visitors, and serve as a support and stimulus to business and industry;

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- (d) To enhance the visual and aesthetic character, diversity and interest of the city;
- (e) To promote the use and preservation of historic landmarks and districts for the educational and general welfare of the people of the city;
- (f) To regulate erection and maintenance of signs in the city in order that signs might fulfill their necessary and useful function in such a way to preserve the public welfare and safety;
- (g) To preserve the integrity of residential areas and the character and dignity of public buildings, parks and other open spaces;
- (h) To enhance property values and the general appearance and natural beauty of the city;
- (i) To protect the public investment in streets and highways;
- (j) To assure creation of an attractive business environment and to promote the orderly and effective display of outdoor advertising;
- (k) To promote, preserve, and enhance the water resources and environment within the city and protect them from adverse effects caused by poorly sited or incompatible development in wetlands, shorelands and floodplains.

50-3 Findings of fact.

The council hereby finds that:

- (a) In order to implement the comprehensive land use plan and to promote the orderly development and redevelopment of property in the city, several ordinances related to land use, permitted construction, and environmental protection need to be consolidated into a single unified development chapter;
- (b) Regulation of permitted uses in each zone district, and the designation of uses that require the issuance of a special use permit, are necessary to protect the comprehensive land use plan and to conserve and protect property and property values in neighborhoods;
- (c) The regulation of the creation of subdivision plats and the creation of individual building lots in the city is necessary to ensure accuracy and consistency in legal descriptions of land, to ensure that all created lots have adequate access to roads, to ensure that adequate public services are available to serve new development, and to protect the environment;
- (d) The provision of a residential-planned zone district is necessary to encourage a variety of housing types within established neighborhoods while maintaining the character and vitality of such neighborhoods, and to allow variation in the relationship of uses and required yards in developments compatible with the massing, use and scale of buildings within established neighborhoods;
- (e) The provision of a mixed use-commercial zone district is necessary to ensure orderly and attractive commercial growth in areas of the city that exhibit sensitive environmental problems, traffic congestion or other characteristics of urban sprawl, and that

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individualized review of the design of development within the zone district is necessary in order to minimize blighting influences on surrounding uses and neighborhoods, reduce adverse effects of development on the natural environment, enhance the visual and aesthetic quality of development and ensure the provision of adequate and cost efficient public facilities;

- (f) The provision of a mixed use-business zone district is necessary in order to provide for modern light industrial developments of attractive integrated design and function while also accommodating older light industrial developments in the city;
- (g) Regulation of land disturbance activities is necessary to control or eliminate soil erosion and sedimentation within the city. It establishes standards and specifications for conservation practices and planning activities that minimize soil erosion and sedimentation and provides a permit system to secure the enforcement of these standards and specifications;
- (h) The preservation, protection, perpetuation and use of areas, places, buildings, structures, lands, districts and other objects having a special historical, cultural or aesthetic interest or value is a public necessity and is required in the interest of public health, prosperity, safety and welfare of the people of the city;
- (i) Protection of the water resources found within the city is necessary for the public good. These water resources relate strongly to other valuable natural resources that include, but are not limited to, air, soil, plants, animals and scenic and aesthetic values. Uncontrolled and inadequately planned use of natural resources adversely affects the public health, safety and general welfare by contributing to pollution, erosion, flooding and other environmental problems, and by creating nuisances, impairing other beneficial uses of environmental and natural resources or destroying the resources themselves, impairing the quality of life of the community, impairing the local tax base and hindering the ability of the city to provide adequate water, flood and fire protection and other community services. In addition, extraordinary public expenditures may be required for the protection of persons and property in areas that may be affected by unplanned land usage;
- (j) Regulation of the erection and maintenance of signs is necessary to ensure that signs fulfill their function in such a way to preserve the public welfare and safety; to preserve the integrity of residential areas and the character and dignity of public buildings, parks and other open spaces; to enhance property values and the general appearance and natural beauty of the city; to protect the public investment in streets and highways; to assure creation of an attractive business environment and to promote the orderly and effective display of outdoor advertising;
- (k) Regulation of the use of private rights-of-way, or portions of public rights-of-way, by nearby private development is necessary to protect the public health, safety, and welfare of auto and bicycle users as well as pedestrians, and to avoid congestion of streets, sidewalks and walkways;
- (l) Wireless telecommunications facilities may pose significant concerns to the health, safety, public welfare, character and environment of the city and its inhabitants. The city also recognizes that facilitating the development of wireless service technology can be an economic development asset to the city and of significant benefit to the city and its

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residents. This Chapter intends to minimize impacts of wireless telecommunications facilities, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the city.

50-4 Citation.

This ordinance may be cited as the Duluth unified development chapter (UDC) and cited as Chapter 50 of the Code.

50-5 Effective date.

The effective date of this UDC is November 19, 2010.

50-6 Applicability.

This Chapter shall apply to all lands within the boundaries of the city unless specifically exempted by the terms of specific sections of this UDC or unless applicability is prohibited by law.

50-7 Effect of chapter.

50-7.1 Compliance required.

Following the adoption of this Chapter, (1) no land shall be used, and (2) no building or structure shall be erected, converted, enlarged, reconstructed, moved, structurally altered, or used, and (3) no platted lot or tract of land shall be created or modified, and (4) the minimum yards, parking spaces, and open spaces, including lot area per family existing on July 14, 1958, or for any building constructed after that date shall not be encroached upon or considered as part of the yard or parking space or open space required of any other lot or building, except in accordance with all provisions of this ordinance that apply in the zone district where the property is located and to the type of use, structure, or development in question and in accordance with all provisions and conditions attached to any approval or permit granted for the use, building, activity, or development.

50-7.2 One building per lot.

Except as specifically provided in this Chapter, every building erected or structurally altered after July 14, 1958, shall be located on a lot as defined in this Chapter. There shall be only one main building on one lot unless a specific exception is stated in this UDC.

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50-7.3 Permits and approvals required.

Following the adoption of this Chapter, no person shall use land, or erect or modify a building or structure, or create or modify a platted lot within the city without first receiving any approvals or permits required by this Chapter for such use, building, structure or lot.

50-8 Relationship to the comprehensive land use plan.

A primary intent of this Chapter is to implement the goals and objectives of the comprehensive land use plan, as that plan may be amended by the council from time to time. The provisions of this Chapter will be interpreted liberally to achieve the goals and objectives of the comprehensive land use plan while remaining consistent with all applicable requirements of federal and state law.

50-9 Conflicting regulations or provisions.

In their interpretation and application, the provisions of this Chapter shall be construed to be the minimum requirements for the promotion of public health, safety and general welfare. It is not intended that this Chapter interfere with, abrogate or annul any other resolution or rules, regulations or permits previously adopted or issued or that shall be adopted or issued not in conflict with any of the provisions of this Chapter. If there is a conflict or alleged conflict between regulations related to this Chapter, the land use supervisor shall determine which provision applies.

50-9.1 Provisions of this chapter.

In the case of conflict between one part of this Chapter and any other part of this Chapter, the more restrictive provision shall apply, except that provisions of overlay zone districts shall prevail over other provisions of this Chapter regardless of whether they are less or more restrictive.

50-9.2 Municipal ordinances or regulations.

In the case of a conflict between any part of this Chapter with any other provision of the city code or ordinance of the city, the more restrictive provision shall apply.

50-9.3 Other ordinances or regulations.

In the case of a conflict between any part of this Chapter and any other public law, ordinance, or regulation, the provisions that are more restrictive or that impose higher standards or requirements shall govern, unless state or federal law requires a different outcome.

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50-9.4 Third-party private agreements.

This Chapter is not intended to interfere with, abrogate, or annul any easements, covenants or other private agreements between parties. However, where this Chapter imposes a greater restriction or higher standards or requirements upon the use of land, buildings or premises than those imposed or required by other easements, covenants or agreements, the provisions of this Chapter shall govern. Nothing in this Chapter shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not excuse any failure to comply with this Chapter. In no case shall the city be obligated to enforce the provisions of any easements, covenants or agreements between private parties.

50-10 Interpretation.

The land use supervisor shall be authorized to interpret the provisions of this Chapter unless a different city official is specifically designated in this Chapter to make a particular interpretation. The decisions of the land use supervisor are subject to appeal as described in Article 5.

50-11 Transition regulations.

50-11.1 Approved projects.

A. Validity.

Permits and approvals that are valid on November 19, 2010, shall remain valid until their expiration date. Projects with valid approvals or permits may be carried out in accordance with the development standards in effect at the time of approval, provided that the permit or approval is valid and has not lapsed;

B. Changes.

Nothing in this Chapter shall require any change in the plans, construction, size or designated use of a building or part of a building for which a building permit has been granted or for which plans were on file with the building official before November 19, 2010, provided that construction pursuant to the building permit begins before the building permit expires. If any of these requirements have not been fulfilled or if the building operations are voluntarily discontinued for a period of 90 days, any further construction shall be in conformity with the provisions of this Chapter;

C. Extensions and re-application.

The decision-making body that granted the original approval may renew or extend the time of a previous approval if the required standards or criteria for approval remain valid. Any extension granted shall not exceed the time specified for the extension of the specific permit approval in this Chapter. Any re-application for an

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expired project approval shall meet the standards in effect at the time of re-application.

50-11.2 Applications in progress.

A. Completed applications.

Complete applications for permits and other approvals pursuant to this Chapter that have been accepted as complete and are pending approval on November 19, 2010, may, at the applicant's option, be reviewed wholly under the terms of the previous chapters of the City Code. If approved, these projects may be carried out in accordance with the development standards in effect at the time of application. Any re-application for an expired permit shall meet the standards in effect at the time of re-application. The applicant may not choose to have some parts of the previous chapters and other parts of the current Chapter apply to the project;

B. No applications submitted.

Projects for which an application (including all required supporting materials) has not been submitted and accepted as complete prior to November 19, 2010, shall be subject to all requirements and standards of this Chapter;

C. Expiration.

Regardless of whether or not a completed application has been received prior to the adoption of this Chapter, any permit or approval issued following the adoption of this Chapter shall be subject to any provisions for the lapsing of that type of permit or approval contained in this Chapter.

50-11.3 Special use permits deemed approved.

If (a) a use of land or structure was listed as a permitted use in a specific zone district under the previous sections of the City Code consolidated into this Chapter, and (b) that use of land or structure was established prior to the adoption of this Chapter, and (c) the same use of land or property is now listed as a special use in the same zone district, then the established use shall be deemed to have received a special use permit and shall be a legal, conforming use of land. Upon documentation by the property owner that the use was established prior to approval of this Chapter, the land use supervisor shall provide written confirmation of the legal, conforming status of the use.

50-11.4 Violations continue.

Any violation occurring under previous sections of the city code consolidated into this Chapter will continue to be a violation under this Chapter and be subject to penalties and enforcement pursuant to Section 50-39, *Enforcement and penalties*, unless the use, development, construction, or other activity complies with the provisions of this Chapter.

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Any violation issued prior to the adoption date of this Chapter shall be subject to the fines and penalties of the previous ordinance unless the violation is not addressed by the property owner and is reissued by the city after the adoption of this Chapter, in which case the violation shall be subject to the fines and penalties in Section 50-39.

50-11.5 Nonconformities continue.

Any nonconformity under previous sections of the Code consolidated into this Chapter will also be a legal nonconformity under this Chapter, as long as the situation that resulted in the nonconforming status under the previous Code section continues to exist. If a nonconformity under the previous code section becomes conforming because of the adoption of this Chapter, then the situation will no longer be a nonconformity.

50-12 Severability.

If any provision or section of this Chapter is determined to be invalid, illegal, or inoperative for any reason, or to constitute a taking or deprivation of property in violation of the constitutions of the state or of the United States, that provision or section shall be severed from the remaining provisions of the Chapter, and the remainder of this Chapter shall remain effective and fully operative as far as possible.

Article II. Zone Districts.

50-13 General provisions.

50-13.1 Purpose.

This Article establishes the base and overlay zone districts available in the city to regulate land and implement the comprehensive land use plan. It also contains basic information pertaining to the districts, including statements of purpose and dimensional standards. Article 3, *Permitted Uses*, identifies the uses allowed within each districts. Article 4, *Development Standards*, contains the site layout and building design standards that apply to development in the districts.

50-13.2 Article organization.

- A. Section 50-13, *General provisions*, establishes the zone districts and contains basic information pertaining to all districts and the zoning map;
- B. Section 50-14, *Residential districts*, describes the residential districts and includes purpose statements, dimensional requirements, photographic examples of typical structures, graphic sketches of allowed development and district-specific standards if applicable;
- C. Section 50-15, *Mixed use districts*, describes the mixed use districts and includes purpose statements, dimensional requirements, photographic

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examples of typical structures, graphic sketches of allowed development and district-specific standards if applicable;

- D. Section 50-16, *Form districts*, describes the form-based districts and includes purpose statements, regulating standards and regulating graphics of typical structures;
- E. Section 50-17, *Special purpose districts*, describes the special purpose districts and includes purpose statements, dimensional requirements, photographic examples of typical structures, graphic sketches of allowed development and district-specific standards if applicable;
- F. Section 50-18, *Overlay districts*, identifies the overlay districts and includes purpose statements and any district-specific standards.

50-13.3 Zone districts established.

For the purposes of this Article, the city is hereby divided into districts, as follows:

Table 50-13.3-1: Zone Districts Established		
District Type	Abbreviation	District Name
Residential	R-C	Rural-Conservation
	RR-1	Residential-Rural 1
	RR-2	Residential-Rural 2
	R-1	Residential-Traditional
	R-2	Residential-Urban
	R-P	Residential-Planned
Mixed Use	MU-N	Mixed Use-Neighborhood
	MU-C	Mixed Use-Commercial
	MU-I	Mixed Use-Institutional
	MU-B	Mixed Use-Business Park
	MU-W	Mixed Use-Waterfront
Form Based	F-1	Form District 1
	F-2	Form District 2
	F-3	Form District 3
	F-4	Form District 4
	F-5	Form District 5
	F-6	Form District 6
	F-7	Form District 7
	F-8	Form District 8
	F-9	Form District 9
Special Purpose	I-G	Industrial-General
	I-W	Industrial-Waterfront
	P-1	Park & Open Space
Overlay	NR-O	Natural Resources Overlay
	A-O	Airport Overlay
	SP-O	Skyline Parkway Overlay
	HR-O	Historic Resources Overlay

50-13.4 Zoning map.

- A. Zoning map.

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The boundaries of the districts set out in Table 50-13.3-1 are hereby established as shown on the city's official zoning map, as that map may be updated by council from time to time. That map shall be maintained by the city and is hereby made a part of this Chapter and incorporated by reference;

B. Zoning map amendments.

Procedures for amending the zoning map are in Article 5 of this Chapter;

C. Questions regarding zoning designations.

In the event of uncertainty regarding zoning designations or the exact boundaries of any zone district, the land use supervisor shall make a determination based upon the interpretation rules in subsection D below. The land use supervisor's determination shall be subject to appeal pursuant to Article 5 of this Chapter;

D. Interpretation of map boundaries.

Where uncertainty exists with respect to the boundaries of the districts shown on the zoning map, the land use supervisor's decision shall be based on the following standards:

1. Where a district is bounded by a street, alley or other public way, the centerline of the street, alley, or other public way shall be construed to be the boundary of the district;
2. Boundaries delineated by lot lines shall follow those lot lines;
3. Boundaries delineated by railroad lines shall be midway between the main tracks or the centerline of a single track;
4. Boundaries dividing a lot or transecting un-subdivided land shall be determined using the scale appearing on the zoning map, unless the boundary location is indicated by dimensions shown on the map;
5. Boundaries shown parallel to or as extensions of features indicated in this subsection shall be interpreted as such. Distances not specifically indicated on the zoning map shall be determined by the scale of the map;
6. Where the description of the property is contained in an ordinance, the metes and bounds description of the property in the ordinance shall control over the zoning map. When a metes and bounds description contained in an ordinance is for an unplatted tract of land, the land use supervisor is authorized the make the appropriate modifications to the zoning map at the time the property is platted so that the boundaries of the zone district coincide with the newly created property lines;
7. Whenever any street, alley or other public way is vacated by official action of the council, the zone district adjoining each side of such street, alley, or public way shall be automatically extended to the center of such vacated

street, alley or public way, and all areas included in the vacated street, alley or public way shall be subject to all regulations of the extended district, unless otherwise approved by council;

E. Relationship to overlay districts.

All lands within the city shall be designated as one of the base zone districts listed in Table 50-13-1. In addition, some lands may be located within one or more of the overlay districts listed in that table. Where the property is designated as an overlay district, the regulations governing development in the overlay district shall apply in addition to the regulations governing development in the underlying base district. In the event of an express conflict between the two sets of standards, the standards for the overlay district shall control;

F. Annexed territory.

All territory annexed to the city after November 19, 2010, shall be automatically classified as R-C, until a different zone district is assigned by council. In a newly annexed area classified as R-C, no permit for construction of a building other than a single-family dwelling or accessory building permitted in an R-C district shall be issued by the city until such permit has been specifically authorized by council, or until the area is reclassified according to the rezoning procedures in Article 5;

G. Structure of zone district standards.

1. Each of the following base zone district sections has a common structure consisting of a purpose statement and one or more of the following graphic illustrations, each of which is numbered for reference purposes.
 - (a) One or more tables setting out the district's bulk and dimensional requirements;
 - (b) A photograph representative of typical building forms;
 - (c) A graphic depiction of the district's primary bulk and dimensional standards;
2. The graphic illustrations in this Chapter are intended to illustrate the primary dimensional standards and the general character of each district, and do not necessarily reflect all the standards that may apply to a particular development. All development is subject to all dimensional standards of this Chapter, all applicable overlay district standards in this Chapter, the applicable use-specific standards in Article 3, and the applicable requirements of Article 4.

50-14 Residential districts.

50-14.1 General purposes of residential zone districts.

The residential zone districts are intended to:

- A. Provide appropriately located areas for residential development that are consistent with the comprehensive land use plan and with the public health, safety, and general welfare;
- B. Ensure adequate light, air, and privacy for all dwelling units;
- C. Protect the scale and character of existing residential neighborhoods and the community;
- D. Discourage any use that, because of its character or size, would create additional requirements and costs for public services that are in excess of such requirements and costs if the district were developed solely for the intended type of residential uses;
- E. Provide a mechanism – the R-P zone district – through which certain listed non-residential uses that serve neighborhoods can be integrated into residential developments.

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50-14.2 Rural-conservation (R-C) (new district).

A. Purpose.

The R-C district is established to accommodate low-density, single-family detached residential uses on parcels of at least ten acres each in areas where the comprehensive land use plan calls for protection of rural character. The district encourages development designs that conserve open space and natural resources and preserve rural character. Complimentary uses such as limited agriculture, parks, minor utilities and certain temporary uses are allowed as shown in Table 50-19.8.

TABLE 50-14.2-1 R-C DISTRICT DIMENSIONAL STANDARDS	
LOT STANDARDS	
Minimum lot area per family (calculated to include any highway easements or parts of highway easements within the original parcel of land)	10 acres
Minimum lot frontage (ft)	250 ft.
SETBACKS, MINIMUM	
Minimum depth of front yard (ft)	60 ft.
Minimum width of side yard (ft)	25 ft.
Minimum depth of rear yard (ft)	50 ft.
BUILDING STANDARDS	
Maximum height of building (ft)	30 ft.

Section 50.21 *Dimensional standards* contains additional regulations applicable to this district.

B. Example.

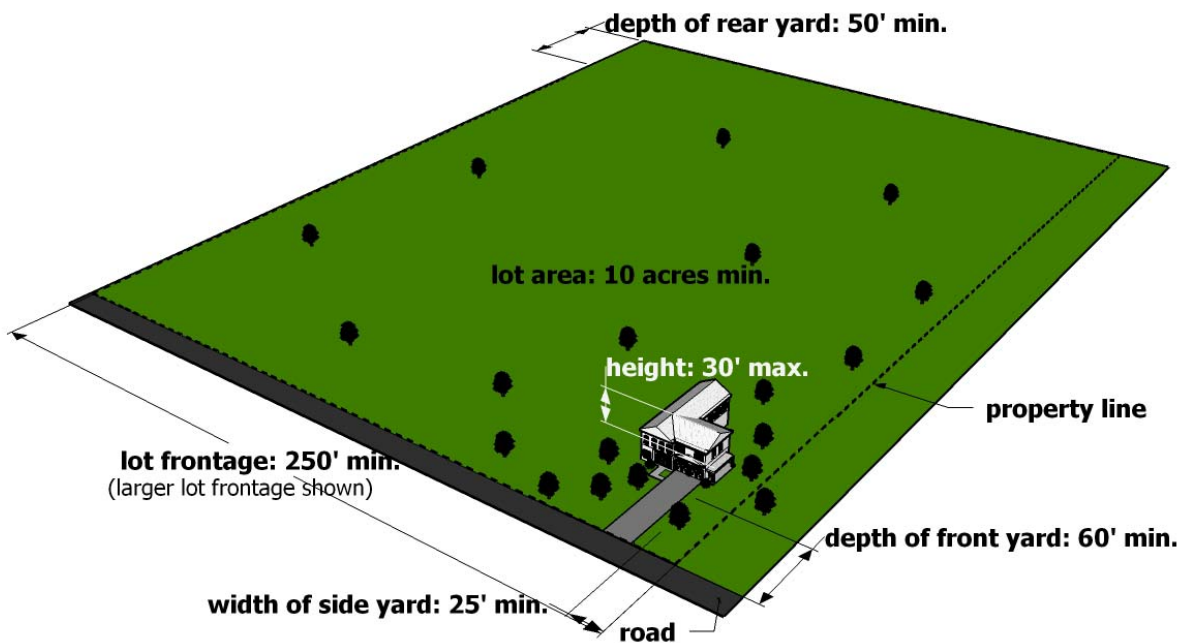
R-C Example



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C. Illustration.

R-C Example Lot Layout



D. Development standards.

All homesites in the R-C zone district shall be located so as to preserve the rural character of the district and to avoid unnecessary fragmentation of the rural landscape by:

1. Designating a portion of the site containing no more than one acre of land in compact configuration as the homesite in which the primary dwelling and all major accessory buildings will be located;
2. Locating the homesite either (1) adjacent to a side or rear property line of the parcel, or (2) where the primary structure is hidden from view from public rights-of-way by an intervening natural feature such as a hillside, berm, or tree grove;
3. Locating the driveway leading from the public right-of-way to the homesite (1) as close to a side property line of the parcel as is reasonably possible without significant grading, vegetation, or stream

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crossings, or (2) in another location that will minimize the fragmentation of field, pasture, or naturally vegetated areas.

4.

50-14.3 Residential-Rural 1 (RR-1) (formerly S Suburban).

A. Purpose.

The RR-1 district is established to accommodate large-lot, single-family detached residential uses, typically surrounded by significant open space, on lots of at least 5 acres each. The district encourages distinctive neighborhoods with a semi-rural character. Complimentary uses such as limited agriculture, small-scale institutional uses, parks, minor utilities and certain temporary uses are allowed as shown in Table 50-19.8.

TABLE 50-14.3-1 RR-1 DISTRICT DIMENSIONAL STANDARDS	
LOT STANDARDS	
Minimum lot area per family (calculated to include any highway easements or parts of highway easements within the original parcel of land)	5 acres
Minimum lot frontage	250 ft.
SETBACKS, MINIMUM	
Minimum depth front yard	60 ft.
Minimum width of side yard	25 ft.
Minimum depth of rear yard	50 ft.
BUILDING STANDARDS	
Maximum height of building	30 ft.

Section 50.21 *Dimensional standards* contains additional regulations applicable to this district.

B. Example.

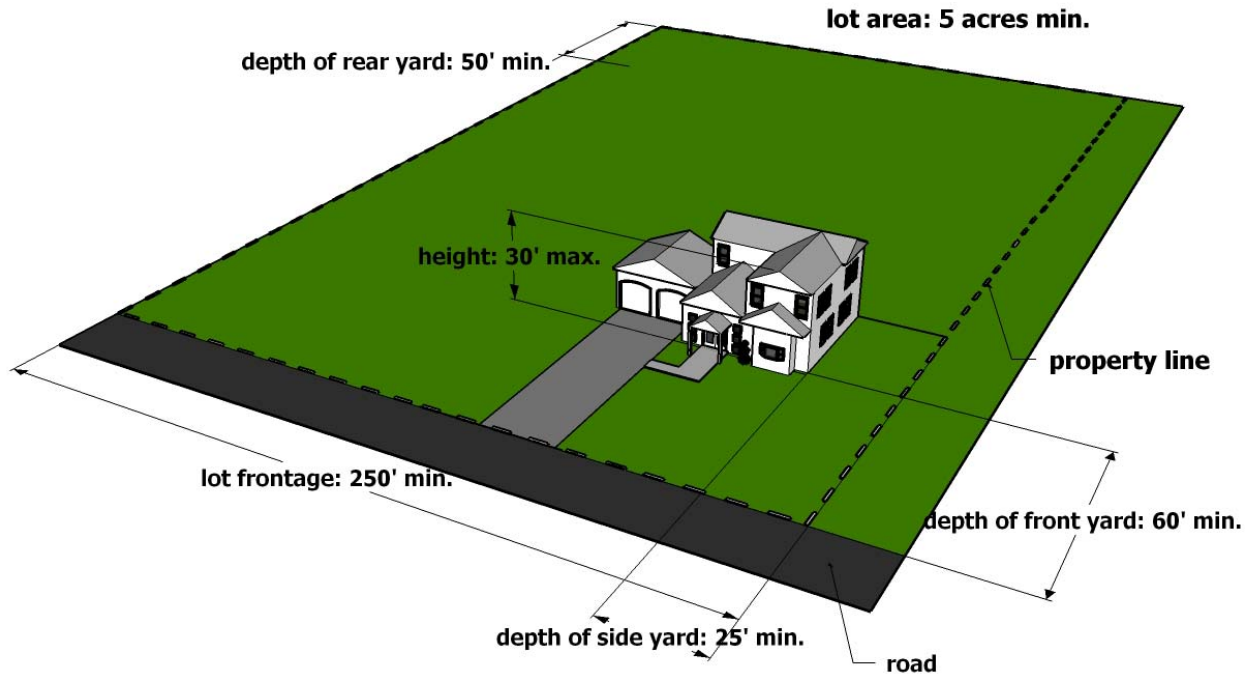
RR-1 Example Building Form



RR-2 Example Building Form

C. Illustration.

RR-1 Example Lot Layout



50-14.4 Residential-Rural 2 (RR-2) (formerly S-2 Suburban).

A. Purpose.

The RR-2 district is established to accommodate single-family detached residential uses on lots of at least two acres each. The district encourages distinctive neighborhoods with a suburban character. The district may serve as a transition between lower-density semi-rural areas and more intense residential or mixed use neighborhoods. Complimentary uses such as limited agriculture, small-scale institutional uses, parks, minor utilities and certain temporary uses are allowed as shown in Table 50-19.8.

TABLE 50-14.4-1

RR-2 DISTRICT DIMENSIONAL STANDARDS

LOT STANDARDS	
Minimum lot area per family	2 acres
Minimum lot frontage	100 ft.
SETBACKS, MINIMUM	
Minimum depth front yard	35 ft.
Minimum width of side yard	10 ft.
Corner Lot: width of front side yard	25 ft.
Minimum depth of rear yard	25 ft.
BUILDING STANDARDS	
Maximum height of building	30 ft.

Section 50.21 *Dimensional standards* contains additional regulations applicable to this district.

and certain temporary uses are allowed as shown in Table 50-19.8.

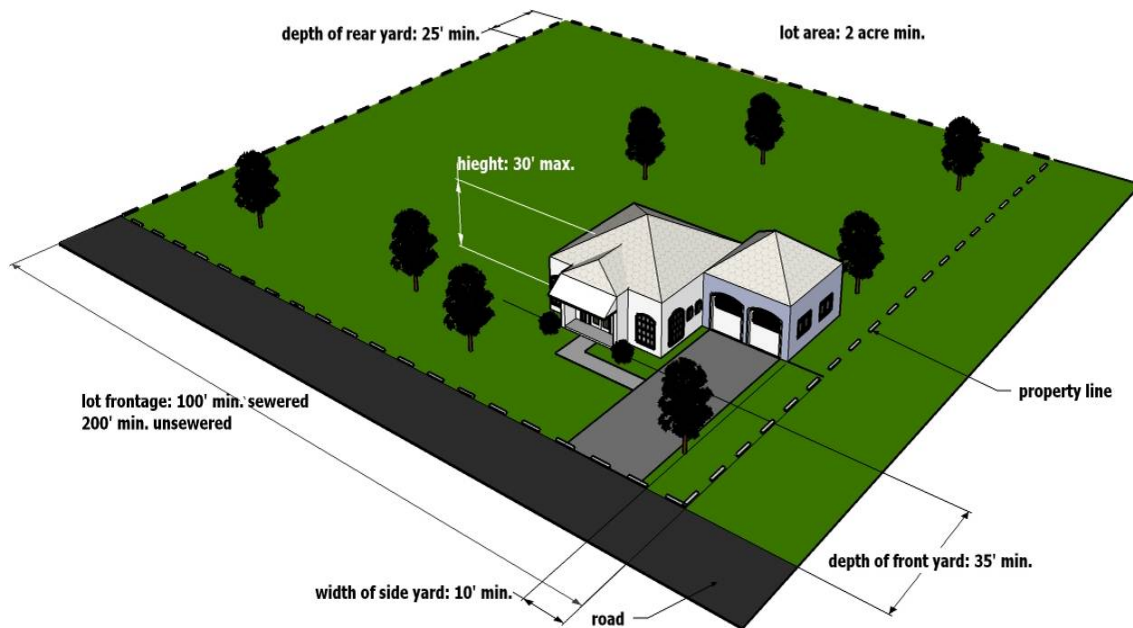
PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

B. Example.



Illustration.

RR-2 Example Lot Configuration



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50-14.5 Residential-Traditional (R-1) (formerly R-1-a, R-1-b, R-1-c, & R-2).

Purpose.

The R-1 district is established to accommodate traditional neighborhoods of single-family detached residences, duplexes and townhouses on moderately sized lots. This district is intended to be used primarily in established neighborhoods. Many of the dimensional standards in this district require development and redevelopment to be consistent with development patterns, building scale, and building location of nearby areas. Uses are allowed as shown in Table 50-19.8.

B. Example.

TABLE 50-14.5-1 R-1 DISTRICT DIMENSIONAL STANDARDS		
LOT STANDARDS		
Minimum lot area per family (One-family)		The larger of 4,000-sq. ft. or average of developed 1-family lots on the block face
Minimum lot area per family (Two-family)		The larger of 3,000 sq. ft. or average of developed 2-family lots on the block face
Minimum lot area per family (Townhouse)		2,500 sq. ft.
Minimum lot frontage (one-family, two-family, and townhouses)		The larger of 30 ft. or average of developed lots with similar uses on the block face
SETBACKS, MINIMUM		
Minimum depth of front yard		The smaller of 25 ft. or average of adjacent developed lots facing the same street
Minimum width of side yard (one- and two-family)	General	The larger of 6 ft. or average of adjacent developed lots facing the same street
	Lots with less than 50 ft. frontage and garage	Combined width of side yards must be at least 12 ft.
Minimum width of side yard (Townhouse)		10 ft. if adjacent to another lot
		25 ft. if adjacent to platted street
Corner Lot: width of front side yard	Dwelling	15 ft.
	Detached accessory building	20 ft.
	Permitted non-residential building	25 ft.
Minimum depth of rear yard		25 ft.
BUILDING STANDARDS		
Maximum height of building		30 ft.
Section 50.21 <i>Dimensional standards</i> contains additional regulations applicable to this district.		

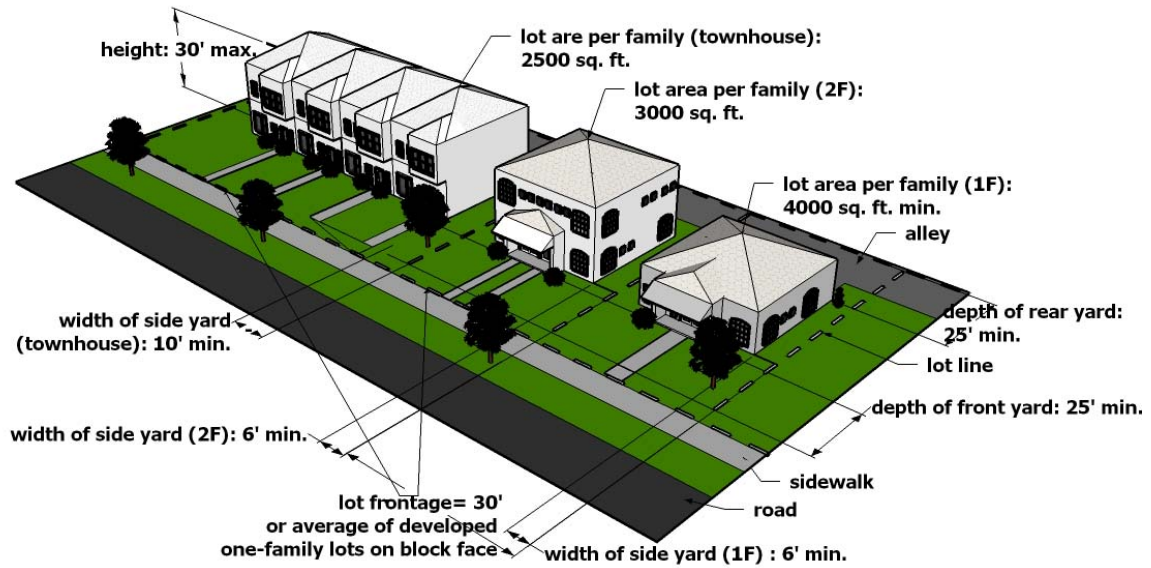
R-1 Example Building Forms



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C. Illustration.

R-1 Example Lot Layout



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50-14.6 Residential-Urban (R-2) (formerly R-3 Apartment Residential).

A. Purpose.

The R-2 district is established to accommodate multi-family apartments and townhouses, in an urban setting. This district also allows for single-family detached dwellings, duplexes and group living accommodations as shown in Table 50-19.8. The district is intended primarily for locations closer to commercial and mixed use activity centers, and may serve as a transition between lower-density residential areas and more intense commercial and mixed use neighborhoods.

**TABLE 50-14.6-1
R-2 DISTRICT DIMENSIONAL STANDARDS**

		LOT STANDARDS
Minimum lot area per family	One-family	4,000 sq. ft.
Minimum lot area per family	Two-family	2,500 sq. ft.
Minimum lot area per family	Multi-family	1,500 sq. ft.
Minimum lot area per family	Townhouse	2,200 sq. ft.
No lot of record containing 5,000 sq. ft. or less shall be used except for a one-family dwelling or a permitted non-dwelling use.		
Minimum lot frontage	One-family, two-family, and townhouse	30 ft.
	Multi-family and non-residential	50 ft.
		SETBACKS, MINIMUM
Minimum depth front yard		The smaller of 25 ft. or average of adjacent developed lots facing the same street
Minimum width of side yard for buildings less than 3 stories		7 ft.
Minimum width of side yard for building 3 stories or more		10 ft.
Corner Lot: width of front side yard	Dwelling	15 ft.
	Detached accessory building	20 ft.
	Permitted non-residential building	25 ft.
Minimum depth of rear yard		25 ft.
		BUILDING STANDARDS
Maximum height of building		45 ft.

Section 50.21 *Dimensional standards* contains additional regulations applicable to this district.

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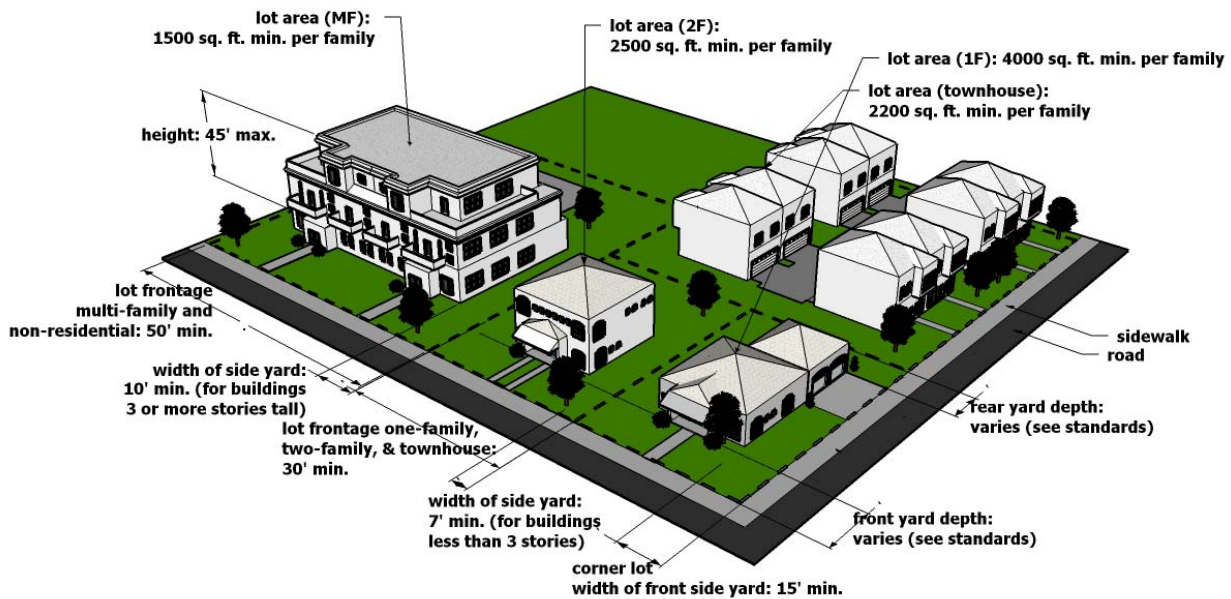
B. Example.

R-2 Example Building Form



C. Illustration.

R-2 Example Lot Layout



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50-14.7 Residential-Planned (R-P) (replaces TND Traditional Neighborhood).

A. Purpose.

The R-P district is established to provide a flexible development option for residential projects that integrate creative site design, provide a variety of housing types, provide unique on-site amenities, conserve natural features, increase pedestrian connectivity, or otherwise result in a final product that provides a greater level of public benefit than would be required under the existing zone district. Each R-P district requires approval of an R-P district plan that includes the location, type, intensity of proposed development and a description of public amenities or benefits included. Different R-P standards are required for projects in identified high-density and low-density residential areas. Single-family residences, two-family residences, townhouses, group living and apartments, as well as accessory uses, are permitted, as shown in Table 50-19.8, provided projects are compatible in scale and character with the surrounding neighborhood and are included in the approved district plan;

B. Dimensional standards.

The dimensional standards in the R-P District, including but not limited to maximum building heights, minimum or maximum building setbacks, and yard requirements, shall be established on a project-specific basis through the district plan approval process in Section 50-37.4. However, all shoreland setbacks and other setbacks and dimensional requirements from Section 50-18.1 (NR-O overlay) shall continue to apply and cannot be varied through the R-P district plan approval process;

C. Examples.

R-P Low Density Example Building Forms



R-P High Density Example Building Forms



D. Rezoning and district plan approval required.

The establishment of an R-P district requires rezoning the property from a current zone district to R-P and the approval of a district plan that governs the location, density, dimensional standards and character of the proposed project. The district

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plan shall cover all of the land in the proposed R-P district. In addition, prior to any construction within an R-P zone district, the property owner shall be required to present site plans for planning review and approval by city staff. Procedures for approval of both district and planning review are set forth in Article 5 of this Chapter. A district plan and a site plan for all or part of the property in a proposed R-P district may be submitted for approval simultaneously at the applicant's option;

E. Applicability.

An R-P district shall only be established in the R-C, RR-1, RR-2, R-1, R-2, and MU-N districts provided the property meets the requirements in Table 50-14.7-1.

Characteristic	Low Density	High Density
Current zoning	R-C, RR-1, RR-2	R-1, R-2, MU-N
Minimum lot size	4 acres	2 acres

F. Development standards.

1. General development standards.

- (a) The development standards of the zone district(s) where the property is located shall apply to any R-P zoned land unless waived or varied by the terms of an approved R-P district plan. The ordinance approving an R-P district and the approved district plan shall identify the previous base zone districts for each portion of the property;
- (b) Maximum building height within 200 feet of an R-1 district is 35 feet;
- (c) Maximum building height within 200 feet of an R-2 district is 50 feet;

2. Low density.

Development in low density R-P zones shall comply with the following standards:

- (a) A natural resources inventory is required;
- (b) Common open space. Adequate provisions shall be made for the permanent preservation and maintenance of useable active or passive open space. Common open space shall not be less than 30% of the area of the project and shall comply with the following requirements:
 - (i) Common open space shall include the shore and bluff impact zones;
 - (ii) Common open space shall include, where possible, lands within the Skyline Overlay;
 - (iii) Common open space shall include, where possible, wetlands, floodplains, wildlife areas, steep slopes, rock outcrops, tree

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stands and areas unsuitable for development in their natural state;

- (iv) No more than one-quarter of the required common open space shall consist of wetlands;
- (v) Common open space shall not include area within 25 feet of any structure, any impervious surface, or the area between buildings within an individual cluster of buildings;
- (vi) At least 50% of the common open space shall be retained in a contiguous area;
- (vii) Where possible, the design should utilize features such as vegetation, fences, topography, roads or trails to delineate the boundary of the common open space to minimize potential physical encroachments into the common open space by adjacent homeowners;

- (c) Ownership of common open space. Common open space shall be owned and managed by a homeowners association and shall be encumbered through an easement, restrictive covenant or other instrument suitable to the city;

3. High density.

Development in high density R-P zones shall comply with the following standards:

- (a) The development shall encourage walkable, bikeable communities through the use of complete streets, alleys, sidewalks and trails, interconnected street networks, small blocks, front porches, and buildings that are sited adjacent to streets;
- (b) A traffic impact analysis is required;

G. Required district plan contents.

The district plan for an R-P zone district shall include the following information:

- 1. General layout of development areas and building parcels in relation to the natural features to be protected and the proposed road, trail and bicycle circulation systems;
- 2. Lot sizes and widths and building setbacks for all proposed development parcels;
- 3. A road, trail and bicycle circulation plan (including how the circulation may intersect with transit use) and a description of proposed road, trail and bike route widths, trail surfaces, a proposal for maintenance of each road and trail (which may include dedication to and maintenance by the city), and a statement as to whether public access will be permitted on each road, trail, and bicycle route;

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4. Natural site features to be protected;
5. Common open space to be provided, the location of that open space, a calculation of proposed open space as a percentage of the total land area in the R-P zone, a proposal for protection and maintenance of the open space over time and a statement as to whether public access to the open space shall be provided;
6. Permitted and special uses for the site, which shall be consistent with those shown in Table 50-19.8;
7. A plan describing the demand for and location of water, sewer, and utility service to the property, including any additional right-of-way needed to accommodate those utilities. In addition, the plan shall indicate all utilities that will be owned or maintained by the public, and if any of those services are to be provided by the city or a public or quasi-public district, and provide a statement as to whether the proposed facilities will meet the engineering and maintenance standards of that entity;
8. A plan for storm water collection and treatment that includes a summary of land use and technical methods used to minimize storm water run-off from the site;
9. Off-street parking to be provided in driveways, surface lots and garages;
10. Any public amenities, other than common open space, to be provided by the applicant, together with a statement as to whether those amenities shall be available for public use.
11. Any required building types, form-based regulation or architectural design requirements, as well as a description of how those standards will be maintained and enforced over time.

H. Previously approved developments.

All residential developments approved prior to November 19, 2010, as low-density planned developments pursuant to Sections 50-36.1 through 50-36.3 of the previous zoning code shall be treated as approved low density R-P developments, and will be rezoned to the R-P zone district. In addition, the Harbor Highlands TND plan and the Ramsey Village TND plan, approved pursuant to the TND zone district codified as Article XXIV of the previous zoning code, shall be treated as approved high density R-P developments, and will be rezoned to the R-P zone district.

50-15 Mixed use districts.

50-15.1 General purposes of mixed use districts.

The mixed use districts are established to:

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- A. Increase opportunities for residents to live in close proximity to jobs and non-residential development;
- B. Accommodate the mix of residential and non-residential land uses common in and around downtown/waterfront areas, major universities and medical centers and along commercial corridors;
- C. Encourage mixed use redevelopment, conversion and reuse of aging and underutilized areas, and increase the efficient use of available commercial land in the city;
- D. Create pedestrian-oriented environments that encourage transit use, pedestrian access, and more sustainable land use patterns;
- E. Ensure that the appearance and function of residential and non-residential uses are of high and unique aesthetic character and quality, and are integrated with one another and the character of the area in which they are located.

50-15.2 Mixed Use-Neighborhood (MU-N) (formerly R-4 and C-1).

A. Purpose.

The MU-N district is established to accommodate a mix of neighborhood-scale, neighborhood serving non-residential uses and a range of residential uses located in close proximity. This district accommodates both horizontal (uses located in separate structures) and vertical (uses located in the same building) types of mixed use. Non-residential uses may include small-scale retail, service and professional offices that provide goods and services to the residents of the surrounding neighborhood, as shown in Table 50-19.8;

**TABLE 50-15.2-1
MU-N DISTRICT DIMENSIONAL STANDARDS**

LOT STANDARDS		
Minimum lot area per family	One-family	4,000 sq. ft.
	Two-family	2,500 sq. ft.
	Multi-family	500 sq. ft.
	Efficiency unit	380 sq. ft.
	Townhouse or live-work dwelling	2,200 sq. ft.
No lot of record containing 5,000 sq. ft. or less shall be used except for a one-family dwelling or a permitted non-dwelling use		
Minimum lot frontage	One-family, two-family, or townhouse dwelling	30 ft.
	Multi-family or non-residential	50 ft.
SETBACKS, MINIMUM		
Minimum depth of front yard	One-family, non-residential, and mixed use	The smaller of 25 ft. or average of adjacent developed lots facing the same street
Minimum width of side yard	Non-residential use adjacent to residential district or use	15 ft.
	Non-residential use adjacent to non-residential district or use	0 ft.
	Multi-family adjacent to single-family district or use	10 ft.
	Multi-family adjacent to multi-family district or use	0 ft.
Minimum depth of rear yard		25 ft.
BUILDING STANDARDS		
Maximum height of building	Non-residential use	35 ft.
	Residential or mixed use (general)	75 ft.
	Residential or mixed use (within 200 ft. of R-1)	35 ft.
	Residential or mixed use (within 200 ft. of R-2)	50 ft.

Section 50.21 *Dimensional standards* contains additional regulations applicable to this district.

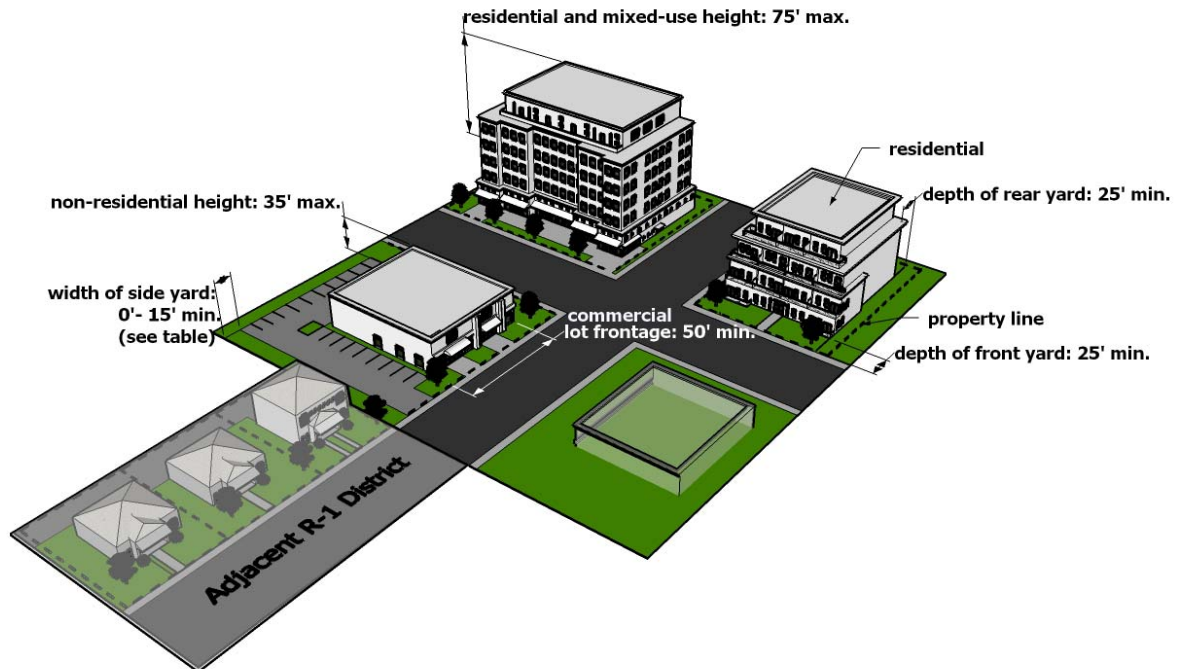
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B. Example.

MU-N Example Building Form



C. Illustration.

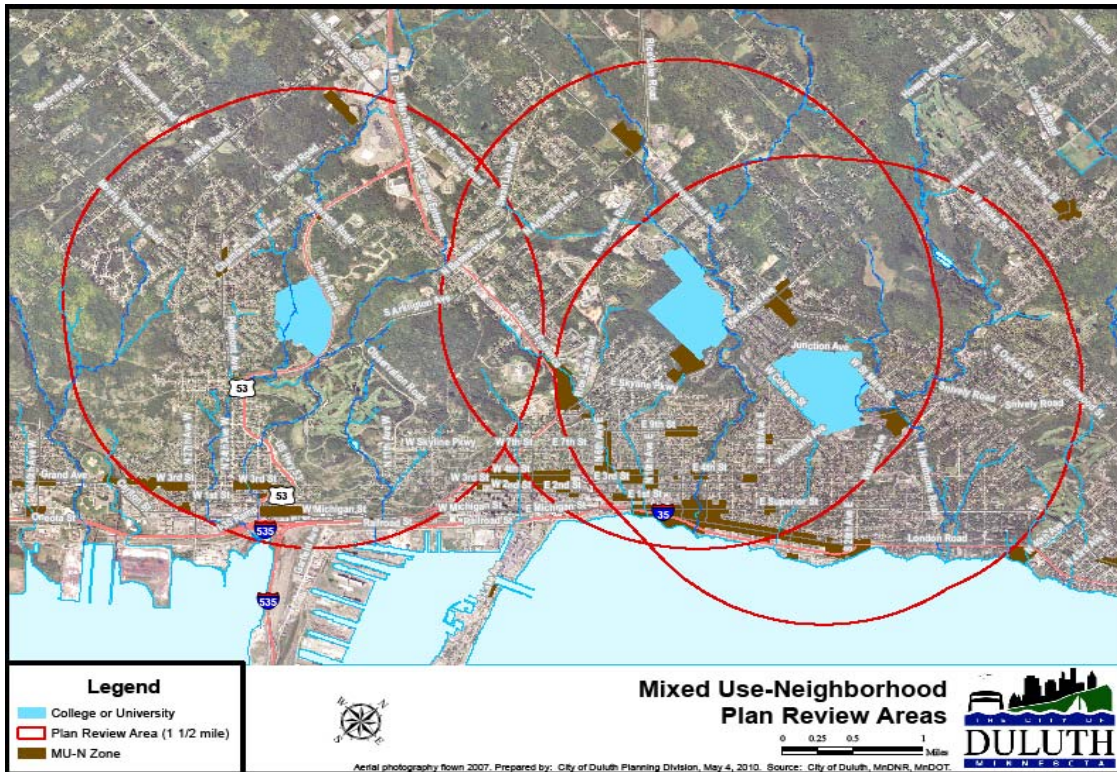


D. Planning commission approval required.

A planning review by the planning commission, pursuant to the procedures in Article 5, shall be required for all residential development or redevelopment on land zoned MU-N and located within one and one-half (1.5) mile of land occupied, owned or related to a college or university and zoned MU-I, as shown on the following map, except for (1) one-family and two-family dwellings, and (2) any residential development where all of the dwelling units are restricted by development

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agreement or covenant for occupancy by those aged 50 and over or for occupancy by those individuals and households protected by the federal Fair Housing Act amendments of 1988. The planning review is intended to mitigate the impacts of potential student use on the adjacent residential neighborhood. Development may not proceed until the planning commission has approved the project through planning review;



E. Development standards.

The plan for the development shall be approved only if the planning commission finds that it meets the following criteria:

1. Resident parking spaces shall be provided at the ratio of one space per bedroom;
2. Visitor parking spaces shall be provided at the rate of 15% of required resident parking spaces;
3. No residential balcony, patio or deck shall be located on any side of the property facing and within 200 feet of an R-1 or R-2 district;
4. Vehicle ingress and egress shall be located in a manner that avoids or minimizes impacts to residents in adjacent R-1 and R-2 districts and that reduces the potential for pedestrian-vehicular conflicts;

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5. Commercial development shall be concentrated on major roads, not on streets intended primarily for neighborhood traffic.

50-15.3 Mixed Use-Commercial (MU-C) (formerly C-5 Planned Commercial).

A. Purpose.

The MU-C district is established to provide for community and regional commercial development along commercial corridors and nodal centers. Intended non-residential uses include retail, lodging, service, and recreational facilities needed to support the community and region, as shown in Table 50-19.8. Development should facilitate pedestrian connections between residential and non-residential uses;

TABLE 50-15.3-1

MU-C DISTRICT DIMENSIONAL STANDARDS

		LOT STANDARDS
Minimum lot area per family	Live-work dwelling	2,200 sq. ft.
	Multi-family	500 sq. ft.
	Efficiency unit	380 sq. ft.
Minimum lot frontage	Non-residential or mixed use	0 ft.
	Multi-family	50 ft.
		SETBACKS, MINIMUM
Minimum depth of front yard		0 ft.
Minimum width of side yard and rear yard	Non-residential district or use adjacent to residential or mixed use district or use	15 ft.
	Multi-family residential district or use adjacent to one-family residential district or use	10 ft.
	Non-residential use adjacent to commercial use or multi-family use adjacent to multi-family use	0 ft.
		BUILDING STANDARDS
Maximum height of building	Non-residential use	45 ft.
	Residential or mixed use	90 ft.
	Residential or mixed use within 200 ft. of R-1	35 ft.
	Residential or mixed use within 200 ft. of R-2	50 ft.

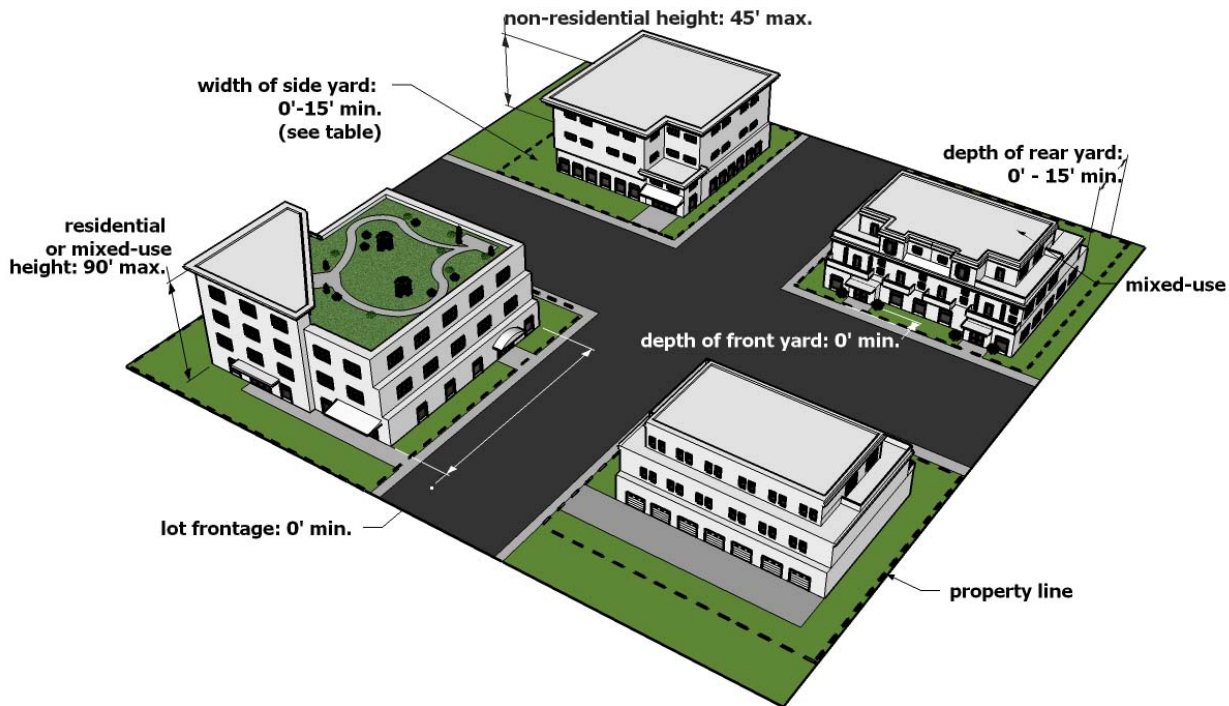
Section 50.21 *Dimensional standards* contains additional regulations applicable to this district.

B. Example.

MU-C Example Building Forms



Illustration



D. Planning commission approval required.

A planning review by the planning commission, pursuant to the procedures in Article 5, shall be required for all new development, redevelopment and expansions in the MU-C district, including but not limited to construction of driveways or other access from public streets, and construction of off-premises signs, but excluding the following:

1. Building construction or expansion of less than 500 square feet in area;
2. Building renovations that affect the exterior of structures that do not result in an increase in building square footage;
3. Grading and construction of parking areas less than 3,000 square feet.

Development may not proceed until the planning commission has approved the project through planning review;

E. Development standards.

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1. The location, size and number of curb cuts shall be designed to minimize traffic congestion or hazard in the area. Any traffic control improvements required as a result of the proposal such as traffic signals, turning lanes, medians, signage and other types of improvements necessary to accommodate traffic flow to and from the proposed project shall be paid for by the property owner. Any additional right-of-way or easements needed shall be provided by the property owner at no cost to the city;
2. Any necessary public easements over the subject property shall be dedicated, and any necessary improvements within such easements or other easements adjacent to the subject property shall be made.

50-15.4 Mixed Use-Institutional (MU-I) (formerly M-C Medical Center).

A. Purpose.

The MU-I district is established to provide for the unique development needs and impacts of major medical, educational and research institutional development. The intent is to give institutional landowners the flexibility to plan and develop their facilities while ensuring that surrounding neighborhoods are protected from adverse impacts, such as traffic, overshadowing buildings, noise, and unexpected expansion of institutional uses into residential areas. Landowners may choose to submit a district plan for approval that will guide future development, in which case individual building approvals consistent with the district plan will be approved administratively. As an alternative, the applicant may submit future development projects through individual planning review by the planning commission, which will include review of vehicle circulation and building scale, without reference to a district plan. Residential development is limited to that which directly serves the institution, and allowed uses are as shown in Table 50-19.8;

TABLE 50-15.4-1 MU-I DISTRICT DIMENSIONAL STANDARDS		
LOT STANDARDS		
Minimum lot area per family	Multi-family	500 sq. ft.
	Efficiency unit	380 sq. ft.
SETBACKS, MINIMUM		
Structures and parking facility setbacks		0 ft.
BUILDING STANDARDS		
Maximum height of building	Generally	120 ft.
	On development sites totaling not more than 15% of developable area of the zone district, but not within those areas where a lower maximum is noted below.	300 ft.
	Within 200 ft. of R-1	46 ft.
	Within 200 ft. of R-2	66 ft.
	Within 200 ft. of MU-N	91 ft.
Section 50.21 <i>Dimensional standards</i> contains additional regulations applicable to this district.		

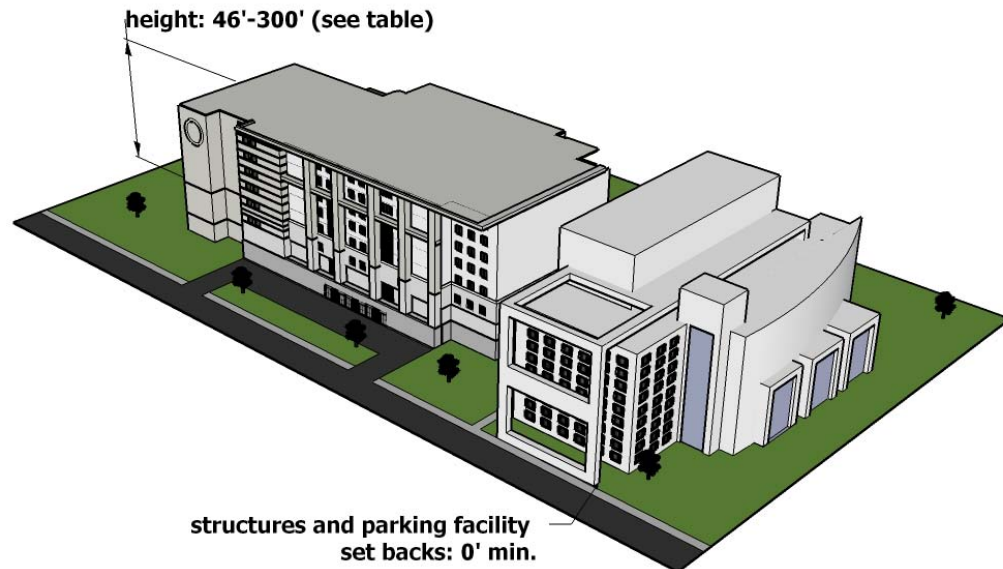
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B. Example.

MU-I Example Building Forms



C. Illustration.



D. Planning commission approval required.

1. A planning review by the planning commission, pursuant to the procedures in Article 5, shall be required for all development and redevelopment, unless the applicant chooses to use the district plan option described below. Development may not proceed until the planning commission has approved the project through planning review or the district plan option;

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2. Any proposed rezoning of land from an R district into the MU-I district shall require the preparation of a plan addressing how traffic, parking, and view impacts from the proposed redevelopment will be minimized for those lands on nearby R district properties or mitigated within existing MU-I lands, and planning review shall be based on that plan. The plan shall include any land and facilities within the current MU-I district that will be used to support the use or development of the property to be rezoned, and shall demonstrate how the rezoned and existing institutional properties will functionally relate in terms of parking, circulation, noise, visual impacts, and other applicable development standards;
3. Applicants that do not opt for approval of a district plan shall obtain separate approval for each future expansion or development project through the full development review procedures in Article 5, which may include requirements for special use permits or variances;

E. District plan option.

1. In an MU-I zone district that contains ten acres or more of land and multiple buildings owned or operated by a single institution, the institution may choose to obtain approval of a district plan from the city as set forth in Article 5;
2. After a district plan that complies with this Section 50-15.4 is approved, all subsequent development proposed by the institution that substantially complies with the density, location and uses of the approved district plan shall be administratively approved by the land use supervisor through the planning review process in Section 50-37.11 without the need for additional planning commission review or public hearings;

F. Optional district plan requirements.

1. Planning area.

The planning area for the optional district plan shall include all the contiguous areas and properties under the ownership and control of the institution. All maps submitted under this Section also shall depict properties within 500 feet of the planning area boundaries;

2. Plan requirements.

An optional district plan shall, at a minimum, include the following information unless the land use supervisor determines that some elements are not necessary to evaluate the institution's future impacts on surrounding neighborhoods:

- (a) A statement as to whether the institution intends to acquire any additional properties in the surrounding area for conversion to

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- institution uses over the ten year period, and, if so, the general direction of that proposed expansion;
- (b) A plan and description of the maximum amount of development of land and buildings expected to occur within the planning area boundaries within over the next ten years, including:
 - (i) Location of each potential new building or significant expansion of or addition to existing buildings;
 - (ii) Maximum floor area and height of potential new buildings and additions to and expansions of existing buildings;
 - (iii) Any setbacks and buffering from the external planning area boundaries;
 - (iv) Total number and location of parking spaces that will be developed to serve any new development;
 - (v) A statement of any sensitive natural areas or site features that will be protected from development, and the measures to be taken to protect them;
 - (vi) A statement as to any public improvements anticipated to be required from the city or any public or quasi-public entity to serve the proposed development;
 - (c) A transportation and parking management element that identifies traffic circulation patterns, entry and exit points for traffic at the planning area boundaries, any anticipated increases or decreases in traffic entering or exiting the planning area, how parking needs and transit service will be accommodated within the planning area and any measures to be used to mitigate traffic and parking impacts on surrounding areas. If the district plan reflects an increase of ten percent or more in building gross square footage or an increase of ten percent or more of employment or enrolled students within the planning areas, the city may require that the institution base this element on a traffic and parking study prepared by a qualified consultant;
 - (d) An open space, trail and pedestrian/bicycle circulation element that describes how those features will be integrated into the proposed development and connected to similar features in the surrounding area;
 - (e) A massing plan showing the locations of all existing and planned buildings more than 20 feet taller than the maximum height allowed in any adjacent residential zone district, together with any design standards to be applied on those buildings to reduce the degree to which those buildings obstruct views of Lake Superior from adjacent residential neighborhoods;
 - (f) A description of any requested variation from the development standards in Article 4 that would otherwise apply to the planning area.

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Unless varied by the district plan, the provisions otherwise applicable to the MU-I zone district will apply;

G. Community meeting.

The applicant shall hold at least one community meeting to discuss the district plan before submitting the plan for review and approval by the city. Notice of the public meeting shall be mailed to all property owners within 350 feet outside the planning area boundaries, and the city shall provide the applicant with the names and address of those property owners upon request. The applicant shall submit with the application documentation that the community meeting has taken place, the date and time of the meeting, the number of attendees, any issues raised regarding the district plan and any responses to those concerns incorporated in the district plan;

H. Approval criteria.

The city shall approve an optional district plan if it finds that the application meets all of those district plan approval criteria in Section 50-37.4C and in addition meets the following criteria:

1. The district plan complies with all applicable standards of this Chapter, or offers sound reasons for variations from those standards;
2. The district plan mitigates any potential significant adverse impacts to surrounding areas – including but not limited to traffic, parking, and visual obstruction of views of Lake Superior and the St. Louis River to the extent reasonable;
3. Sufficient public safety, transportation and utility facilities and services are available to serve the planning area at the proposed level of development, while maintaining sufficient levels of service to existing and anticipated development in surrounding areas.

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50-15.5 Mixed Use-Business Park (MU-B) (formerly M-1, I-P and I-T).

A. Purpose.

The MU-B district is intended to accommodate modern light industrial and technology-based developments of attractive integrated design and function. The development standards for this district are intended to ensure that projects minimize adverse impacts on surrounding uses and neighborhoods, reduce impacts on the natural environment, enhance the visual quality of development and ensure the provision of adequate and cost-efficient public facilities. Intended uses include wholesaling, industrial services, research laboratories, and light manufacturing needed to support the community and region at large, as shown in Table 50-19.8;

TABLE 50-15.5-1 MU-B DISTRICT DIMENSIONAL STANDARDS		
		SETBACKS, MINIMUM
Minimum depth of front yard	General	25 ft.
	Lots with less than 250 ft. average depth	Larger of 10 ft. or 10% of lot depth
Minimum width of side yard	Adjacent to residential use or district	6 ft.
	General	0 ft.
Minimum depth of rear yard	Adjacent to residential use or district	10 ft.
	General	0 ft.
BUILDING STANDARDS		
Maximum height of building	General	60 ft.
	Within 200 ft. of R-1 district	35 ft.
	Within 200 ft. of R-2 district	50 ft.
Section 50.21 <i>Dimensional standards</i> contains additional regulations applicable to this district.		

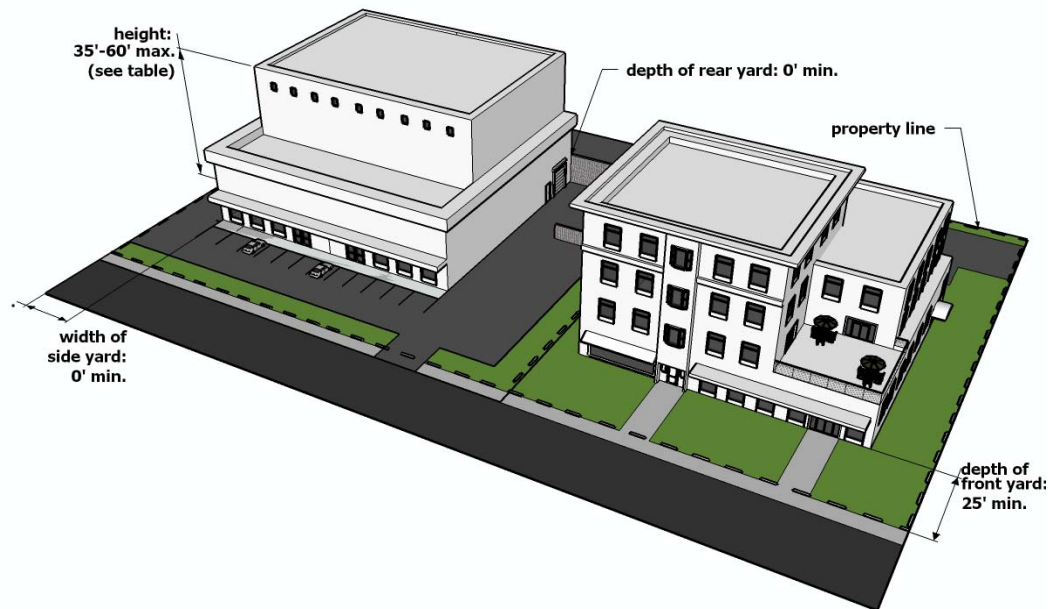
B. Example.

MU-B Example Building Forms



C. Illustration.

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D. Development standard.

In portions of the MU-B zone district developed after May 7, 1979, (a) all truck loading, unloading, and maneuvering areas shall be constructed in side or rear yard areas with a durable dust free material having a smooth hard surface, and shall be defined on all sides by raised cast-in-place concrete curbs, and (b) all truck loading, unloading, and maneuvering operations shall be conducted so that no truck movement interferes with ingress or egress of traffic on a street and no truck shall be required to back into loading areas from a street.

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50-15.6 Mixed Use-Waterfront (MU-W) (formerly part of I-W Waterfront).

A. Purpose.

The MU-W district is intended to provide for waterfront-dependent commercial uses and medium to high density residential development. Intended non-residential uses include visitor-related retail and services, lodging, recreational facilities and maritime uses, as well retail and service uses that take advantage of the waterfront setting, as shown in Table 50-19.8. Development may include horizontal or vertical mixed use, and should facilitate transit and pedestrian connections between developments and the surrounding areas and community;

TABLE 50-15.6-1 MU-W DISTRICT DIMENSIONAL STANDARDS		
LOT STANDARDS		
Minimum lot area per family	Townhouse or live-work dwelling	2,200 sq. ft.
	Multi-family	500 sq. ft.
	Efficiency unit	380 sq. ft.
Minimum lot frontage		50 ft.
SETBACKS, MINIMUM		
Minimum depth of front yard		0 ft.
Minimum width of side yard	Non-residential use adjacent to residential district or use	15 ft.
	Non-residential use adjacent to non-residential district or use	0 ft.
	Multi-family adjacent to single-family district or use	10 ft.
	Multi-family adjacent to multi-family district or use	0 ft.
Minimum depth of rear yard		25 ft.
BUILDING STANDARDS		
Maximum height of building	Residential or mixed use	120 ft.
	Non-residential	45 ft.
	Within 200 ft. of R-1 district	35 ft.
	Within 200 ft. of R-2 district	50 ft.
Section 50.21 <i>Dimensional standards</i> contains additional regulations applicable to this district.		

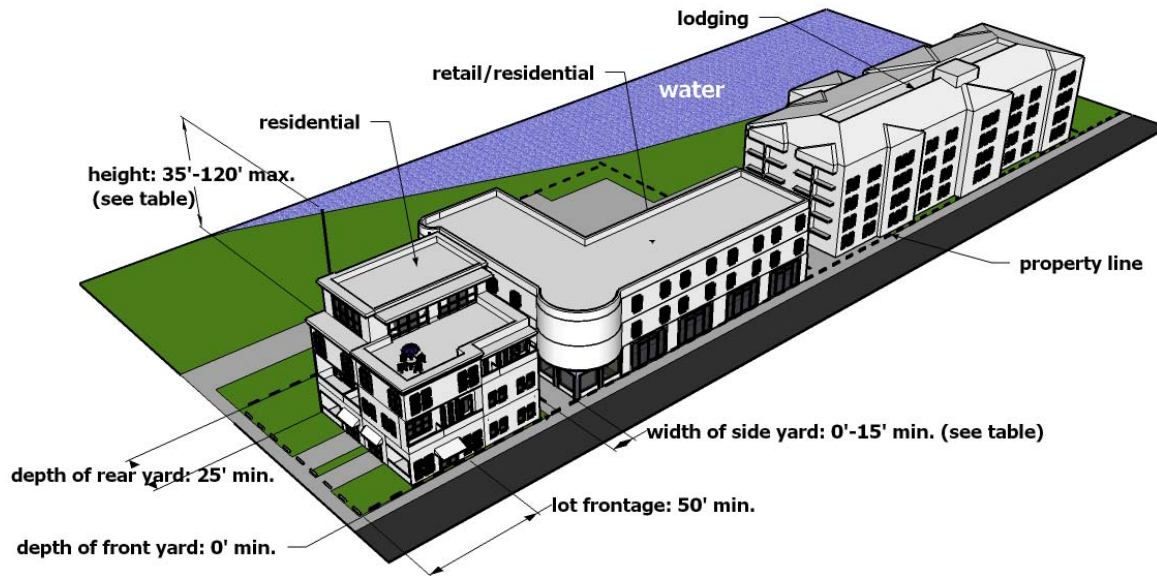
B. Example.

MU-W Example Building Forms



PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

C. Illustration.



D. Planning commission approval required.

A planning review by the planning commission, pursuant to the procedures in Article 5, shall be required for all development, redevelopment and expansions in the MU-W district, including but not limited to construction of driveways or other access from public streets and construction of off-premises signs, but excluding the following:

1. Building construction or expansion of less than 500 square feet in area;
2. Building renovations that affect the exterior of structures that do not result in an increase in building square footage;
3. Grading and construction of parking areas less than 3,000 square feet.

Development may not proceed until the planning commission has approved the project through planning review;

E. Development standards.

All permitted development in the MU-W shall comply with the following development standards:

1. Proposed development shall be visually and functionally oriented toward the waterfront of Lake Superior, the harbor and the St. Louis River to the maximum extent possible so that users of buildings and associated outdoor areas have direct views and physical access to the waterfront;

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2. To protect public views to the waterfront from the closest landward public street running approximately parallel to the water, all primary structures shall have a maximum width of 200 feet measured along the shoreline and shall be separated from other primary structures by a minimum of 50 feet. These requirements shall not apply to portions of buildings that do not block public views of Lake Superior, the harbor and the St. Louis River from the closest landward public street running approximately parallel to the water due to topography or the location;
3. Buildings shall have a primary façade, with a functioning entrance for residents, employees or patrons facing the waterfront, and a second primary façade with a similar functioning entrance facing at least one of the adjacent streets, to the maximum extent feasible;
4. The quality of façade design and materials and the level of detail on the building façade facing the water shall be comparable to that on any other building façade containing a functioning entrance. The building façade facing the water shall have at least 70% transparency, measured as set forth in Section 50-22.5D.1; no rectangular area greater than 30% of each story of the façade facing the water may be windowless, as measured from floor to floor, and no horizontal distance greater than 15 feet of each story of a facade facing the water may be windowless;
5. The parking requirements in Section 50-24 shall be met, except that where a property is not adjacent to an R zone district, the required parking may be reduced by 30% if the applicant can demonstrate that nearby properties provide supplemental on-street or off-street parking.

50-16 Form districts.

50-16.1 General purposes of form districts.

Nine new districts were created for those areas within the city to be regulated by form-based coding. Sections 50-16.2 through 50-16.10 below contain brief descriptions of each of the form districts. Section 50-22, *Building form standards*, provides additional information that applies to these districts and regulates the types of buildings, development and rezoning permitted in each district.

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50-16.2 Form District 1 (F-1) low-rise neighborhood shopping (new district).

A. Purpose.

The F-1 District consists of only one building type, Main Street Building I. This district is meant to be mapped within the East Superior Street study area (Lakeside/Lester Park) along the commercial nodes that take the form of traditional mixed use development. Main Street Building I has a build-to zone of between 0 and 15 feet, that allows the building to either be built adjacent to the sidewalk or set back further on the lot to match its surrounding residential context. This building type also requires a high amount of transparency on the ground floor. Permitted and special uses are shown in Table 50-19.8;

		Form Districts								
		F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9
Building Types	Main Street Building I	•	•							
	Main Street Building II			•	•	•	•			
	Main Street Building III							•	•	
	Corridor Building I		•							
	Corridor Building II				•	•				
	Lakefront Corridor									•
	Corridor Building III								•	
	Cottage Commercial I		•				•			
	Cottage Commercial II				•					
	Iconic Building		•		•	•			•	

B. Example.

F-1 Example Building Forms



C. Illustration.

See Section 50-22 for illustrations of building types permitted in the F-1 district.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

50-16.3 Form District 2 (F-2) low-rise neighborhood mix (new district).

A. Purpose.

The F-2 District permits Main Street Building I, Corridor Building I, Cottage Commercial Building I and the Iconic Building. This district was designed for both the East Superior Street (Lakeside/ Lester Park) and London Road (12th to 21st avenues East) study areas, and is meant to serve as a mixed use, neighborhood-scale commercial district. Corridor Building I is better suited for office or residential (apartment) uses. Due to its residential character, Cottage Commercial I is well suited to commercial uses that may occur adjacent to a residential area. Permitted and special uses are shown in Table 50-19.8;

		Form Districts								
		F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9
Building Types	Main Street Building I	•	•							
	Main Street Building II			•	•	•	•			
	Main Street Building III							•	•	
	Corridor Building I		•							
	Corridor Building II				•	•				
	Lakefront Corridor									•
	Corridor Building III								•	
	Cottage Commercial I		•				•			
	Cottage Commercial II				•					
	Iconic Building		•		•	•				•

B. Example.

F-2 Example Building Forms



C. Illustration.

See Section 50-22 for illustrations of building types permitted in the F-2 district.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

50-16.4 Form District 3 (F-3) mid-rise community shopping (new district).

A. Purpose.

Several pockets within the West Duluth (Grand Avenue and Central Avenue) and Canal Park study areas contain older mixed use buildings, with retail or office uses on the ground floor and office or residential uses on the upper floors. F-3: Main Street Building II was created to preserve this style of development and provide standards for future infill development to emulate the style as well. Main Street Building II has a small build-to zone, requiring the building to be constructed fairly close to the front property line. Permitted and special uses are shown in Table 50-19.8;

		Form Districts								
		F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9
Building Types	Main Street Building I	•	•							
	Main Street Building II			•	•	•	•			
	Main Street Building III							•	•	
	Corridor Building I		•							
	Corridor Building II				•	•				
	Lakefront Corridor									•
	Corridor Building III								•	
	Cottage Commercial I		•				•			
	Cottage Commercial II				•					
	Iconic Building		•		•	•			•	

B. Example.

F-3 Example Building Forms



C. Illustration.

See Section 50-22 for illustrations of building types permitted in the F-3 district.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

50-16.5 Form District 4 (F-4) mid-rise community mix (new district).

A. Purpose.

Portions of the West Duluth study area (Grand Avenue and Central Avenue) either contain auto-oriented development or a mixture of different building types. The F-4 District was created for those areas within West Duluth that are not strictly comprised of mixed use buildings. These areas are often transitional in nature, as the study area switches from commercial to residential. The integration of Corridor Building II and Cottage Commercial II will assist in stepping down the intensity as the district approaches residential neighborhoods. Permitted and special uses are shown in Table 50-19;

		Form Districts								
		F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9
Building Types	Main Street Building I	•	•							
	Main Street Building II			•	•	•				
	Main Street Building III							•	•	
	Corridor Building I		•							
	Corridor Building II				•	•				
	Lakefront Corridor									•
	Corridor Building III								•	
	Cottage Commercial I		•				•			
	Cottage Commercial II				•					
	Iconic Building		•		•	•			•	

B. Example.

F-4 Example Building Forms



C. Illustration.

See Section 50-22 for illustrations of building types permitted in the F-4 district.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

50-16.6 Form District 5 (F-5) mid-rise community shopping and office (new district).

A. Purpose.

The F-5 District is applied to both the West Superior Street study area (Lincoln Park) and the transitional areas surrounding Downtown, including Canal Park and Central Hillside (Second Street from Sixth Avenue West to Third Avenue East). These areas consist of a combination of traditional mixed use buildings and office buildings, which conform to the style of Main Street Building II and Corridor Building II. Permitted and special uses are shown in Table 50-19.8;

		Form Districts								
		F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9
Building Types	Main Street Building I	•	•							
	Main Street Building II			•	•	•	•			
	Main Street Building III							•	•	
	Corridor Building I		•							
	Corridor Building II				•	•				
	Lakefront Corridor									•
	Corridor Building III								•	
	Cottage Commercial I		•				•			
	Cottage Commercial II				•					
	Iconic Building		•		•	•			•	

B. Example.

F-5 Example Building Forms



C. Illustration.

See Section 50-22 for illustrations of building types permitted in the F-5 district.

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50-16.7 Form District 6 (F-6) mid-rise neighborhood shopping (new district).

A. Purpose.

This district was created to respond to the commercial nodes present in the Central Hillside neighborhood (14th Street from Mesaba Avenue to Third Avenue East). These nodes are separated by residential developments, which were not included in the study area. Main Street Building II and Cottage Commercial Building I provide flexibility in the style of commercial building, with the Cottage Commercial building type especially applicable when it's located adjacent to residential development. Permitted and special uses are shown in Table 50-19.8;

		Form Districts								
		F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9
Building Types	Main Street Building I	•	•							
	Main Street Building II			•	•	•	•			
	Main Street Building III							•	•	
	Corridor Building I		•							
	Corridor Building II				•	•				
	Lakefront Corridor									•
	Corridor Building III								•	
	Cottage Commercial I		•				•			
	Cottage Commercial II				•					
	Iconic Building		•		•	•				•

B. Example.

F-6 Example Building Forms



C. Illustration.

See Section 50-22 for illustrations of building types permitted in the F-6 district.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

50-16.8 Form District 7 (F-7) downtown shopping (new district).

A. Purpose.

To preserve the historic mixed use core of Downtown, F-7 was created to be applied in specific areas along Superior Street. This district permits only Main Street Building III, which seeks to codify the existing urban structure of the heart of Downtown. The building type requires a storefront on the ground floor and that the building be located adjacent to the sidewalk. The F-7 and F-8 districts also permit the highest intensity development, with a maximum height along Superior Street of 15 stories. Permitted and special uses are shown in Table 50-19.8;

		Form Districts								
		F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9
Building Types	Main Street Building I	•	•							
	Main Street Building II			•	•	•	•			
	Main Street Building III							•	•	
	Corridor Building I		•							
	Corridor Building II				•	•				
	Lakefront Corridor									•
	Corridor Building III								•	
	Cottage Commercial I		•				•			
	Cottage Commercial II				•					
	Iconic Building		•		•	•			•	

B. Example.

F-7 Example Building Forms



C. Illustration.

See Section 50-22 for illustrations of building types permitted in the F-7 district.

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50-16.9 Form District 8 (F-8) downtown mix (new district).

A. Purpose.

F-8 applies to other Downtown areas not included in the F-7 district. The district provides slightly more flexibility in building form than does F-7, as it permits both Main Street Building III and Corridor Building III for office and residential uses. Permitted and special uses are shown in Table 50-19.8;

		Form Districts								
		F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9
Building Types	Main Street Building I	•	•							
	Main Street Building II			•	•	•	•			
	Main Street Building III							•	•	
	Corridor Building I		•							
	Corridor Building II				•	•				
	Lakefront Corridor									•
	Corridor Building III								•	
	Cottage Commercial I		•				•			
	Cottage Commercial II				•					
	Iconic Building		•		•	•			•	

B. Example.

F-8 Example Building Forms



C. Illustration.

See Section 50-22 for illustrations of building types permitted in the F-8 district.

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50-16.10 Form District 9 (F-9) Canal Park Lakefront (new district).

A. Purpose.

F-9 applies specifically to the east side of Canal Park Drive, addressing the parcels currently occupied by hotels. This district is unique in that the parcels are deep and front both Lake Superior and Canal Park Drive. The Lakefront Corridor Building was developed specifically for these locations, requiring frontage on both sides with enough depth to nestle parking in between the buildings. Views through these parcels to the lake are also addressed with view corridors. Permitted and special uses are shown in Table 50-19.8;

		Form Districts								
		F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9
Building Types	Main Street Building I	•	•							
	Main Street Building II			•	•	•	•			
	Main Street Building III							•	•	
	Corridor Building I		•							
	Corridor Building II				•	•				
	Lakefront Corridor									•
	Corridor Building III								•	
	Cottage Commercial I		•				•			
	Cottage Commercial II				•					
	Iconic Building		•		•	•			•	

B. Example.

F-9 Example Building Forms



C. Illustration.

See Section 50-22 for illustrations of building types permitted in the F-9 district.

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50-17 Special purpose districts.

50-17.1 General purposes.

The special purpose zone districts are intended to:

- A. Preserve, protect and promote employment-generating uses;
- B. Create suitable environments for various types of commercial and industrial uses and protect them from the adverse effects of incompatible uses;
- C. Help implement the comprehensive land use plan by accommodating special land uses needed by Duluth’s residents, businesses, visitors and workers;
- D. Encourage site planning, land use planning and architectural design that create an interesting, pedestrian-friendly environment where appropriate;
- E. Minimize potential negative impacts of non-residential development on adjacent residential areas;
- F. Preserve the natural resources of the city.

50-17.2 Industrial-General (I-G) (formerly M-2 Manufacturing District).

A. Purpose.

The I-G district is intended to provide for general- to heavy- impact industrial, processing, assembly, fabrication and manufacturing uses. Office uses are allowed provided they are clearly incidental to and supportive of on-site industrial uses, as shown in Table 50-19.8. The district is intended primarily for locations close to major transportation corridors and active commercial centers. This district should be located away from residential development;

TABLE 50-17.2-1 I-G DISTRICT DIMENSIONAL STANDARDS		
LOT STANDARDS		
Minimum lot area		0 sq. ft.
Minimum lot frontage		0 ft.
SETBACKS, MINIMUM		
Minimum depth of front yard	General	25 ft.
	Lots with less than 250 ft. average depth	Larger of 10 ft. or 10% of lot depth
Minimum width of side yard	General	0 ft.
	Adjacent to residential use or district	15 ft.
Minimum depth of rear yard (ft)	General	0 ft.
	Adjacent to residential use or district	25 ft.
BUILDING STANDARDS		
Maximum height of building	General	60 ft.
	Within 200 ft. of R-1 district	35 ft.
	Within 200 ft. of R-2 district	50 ft.

Section 50.21 *Dimensional standards* contains additional regulations applicable to this district.

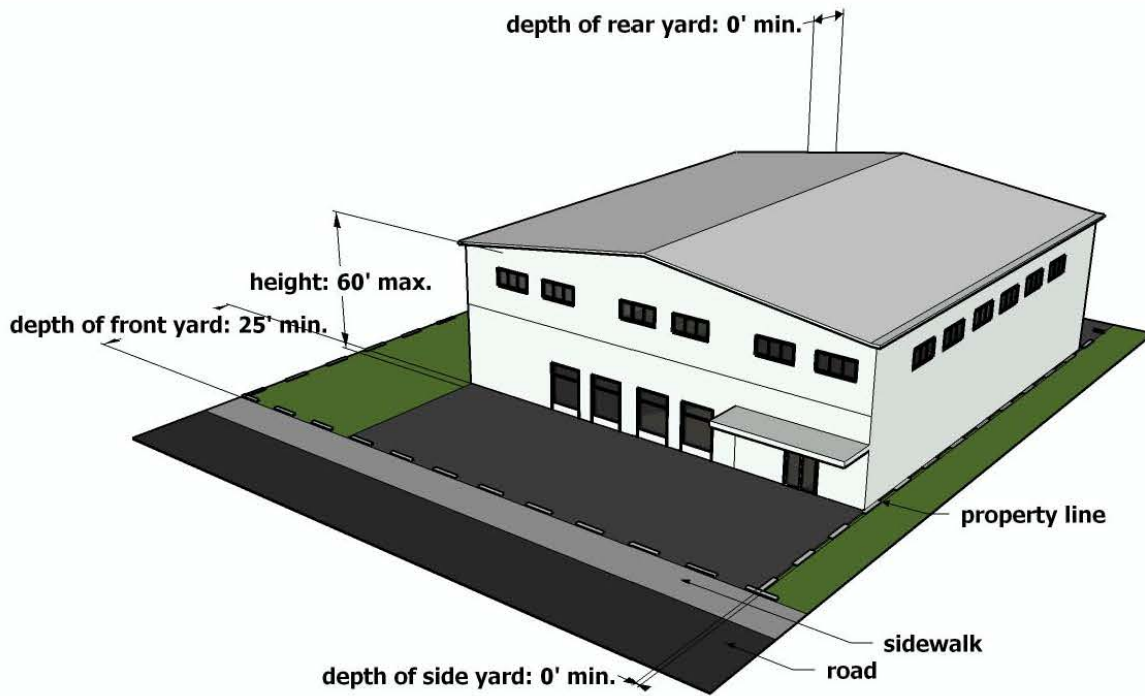
PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

B. Example.

I-G Example Building Form



C. Illustration.



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50-17.3 Industrial-Waterfront (I-W) (formerly part of W-I Waterfront).

A. Purpose.

The I-W district is intended to provide for water-dependent and port-dependent industrial uses as shown in Table 50-19.8. Office uses are allowed provided they are clearly incidental to and supportive of on-site industrial uses. This district should be located away from residential development.

TABLE 50-17.3-1 I-W DISTRICT DIMENSIONAL STANDARDS		
		LOT STANDARDS
Minimum lot area		0 sq. ft.
Minimum lot frontage		0 ft.
SETBACKS, MINIMUM		
Minimum depth of front yard	General	25 ft.
	Lots with less than 250 ft. average depth	Larger of 10 ft. or 10% of lot depth
Minimum width of side yard	General	0 ft.
	Adjacent to residential	15 ft.
Minimum depth of rear yard	General	0 ft.
	Adjacent to residential	25 ft.
BUILDING STANDARDS		
Maximum height of building	General	60 ft.
	Within 200 ft. of R-1 district	35 ft.
	Within 200 ft. of R-2 district	50 ft.

Section 50.21 *Dimensional standards* contains additional regulations applicable to this district.

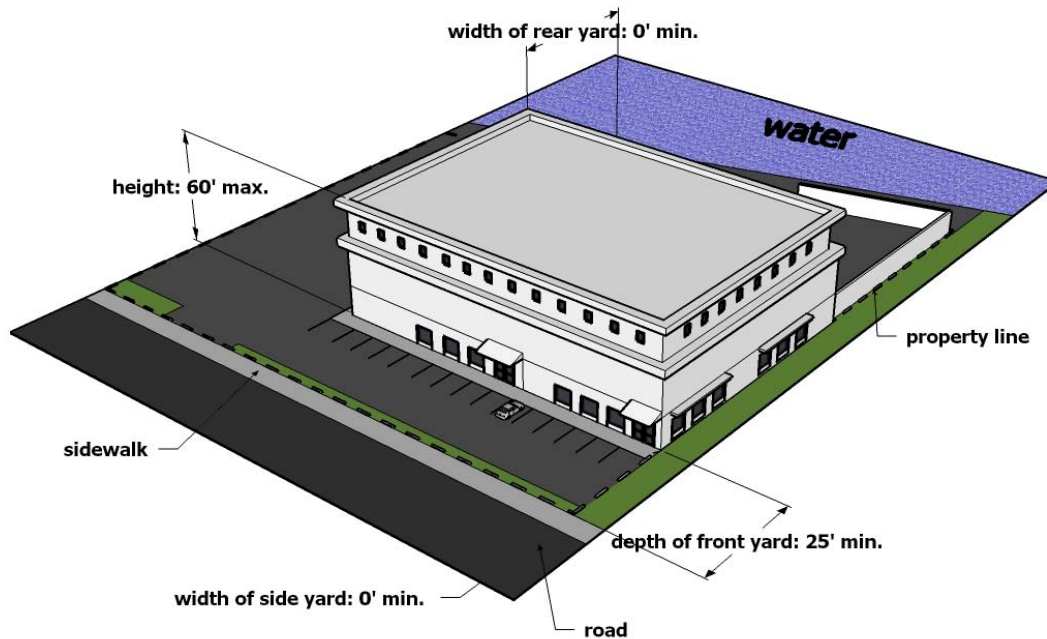
B. Example.

I-W Example Building Form



PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

C. Illustration.



50-17.4 Park and Open Space District (P-1) (new district).

A. Purpose.

The P-1 district is intended to protect and reserve lands for recreational, scenic and natural resource uses. It is intended to be applied to publicly owned land but may be applied to private property with the landowner's written consent. Both passive recreational (e.g., walking paths, picnic tables) and active recreational (e.g., playgrounds, ball fields, tennis courts) uses may be permitted, as shown in Table 50-19.8. Small-scale buildings, structures and development (e.g., parking) that are incidental to and supportive of an approved use may also be permitted. All uses and structures shall be compatible in scale, design and impact with the natural features and character of the land;

**TABLE 50-17.4-1:
P-1 DISTRICT DIMENSIONAL STANDARDS**

LOT STANDARDS	
Minimum lot area	0 sq. ft.
Minimum lot frontage	0 ft.
SETBACKS, MINIMUM	
Minimum depth of front yard	0 sq. ft.
Minimum width of side yard	25 ft.
Minimum depth of rear yard	25 ft.
BUILDING STANDARDS	
Maximum height of building	30 ft.

Section 50.21 *Dimensional standards* contains additional regulations applicable to this district.

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B. Example.

P-1 Example Pictures



50-18 Overlay districts.

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

A. General.

1. Purpose statement.

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

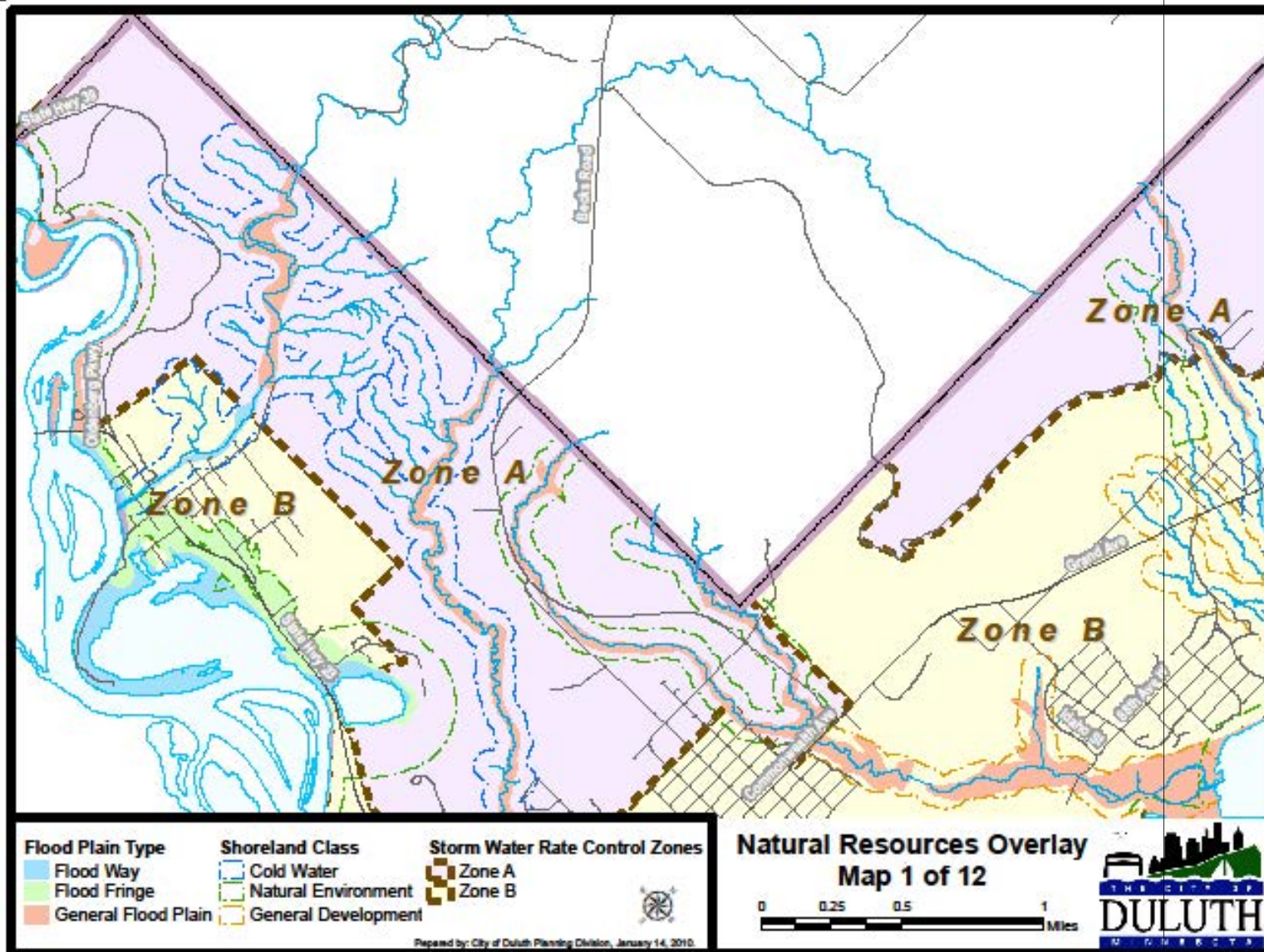
2. NR-O map.

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

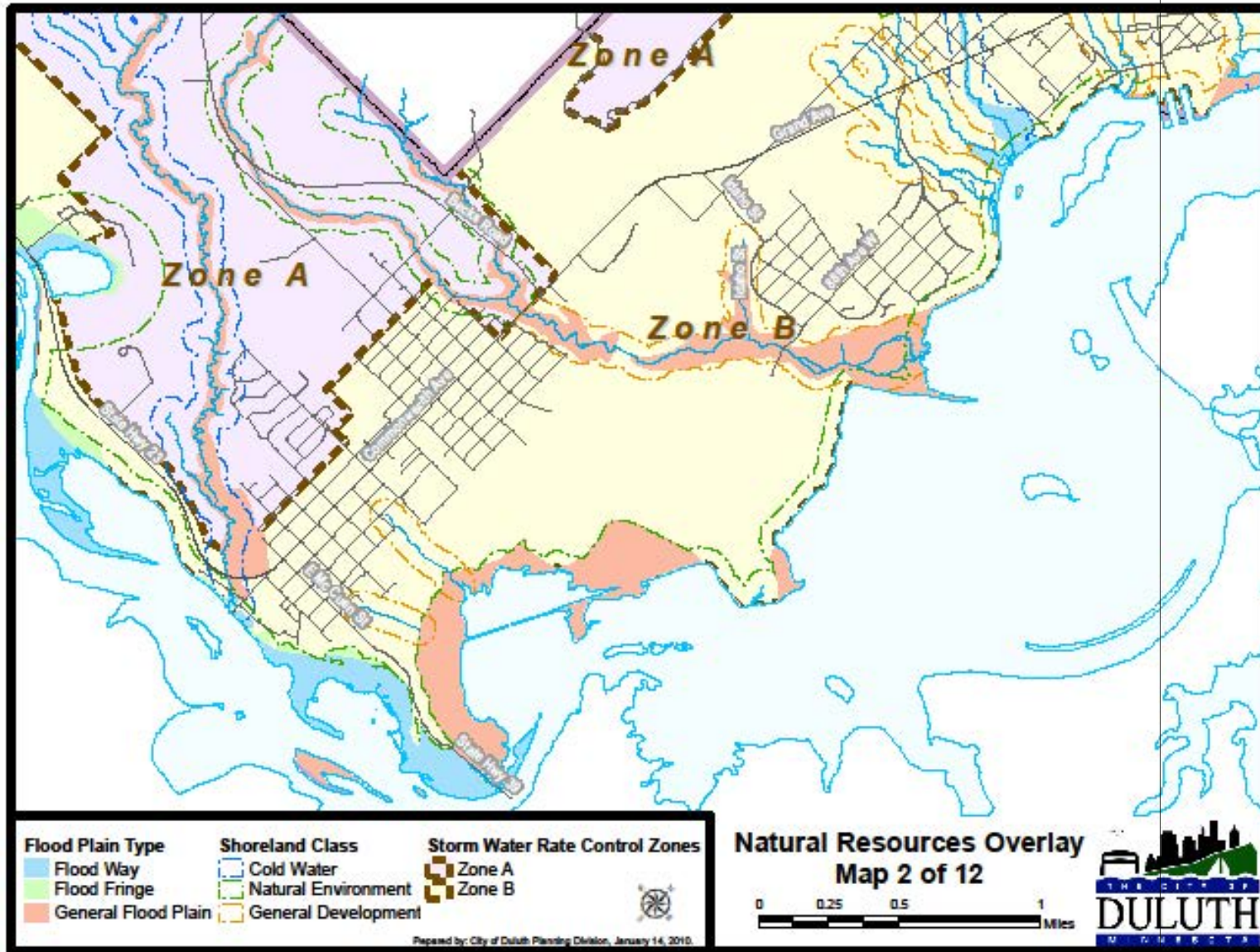
PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

- (a) For wetlands, there is no official wetlands map. All lands in the city that meet the definition of wetlands in Article 6 are considered wetlands for the purposes of this Section. Wetlands shown on the NR-O map are the result of a partial inventory and are shown for public information only;
- (b) For flood plains, the flood boundary and floodway map for Duluth, Minnesota, published with an effective date of February 1, 1980, by the U.S. department of housing and urban development, and all subsequent amendments thereto. Determinations of flood plain status on individual properties shall be made based on the official version of this map on file with the city;
- (c) For shorelands, boundaries shall be based on (i) waters shown as protected on the map and inventory of protected waters in Duluth prepared by the DNR commissioner pursuant to Chapter 199, Laws of Minnesota, 1979, and (ii) selected waters that the city has added to the commissioner's survey as being worthy of shoreland protection. All of these waters are shown on the NR-O map as currently revised as of November 19, 2010;
- (d) Where interpretation is needed as to the exact location of any boundary as shown on an official map, the city engineer shall make the necessary interpretation based on available technical data, and, in the case of flood plains, based particularly on elevations on the regional flood profile or hydraulic modeling data;
- (e) The NR-O map may be amended in the future, and any revisions shall become effective upon adoption of the revised NR-O map as an amendment to this Chapter.

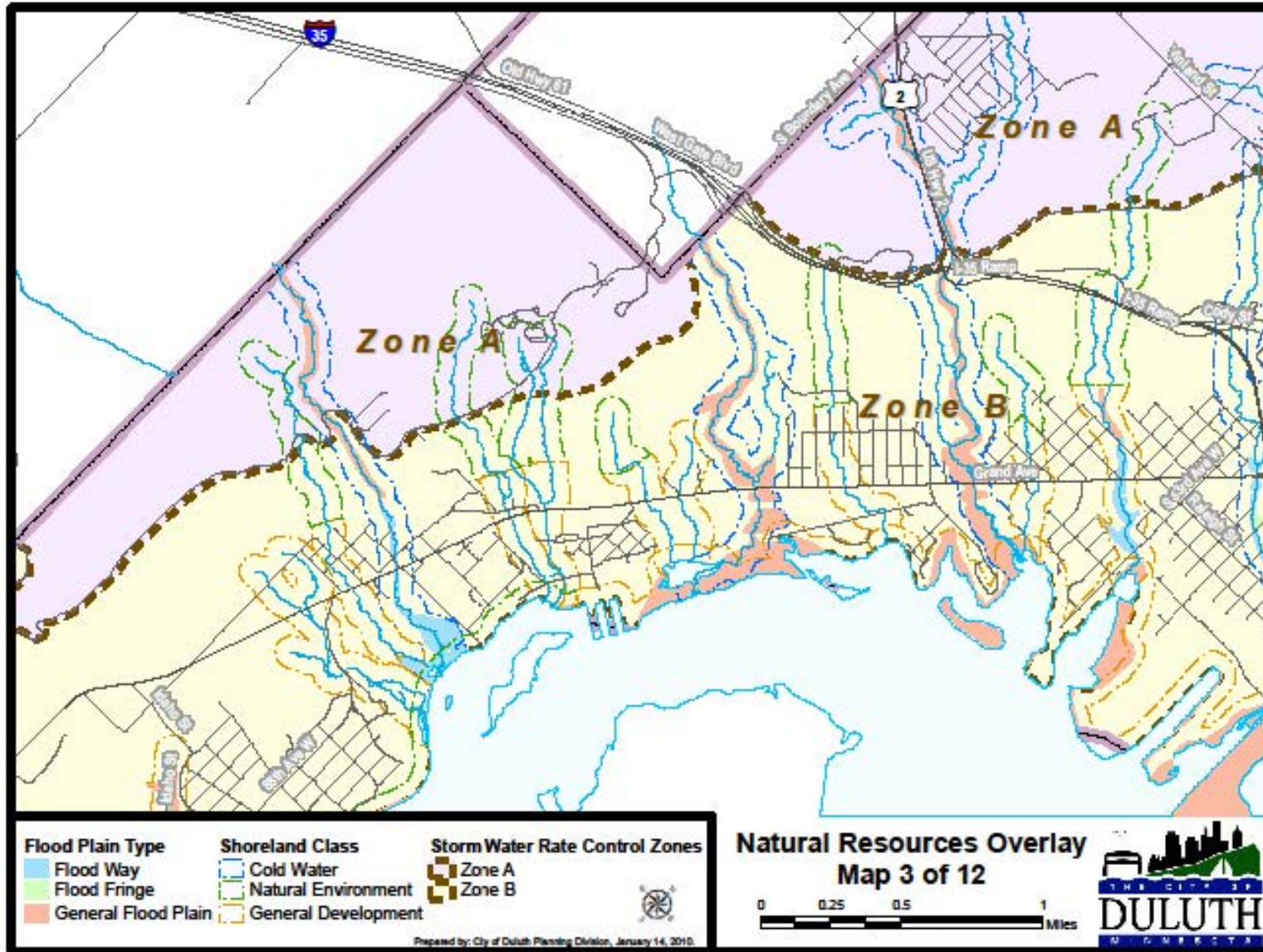
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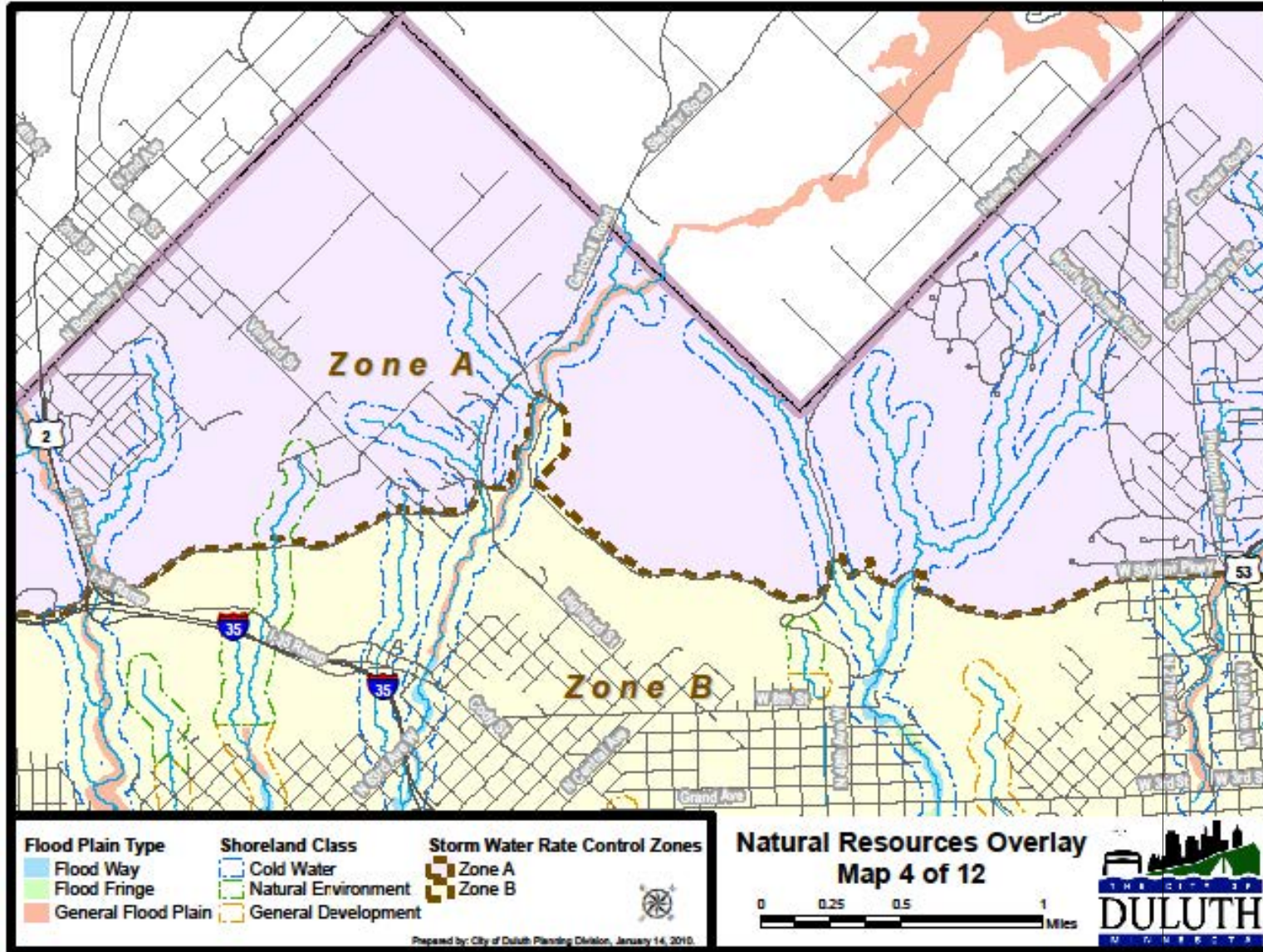
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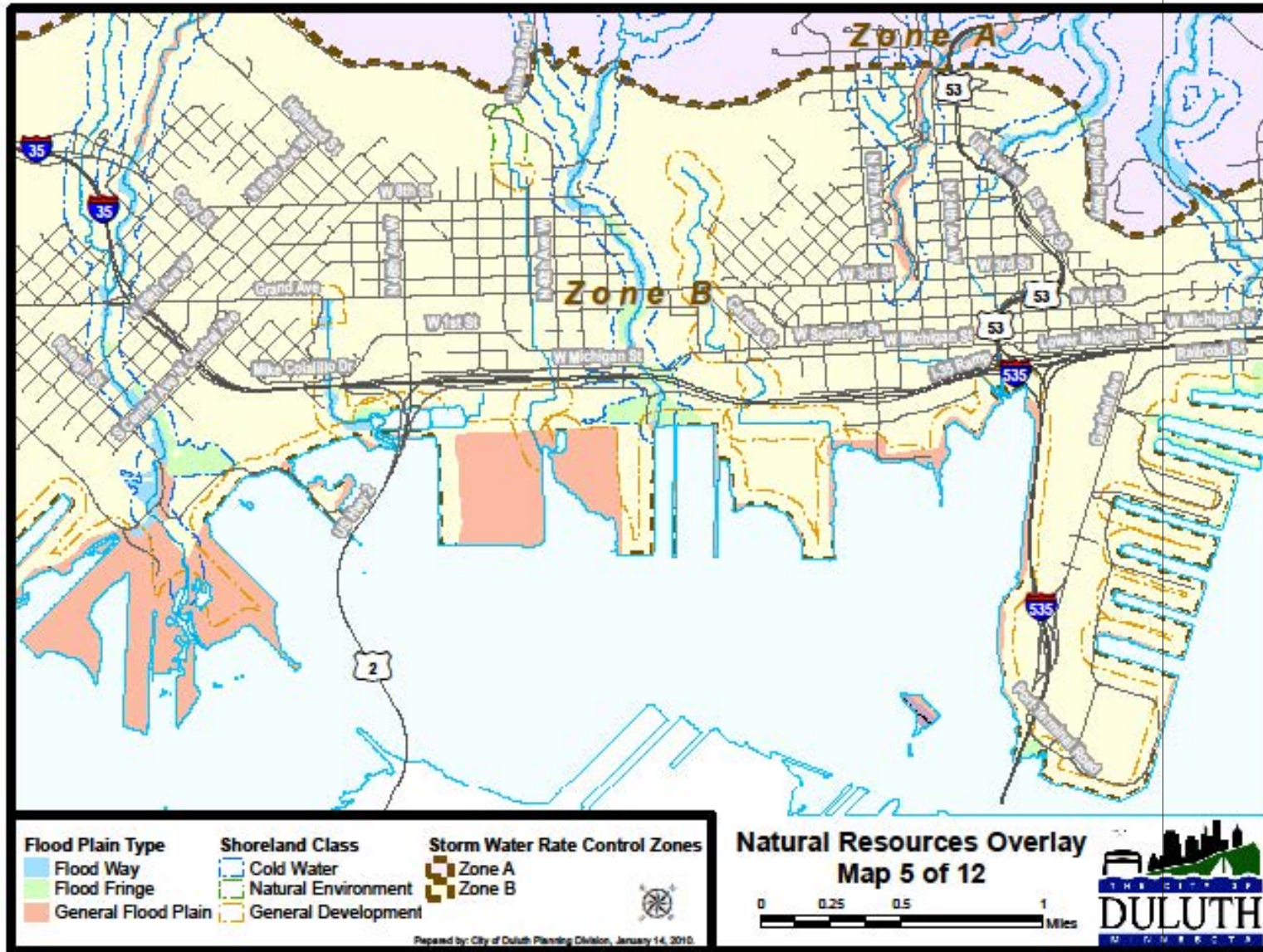
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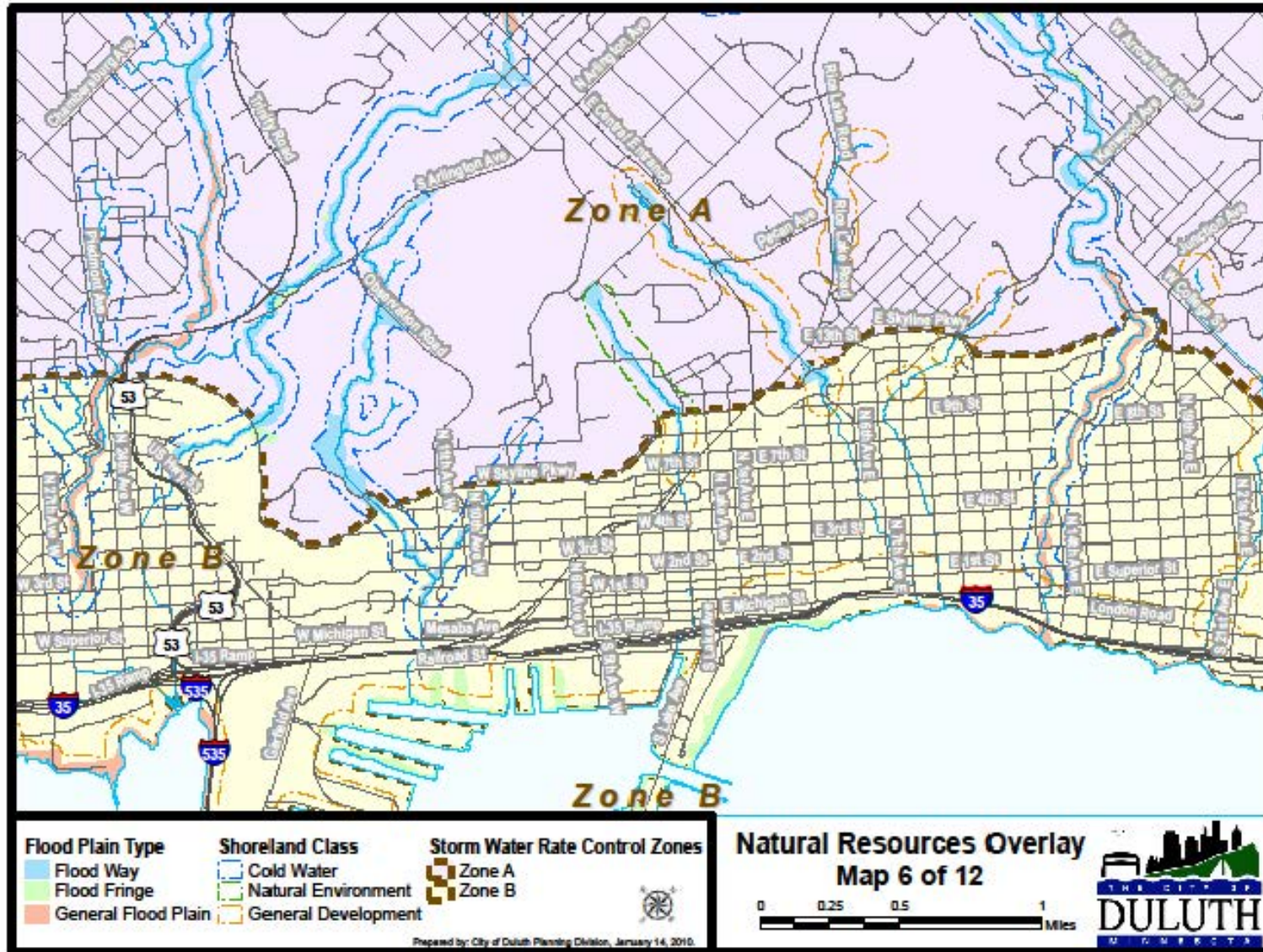
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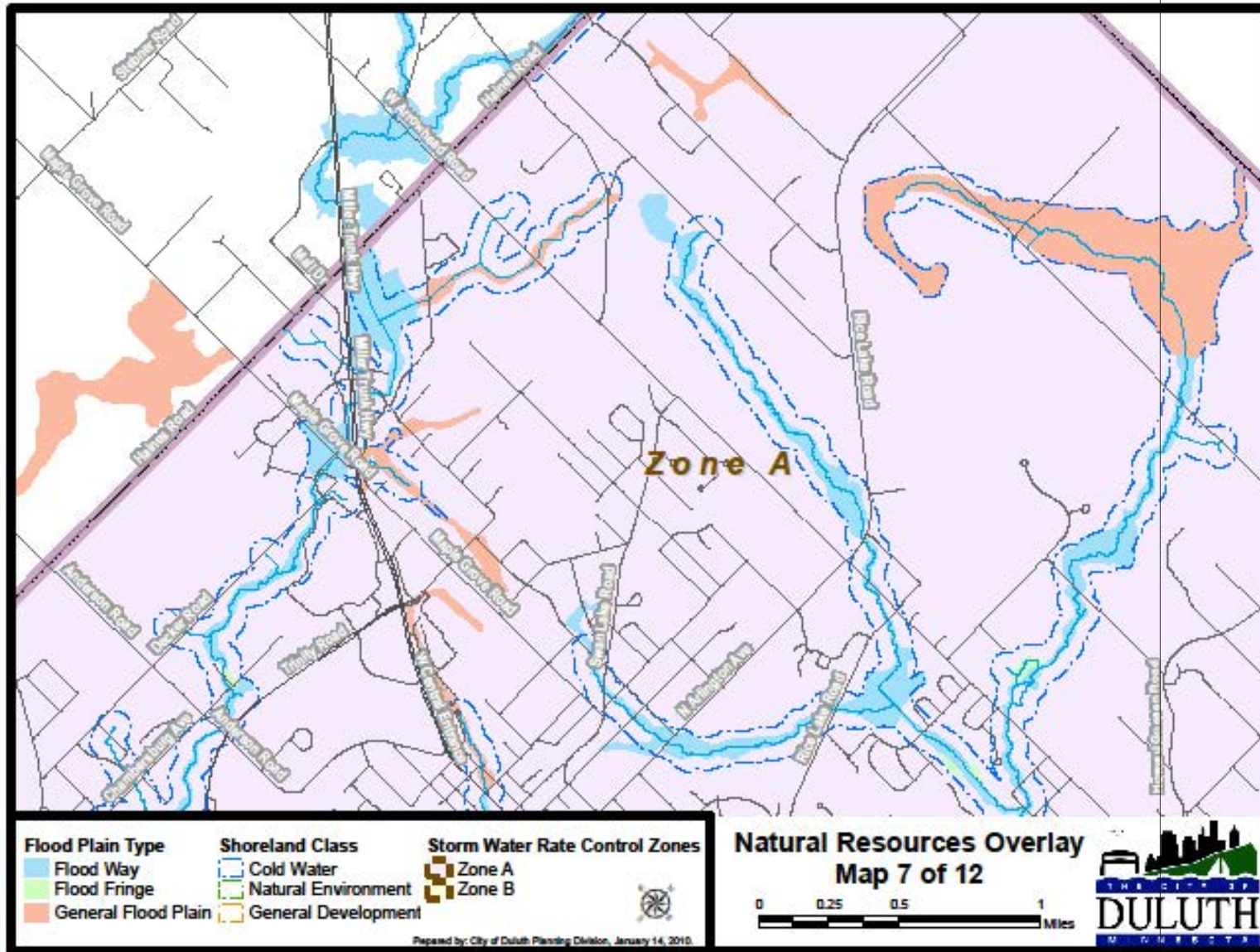
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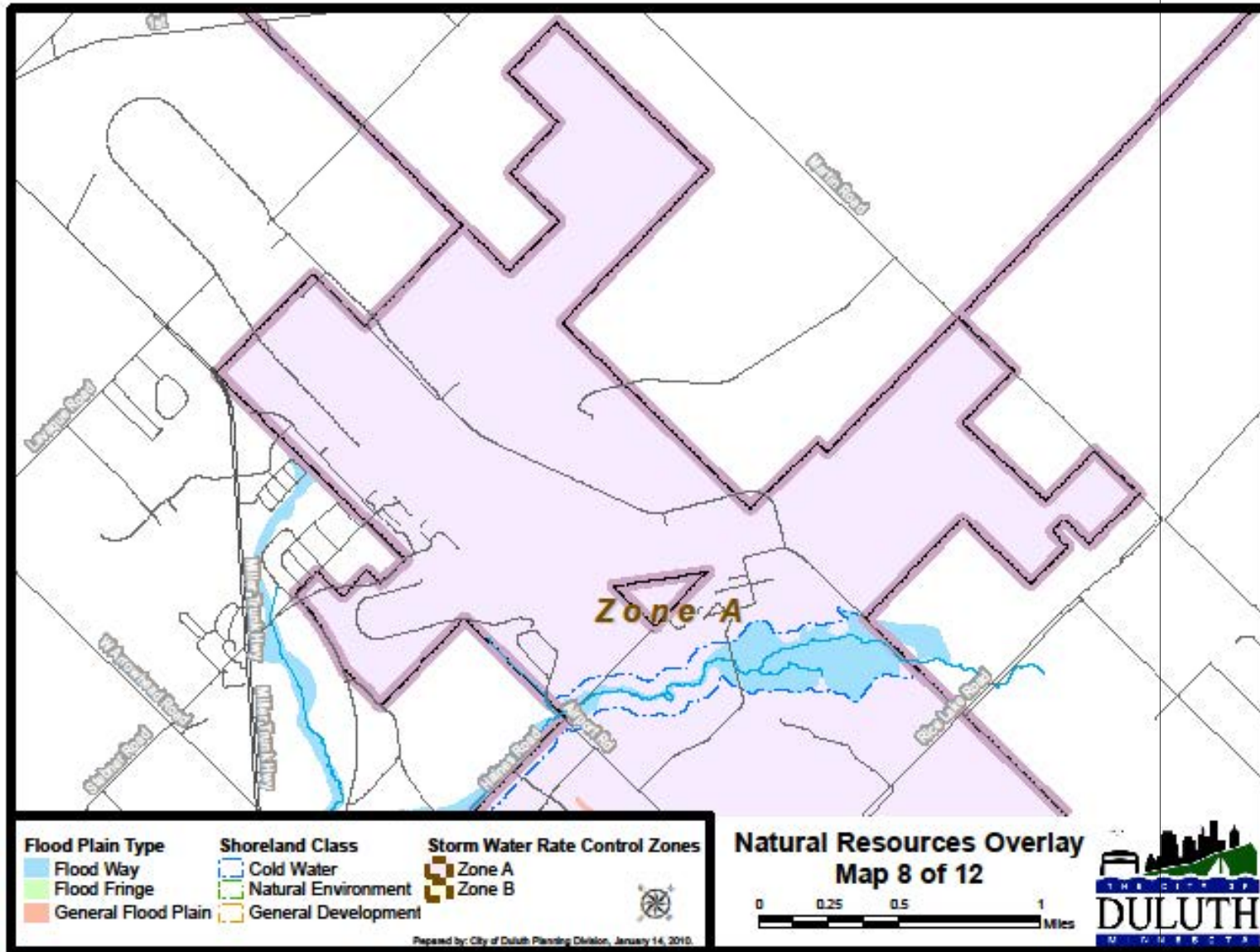
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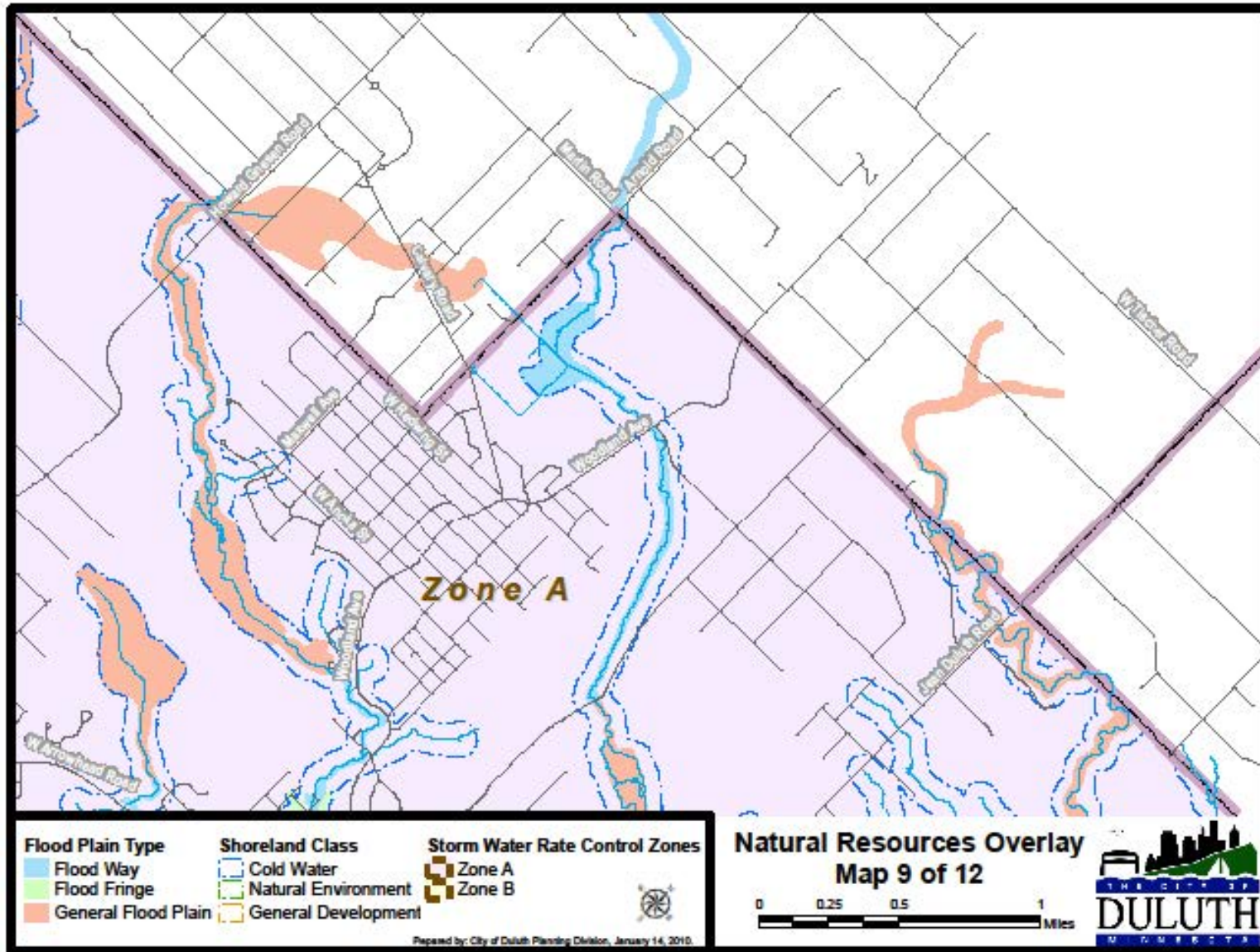
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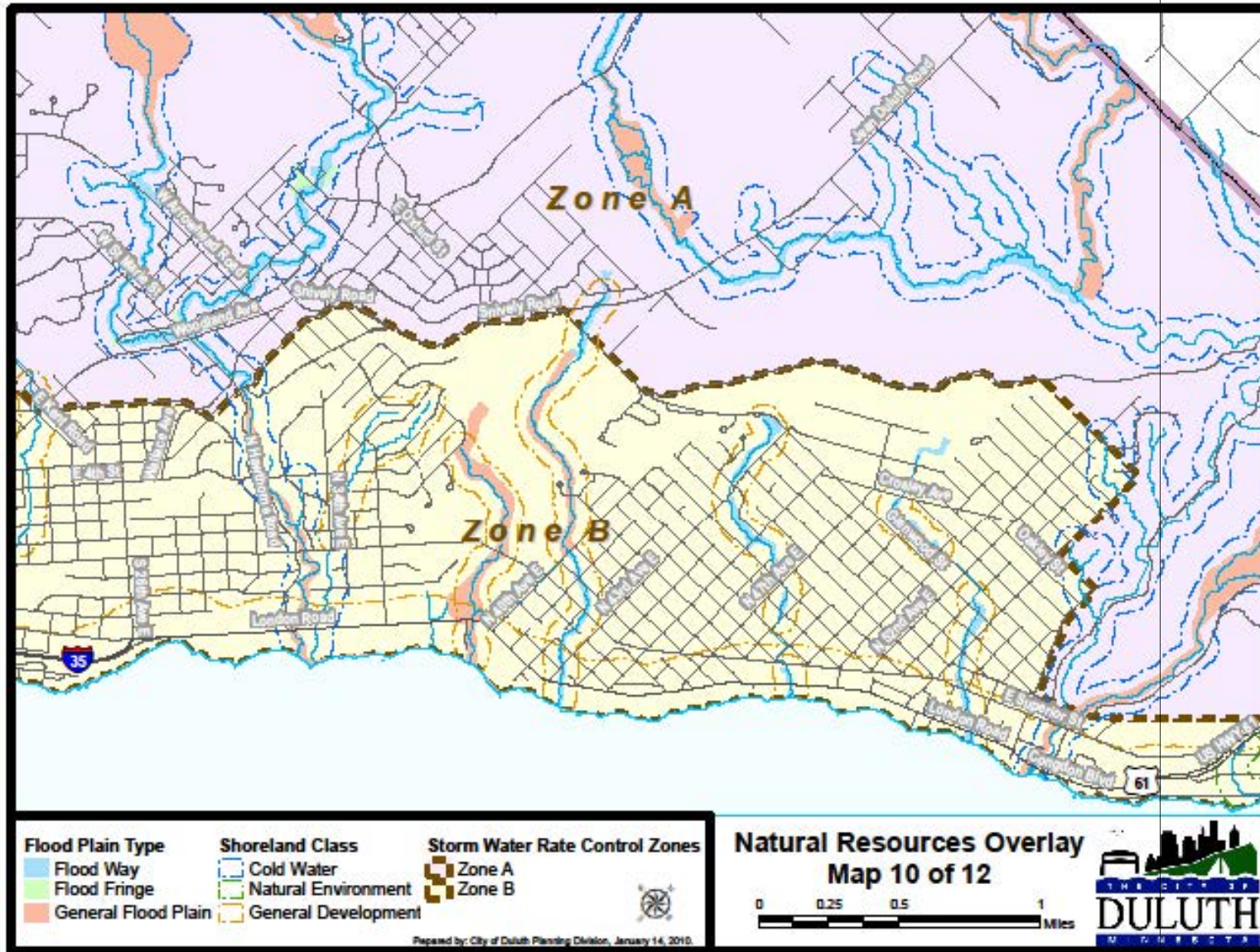
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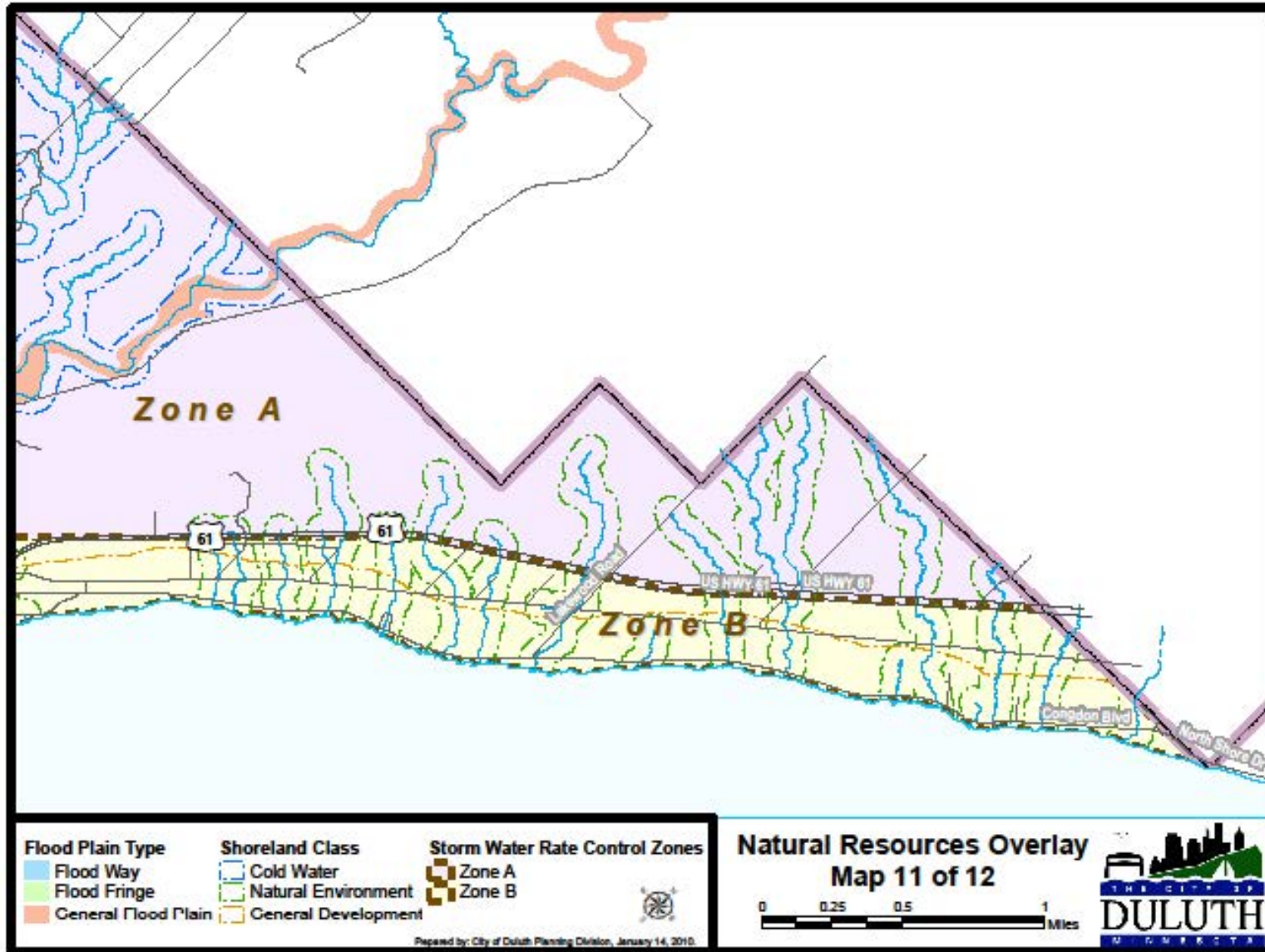
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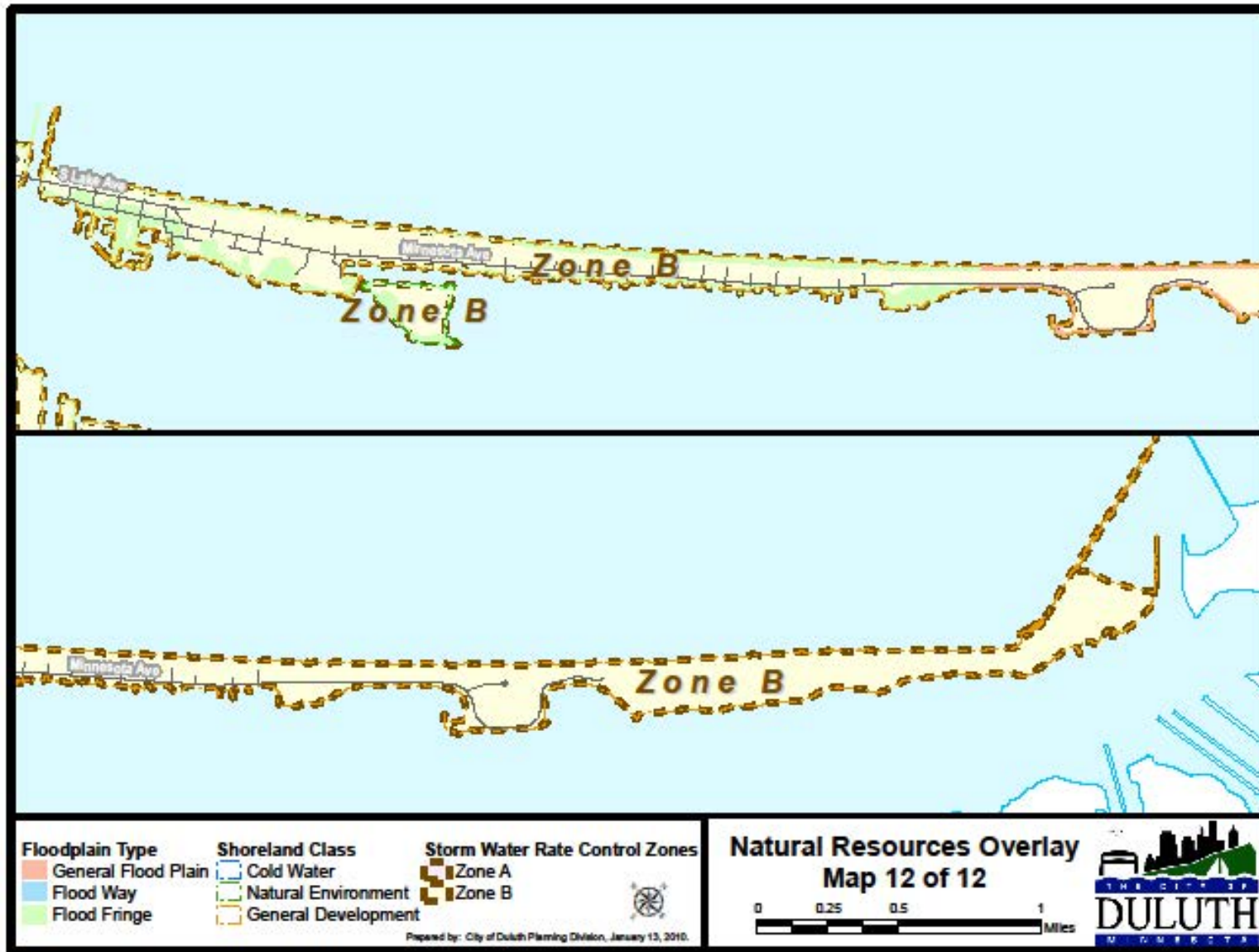
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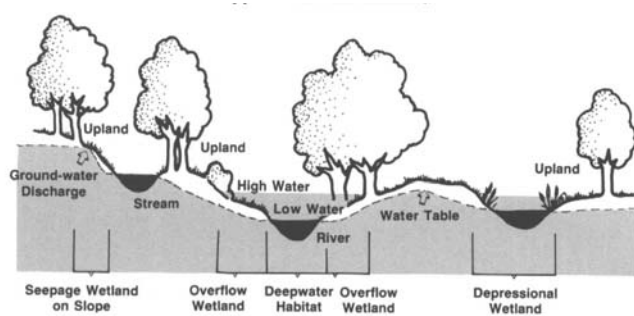


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B. Wetlands.

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



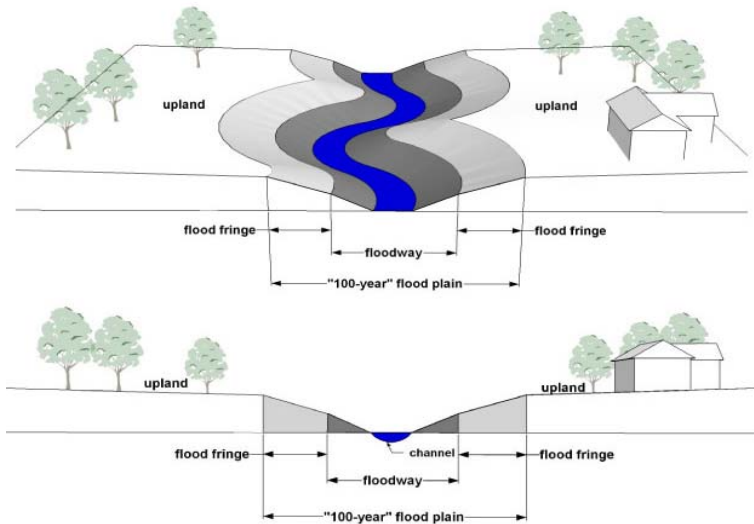
Graphic taken from *Floodplain Management in the United States: An Assessment Report*, prepared for the Federal Interagency Floodplain Management Task Force 1992.

Figure 50-18.1-1: Typical Inland Wetland

1. Partial inventory and mapping of city wetlands has been completed and the results of those surveys and inventories are shown on the NR-O map. The wetlands information on the map is provided for public information only, and the actual existence or absence of wetlands will be determined on a case-by-case basis;
2. In unmapped areas, the building official shall require each permit applicant to specify on the permit application whether or not the proposed site contains wetlands. Regardless of the answer given, if the building official has reasonable grounds to believe the site contains wetlands, the official shall make a determination as to the existence of wetlands. In making that determination, the building official may require any of the following:
 - (a) Require the applicant to submit to submit a complete wetland delineation as outlined in WCA and performed by a professional wetland delineator, including information such as soil analysis, surveys of vegetation and engineering or hydrological data, to aid in the determination;
 - (b) Conduct a site inspection and evaluation;
 - (c) Consult with the city engineer, St. Louis County Soil and Water Conservation District, Board of Water and Soil Resources, and other available wetland experts;
 - (d) Use any other reasonable method to determine if the site contains wetlands;

C. Flood plains.

This Section shall apply to all lands within the city that are shown as flood plains on the NR-O map. All lands within flood plains shall be divided into floodway districts, flood fringe districts, or general flood plain districts. For purposes of relating those districts to plats and lots within the city, the NR-O map shall be used as a working map in the administration of the flood plain controls unless it is clearly shown that there is an inconsistency between the flood boundary and floodway map and said NR-O Map, in which case the flood boundary and floodway map shall control.



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

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

1. Compliance.

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

2. Uses and special use permits – floodway.

(a) Permitted uses.

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

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structures, fill, obstructions, excavations or storage of materials or equipment:

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

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

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

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

- (i) The proposed use or structure will not cause any increase in the stage of the 100-year or regional flood or cause an increase in flood damages in the reach or reaches affected;
- (ii) Any fill deposited in the floodway shall be no more than the minimum amount necessary to grade or landscape, shall not in any way obstruct the flow of flood waters and shall be protected

from erosion by the planting of vegetative ground cover, the use of rip rap or other method approved by the city;

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

3. Uses and special use permits – flood fringe.

(a) Permitted uses.

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

- (i) All structures, including accessory structures, shall be elevated so that a structure's lowest floor is above the regulatory flood

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protection elevation. The structure's design and as-built condition in relation to the regulatory flood protection elevation must be certified by a professional engineer or architect licensed in Minnesota;

- (ii) Any non-residential basements below the regulatory flood protection elevation will be structurally dry floodproofed in accordance with the State Building Code;
 - (iii) As an alternative to elevation, accessory structures that constitute a minimal investment and that do not exceed 500 square feet may be internally floodproofed in accordance with Section C.2(c)(iv) and (v) above;
 - (iv) Any placement of fill with a cumulative volume in excess of 1,000 cubic yards at any one time may only be used to elevate a structure in accordance with this subsection (a);
 - (v) Any stored materials or equipment shall be elevated on fill to the regulatory flood protection elevation;
- (b) Special uses.

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

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

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

and all supporting data and analyses to FEMA, the DNR or the planning commission for review and comment. Once the floodway and flood fringe district boundaries have been determined, and assuming the proposed use is allowed in the area where it is proposed, the city council shall refer the matter to staff who shall process the permit application consistent with the applicable provisions of this Section 50-18.1.C;

5. Public utilities, railroads, roads and bridges.

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

D. Shorelands.

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

1. Shoreland permit required .

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

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

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2. Standards for shoreland permit.

- (a) Erosion and sediment control technologies shall be required for any land disturbing activity that disrupts a surface area of 3,000 square feet or more;
- (b) Grading and filling of more than 250 square feet or placement of more than ten cubic yards of material within the shore impact zone shall only be permitted if a plan for erosion control, storm water management and shoreline buffer restoration is approved by the city and effectively implemented;
- (c) Impervious surfaces shall be designed and constructed to minimize and control runoff and erosion into the regulated waters;
- (d) Any removal of natural vegetation shall be designed to prevent erosion into regulated waters and to preserve shoreland aesthetics;
- (e) Removal of trees or shrubs in a contiguous patch, strip, row or block is prohibited in shore impact zones;
- (f) The project does not result in the proposed building being located in a shore or bluff impact zone;
- (g) Natural vegetation shall be restored to the extent feasible after any project is complete;

3. Dimensional standards.

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

4. Uses and special use permits.

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

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Table 50-18.1.D-1: Minimum Shoreland Area Standards			
Standards	General Development Waters ^[1]	Natural Environmental Waters	Coldwater River
Minimum setbacks from Ordinary High Water Level or highest known water level, whichever is higher			
<i>Residential structures</i>	75 ft.	150 ft.	200 ft.
<i>Public, institutional, and civic; commercial; and industrial structures</i>	200 ft.	200 ft.	200 ft.
<i>Commercial, mixed use, & industrial structures in the harbor, shown in Figure 50-18.1.-3^[2]</i>	25 ft.	N/A	N/A
<i>Impervious surfaces^[3]</i>	50 ft.	75 ft.	100 ft.
Lowest floor elevation above Ordinary High Water Level or highest known water level, whichever is higher	3 ft.		
Width of naturally vegetative buffer	50 ft.		

[1] All Lake Superior shoreland is classified as general development waters.

[2] 0 ft. setback for grain elevators, cranes, loading bins, and other equipment necessary for loading and unloading, including impervious surface necessary to support these activities.

[3] Public trails no more than 10 ft. wide may be constructed within these setbacks, provided that a minimum amount of natural vegetation is removed and provided that permits are obtained from the DNR and MPCA, if required.

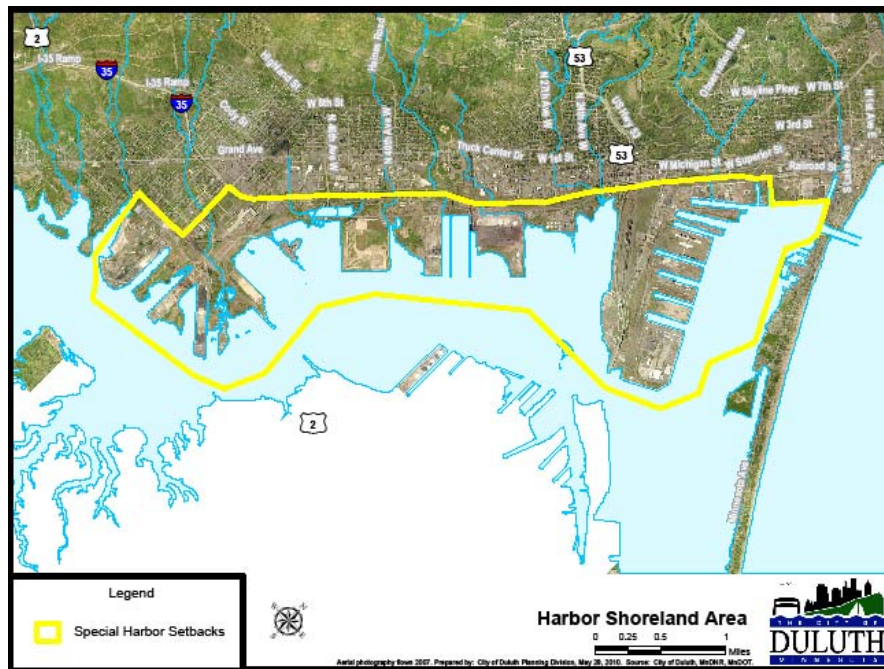


Figure 50-18.1-3

(c) Standards for special use permit:

- (i) Compliance with all development requirements for shorelands in this Section 50-18.1.D;

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- (ii) Prevention of soil erosion, storm water runoff or other possible pollution of public waters, both during and after construction or use;
- (iii) Restoration of the shoreline buffer to a natural state;
- (iv) Screening of structures and other facilities as viewed from regulated waters, as shown on the NR-O map;

5. Subdivisions.

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

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

6. Nonconforming lots of record.

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

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

E. Storm water management and erosion control.

1. Goals and purpose.

- (a) The federal Clean Water Act (CWA) requires that municipal storm water discharges be authorized under the national pollution discharge elimination system (NPDES). The city is allowed to discharge its storm water under coverage provided by a CWA municipal separate storm sewer system general permit (MS4 permit). As part of the requirements of the permit, the city is required to develop a storm

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water pollution prevention program (MS4 program) with specific goals requiring:

- (i) Non-degradation of all city waters;
- (ii) Restrictions to special designated waters in the city, including: (a) Lake Superior (which is an MPCA designated outstanding value resource water with both restricted discharge and impaired water designations); (b) St. Louis River (which is an MPCA designated impaired water and area of concern; and (c) 16 trout streams designated by the DNR;
- (b) The goals described in the city’s MS4 program pertaining to illicit discharge detection and elimination, construction-site runoff controls, and post-construction runoff treatment are incorporated into this Chapter by reference;
- (c) The purpose of this Section 50-18.1.E is to establish regulations to comply with the federal CWA and the city’s MS4 permit and to achieve the goals stated in the city’s MS4 program;

2. Temporary erosion and sediment controls.

(a) Applicability.

This Section 50-18.1.E.3 applies to all land disturbing activities within the city, except those specifically exempt in this Section and those subject to a superseding or preemptive state or federal law. This section shall be deemed to supplement, but not to conflict with, the applicable provisions of the State Building Code;

(b) Requirements.

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

Table 50-18.1.E-1: Temporary Erosion and Sediment Controls				
Land Area Disturbed ►	≤ 3,000 sq. ft. ^[1]	> 3,000 and ≤ 10,000 sq. ft. ^[2]	> 10,000 sq. ft. and < 1 acre	≥ 1 acre
Development Plan Measures Required ▼				
Temporary erosion and sediment controls to prevent any off-site migration of sediment	✓			
Site specific Erosion and Sediment Control Plan (ESCP) and ESCP Permit from city engineer		✓	✓	
Site specific Storm Water Pollution Prevention Plan (SWPPP) meeting MPCA NPDES Permit requirements for Construction Activity				✓

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Table 50-18.1.E-1: Temporary Erosion and Sediment Controls				
Land Area Disturbed ►	≤ 3,000 sq. ft. ^[1]	> 3,000 and ≤ 10,000 sq. ft. ^[2]	> 10,000 sq. ft. and < 1 acre	≥ 1 acre
Development Plan Measures Required ▼				
MPCA NPDES/State Disposal System Construction Storm Water Permit				✓
MS4 Statement of Compliance from city engineer			✓	✓

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

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

(c) Authority to waive.

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

3. Permanent water quality and discharge rate controls.

(a) Applicability.

- (i) This Section 50-18.1.E.3 applies to all land disturbing activities within the city, except those specifically exempt in this Section and those subject to a superseding or preemptive state or federal law. This Section shall be deemed to supplement, but not to conflict with provisions of the State Building Code;
- (ii) This Section does not apply to pavement resurfacing and pavement rehabilitation projects where: no new impervious surface is created, there is no change to the configuration of the site and there is no change to the land use;

(b) General requirements.

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

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

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

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

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

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

(c) Authority to waive.

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

(d) Shoreland requirements.

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

(e) Water quality treatment requirements.

Where subsection (b) requires that a development plan include water quality treatment, the development or redevelopment must be

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designed to provide the following treatment, volume reduction and pollutant removal:

(i) Treatment requirements.

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

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

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

(ii) Storm water flow volume reduction.

Storm water flow volume reduction shall be provided to the maximum extent practicable. Refer to the Minnesota Storm Water Manual. Volume reduction techniques may include:

- (1) Infiltration into the ground;
- (2) Evaporation or transpiration;
- (3) Storage for re-use;
- (4) Enhanced infiltration swales, filter strips, or disconnected impervious area;
- (5) Other demonstrable methods that reduce volume;

(iii) Pollutant removal.

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

(f) Runoff rate control.

Where subsection (b) requires that a development plan include runoff rate control, the development or redevelopment must be designed to provide the controls as follows. Runoff rate control is beneficial in the upper, flatter part of the watershed above the bluff line. Below the bluff

line, the topography is relatively steep and storm water flows quickly to Lake Superior and the St. Louis River. This bluff line designation is shown on the NR-O map. The storm water rate control requirements for development and redevelopment are shown in Table 50-18.1.E-4;

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

- (g) General design criteria.
- (i) New minor system drainage systems shall be designed to efficiently convey the peak discharge rates for a ten-year flow;
 - (ii) New major system drainage systems shall be designed to efficiently convey the peak discharge rates for a 100-year flow;
 - (iii) The 100-year rainfall event or 100-year peak flow shall be evaluated to ensure that no damage occurs to adjacent properties for all systems;
 - (iv) The storm water management systems for any new or redevelopment project shall maintain at least three feet of freeboard between the anticipated 100-year high water elevation and the minimum building opening;
 - (v) Consideration may be given for treating existing untreated impervious areas diverted to the site and included in the control area for analysis if it is in the best interest of the city;
 - (vi) All impervious areas shall be considered connected and curve numbers shall not be weighted for impervious areas except under special circumstances;
 - (vii) 95 percent of all newly added impervious surface shall be directed to the water quality treatment area. If it is impractical to direct 95 percent of the added impervious surface to water quality area, alternate methods may be used in combination so long as 95 percent is treated and all peak flow requirements are fulfilled;
 - (viii) Flow shall not be diverted from one major or minor system to another major or minor system;
 - (ix) When storm water management plans involve directing runoff from a site, it shall be the responsibility of the applicant to obtain from adjacent property owners any necessary easements or other

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property interests concerning flowage of water to a point where the storm water enters a major system;

- (x) Adequate measures shall be taken to prevent uncontrolled drainage across lot lines;

4. General storm water restrictions.

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

5. Ownership and maintenance.

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

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

- (b) Ownership.

- (i) All components of the storm water management system shall be constructed, owned, operated and maintained by the developer or owner(s) to their confluence with the major system or city owned minor system;
- (ii) In the case of developments in which right-of-way is transferred to public ownership, the storm drain system within the city right-of-way shall be owned and maintained by the city. Storm water treatment facilities and ponds shall be in common space and shall be owned and maintained by the developer or the owners of the development. Storm water treatment facilities shall not be located in the public right-of-way;

- (c) Owner inspection and maintenance.

- (i) Storm water management facilities shall be designed to minimize maintenance and provide maintenance access. All facilities shall have a plan of operation and maintenance that assures continued effective removal of runoff pollutants and accumulated sediment.

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The developer or the owner(s) shall be responsible for inspection, maintenance and reporting for all non-publicly owned storm water management facilities associated with the development. Copies of the inspection records shall be maintained by the developer or owner for a period of six years. Copies of all inspection records shall be provided to the city upon request;

- (ii) For the purposes of inspection during construction monitoring, the permittee shall:
 - (1) Submit an inspection log to the city on the first day of each month during the entire duration of construction;
- (iii) For the purposes of ongoing monitoring and maintenance after construction is complete, the owner shall conduct inspections on all non-publicly owned structural components and all non-structural components (including swales and pond areas) of the storm water management system;
 - (1) Submit a written report approved by an engineer summarizing findings and maintenance needs;
 - (2) Submit a written report of work completed to maintain storm water facilities. Work must be completed within three months of annual inspection.

50-18.2 Airport Overlay (A-O) (formerly Sky Harbor Municipal Airport District).

The A-O district is intended to protect the lives and property of users of Duluth International Airport and Sky Harbor Municipal Airport from hazards and to protect the lives and property of residents living in the vicinity of the airports from risks and impacts of airport-related activities. The purpose of this district is also to prevent and, when possible, to minimize, reduce or remove hazards that interfere with the safe operation of the respective airports.

A. Purpose and authority.

The council, pursuant to the provisions and authority of Minnesota Statute Sec. 360.063, hereby finds and declares that:

1. Airport hazards endanger the lives and property of users of Duluth International Airport and the Sky Harbor Municipal Airport, and property or occupants of land in their vicinity, and may reduce the size of the area available for the landing, takeoff and maneuvering of aircraft, thus tending to destroy or impair the utility of the airports and the public investments they represent;
2. The creation or establishment of an airport hazard is a public nuisance and an injury to the region served by both airports;
3. For the protection of the public health, safety, and welfare, it is necessary to prevent the creation or establishment of airport hazards;

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4. The prevention of these airport hazards should be accomplished, to the extent legally possible, by the exercise of the police power without compensation;
5. The prevention of the creation or establishment of airport hazards, and the elimination, removal, alteration mitigation, or marking and lighting of existing airport hazards are public purposes;

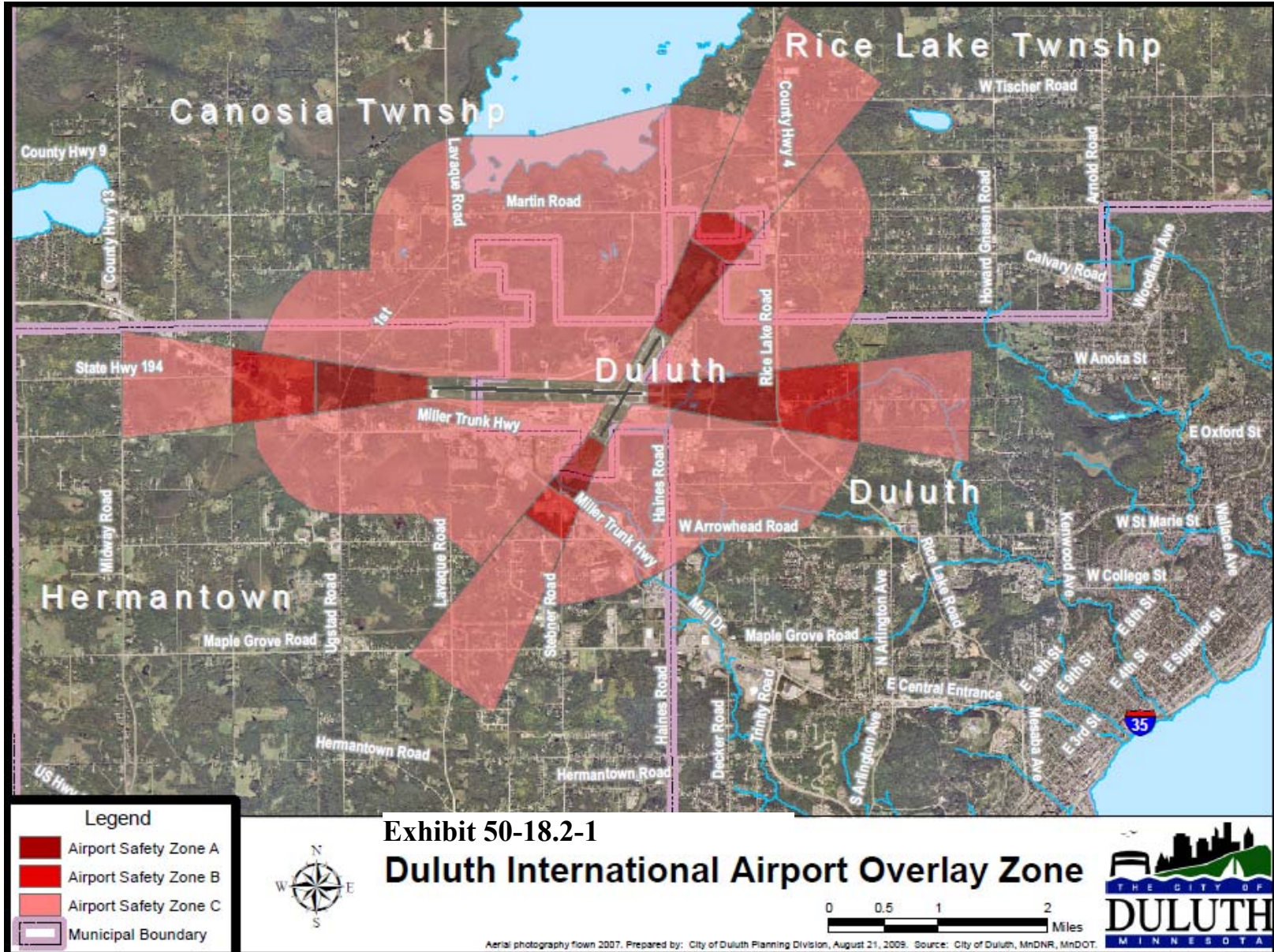
B. Airport zoning ordinance incorporated.

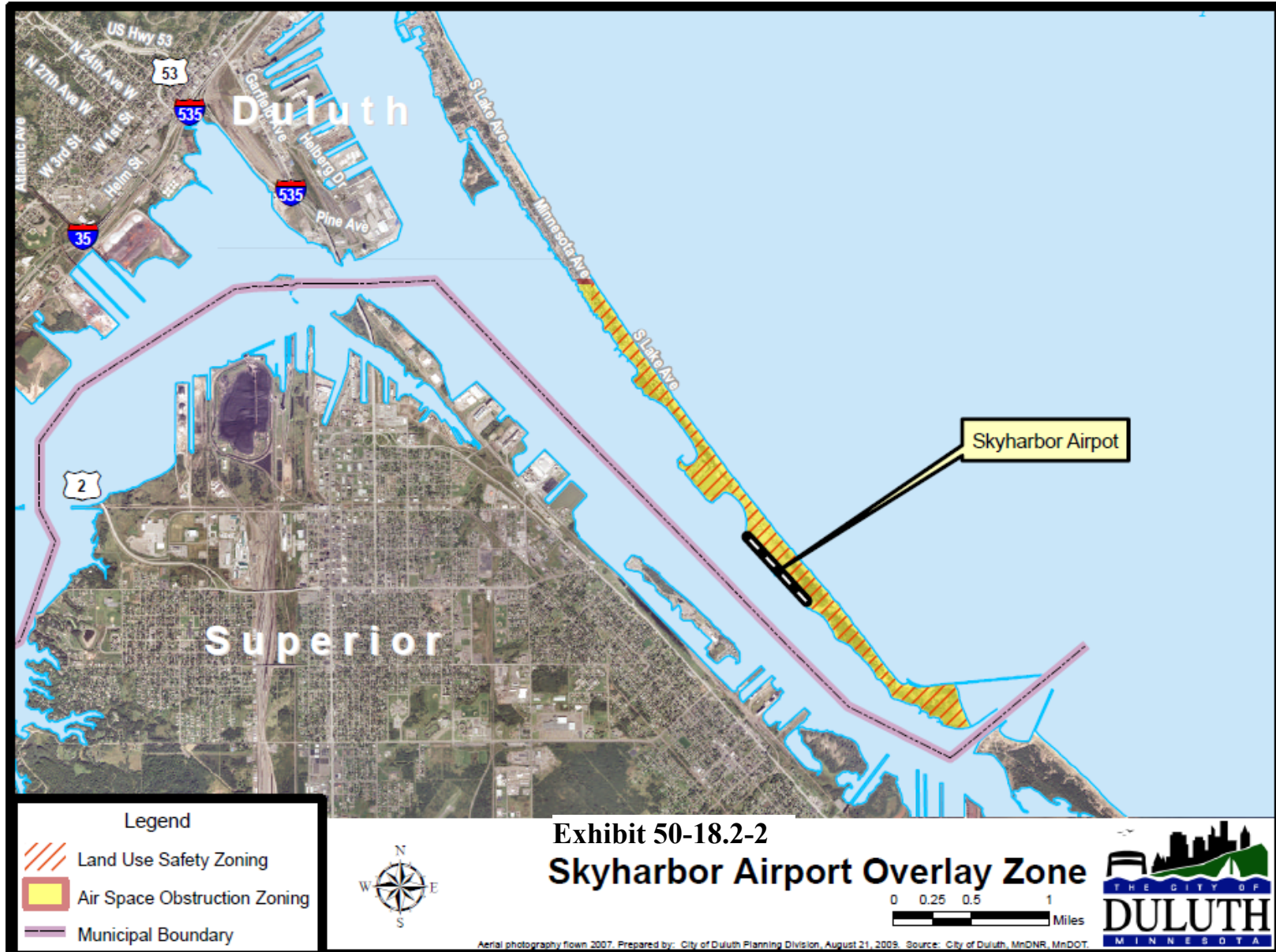
This Section 50-18.2 incorporates the Duluth International Airport Zoning Ordinance, as amended, created by the Duluth Airport Authority and the Duluth International Airport zoning board under the authority of the Laws of Minnesota 1969, Chapter 577, and MSA 360.061 to 360.074, as amended. Any changes to this Section 50-18.2 must comply with the requirements of MSA 360.061 to 360.074, as amended;

C. Land affected.

The land affected by this Section 50-18.2 is shown on exhibits 50-18.2-1 and 2;

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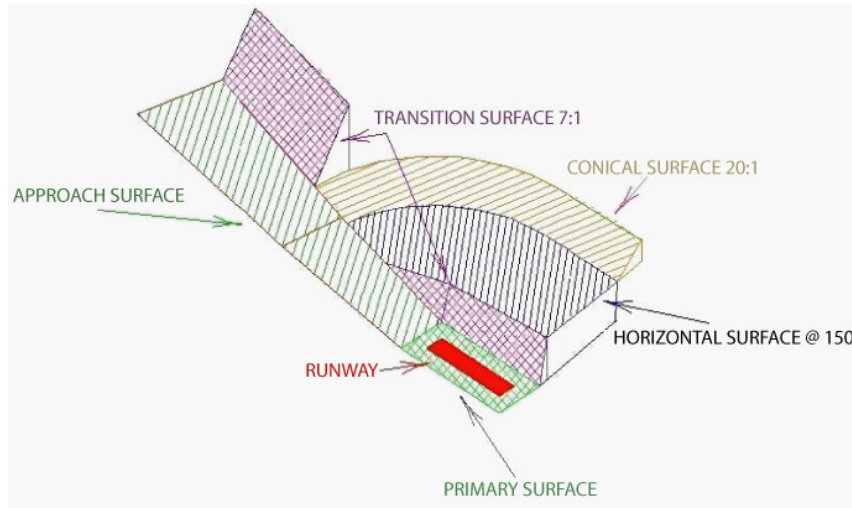




D. Air space obstruction zones.

1. Air space zones.

In order to carry out the purpose of this Section, the following air space zones are hereby established: primary zone, horizontal zone, conical zone, approach zone, and transitional zone;



2. Primary zone.

All land that lying directly under an imaginary primary surface longitudinally centered on a runway and (a) extending 200 feet beyond each end of Sky Harbor Municipal Airport Runway 14-32 and Duluth International Airport Runways 9-27, 3-21 and 13-21; and (b) coinciding with each end of Runways 14-32, 9-27, 3-21 and 13-21. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The width of the primary surface is:

- (a) 1,000 feet for Duluth International Airport Runways 9-27 and 3-21;
- (b) 500 feet for Sky Harbor Municipal Airport Runway 14-32;

3. Horizontal zone.

All land lying directly under an imaginary horizontal surface 150 feet above the established airport elevation, or a height of 1,580 feet above mean sea level for Duluth International Airport and 760 feet above mean sea level for Sky Harbor Municipal Airport, the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the primary surface of each runway and connecting the adjacent arcs by lines tangent to those arcs. The radius of each arc is:

- (a) 10,000 feet for Duluth International Airport Runway 9-27 and 3-21;

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(b) 6,000 feet for Sky Harbor Municipal Airport Runway 14-32;

4. Conical zone.

All land lying directly under an imaginary conical surface extending upward and outward from the periphery of the horizontal surface at a slope of 20:1 for a horizontal distance of 4,000 feet as measured radially outward from the periphery of the horizontal surface;

5. Approach zone.

All land lying directly under a surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface. An approach surface is applied to the end of a runway based on the type of approach available or planned for that runway.

(a) The inner edge of the approach surface is the width as the primary surface and it expands uniformly to a width of: (i) 1,250 feet for that end of a utility runway with only visual approaches; (ii) 1,500 feet for that end of a runway other than a utility runway with only visual approaches; (iii) 2,000 feet for that end of a utility runway with a nonprecision instrument approach; (iv) 3,500 feet for that end of a nonprecision instrument runway other than utility, having visibility minimums greater than three-fourths of a statute mile; (v) 4,000 feet from that end of a nonprecision instrument runway, other than utility, having a nonprecision instrument approach with visibility minimums as low as three-fourths statute mile; and (vi) 16,000 feet for precision instrument runways;

(b) The approach surface extends for a horizontal distance of (i) 5,000 feet at a slope of 20:1 for all utility and visual runways; (ii) 10,000 feet at a slope of 34:1 for all nonprecision instrument runways other than utility, and (iii) 10,000 feet at a slope of 50:1 with an additional 40,000 feet at a slope of 40:1 for all precision instrument runways;

(c) The outer width of an approach surface to an end runway will be that width prescribed in this subsection 5 for the most precise approach existing or planned for that runway end;

6. Transitional zone.

All land lying directly under surfaces that extend outward and upward at right angles to the runway centerline and the runway centerline extended at a slope of 7:1 from the sides of the primary surface and from the sides of the approach surfaces. Transitional surfaces for those portions of the precision approach surface that project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at right angles to the runway centerline;

7. Height restrictions.

Except as necessary and incidental to airport operations, no structure or tree shall be constructed, altered, maintained or allowed to grow in any air space obstruction zone so as to project above any of the imaginary air space surfaces described in subsections 1 through 6. Where an area is covered by more than one height limitation, the more restrictive limitation shall apply;

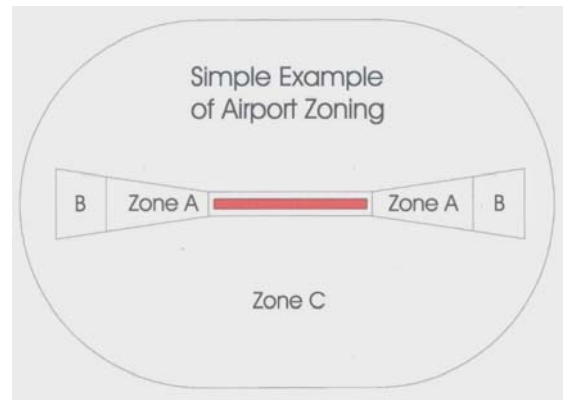
8. Traverse ways.

For the purpose of determining height limits in this Section 50-18.2, traverse ways shall be increased in height by 17 feet for interstate highways; 15 feet for all other public roadways; ten feet or the height of the highest mobile object that would normally traverse the road, whichever is greater, for private roads; 23 feet for railroads; and for waterways and all other traverse ways not previously mentioned, an amount equal to the height of the highest mobile object that would normally traverse it;

E. Land use safety zoning.

1. Safety zone boundaries.

Safety zones are created to protect the surrounding community and to assist aircraft in the event of emergency landings. Safety zones seek to limit the population and building density to protect life and property in case of accident. In order to carry out the purpose of this Section to restrict those uses that may be hazardous to the operational safety of aircraft operating to



and from the Duluth International Airport or Sky Harbor Municipal Airport, the following land use safety zones are established:

2. Safety Zone A.

All land in that portion of the approach zones of a runway, as defined in subsection 50-18.2.D, that extends outward from the end of primary surface a distance equal to 2/3 of the planned length of the runway, which distance is:

- (a) 7,435 feet for Duluth International Airport runway 9-27;
- (b) 5,415 feet for Duluth International Airport runway 3-21;
- (c) 2,230 feet for Sky Harbor Municipal Airport runway 14-32;

3. Safety Zone B.

All land in that portion of the approach zones of a runway, as defined in subsection 50-18.2.D that extends outward from Safety Zone A a distance equal to 1/3 of the planned length of the runway, which distance is:

- (a) 3,718 feet for Duluth International Airport runway 9-27;
- (b) 2,708 feet for Duluth International Airport runway 3-21;
- (c) 1,120 feet for Sky Harbor Municipal Airport runway 14-32;

4. Safety Zone C.

All that land that is enclosed within the perimeter of the horizontal zone, as defined in subsection 50-18.2.D, and that is not included in Safety Zone A, Safety Zone B, or the exempted parcels referred to in Section 50-18.2.D.5;

F. Land use restrictions.

1. General.

No use shall be made of any land in any land use safety zone that creates or causes interference with the operations of radio or electronic facilities on the airport or with radio or electronic communications between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and other lights, results in glare in the eyes of pilots using the airport, impairs visibility in the vicinity of the airport or otherwise endangers the landing, taking off or maneuvering of aircraft;

2. Zone A.

Areas designated as Zone A shall contain no buildings, temporary structures, exposed transmission lines, or other similar above ground land use structural hazards, and shall be restricted to those uses that will not create, attract or bring together an assembly of more than 100 persons on the property. Permitted uses may include but are not limited to: agriculture (seasonal crops), horticulture, animal husbandry, raising of livestock, wildlife habitat, light outdoor recreation (non spectator), cemeteries and automobile parking;

3. Zone B.

Areas designated as Zone B shall be restricted in use as follows:

- (a) Each use shall be on a site of not less than three acres;
- (b) Each use shall not create, attract or bring together a site population that would exceed 15 times that of the site acreage. Compliance with this subsection shall be determined by multiplying the number of required parking spaces for each use on the site by the vehicle occupancy rates for each use on the site, as provided in Table 50-18.2.-1;

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TABLE 50-18.2-1: Vehicle Occupancy Rates	
Land Use	Vehicle Occupancy Rate
Industrial / Storage / Transportation	1.2
Educational	1.2
Health Care	1.7
Retail Store	1.5
Restaurant / Community and Cultural Facility / Recreational	2.0

Example: The site population for a 1,500 sq. ft. restaurant is calculated as follows: 15 (i.e., 1 parking space per 100 sq. ft) X 2.0 (i.e., vehicle occupancy rate) = 30 people. Therefore, the site would need to be at least 2 acres in size to meet the 15 people / acre maximum site population limit.

- (c) Each site shall have no more than one building plot upon which any number of structures may be erected;
- (d) A building plot shall be a single, uniform and non-contrived area, whose shape is uncomplicated and whose area shall not exceed the following minimum ratios with respect to the total site area:

TABLE 50-18.2-2: Ratio of Site Area to Building Area		
Site area	Ratio of site area to building plot area	Building plot area (sq. ft)
3.00 – 3.99 acres	12:1	10,900
3:00 – 5.99 acres	10:1	17,400
6:00 – 9.99 acres	8:1	32,700
10:00 – 19.99 acres	6:1	72,600
20:00 acres or more	4:1	218,000

- (e) The following uses are specifically prohibited in Zone B: churches, hospitals, schools, theaters, stadiums, hotels, motels, trailer courts, campgrounds and other places of frequent public or semi public assembly;
4. Zone C.
Zone C is subject only to height restrictions set forth in subsection D above and to the general restrictions contained in subsection F.1 above;
 5. Exemptions for established residential neighborhoods.
Land uses that existed as of June 18, 1988, for the Duluth International Airport, and as of January 1, 1994, for Sky Harbor Municipal Airport, and that were established residential neighborhoods in built-up urban areas on those dates, are subject to the height restrictions of subsection D above, but are not subject to the additional restrictions in subsections F.2 or 3

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above. Land uses that came or come into existence after those dates, are treated as though they were or are not in a listed established residential neighborhood and are subject to the restrictions in subsections F.2 or 3 above, as applicable based on the location of the property;

50-18.3 Historic Resources Overlay (HR-O) (formerly CH. 28A Heritage Preservation).

A. Purpose.

The purpose of this Section 50-18.3 is to preserve, protect and promote any areas, places, buildings, structures, lands, districts and other objects having a special historical, community or aesthetic interest or value. The Historic Resources Overlay:

1. Safeguards the heritage of the city by preserving properties that reflect elements of the city's cultural, social, economic, political, engineering, visual or architectural history;
2. Protects and enhances the city's appeal and attraction to residents, visitors and tourists, while enhancing its economic viability through the protection and promotion of its unique character as related to its history and heritage;
3. Enhances the visual and aesthetic character, diversity and interest of the city;
4. Fosters civic pride in the beauty and notable accomplishments of the past;
5. Promotes the preservation and continued use of historic properties for the education and general welfare of the people of the city;

B. Designation of historic resources.

1. Through the process for designating historic resources in Section 50-37.8, or its predecessor ordinance previously codified as Chapter 28A of the City Code, the historic preservation commission has designated:
 - (a) Two historic preservation districts: the Duluth Civic Center Historic District, and the Duluth State Normal School Historic District, whose boundaries are shown on Exhibits 50-18.3-1 and 50-18.3-2; and
 - (b) Those designated historic preservation landmarks listed on Exhibit 50-18.3-3;
2. The historic preservation commission and planning commission may from time to time recommend, and the council may approve, additional historic preservation districts or landmarks pursuant to Section 50-37.8;

C. Review of construction/demolition activities.

Within those designated historic preservation districts shown on Exhibit 50-18.3-1 and those historic preservation landmarks listed on Exhibit 50-18.3-2:

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1. Construction and demolition activities, including all street and utility activities, shall be approved pursuant to Section 50-37.14;
2. The issuance of city permits to do any of the following shall be approved pursuant to Section 50-37.14:
 - (a) Remodel, repair or alter in any manner that will change the exterior appearance;
 - (b) New construction, including parking facilities;
 - (c) Move a building;
 - (d) Change the nature or appearance of a designated historic preservation landmark or district, including landscape features;
 - (e) Demolition in whole or in part;

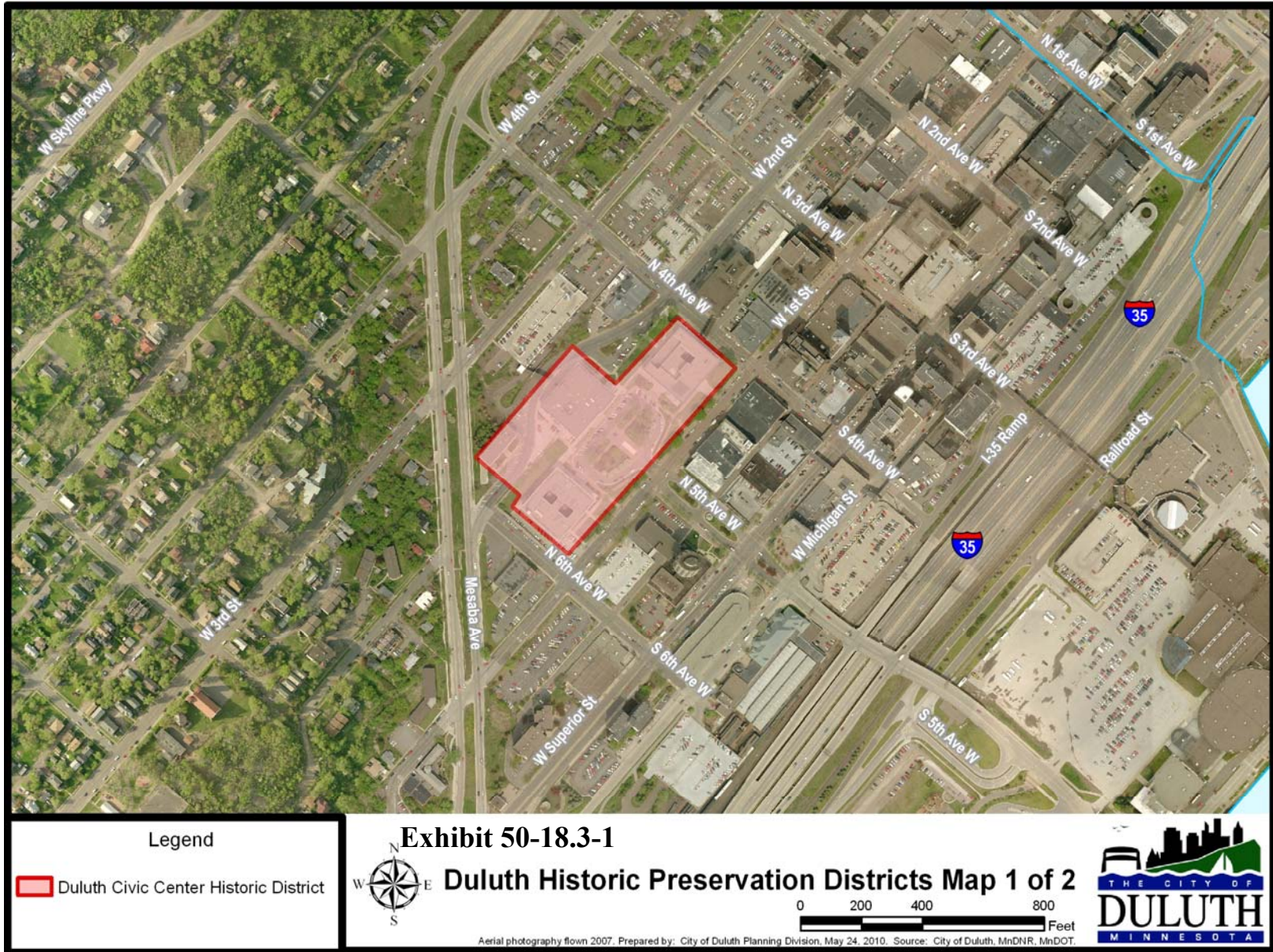
D. Emergency repair.

In emergency situations where immediate repair is needed to protect the safety of the structure and its inhabitants, the building official may approve the repair of only those items needed to ensure safety. Such repairs shall be limited to those necessary to correct the safety emergency. In the case of a permit issued pursuant to this subsection D, the building official shall require that the repairs be made in conformance with the U.S. secretary of interior's recommended standards for historic preservation projects and adopted historic preservation guidelines for the landmark or district to the extent possible. In addition, the building official shall immediately notify the historic preservation commission of the action and specify the facts or conditions constituting the emergency situation;

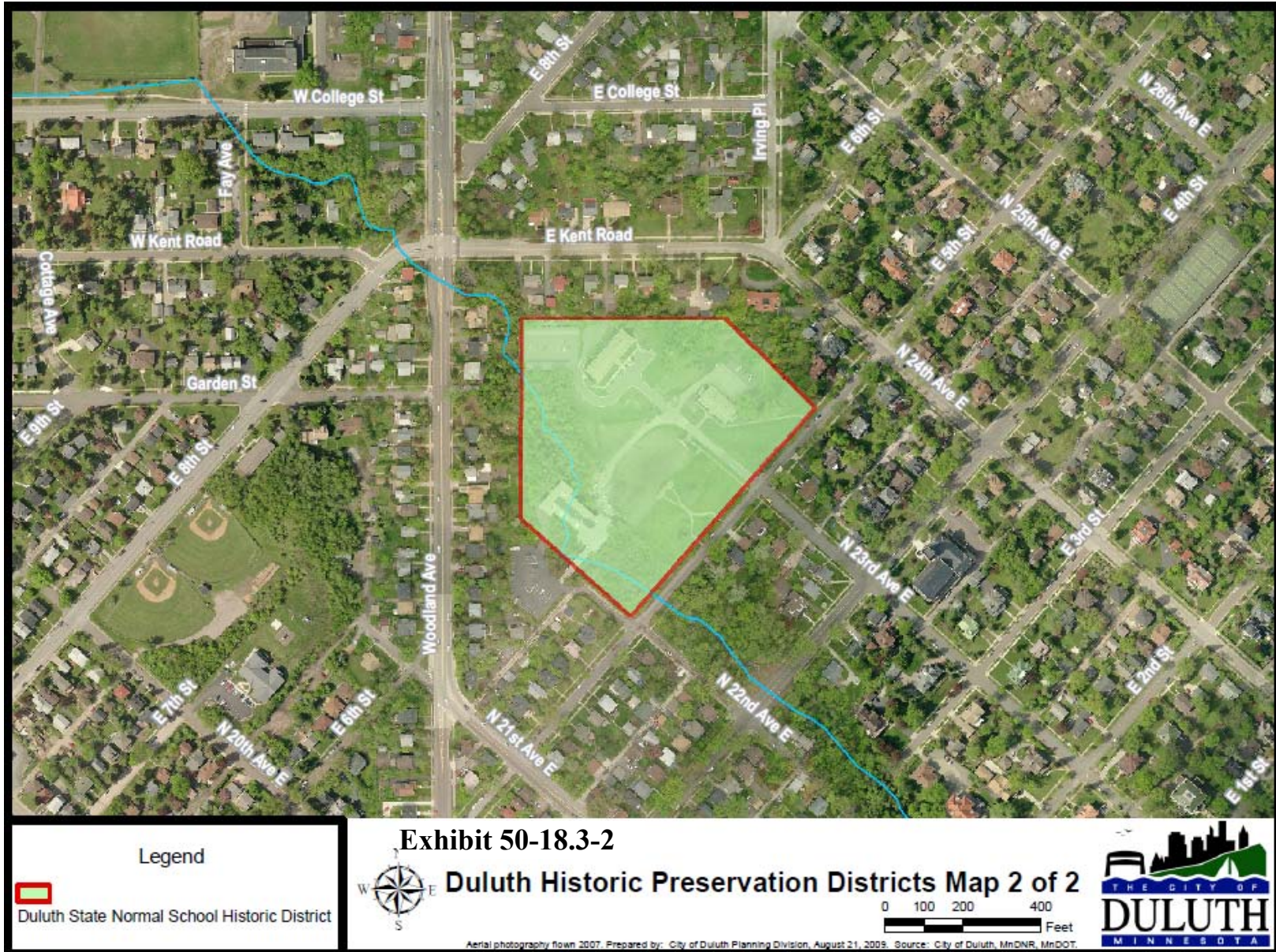
E. Building code enforcement.

This Section 50-18.3 is also intended to encourage the sensitive rehabilitation, restoration, stabilization and preservation of historic buildings throughout the city. These rehabilitation and preservation efforts should provide for the upgrading and maintenance of the safety features of the building or structure to provide a practical level of safety to the public and surrounding properties. While ensuring this increased level of public safety, the enforcement authorities are encouraged to be open to acceptable alternative solutions and alternative compliance concepts, where practical, that will permit the continued use of existing buildings and structures without creating overly restrictive financial burdens on owners or occupants. Nothing in this Section shall be construed to prevent the ordinary maintenance or repair of any exterior elements of any building or structure.

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Exhibit 50-18.3-3 Designated Historic Landmarks					
No.	Name	Location	Type	Designation Date	
				National	Duluth
1	Aerial Lift Bridge	Lake Ave over Duluth Ship Canal	Bridge	5/22/1973	4/11/1993
2	Bergetta Moe Bakery	716 E. Superior St.	Building	6/3/1976	
3	Bridge No. 5757	MN Hwy. 23 over Mission Creek	Bridge	6/26/1998	
4	Stewart Creek Stone Arch Bridge (Bridge No. L-6007)	Skyline Pkwy. over Stewart Creek	Bridge	11/06/1989	
5	Chester Terrace	1210 - 1232 E. 1st St.	Building	11/19/1980	
6	Chester & Clara Congdon Estate (Glensheen)	3300 London Rd.	Building	8/15/1991	
7	DeWitt-Seitz Building	394 Lake Ave S.	Building	9/05/1985	
8	Duluth Central High School	Lake Ave. and 2nd St	Building	11/09/1972	4/11/1993
16	Duluth Missabe & Iron Range Depot (Endion)	100 Lake Place	Building	4/16/1975	
17	Duluth Public Library	101 W 2nd St	Building	5/05/1978	11/02/1991
18	Duluth South Breakwater Inner Lighthouse	South Breakwater	Building	8/04/1983	
20	Duluth Union Depot	5th Ave W & Michigan St	Building	12/09/1971	11/02/1991
21	Endion School	1801 E 1st St	Building	2/10/1983	
22	Fire House No. 1	1st Ave E & 3rd St	Building	5/12/1975	
23	Fitger Brewing Company	1600 E. Superior St	Building	2/09/1984	
24	Hartley Building	740 E Superior St	Building	12/22/1989	
25	Irving School	101 N 56th Ave W	Building	11/20/1992	4/11/1993
26	Kitchi Gammi Club	831 E Superior St	Building	4/16/1975	
27	Lester River Bridge (Bridge No. 5772)	London Rd (MN HWY 61) over Lester River	Bridge	9/06/2002	
28	Minnesota Point Lighthouse	Minnesota Point	Building	12/27/1974	8/27/1995
29	Munger Terrace	405 Mesabi Ave	Building	12/12/1976	
31	Saint Mark's African Methodist Episcopal Church	530 N 5th Ave E	Building	4/16/1991	
32	Oliver G. Traphagen House (Redstone)	1509-1511 E Superior St	Building	4/04/1975	
33	U.S. Army Corps of Engineers Duluth Vessel Yard	9th St S & Minnesota Ave	Yard	10/23/1995	
34	U.S. Fisheries Station-Duluth	6008 London Rd	Building	11/28/1978	
35	USS Essex Shipwreck	Lake Superior (Estimate)	Shipwreck	4/14/1994	
36	William A. Irvin	Minnesota Slip, Duluth Harbor	Freighter	7/13/1989	
37	Wirth Building	13 W Superior St	Building	7/25/1991	
41	Sacred Heart Cathedral School	206 W 4th St	Building	6/26/1986	
42	Sacred Heart Cathedral	211 W 4th St	Building	6/26/1986	8/27/1995
43	Christian Brothers Home	315 N 2nd Ave W	Building	6/26/1986	
44	Thomas Wilson Shipwreck	Duluth Harbor	Shipwreck	7/23/1992	
45	Masonic Temple Building	203 E Superior St	Building		11/02/1991
46	Former Lincoln Library	2229 W 2nd St	Building		1/28/1996
47	Harry C & Marjory Congdon Dudley Residence	3600 London Rd	Building		6/09/1996
48	Duluth City Hall (Former)	132 E Superior St	Building		6/27/1997
49	Duluth City Police Headquarters & Jail (Former)	126 E Superior St	Building		6/27/1997
50	Killorin Residence	2708 Branch St	Building		11/27/2000

50-18.4 Skyline Parkway Overlay (SP-O) (new overlay).

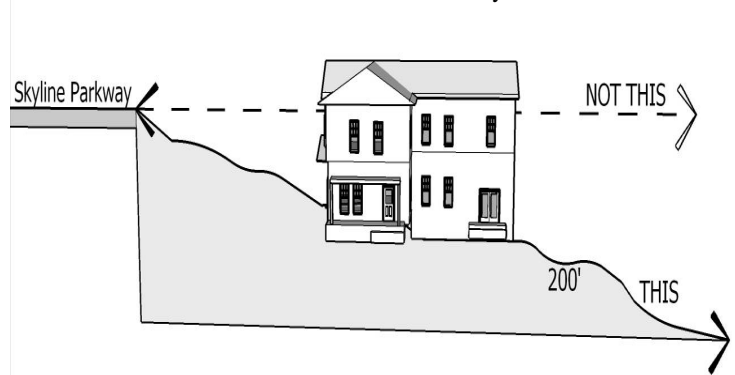
A. Purpose.

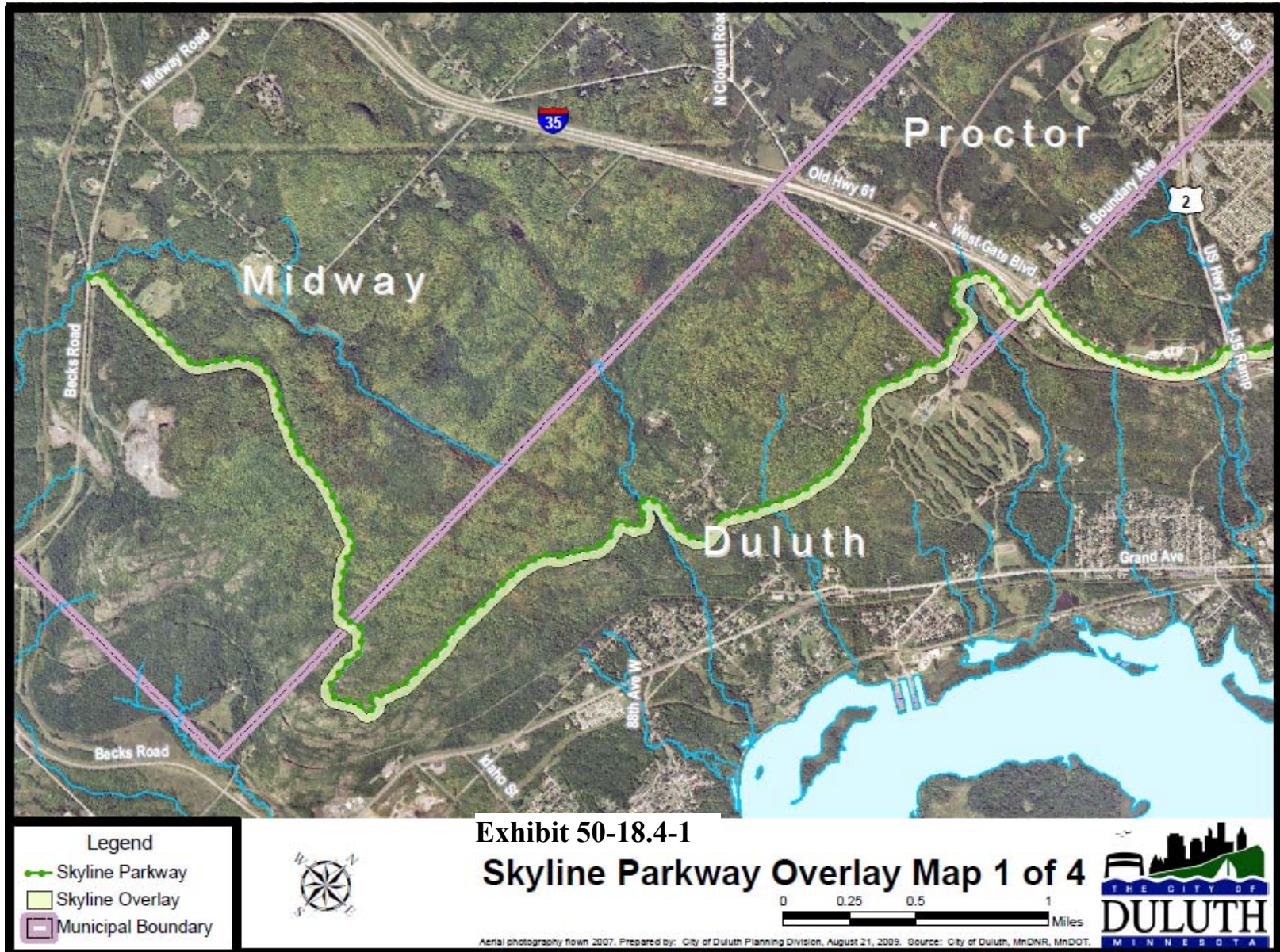
The purpose of this Section 50-18.4 is to protect the unique character and visual qualities of Skyline Parkway as documented in the Skyline Parkway corridor management plan and the comprehensive land use plan while protecting the property rights of private property owners affected by these regulations. One key purpose is to protect views from Skyline Parkway toward Lake Superior, the St. Louis River, and the harbor, from a wide variety of vantage points along the Parkway and to encourage the construction of narrower buildings located farther from the Skyline Parkway rather than wider buildings located closer to the parkway;

B. Land affected.

The regulations of this Section 50-18.4 apply to all private and public property located within 200 feet of the downhill side of Skyline Parkway as shown on Exhibits 50-18.4-2 to 4. The 200 foot distance shall be measured from the edge of the right-of-way along the slope of the affected property (not horizontally from the road), as shown in Figure 50-18.4-1. The Skyline Parkway Overlay maps are shown only for illustrative purposes and are not intended to regulate the boundary of the 200 feet distance as described above;

Exhibit 50-18.4-1: Measurement of 200' boundary







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C. Construction and reconstruction affected.

This Section 50-18.4 shall apply to (1) all construction of new buildings or additions to buildings, (2) all reconstruction of an existing building or addition, (3) all construction of fences and walls, and (4) all installation and maintenance of landscaping within the SP-O zone district, after November 19, 2010. Buildings, additions, fences and walls that are permitted or exist on November 19, 2010, shall not be required to comply with the provisions of this Section, and shall be considered conforming structures for zoning purposes;

D. Design controls.

When construction of a building or an addition to a building, or reconstruction of an existing building or addition is proposed within the SP-O zone district, the following standards shall apply:

1. The building or addition shall be located at least 50 feet from the right-of-way of Skyline Parkway, or as close to that distance as is reasonably possible without violating required side or rear setbacks;

Exhibit 50-18.4-6:
Measurement of Long Axis

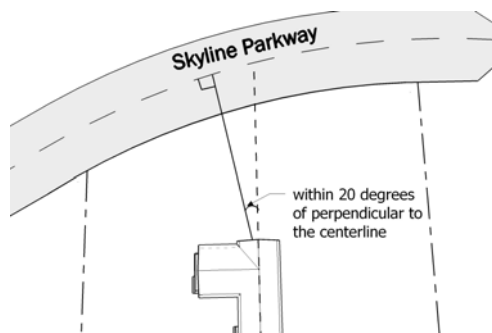
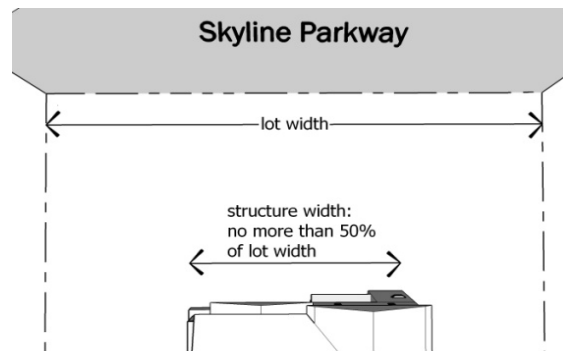


Exhibit 50-18.4-7:
Measurement of 50% of Lot Width



2. The long axis of a new structure shall be located within 20 degrees of perpendicular to the right-of-way line of Skyline Parkway at the midpoint of the front property line, or if that is not possible due to site or engineering constraints, then as close to that number as is reasonably possible;
3. The width of a new primary structure closest to Skyline Parkway shall not exceed 50% of the width of the lot at the point closest to or adjacent to the Skyline Parkway right-of-way. For purposes of this paragraph, the width shall include all portions of the structure (including attached garages or enclosed porches);

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4. Where an addition to an existing structure is proposed, the location of that addition shall not result in the width of structure and addition, taken together, exceeding 50% of the width of the lot at the point closest to or adjacent to the Skyline Parkway right-of-way;
5. The provisions of subsections 1 through 4 above shall not apply to any structure located and designed so that no part of the structure (other than chimneys) extends taller than three feet above the elevation of Skyline Parkway closest to the structure;
6. No wall located within 50 feet of horizontal distance from the property line along Skyline Parkway shall exceed a height of three feet above the elevation of the centerline of Skyline Parkway;
7. All portions of a fence located within 50 feet of horizontal distance from the property line along Skyline Parkway and extending more than three feet above the elevation of the centerline of Skyline Parkway shall be at least 75% transparent. No more than 25% of the area bounded by the top, bottom, and sides of the fence may be constructed of solid or opaque materials;
8. No landscaping located on the 50% of the lot width not occupied by the primary structure may be of a species that will have a height at maturity of more than three feet above the elevation of the centerline of Skyline Parkway, and all installed landscaping in those areas shall be maintained so that its height does not exceed three feet above the elevation of the centerline of Skyline Parkway.

Article III. Permitted Uses.

50-19 Permitted use table.

50-19.1 General.

Table 50-19.8, use table, lists land uses and indicates whether they are allowed by right or with a special use permit, or prohibited in each base zone district. The use table also includes references to any additional regulations applicable to that use.

50-19.2 Permitted uses.

A "P" in a cell of the use table indicates that the land use is allowed by right in that base zone district, subject to compliance with the use-specific standards referenced in the final column of the use table. A "U" in a cell of the use table indicates that the land use is allowed by right in that base district on any floor of the structure other than the ground floor, subject to compliance with the use-specific standards referenced in the final column of the table. A "P" or a "U" in the R-P zone district column indicates that the use is permitted, or permitted above the ground floor, only if it was included in a plan or plan amendment for

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the R-P district. Permitted uses are subject to all other applicable requirements of this UDC, including those set forth in Article 4, *Development Standards*.

50-19.3 Special uses.

An “S” in a cell of the use table indicates that the land use is allowed in that base zone district only upon approval of a special use permit as described in Section 50-37.10 and compliance with any use-specific standards referenced in the final column of the use table. Uses subject to a special use permit are subject to all other applicable requirements of this UDC, including those set forth in Article 4, *Development Standards*. In addition, council may approve interim uses through the procedure described in Section 50-37.10.

50-19.4 Prohibited uses.

A blank cell in the use table indicates that the land use is prohibited in that base zone district.

50-19.5 Overlay districts provisions govern.

When a property is located within the boundaries of an overlay district, the provisions for that overlay district prevail over those in the base zone district. For example, if a use is prohibited in the base zone district where the property is located, but is a permitted use in an overlay district applicable to the same property, then the use is allowed on that property. On the other hand, if a use is listed as a permitted use in the base zone district but is listed as a special use in an overlay zone district applicable to the same property, then the use is a special use for that property. Where a property is located in more than one overlay district, then the most restrictive use provision in those overlay zone districts shall apply to the property.

50-19.6 Use-specific standards.

When a land use is a permitted or a special use in a zone district, there may be additional standards that apply to that specific use. Those additional standards are cross-referenced in the last column of the use table (use-specific standards). The cross-referenced standards appear in subsection 50-20 immediately following the use table.

50-19.7 Unlisted uses.

When a proposed land use is not explicitly listed in the use table, the land use supervisor shall determine whether or not it is included in the definition of a listed use or is so consistent with the size, scale, operating characteristics and external impacts of a listed use that it should be treated as the same use. Any such interpretation shall be made available to the public and shall be binding on future decisions of the city until the land use supervisor makes a different interpretation.

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50-19.8 Permitted use table.

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TABLE 50-19.8: USE TABLE

NOTE: Uses in the Natural Resources Overlay (NR-O) are limited by Section 50-18.1

NOTE: Uses in the Airport Overlay (A-O) district are limited by Section 50-18.2

NOTE: P and S uses only allowed in R-P district if included in an approved District Plan for the area

P = Permitted Use

U = Upper Story Only

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A = Accessory Use

New Zone District Name	Residential					Mixed Use					Form									Special			Use-Specific Standards
	R-C	RR-1	RR-2	R-1	R-2	R-P	MU-N	MU-C	MU-I	MU-B	MU-W	F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9	I-G	I-W	
Current Zone District Name		S	S2	R1a,b,c & R2	R3		R4 & C1	C5	MC	M1, IT & IP	W1										M2	W1	
LAND USE CATEGORY																							
RESIDENTIAL USES																							
Household Living																							
Dwelling, one-family	P	P	P	P	P	P	P					U	U	U	U	U	U	U	U	U			
Dwelling, two-family				P	P	P	P					U	U	U	U	U	U	U	U	U			50-20.1A
Dwelling, townhouse				S	P	P	P			P													50-20.1B
Dwelling, multi-family					P	P	P	P		P		U	P	U	P	P	U	U	P	P			50-20.1C
Dwelling, live-work						P	P	P		P		P	P	P	P	P	P		P	P			
Group Living																							
Assisted living facility (elderly)				S	P	P	P	P		P		U	P	U	P	P	U	U	P	P			50-20.1.D
Co-housing facility				S	S	P	P																
Residential care facility (6 or fewer)		P	P	P	P	P	P																
Residential care facility (7 or more)				S	P	P	P	P		P													
Rooming house					S	P	P	P		P		U	P	U	P	P	U	U	P	P			50-20.1.E
PUBLIC, INSTITUTIONAL AND CIVIC USES																							
Community and Cultural Facilities																							
Bus or rail transit station							P	P	P	P	P	P	P	P	P	P	P	P	P	P			
Cemetery or mausoleum	S	S	S	S	S	P	S	S	S	S													S

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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	R-C	RR-1	RR-2	R-1	R-2	R-P	MU-N	MU-C	MU-I	MU-B	MU-W	F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9	I-G	I-W		P-1
Current Zone District Name		S	S2	R1a,b,c & R2	R3		R4 & C1	C5	MC	M1, IT & IP	W1										M2	W1		
LAND USE CATEGORY																								
Club or lodge (private)				S	P		P	P	P		P	P	P	P	P	P	P	P	P	P				50-20.2A
Government building or public safety facility		P	P	S	P	P	P	P		P	P	P	P	P	P	P	P	P	P	P	S	S	S	
Museum, library, or art gallery				S	S	P	P	P		S	P	P	P	P	P	P	P	P	P	P			S	
Park, playground, or forest reserve	P	P	P	P	P	P	P	P	P		P	P	P	P	P	P	P	P	P	P			P	
Religious assembly		P	P	S	P	P	P	P	P	S	P	P	P	P	P	P	P	P	P					50-20.2.C
Educational Facilities																								
Business, art, or vocational school							P	P	P	P	P	P	P	P	P	P	P	P	P					
School, elementary		P	P	P	P	P	P	P				U	P	U	P	P	U	U	U					50-20.2.D
School, middle or high		S	S	S	S	P	S	S				U	P	U	P	P	U	U	U					50-20.2.D
University or college									P					U	P	P	U	U	U					
Health Care Facilities																								
Hospital									P															
Medical or dental clinic					S	P	P	P	P	P	P	P	P	P	P	P	P	U	P					50-20.2.B
Nursing home					P	P	P	P		P			P		P									
Other institutional support uses not listed in this table									S															
COMMERCIAL USES																								
Agriculture and Animal-Related																								

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

TABLE 50-19.8: USE TABLE

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	R-C	RR-1	RR-2	R-1	R-2	R-P	MU-N	MU-C	MU-I	MU-B	MU-W	F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9	I-G	I-W		P-1
Current Zone District Name		S	S2	R1a,b,c & R2	R3		R4 & C1	C5	MC	M1, IT & IP	W1										M2	W1		
LAND USE CATEGORY		S	S2	R1a,b,c & R2	R3		R4 & C1	C5	MC	M1, IT & IP	W1										M2	W1		
Agriculture, general	P	P																						50-20.3.B
Agriculture, urban		P	P	P	P	P																		
Kennel	S	S						S	S	P														
Riding stable	S	S	S			P					S												S	
Veterinarian or animal hospital	S	S			P	P	P	P	P	P	P		P		P	P								50-20.3.R
Food, Beverage, and Indoor Entertainment																								
Adult entertainment establishment																					P			50-20.3.A
Convention or event center								P		P	P				P		P	P	P					
Indoor entertainment facility								P		P	P		P		P			P	P					
Restaurant (no drive-in/drive-through)					S	P	P	P	P	P	P	P	P	P	P	P	P	P	P					50-20.3.N
Restaurant (with drive-in/drive-through)								P		P			P		P									50-20.3.O
Theater							P	P			P		P		P		P	P	P					
Lodging																								
Hotel or motel							P	P	P	P	P		P		P		P	P	P					
Bed and breakfast				S	P	P	P	P	P	P	P		P		P									50-20.3.F
Seasonal camp or cabin	P	P				P					P												S	50.20.3.P
Offices																								

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Current Zone District Name		S	S2	R1a,b,c & R2	R3		R4 & C1	C5	MC	M1, IT & IP	W1										M2	W1		
LAND USE CATEGORY																								
Bank							S	P	P	P	S	P	P	P	P	P	P	P	P	P				50-20.3.E
Office							P	P	P	P	P	P	P	P	P	P	U	P	P					50-20.3.K
Outdoor Recreation & Entertainment																								
Golf course		S	S			P																	P	
Marina or yacht club											P											S	S	
Tourist or trailer camp	S	S	S								S												S	50.20.3.Q
Other outdoor entertainment or recreation use not listed		S						S		S	S													50.20.3.L
Personal Services																								
Business park support activities										P														
Day care facility		S	S	S	S	P	P	P	P		P	P	P	P	P	P		P						50-20.3.H
Funeral home or crematorium					S		S	P	P	P			P		P						P			
Mini-storage facility										P											P	P		50-20.3.J
Personal service and repair (small)						P	P	P	P	P	P	P	P	P	P	P	P	P	P					
Personal service and repair (large)							S	P	P	P	P		P		P						P			
Retail Sales																								
Adult book store																					P			Chapter 5
Building materials sales								S		P														50-20.3.G

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	R-C	RR-1	RR-2	R-1	R-2	R-P	MU-N	MU-C	MU-I	MU-B	MU-W	F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9	I-G	I-W		P-1
Current Zone District Name		S	S2	R1a,b,c & R2	R3		R4 & C1	C5	MC	M1, IT & IP	W1										M2	W1		
LAND USE CATEGORY		S																						
Garden material sales		S						P							P									
Grocery store, small						P	P	P		P			P		P			P	P					
Grocery store, large								P																
Retail store not listed, small					S	P	P	P	P	P		P	P	P	P	P	P	P	P	P				
Retail store not listed, large								P			P		P		P		P	P						
Vehicle-Related																								
Automobile and light vehicle repair and service							S	P		P			P		P		P				P			50-20.3.C
Automobile and light vehicle sales, rental, or storage								P		P											P			50-20.3.D
Filling station					S	P	P	P		P	P		P		P	P					P	P		50-20.3.I
Parking lot or parking garage (primary use)								P	P	P	P	S	S	S	S	S	S	S	S	S	P	P		50.20.3.M
Truck, or heavy vehicle sales, rental, repair, or storage										P											P			
INDUSTRIAL USES																								
Industrial Service																								
Contractor's shop and storage yard										P					P						P	P		50-20.3.B
Dry cleaning or laundry plant										P											P			
Research laboratories									P	P											P	P		

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	R-C	RR-1	RR-2	R-1	R-2	R-P	MU-N	MU-C	MU-I	MU-B	MU-W	F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9	I-G	I-W		P-1
Current Zone District Name		S	S2	R1a,b,c & R2	R3		R4 & C1	C5	MC	M1, IT & IP	W1										M2	W1		
LAND USE CATEGORY																								
Industrial services										P											P	P		
Manufacturing and Mining																								
Manufacturing, light									P	P					P								50-20.4.F	
Manufacturing, heavy																					P			
Manufacturing, hazardous or special																					S		50-20.4.G	
Mining, extraction and storage																					S	S	50-20.4.H	
Water-dependent manufacturing, light or heavy																						P		
Transportation-Related																								
Airport and related facilities	S																				P		50-20.4.A	
Railroad yard or shipyard and related facilities																					P	P		
Truck freight or transfer terminal										P											P	P		
Utilities																								
Electric power or heat generation plant																					P	P		
Electric power transmission line or substation	S	S	S	S	S	P	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	50-20.4.C
Major utility or wireless telecommunication facility	S	S	S	S	S	P	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S		50-20.4.E
Radio or television broadcasting tower		S								S											S	S		50.20.4.I
Solar, geothermal, or biomass power facility (primary use)		S				P		S	S	P											P	S		

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	R-C	RR-1	RR-2	R-1	R-2	R-P	MU-N	MU-C	MU-I	MU-B	MU-W	F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9	I-G	I-W		P-1
Current Zone District Name		S	S2	R1a,b,c & R2	R3		R4 & C1	C5	MC	M1, IT & IP	W1										M2	W1		
LAND USE CATEGORY		S	S	S	S	P	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	
Water or sewer pumping stations/reservoirs	S	S	S	S	S	P	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	
Water or sewer treatment facilities																					P	P		
Wind power facility (primary use)		S							S	S											P	S	50-20.4.M	
Waste and Salvage																								
Junk and salvage services																					S	S	50.20.4.D	
Recycling collection point (primary use)								S	S	P											P	P		
Solid waste disposal or processing facility		S								S											S	S	50-20.4.J	
Wholesale Distribution and Storage																								
Storage warehouse										P					P						P		50.20.4.K	
Wholesaling										P					P						P		50-20.4.L	
Bulk storage not listed elsewhere																					P			
Water-dependent bulk storage or wholesaling not listed elsewhere																						P		
ACCESSORY USES																								
Accessory agriculture roadside stand	A	A																					A	50.20.5.A
Accessory bed and breakfast	A	A	A	A	A	A	A		A		A													50-20.5.B
Accessory boat dock, residential	A	A	A	A	A	A	A	A	A		A													50-20.5.C
Accessory caretaker quarters										A											A	A	A	

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	R-C	RR-1	RR-2	R-1	R-2	R-P	MU-N	MU-C	MU-I	MU-B	MU-W	F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9	I-G	I-W		P-1
Current Zone District Name		S	S2	R1a,b,c & R2	R3		R4 & C1	C5	MC	M1, IT & IP	W1										M2	W1		
LAND USE CATEGORY																								
Accessory communications tower for private use	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Accessory day care facility	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A				
Accessory dwelling unit	A	A	A	A	A	A	A																50-20.5.D	
Accessory heliport	A								A												A		50-25.5.E	
Accessory home occupation	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A			50-20.5.F	
Accessory recycling collection point					A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
Accessory sidewalk dining area					A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A			50-20.5.G	
Accessory solar or geothermal power equipment	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	50-20.5.H
Accessory uses and structures not listed elsewhere	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	50-20.5.I
Accessory wind power equipment	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	50-20.5.J
Minor utilities and accessory wireless antennas attached to existing structures	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	50-20.5.K
TEMPORARY USES																								
Temporary construction office or yard	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Temporary event or sales	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Temporary moveable storage container	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		50-20.6.A
Temporary real estate sales office				A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A				

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TABLE 50-19.8: USE TABLE

NOTE: Uses in the Natural Resources Overlay (NR-O) are limited by Section 50-18.1

NOTE: Uses in the Airport Overlay (A-O) district are limited by Section 50-18.2

NOTE: P and S uses only allowed in R-P district if included in an approved District Plan for the area

P = Permitted Use

U = Upper Story Only

S = Special Use

A = Accessory Use

New Zone District Name	Residential					Mixed Use					Form									Special			Use-Specific Standards	
	R-C	RR-1	RR-2	R-1	R-2	R-P	MU-N	MU-C	MU-I	MU-B	MU-W	F-1	F-2	F-3	F-4	F-5	F-6	F-7	F-8	F-9	I-G	I-W		P-1
Current Zone District Name		S	S2	R1a,b,c & R2	R3		R4 & C1	C5	MC	M1, IT & IP	W1										M2	W1		
LAND USE CATEGORY																								
Temporary use not listed in this table	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	

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50-20 Use specific standards.

50-20.1 Residential uses.

A. Two-family dwelling.

In the R-1, R-2 and R-P districts, two-family dwellings shall be designed to protect and reflect the character of one-family residences as set forth below:

1. Minimum size. Each two-family dwelling shall contain at least 1,800 square feet of floor area (not including garages or utility rooms or basement or attic space not used for living quarters);
2. Single front entrance. No more than one entrance shall be permitted on the front façade of the building;
3. Exterior stairways. No exterior stairways with a total vertical rise greater than five feet shall be permitted;

B. Townhouse dwelling.

In the R-1 district each dwelling shall exhibit the characteristics of a series of one-family dwellings that are arranged in an attached side by side fashion and shall be designed to protect the character of one-family residences as set forth below:

1. Dwelling fronting street. Townhouse dwellings shall be located on lots in such a way that each individual dwelling unit has a minimum of 15 feet of street frontage;
2. Variation of exterior walls. No more than two adjacent townhouse units may have front facades in the same vertical plane. Where a variation in front façade plane is required, the variation shall be a minimum of three feet;
3. Landscaping. Prior to the occupancy and use of a townhouse dwelling, coniferous or evergreen trees meeting the minimum size requirements of Section 50-25.2 shall be planted in required front and back yard areas on an average spacing of 20 feet;
4. Screening of refuse areas. Where refuse storage areas are directly viewable from any exterior lot line at a height of six feet above grade, they shall be screened by wood, brick, or stone fences, or by vegetative materials, with a minimum height of six feet, designed so that at least 75% of the refuse area is obscured by opaque materials when viewed at an angle perpendicular to the screening materials;

C. Dwelling, multi-family.

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In the F-2, F-4, F-5 and F-8 districts, this use is permitted on the ground floor of the corridor building type only. In other building types it is only permitted above the ground floor;

D. Assisted living facility (elderly).

1. In the R-1 district, the facility shall contain 12 or fewer habitable units;
2. In the F-2, F-4, F-5, and F-8 districts, this use is permitted on the ground floor of the corridor building type only. In other building types it is only permitted above the ground floor;

E. Rooming house.

In the F-2, F-4, F-5 and F-8 districts, this use is permitted on the ground floor of the corridor building type only. In other building types it is only permitted above the ground floor;

50-20.2 Public, institutional and civic uses.

A. Club or lodge (private).

1. In the R-2 district, the club or lodge shall be operated by a not-for-profit civic, cultural or educational organization, and the primary activity cannot be any service that is customarily carried on as a business;
2. In the RR-1 district, any such buildings shall occupy not more than ten percent of the total area of the lot and shall be set back from all yard lines a distance of not less than two feet for each foot of building height;
3. In the RR-1, RR-2, R-1 and R-2 zone districts, the maximum size of a primary building for religious assembly shall be 40,000 square feet;
4. In the R-1 and R-2 zone districts, each property boundary with a lot occupied by a residential use shall be buffered with a dense urban screen;

B. Medical or dental clinic.

1. In the residential districts, the clinic shall occupy 10,000 square feet or less in total floor area;
2. In the MU-N district, the clinic shall occupy 20,000 square feet or less in total floor area;

C. Religious assembly.

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1. In the RR-1 district, any such buildings shall occupy not more than ten percent of the total area of the lot and shall be set back from all yard lines a distance of not less than two feet for each foot of building height;
2. In the RR-1, RR-2, R-1 and R-2 zone districts, the maximum size of a primary building for religious assembly shall be 40,000 square feet;
3. In the R-1 and R-2 zone districts, each property boundary with a lot occupied by a residential use shall be buffered with a dense urban screen;

D. School, elementary, middle or high.

1. In the RR-1, RR-2 and R-1 districts, the school shall have a curriculum similar to that ordinarily given in public schools and having no rooms regularly used for housing or sleeping purposes, except staff quarters, when located on the premises for the school;
2. In the RR-1, RR-2, R-1, R-2, MU-N and MU-C districts, any such building shall be located not less than 40 feet from any side or rear lot line;
3. Notwithstanding any lower maximum height stated in Article 2, in all zone districts except the form districts, the maximum height for this use shall be 45 feet.

50-20.3 Commercial uses.

A. Adult entertainment establishment.

All adult entertainment establishments shall comply with MSA 617.242 and Chapter 5 of this Code;

B. Agriculture, general.

1. No killing or dressing of poultry, rabbits or other small or large animals, fish or creatures shall be permitted, other than the animals, fish or creatures raised on the premises and that such killing or dressing is done in an accessory building located not less than 200 feet from any lot line;
2. All buildings and enclosures, including fences, for the feeding, breeding or milking of large livestock or small animals, such as poultry, rabbits, fish and other similar animals, but not including pasturing and grazing, of such animals, must be located not less than 200 feet from any lot line;

C. Automobile and light vehicle repair and service.

1. No displays or storage of merchandise, parts or refuse may be located closer than 20 feet from any public right-of-way;

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2. A dense urban screen must be installed and maintained along all side and rear property lines abutting a residential or mixed use district;
3. All areas for outdoor storage of automobiles or light vehicles shall be screened from adjacent properties by a dense urban screen regardless of the use on the adjacent property;

D. Automobile or light vehicle sales, rental or storage.

In the MU-C district, the use is permitted when located at least 100 feet from any R district;

E. Bank.

1. In the MU-N district, banks are limited to no more than one drive-through window and one drive-through lane on the premises;
2. Any drive-through lane that is located between a bank and a residential district or structure shall be buffered from the residential district or structure by a dense urban screen and shall not be open past 10:00 p.m.;
3. Banks in the F-1, F-3, F-5, F-6, F-7, F-8 or F-9 districts may not have drive-through facilities;

F. Bed and breakfast.

This is a primary use of land, and the owner need not reside in the use. The use shall:

1. Have no more than 12 habitable units;
2. If located in a residential zone district, the use shall appear outwardly to be a one-family dwelling, giving no appearance of a business use other than allowed signs;
3. If located in a residential zone district, the use shall have no greater impact on surrounding public areas or infrastructure or natural resources than a fully occupied private home with house guests;
4. Be located on a lot or tract containing a minimum of 0.6 acre;
5. Contain a minimum of 1,500 square feet of area on the first floor of the main building;
6. Dining areas shall not exceed five seats per habitable unit. In addition to resident guests, only guests of resident guests shall be permitted to dine in a bed and breakfast, or guests participating in meetings or other private events hosted by the facility when other overnight guests are not present, not to exceed the approved seating capacity of the facility. For-profit events on the premises that involve a total number of participants in

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excess of the approved dining area seating capacity shall be limited to six days per year and shall be restricted to the period of October 15 through June 15;

7. Shall not have signage exceeding 12 square feet in size, and any signage shall complement the architecture of the structure;
8. Shall limit each guest stay to a maximum of 21 consecutive days;

G. Building materials sales.

1. Outdoor storage is limited to ten percent of the parcel's land area, and shall not be permitted in any required front yard area;
2. Each such area shall be screened from view from any ground floor window or door on any adjacent property, and from all adjacent rights-of-way, by an opaque fence or wall between six feet and eight feet in height. The fence may exceed eight feet in height where the difference in grade between the property line or right-of-way and the outdoor storage area makes a taller fence necessary to effectively screen the area;
3. A landscaped earth berm may be used instead or in combination with a required fence or wall;

H. Day care facility.

1. In the R-1 district, this must be either (a) a facility licensed by the state serving 12 or fewer persons, or (b) a group family day care facility licensed by the state to serve 14 or fewer children;
2. In the remaining districts where this use is permitted, the use must be either (a) a facility licensed by the state serving not more than 16 persons, or (b) a group family day care facility licensed by the state to serve 14 or fewer children;
3. In the RR-1 and RR-2 districts this use and related parking facilities and structures are limited to no more than 20% of the lot or parcel area;

I. Filling station.

1. No displays or storage of merchandise, parts or refuse may be located closer than 20 feet from any public right-of-way;
2. A dense urban screen must be installed and maintained along all side and rear property lines abutting a residential or mixed use district;

J. Mini-storage facility.

This use shall comply with the following standards:

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1. The use shall be contained within an enclosed building or buildings;
2. If the use abuts a residential zone district on any property line, building architecture shall employ sloped roofs and shall display wall relief features and colors commonly found in residential construction;
3. The use shall be designed so that doors to individual storage units do not face any abutting street frontage;
4. At least 50% of the wall surface area of any wall facing an abutting public street shall be faced with brick or split-block materials. Exposed concrete masonry unit (CMU) construction is not permitted on those facades;
5. Hours of public access to mini-storage units abutting one or more residential zone districts shall be restricted to the period from 6:00 a.m. to 10:00 p.m.;
6. Signage shall be limited to one 40 square feet illuminated pole and 20 square feet of non-illuminated wall signage. Signs shall not be located closer than ten feet to the front property line and no closer than 50 feet to any side property line;
7. In the RR-1 district, there shall be a minimum of 50 feet of landscaped or naturally vegetated buffer from all property lines;
8. In the R districts a dense urban screen shall be installed along all side and rear property lines;

K. Office.

1. In the MU-I district, offices are limited to those in support of the permitted institutional uses in the district; general offices unrelated to the activities of those institutions are not permitted;
2. In the MU-B district, offices are limited to those in support of the permitted industrial uses in that zone district; general offices unrelated to the activities of those institutions are not permitted;
3. In the F-6 district, offices may not have drive-through facilities.

L. Other outdoor entertainment or recreation use not listed.

1. No circus ground, carnival ground, event ground, or amusement park shall be approved within 300 feet of an R-C, RR-2 or R district;

M. Parking lot or parking garage (primary use).

1. In the MU-C district, any parking garage shall be located at least 50 feet from any RC, RR or R district;
2. In F-1, F-2, F-3, F-4, F-5, F-6, F-8 and F-9 districts, only parking lots (not parking garages) are permitted as primary uses;

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3. No portion of any parking lot or parking garage may be used for outdoor storage or junk, salvage items, inoperable motor vehicles or unlicensed retail or wholesale activities;

N. Restaurant (no drive-in/ drive-through).

In the R-2 district, no use shall exceed 5,000 square feet in gross floor area;

O. Restaurant (with drive-in/drive-through).

Drive through lanes must be located at least 25 feet from the boundary of any RR or R district and impacts along the boundary with those districts shall be buffered through the use of a dense urban screen;

P. Seasonal camp or cabin.

1. In the R-C and RR-1 districts, buildings shall be located not less than 200 feet from any R district;
2. In the R-C district, the design of the site shall preserve the rural character by:
 - (a) Separating each camp or cabin site by at least 50 feet, measured from the closest points on each tent or cabin area;
 - (b) Preserving all natural vegetation not required to be removed for access roads, trails or public safety;
 - (c) Using gravel or pervious paving, rather than impervious materials, for all access road and driveways serving fewer than 25 camp or cabin sites;

Q. Tourist or trailer camp.

When located in a flood plain, this use is limited to trailers without foundations that can be easily moved should flooding occur;

R. Veterinarian or animal hospital.

1. In the R-C and RR-1 districts, this use is permitted provided that service is limited to large livestock/large animal care and any building or enclosure so used shall be located not less than 100 feet from any lot line;
2. In the R-2, R-P, MU-N and MU-C districts, this use is permitted provided that practice is limited to the treatment of small animals (household pets, i.e. dogs, cats, birds, that are ordinarily permitted in the house for company) and that all aspects of the facility are totally contained (including kennel runs and exercise areas) within a soundproof building with adequate ventilation;

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50-20.4 Industrial uses.

A. Airport and related facilities.

1. In the R-C district, airport and related facilities are permitted only on land owned by the public or airport authority that is used for the exclusive purpose as an airport and only on land on which an airport was established on November 19, 2010;
2. In the I-G district, airport and related facilities are permitted only on land owned by the public or airport authority that is used for the exclusive purpose as an airport;

B. Contractor's shop and storage yard.

In the F-5 zone, this use is permitted only in the West Superior study area;

C. Electric power transmission line or substation.

The following standards shall apply, in addition to regular requirements of the special use permit process:

1. General corridor criteria:
 - (a) The public need for the route and facility as specifically proposed shall be demonstrated;
 - (b) Where possible, lines shall avoid existing and potential urban density residential neighborhoods;
 - (c) The applicant shall provide an evaluation of the future needs for additional transmission lines in the same general area as the proposed route and the advisability of utilizing structures capable of expansion of transmission capacity through multiple circuiting or design modification;
 - (d) When routing transmission lines, the following shall be avoided unless no reasonable alternative exists: slopes of 20% grade or greater; intrusions into scenic areas such as streams, open water, valleys, overviews, ridge crests and high points; wetlands; forests, by running along the fringe rather than through the forests, and by utilizing open areas in order to minimize cutting, although leaving a strip at the outside for screening purposes; soils susceptible to erosion that would create sedimentation and pollution problems; areas of unstable soils that would be subject to extensive slippages; areas with high water tables, especially if construction requires excavation; open space recreation areas, including parks, golf courses, etc.; long views of lines parallel to highways and trails; airports; and parkways;
 - (e) Routes shall utilize or parallel existing railroads and highway rights-of-way if possible. If such highway rights-of-way are developed the line

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and structures shall be sufficiently set back and screened in order to minimize view of the line and structures from the highway;

2. Design criteria:

- (a) If a proposal would unduly harm adjacent property or property values, alternatives must be evaluated to determine whether a feasible alternative to the proposal exists. Such consideration of alternatives shall include the underground placement of the line. Any consideration of feasibility of such underground lines shall include economic, technological or land characteristic factors. Economic considerations alone shall not render underground placement not feasible;
- (b) All structures shall be located and designed in such a way that they are compatible with surrounding land uses, scenic views and existing transmission structures with regard to height, scale, material, color and design;
- (c) Lines shall meet or exceed the National Electric Safety Code;
- (d) Electromagnetic noise and interference with radio and television reception, as well as audible hum outside the line right of way, shall be minimized;
- (e) The cleared portion of the right-of-way shall be kept to a minimum and where vegetation will be removed, new vegetation consisting of native grasses, shrubs and low growing trees shall be planted and maintained. Vegetative screening shall be utilized to the maximum extent consistent with safety requirements;

D. Junk and salvage services.

1. Junk and salvage service operations and facilities shall comply with all state and Western Lake Superior Sanitary District requirements;
2. No junk or salvage service facilities, shall be permitted in a designated shoreland or flood plain zone nor in an identified wetland as these are defined or shown in Section 50-18.1, *Natural Resources Overlay*;
3. There shall be no burning of materials;

E. Major utility or wireless telecommunications facility.

1. Policy.

Overall policy and desired goals for special use permits for wireless telecommunications facilities. In order to ensure that the placement, construction and modification of wireless telecommunications facilities protects the city's health, safety, public welfare, environmental features, the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in this Section 50-20.4.E, the city has adopted an overall policy with respect to a special use

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permit for wireless telecommunications facilities for the express purpose of achieving the following goals:

- (a) Requiring a special use permit for any new, co-location or modification of a wireless telecommunications facility;
- (b) Implementing an application process for person(s) seeking a special use permit for wireless telecommunications facilities;
- (c) Establishing a policy for examining an application for and issuing a special use permit for wireless telecommunications facilities that is both fair and consistent;
- (d) Promoting and encouraging, wherever possible, the sharing and co-location of wireless telecommunications facilities among service providers;
- (e) Promoting and encouraging, wherever possible, the placement, height and quantity of wireless telecommunications facilities in such a manner, including but not limited to the use of stealth technology, to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding and in generally the same area as the requested location of such wireless telecommunications facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances;
- (f) That in granting a special use permit, the city has found that the facility shall be the most appropriate site as regards being the least visually intrusive among those available in the city;

2. Applicability and exemptions.

- (a) Except as otherwise provided by subsection (b) below, no person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of, wireless telecommunications facilities after July 25, 2010, without having first obtained a special use permit for wireless telecommunications facilities. All legally permitted wireless telecommunications facilities, constructed as permitted, existing on or before July 25, 2010, shall be allowed to continue as they presently exist, provided however, that any visible modification of an existing wireless telecommunications facility will require the complete facility and any new installation to comply with this Section 50-20.4.E. Any repair and maintenance of a wireless facility does not require an application for a special use permit;
- (b) The following shall be exempt from the requirements of this Section 50-20.4.E:
 - (i) The city's fire, police, department of transportation or other public service facilities owned and operated by the city or those owned and operated by county, the state or federal government;

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- (ii) Any facilities expressly exempt from the city's siting, building and permitting authority;
- (iii) Over-the-air reception devices including the reception antennas for direct broadcast satellites (DBS), multichannel multipoint distribution (wireless cable) providers (MMDS), television broadcast stations (TVBS) and other customer-end antennas that receive and transmit fixed wireless signals that are primarily used for reception;
- (iv) Facilities exclusively for private, non-commercial radio and television reception and private citizen's bands, licensed amateur radio and other similar non-commercial telecommunications;
- (v) Facilities exclusively for providing unlicensed spread spectrum technologies (such as IEEE 802.11a, b, g (Wi-Fi) and Bluetooth) where the facility does not require a new tower;

3. Location standards.

- (a) Wireless telecommunications facilities shall be located, sited and erected in accordance with the following priorities, (i) being the highest priority and (vi) being the lowest priority:
 - (i) On existing towers or other structures on city owned properties;
 - (ii) On existing towers or other structures on other property in the city;
 - (iii) A new tower on city owned properties;
 - (iv) A new tower on properties in special purpose districts;
 - (v) A new tower on properties in mixed use or form districts;
 - (vi) A new tower on properties in residential districts;
- (b) If the proposed site is not proposed for the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred by the applicant if the permit were not granted for the proposed site;
- (c) An applicant may not by-pass sites of higher priority by stating the site proposed is the only site leased or selected. An application shall address co-location as an option. If such option is not proposed, the applicant must explain to the reasonable satisfaction of the city why co-location is commercially or otherwise impracticable. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of commercial impracticability or hardship;
- (d) The applicant shall submit a written report demonstrating the applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If

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appropriate, based on selecting a site of lower priority, a detailed written explanation as to why sites of a higher priority were not selected shall be included with the application;

- (e) The city may approve any site located within an area in the above list of priorities, provided that the city finds that the proposed site is in the best interest of the health, safety and welfare of the city and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood;

4. Other standards and requirements.

The following requirements are applicable to all wireless telecommunications facilities.

- (a) To the extent that the holder of a special use permit for wireless telecommunications facilities has not received relief, or is otherwise exempt from appropriate state or federal agency rules or regulations, then the holder of such special use permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any state or federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards;
- (b) To the extent that applicable rules, regulations, standards and provisions of any state or federal agency, including but not limited to the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting and security are changed or are modified during the duration of a special use permit for wireless telecommunications facilities, then the holder of such special use permit shall conform the permitted wireless telecommunications facilities to the applicable changed or modified rule, regulation, standard or provision within a maximum of 24 months of the effective date of the applicable changed or modified rule, regulation, standard or provision, or sooner as may be required by the issuing entity;
- (c) The wireless telecommunications facility and any and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and to harmonize with the natural surroundings; this shall include the utilization of stealth or concealment technology as may be required by the city. Facilities located within the migratory bird flight path shall utilize stealth or concealment technology;
- (d) All utilities at a wireless telecommunications facilities site shall be installed underground whenever possible and in compliance with all laws, ordinances, rules and regulations of the city, including specifically, but not limited to, the city and state building and electrical codes, where appropriate;

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- (e) At a telecommunications site, an access road, turn-around space and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion;
- (f) All wireless telecommunications facilities shall be constructed, operated, maintained, repaired, provided for removal of, modified or restored in strict compliance with all current applicable technical, safety and safety-related codes adopted by the city, state, or federal government, including but not limited to the most recent editions of the ANSI Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health and land use codes. In the event of a conflict between or among any of the preceding, the more stringent shall apply;
- (g) A holder of a special use permit granted under this Section 50-20.4.E shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the city or other governmental entity or agency having jurisdiction over the applicant;
- (h) The holder of a special use permit shall notify the city of any intended modification of a wireless telecommunication facility and shall apply to the city to modify, relocate or rebuild a wireless telecommunications facility;
- (i) All new towers shall be structurally designed to accommodate at least four additional antenna arrays equal to those of the applicant, and located as close to the applicant's antenna as possible without causing interference. This requirement may be waived, provided that the applicant, in writing, demonstrates that the provisions of future shared usage of the tower is not technologically feasible, is commercially impracticable or creates an unnecessary and unreasonable burden, based upon:
 - (i) The foreseeable number of FCC licenses available for the area;
 - (ii) The kind of wireless telecommunications facilities site and structure proposed;
 - (iii) The number of existing and potential licenses without wireless telecommunications facilities spaces/sites;
 - (iv) Available space on existing and approved towers;
- (j) New guyed towers are prohibited;

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- (k) Tower condition inspections shall be conducted every three years for a guyed tower and five years for monopoles and self-supporting towers. All inspections shall be documented in a report such as an ANSI report as per Annex E, Tower Maintenance and Inspection Procedures, ANSI/TIA/EIA-222F or most recent version. The inspection report shall be provided to the building official within two days of a request by the city for such records;
- (l) The owner of a proposed new tower, and the owner's successors in interest, shall negotiate in good faith for the shared use of the proposed tower by other wireless service providers in the future, and shall:
 - (i) Respond within 60 days to a request for information from a potential shared-use applicant;
 - (ii) Negotiate in good faith concerning future requests for shared use of the new tower by other telecommunications providers;
 - (iii) Allow shared use of the new tower if another telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference;
- (m) No tower constructed after July 25, 2010, including allowing for all attachments, shall exceed that height that shall permit operation without required artificial lighting of any kind in accordance with city, state or federal statute, law, code, rule or regulation;
- (n) No tower constructed after July 25, 2010, including allowing for all attachments, shall exceed 75 feet in height within the migratory bird flight path;
- (o) Wireless telecommunications facilities shall not be artificially lighted or marked, except as required by law;
- (p) Towers shall be galvanized or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this Section 50-20.4.E;
- (q) Wireless telecommunications facilities and antennas shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. All antennas, towers and other supporting structures, including guy anchor points and wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with. Transmitters and telecommunications control

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points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them;

- (r) Wireless telecommunications facilities shall contain a sign no larger than four square feet in order to provide adequate notification to persons in the immediate area of the presence of RF radiation or to control exposure to RF radiation within a given area. A sign of the same size is also to be installed to contain the name(s) of the owner(s) and operator(s) of the antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. On tower sites, an FCC registration site as applicable is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted;
- (s) All proposed towers and any other proposed wireless telecommunications facility structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the following distances: A distance equal to the height of the proposed tower or wireless telecommunications facility structure plus ten% of the height of the tower or structure, or the existing setback requirement of the underlying zone district, whichever is greater. Any accessory structure shall be located so as to comply with the applicable minimum setback requirements for the property on which it is situated;
- (t) The applicant and the owner of record of any proposed wireless telecommunications facilities property site shall, at its cost and expense, be jointly required to execute and file with the city a bond, or other form of security acceptable to the city as to type of security and the form and manner of execution, in an amount that shall be set in accordance with Section 31-6(a) of the City Code, and with such sureties as are deemed sufficient by the city to assure the faithful performance of the terms and conditions of this Section 50-20.4.E and conditions of any special use permit issued. The full amount of the bond or security shall remain in full force and effect throughout the term of the special use permit and until any necessary site restoration is completed to restore the site to a condition comparable to that which existed prior to the issuance of the original special use permit;
- (u) A holder of a special use permit for wireless telecommunications facilities shall secure and at all times maintain for the duration of the special use permit commercial general liability insurance for personal injuries, death and property damage, and umbrella insurance coverage in the following amounts: \$1,000,000 per occurrence/\$2,000,000 aggregate;
 - (i) For a wireless telecommunications facility on city property, the policy shall specifically include the city and its officers,

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employees, agents and consultants as additional insureds. The amounts of such coverage shall be established as a condition of the special use permit and shall be consistent with the liability limits provided in MSA 466.04;

- (ii) The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the state and with a Best's rating of at least A;
 - (iii) The insurance policies shall contain an endorsement obligating the insurance company to furnish the building official with at least 30 days prior written notice in advance of the cancellation of the insurance;
 - (iv) Renewal or replacement policies or certificates shall be delivered to the building official at least 15 days before the expiration of the insurance that such policies are to renew or replace;
 - (v) No permit necessary to the site preparation or construction of a permitted wireless telecommunications facilities may be issued until the holder of the special use permit shall file with the city building official a copy of the required policies or certificates representing the insurance in the required amounts;
 - (vi) Notwithstanding the requirements noted in this subsection no insurance shall be required in those instances where the city, county, state or a federal agency applies for and secures a special use permit for wireless telecommunications facilities.
- (v) All special use permits approved for wireless telecommunication facilities located on city property after July 25, 2010, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the city, and its officers, employees, agents and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal or restoration of said facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the city, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the city. An indemnification provision will not be required in those instances where the city itself applies for and secures a special use permit for wireless telecommunications facilities;

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5. Additional provisions for special use permit review.

In addition to those standards and criteria in Section 50-37.1 *Common procedures* and Section 50-37.10 *Special and interim use permits*, each application for a special use permit for a wireless telecommunications facility shall comply with the following additional standards:

- (a) The city may hire any consultant or expert necessary to assist the city in reviewing and evaluating an application for a special use permit for a wireless telecommunications facility, including the construction and modification of the site, once permitted, and any site inspections. An applicant shall deposit with the city funds sufficient to reimburse the city for all reasonable costs of consultant and expert evaluation and consultation to the city in connection with the review of any application including where applicable, the lease negotiation, the pre-approval evaluation, and the construction and modification of the site, once permitted. The initial deposit shall be set in accordance with Section 31-6(a) of the City Code;
- (b) The placement of the deposit with the city shall precede the pre-application meeting. The city will maintain a separate escrow account for all such funds. The city's consultants shall invoice the city for its services related to the application. The total amount of the funds needed for the review of the application may vary depending on the scope and complexity of the project, the completeness of the application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification. If at any time during the process this escrow account has a balance less than \$2,500, the applicant shall immediately, upon notification by the city, replenish said escrow account so that it has a balance of at least \$5,000. Such additional escrow funds shall be deposited with the city before any further action or consideration is taken on the application. In the event that the amount held in escrow by the city is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall, upon request of the applicant, be refunded to the applicant;
- (c) The land use supervisor may administratively approve an application to co-locate on an existing tower or other structure or a modification at an existing site, as long as there is no proposed increase in the height of the tower or structure or attachments to the tower or structure;
- (d) At any stage prior to issuing a special use permit the city may require such additional information as it deems necessary to confirm compliance with this UDC;
- (e) The city may refer any application or part of an application to any advisory, other committee or commission for a non-binding recommendation;

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- (f) Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the city may disapprove an application for any of the following reasons:
 - (i) Conflict with safety and safety-related codes and requirements;
 - (ii) Conflict with the historic nature or character of a neighborhood or historical district;
 - (iii) The use or construction of wireless telecommunications facilities that is contrary to an already stated purpose of a specific zoning or land use designation;
 - (iv) The placement and location of wireless telecommunications facilities that would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees and agents of the city or employees of the service provider or other service providers;
 - (v) Conflicts with the provisions of this Section 50-20.4.E;
 - (vi) The failure of the applicant to provide additional requested information in sufficient time for the city to comply with the requirements of MSA 15.99;
 - (g) Except for necessary building permits, once a special use permit has been granted, no additional zoning approvals shall be required by the city for the wireless telecommunications facilities covered by the special use permit;
 - (h) In order to verify that the holder of a special use permit for wireless telecommunications facilities and any and all lessees, renters and licensees of wireless telecommunications facilities, place and construct such facilities, including towers and antennas, in accordance with all applicable technical, safety, fire, building and zoning codes, laws, ordinances and regulations and other applicable requirements, the city may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, towers, antennas and buildings or other structures constructed or located on the permitted site;
6. Relief and appeal.

Any applicant desiring relief, waiver or exemption from any aspect or requirement of this Section 50-20.4.E may request relief, waiver or exemption in the submitted application for either a special use permit, or in the case of an existing or previously granted special use permit a request for modification of its tower and/or facilities. The requested relief, and any relief granted by the city, may be temporary or permanent, partial or complete. The burden of proving the need for the requested relief, waiver or exemption is solely on the applicant to prove. The applicant shall bear

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all costs of the city in considering the request and the relief, waiver or exemption. No such relief or exemption shall be approved unless the applicant demonstrates by clear and convincing evidence that if granted, the relief, waiver or exemption will have no significant affect on the health, safety and welfare of the city, its residents and other service providers;

F. Manufacturing, light.

In the MU-I district, this use is permitted provided it is related to and incidental to a permitted institutional primary use on the property;

G. Manufacturing, hazardous or special.

1. In permitting any such uses, the city may impose appropriate conditions and safeguards, including performance bonds, to protect the health, safety and welfare of the residents of the community and the environment;
2. All future use of the land and structures erected on the land shall be governed by and limited to the approved plans and conditions imposed by the city. Any subsequent change or addition to the plan or use shall be submitted for approval as if it were a new use;
3. Without limitation on other valid reasons for denying approval for such a use, the city may deny approval if it finds that the use would have negative environmental, health or safety impacts on the community or have little or no contiguity with existing or programmed development in the affected area;

H. Mining, extraction, and storage.

1. No special use permit for this use shall be issued until the city determines that:
 - (a) The city engineer has certified that the proposed extraction, removal or processing, and the proposed finished grades on the property, will not endanger the function of any public highway or utility easement of the city. If the city engineer proposes conditions and safeguards that are necessary to protect adjoining property, both city and privately owned, those conditions and safeguards have been included in the application or agreed to in writing by the applicant;
 - (b) The proposed excavation, removal or processing shall not result in the creation of any hazardous sharp pits, steep banks, soil erosion, drainage or sewerage problems or other conditions that would ultimately impair the use of the property in accordance with the general purpose and intent of the zoning regulations for that district;
 - (c) Finished slopes in the excavated area shall not exceed one foot vertical rise to two feet of run except in the case of dams or swimming

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pools, or where specifically approved in writing by the planning commission;

- (d) No stagnant water shall be permitted to result from such removal, excavation or processing;
2. No earthmoving, processing or excavating equipment or trucks that are inoperative for more than 30 days shall be stored in the open on the property;
3. Upon completion of the excavation, processing or removal of earth materials in accordance with the approved proposed contour lines, the premises shall be cleared of all debris and, unless the excavated area is beneath water, a top layer of soil that will sustain the growth of turf shall be spread over the premises and shall be seeded with perennial rye or grasses;
4. All excavation, removal and processing, and the extent, limits, and time limits of each activity, shall comply with all terms and conditions in the approved special use permit;
5. The applicant shall post financial security pursuant to Section 50-37.1.P to ensure compliance with the terms and conditions of the permit, including but not limited to remediation of the site following excavation, removal and processing operations;

I. Radio or television broadcasting tower.

All radio or television broadcasting towers shall be located in the area of the city known as the tower farm within Section 28, Township 50, Range 14, so as to place the visual and safety impacts of the structure near similar structures, unless the applicant provides a report from a qualified specialist in the type of facility being constructed or the type of service being provided stating that it is technically not possible to construct the required structure or to provide the applicant's service from that area of the city;

J. Solid waste disposal or processing facility.

This use shall comply with the following standards:

1. All aspects of the solid waste disposal operation shall be setback from all property lines a minimum of 150 feet. Natural vegetation shall be retained in such setbacks where practical. All aspects of yard waste composting facilities shall be set back 100 feet from all property lines;
2. All solid waste disposal operations and facilities, including without limitation yard waste composting facilities, medical waste disposal facilities and petroleum soil disposal sites, shall comply with all state and Western Lake Superior Sanitary District requirements;

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3. Solid waste disposal facilities for industrial waste shall only be allowed in I-G and I-W zones. Such facilities shall be approved in the special use permit only for specified types of industrial waste;
4. The special use permit shall specify the types of wastes authorized;
5. Solid waste disposal facilities for construction debris shall only be allowed in I-G and I-W zones'
6. Facilities for composting of yard waste shall not accept materials other than yard waste;
7. No solid waste disposal facilities, except composting facilities, shall be permitted in a designated shoreland or flood plain zone nor in an identified wetland as defined in Section 50-18.1 or Article 6;
8. All filled areas shall be covered and vegetated in accordance with an approved schedule for filling, covering and vegetating. Further, there shall be an approved plan as part of the special use permit for the vegetation and dust control of stockpiled cover material;
9. There shall be no burning of materials;
10. Facility locations shall have direct access to an arterial street and shall not access through a neighborhood. Increased traffic generated by the facility shall not have an adverse effect on the neighborhood. All roads leading to and from and within facilities located in RR-1 and MU-B zones shall be constructed with an approved dust-free material;
11. All vehicles transporting materials to or from the facility shall be covered;
12. Except for yard waste composting facilities there shall be no processing, separating or sorting of materials outside of covered structures;
13. Noise emanating from a building in which dumping, separating or other processing of material is performed shall not exceed state noise requirements at any property line that abuts property zoned other than I-G and I-W;
14. In the absence of other compliance funding required by state permitting agencies, there shall be a bond, letter of credit or other security (including an account to accept deposits of tipping fees) acceptable to the city, prior to the issuance of a permit to ensure compliance with the terms of the permit and to ensure proper closure of the facility. Such bond, letter of credit or other surety shall provide for the amount of the closure costs estimated and certified by the project engineer for each phase of operation and final closure;

K. Storage warehouse.

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In the F-5 district, this use is only permitted in the West Superior portion of the F-5 district;

L. Wholesaling.

In the F-5 district, this use is only permitted in the West Superior portion of the F-5 district;

M. Wind power facility.

In all districts, wind power systems shall comply with the following requirements:

1. The base of the tower shall be set back from all property lines, public rights-of-way, and public utility lines a distance equal to the total extended height. A tower may be allowed closer to a property line than its total extended height if the abutting property owner(s) grants written permission and the installation poses no interference with public utility lines or public road and rail rights-of-way;
2. In the MU-B district, towers that are 50 feet or less in height are permitted by right; taller towers require a special use permit, and no tower shall be approved over 200 feet in height. In other districts where this use is listed as a permitted use, towers that are 200 feet or less in height are permitted by right; taller towers require a special use permit;
3. Notwithstanding the provisions of subsection 2 above, no wind power facility shall be taller than 75 feet within any migratory bird flight path;
4. Sound produced by the turbine under normal operating conditions, as measured at the property line of any adjacent property improved with a dwelling unit at the time of the issuance of the zoning certificate, shall not exceed 55 dba for any period of time. The 55 dba sound level may be exceeded during short-term events out of the owner's control such as utility outages or severe wind storms;
5. The turbine and tower shall remain painted or finished in the color that was originally applied by the manufacturer;
6. The blade tip or vane of any small wind energy system shall have a minimum ground clearance of 15 feet as measured at the lowest point of the arc of the blades;
7. All signs on a wind generator, tower, building or other structure associated with a small wind energy system visible from any public road, other than the manufacturer's or installer's identification, appropriate warning signs or owner identification, shall be prohibited;
8. No illumination of the turbine or tower shall be allowed unless required by the FAA;

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9. Any climbing feet pegs or rungs below 12 feet of a freestanding tower shall be removed to prevent unauthorized climbing. For lattice or guyed towers, sheets of metal or wood or similar barriers shall be fastened to the bottom tower section such that it cannot readily be climbed;
10. Building permit applications for small wind energy systems shall be accompanied by standard drawings of the wind turbine structure and stamped engineered drawings of the tower, base, footings and foundation as provided by the manufacturer. Wet stamps shall not be required;
11. No part of this use may project above any of the imaginary airspace surfaces described in FAR Part 77 of the FAA guidance on airspace protection;
12. This use shall not be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator;
13. If a wind turbine is inoperable for six consecutive months the owner shall be notified that it must, within six months of receiving the notice, restore their system to operating condition. If the owner(s) fails to restore their system to operating condition within the six month time frame, then the owner shall be required, to remove the wind turbine from the tower for safety reasons, at its expense. If the owner(s) fails to remove the wind turbine from the tower, the city may pursue legal action to have the wind generator removed at the owner's expense;

50-20.5 Accessory uses.

A. Accessory agriculture roadside stand.

Only one stand offering for sale farm products produced on the premises is permitted provided that such stand does not exceed an area of 200 square feet and that it is located not nearer than 25 feet to any street or highway;

B. Accessory bed and breakfast.

The owner and operator of an accessory bed and breakfast shall be required to live in the establishment. In addition, the use shall:

1. Have no more than five habitable units;
2. Appear outwardly to be a one-family dwelling, giving no appearance of a business use other than allowed signs;
3. Have no greater impact on surrounding public areas, infrastructure or natural resources than a fully occupied private home with house guests;
4. Be located on a lot or tract containing a minimum of 0.6 acre;

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5. Contain a minimum of 1,500 square feet of area on the first floor of the main building;
6. Dining areas shall not exceed three seats per habitable unit in bed and breakfast inns. In addition to resident guests, only guests of resident guests shall be permitted to dine in a bed and breakfast, or guests participating in meetings or other private events hosted by the facility when other overnight guests are not present, not to exceed the approved seating capacity of the facility. For profit events on the premises that involve a total number of participants in excess of the approved dining area seating capacity shall be limited to six days per year and shall be restricted to the period of October 15 through June 15;
7. Shall not have signage exceeding 12 square feet in size, and any signage shall complement the architecture of the structure;
8. Shall limit each guest stay to a maximum of 21 consecutive days;
9. May be subject to other conditions deemed necessary by the city to ensure the use complies with the purpose of this subsection;

C. Accessory boat dock, residential.

This use shall comply with the following standards:

1. Dockage of boats owned and primarily used by a resident of the property is a permitted accessory use to the primary residential use and shall not be limited in number;
2. If there is a residential structure on the property and the property has frontage on an improved street, the owner of the residential structure may rent out boat dockage to a maximum of two boats owned by others. If the property does not have frontage on an improved street, the owner of the residential structure may not rent dockage space to others. Boat dockage use on a property that is not residentially developed is permitted as a principal use provided that the use is limited to one boat for each lot or group of contiguous lots in the same ownership, and the boat is owned and primarily used by the owner of the property;
3. For each new rental boat dock space created or made legal after April 14, 1974, one off street parking space shall be provided in addition to all other off street parking spaces required by other legal uses of the property, such spaces to be constructed in accordance with Section 50-24;
4. At the request of the building official, the owner of property shall provide boat registration or other documentary evidence to prove compliance with these standards;
5. No buildings other than residential or residential accessory structures, no winter storage of boats other than those owned by a resident of the

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property in question, no repair facilities, fuel sales, food or refreshment sales, rentals of boats, boat or parts sales or displays or other commercial uses shall be permitted;

D. Accessory dwelling unit.

An accessory dwelling unit may be created within, or detached from, any one-family dwelling, as a subordinate use, in those districts shown in Table 50-19.8, provided the following standards are met:

1. Only one accessory dwelling unit may be created per parcel;
2. No variances shall be granted for an accessory dwelling unit;
3. Only the property owner, which shall include title holders and contract purchasers, may apply for an accessory dwelling unit;
4. One off-street parking space shall be provided in addition to off-street parking that is required for the primary dwelling;
5. Accessory dwelling units shall contain no more than 800 square feet of floor space and shall be consistent in character and design with the primary dwelling;
6. If a separate outside entrance is necessary for an accessory dwelling unit located within the primary dwelling, that entrance must be located either on the rear or side of the building;

E. Accessory heliport.

1. All accessory heliports shall have and maintain in effect at all times all required permits and approvals, if any, for the facility and operation required by the FAA, and shall design and maintain the facility and conduct operations in compliance with those permits and approvals;
2. In the R-C and I-G districts, this use shall be permitted only when it is accessory to an airport as a primary use;

F. Accessory home occupation.

All home occupations not listed separately in Table 50-19.8 must comply with the following standards:

1. The use must be conducted entirely in the residence or accessory buildings and not on outdoor portions of the lot;
2. No business involving retail sales of goods from the premises is permitted;
3. No person not a member of the family residing on the premises shall work on the premises;

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4. Not more than 25% of the floor area of one story of the dwelling shall devoted to such home occupation;
5. The home occupation shall not require external alterations that would change the residential character of the property;
6. No display pertaining to such occupation shall be visible from the street;
7. Only one sign not exceeding one square feet in area is permitted, and that sign may only contain the name and title of the business or proprietor and may not be illuminated;
8. No equipment shall be used that creates offensive noise, vibration, sound, smoke, dust, odors, heat, glare, X-ray or electrical disturbance to radio or television or that otherwise constitutes a nuisance;
9. All home occupations that require a license from the state shall maintain a valid license at all times and shall operate in compliance with the terms of that license and all applicable regulations of the state at all times;
10. No motor vehicle repair is permitted as an accessory home occupation;

G. Accessory sidewalk dining area.

In all districts, this use requires approval of a sidewalk use permit pursuant to Section 50-37.12;

H. Accessory solar or geothermal power equipment.

In all districts, solar collection systems shall comply with the following requirements:

1. Ground-mounted solar system.
 - (a) Solar collectors shall not be located in the front yard between the principal structure and the public right-of-way;
 - (b) Solar collectors shall be located a minimum of six feet from all property lines and other structures;
 - (c) Solar collector areas in any residential district shall not exceed the greater of one-half the footprint of the principal structure or 600 square feet, whichever is greater. The size of solar collector areas in all districts except residential districts shall not exceed one-half of the footprint of the principal structure;
 - (d) Solar collectors shall not exceed five feet in height;
2. Roof-mounted or wall-mounted solar system.
 - (a) A solar collection system shall be located a minimum of six feet from all property lines and other structures except the structure on which it is mounted;

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- (b) A solar collection system shall not extend more than 18 inches above the roofline of a one-family or two family residential structure, or more than ten feet above the roofline of a multi-family or non-residential structure;
- (c) A solar collection system shall not exceed the maximum height permitted in the zone district in which it is located by more than 18 inches;
- (d) A solar collection system may be located on an accessory structure;
- (e) A development proposed to have a solar collection system located on the roof or attached to a structure, or an application to establish a system on an existing structure, shall provide a structural certification as part of the building permit application;

3. Solar easements.

A property owner who has installed or intends to install a solar collection system shall be responsible for negotiating with other property owners in the vicinity for any necessary solar easement and shall record the easement with the county recorder. If no such easement is negotiated and recorded, the owner of the solar collector shall have no right to prevent the construction of structures permitted by this Chapter on nearby properties on grounds that the construction would cast shadows on the solar collection system;

I. Accessory uses or structures not listed elsewhere.

- 1. In any residential district, any accessory building that is erected prior to the construction of the principal building shall comply with the following conditions:
 - (a) The construction of the principal building shall be completed and the certificate of occupancy for such principal use issued within two years of issuance of the building permit for the accessory building;
 - (b) Prior to issuance of a building permit for such accessory use, a building demolition bond shall be approved by the city and in an amount sufficient to demolish such accessory structure be filed with the building official;
 - (c) The owner shall execute a license, in a form approved by the city, authorizing the city to enter upon the real property for the purpose of demolishing such accessory structure in the event a principal structure is not completed as required by this Section.
- 2. In the RR-2 district, business shall not be conducted from a garage;
- 3. In the R-2 district, accessory building includes a storage garage on a lot occupied by a multi-family dwelling, townhouse or rooming house;

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4. In the MU-N district, accessory buildings shall be subject to the following restrictions:
 - (a) Except for truckload or trailer-load retail sales lasting less than 30 days, no accessory use shall be conducted in or out of a trailer or truck;
 - (b) Storage of trailers and trucks or storage of goods within trailers and trucks shall not be a permitted accessory use unless (i) the primary use of the lot is a parking lot, parking garage, or filling station, or (ii) the truck or trailer is used on a regular basis for deliveries or the hauling of supplies to or from a business;
5. In the MU-C, MU-I and MU-W districts, accessory buildings shall be erected at the same time or after the construction of the principal building and subject to the following restrictions:
 - (a) Except for truckload or trailer-load retail sales lasting less than 30 days, no accessory use shall be conducted in or out of a trailer or truck;
 - (b) The storage of trailers and trucks or the storage of goods within trailers and trucks shall not be a permitted use unless (i) the primary use of the lot is a parking lot, parking garage, filling station, automobile or light vehicle sales or service, or automobile or light vehicle storage, or (ii) the truck or trailer is used on a regular basis for deliveries or the handling of supplies to or from a business;
6. In the MU-B, I-G, and I-W districts, accessory buildings shall be erected at the same time or after the construction of the building for the principal use;
7. An accessory building may observe an equal or greater distance to the front property line as provided by a principal structure if the accessory building provides the front and side yards required for dwelling in that district as per Article 2 and Section 50-20;

J. Accessory wind power equipment.

In all districts, accessory wind power systems shall comply with the following requirements:

1. The base of the tower shall be set back from all property lines, public rights-of-way, and public utility lines a distance equal to the total extended height. A tower may be allowed closer to a property line than its total extended height if the abutting property owner(s) grants written permission and the installation poses no interference with public utility lines or public road and rail right-of-ways;
2. Towers that are 50 feet or less in height are permitted by right. Towers exceeding 50 feet in height require approval of a special use permit, provided that in no case shall tower height exceed 130 feet;

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3. Notwithstanding the provisions of subsection 2 above, no wind power facility shall be taller than 75 feet within any migratory bird flight path;
4. Sound produced by the turbine under normal operating conditions, as measured at the property line of any adjacent property improved with a dwelling unit at the time of the issuance of the zoning certificate, shall not exceed 55 dba for any period of time. The 55 dba sound level may be exceeded during short-term events out of the owner's control such as utility outages or severe wind storms;
5. The turbine and tower shall remain painted or finished in the color that was originally applied by the manufacturer;
6. The blade tip or vane of any small wind energy system shall have a minimum ground clearance of 15 feet as measured at the lowest point of the arc of the blades;
7. No sign that is visible from any public street shall be permitted on the generator, tower, building or other structure associated with a small wind energy system other than the manufacturer's or installer's identification and appropriate warning signs;
8. No illumination of the turbine or tower shall be allowed unless required by the FAA;
9. Any climbing feet pegs or rungs below 12 feet of a freestanding tower shall be removed to prevent unauthorized climbing. For lattice or guyed towers, sheets of metal or wood or similar barriers shall be fastened to the bottom tower section such that it cannot readily be climbed;
10. No part of this use may project above any of the imaginary airspace surfaces described in FAR Part 77 of the FAA guidance on airspace protection;
11. No small wind energy system shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement;

K. Minor utilities and accessory wireless antennas attached to existing structures.

The following standards apply to accessory wireless antennas that are attached to existing structures and to minor utilities regardless of whether they are attached to an existing structure:

1. A special use permit is required to allow any antenna to exceed 150 feet in height;
2. All building-mounted antennas shall meet or exceed current standards and regulations of the FAA, FCC and any other state or federal agency with the authority to regulate communications antennae and support structures;

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3. The size, design and location of each attached antenna shall reduce visibility from surrounding buildings and from the public rights-of-way adjoining the property to the greatest extent feasible;
4. Building-mounted antennas or disguised antenna support structures shall be of a color identical to or closely compatible with the surface to which they are mounted;
5. Except when a support structure for a building-mounted antenna is an otherwise lawfully permitted sign, the placement of advertising on antennae is prohibited;

50-20.6 Temporary uses.

A. Temporary construction office or yard.

This use is limited to one month before construction begins to one month after construction is completed, unless extended for good cause by the building official. Requests for longer periods may be reviewed through the special use permit procedure in Section 50-37.10;

B. Temporary event or sales.

This use is limited to no more than 4 events per calendar year, with the combined length of the 4 events limited to 20 days. Requests for more events or longer periods may be reviewed through the special use permit procedure in Section 50-37.10;

C. Temporary moveable storage container.

1. Temporary moveable storage containers for residential uses shall not be located on any public street, and shall not remain on any property in a residential zone district for more than 14 consecutive days;
2. Temporary moveable storage containers for non-residential uses shall not be located on any public street and shall not be located on private property for more than 90 days during any calendar year unless located and buffered from adjoining property to the same extent required for primary or accessory structures;

D. Temporary real estate sales office.

This use is limited to one month before lot or unit sales begin to one month after 90% of the lots or units have been sold, unless extended for good cause by the land use supervisor. Requests for longer periods may be reviewed through the special use permit procedure in Section 50-37.10.

Article IV. Development Standards.

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50-21 Dimensional standards.

50-21.1 General dimensional standards.

A. Residential, mixed use, special purpose and overlay zones.

The dimensional standards for residential, mixed use, special purpose and overlay districts are shown in the description for each district in the following Sections of Article 2:

- Standards for residential districts are shown in Section 50-14;
- Standards for mixed Use districts are shown in Section 50-15;
- Standards for special purpose districts are shown in Section 50-17; and
- Standards for overlay districts are shown in Section 50-18.

All dimensional standards shown in Article 2 are subject to the special dimensional standards in Section 50-21.2 and the exceptions and encroachments in Section 50-21.3 unless specifically noted;

B. Form districts.

The dimensional standards for form districts are integrated into descriptions of each form-based district in Article 2 and the building form standards in Section 50-22. The special dimensional standards in Section 50-21.2 and the exceptions and encroachments in Section 50-21.3 do not apply in the form districts unless specifically noted.

50-21.2 Special dimensional standards.

A. Lot without municipal sewer.

Lot areas for properties not provided with municipal sewer shall be at least two acres in size or the minimum lot area for the zone district, whichever is larger, and shall be subject to county ordinances and standards regulating individual sewage treatment systems. Lots with large wetlands or shallow bedrock may be required to be larger than two acres, and shall be determined on a case-by-case basis based on the area needed to fit a sewage treatment system on the site. Lots smaller than two acres may be allowed in areas zoned R-P based on soil and site conditions;

B. Front yards on double frontage lots.

On lots having double frontage and where the first and second frontages are on opposite lot lines, the required front yard shall be provided on the frontage that is the generally established frontage on the block, as determined by the building official;

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C. Side yards.

1. Dwelling units above commercial uses.

In all residential and mixed use districts, where dwelling units are erected above commercial establishments, no residential side yard is required, except for any side yard required for the commercial building on the side of a lot adjoining a residential district. In form districts, no side yard is required even if the lot adjoins a residential district;

2. Attached and multi-family dwellings.

For the purpose of side yard regulations, a two-family dwelling, townhouse, or multi-family dwelling shall be considered as one building occupying one lot;

3. Driveways.

Where no garage facilities are provided and the alley is not developed for access at the time the dwelling is constructed in an R-1 or R-2 district, there shall be provided one side yard of a minimum of nine feet for a driveway and the other side yard shall have a minimum width of five feet;

D. Rear yards.

An accessory building not exceeding 20 feet in height may occupy no more than 30% of required rear yard area. Unenclosed parking spaces may occupy no more than 50% of required rear yard area. Where a lot abuts upon an alley, one-half of the platted alley easement may be considered as part of the required rear yard.

50-21.3 Exceptions and encroachments.

The following exceptions and encroachments to required yard areas and height limits are allowed. These provisions apply to form districts except as noted.

Table 50-21-1: Exceptions and Encroachments	
Structure or Feature	Conditions or Limits
Encroachments into Required Yard Areas	
Architectural features (sills, belt courses, eaves, cornices) awnings and canopies, bay windows, gutters and downspouts	No more than 18 in. into any required yard area
Unenclosed or lattice-enclosed stairs, fire escapes, and balconies opening upon fire towers	No more than 5 ft. into any required rear yard, except as required to comply with applicable fire code or Americans with Disabilities Act
Chimneys and flues	No more than 2 ft. into any required front or side setback.
Open, uncovered porch or paved terrace	Not more than 10 ft. into front yard
Enclosed vestibule or fixed canopy with a floor area of not more than 40 sq. ft.	Not more than 4 ft. into front yard
Fuel pumps or pump islands	Not closer than 15 ft. from any street line or closer than 50

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Table 50-21-1: Exceptions and Encroachments	
Structure or Feature	Conditions or Limits
	ft. from any residential district boundary
Fences meeting the standards of Section 50-26.4	Fences may not be located closer than 3 ft. to any publicly maintained right-of-way
Porte cochere, carport, or canopy if every part is unenclosed except for necessary structural supports	Permitted in any side setback, but not less than 5 ft. from any side lot line
Accessory Structures	No accessory structure may be located (a) between a street and any façade of a primary building facing that street, or (b) closer than 10 ft. to any principal structure on an adjoining property, or (c) closer than 5 ft. to any rear lot line, or (d) closer than 3 ft. to any side lot line, except as listed for specific accessory structures below.
Accessory boat dock, residential	No setback required from property lines along the water
Accessory clotheslines, play equipment, trash containers, odor-controlled composting bins and rainwater harvesting tanks	Permitted in side and rear yards
Accessory raingarden	Permitted in all (front, side and rear) yards
Accessory wind power equipment	Permitted in side and rear yards except where prohibited by adopted building code
Exceptions to Building Height Limits	
Television and radio towers, accessory communications towers for private use, religious assembly or ornamental spires and towers, belfries, monuments, tanks, water and fire towers, stage tower or scenery lofts, cooling towers, ornamental towers, chimneys, elevator penthouses, air conditioning penthouses, skylights, smokestacks, conveyors, storage elevators and facilities, flagpoles, accessory wind power equipment, or accessory rooftop solar collectors.	Exempt from height limit. The provisions for covering religious assembly towers and spires only apply if the applicant proposes an Iconic Building in a Form District.

50-22 Building form standards.

The following provisions apply only in the form districts listed in Section 50-16, but do not apply in other zone districts.

50-22.1 General requirements.

A. Intent

The building types detailed in this Section outline the desired building forms for new construction and renovated structures within the form districts;

B. Applicability.

1. All building type standards apply to all new construction and renovation of existing structures, where the renovation includes an addition of more than 50% in building square footage;

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2. When a renovation of the front facade occurs with no added building square footage, the street facade requirements and base type requirements must be met when:
 - (a) The existing building front, corner, or lakefront facade is located within the build-to zone;
 - (b) The renovation includes any of the following:
 - (i) Installation of additional doors or a change in location of a door;
 - (ii) Expansion or change in location of 30% of windows on any street or lakefront facade;
 - (iii) Replacement of 30% or more of facade materials on any street or lakefront facade with a different facade material;
3. When a renovation of the shape or style of the roof occurs with no added building square footage, the cap type requirements must be met when the existing building front, corner or lakefront facade is located within the build-to zone;
4. Under all circumstances, no portion of the building type standards must be met in the case of normal repairs required for safety and continued use of the structure, such as replacement of window or door glass;

C. General requirements.

All construction in the form districts must meet the following requirements:

1. Zone districts.

No primary building shall be developed within a form district unless it matches one of the building types approved for that district in Table 50-22.2-1;

2. Planning review required.

Development of any building type must be reviewed and approved by the city through the planning review process in Article 5;

3. Permanent structures.

All buildings constructed must be permanent construction without a chassis, hitch, or wheels, or other features that would make the structure mobile. Temporary structures and uses are permitted as shown in Article 3;

50-22.2 General building type descriptions.

Four major categories of building types are described in this Section: Main Street Building, Corridor Building, Cottage Commercial Building, and Iconic Building. The building types proposed for the Form Districts include three variations of the Main

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Street Building, three variations of the Corridor Building, two variations of the Cottage Commercial Building, and one version of the Iconic Building. The building type variations go from least intense (Type I) to most intense (Type III). Main Street Buildings, in general, are pedestrian-oriented, mixed use buildings. This building type typically has a storefront on the ground floor with offices or residential uses on the upper floors. The ground floor of the Main Street Building has a high amount of transparency, so that pedestrians walking by can look into the interior space. Corridor Buildings are primarily meant to house office or multi-family residential uses, with less transparency required on the ground floor. The Cottage Commercial Building is primarily commercial in nature but, unlike the Main Street Building, it is similar in form to single-family residential areas, providing transitions between commercial and residential areas. While the previously mentioned building types are intended to serve as the fabric buildings of the city, the Iconic Building is a unique civic or institutional building that has distinctive character and function within the community;

A. Main street buildings.

1. Main street building I.

This building type allows for service, retail, and office uses on the ground floor and office or residential above. It is appropriate for commercial uses adjacent to residential neighborhoods, as the intensity of this building type is not as high as the other main street building types. It has a larger build-to zone and a maximum height of two-and-a-half or three stories depending on location;

2. Main street building II.

Main street building II is slightly more intense than main street building I, as it is required to be built up to the right-of-way and may be up to four stories tall. This building type also permits service, retail and office uses on the ground floor and office or residential on upper floors;

3. Main street building III.

Main street building III is the most intense of the main street building types, as it is meant to be used in the downtown area. It is located directly adjacent to the sidewalk and should include retail or service uses on the ground floor whenever possible. Main street building III has a maximum height of 15 stories in limited locations;

B. Corridor buildings.

1. Corridor building I.

This building type can house a single category of uses, such as office or residential, or a mix of uses. Corridor building I is the least intensive

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corridor building, located in the more neighborhood oriented study area locations. It has a larger build-to zone that is set back farther than the other corridor buildings and is permitted to be a maximum of three stories;

2. Corridor building II.

Corridor building II is an intermediary building type between the more neighborhood scale locations and the intensity of Downtown. It is similar to corridor building I in many ways, but is permitted to be built up to the sidewalk and may also be taller, with a maximum height of four stories;

3. Lakefront corridor building.

The lakefront corridor building is a variation on corridor building II that was created for use along Lake Superior in Canal Park. These buildings front the lake, but also require some level of frontage on Canal Park Drive. The maximum height is four stories;

4. Corridor building III.

Corridor building III was created for use in Downtown. It is required to be built adjacent to the sidewalk and has a maximum height of 15 stories in specified locations. While the corridor building types are meant to house primarily office and residential uses, commercial uses are also permitted to create a vibrant commercial core for Downtown;

C. Cottage commercial.

1. Cottage commercial I.

The cottage commercial building type is residential in character but commercial in use. At a maximum height of two and a half stories, it is meant to blend in with a surrounding residential neighborhood while at the same time providing neighborhood-scale commercial uses. Cottage commercial I is for use as a transition to residential locations, with a larger build-to zone and permitted side aisle of parking. Cottage commercial I may also include multiple principal structures on one lot, provided that each building meets the requirements of the building type;

2. Cottage commercial II.

Cottage commercial II is similar to cottage commercial I but is used in the West Duluth study area, which is a more intense context. This building type may be built to the front property line and must locate parking in the rear;

D. Iconic building.

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The iconic building type is a unique building type meant to house community, cultural, civic, educational or governmental uses. The iconic building has more flexible requirements for building location and transparency than the other non-residential building types due to its unique nature.

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Table 50-22.2-1: Summary Table of Permitted Building Types by Zone District.

		Building Types									Areas	
		Main Street Building I	Main Street Building II	Main Street Building III	Corridor Building I	Corridor Building II	Lakefront Corridor Building	Corridor Building III	Cottage Commercial I	Cottage Commercial II		Iconic Building
Districts	F1: Low-Rise Neighborhood Shopping	●										East Superior
	F2: Low-Rise Neighborhood Mix	●			●				●		●	East Superior, London Road
	F3: Mid-Rise Community Shopping		●									West Duluth, Canal Park
	F4: Mid-Rise Community Mix		●			●				●	●	West Duluth London Road
	F5: Mid-Rise Community Shopping/Office		●			●					●	West Superior, Canal Park
	F6: Mid-Rise Neighborhood Shopping		●						●		●	Central Hillside
	F7: Downtown Shopping			●								Downtown
	F8: Downtown Mix			●				●			●	Downtown
	F9: Canal Park						●					Canal Park

● Building Type permitted

50-22.3 Base types.

Base type standards apply to the ground story and visible basement of front facades of all building types. To determine which base type(s) are permitted for each building type, refer to the building types-specific information found in sections 50-22.7 through 50-22.17.

A. General provisions.

The following provisions apply to all base types.

1. Intent. To guide the design of the ground story of all buildings to relate appropriately to pedestrians on the street. Treatment of other portions of the building facades is detailed in each building type standard (refer to 50-22.7 through 50-22.17);

2. Applicability. The entire ground story front facade of all buildings must meet the requirements of one of the permitted base types, unless otherwise stated in this Section;
3. Measuring transparency. Refer to Section 50-22.5.D.1 for information on measuring building transparency;
4. Visible basements. Visible basements, permitted by base type, are optional;
5. Expression lines. For the purposes of this Section, expression lines are an architectural feature comprised of a decorative, three dimensional, linear element, horizontal or vertical, protruding or indented at least one inch from the exterior facade of a building, and extending the length or height of the building with minimal interruptions from doors and windows. It is typically used to delineate the floors or stories of a building;

B. Storefront base type.

The storefront base type is a highly transparent ground story treatment designed to serve as the display area and primary entrance for retail or service uses. (Refer to Figure 50-22.3-A)

1. Transparency. A minimum of 75% of the front facade between two and eight feet above the sidewalk must be comprised of transparent, non-reflective windows into the commercial space. A minimum of 25% of the windows shall have views directly into and out of the ground floor occupied space;
2. Elevation. Ground story elevation must be less than or equal to one foot above sidewalk;
3. Visible basement. A visible basement is not permitted;
4. Facade divisions. Expression lines shall divide the facade into segments;
 - (a) Vertically divide the base facade into segments no greater than 30 feet in width;
 - (b) Horizontally define the base facade from the upper stories;
5. Entrance. All entries shall be recessed from the front facade closest to the street;

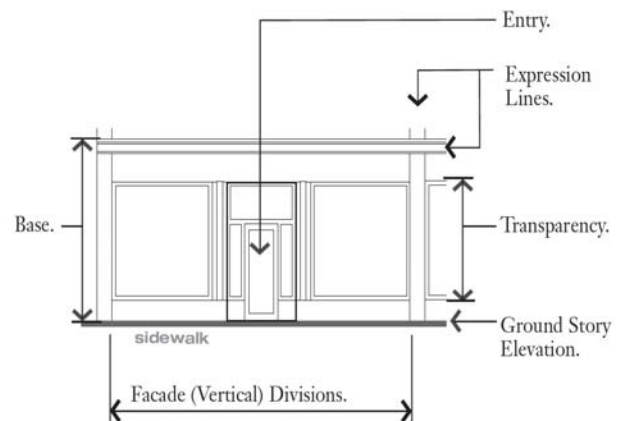


Figure 50-22.3-A: Storefront base type

- (a) Recess shall be a minimum of three feet and a maximum of eight feet deep, measured from the portion of the front facade closest to the street;
- (b) When the recess falls behind the front build-to zone, the recess shall be no wider than eight feet;

C. Shopfront base type.

The shopfront base type treatment while still allowing views in and out of a porch or stoop. (Refer to Figure

1. Transparency. A minimum of 50% of the front facade between three and nine feet above the sidewalk must be comprised of transparent, non-reflective windows into the commercial space;

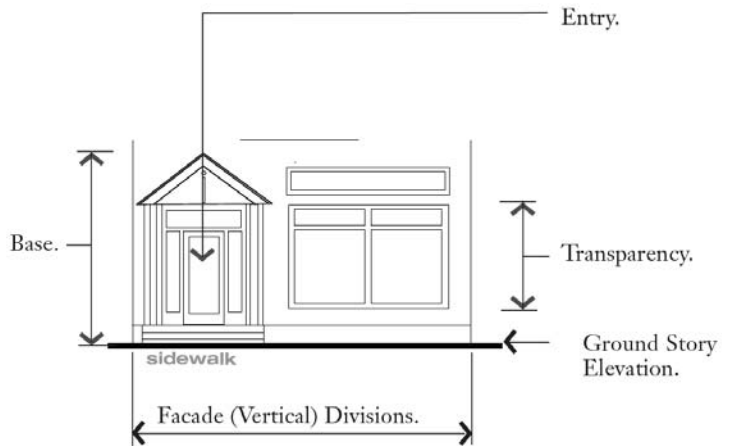


Figure 50-22.3-B: Shopfront base type

2. Elevation. Ground story elevation must be between zero and three feet above sidewalk and not less than six inches above the curb, with or without optional visible basement;
3. Visible basement. A visible basement is permitted;
4. Vertical facade divisions. For buildings wider than 50 feet, divide base facade into segments no greater than 50 feet in width with an expression line;
5. Entrance. Porch or stoop entrance required;

D. Arcade base type.

An arcade base type is a covered pedestrian walkway within the recess of a ground story. (Refer to Figure 50-22.3-C)

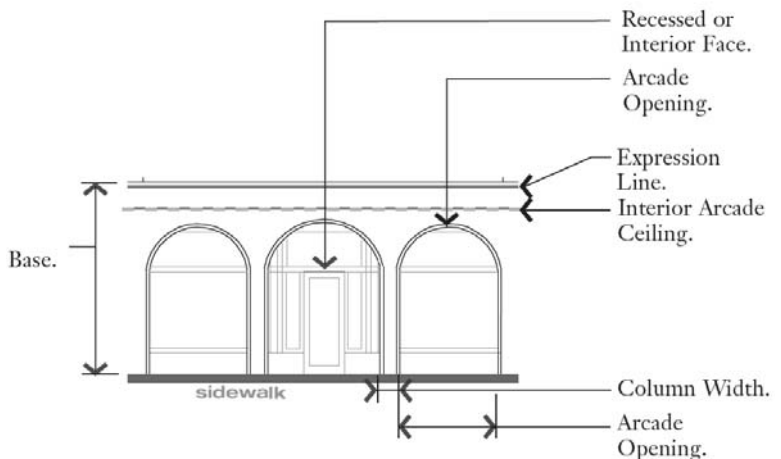


Figure 50-22.3-C: Arcade base type

1. Arcade. An open-air public

walkway is required from the face of the building recessed into the building a minimum of eight and a maximum of 15 feet;

2. Recessed or interior facade. Storefront or shopfront base types are required on the recessed ground story facade;
3. Column spacing. Columns shall be spaced between ten feet and 12 feet on center;
4. Column width. Columns shall be a minimum of one foot, eight inches, and a maximum two feet, four inches, in width;
5. Arcade opening. Opening may not be flush with interior arcade ceiling and may be arched or straight;
6. Horizontal facade division. Horizontally define the base facade from the upper stories;
7. Visible basement. A visible basement is not permitted;

E. Stoop base type.

A stoop is an unroofed, open platform. (Refer to Figure 50-22.3-D)

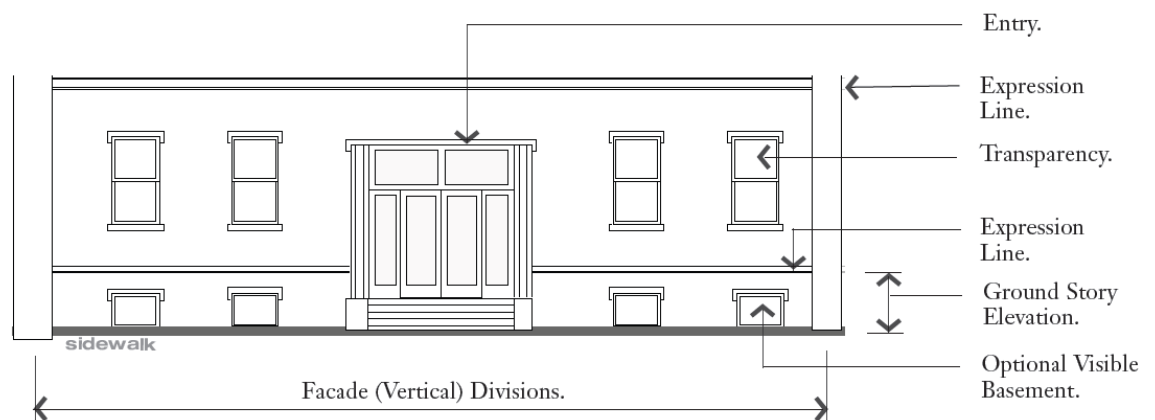


Figure 50-22.3-D: Stoop base type

1. Transparency. Minimum transparency per building type is required;
2. Stoop size. Stoops shall be a minimum of three feet deep and four feet wide;
3. Elevation. Ground story elevation must be located a maximum of two feet, six inches, above the sidewalk without visible basement and a maximum of four feet, six inches, above the sidewalk with a visible basement;
4. Visible basement. A visible basement is permitted;

5. Facade divisions. Expression lines shall divide facade segments;
 - (a) Vertically divide the base facade into segments no greater than 100 feet in width;
 - (b) Horizontally define the base facade from upper stories;
6. Entrance. All entries shall be located off a stoop;

F. Porch base type.

A porch is a raised, roofed platform that may or may not be enclosed on all sides. (Refer to Figure 50-22.3-E)

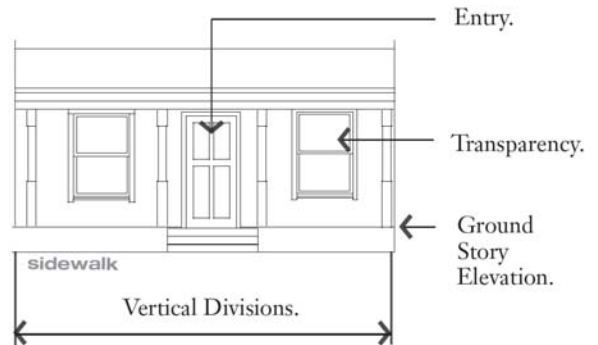


Figure 50-22.3-E: Porch base type

1. Transparency:
 - (a) Minimum transparency per building type is required;
 - (b) If enclosed, a minimum of 40% of the enclosed porch must be comprised of transparent, non-reflective windows;
2. Porch size. The porch shall be a minimum of five feet deep and maximum of eight feet wide;
3. Elevation. Ground story elevation must be located a maximum of two feet, six inches, above the sidewalk without visible basement, and a maximum of four feet, six, inches, above the sidewalk with a visible basement;
4. Visible basement. A visible basement is permitted;
5. Facade divisions. Use expression lines to divide facade segments;
 - (a) Vertically divide base facade into segments no greater than 60 feet in width;
 - (b) Horizontally define the base facade from upper stories;
6. Height. Porch may be two stories to provide a balcony on the second floor;
7. Entrance. All entries shall be located off a porch.

50-22.4 Cap types.

Cap type standards apply to the cap of all building types as required in this Section.

A. General provisions.

The following provisions apply to all cap types.

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1. Intent. To guide the design of building caps in order to ensure an appropriate and aesthetically pleasing cap for all buildings;
2. Applicability. All buildings must meet the requirements of one of the cap types permitted for the building type;
3. Measuring height. Refer to the definition of “height of building” in Article 6;
4. Other cap types. The Iconic building type may seek to incorporate other building caps not listed as a specific type by applying for a special use permit pursuant to Section 50-37.10, but the height may not exceed the maximum height of the tallest cap type permitted for the building type;

B. Parapet cap type.

A parapet is a low wall projecting above a building’s roof along the perimeter of the building. It can be utilized with a flat or pitched roof and also serves to limit the view of roof-top mechanics from the street. (Refer to Figure 50-22.4-A)

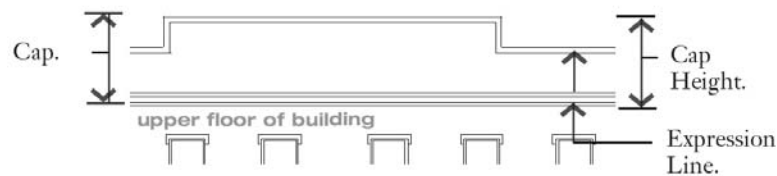


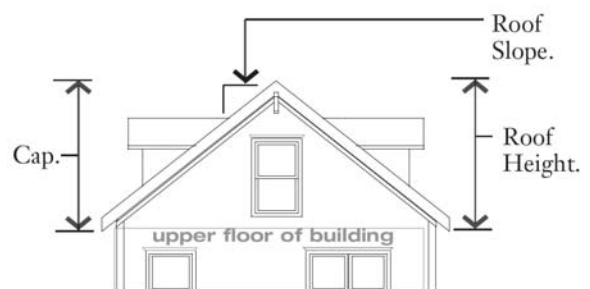
Figure 50-22.4-A: Parapet cap type

1. Parapet height. Height is measured from the top of the upper story to the top of the parapet;
 - (a) Minimum height is two feet with a maximum height of six feet;
 - (b) Cap shall be high enough to screen the roof and any roof appurtenances when viewed from the street(s) and any adjacent building of similar height;
2. Horizontal expression lines. An expression line shall define the cap from the upper stories of the building and shall also define the top of the cap;
3. Occupied space. Occupied space may not be incorporated behind this cap type;

C. Pitched roof cap type.

This cap type has a sloped or pitched roof. Slope is measured with the vertical rise divided by the horizontal span or run. (Refer to Figure 50-22.4-B)

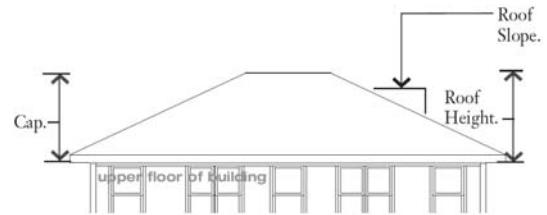
Figure 50-22.4-B: Pitched roof



Pitched Roof cap type – Gabled

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1. Pitch measure. The roof may not be sloped steeper than a 6:12 (rise:run) or flatter than 16:12 (rise:run);
2. Roof types. Hipped, gabled, and combination of hips and gables with or without dormers are acceptable. Gambrel and mansard roofs are acceptable provided that when the ridge runs parallel to the street, 1 dormer per 15 feet of street face is required;
3. Parallel ridge line. A gabled end or perpendicular ridge line shall occur at least every 100 feet of roof for two-story buildings or higher and at least every 50 feet of roof for one-story buildings when the ridge line runs parallel to the front property line;



Pitched Roof cap type - Hipped

4. Roof height. Roof height may not be greater than the total of all floors below the roof. For single story portions of the building, roof height may not exceed one-and-one-half times the floor below the roof;



Pitched Roof cap type - Gambrel



Pitched Roof cap type - Mansard

D. Flat Roof cap type

This cap type has a flat roof with overhanging eaves. (Refer to Figure 50-22.4-C)

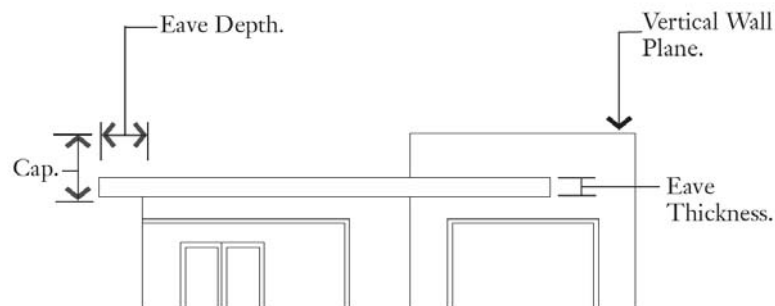


Figure 50-22.4-C: Flat roof

1. Roof types. Roofs with no visible slope are acceptable. Eaves are required on all street-facing facades;
2. Eave depth. Eave depth is measured from the building façade to the outside edge of the eave. Eaves shall have a depth of at least 12 inches;
3. Eave thickness. Eave thickness is measured at the outside edge of the eave, from the bottom of the eave to the top of the eave. Eaves shall be a minimum of six inches thick;
4. Interrupting vertical walls. Vertical walls may interrupt the eave and extend above the top of the eave with no discernible cap;
 - (a) No more than one-half of the front façade can consist of an interrupting vertical wall;
 - (b) Vertical walls shall extend no more than four feet above the top of the eave.;

E. Towers.

A Tower is a rectilinear or cylindrical vertical element that must be used with other cap types. (Refer to Figure 50-22.4-D)

1. Quantity. One tower is permitted per building;
2. Tower height. Maximum height, measured from the top of the upper story to the top of the tower, is the equivalent of the height of one upper floor of the building to which the tower is applied;
3. Tower width. Maximum width along all facades is one-third the width of the front facade or 30 feet, whichever is less;
4. Occupied space. Towers must be occupied by the same uses allowed in upper stories of the building type to which it is applied;
5. Tower cap. The tower may be capped by the parapet, pitched, or flat roof cap types.

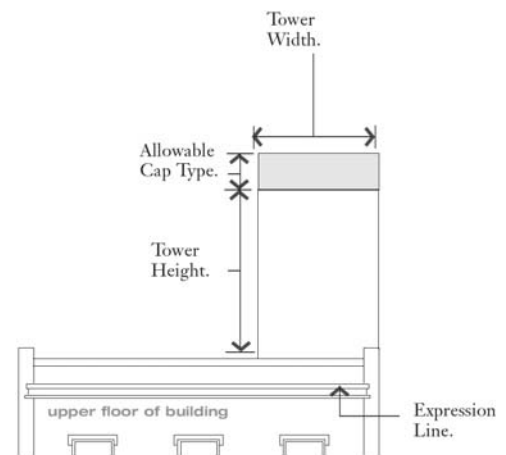


Figure 50-22.4-D: Tower

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50-22.5 Explanation of table requirements.

The following explains and defines the requirements included in the tables for each building type, sections 50-22.7 through 50-22.17, and summarized for all building types in Table 50-22.2.

A. Building siting.

1. Street frontage.

- (a) Multiple principal buildings permitted on a lot. The presence of more than one principal structure on a lot;
- (b) Front build-to zone (BTZ) or setback. The build-to zone or setback parallel to the front property line. All BTZ and setback areas not covered by the building must contain either landscaping, patio space, or sidewalk space. Build-to zones define the minimum and maximum distance a structure may be placed from a property line;
- (c) Corner BTZ or setback. The build-to zone or setback parallel to the corner property line. All BTZ and setback areas not covered by building must contain landscape area;
- (d) Minimum coverage of front BTZ. Measurement defining the minimum percentage of street wall or building facade required along the street. The width of the principal structure(s) (as measured within the front build-to zone) shall be divided by the maximum width of the front. Refer to Figure 50-22.5-A;
- (e) Occupation of corner. Occupying the intersection of the front and corner build-to zones with a principal structure;

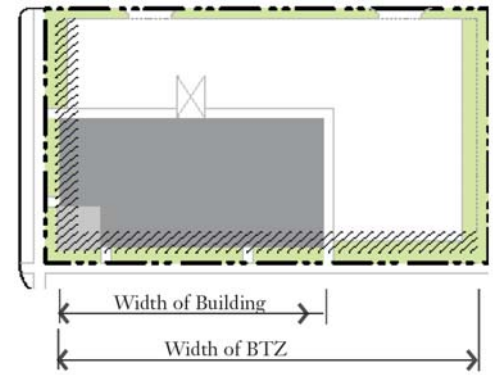


Figure 50-22.5-A: Measuring BTZ Coverage

2. Side and rear setbacks.

- (a) Minimum side yard setback. The minimum required setback along a side property line. All side yard setback areas not covered by building must contain landscape area;
- (b) Minimum rear yard setback. The minimum required setback along a rear property line;

3. Buildable area.

- (a) Minimum landscape area. The minimum percentage of a lot that must be primarily dedicated to landscape materials, such as planting beds, grass or shrubs. A portion of the area may include hardscape

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materials for pedestrian use or access to the area or building, such as patio or sidewalk;

(b) Minimum lot width. The minimum width of a lot, measured at the front property line;

4. Parking and access.

(a) Location of parking facilities. The yard in which a parking lot and associated drive is permitted;

(b) Loading facility location. The facade of the building on which access is permitted for loading and unloading activities related to building uses;

(c) Number of permitted driveways. Defines the circumstances under which a driveway is permitted on a lot;

B. Height.

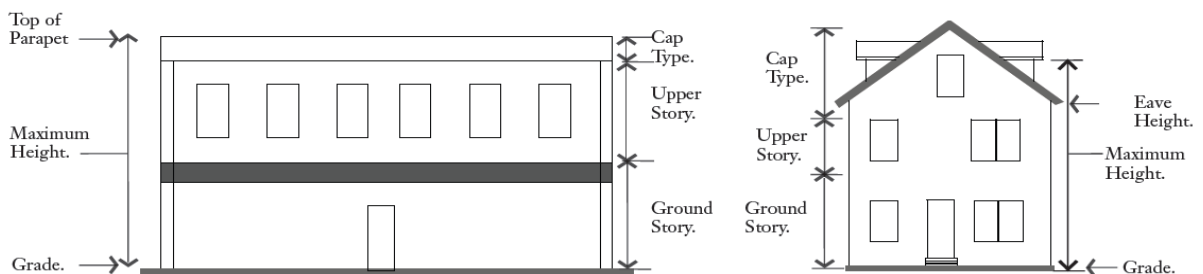


Figure 50-22.5-B: Measuring Height

1. Minimum and maximum overall height. (Refer to Figure 50-22.5-B)

A required minimum and maximum overall height is provided for all building types and is measured as follows:

(a) Height in stories. The sum of a building's stories. Half stories are located either completely within the roof structure or in a visible basement exposed a maximum of one-half story above average finished grade;

(b) Height in feet measured as follows:

(i) Parapet cap type. Overall height is measured from the average finished grade of the building's front facade to the highest point of the parapet;

(ii) Pitched cap type. Overall height is measured from the average finished grade of the building's front facade to the midpoint of the highest roof slope;

(iii) Flat Roof cap type. Overall height is measured from the average finished grade of the building's front facade to the top of the highest eave;

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- (iv) Appurtenances. Chimneys, antennae and other similar appurtenances may exceed the overall building height by no more than 25 feet;
 - (v) Towers. Maximum height, measured from the top of the upper story to the top of the tower, is the equivalent of the height of one upper floor of the building to which the tower is applied. This additional floor does not count toward the overall height of the building. Refer to Section 50-22.4 (E);
2. Ground story and upper story minimum and maximum height. (Refer to Figure 50-22.5-B.) Each building type includes a permitted range of height in feet for each story, which is measured as follows:
- (a) Floor height is measured in feet from the floor of a story to the floor of the story above it;
 - (b) For single story buildings and the uppermost story of a multiple story building, floor to floor height shall be measured from the floor of the story to the tallest point of the ceiling;

C. Uses.

1. Ground story. The uses that may occupy the ground story of a building. Refer to Article 3, *Permitted uses*;
2. Upper story. The uses that may occupy the upper stories of a building. Refer to Article 3, *Permitted uses*;
3. Parking within building. The area(s) of a building in which parking is permitted within the structure;
4. Occupied space. The area(s) of a building that must be occupied by the users on a regular basis;

D. Facade requirements.

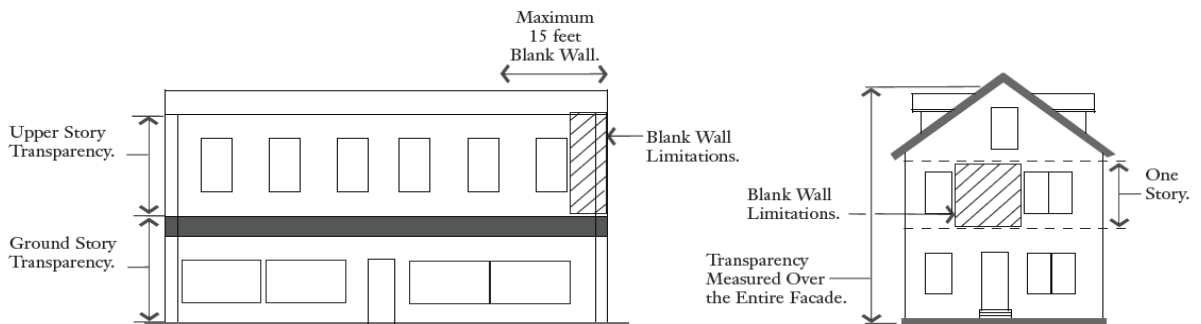


Figure 50-22.5-C: Measuring transparency

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1. Transparency. Measurement of the percentage of a facade that has clear, non-reflective windows. Refer to Figure 50-22.5-C;
 - (a) Minimum transparency. The minimum amount of transparency required on the upper stories of facades with street frontage, measured per story or per facade, depending on the building type. Buildings with storefront and shopfront base types are required to have a greater ground story transparency on the front facade, as defined in Section 50-22.3, *Base types*;
 - (b) Blank wall limitations. A restriction of the amount of windowless area permitted on a facade with street frontage. If required, the following shall be met:
 - (i) No rectangular area greater than 30% of a story's facade, as measured from floor to floor, may be windowless; and
 - (ii) No horizontal distance greater than 15 feet of a story's facade may be windowless;
2. Building entrance.
 - (a) Principal entrance location. The facade on which the primary building entrance is to be located;
 - (b) Street facades. Number of entrances on street facade. The maximum spacing between entrances on a building facade with street frontage;
3. Balconies. The following requirements pertain to balconies on building facades with street frontage;
 - (a) Size. The minimum dimensions of a permitted balcony;
 - (b) Facade coverage. The percentage of a facade's total area that may be covered by balconies, including street facing railing and balcony structure;
 - (c) Access. The number of units that are permitted to gain entry to an individual balcony;
 - (d) Structure. Requirements related to the construction of a balcony. Two types of balcony structures are permitted:
 - (i) Independently secured balconies are those that are connected directly to the building and are unconnected to other balconies;
 - (ii) Balconies that are integral to the facade are a part of, and built in conjunction with, the building structure;

E. Cap and base type requirements.

1. Cap type. The cap type(s) permitted for a given building type. Refer to 50-22.4, *Cap types*, for more specific requirements;

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2. Tower. A vertical building extension that may be permitted in conjunction with another cap type on certain building types. Refer to 50-22.4(E), *Cap types*;
3. Front street facade base type. The base type(s) required on the street-facing facade of a given building type. Refer to 50-22.3, *Base types*, for more specific requirements;
4. Parking lot facade base type. The base type(s) required on the facade of a given building type that faces a parking lot. Refer to 50-22.3, *Base types*, for more specific requirements;

F. Façade materials requirement.

The materials prohibited, required and to be avoided for designated facades.

50-22.6 Additional development standards.

The following provides additional required physical standards for the uses outlined as permitted in Article 3, *Permitted uses*.

A. Automobile and light vehicle repair and service.

1. Service bays. Vehicular service bays, including garages and car wash bays, shall not be located on the front façade;
2. Outdoor activities. All repairs or washing activities must occur inside a structure;

B. Filling station: fuel pumps and canopies.

Refer to Figure 50-22.6-A.

1. Fuel pumps are permitted in the side or rear yards;
2. If a lot containing fuel pumps is adjacent to any residential district, the boundary with those districts shall be buffered in accordance with the standards in Section 50-25.5.B;
3. Canopy roof structures shall match the roof structure of the principal structure on the lot;
4. Canopy height shall not exceed the height of the principal structure on the lot;

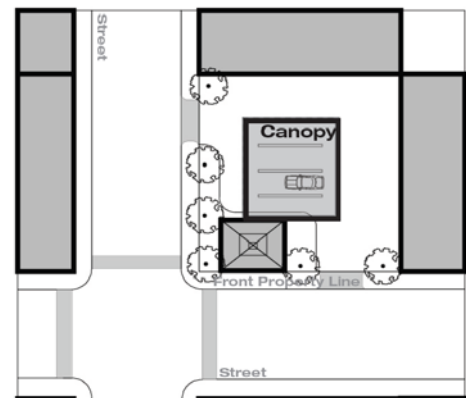


Figure 50-22.6-A: Relationship between the principal structure and the pump islands

5. Signage is not permitted on the canopy;

C. Drive-through.

Refer to Figure 50-22.6-B.

1. The drive-through shall be located on the side or rear façade;
2. When occurring adjacent to any residential district, the boundary with those districts shall be buffered in accordance with the standards in Section 50-25.5.B;

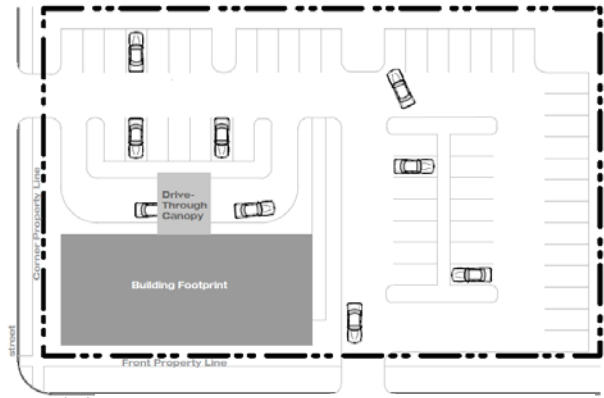


Figure 50-22.6-B: drive-through

D. Parking structure.

Facades of parking structures visible from any public right-of-way shall meet the following requirements:

1. Vertical expression lines are required every 60 feet;
2. Ramped floors shall not be visible from the street. Garage openings shall be organized in stories. Story dimensions shall match adjacent buildings, measured between nine feet and 14 feet floor to floor;
3. The street facing façade surface of the structure shall be articulated with the same level of detail and the same type of material as adjacent buildings. Brick masonry shall be the dominant surface material, occupying a minimum of 50% of the street facing façade surface;
4. Garage entries and exits shall be located on secondary streets or alleys.

50-22.7 Building type summary table.

Table 50-22.7-1: Building Type Summary Table.

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	Street Frontage			Side & Rear Yard Setbacks			Buildable Area	
	Multiple Buildings Permitted on a Lot	Front Yard BTZ or setback (feet)	Corner Side Yard BTZ or setback (feet)	Minimum Coverage of Front Build-to Zone	Minimum Side Yard Setback (feet)	Minimum Rear Yard Setback (feet)	Minimum Landscape Area	Minimum Lot Width (feet)
Main Street Building I	No	0-15	0-15	85%; BTZ may exclude permitted driveway	0	5	10%	30
Main Street Building II	No	0-5	0-5	95%	0	5	0%	20
Main Street Building III	No	0-5	0-5	95%	0	5	0%	20
Corridor Building I	Yes	5-15	5-15	75%	0	5	15%	30
Corridor Building II	Yes	0-15	0-15	75%	0	5	15%	50
Lakefront Corridor Building	Yes	0-25 BTZ on Lakefront; 0-15 BTZ along Canal Park Drive	0-15	33% on street face; 65% on Lakefront	10% of lot width on each side or aggregate on one side	Not applicable	20%	50
Corridor Building III	No	0-5	0-5	85%	0	5	0%	50
Cottage Commercial I	Yes	5-20	5-20	60%	5	5	20%	50
Cottage Commercial II	No	0-15	0-15	60%	0	5	20%	50
Iconic Building	Yes	5' Setback	5' Setback	Not applicable	5	5	20%	50

¹ Tower permitted for all Building Types

² 2 driveways may be permitted through [special exception] if frontage exceeds 200'

³ 15 Stories or 188' as measured from W Superior Street; Permitted from Mesaba Ave to N 4th Ave E

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Parking & Access		Building Height		Transparency		Entrance	Cap & Base Types	
Location of Parking Facilities (yard)	Number of Permitted Driveways	Minimum Principal Building Height (stories)	Maximum Principal Building Height	Minimum Front & Corner Side Façade Transparency per Story	Blank Wall Limitations	Primary Entrance Location	Allowed Cap Types ¹	Allowed Base Types
Rear	1 driveway permitted per frontage ²	1	2.5 stories / 37' along East Superior Street; 3 stories / 45' along London Road	20%	Required	Front or Corner Side Façade	Parapet, Flat Roof, Pitched Roof	Storefront
Rear	If no alley exists, 1 driveway permitted per frontage ²	1	4 stories / 55'	20%	Required	Front or Corner Side Façade	Parapet, Flat Roof, Pitched Roof	Arcade, Storefront
Rear	If no alley exists, 1 driveway permitted per frontage	1; 2 along Superior Street	6 stories / 80'; 9 stories / 116' on corner parcels only; 15 stories / 188' along Superior Street ³	20%	Required	Front or Corner Side Façade	Parapet, Flat Roof	Arcade, Storefront
Rear, Single side aisle permitted	1 driveway permitted per frontage ²	1	3 stories / 45'	20%	Required	Front or Corner Side Façade	Parapet, Flat Roof, Pitched Roof	Stoop, Porch
Rear	If no alley exists, 1 driveway permitted per frontage ²	1	4 stories / 55'	20%	Required	Front or Corner Side Façade	Parapet, Flat Roof, Pitched Roof	Stoop, Porch
Must be screened from the Lakefront by building	1 driveway permitted per every 140' of frontage	1	4 stories / 55'	20%	Required only on street or Lakefront facades	Visible from street	Parapet, Flat Roof, Pitched Roof	Stoop or Porch on Lake or parking lot face; Storefront or Stoop on street face
Rear	If no alley exists, 1 driveway permitted per frontage	1	6 stories / 80'; 9 stories / 116' on corner parcels only; 15 stories / 188' along Superior Street ³	20%	Required	Front or Corner Side Façade	Parapet, Flat Roof	Stoop
Rear, Single side aisle permitted	1 driveway permitted per frontage ²	1	2.5 stories / 33'	20%	Not required	Front or Corner Side Façade	Pitched Roof	Shopfront, Porch, Stoop
Rear	If no alley exists, 1 driveway permitted per frontage ²	1	2.5 stories / 33'	20%	Not required	Front or Corner Side Façade	Pitched Roof	Shopfront, Porch, Stoop
Rear, Single side aisle permitted	1 driveway permitted per frontage ²	1	4 stories / 55'	10%	Not required	Front or Corner Side Façade	Parapet, Flat Roof, Pitched Roof	Stoop

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50-22.8 Main street building I.

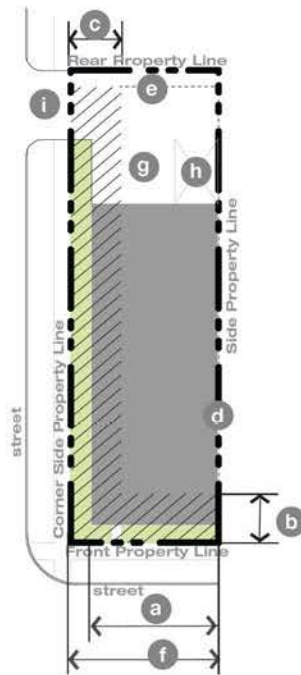


Figure 50-22.8(A): Building Siting.

A. Building Siting	
1. Street Frontage	
Multiple Principal Buildings	Not permitted
Front Build-to Zone Coverage	85%; BTZ may exclude permitted driveway (a)
Occupation of Corner	Required
Front BTZ	0' to 15' (b)
Corner BTZ	0' to 15' (c)
2. Buildable Area	
Side Yard Setback	0' (d)
Rear Yard Setback	5' (e)
Minimum Lot Width	30' (f)
Minimum Landscape Area	10%
3. Parking Lot, Loading & Access	
Parking Lot Location	Rear yard (g)
Loading Facility Location	Rear building façade (h)
Access	1 driveway permitted per frontage; 2 driveways may be permitted through [special exception] if frontage exceeds 200' (i)

B. Height	
Minimum Overall Height	1 story (j)
Maximum Overall Height	2.5 stories / 37' along East Superior; 3 stories / 45' along London Road (k)
Ground Story: Minimum Height	15' (l)
Maximum Height	24'
Upper Stories: Minimum Height	9' (m)
Maximum Height	14'
Notes:	
¹ If 20' or more in height, ground story shall count as 2 stories towards maximum building height.	

C. Uses	
Ground Story	Refer to Article 3. Permitted Uses (n)
Upper Story	Refer to Article 3. Permitted Uses (o)
Parking within Building	Permitted in the rear of the ground floor and fully in any other floor (p)
Occupied Space	30' depth space required on ground floor facing Primary Street

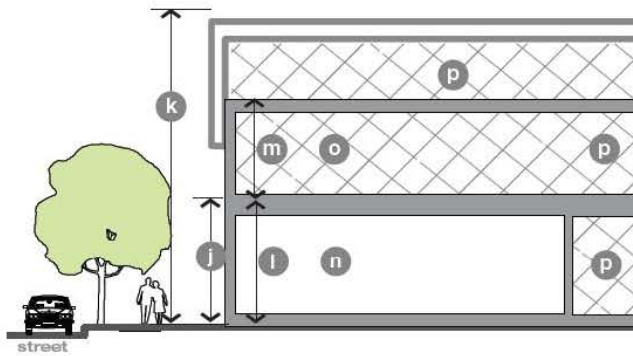


Figure 50-22.8(B): Height & Use Requirements.

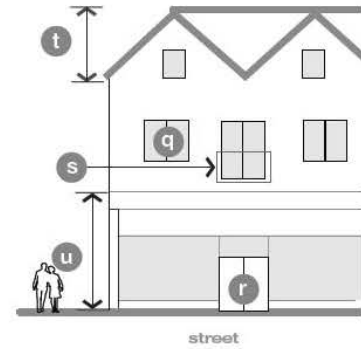


Figure 50-22.8(C): Façade Requirements.

D. Street Façade Requirements

1. Transparency		q
Minimum Transparency	20% per floor	
Blank Wall Limitations	Required	
2. Building Entrance		
Principal Entrance Location	Front or Corner Side Façade of building	r
Street Façades: Number of Entrances	1 per 75' of Front Façade	
3. Balconies (if provided)		s
Size	Minimum 3' deep and 5' wide	
Façade Coverage	Maximum 30% of front & corner side façades, calculated separately	
Access to Balcony	Maximum one (1) dwelling unit	
Structure	Independently secured and unconnected to other balconies; or integral to the façade	

E. Cap & Base Type Requirements

Cap Type	Parapet, Flat Roof, Pitched Roof	t
Tower	Permitted	
Street Façade Base Type	Storefront	u

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50-22.9 Main street building II.

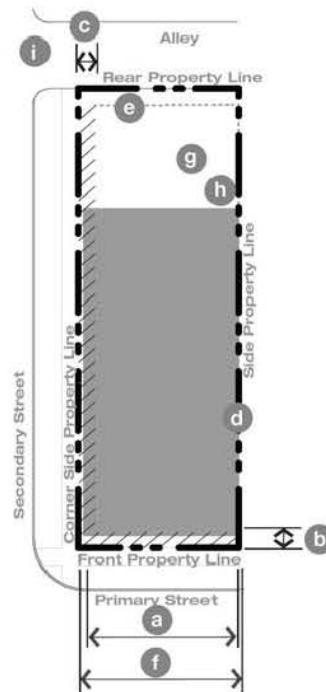


Figure 50-22.9(A): Building Siting.

A. Building Siting	
1. Street Frontage	
Multiple Principal Buildings	Not permitted
Front Build-to Zone Coverage	95% a
Occupation of Corner	Required
Front BTZ	0' to 5' b
Corner BTZ	0' to 5' c
2. Buildable Area	
Side Yard Setback	0' d
Rear Yard Setback	5' e
Minimum Lot Width	20' f
Minimum Landscape Area	0%
3. Parking Lot, Loading & Access	
Parking Lot Location	Rear yard g
Loading Facility Location	Rear building façade h
Access	No driveway permitted if alley access is available; If no alley exists, 1 driveway permitted per frontage; 2 driveways may be permitted through [special exception] if frontage exceeds 200' i

B. Height	
Minimum Overall Height	1 story j
Maximum Overall Height	4 stories / 55' k
Ground Story: Minimum Height	15' l
Maximum Height ¹	24' l
Upper Stories: Minimum Height	9' m
Maximum Height	14' m

Notes:

¹ If 20' or more in height, ground story shall count as 2 stories towards maximum building height.

C. Uses	
Ground Story	Refer to Article 3. Permitted Uses n
Upper Story	Refer to Article 3. Permitted Uses o
Parking within Building	Permitted in the rear of the ground floor and fully in any other floor p
Occupied Space	30' depth space required on ground floor facing Primary Street

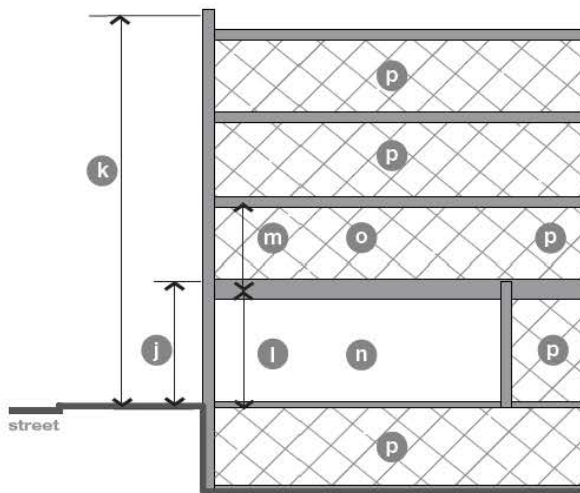


Figure 50-22.9(B): Height & Use Requirements.

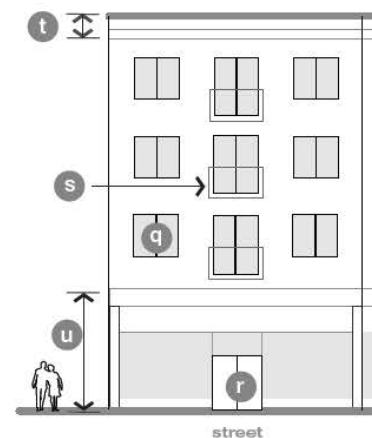


Figure 50-22.9(C): Façade Requirements.

D. Street Façade Requirements

1. Transparency (q)	
Minimum Transparency	20% per floor
Blank Wall Limitations	Required
2. Building Entrance	
Principal Entrance Location	Front or Corner Side Façade of building (r)
Street Façades: Number of Entrances	1 per 75' of Front Façade
3. Balconies (if provided) (s)	
Size	Minimum 3' deep and 5' wide
Façade Coverage	Maximum 30% of front & corner side façades, calculated separately
Access to Balcony	Maximum one (1) dwelling unit
Structure	Independently secured and unconnected to other balconies; or integral to the façade

E. Cap & Base Type Requirements

Cap Type	Parapet, Flat Roof, Pitched Roof (t)
Tower	Permitted
Street Façade Base Type	Arcade, Storefront (u)

F. Façade Materials Requirements ²

Permitted Façade Materials	Durable, natural materials, such as stone, brick, stucco, metal, and concrete
Permitted Upper Story Façade Materials	Painted or Stained Wood
Required Materials	Minimum 60% masonry on each façade, red brick preferred
Materials to Avoid	Imitation materials intended to look like natural materials; Residential grade windows and doors on the ground story; painted brick or stone
Prohibited Materials on Façades	Concrete masonry units, utility or economy bricks more than 3" in height, untreated wood, and exterior insulation & finishing systems (EIFS)
Façade Colors	Historic Paint Palettes by any major brand, also on file at City Hall

Notes:

² Façade materials requirements apply only to the Canal Park area

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50-22.10 Main street building III.

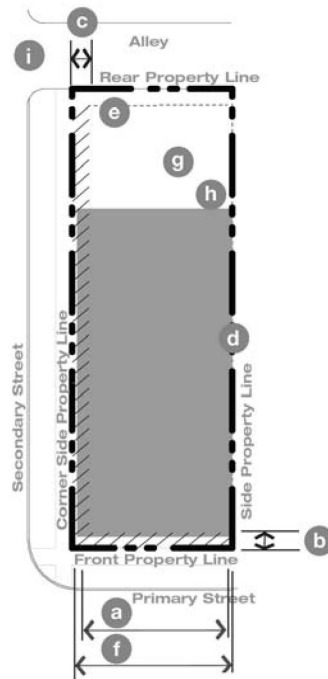


Figure 50-22.10(A) : Building Siting.

A. Building Siting	
1. Street Frontage	
Multiple Principal Buildings	Not permitted
Front Build-to Zone Coverage	95% (a)
Occupation of Corner	Required
Front BTZ	0' to 5' (b)
Corner BTZ	0' to 5' (c)
2. Buildable Area	
Side Yard Setback	0' (d)
Rear Yard Setback	5' (e)
Minimum Lot Width	20' (f)
Minimum Landscape Area	0%
3. Parking Lot, Loading & Access	
Parking Lot Location	Rear yard (g)
Loading Facility Location	Rear building façade (h)
Access	No driveway permitted if alley access is available; If no alley exists, 1 driveway permitted per frontage (i)

B. Height	
Minimum Overall Height	1 story; 2 stories along Superior Street (j)
Maximum Overall Height	6 stories / 80'; 9 stories / 116' on all corner parcels except those on 2nd Street; 15 stories / 188' along Superior Street ^{1,2} (k)
Ground Story: Minimum Height	15' (l)
Maximum Height ³	24'
Upper Stories: Minimum Height	9' (m)
Maximum Height	14'
Notes:	
¹ 15 Stories/188' height shall be measured from Superior Street	
² 15 Stories permitted from Mesaba Ave to N 4th Ave E on W Superior Street	
³ If 20' or more in height, ground story shall count as 2 stories towards maximum building height	
C. Uses	
Ground Story	Refer to Article 3. Permitted Uses (n)
Upper Story	Refer to Article 3. Permitted Uses (o)
Parking within Building	Permitted in the rear of all floors and fully in any basement (p)

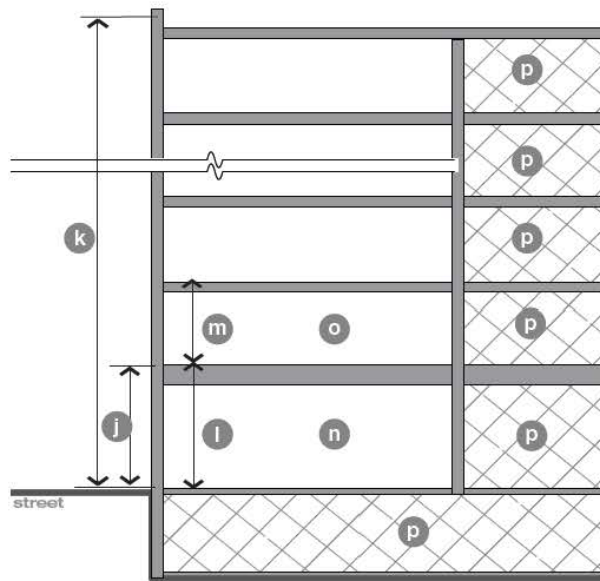


Figure 50-22.10(B): Height & Use Requirements.

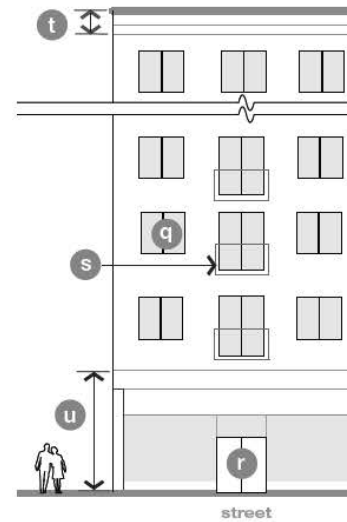


Figure 50-22.10(C): Façade Requirements.

Occupied Space	30' depth space required on all floors facing Primary Streets and on ground floor facing Secondary Streets
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D. Street Façade Requirements

1. Transparency (q)	
Minimum Transparency	20% per floor
Blank Wall Limitations	Required
2. Building Entrance	
Principal Entrance Location	Front or Corner Side Façade of building (r)
Street Façades: Number of Entrances	1 per 75' of Front Façade
3. Balconies (s)	
Size	Minimum 3' deep and 5' wide
Façade Coverage	Maximum 30% of front & corner side façades, calculated separately
Access to Balcony	Maximum one (1) dwelling unit
Structure	Independently secured and unconnected to other balconies; or integral to the façade

E. Cap & Base Type Requirements

Cap Type	Parapet, Flat Roof (t)
Tower	Permitted
Street Façade Base Type	Arcade, Storefront (u)

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50-22.11 Corridor building I.

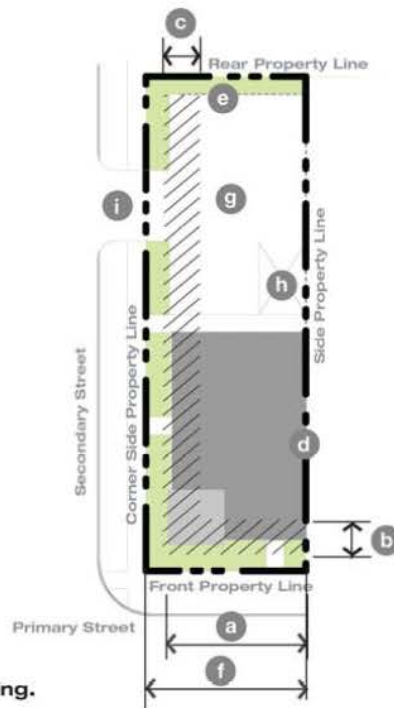


Figure 50-22.11(A): Building Siting.

A. Building Siting	
1. Street Frontage	
Multiple Principal Buildings	Permitted
Front Build-to Zone Coverage	75% (a)
Occupation of Corner	Required
Front BTZ	5' to 15' (b)
Corner BTZ	5' to 15' (c)
2. Buildable Area	
Side Yard Setback	0' (d)
Rear Yard Setback	5' (e)
Minimum Lot Width	30' (f)
Minimum Landscape Area	15%
3. Parking Lot, Loading & Access	
Parking Lot Location	Rear yard; Single aisle permitted in side yard (g)
Loading Facility Location	Rear building façade (h)
Access	1 driveway permitted per frontage; 2 driveways may be permitted through [special exception] if frontage exceeds 200' (i)

B. Height	
Minimum Overall Height	1 story (j)
Maximum Overall Height	3 stories / 45' (k)
Ground Story: Minimum Height	15' (l)
Maximum Height ¹	24' (l)
Upper Stories: Minimum Height	9' (m)
Maximum Height	14' (m)

Notes:
¹ If 20' or more in height, ground story shall count as 2 stories towards maximum building height.

C. Uses	
Ground Story	Refer to Article 3. Permitted Uses (n)
Upper Story	Refer to Article 3. Permitted Uses (o)
Parking within Building	Permitted in the rear of the ground floor and fully in any other floor (p)
Occupied Space	30' depth space required on ground floor facing Primary Street

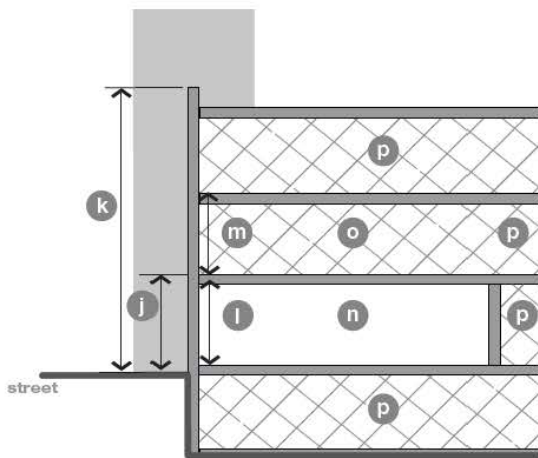


Figure 50-22.11(B): Height & Use Requirements.

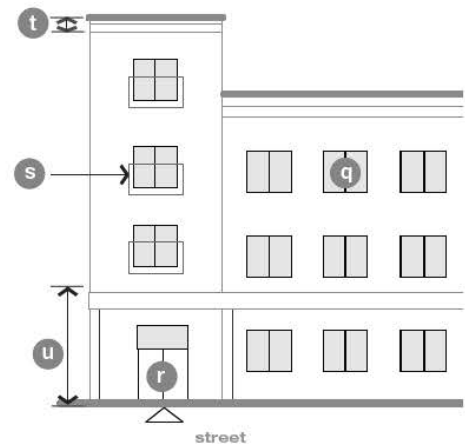


Figure 50-22.11(C): Façade Requirements.

D. Street Façade Requirements	
1. Transparency (q)	
Minimum Transparency	20% per floor
Blank Wall Limitations	Required
2. Building Entrance	
Principal Entrance Location	Front or Corner Side Façade of building (r)
Street Façades: Number of Entrances	1 per 75' of Front Façade
3. Balconies (if provided) (s)	
Size	Minimum 3' deep and 5' wide
Façade Coverage	Maximum 30% of front & corner side façades, calculated separately
Access to Balcony	Maximum one (1) dwelling unit
Structure	Independently secured and unconnected to other balconies; or integral to the façade

E. Cap & Base Type Requirements	
Cap Type	Parapet, Flat Roof, Pitched Roof (t)
Tower	Permitted
Street Façade Base Type	Stoop, Porch ² (u)

Notes:

² Porch, Stoop, or stairs may encroach to within 2' of the property line

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50-22.12 Corridor building II.

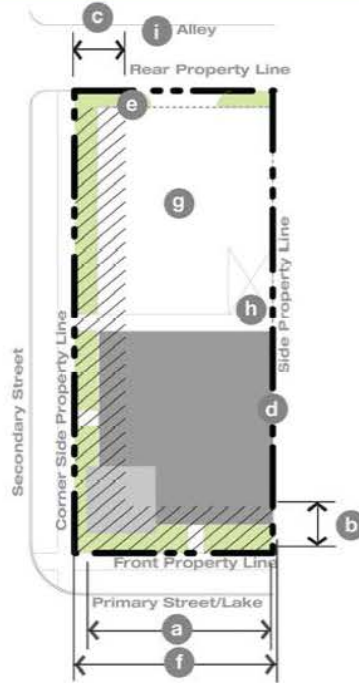


Figure 50-22.12(A): Building Siting.

A. Building Siting	
1. Street Frontage	
Multiple Principal Buildings	Permitted
Front Build-to Zone Coverage	75% (a)
Occupation of Corner	Required
Front BTZ	0' to 15' (b)
Corner BTZ	0' to 15' (c)
2. Buildable Area	
Side Yard Setback	0' (d)
Rear Yard Setback	5' (e)
Minimum Lot Width	50' (f)
Minimum Landscape Area	15%
3. Parking Lot, Loading & Access	
Parking Lot Location	Rear yard (g)
Loading Facility Location	Rear building façade (h)
Access	No driveway permitted if alley access is available; If no alley exists, 1 driveway permitted per frontage; 2 driveways may be permitted through [special exception] if frontage exceeds 200' (i)

B. Height	
Minimum Overall Height	1 story (j)
Maximum Overall Height	4 stories / 55' (k)
Ground Story: Minimum Height	15' (l)
Maximum Height	24'
Upper Stories: Minimum Height	9' (m)
Maximum Height	14'

Notes:
 1. If 20' or more in height, ground story shall count as 2 stories towards maximum building height.

C. Uses	
Ground Story	Refer to Article 3. Permitted Uses (n)
Upper Story	Refer to Article 3. Permitted Uses (o)
Parking within Building	Permitted in the rear of the ground floor and fully in any other floor (p)
Occupied Space	30' depth space required on ground floor facing Primary Street

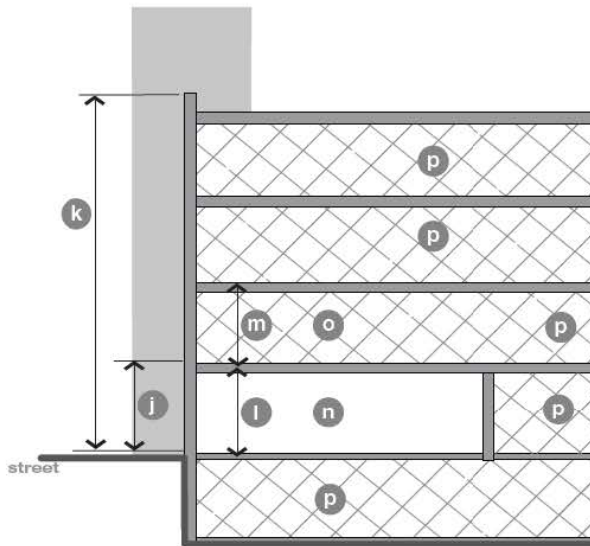


Figure 50-22.12(B): Height & Use Requirements.

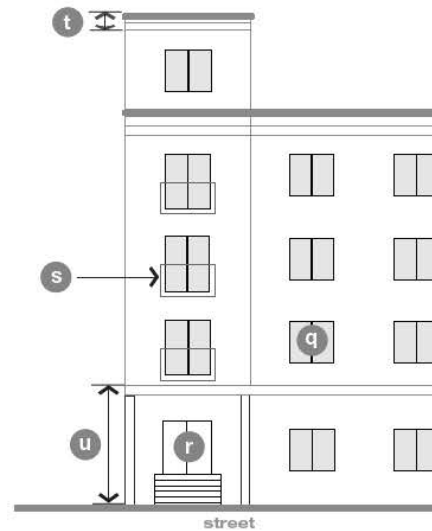


Figure 50-22.12(C): Façade Requirements.

D. Street Façade Requirements	
1. Transparency (q)	
Minimum Transparency	20% per floor
Blank Wall Limitations	Required
2. Building Entrance	
Principal Entrance Location	Front or Corner Side Façade of building (r)
Street Façades: Number of Entrances	1 per 75' of Front Façade
3. Balconies (if provided) (s)	
Size	Minimum 3' deep and 5' wide
Façade Coverage	Maximum 30% of front & corner side façades, calculated separately
Access to Balcony	Maximum one (1) dwelling unit
Structure	Independently secured and unconnected to other balconies; or integral to the façade

E. Cap & Base Type Requirements	
Cap Type	Parapet, Flat Roof, Pitched Roof (t)
Tower	Permitted
Street Façade Base Type	Stoop, Porch (u)

F. Façade Materials Requirements ²	
Permitted Façade Materials	Durable, natural materials, such as stone, brick, stucco, metal, and concrete
Permitted Upper Story Façade Materials	Painted or Stained Wood
Required Materials	Minimum 60% masonry on each façade, red brick preferred
Materials to Avoid	Imitation materials intended to look like natural materials; Residential grade windows and doors on the ground story; painted brick or stone
Prohibited Materials on Façades	Concrete masonry units, utility or economy bricks more than 3" in height, untreated wood, and exterior insulation & finishing systems (EIFS)
Façade Colors	Historic Paint Palettes by any major brand, also on file at City Hall

Notes:

² Façade materials requirements apply only to the Canal Park area

50-22.13 Lakefront corridor building.

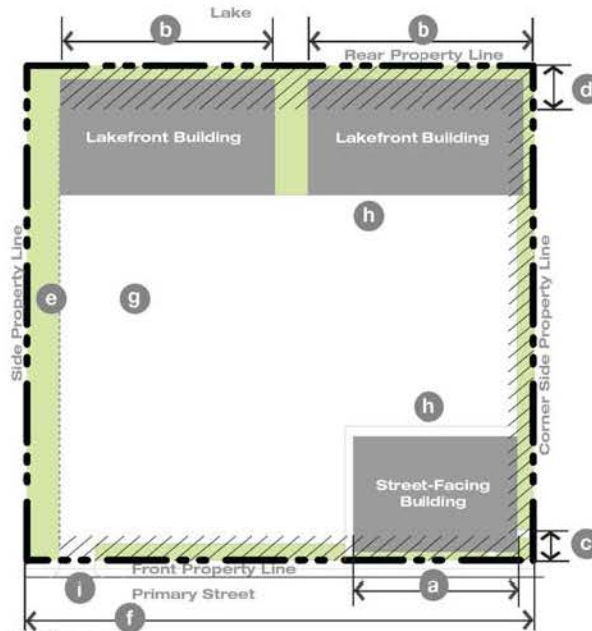


Figure 50-22.13(A): Building Siting.

A. Building Siting	
1. Street & Lake Frontage	
Multiple Principal Buildings	Permitted
Build-to Zone Coverage:	
Front & Corner BTZ on Street Face	33% (a)
Rear BTZ on Lakefront	65% (b)
Occupation of Corner	Required
Build-to Zone:	
Front & Corner BTZ on Street Face	0-15' (c)
Rear BTZ on Lakefront	0-25' (d)
2. Buildable Area	
Side Yard Setback	10% of lot width on each side or aggregate on one side (e)
Rear Yard Setback	Not applicable
Lakefront Access Easement	Minimum 50' wide easement from Canal Park Drive to the Lakewalk ¹
Minimum Lot Width	50' (f)
Minimum Landscape Area	20%
3. Parking Lot, Loading & Access	
Parking Lot Location	Must be screened from the Lakefront by building (g)
Loading Facility Location	Not permitted on Street or Lakefront Façades (h)

Access	1 driveway permitted per every 140' of street frontage (i)
Notes:	
¹ Access easements are required at the terminus of any street with Canal Park Drive.	
B. Height	
Minimum Overall Height	1 story (j)
Maximum Overall Height	4 stories / 55' (k)
Ground Story: Minimum Height 15' (l)	
Maximum Height ² 24' (l)	
Upper Stories: Minimum Height 9' (m)	
Maximum Height 14' (m)	
Notes:	
² If 20' or more in height, ground story shall count as 2 stories towards maximum building height.	
C. Uses	
Ground Story	Refer to Article 3. Permitted Uses (n)
Upper Story	Refer to Article 3. Permitted Uses (o)
Parking within Building	Permitted in the rear of all floors and fully in any basement (p)
Occupied Space	30' depth space facing Primary Street or space on front façade

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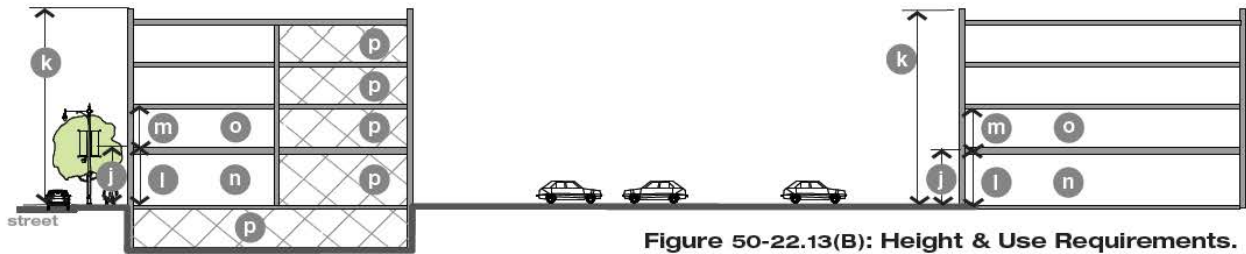


Figure 50-22.13(B): Height & Use Requirements.

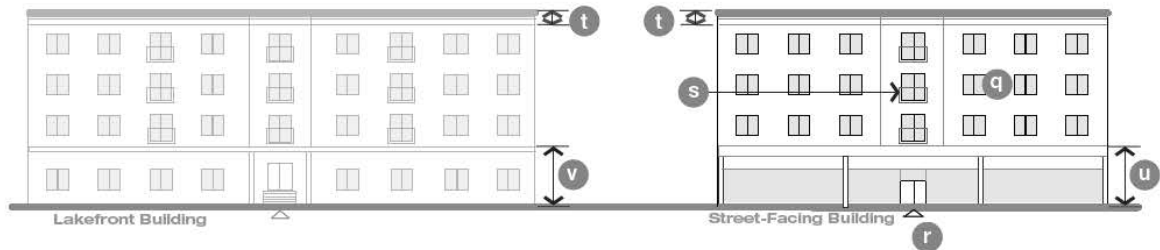


Figure 50-22.13(C): Facade Requirements.

D. Street, Lakefront, and Parking Lot Façade Requirements

1. Transparency (q)	
Minimum Transparency	20% per floor
Blank Wall Limitations	Required only on Street and Lakefront Façades
2. Building Entrance (r)	
Principal Entrance Location	Visible from Street
Number of Entrances:	
Street Façade	1 per 100' of Front Façade
Lakefront Façade	1 per 150' of Front Façade
3. Balconies (if provided) (s)	
Size	Minimum 3' deep and 5' wide
Façade Coverage	Maximum 30% of front & corner side façades, calculated separately
Access to Balcony	Maximum one (1) dwelling unit
Structure	Independently secured and unconnected to other balconies; or integral to the façade

E. Cap & Base Type Requirements

Cap Type	Parapet, Flat Roof, Pitched Roof (t)
Tower	Permitted
Street Façade Base Type	Storefront, Stoop (u)
Parking Lot Façade Base Type Visible from Street	Stoop, Porch (v)
Lakefront Façade Base Type	Stoop, Porch

F. Façade Materials Requirements

Permitted Façade Materials	Durable, natural materials, such as stone, brick, stucco, metal, and concrete
Permitted Upper Story Façade Materials	Painted or Stained Wood
Required Materials	Minimum 60% masonry on each façade, red brick preferred
Materials to Avoid	Imitation materials intended to look like natural materials; Residential grade windows and doors on the ground story; painted brick or stone
Prohibited Materials on Façades	Concrete masonry units, utility or economy bricks more than 3" in height, untreated wood, and exterior insulation & finishing systems (EIFS)
Façade Colors	Historic Paint Palettes by any major brand, also on file at City Hall

50-22.14 Corridor building III.

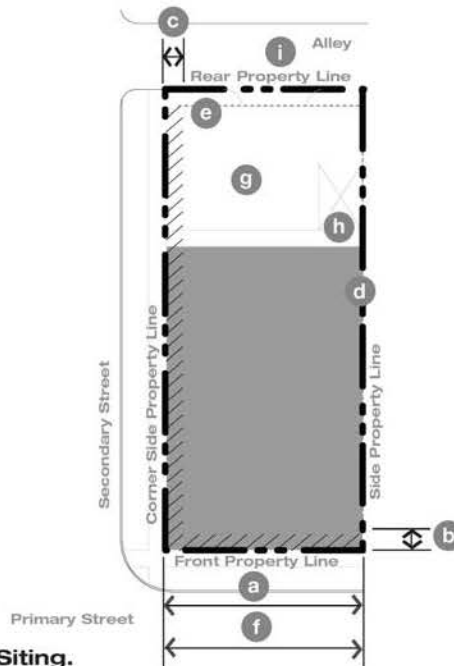


Figure 50-22.14(A): Building Siting.

A. Building Siting	
1. Street Frontage	
Multiple Principal Buildings	Not permitted
Front Build-to Zone Coverage	85% a
Occupation of Corner	Required
Front BTZ	0' to 5' b
Corner BTZ	0' to 5' c
2. Buildable Area	
Side Yard Setback	0' d
Rear Yard Setback	5' e
Minimum Lot Width	50' f
Minimum Landscape Area	0%
3. Parking Lot, Loading & Access	
Parking Lot Location	Rear Yard g
Loading Facility Location	Rear Building Façade h
Access	No driveway permitted if alley access is available; If no alley exists, 1 driveway permitted per frontage i

B. Height	
Minimum Overall Height	1 story j
Maximum Overall Height	6 stories / 80'; 9 stories and 116' on corner parcels only; 15 stories / 188' along Superior street ^{1,2} k
Ground Story: Minimum Height	15' l
Maximum Height ³	24' l
Upper Stories: Minimum Height	9' m
Maximum Height	14' m

Notes:

¹ 15 Stories/188' height shall be measured from Superior Street

² 15 Stories permitted from Mesaba Ave to N 4th Ave E on W Superior Street

³ If 20' or more in height, Ground Story shall count as 2 Stories towards maximum building height.

C. Uses	
Ground Story	Refer to Article 3. Permitted Uses n
Upper Story	Refer to Article 3. Permitted Uses o
Parking within Building	Permitted in the rear of all floors and fully in any basement p

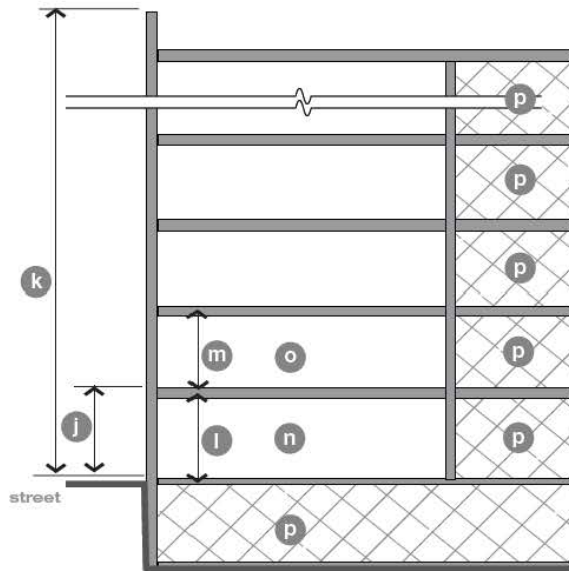


Figure 50-22.14(B): Height & Use Requirements.

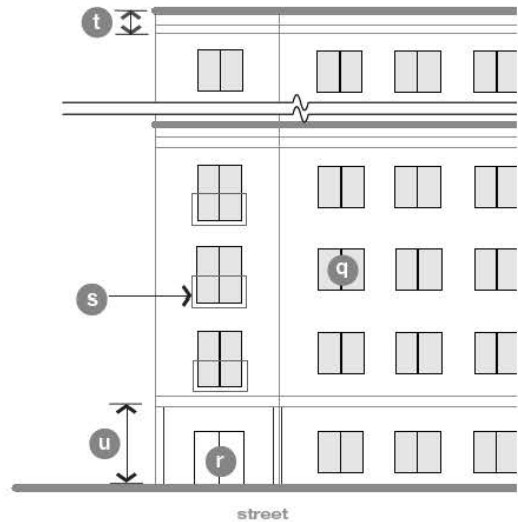


Figure 50-22.14(C): Façade Requirements.

Occupied Space	30' depth space required on all floors facing Primary Streets and on ground floor facing Secondary Streets
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Structure	Independently secured and unconnected to other balconies; or integral to the Façade
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D. Street Façade Requirements

1. Transparency (q)	
Minimum Transparency	20% per floor
Blank Wall Limitations	Required
2. Building Entrance	
Principal Entrance Location	Front or Corner Side Façade of Building (r)
Street Façades: Number of Entrances	1 per 75' of Front Façade
3. Balconies (if provided) (s)	
Size	Minimum 3' deep and 5' wide
Façade Coverage	Maximum 30% of Front & Corner Side Façades, calculated separately
Access to Balcony	Maximum one (1) dwelling unit

E. Cap & Base Type Requirements

Cap Type	Parapet, Flat Roof (t)
Tower	Permitted
Street Façade Base Type	Stoop (u)

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50-22.15 Cottage commercial I.

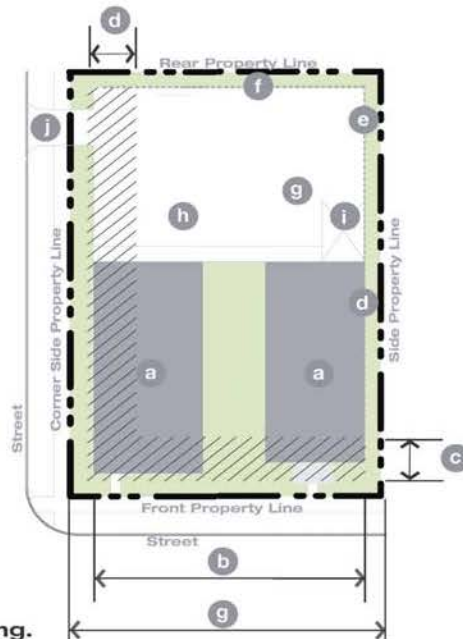


Figure 50-22.15(A): Building Siting.

A. Building Siting		
1. Street Frontage		
Multiple Principal Buildings	Permitted ¹	(a)
Front Build-to Zone Coverage	60%	(b)
Occupation of Corner	Required	
Front BTZ	5' to 20'	(c)
Corner BTZ	5' to 20'	(d)
2. Buildable Area		
Side Yard Setback	5'	(e)
Rear Yard Setback	5'	(f)
Minimum Lot Width	50'	(g)
Minimum Landscape Area	20%	
3. Parking Lot, Loading & Access		
Parking Lot Location	Rear Yard; Single side aisle permitted	(h)
Loading Facility Location	Rear Building Façade	(i)
Access	1 driveway permitted per frontage; 2 driveways may be permitted through [special exception] if frontage exceeds 200'	(j)

Notes:

¹ Each principal building shall have a width of less than 75' and meet the applicable requirements for the Building Type included in this Section.

B. Height		
Minimum Overall Height	1 story	(k)
Maximum Overall Height	2.5 stories / 33'	(l)
Ground Story: Minimum Height	15'	(m)
	Maximum Height ² 24'	
Upper Stories: Minimum Height	9'	(n)
	Maximum Height 14'	
Notes:		
² If 20' or more in height, Ground Story shall count as 2 Stories towards maximum building height.		
C. Uses		
Ground Story	Refer to Article 3. Permitted Uses	(o)
Upper Story	Refer to Article 3. Permitted Uses	(p)
Parking within Building	Permitted in the Rear of all Floors and fully in any Basement	(q)
Occupied Space	30' depth space facing Primary Street or space on front façade	

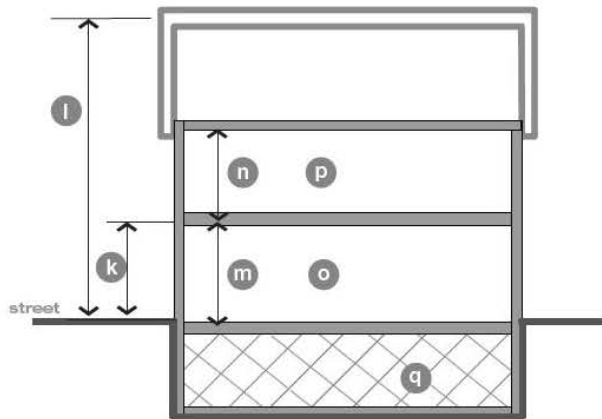


Figure 50-20.15(B): Height & Use Requirements.

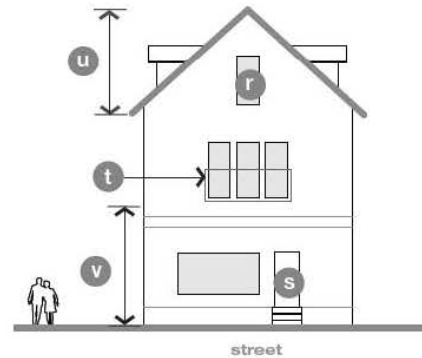


Figure 50-22.15(C): Façade Requirements.

D. Street Façade Requirements

1. Transparency (r)	
Minimum Transparency	20% per floor
Blank Wall Limitations	Required
2. Building Entrance	
Principal Entrance Location	Front or Corner Side Façade (s)
Street Façades: Number of Entrances	Not required
3. Balconies (if provided) (t)	
Size	Minimum 3' deep and 5' wide
Façade Coverage	Maximum 30% of Front & Corner Side Façades, calculated separately
Access to Balcony	Maximum one (1) dwelling unit
Structure	Independently secured and unconnected to other balconies; or integral to the Façade

E. Cap & Base Type Requirements

Cap Type	Pitched Roof (u)
Tower	Permitted
Street Façade Base Type	Shopfront, Porch, Stoop ³ (v)

Notes:

³ Porch, Stoop, or stairs may encroach to within 2' of the property line

50-22.16 Cottage commercial II.

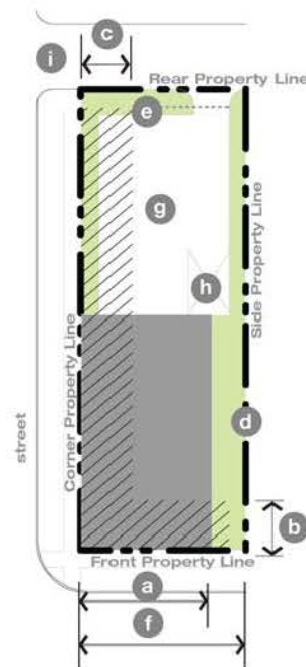


Figure 50-22.16(A): Building Siting.

A. Building Siting	
1. Street Frontage	
Multiple Principal Buildings	Not permitted
Front Build-to Zone Coverage	60% (a)
Occupation of Corner	Required
Front BTZ	0' to 15' (b)
Corner BTZ	0' to 15' (c)
2. Buildable Area	
Side Yard Setback	0' (d)
Rear Yard Setback	5' (e)
Minimum Lot Width	50' (f)
Minimum Landscape Area	20%
3. Parking Lot, Loading & Access	
Parking Lot Location	Rear Yard (g)
Loading Facility Location	Rear Building Façade (h)
Access	No driveway permitted if alley access is available; If no alley exists, 1 driveway permitted per frontage; 2 driveways may be permitted through [special exception] if frontage exceeds 200' (i)

B. Height	
Minimum Overall Height	1 story (j)
Maximum Overall Height	2.5 stories / 33' (k)
Ground Story: Minimum Height	15' (l)
Maximum Height ¹	24' (m)
Upper Stories: Minimum Height	9' (n)
Maximum Height	14' (o)

Notes:

¹ If 20' or more in height, Ground Story shall count as 2 Stories towards maximum building height.

C. Uses	
Ground Story	Refer to Article 3. Permitted Uses (p)
Upper Story	Refer to Article 3. Permitted Uses (q)
Parking within Building	Permitted in the Rear of all Floors and fully in any Basement (r)
Occupied Space	30' depth space facing Primary Street or space on front façade (s)

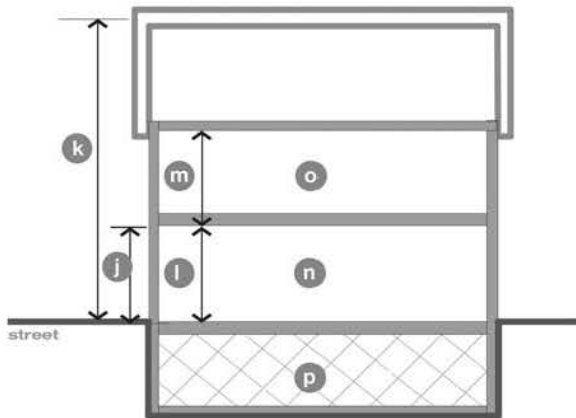


Figure 50-22.16(B): Height & Use Requirements.

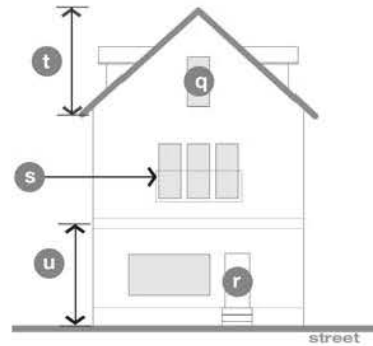


Figure 50-22.16(C): Façade Requirements.

D. Street Façade Requirements	
1. Transparency (q)	
Minimum Transparency	20% per floor
Blank Wall Limitations	Not required
2. Building Entrance	
Principal Entrance Location	Front or Corner Side Façade of Building (r)
Street Façades: Number of Entrances	Not required
3. Balconies (if provided) (s)	
Size	Minimum 3' deep and 5' wide
Façade Coverage	Maximum 30% of Front & Corner Side Façades, calculated separately
Access to Balcony	Maximum one (1) dwelling unit
Structure	Independently secured and unconnected to other balconies; or integral to the Façade

E. Cap & Base Type Requirements	
Cap Type	Pitched Roof (t)
Tower	Permitted
Street Façade Base Type	Shopfront, Porch, Stoop (u)

50-22.17 Iconic building.

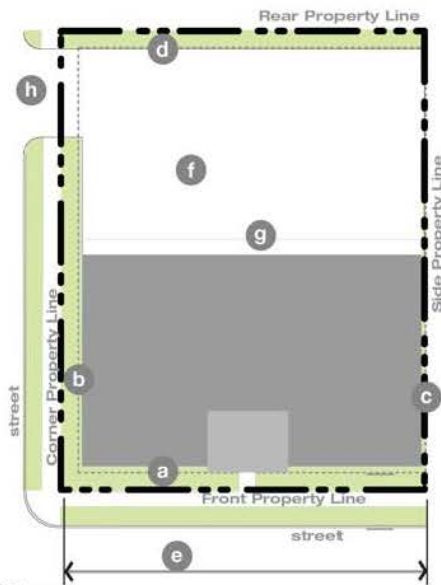


Figure 50-22.17(A): Building Siting.

A. Building Siting	
1. Street Frontage	
Multiple Principal Buildings	Permitted
Front Build-to Zone Coverage	Not Applicable
Occupation of Corner	Not required
Front Setback	5' (a)
Corner Setback	5' (b)
2. Buildable Area	
Side Yard Setback	5' (c)
Rear Yard Setback	5' (d)
Minimum Lot Width	50' (e)
Minimum Landscape Area	20%
3. Parking Lot, Loading & Access	
Parking Lot Location	Rear Yard; Single aisle permitted in Side Yard (f)
Loading Facility Location	Rear Building Façade (g)
Access	1 driveway permitted per frontage; 2 driveways may be permitted through [special exception] if frontage exceeds 200' (h)

B. Height	
Minimum Overall Height	1 story (i)
Maximum Overall Height	4 stories / 55' (j)
Ground Story: Minimum Height	9' (k)
Maximum Height ¹	30'
Upper Stories: Minimum Height	9' (l)
Maximum Height	14'

Notes:

¹ If 20' or more in height, Ground Story shall count as 2 Stories towards maximum building height.

C. Uses	
Ground & Upper Stories	Only Civic, Institutional, Utility, and Recreation uses are permitted in the Iconic Building Type (see Article 3. Permitted Uses). (m)
Parking within Building	Permitted in the Rear of all Floors and fully in any Basement
Occupied Space	30' depth space facing Primary Street or space on front façade

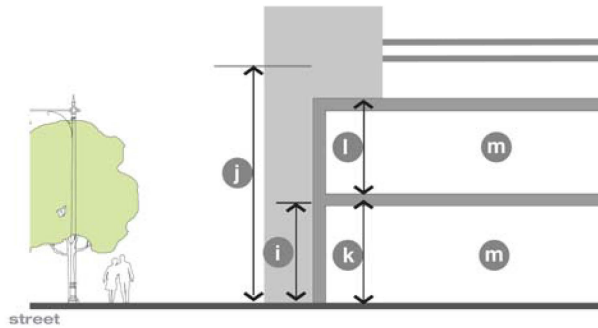


Figure 50-22.17(B): Height & Use Requirements.

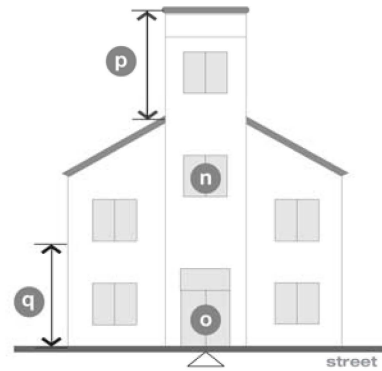


Figure 50-22.17(C): Facade Requirements.

D. Street Façade Requirements	
1. Transparency (n)	
Minimum Transparency	10% per floor
Blank Wall Limitations	Not required
2. Building Entrance	
Principal Entrance Location	Front or Corner Side Façade of Building (o)
Street Façades: Number of Entrances	Not required

E. Cap & Base Type Requirements	
Cap Type ²	Parapet, Pitched Roof, Flat Roof (p)
Tower	Permitted
Street Façade Base Type	Stoop (q)
Notes:	
² Other cap types not listed here may be approved through a [special exception] (see Section XX)	

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50-23 Connectivity and circulation.

50-23.1 Applicability and exemptions.

This Section 50-23 shall apply to all new subdivision, replatting, registered land surveys (RLSs), development and redevelopment applications after November 19, 2010. General circulation requirements are listed in subsection 50-23.2, but additional circulation requirements apply in some circumstances. Sites that are (a) located in any zone district other than the RC, RR-1, RR-2, MU-B, I-G, or I-W districts, and (b) larger than three acres, and (c) will contain more than one development parcel shall meet the connectivity index requirements of subsection 50-23.3. All new subdivision, replatting, development, and redevelopment applications shall meet the requirements of subsection 50-23.4, and those containing more than one principal building shall meet the requirements of subsection 50-23.5.

50-23.2 General circulation requirements.

Applications for subdivision, replatting, RLS, development, or redevelopment shall meet the following standards:

- A. Where adopted city plans show a bicycle or pedestrian path or trail, the site design shall provide connections to those paths or trails;
- B. Any requests by the city for designation or dedication of land for bicycle or pedestrian trails within a proposed development shall comply with the provisions of subsection 50-33.8, *Land for public purposes*;
- C. Unless the city engineer waives the requirement based on concerns of public safety or site/topography constraints:

- 1. Each proposed public or private street within the R-1, R-2, R-P, MU-N, MU-C, MU-I or MU-W districts shall include a sidewalk at least five feet wide on both sides of the street;

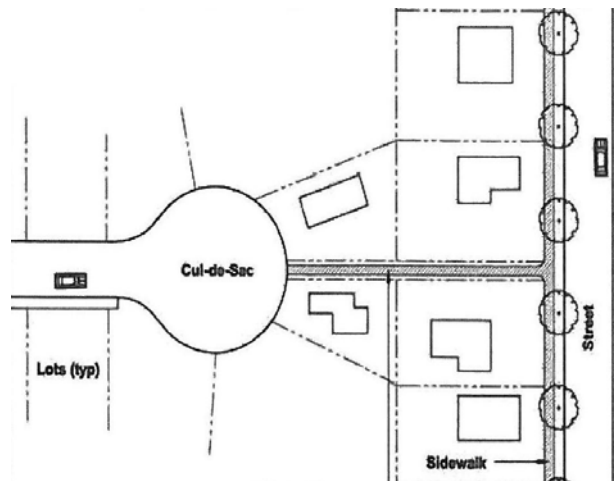


Figure 50-23-A: 10 ft. access easement from head of cul-de-sac to nearest street or path

- 2. Each proposed public or private street within the MU-B, I-G or I-W districts shall include a sidewalk at least five feet wide on one side of the street;

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- D. Whenever cul-de-sac streets are created, one ten foot wide pedestrian access/public utility easement shall be provided, between the cul-de-sac head or street turnaround and the sidewalk system of the closest adjacent street or pedestrian sidewalk or pathway, unless the city engineer determines that public access in that location is not practicable due to site or topography constraints (refer to Figure 50-23-A);
- E. A pedestrian way at least ten feet in width shall be provided near the middle of any block face longer than 800 feet in order to provide connections with streets on either side of the block.

50-23.3 Connectivity index for larger non-exempt developments.

A. Requirements.

1. A connectivity index is calculated by dividing the number of “links” in the proposed development by the number of “nodes” in the same development;
2. In order to promote walkability and reduce the number and length of vehicular trips both within developments and between new developments and surrounding areas, each development or redevelopment covered by this Section 50-23 shall provide internal junctions and external connections to achieve a connectivity index calculation of at least 1.65;
3. In addition, each street frontage of the development shall include at least one street stub or connection to the external street system every 1,500 feet;
4. The land use supervisor may reduce the required connectivity index, the requirement for external street connections, or the requirement for cul-de-sac access easements if compliance with the provisions of this subsection is impracticable due to site or topography constraints;

B. Example.

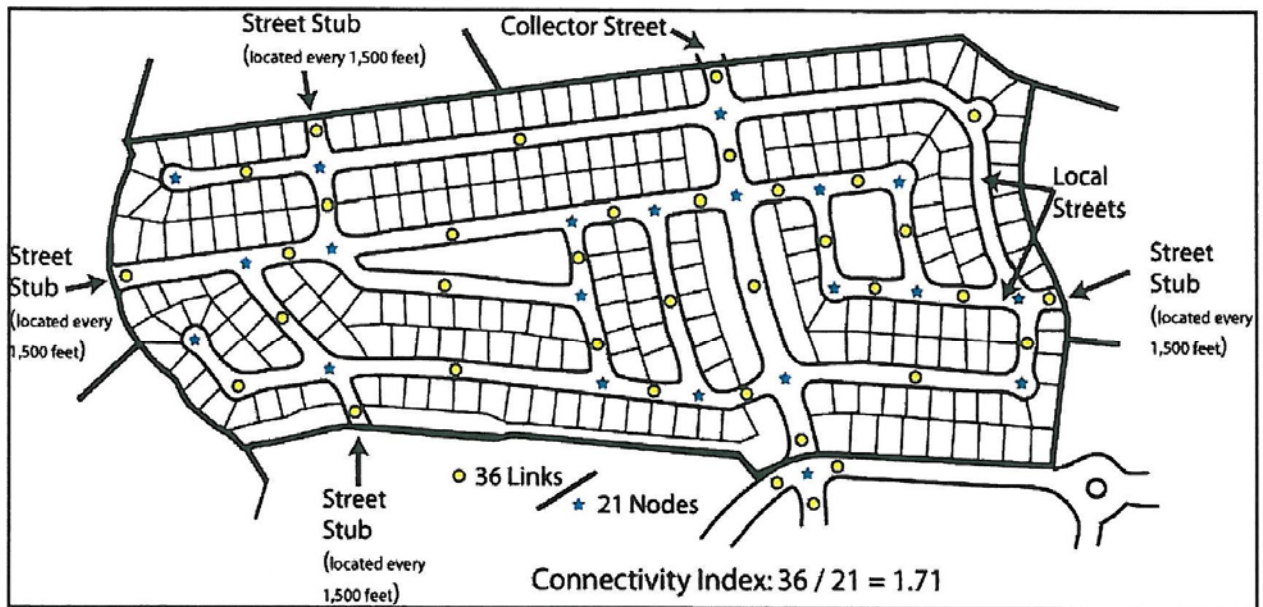


Figure 50-23-B: Example: There are 36 links (circles) and 21 nodes (stars).

50-23.4 Americans with Disabilities Act.

All "places of public accommodation," as defined in the federal Americans with Disabilities Act (42 U.S.C. 12101 et. seq.) shall comply with the requirements of that act concerning on-site circulation and access.

50-23.5 Multi-building developments.

Commercial developments containing more than one principal building on a single lot or parcel shall include an unobstructed walkway or pathway providing access between the principal buildings. The walkway or pathway shall be at least five feet wide.

50-23.6 Skywalks.

- A. The location and design of skywalks should not compromise the historic or architectural integrity of existing buildings;
- B. Design of skywalks shall be approved based on their architectural sensitivity, harmony and cohesiveness with the historic/industrial waterfront character of the surrounding area;
- C. New skywalks installed and existing sidewalks remodeled at a cost of more than 50% of their assessed value after November 19, 2010, shall be designed so that 66% of each vertical side elevation is made of glass or transparent materials. A lower level of transparency can be reduced, but not to less than 50%, if a higher level of transparency is technically infeasible due to span length and engineering limitations.

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50-24 Parking and loading.

50-24.1 Applicability.

The standards of this Section 50-24 shall apply to all development and redevelopment, except that:

- A. Development and redevelopment in any of the form districts shall only be required to provide that amount of parking that can be accommodated on the development parcel while allowing the principal building to meet all of the building form standards in Section 50-22;
- B. No off-street parking shall be required for any non-residential use on a lot smaller than 10,000 square feet in any mixed use district or special purpose district;
- C. No off-street parking shall be required for any building with less than 10,000 square feet of gross floor area and with a non-residential primary use in any mixed use district or special purpose district;
- D. No off-street parking shall be required within the boundaries of the Downtown area shown in Exhibit 50-24.1-1;

No off street parking shall be required for any use except (1) hotels or motel, and (2) residential developments with more than ten units, within the boundaries of the Canal Park area shown in Exhibit 50-24.1-1.



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50-24.2 Required parking spaces.

In all districts there shall be provided, at the time any building or structure is erected, except as provided in Section 50-24.5, *Calculation of parking spaces*, the number of off-street parking spaces shown in Table 50-24-1, unless an exemption from or variation of this requirement is provided in another section of this Chapter.

Table 50-24-1: Off-Street Parking Spaces Required		
Use	Current Zoning Ordinance	New UDC Requirement
RESIDENTIAL USES		
Dwelling, one-family	3 floors or less -- One parking space for each dwelling unit. (1) Whenever a two family dwelling is permitted in an R 1 a, R 1 b or R 1 c residential zone at least one of the required parking spaces shall be within a private garage located on the same lot as the dwelling. (2) Where townhouse dwellings are erected in an R 2 two family residential district, for each two dwelling units a minimum of three off street parking spaces shall be provided, at least 1/2 of such spaces to be located within a garage attached to or incorporated into the townhouse dwelling	1 space per dwelling unit
Dwelling, two-family		
Dwelling, townhouse		
Dwelling, live-work Co-housing facility		
Dwelling, Multi-family	More than 3 floors -- 2 spaces per 3 dwelling units or suites Fraternity or sorority -- 1 parking space for each 6 beds	1 space per dwelling unit
Assisted living facility (elderly)	Elderly congregate care -- 2 parking spaces per 3 habitable units	1 space per 3 habitable units
Residential care facility	Residential care facility -- 2 parking spaces plus 1 parking space per employee on the largest shift	1 space per 9 residential care beds, but not less than 2 spaces
Rooming house	Commercial -- 1 parking space for each 2 habitable rooms; Residential -- 2 parking spaces per 3 habitable units	1 space per habitable room
PUBLIC, INSTITUTIONAL, AND CIVIC USES		
Business, art, or vocational school	School, except high school or college --1 parking space for each 10 seats in the auditorium or main assembly room or 1 space for each classroom, whichever is greater	No change
Cemetery or mausoleum		No requirement
Club or lodge (private)	Private club or lodge -- 1 parking space for every 400 sq. ft. of floor area	No change
Government building or public safety facility	Business, professional or public office building, studio, bank or dental clinic -- 3 parking spaces plus 1 additional parking space for each 400 sq. ft. of floor area over 1,000	As determined by land use supervisor based on anticipated use and neighborhood impacts
Hospital	General hospital -- 1 space for each bed plus 1 space for each employee normally present on any	2 spaces per 1,000 sq. ft.

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Table 50-24-1: Off-Street Parking Spaces Required		
Use	Current Zoning Ordinance	New UDC Requirement
	single weekday shift Outpatient facilities: Two spaces for each examination and each treatment room, plus one space for each employee normally present on a weekday shift	
Medical or dental clinic	Medical clinic: 5 spaces per 1,000 sq. ft. of gross floor area used for administrative, office, examination and treatment	4 spaces per 1,000 sq. ft. of gross floor area
Museum, library, or art gallery	Community center, library, museum or art gallery -- 10 parking spaces plus 1 additional space for each 300 sq. ft. of floor area in excess of 2,000 sq. ft.	1 space per 1,000 sq. ft. of gross floor area
Nursing home	Sanatorium, convalescent home, home for the aged or similar institutions – 1 parking space for each 6 beds Nursing facilities: A minimum of one space for every four beds	1 space per 6 beds
Park, playground, or forest reserve		No requirement
Religious assembly	Church or temple – 1 parking space for each 8 seats in the main auditorium	1 space per 6 seats or per 100 sq. ft. in main auditorium, whichever is greater
School, elementary	School, except high school or college --1 parking space for each 10 seats in the auditorium or main assembly room or 1 space for each classroom, whichever is greater	1 parking space for each 10 seats in the auditorium or main assembly room or 1 space for each classroom, whichever is greater
School, middle or high	College or high school -- 1 parking space for each 8 seats in the main auditorium or 3 spaces for each classroom, whichever is greater	1 parking space for each 8 seats in the main auditorium or 3 spaces for each classroom, whichever is greater
University or college	College or high school -- 1 parking space for each 8 seats in the main auditorium or 3 spaces for each classroom, whichever is greater	1 space per 500 sq. ft. of office, research, and library area plus 1 space per 125 sq. ft. of auditorium space.
Other community facility or institutional support uses not listed		As determined by land use supervisor based on anticipated use and neighborhood impacts
COMMERCIAL USES		
Adult book store	Retail store, billiard parlor or personal service establishment not listed elsewhere -- 1 parking space for each 200 sq. ft. of floor area	2.5 spaces per 1,000 sq. ft. of gross floor area
Adult entertainment establishment	Restaurant, night club, cafe or similar recreation or amusement establishment -- 1 parking space for	1 per 200 sq. ft. of gross floor area

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Table 50-24-1: Off-Street Parking Spaces Required		
Use	Current Zoning Ordinance	New UDC Requirement
	each 100 sq. ft. of floor area	
Agriculture		No requirement
Automobile filling station		1 per 250 sq. ft. gross floor area plus 1 per service stall
Automobile and light vehicle repair and service	Furniture or appliance store, hardware store, wholesale establishments, machinery or equipment sales and service, clothing or shoe repair or service shop -- 2 parking spaces, plus one additional parking space for each 300 sq. ft. of floor area over 1,000	1 per 500 sq ft. of gross floor area
Automobile and light vehicle sales, rental, or storage	Furniture or appliance store, hardware store, wholesale establishments, machinery or equipment sales and service, clothing or shoe repair or service shop -- 2 parking spaces, plus one additional parking space for each 300 sq. ft. of floor area over 1,000	1 per 500 sq ft. of gross floor area
Bank	Business, professional or public office building, studio, bank or dental clinic --3 parking spaces plus 1 additional parking space for each 400 sq. ft. of floor area over 1,000	2.5 spaces per 1,000 sq. ft of gross floor area
Bed and breakfast	Bed and breakfast inn -- 2 parking spaces for the primary dwelling unit plus 1 space for each habitable unit, plus 1 parking space for each 2 seats in the dining area in excess of 2 seats per habitable unit, plus 1 parking space per employee on the largest shift	1 space for manager plus 1 space per habitable unit
Building material sales	Furniture or appliance store, hardware store, wholesale establishments, machinery or equipment sales and service, clothing or shoe repair or service shop -- 2 parking spaces, plus one additional parking space for each 300 sq. ft. of floor area over 1,000	1 per 1,000 sq ft. of gross floor area
Business park support activities		1 per 500 sq. ft. of gross floor area
Day care facility	Day care facility -- 2 parking spaces plus 1 parking space per employee on the largest shift	1 per 5 persons care capacity
Funeral home or crematorium	Mortuary or funeral home -- 1 parking space for each 50 sq. ft. of floor space in slumber rooms, parlors or individual funeral service rooms	No change
Garden material sales	Furniture or appliance store, hardware store, wholesale establishments, machinery or equipment sales and service, clothing or shoe repair or service shop -- 2 parking spaces, plus one additional parking space for each 300 sq. ft. of floor area over 1,000	1 per 1,000 sq ft. of gross floor area
Golf course	One parking space for every 400 sq. ft. of clubhouse area or 6 per hole, whichever is greater.	No change
Hotel or motel	Hotel or motel -- 1 parking space for each habitable unit, plus 1 space per employee working on the largest shift, plus 1 parking space for each 200 sq. ft. of commercial non-lodging floor area	2 per 3 guest rooms plus 1 per 200 sq. ft. of gross floor area in all accessory uses including restaurants and meeting rooms

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Table 50-24-1: Off-Street Parking Spaces Required

Use	Current Zoning Ordinance	New UDC Requirement
Indoor entertainment facility	Bowling alley -- 5 parking spaces for each alley Dance hall, assembly or exhibition hall without fixed seats -- 1 parking space for each 100 sq. ft. of floor area	1 space per 400 sq. ft. of gross floor area.
Kennel		1 per 1,000 sq. ft. of gross floor area
Marina or yacht club		1 per 400 sq. ft. of clubhouse area, plus 1 per 10 boat slips
Mini-storage facility		1 per 20 storage units
Office	Business, professional or public office building, studio, bank or dental clinic --3 parking spaces plus 1 additional parking space for each 400 sq. ft. of floor area over 1,000	2.5 per 1,000 sq. ft of gross floor area
Parking lot or parking structure (primary use)		No requirement
Restaurant (no drive-in/drive-through)	Restaurant, night club, cafe or similar recreation or amusement establishment -- 1 parking space for each 100 sq. ft. of floor area	1 per 200 sq. ft. of gross floor area
Restaurant (drive-in/drive-through)	Restaurant, night club, cafe or similar recreation or amusement establishment -- 1 parking space for each 100 sq. ft. of floor area	1 per 200 sq. ft. of gross floor area
Retail store not listed elsewhere	Retail store, billiard parlor or personal service establishment not listed elsewhere -- 1 parking space for each 200 sq. ft. of floor area	3 per 1,000 sq. ft. of gross floor area
Riding Stable		No requirement
Seasonal camp or cabin	Seasonal camp or cabin -- 1 parking space for each 2 beds or for each cabin or sleeping unit, whichever is greater	No change
Theater	Theater or auditorium (except school) -- 1 parking space for each 5 seats or bench seating spaces	1 space per 6 seats or per 100 sq. ft. in main auditorium, whichever is greater
Tourist or trailer camp	Tourist home, cabin or motel -- 1 parking space for each sleeping room or suite	2 per 3 sleeping rooms, suites, or trailer spaces
Truck or heavy vehicle sales, rental, repair, or storage	Furniture or appliance store, hardware store, wholesale establishments, machinery or equipment sales and service, clothing or shoe repair or service shop -- 2 parking spaces, plus one additional parking space for each 300 sq. ft. of floor area over 1,000	1 per 1,000 sq ft. of gross floor area
Veterinarian or animal hospital	Furniture or appliance store, hardware store, wholesale establishments, machinery or equipment sales and service, clothing or shoe repair or service shop -- 2 parking spaces, plus one additional parking space for each 300 sq. ft. of floor area over 1,000	1 per 400 sq. ft. of gross floor area
Personal service or repair not listed	Furniture or appliance store, hardware store, wholesale establishments, machinery or equipment sales and service, clothing or shoe repair or service shop -- 2 parking spaces, plus one additional parking	1 per 400 sq. ft. of gross floor area

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Table 50-24-1: Off-Street Parking Spaces Required		
Use	Current Zoning Ordinance	New UDC Requirement
	space for each 300 sq. ft. of floor area over 1,000	
Other commercial use not listed		As determined by land use supervisor based on anticipated use and neighborhood impacts
INDUSTRIAL USES		
Airport and related facilities		As determined by airport management
<ul style="list-style-type: none"> • Electric power or heat generation plant • Electric power transmission line • Junk and salvage services • Major utility or wireless communication tower • Radio or television broadcasting tower • Railroad or shipyard and related facilities • Solar or geothermal power facility (primary use) • Truck freight or transfer terminal • Water or sewer works • Wind power facility (primary use) • Bulk storage not listed 		No requirement
<ul style="list-style-type: none"> • Contractor's shop and storage yard • Dry cleaning or laundry plant • Recycling collection point (primary use) • Solid waste disposal or processing facility 		1 per 1,000 sq. ft. of gross floor area
<ul style="list-style-type: none"> • Manufacturing, light • Manufacturing, heavy • Manufacturing, hazardous or special • Storage warehouse • Water-dependent manufacturing, light or heavy 	Manufacturing or industrial establishment, research or testing laboratory, creamery, bottling plant, warehouse or similar establishment --1 parking space for each 2 employees on the maximum working shift, but no less than one space for every 1,000 sq. ft. of floor area	1 per 1,000 sq. ft. of gross floor area

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Table 50-24-1: Off-Street Parking Spaces Required		
Use	Current Zoning Ordinance	New UDC Requirement
• Wholesaling		
Research laboratory	Manufacturing or industrial establishment, research or testing laboratory, creamery, bottling plant, warehouse or similar establishment --1 parking space for each 2 employees on the maximum working shift, but no less than one space for every 1,000 sq. ft. of floor area	As determined by land use supervisor based on anticipated use and neighborhood impacts
Other Industrial uses not listed		As determined by land use supervisor based on anticipated use and neighborhood impacts
ACCESSORY USES		
Accessory bed and breakfast	Bed and breakfast homestay -- 2 parking spaces for the primary dwelling unit plus 1 space for each additional habitable unit, plus 1 parking space for each 2 seats in the dining area in excess of 2 seats per habitable unit	1 space for primary use dwelling; plus 1 space per habitable unit
Accessory caretaker quarters		1 space
All other accessory uses		No requirement
TEMPORARY USES		
Temporary real estate sales office		2 spaces
All other temporary uses		No requirement

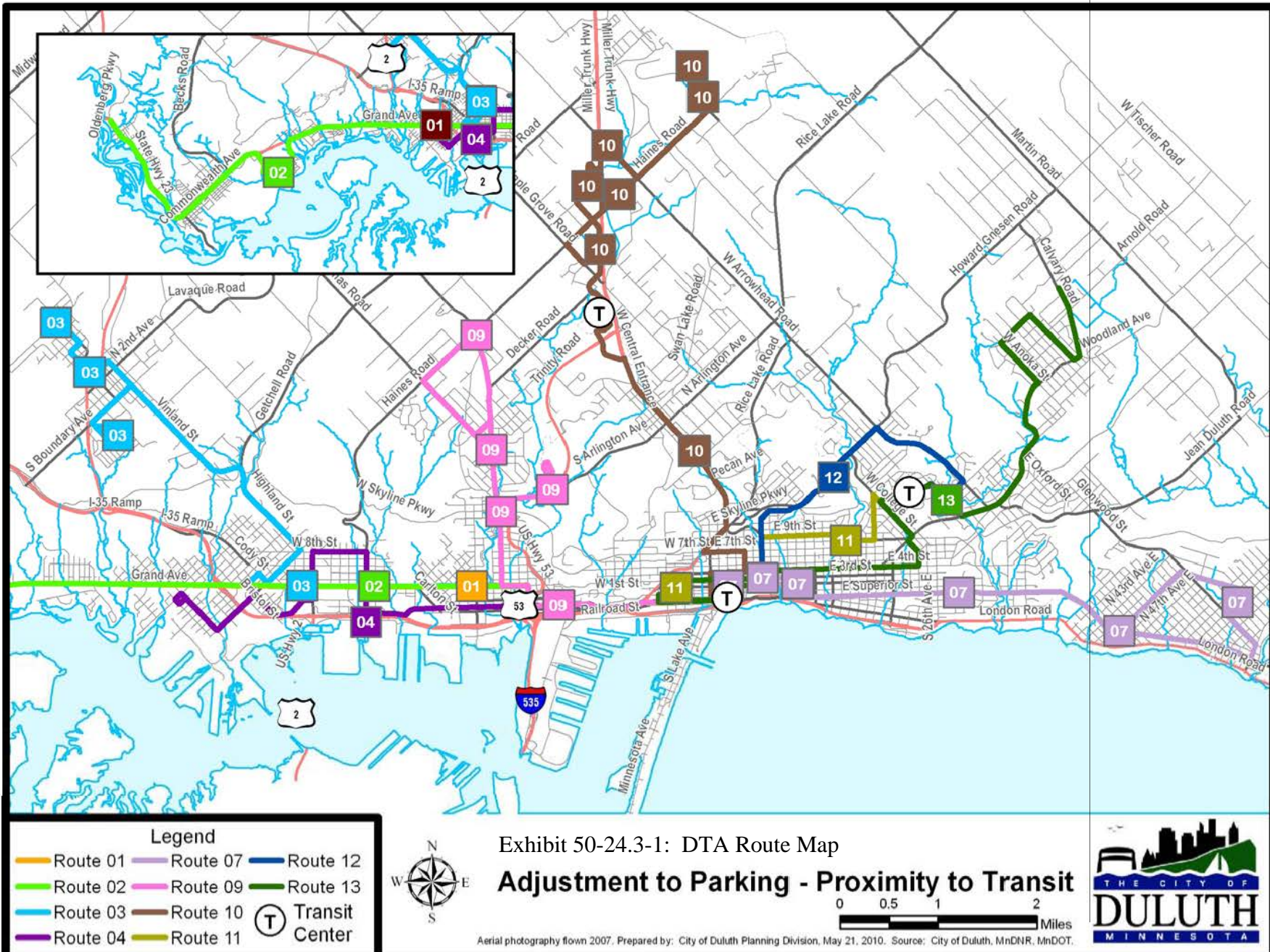
50-24.3 Adjustment to required off-street parking.

The minimum parking requirements listed in Section 50-24.2 above shall be adjusted as follows:

A. Proximity to transit.

1. The minimum number of off-street parking spaces required for any development or redevelopment lands located within 1/4 mile of the following Duluth Transit Authority routes, 1, 2, 3, 4, 7, 9, 10, 11, 12 and 13, as shown on Exhibit 50-24.3-1, may be reduced by 30%;
2. The minimum number of off-street parking spaces required for any development or redevelopment lands located within 1/2 mile of (a) any Duluth Transit Authority transit center, as indicated by a "T" on Exhibit 50-24.3-1, or (b) the intersection of Grand and Central avenues in West Duluth, may be reduced by 20%;

If an existing transit route or center is eliminated or changed in location, any development approved in conformance with this Section 50-24.3 shall not be deemed nonconforming in terms of required parking.



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B. Sharing of parking spaces.

3. General.

Where two land uses listed in separate use categories in Table 50-19.8 share a parking lot or structure, the total off-site parking required for those uses may be reduced by the factors shown in Table 50-24-2. Total off-street parking required shall be the sum of the two parking requirements for the two uses divided by the factors in Table 50-24-2. If uses in three or more categories of Table 50-19.8 share a parking lot or structure, the land use supervisor shall determine the parking reduction based on the relative sizes of the various uses and the reduction factors listed in Table 50-24-2;

Table 50-24-2: Shared Parking Reduction Factors					
Add the two parking requirements and divide by these factors					
Property Use	Multi-family Residential	Public, Institutional, or Civic	Food, Beverage, Indoor, Entertainment, or Lodging	Retail	Other Commercial
Multi-family Residential	1.0				
Public, Institutional, or Civic	1.1	1.0			
Food, Beverage, Indoor, Entertainment, or Lodging	1.1	1.2	1.0		
Retail	1.2	1.3	1.3	1.0	
Other Commercial	1.3	1.5	1.7	1.2	1.0

4. Additional sharing permitted for certain uses.

As an alternative to those reduction factors listed in Table 50-24-2, (a) up to 50% of the parking spaces required for food, beverage and indoor entertainment uses, and up to 100% of parking spaces required for religious assembly uses and elementary, middle, high school, university or college auditoriums may be used jointly by (b) any non-residential use not normally open, used or operated during the same hours as those listed in (a), or any non-residential use that has excess parking capacity based on the minimum off-street parking for that use. A written agreement assuring the continued availability of the parking spaces for the uses they serve shall be required on a form approved by the city and shall be filed with the application for a building permit.

50-24.4 Maximum parking limit.

No more than 150% of the minimum required number off-street parking spaces shall be provided.

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50-24.5 Calculation of parking spaces.

The following rules shall apply to calculation of the number of required parking spaces:

- A. Floor area shall mean the gross floor area of the specific use;
- B. Requirements for a fraction of a parking space shall be ignored;
- C. The parking space requirement for a use not specifically listed in Table 50-24-1 shall be the same as for the most similar use listed in that table, as determined by the land use supervisor;
- D. Whenever a building or use is enlarged to the extent of 25% or more in floor area or in the site area used, the building or use shall be required to (a) retain any on-site parking existing prior to the expansion, and if that is not sufficient to comply with the parking required for the use as expanded, then (b) to comply with the requirements in Table 50-24-1 for the expansion area.

50-24.6 Location of parking spaces.

A. On site location and exceptions.

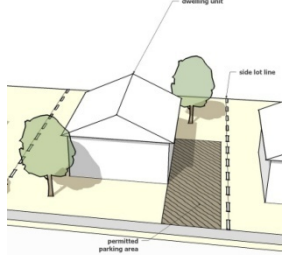
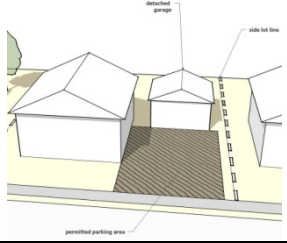
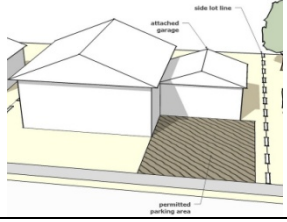
1. All required parking spaces shall be located on the same lot with the principal building or the primary use served; except as provided in subsection 2 below;
2. Where an increase in the number of spaces is required by a change or enlargement of any use other than a single-family dwelling, two-family dwelling, or townhouse, the required spaces may be located and maintained up to 500 feet from the lot containing that use. Where required parking spaces are not provided on site, a written agreement assuring the continued availability of the parking spaces for the uses they serve shall be required on a form approved by the city and shall be filed with the application for a building permit;

B. Parking location within the site.

Unless a front yard parking permit was issued for the property on or before June 1, 2009, required parking spaces shall only be provided on those portions of the lot indicated in Table 50-24-3.

Table 50-24-3: Permitted Parking Areas	
Type of Lot	Permitted Parking Area
Residential Districts	
All Lots	The rear yard and one side yard

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Table 50-24-3: Permitted Parking Areas	
Type of Lot	Permitted Parking Area
Non-corner lot with dwelling unit and no garage	The area between one side lot line and the nearest side wall of the dwelling unit and its extension to the improved street abutting the front yard. (See diagram to the right) 
Non-corner lot with dwelling unit and detached garage	The area between the closest side lot line to the side wall of the dwelling unit nearest to the garage, and its extension to the improved street abutting the front yard. (See diagram to the right) 
Non-corner lot with dwelling unit and attached garage	The area between the closest side lot line to the common wall separating the dwelling unit and garage, and its extension to the improved street abutting the front yard. (See diagram to the right) 
Corner lot	By variance per Section 50-37.9
Mixed Use and Special Purpose Districts	
All Mixed Use and Special Purpose Districts	Buildings or projects constructed after November 19, 2010, shall locate no more than 50% of off-street accessory parking within required front yard areas.
Form Districts	Parking only permitted on those portions of the lot permitted for the building type being constructed pursuant to Sections 50-16 and 50-22.

50-24.7 Parking lot design standards.

A. General standards.

The design of required off street parking areas and spaces shall meet the standards shown in Table 50-24-4;

Table 50-24-4: Parking Design Standards		
Parking Space Size*		
Size of Car	Size of Parking Space	
Small	8.5 ft. x 15 ft.	
Standard	9 ft. x 17 ft.	
Aisle Widths		
Angle of Parking	Width of Aisle	
	One-Way	Two-Way
Parallel/no parking	11 ft.	21 ft.

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Table 50-24-4: Parking Design Standards		
30 degree	11 ft.	21 ft.
45 degree	13 ft.	23 ft.
60 degree	18 ft.	25 ft.
90 degree	24 ft.	25 ft.
Permitted Percentage of Small Car Spaces (Applies to lots with more than 5 spaces)		
Size of Parking Lot	Maximum Percentage of Small Cars	
6 to 100 spaces	40%	
100 to 149 spaces	45%	
150 or more spaces	50%	
Required Surface Treatment/Paving		
Zone District	Requirement	
All residential district parking areas not in lawful existence on June 1, 2009.	Surfaced in a dust free, hard surface material such as concrete or bituminous, or pervious paving materials, except for rear yards, which may be surfaced in aggregate materials, compressed aggregates or similar surfaces.	
All Mixed Use and Special Purpose Districts	All parking areas shall be surfaced in a dust free, hard surface material such as concrete or bituminous. Pervious paving material shall be approved by the city engineer.	

*The area set aside for a parking space may encroach beyond the face of a curb a maximum of 1.5 ft., provided that (a) it does not include trees, posts, or other obstructions that would prevent a vehicle from fully utilizing the space, and (b) it is not included in required open space, landscape area requirements, or required pedestrian walkways.

B. Snow storage areas.

A portion of the each accessory surface parking area shall be designated for snow storage. The areas required to meet the minimum parking requirements of this Section 50-24 shall not be used for snow storage. Snow storage areas may be landscaped if the vegetation is selected and installed so as not to be harmed by snow storage. Snow storage areas shall not count towards those landscape areas required by Section 50-25 unless it they are integrated with a side or rear buffer required by Section 50-25;

C. Parking lot walkways.

Each surface parking area that (a) serves a multi-family residential, commercial, public, institutional, civic, or mixed use, and (b) contains 50 or more parking spaces, and (c) contains any parking spaces located more than 300 feet from the front façade of the building shall contain at least one pedestrian walkway from allowing pedestrians to pass from the row of parking furthest from the primary building façade to the primary building entrance or a sidewalk allowing the pedestrian to reach the primary building entrance without crossing additional driving spaces or aisles. The required walkway must be at least five feet wide, shall not be located within a driving aisle, and shall be located in a landscaped island running perpendicular to the primary building façade if possible. If located in a landscaped island, the minimum width of the island shall be increased by five feet to accommodate the walkway without reducing the amount of landscaped area. If any parking space in the parking aisle located furthest from the primary structure is more than 200 feet from the walkway, additional similar walkways shall be required within 200 feet of those

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spaces. If there is a public sidewalk along the street frontage located within 50 feet of any required walkway, the walkway shall connect to that sidewalk.

50-24.8 Required loading space.

Unless otherwise provided in this Chapter, all construction of new buildings or expansions of existing buildings shall provide off street loading space shown in Table 50-24-5 below.

Table 50-24-5: Off-Street Loading Space Standards	
Type of Use or Facility	Off-Street Loading Requirement
Office, hotel or motel	1 space for 20,000 sq.ft. of gross floor area
Personal service and repair not otherwise listed; building material sales; garden material sales; retail store not listed (large); automobile and light vehicle repair and service, automobile and light vehicle sales, rental, or storage; truck or heavy vehicle sales, rental, repair, or storage; wholesaling.	1 space for 20,000-50,000 sq.ft. of gross floor area; and 2 spaces for more than 50,000 sq.ft. gross floor area
Manufacturing	1 space for 25,000 to 50,000 sq.ft. of gross floor area; 2 spaces for more than 50,000 sq.ft. of gross floor area.

50-25 Landscaping and tree preservation.

50-25.1 Applicability.

- A. The landscaping provisions of sections 50-25.2 through 25.9 shall apply to lots and parcels in any zone district that contain (i) more than 10,000 square feet of lot area, and (ii) a primary structure with a multi-family, mixed use, commercial, institutional, industrial, or parking principal use, when any of the following conditions occur after November 19, 2010:
1. A new primary structure is constructed;
 2. The floor area in an existing primary structure(s), taken collectively, is increased by more than 25%;
 3. An existing primary structure is relocated on the lot or parcel;
 4. The primary structure is renovated or redeveloped (including but not limited to reconstruction after fire, flood or other damage), and the value of that renovation or redevelopment, as indicated by building permits, is more than 25% of the market value of the land and buildings, as indicated by tax assessor's records;
 5. A new primary use parking lot containing 25 or more spaces is constructed;
 6. An existing primary use parking lot containing 25 or more spaces is redesigned or reconstructed with significant changes to the layout of parking spaces, driving aisles and access drives;

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- B. No landscaping shall be required to be installed on any portion of a lot in any form district required to be occupied by a principal structure;
- C. The tree preservation provisions of Section 50-25.9 apply to all development or redevelopment on lots and parcels that contain more than 10,000 square feet of lot area, and to any new lot of record created after November 19, 2010, of the primary use of the property, in any zone district.

50-25.2 General landscaping standards.

A. Landscape plan required.

A landscaping plan shall be submitted as a part of all development applications for those activities listed in Section 50-25.1.A, unless the land use supervisor determines that compliance with the provisions of Section 50-25 can be demonstrated without the use of a landscaping plan. A landscaping plan may be combined with other required application materials if compliance with Section 50-25 can be demonstrated in the combined materials;

B. Plant materials.

Plant materials shall be from the city's approved landscaping plant list as shown in the UDC application manual. All plant material shall be hardy to Northeast Minnesota, suitable for the site, free of disease and insects and conform to the American Standard for Nursery Stock of the American Nursery and Landscape Association;

C. Minimum living materials.

In all areas where landscaping is required, a minimum of 50% of the surface area shall be covered by living materials, rather than bark, gravel or other non-living materials;

D. Existing vegetation.

Existing vegetation shall be protected during construction through use of a fence around an area sufficient to protect the health of the vegetation, and shall be incorporated into the landscape plan wherever possible;

E. Vegetation grouping.

Landscaping shall generally incorporate large irregular groupings of the same species of shrub, avoiding rigid or repeated specimen planting except for boulevard trees, and shall introduce multiple varieties within one general area. Except for

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plantings used for screening, no one species of tree or shrub may make up more than 50% of the total amount of landscape plantings;

F. Soil condition.

All required landscaping shall be planted in uncompacted soil with a minimum depth of two feet;

G. Grading and drainage.

All open areas shall be graded, properly drained and maintained according to storm water standards in Section 50-18.1.E;

H. Raingardens and storm water management features.

Areas included in raingardens or vegetated site features created to meet storm water management requirements in Section 50-18.1.E shall be counted towards any required interior site or parking lot landscaping, and if vegetated to meet the requirements for any landscaped buffers shall count towards those buffer requirements;

I. Minimum plant sizes.

Where included as part of the required landscaping, deciduous trees shall have a minimum caliper of 2.5 inches, coniferous trees shall be a minimum of six feet in height, large shrubs shall be of a minimum five gallon container size and have a height of at least six feet at maturity, small shrubs shall be of a minimum five gallon container size and have a height of less than six feet at maturity, and ground cover shall be of a minimum one gallon container size. The above dimensions apply to sizes at time of planting;

J. Plant material spacing.

Except for buffer zone provisions of Section 50-25.5, *Landscaping between differing land uses*, plant materials shall not be placed closer than four feet from any fence line or property line. Where tree planting requirements are based on linear street frontage, areas occupied by driveways shall be included when calculating the number of trees required to be planted, and any trees that would otherwise be required in driveways shall be planted in other landscaped front yard areas unless prohibited by minimum spacing requirements for that species as recommended by the American Standard for Nursery Stock of the American Nursery and Landscape Association. The land use supervisor may authorize adjustments to these spacing requirements when required due to topography, drainage, utilities or obstructions, provided that the total amount of required landscaping is not reduced;

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K. Snow Storage areas.

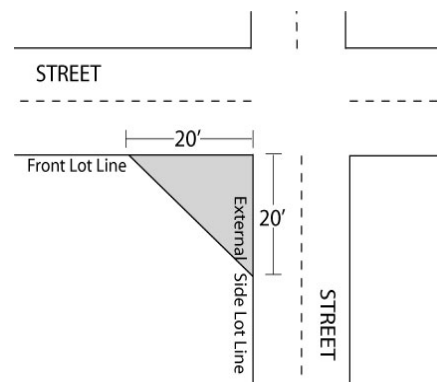
Areas required for snow storage and areas required for landscaping shall not overlap, except that snow may be stored on ground cover landscape areas (e.g., turf) that do not contain required landscape trees or other plantings;

L. City right-of-way.

Tree removal or planting in city rights-of-way shall be done only with the approval of the city forester;

M. Protection of site distances;

On any corner lot on which a front and side yard are required, no wall, fence, structure, sign, or any plant growth that obstructs sight lines at elevations between 2.5 feet and six feet above the driving surface of the adjacent roadway shall be maintained in a triangle formed by measuring from the point of intersection of the front and exterior side lot lines a distance of 20 feet along the front and side lot lines and connecting the points so established to form a right triangle on the area of the lot adjacent to the street intersection;



N. Delay of installation due to season.

Whenever the installation of required landscaping is not possible by the time construction on the primary structure or primary use parking lot has been completed, the city may authorize a delay in installation until no later than the following June 30. As a condition of authorizing a delay in installation, the city may require that a surety or other guarantee, in a form acceptable to the city, in the estimated amount of such installation be provided, or the city may issue a temporary certificate of occupancy, with the permanent certificate of occupancy to be issued following installation of all required landscaping;

O. Flexibility for redevelopment.

Where the requirements of this Section 50-25 apply to a redevelopment or reconstruction project, rather than a new development, the land use supervisor may authorize a reduction of minimum off-street parking requirements established in Section 50-24 by up to ten percent if required to accommodate street frontage landscaping required by Section 50-25.3 or parking area landscaping required by Section 50-25.4.

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50-25.3 Street frontage landscaping.

The street frontage of the property shall meet the following landscaping requirements.

- A. Minimum average depth: See Table 50-25-1. An average depth allows the width of the landscape area to vary in size along different portions of the property to respond to varying site conditions and allow design flexibility;

Table 50-25-1: Average Depths of Street Frontage Landscaping Required	
Context	Average Depth Required
General requirement unless otherwise listed below	15 ft. in front street yards 10 ft. in side street yards 5 ft. on rear lot lines of double frontage lots
Lots with no required front setback, and where the primary building abuts the front lot line	Exempt
Lots with less than 10,000 sq. ft. or lot area.	Exempt
Lots with 10,000 to 20,000 sq. ft. of lot area.	5 ft. along all street frontages
Form districts	Consistent with front yard landscaping depth, if any, in surrounding properties in the same district.

- B. Required trees: One tree per 35 feet of linear frontage, planted (a) in alignment with any similar street frontage landscaping on adjacent lots, or if that is not possible or adjacent lots do not contain front yard landscaping then (b) as close to the public right-of-way as the city engineer will permit;
- C. Required shrubs: one large shrub per 25 feet of linear frontage;
- D. On lots adjacent to city-maintained boulevards, landscaping in the boulevards may be credited towards the landscaping requirements of this Section 50-25.3.

50-25.4 Parking lot landscaping.

Accessory and primary use parking lots shall provide the following amounts and types of landscaping unless alternative standards for specific situations are required pursuant to Section 50-26, *Screening, walls and fences*, or Section 50-30, *Design standards*. In any case where landscaping required by this Section 50-25.4 overlaps areas required to be landscaped by any other provision of this Section 50-25, the provisions of the section requiring more planting shall apply.



Figure 50-25.4-A: Parking lot screening from public right-of-way

A. Perimeter screening from public streets.

1. Minimum width: five feet;
2. Required trees: one tree per 35 feet of linear frontage;
3. Required shrubs: three large shrubs per 25 feet of linear frontage. If a berm or an opaque fence or wall at least three feet tall is erected, three small shrubs per 25 feet of linear frontage;

B. Perimeter screening from abutting residential zone or use.

When a parking lot abuts a residential zone or a lot with a current residential use (regardless of whether there is an intervening street or alley or railway right-of-way), a continuous screening wall, berm, fence, or row of planting at least six feet tall shall be provided between the parking lot and the residential zone or use. The screening material shall be designed to provide 75% opacity one year after planting along the full required height and length of the screening buffer;

C. Interior landscaping requirements.

Parking lots shall provide the following landscaping internal to the parking lot:

1. Minimum area: 15% of the interior parking lot area (excluding any perimeter areas required to be landscaped by sections 50-25.3, 50-25.4.A or B, or 50-25.5);

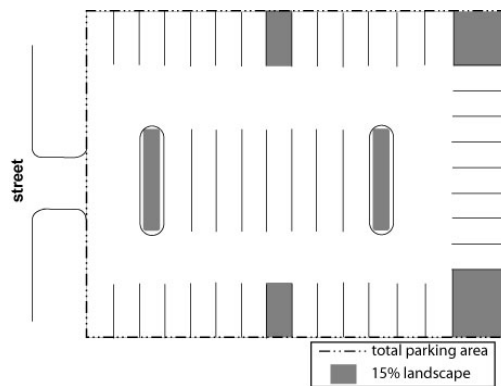


Figure 50-25.4-B: Required interior parking lot landscape areas

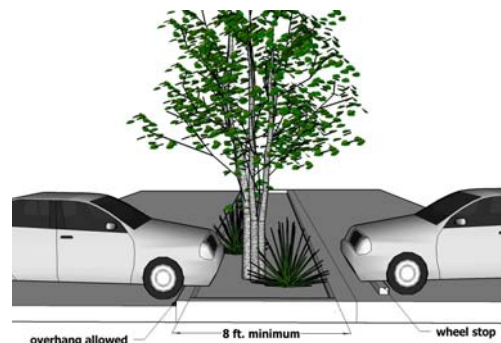


Figure 50-25.4-C: Minimum width of interior parking lot landscape areas

2. Location: Internal landscape areas shall be dispersed on the site to break up the perception of large uninterrupted expanse of pavement (see Figure 50-25.4-B);
3. Required trees: One tree per 300 square feet of internal landscape area. Tree species shall be chosen so that, combined with trees planted under

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subsections A. and B. above, parking lots will have a minimum tree canopy coverage of 30% at maturity;

4. Landscape areas shall be a minimum of eight feet in width (See Figure 50-25.4-C);
5. Curbing: Internal landscape areas shall be curbed for protection of the landscape materials, but planted areas shall be installed at a lower grade than the parking lot pavement, and curbing shall allow drainage from the pavement to enter and percolate through the landscaped areas.

50-25.5 Landscaping between differing land uses.

In addition to landscaping required by sections 50-25.3 and 50-25.4, buffer areas are required to be landscaped when specific types of differing land uses occur adjacent to each other. These standards do not apply when the listed types of adjacencies occur within mixed use or form districts, but do apply where the boundaries of a mixed use or form district are adjacent to a residential or special purpose zone district. In any case where landscaping required by this Section 50-25.5 overlaps areas required to be landscaped by any other provision of this Section 50-25, the provisions of the section requiring more planting shall apply. These requirements only apply at the time of development or redevelopment (i.e., later development of an abutting land use will not result in an existing development being required to install buffer landscaping).

A. Multi-family residential abutting single-family residential.

Where a multi-family residential building or project with more than eight units abuts (a) a lot in the RC, RR-1, RR-2 or R-1 zone district, or (b) a lot in the R-2 district that is developed with a one-family use, a landscape buffer shall be provided using either Option A or B below.

1. Option A.

A landscape buffer area at least ten feet wide shall be provided by the multi-family project on the shared border. The buffer area shall consist of natural landscape materials such as lawn, ground cover, shrubs and trees, and shall not contain impervious materials. One tree shall be provided for every 35 feet of boundary lot line and three large shrubs per 25 feet of boundary lot line, with spacing designed to minimize sound, light, and noise impacts on single-family residential homes;

2. Option B.

An opaque wall, berm, fence or dense (at least 50% opacity) vegetative screen at least six feet tall shall be provided. If a fence or wall is provided, the side facing away from the multi-family use shall be at least as finished in appearance as the side facing the multi-family use, and three small shrubs per 25 feet of boundary lot line shall be provided. If a vegetative

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screen is proposed, it shall be at least six feet in height at the time of planting;

B. Commercial or institutional abutting residential.

Where a commercial, public, institutional or civic building or project abuts lots in a residential district, a landscape buffer shall be provided using either Option A or B below.

1. Option A.

A landscape buffer at least 15 feet wide shall be provided by the commercial or institutional project on the shared border. The buffer area shall consist of natural landscape materials such as lawn, ground cover, shrubs, and trees, and shall not contain impervious materials. One tree shall be provided for every 35 feet of boundary lot line and large three shrubs per 25 feet of shared lot line, with spacing designed to minimize sound, light, and noise impacts on the residential use;

2. Option B.

An opaque wall, berm, fence or dense (at least 75% opacity) vegetative screen at least six feet shall be provided. If a fence or wall is provided, the side facing away from the commercial or institutional use shall be at least as finished in appearance as the side facing the commercial or institutional use, and three small shrubs per 25 feet of boundary lot line shall be provided. If a vegetative screen is proposed, it shall be at least 6 feet in height at the time of planting;

C. Industrial abutting residential.

Where an industrial building or project abuts lots in a residential district or lots used for any use listed as a residential use in Table 50-19.8, a landscape buffer shall be provided using either Option A or B below.

1. Option A.

A landscape buffer at least 15 feet wide shall be provided by the industrial project on the shared border. The buffer area shall consist of natural landscape materials such as lawn, ground cover, shrubs and trees, and shall not contain impervious materials. One tree shall be provided for every 25 feet of boundary lot line and four large shrubs per 25 feet of boundary lot line, with spacing designed to minimize sound, light and noise impacts on residential uses;

2. Option B.

An opaque wall, berm, fence or dense (100% opacity) vegetative screen at least eight feet tall shall be provided. If a fence or wall is provided, the

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side facing away from the industrial use shall be at least as finished in appearance as the side facing the industrial use, and three small shrubs per 25 feet of boundary lot line shall be provided. If a vegetative screen is proposed, it shall be at least eight feet tall at the time of planting;

D. Industrial abutting commercial or institutional.

Where an industrial building or project abuts lots that are used or zoned for commercial, institutional or mixed use purposes, a landscape buffer shall be provided by using either Option A or B below.

1. Option A.

A landscape buffer at least ten feet wide shall be provided by the industrial project on the shared border. The buffer area shall consist of natural landscape materials such as lawn, ground cover, shrubs and trees, and shall not contain impervious materials. One tree shall be provided for every 40 feet of boundary lot line and large four shrubs per 20 feet of boundary lot line, with spacing designed to minimize sound, light and noise impacts on commercial or institutional uses;

2. Option B.

An opaque wall, berm, fence or dense (50% opacity) vegetative screen shall be provided with a minimum height of six feet. If a fence or wall is provided, the side facing away from the industrial use shall be at least as finished in appearance as the side facing the industrial use, and three small shrubs per 25 feet of boundary lot line shall be provided. If a vegetative screen is proposed, it shall be at least six feet tall at the time of planting.

50-25.6 Landscaping credit to preserve existing trees.

Landowners who preserve mature, non-diseased trees as part of a development project may obtain credits toward the required landscaping. Trees intended to be preserved shall be indicated on the landscaping plan and shall be protected during construction through use of a fence around the critical root radius. To obtain credit, the preserved trees shall be of a high quality and at least five inches diameter at breast height (DBH) in size. Trees located in any portion of the site protected from development or protected in its natural state as part of a zoning permit, approval or agreement shall not be eligible for credit against required landscaping on the remainder of the site. The credit for preserved trees shall be as shown in Table 50-25-2. Any preserved trees for which credit is given, and that are lost to damage or disease within two years after the credit is awarded shall be replaced by the land owner with trees otherwise required. The total amount of tree credits cannot exceed 50% of the required tree landscaping requirement. The entity receiving credit shall file with the city a certificate from a forester, arborist or landscape architect that states this Section has been complied with.

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TABLE 50-25-2: Tree Preservation Credits	
DBH of Preserved Tree (in in.)	Numbers of Trees Credited
Over 12 in.	3
8 in. to 11.9 in.	2
5 in. to 7.9 in.	1

50-25.7 Special landscaping provisions in Canal Park area.

In Canal Park as shown in Exhibit 50-25.7-1:

- A. All open areas of a lot not covered by buildings, sidewalks, required parking areas, drives, courtyards or accessory structures shall be landscaped with a combination of trees, shrubs, flowers and ground covers;
- B. Landscape design introducing a nautical character in features such as decorative walks, statuary, bollards, fountains, wood decks and terraced areas are encouraged.

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50-25.8 Alternative landscaping.

In lieu of compliance with the specific requirements of this Section 50-25 an owner may propose to the land use supervisor an alternative approach consistent with the intent of this Section. An alternative approach is designed to provide administrative flexibility in order to respond to unique site conditions or abutting or surrounding uses, and must not result in reductions in the amount or quality of required landscaping. The land use supervisor may approve a proposal under this Section only if the proposed alternative compliance achieves required landscaping to the same degree or better than the provisions of this Section.

50-25.9 Tree preservation requirements.

A. Purpose.

The city recognizes that trees provide numerous benefits and services to city residents, including increased property values reduced storm water runoff and soil

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erosion, with associated cost savings, noise buffering, aesthetic value, reduced energy costs from shade in summer and windbreaks in winter, and removal of greenhouse gases and other pollutants from the air. The city seeks to maintain the tree cover that protects the city's water quality and gives the city its character, while recognizing the need to remove some trees for development, safety, view preservation and other purposes;

B. Tree replacement.

1. Exemptions.

The following activities are not subject to the tree replacement requirement in this Section 50-25.9:

- (a) Forest management activities that maintain pre-existing tree canopy cover, such as minor thinning that eliminates no more than 25% of the canopy;
- (b) Forestry activities that disturb the canopy are exempt if covered by a current forest management plan approved by the city forester;
- (c) Removal of trees that are an obstruction to traffic or power lines or other utilities;
- (d) Removal of trees necessary for rescue in an emergency or for clean-up after a natural disaster;
- (e) Removal of public trees deemed hazardous by the city forester;
- (f) Removal of trees that are airport hazards;
- (g) Removal and trimming of trees along Skyline Parkway to preserve views from established or historic overlooks and viewpoints, with approval by the city forester;
- (h) Installation or replacement of city streets or utilities;

2. Replacement required.

- (a) Tree replacement shall be required pursuant to Table 50-25-3;

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TABLE 50-25-3: Tree Replacement Required				
Tree Type	Removal Threshold	Replacement Standards		
		Replacement Ratio		
		% DBH to be Replaced	If Replacing With Special Trees	If Replacing with Other Tree Species
Special Tree > 20 in. DBH	Prohibited unless approved pursuant to subsection (b) below	If approval received, 50% of DBH removed	1 in. DBH per 1.5 in. of DBH required to be replaced	1 in. DBH per in. of DBH required to be replaced
Special Trees Between 8 and 20 in. DBH	10 or more	25% of DBH removed		
Other Significant Trees	20 or more	10% of DBH removed		

- (b) Removal of special tree species over 20 inches diameter at breast height (DBH) is prohibited unless any of the following applies:
 - (i) The city forester determines that the tree is dead, dying, diseased or a threat to public health or safety;
 - (ii) The city engineer determines that the tree interferes with the provision of public services or is a hazard to traffic;
 - (iii) The land use supervisor determines that the location of the tree is preventing development or redevelopment that cannot be physically designed to protect the tree;
- (c) When ten or more replacement trees are required, not more than 30% shall be the same species without approval from the city forester;
- (d) Replacement trees provided pursuant to this Section 50-25.9 shall count towards landscaping required under other portions of this Section 50-25.9 if they meet the size, type and location standards for the type of landscaping required;
- (e) Replacement trees shall be considered significant trees in any future tree replacement plan;
- (f) If any part of the property is permanently protected from development by a conservation easement or by transfer to a city park or other natural area or a private conservation organization, the combined diameter of the protected trees that meet the size requirement for a significant tree will count toward the replacement requirement;
- (g) With the approval of the appropriate city staff (land use supervisor or city forester), developers should have the option of meeting the tree replacement requirements by putting equivalent funds into a dedicated city tree account. The amount of funds should be calculated based on

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the cost to the city of hiring contractors to plant the number of required replacement trees;

3. Calculation.

(a) If you meet the removal threshold:

$$\frac{\text{Inches removed(DBH)}}{\% \text{ DBH}} \times \text{\%} = \text{replacement requirement in inches}$$

(b) If replacing with special trees:

$$\text{Replacement requirement} \div 1.5 = \text{Total inches required}$$

(c) If replacing with other trees:

$$\text{Replacement requirement} = \text{Total inches required};$$

4. Example.

Step 1: Removal of 12 10- in. special trees = Total of 120 in. DBH

Step 2: 120 in. DBH x 25% = 30 in. replacement requirement

Step 3: If replacing with special tree species:

$$30 \text{ in.} \div 1.5 = 20 \text{ in. total inches required to be planted};$$

5. Tree replacement plans.

Where this replacement requirement applies, the applicant shall submit a tree replacement plan prepared and certified by a certified forester, arborist or landscape architect. The tree replacement plan shall be part of and integrated with the landscaping plan for the site. No replacement shall occur until the city forester has approved the tree replacement plan, and all replacement shall be consistent with that approved plan. The plan shall meet all applicable requirements in the UDC application manual;

6. Calculation for developments exceeding five acres.

For development of forested acres over five acres, with the approval of the appropriate city staff, the total diameter of trees removed should be able to be estimated based on measuring the diameter of trees in representative sample plots. The plots should be scattered throughout the area to be cleared and should cover no less than ten percent of the entire area. All special tree species in the forest must be measured.

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50-26 Screening, walls and fences.

50-26.1 Screening of mechanical equipment.

A. Applicability.

The standards of this Section shall apply to all of the following exterior mechanical features where they occur on buildings containing multi-family dwellings, commercial, institutional, industrial or mixed uses, except those located in the I-G and I-W districts:

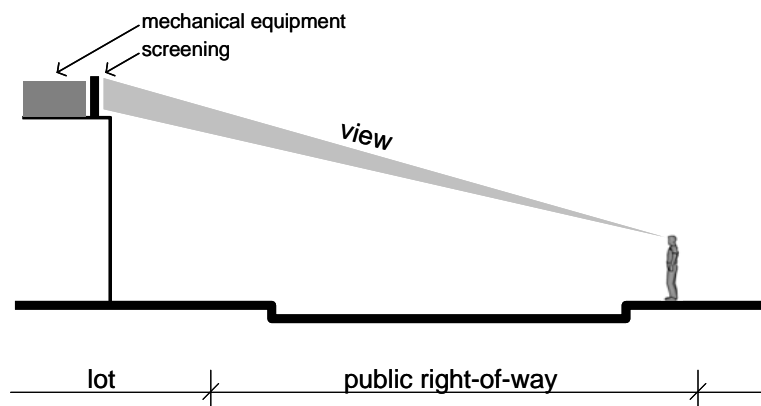
1. Electrical and gas-powered mechanical equipment and power systems equipment;
2. Heating, ventilating and air conditioning equipment ductwork, and lines;
3. Power systems equipment.

Roof or wall-mounted antennas and vent openings shall not be considered mechanical equipment for purposes of these screening standards. The standards of this Section shall not apply if the only feasible location for mechanical screening would impede the functioning of solar, wind or geothermal energy equipment or systems if such systems are otherwise in compliance with applicable building codes and zoning requirements;

B. Screening standards.

1. Roof-mounted mechanical equipment.

Roof-mounted mechanical equipment shall be screened by a parapet wall or similar feature that is an integral part of the building's architectural design. The parapet wall or similar feature shall be of a height equal to or greater than the height of the mechanical equipment being screened;



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Figure 50-26.1-A: Screening for roof-mounted mechanical equipment

2. Ground-mounted **mechanical** equipment.

Ground-mounted mechanical equipment shall be screened from view by landscaping or by a decorative wall that incorporates at least one of the primary materials and colors of the nearest wall of the primary structure. The wall shall be of a height equal to or greater than the height of the mechanical equipment being screened.

50-26.2 Screening of service and off-street loading areas.

A. Applicability.

These standards shall apply to all service areas and off-street loading areas on all properties containing multi-family dwellings, commercial, institutional, industrial or mixed uses, except those located in the I-G and I-W districts.

B. Screening.

Service and off-street loading areas shall be designed and located to reduce the visual and acoustic impacts of these functions on adjacent properties and public streets. Non-enclosed service and off-street loading areas shall be screened with durable, sight-obscuring walls, fences, and/or dense indigenous evergreen planting of between six and eight feet in height. Screening materials shall be the same as, or of equal quality to, the materials used for the primary building and landscaping.

50-26.3 Screening and location of commercial containers.

A. Applicability and exemptions.

1. Except as noted in subsection 2 below, these standards shall apply to all exterior commercial containers, including without limitation garbage dumpsters, grease/oil tanks and cardboard compactors, on all properties containing multi-family dwelling, commercial, institutional, industrial or mixed uses;
2. These standards shall not apply to the following:



Figure 50-26.2-A: Loading area screening

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- (a) Commercial containers located in the I-G and I-W districts;
- (b) Commercial containers located behind a building and not visible from a public street or adjoining single-family, multi-family, mixed use or public property;
- (c) The temporary purpose of disposing of waste generated during the time of an active building permit, or 180 days, whichever is shorter, for the demolition or construction of improvements on the property upon which the commercial container is located;
- (d) A commercial container placed by or upon written authority of the city on a temporary basis;

B. Location.

Commercial containers shall not be placed in any of the following:

- 1. Any required front yard area or any side yard area adjacent to a public street right-of-way;
- 2. Any fire lane;
- 3. Any required off-street parking space;
- 4. Any location that blocks vehicular or pedestrian traffic;
- 5. Any location that obstructs drivers' sight lines at intersection of streets and driveways;
- 6. Any location that may interfere with utilities;

C. Screening of commercial containers.

- 1. Not adjacent to structure wall.

Commercial containers that are not located adjacent to a wall of an existing principal or accessory structure shall be screened from view as follows:

- (a) On three sides with a wall constructed of masonry, brick, wood, stone, or similar material and at least as tall as the container being screened;



Figure 50-26.3-A: Dumpster screening

- (b) On the fourth side a gate constructed of wood or metal and at least as tall as the container being screened;

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2. Adjacent to structure wall.

Commercial containers that are located adjacent to a wall of an existing principal or accessory structure shall be screened from view as follows:

- (a) On two sides with a wall that is (1) constructed of the same principal materials and colors used on the wall of the principal or accessory building that forms the third wall of the enclosure, and (2) at least as tall as the container being screened; and (3) in compliance with applicable fire and building codes;
- (b) On the fourth side a gate constructed of wood or metal and at least as tall as the container being screened.

50-26.4 Fences and walls.

Unless otherwise expressly provided for in this Chapter, or unless expressly provided for in conjunction with the approval of a special use permit, fences and walls shall comply with the following general standards:

A. Fence/wall height.

1. General front yard standards.

- (a) No fence or wall located between the principal structure on a lot and the front property line shall exceed four feet in height;
- (b) Chain link fences, fences that are electrically charged, fences constructed of barbed or razor wire and fences constructed of temporary plastic fencing (snow fences) are prohibited. Prohibitions on electrically charged fences and fences constructed of barbed or razor wire shall not apply to fences used to enclose livestock on bona fide farms and those serving a public or quasi-public institution for public safety or security purposes;

2. General side and rear yard standards.

Fences that are electrically charged, and those constructed of barbed or razor wire shall be prohibited. This prohibition shall not apply to fences used to enclose livestock on bona fide farms and those serving a public or quasi-public institution for public safety or security purposes;

3. Residential zone districts.

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The maximum height of a fence or wall within required side and rear yard area is eight feet. The maximum height for fences and walls for entry gates at the residential subdivision entrance shall be eight feet;

4. Mixed use and special purpose zone districts.

The maximum height of a fence or wall within required side and rear yard area is eight feet, but the land use supervisor may approve a fence or wall up to 12 feet in height where additional height is needed to provide adequate security because of topography or the nature of the material or equipment stored in the area;

5. Form districts.

The maximum height of a fence or wall within required side and rear yard area is eight feet, but the land use supervisor may approve a fence or wall up to 12 feet in height where additional height is to provide adequate security because of topography or the nature of the material or equipment stored in the area. Fences and walls are not permitted in required front yard areas, except for wrought iron fences used to enclose outdoor patio or dining areas, in which case the maximum height of the fence shall be three feet;



Figure 50-26.4-A: Form District front setback wall height

6. Vacant property.

As an exception to other fence height limits, vacant property may be fenced with chain-link fencing not to exceed six feet in height when the purpose of such fencing is to prevent unauthorized dumping or soil disturbance that results in fugitive dust or nuisance conditions. Such fencing of vacant property shall not be construed to allow use of the property for outdoor storage;

B. Retaining walls.

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1. Applicability.

The requirements of this Section apply to construction of new retaining walls in all districts, except for (a) retaining walls on properties containing only one-family and two-family dwellings, and (b) retaining walls that will not be visible from neighboring sites or from a public street frontage;

2. Design standards.

All retaining walls shall comply with the following standards:

(a) Retaining walls more than six feet tall shall be terraced to minimize visual impacts on residents, neighboring properties and the public realm;

(b) Terracing shall be limited to three tiers;

(c) A terrace at least four feet wide, with a maximum slope of 3:1, shall be



Figure 50-26.4-B: Retaining wall terracing and articulation

provided between each tier to create pockets for landscaping. Reduced terrace depths may be administratively approved by the building official where site constraints limit the amount of space available to accommodate the minimum required width;

(d) Terraces between retaining wall tiers shall be vegetated with permanent landscaping to screen retaining walls and provide visual interest unless soil conditions are determined by a licensed engineer to be unsuitable due to geologic hazards;

(e) Retaining walls shall be stacked natural stone or faced with stone or earth-colored materials, textured and colored Mechanically Stabilized Earth (MSE) blocks or other material compatible with the primary building materials;

(f) Retaining walls constructed of railroad ties, timber and gabion-type materials are not allowed;

C. Materials and signs.

No fence, wall or retaining wall shall be constructed of scrap or waste materials unless those materials have been recycled or reprocessed into building materials for sale to the public. No sign may be posted on any fence, wall or retaining wall except for a property identification/management sign not exceeding one square foot in size;

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D. Alternate screening.

In lieu of compliance with the specific requirements of this Section an owner may propose to the building official an alternative approach consistent with the intent of this Section. An alternative compliance approach is designed to provide flexibility in order to respond to unique site conditions or abutting or surrounding uses, and must not result in reductions in the amount or quality of required screening. The building official may approve a proposal under this Section only if it is determined that the proposed alternative compliance achieves required screening to the same degree or better than the provisions of this Section.

50-27 Signs.

50-27.1 General.

- A. Intent. It is not the intention of this Section 50-27 to engage in any form of content-based regulation of sign content prohibited by the federal or state constitution, statutes, or court decisions. A non-commercial message may be substituted for a commercial message on any sign permitted by this Section 50-27. If any portion of this Section is determined to include any form of impermissible content-based regulation of sign content, that provision shall be severed from the remainder of this Section, and the remainder of this Section 50-27 shall remain in effect. It is the specific intent of the city that any unintentional impermissible content-based regulation of sign content not result in the invalidation of this Section 50-27;
- B. Compliance required. All signs erected or maintained in the city – whether accessory to a primary use of property or themselves a primary use of property – shall comply with the provisions of this Section 50-27;
- C. Permits and exceptions. Unless an exception is listed in this Section 50-27, no person, firm or corporation shall erect any sign, or cause or allow a sign to be erected unless a sign permit for that sign has been issued pursuant to Article 5;
- D. Limits apply per property. Whenever the number of signs permitted is limited by this Section 50-27, the limitation shall refer to each piece of property held under separate ownership;
- E. Signs for nonconforming uses. If the use of a property constitutes a legal nonconforming use, all signs erected on the property shall be erected and maintained in conformance with the provisions of this Section 50-27 applying to the most restrictive district in which that use is a permitted use of the property;

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- F. No signs on streets, trees or fences. Except for A-frame signs allowed pursuant to Section 50-27.4 and temporary signs approved pursuant to this Section 50-27, no sign shall be placed on any street, highway or pedestrian easement or be attached to or painted on a tree, fence or accessory building. This provision shall not be deemed to prohibit holiday season decorations or those items regulated by Article III of Chapter 45;
- G. Name of installer on sign. All signs for which a permit is required shall contain, on the face of the sign and in a legible manner, the permit number and installer's name. This provision shall not apply to awning signs;
- H. Setbacks apply. No sign shall be located within a required front, side or rear yard space, except for wall signs, projecting signs and pole signs;
- I. No safety obstructions. No sign shall obstruct access to fire escapes or windows, doors, exits or standpipes. No pole sign or ground sign shall be constructed in such a manner that it projects over any building;
- J. Illumination and glare. All sign illumination, whether direct or indirect, shall be so shaded or concealed that it does not create unreasonable and annoying illumination on residential structures constructed prior to the installation of such lighting apparatus. No sign illumination shall shine in any manner that interferes with the vision of motor vehicle operators;
- K. Signs in the public right-of-way. Where any sign is permitted on the public right-of-way (including but not limited to a portable A-frame sign on the sidewalk), no sign shall be placed in the public right-of-way unless a sign permit has been issued for that sign, and no sign shall be issued until the applicant has submitted evidence of a certificate of insurance approved as to form by the city evidencing that the applicant has in force insurance in the minimum amounts required by the city for bodily injuries or property damage in any one year protecting such person or organization and the city against liability for injuries or damages resulting from the placement of such objects or materials in the public right-of-way;
- L. Attachment to buildings. All signs attached to a building shall be thoroughly and rigidly secured and shall be repaired and maintained as necessary to keep them secure, safe and free from becoming a hazard;
- M. Wind pressure design. All permanent signs and supports shall be designed to withstand a wind pressure of not less than 30 pounds per square foot of area subject to such pressure, or to the value found in the current edition of the Uniform Building Code, whichever is greater;
- N. Electrical wiring. All electrical wiring of signs shall comply with the provisions of the National Electrical Code and any other applicable provision of the State Building Code;

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- O. Certification by structural engineer. The structural design of all supporting members of pole signs, ground signs and projecting signs that have an area of more than 80 square feet, shall be certified by a structural engineer registered in the state or an architect registered in the state. In lieu of the above, if a structural design book showing basic standard sign designs is filed with the city building official, and the designs therein are certified by a structural engineer licensed in the state, and the permit filed is for one of the signs shown in the standard design book, no individual certification shall be required. However, all signs with deviations from the standard designs shall be certified by a Minnesota registered structural engineer or architect.

50-27.2 Signs for which no permit is required.

No sign permit shall be required for the types of signs shown in Table 50-27-1, but each such sign shall be required to comply with the provisions of this Section 50-27.

Table 50-27-1: Signs Not Requiring a Permit	
Zone District	Type of Sign
All districts	Construction contractor sign Home occupation sign Nameplate Political sign Property identification/management sign Real estate sign Recreational field sign Temporary signs not exceeding 8 sq. ft. in size
RR-1 and RR-2 districts	Signs for permitted farm occupations or products

50-27.3 Prohibited signs.

The following types of signs are prohibited:

- A. Portable stand signs;
- B. Private signs that resemble public authority signs;
- C. Roof signs;
- D. Wind oscillating pennants and propellers for use on a permanent basis (use for carnivals, bazaars and similar events for up to ten days per calendar year are permitted);
- E. Signs with flashing, oscillating or revolving lights that could be confused with emergency or traffic lights;
- F. Signs that involve rapid rotation of all or part of the structure, except for changeable message signs and electronic signs that comply with Section 50-27.4.

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50-27.4 Regulations for specific sign types.

A. Awning sign.

1. The message of an awning sign shall consist of the letters and numbers not more than ten inches high and a logo not exceeding 18 inches square;
2. The message shall be fabricated into or printed on the awning cover;
3. The message shall convey only the name or address of the building or the name of the principal occupant or business;



Figure 50-27.4-A: Awning sign

B. Changeable message sign (CMS) and electronic sign (ES).

Changeable message signs and electronic signs shall conform to the following additional conditions in those zone districts where they are permitted:

1. Separation. The sign must be separated from other changeable message signs and electronic signs by at least 100 feet;
2. Orientation. In all districts, the sign must be oriented so that no portion of the sign face is visible from a park that is over one acre in area and contains improvements for recreational use, if the park is within 150 feet of the sign, and no portion of the sign face is visible from a school that is within 150 feet of the sign;
3. Brightness. The maximum brightness of a changeable message sign and electronic sign shall not exceed 5,000 nits (equivalent to 464 candelas per square foot) during daylight hours, or of 500 nits (equivalent to 46 candelas per square foot) between dusk to dawn. The sign must have an automatic dimmer control that produces a distinct illumination change from a higher allowed illumination level to a lower allowed level for the time period between one-half hour before sunset and one-half hour after sunrise;
4. Duration. Any image or message or part of a message displayed on the sign shall have a minimum duration of eight seconds and shall be static display. Transition time between images or messages or part of a message must be no longer than two seconds;
5. Default mechanism. CMS and ES shall contain a default design that will freeze the design in one position if a malfunction occurs;

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6. Audio or pyrotechnics. Audio speakers or any form of pyrotechnics are prohibited;

C. Marquee sign.

1. Structurally integrated. Must be structurally integrated into the fascia of a marquee, and may not project above or below such fascia;
2. Lettering. Marquee signs shall be constructed of individual numbers and letters not exceeding ten inches in height and may contain a logo 28 inches square or less, all of which are individually attached to the fascia and do not project outward more than three inches from such fascia;
3. Placement. The message may be placed on up to three sides of the marquee;
4. Illuminated. Letters, numbers and logos may be individually illuminated only, and shall not flash or convey an animated message;
5. Size. Marquee signs shall cover no more than one square feet of sign area for each linear feet of building frontage;

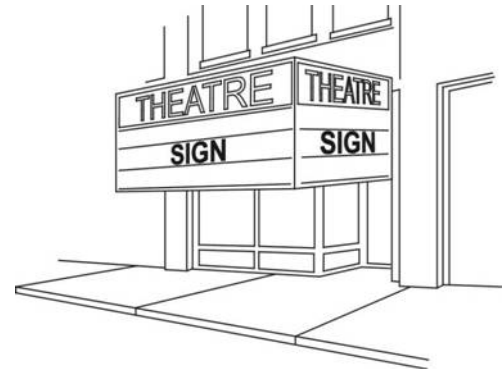


Figure 50-27.4-B: Marquee sign

D. Portable A-frame sign.

1. Size restriction. Between 36 and 40 inches tall and between 24 and 30 inches wide;
2. Location. Shall extend no more than three feet into the public right-of-way and must provide an unobstructed sidewalk width of at least five feet for pedestrian passage;
3. Time. Shall be displayed only during the hours in which the business is open;
4. Snow removal. Shall be removed during city snow removal operations and the city is not liable for any damage to signs caused by snow removal operations;
5. Insurance. Applicant must provide and maintain in force a certificate of insurance, approved as to form by the city, evidencing that such person or organization has in force insurance in the minimum amounts required by the city for bodily injuries or property damage in any one year protecting



Figure 50-27.4-C: Portable A-frame sign

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such person or organization and the city against liability for injuries or damages resulting from the placement of such objects or materials on public sidewalks or boulevard areas;

E. Projecting sign.

1. Projection distance. May not project more than four feet from the building;
2. Projection height. May not project higher than three feet above an exterior wall of the building;

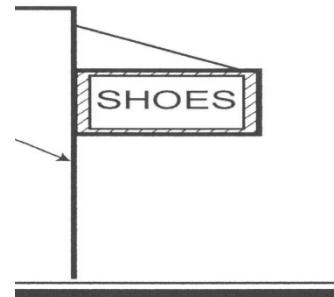


Figure 50-27.4-D: Projecting sign

F. Window sign.

1. In districts other than form districts, window signs shall cover no more than 15% of the window area visible from any public street;
2. In form districts, window signs shall comply with those standards in Section 50-22.

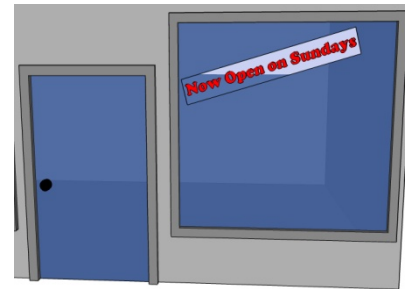


Figure 50-27.4-E: Window sign

50-27.5 Sign schedule for specific zone districts.

Specific types of signs permitted in each zone district, and the conditions that apply to that type of sign, are shown in Table 50-27-2 below.

Table 50-27-2: Sign Regulations for Specific Zone Districts		
Zone District	Type of Sign	Conditions on Sign
Residential Districts		
All residential districts	Construction contractor sign	Residential: 1 sign with maximum size 20 sq. ft. Non-residential: 1 sign with maximum size of 32 sq. ft. plus 16 sq. ft. to identify architects, engineers, or subcontractors. Not permitted in required front, side, or rear yard areas. Indirect illumination only. Must be removed 7 days after construction is complete.
	Home	Maximum size: 20 sq. ft. in RC, RR-1 and RR-2.

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Table 50-27-2: Sign Regulations for Specific Zone Districts		
Zone District	Type of Sign	Conditions on Sign
	occupation sign	1 sq. ft. in R-1 and R-2. Must be set back 20 ft. from front property line in RC, RR-1 and RR-2. Must be attached to building in R-1 and R-2. May not be illuminated.
	Nameplate	1 per dwelling. Maximum size: 2 sq. ft. in RC, RR-1, RR-2 and R-1. Indirect illumination only.
	Political sign or property owner opinion sign	Minimum setback from property lines and street or sidewalk improvements: 3 ft. If illuminated must comply with Section 50-31. Building permit required if more than 6 ft. tall.
	Property identification/management sign	Maximum size: 3 sq. ft. in RC, RR-1, RR-2 and R-1. 6 sq. ft. in R-2. No illumination or animation.
	Public assembly bulletin board	Maximum size: 25 sq. ft. Minimum setback from property lines: 10 ft. Indirect illumination.
	Real estate sign	Maximum size: 32 sq. ft. in RC, RR-1, and RR-2. 6 sq. ft. in R-1. In R-2, may contain name of building and/or management firm. Minimum setback from property lines; 10 ft, unless attached to a building. Must be removed within 7 days after sale, lease, or rental. No illumination.
	Recreational field sign	Directional sign: Maximum size: 20 ft. Maximum Height 10 ft. Building mounted sign: Maximum size 10 ft. Each scoreboard sign may contain up to 10 sq. ft. of advertising. Indirect illumination only.
	Residential complex sign	In R-2 district only. 1 ground mounted sign constructed of individual letters and numbers attached to a structure that is similar in color, texture and material to the primary exterior of the complex buildings. Maximum height of 4 ft., maximum width of 8 ft., maximum depth of 1 ft. Minimum setback from property lines: 10 ft. Indirect illumination only.
	School (grades K-12) sign	1 wall identification sign not exceeding 32 sq. ft. Maximum height of wall identification sign shall be 16 ft. or top of wall, whichever is less. Corner lots limited to 2 wall identification signs per building. 1 freestanding ground sign not exceeding 32 sq. ft. in area and 8 ft. in height also allowed. Either the wall sign or the ground sign, but not both, may be illuminated. Flashing, animated and revolving signs are not permitted.
	Temporary sign	May not advertise on-going business activity. Maximum size: 6 sq. ft. Minimum setback from property lines and street and sidewalk improvements: 3 ft. Maximum length of use: 2 days. No illumination.
	Off-premises	Not permitted.

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Table 50-27-2: Sign Regulations for Specific Zone Districts		
Zone District	Type of Sign	Conditions on Sign
	sign	
Mixed Use and Form Districts		
All residential uses	All signs permitted for residential uses in the R-2 district	
MU-N (formerly R-4 and C-1), MU-W, F-1, F-2, F-3, F-4, F-5, F-6 and F-9 Zones		
Non-residential uses	Awning sign	Permitted on first floor awnings only. Indirect illumination only, but no lighting apparatus shall be attached to the awning itself.
	Marquee signs	Maximum number: 1 for first street frontage plus 1 for any additional street frontage longer than 100 ft. Permanent signage shall be included. Changeable copy shall be limited to no more than 2/3 of the sign face.
	Pole sign	Maximum number: 1 for first street frontage plus 1 for any additional street frontage longer than 100 ft. Maximum height: 15 ft. Minimum height of sign face base above ground: 8 ft. (decorative planters without advertising and not more than 3 ft. above ground are permitted) for signs 8 ft. total in height and no more than 8 sq. ft. per sign face, no minimum clearance required. Maximum thickness: 30 in. (except spherical signs). Maximum sign area: 1 sign per pole, maximum 40 sq. ft. per sign face. The area of a double or triple faced pole sign shall be the area of the largest face. Location: If pole signs are located in the required front, side, or rear yards they shall not be closer than 100 ft. from any residential structure located in a residential zone. Not permitted on or projecting into or over any public street or utility easement. In the Form Districts, this type is limited for use with the Corridor, Cottage Commercial, and Iconic building types. Materials: Solid or composite finished wood, metal, masonry, neon, glass. Internally lit plastic box signs are not permitted. Plastic and synthetics permitted only as separate alphanumeric characters or logos. Direct and indirect illumination permitted.
	Wall sign	Maximum aggregate sign size: 40 sq. ft. or 2 times the number of lineal ft. of the length the building wall where it is mounted, whichever is greater. Materials: Solid or composite finished wood, metal, masonry, neon, glass. Internally lit plastic box signs are not permitted. Plastic and synthetics permitted only as separate alphanumeric characters or logos. Direct and indirect illumination permitted.
	Portable A-frame sign	1 per street frontage.

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Table 50-27-2: Sign Regulations for Specific Zone Districts		
Zone District	Type of Sign	Conditions on Sign
	Monument	<p>Maximum number: 1 for first street frontage plus 1 for any additional street frontage longer than 100 ft.</p> <p>Limited for use with the Corridor, Cottage Commercial, and Iconic building types.</p> <p>Maximum height of 6 ft., maximum area 48 sq. ft. per sign face.</p> <p>Setback from corners and driveways for vehicular site triangles.</p> <p>Materials: Solid or composite finished wood, metal, masonry, neon, glass. Internally lit plastic box signs are not permitted. Plastic and synthetics permitted only as separate alphanumeric characters or logos.</p> <p>Direct and indirect illumination permitted.</p> <p>Landscape at base of sign shall not be taller than 18 in. at mature height.</p>
	Projecting sign	<p>1 per each building façade facing a street, alley, or sidewalk.</p> <p>Maximum sign area: 150 sq. ft. or 1.5 times the number of lineal ft. of the wall where the sign is located, whichever is less. The area of a double faced projecting sign shall be the area of the largest face.</p> <p>Minimum height above sidewalk: 10 ft.; for signs projecting 2 ft. or less, 7 ft.</p> <p>Minimum height above street or alley: 16 ft. Shall not extend closer than 1 ft. to back of any curb or over any alley.</p> <p>Materials: Solid or composite finished wood, metal, masonry, neon, glass. Internally lit plastic box signs are not permitted. Plastic and synthetics permitted only as separate alphanumeric characters or logos.</p> <p>Direct and indirect illumination permitted.</p>
	Window sign	<p>Shall not block more than 30% of any window panel as measured by drawing a box around the outer edges of any typeface or image.</p> <p>Materials: Painted directly on the window, mounted neon on inside of window, or mounted sign on a wall inside the window area.</p>
	Off-premises sign	Not permitted
MU-C (formerly C-5), F-7 and F-8 Zones		
	Awning sign Marquee sign Wall sign Portable A-frame sign	Same as for MU-N, MU-W, F-1, F-2, F-3, F-4, F-5, F-6 and F-9 zones.
	Projecting sign	<p>1 per each building façade facing a street, alley, or sidewalk.</p> <p>Maximum sign area: 150 sq. ft. or 1.5 times the number of lineal ft. of the wall where the sign is located, whichever is less. The area of a double faced projecting sign shall be the area of the largest face.</p> <p>Minimum height above sidewalk: 10 ft.; for signs projecting less than 2 ft., 7 ft.</p> <p>Shall not extend closer than 1 ft. to back of any curb or over any alley.</p> <p>Materials: Solid or composite finished wood, metal, masonry, neon, glass. Internally lit plastic box signs are not permitted. Plastic and synthetics permitted only as separate alphanumeric characters or logos.</p> <p>Direct and indirect illumination permitted.</p>
	Window sign	<p>Shall not block more than 30% of any window panel as measured by drawing a box around the outer edges of any typeface or image.</p> <p>Materials: Painted directly on the window, mounted neon on inside of window, or mounted on a wall inside the window area.</p>

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Table 50-27-2: Sign Regulations for Specific Zone Districts		
Zone District	Type of Sign	Conditions on Sign
	Window sign	Shall not block more than 30% of any window panel as measured by drawing a box around the outer edges of any typeface or image. Materials: Painted directly on the window, mounted neon on inside of window, or mounted sign on a wall inside the window area.
	Off-premises sign	Off-premises wall signs prohibited. All other off-premises signs subject to approval under Section 50-15.3.D
MU-I District		
	All signs permitted in the MU-N district	Maximum sign area on any wall: Number of sq. ft. equal to the number of lineal ft. of the wall. All signs, including public signs, shall be approved by staff based on the consistency of the size, texture, and scale of signs with the character and scale of signs and development in the surrounding area. However, review and permits shall not be required for (a) property information/management signs less than 4 sq. ft., (b) political signs, and (c) property owner opinion signs.
MU-B District		
	Wall signs, projecting signs, and monument signs	Maximum sign size of wall and projecting signs: 5% of the total sq. ft. area of building façade on which they are placed. All wall signs attached to the building shall be flush mounted and shall not extend above the roof line. All monument signs must be architecturally designed and located directly at grade, shall be limited to 1 sign on each street frontage, shall be limited to 60 sq. ft. in area and eight ft. in height and shall be located no closer than 15 ft. from the property lines. Neon signs are not permitted. Direct and indirect illumination is permitted. Spotlighting of signs is permissible if the lighting is shielded so as to direct light to the sign only and the light source is not visible from the property lines. Flashing and animated signs are not permitted.
	Property identification/management sign	Maximum size: 4 sq. ft. Maximum height: 5 ft. No illumination, animation, or flashing.
	Off-premises signs	Not permitted.
Special Purpose Districts		
I-G and I-W Districts	All signs permitted in the MU-C district	On-premises signs only.
P-1 District	Construction contractor sign	Non-residential: 1 sign with maximum size of 32 sq. ft. plus 16 sq. ft. to identify architects, engineers, or subcontractors. No illumination or animation Must be removed 7 days after construction is complete
	Property identification/management sign	Maximum size: 6 sq. ft. in R-2 No illumination or animation
	Public assembly bulletin board	Maximum size: 25 sq. ft. Minimum setback from property lines: 10 ft Indirect illumination

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Table 50-27-2: Sign Regulations for Specific Zone Districts		
Zone District	Type of Sign	Conditions on Sign
	Recreational field sign	Directional sign: Maximum size: 20 ft. Maximum Height 10 ft. Building mounted sign: Maximum size 10 ft. Each scoreboard sign may contain up to 10 sq. ft. of advertising. Indirect illumination only
	Temporary sign	May not advertise on-going business activity. Maximum size: 6 sq. ft. Minimum setback from property lines and street and sidewalk improvements: 3 ft. Maximum length of use: 30 days. No illumination or animation.
	Off-premises sign	Not permitted

50.27.6. Certificate of sign appropriateness in Canal Park.

The following provisions apply to Canal Park, as shown in Exhibit 50-27.6-1;

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Exhibit 50-27.6-1: Canal Park Sign Area

A. Permit required.

No sign, other than a temporary sign, shall be erected, rebuilt or otherwise changed without a certificate of appropriateness issued by the land use supervisor;

B. Materials.

All signs other than temporary signs must be constructed of wood, brick or metal and appropriately treated to maintain an acceptable professionally finished appearance. Individually mounted letters of plastic may be used if wholly covered with opaque paint. Banners and flags shall be fabricated from durable canvas, sailcloth or other non-rip, non-fading type materials and shall be promptly repaired or replaced when they become ragged or otherwise unsightly;

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C. Colors.

Colors shall be chosen from historic paint palettes by any major brand, also on file at City Hall.

50-27.7 Controlled highway sign restrictions.

A. Controlled highway sign district.

The controlled highway sign district includes all land lying within 500 feet of the outside edges of the roadway pavement of the following described highways. The general location of these areas is shown in Exhibit 50-27.7-1:

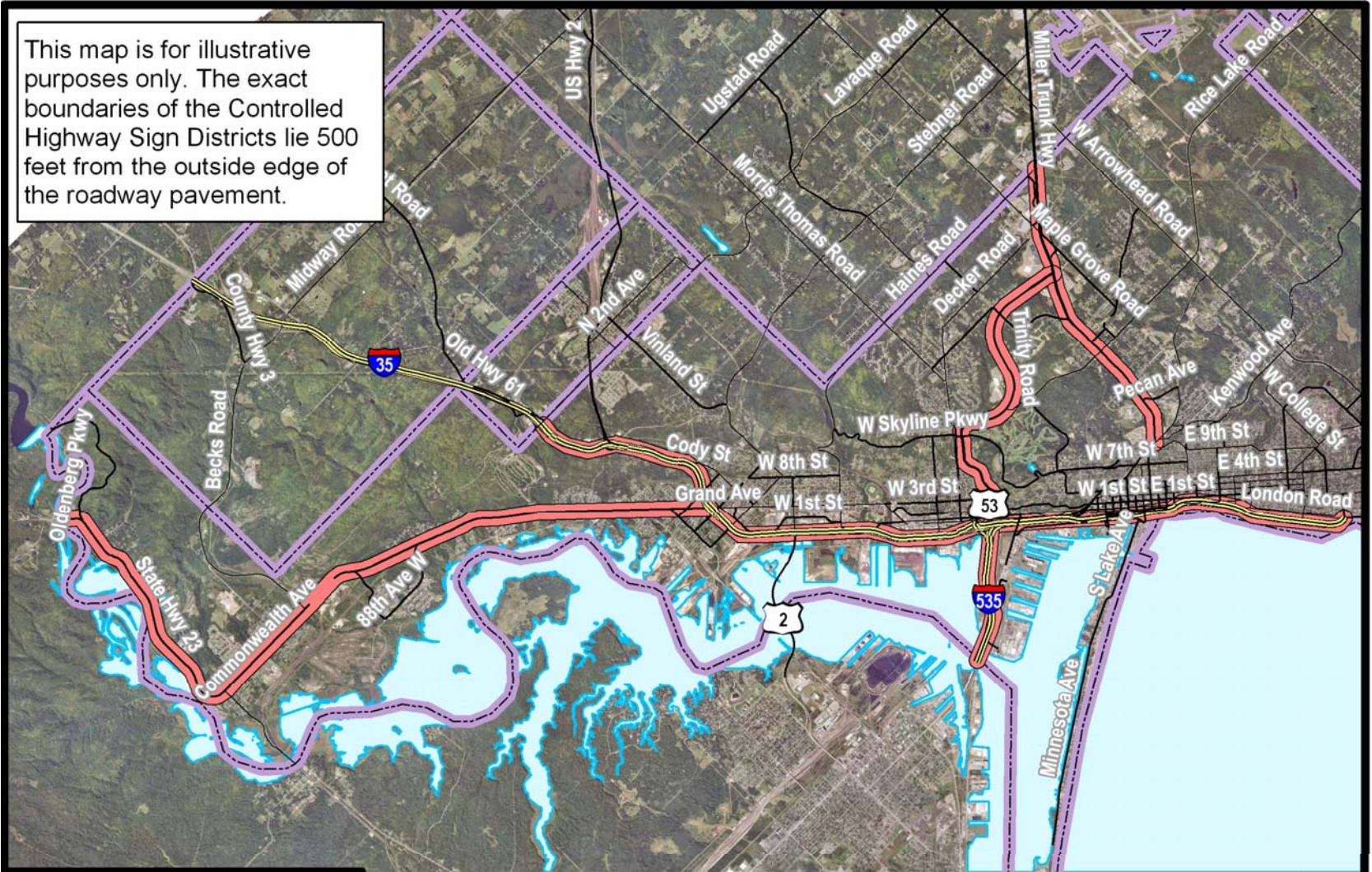
1. Interstate Highway No. 35;
2. Interstate Highway No. 535;
3. Minnesota Highway No. 194 between the Duluth city limits and 11th Street;
4. Minnesota Highway No. 23;
5. U.S. Highway No. 53 between Central Entrance Road and West First Street;

B. Restriction.

1. No off-premises sign shall be erected or maintained in a controlled highway sign district unless such sign complies with the spacing regulations itemized in this Section, and unless such sign is located so that it does not interfere with the effectiveness of traffic signs or signals or interfere with a driver's view of approaching, merging or intersecting traffic;
2. In the Interstate Highway 35 and 535 districts, no off-premises sign may be erected or maintained within 800 feet of any other off-premises sign that is located within the same controlled highway sign district;
3. In the Minnesota Highway No. 194 and U.S. Highway No. 53 districts, no off-premises signs may be erected or maintained within 500 feet of any other off-premises sign located within the same controlled highway sign district unless the signs are on opposite sides of the highway involved;
4. Double faced signs and signs that are closer than two feet from one another shall be considered one sign for purposes of these spacing requirements.

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This map is for illustrative purposes only. The exact boundaries of the Controlled Highway Sign Districts lie 500 feet from the outside edge of the roadway pavement.



Legend

Controlled Highway Sign District

Exhibit 50-27.7-1
Controlled Highway Sign Districts



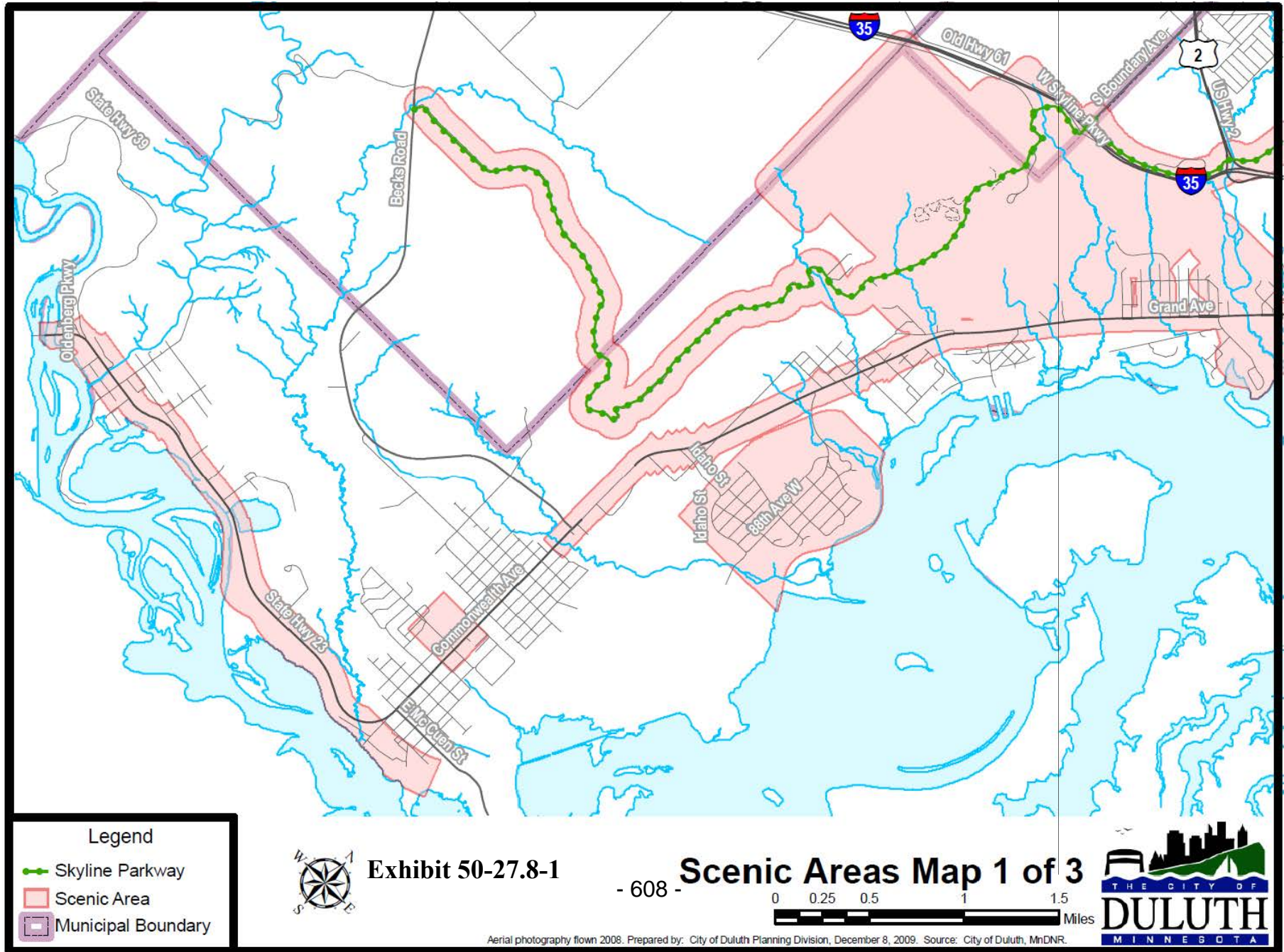
Aerial photography from 2007. Prepared by: City of Duluth Planning Division, May 28, 2010. Source: City of Duluth, MnDNR, MnDOT.

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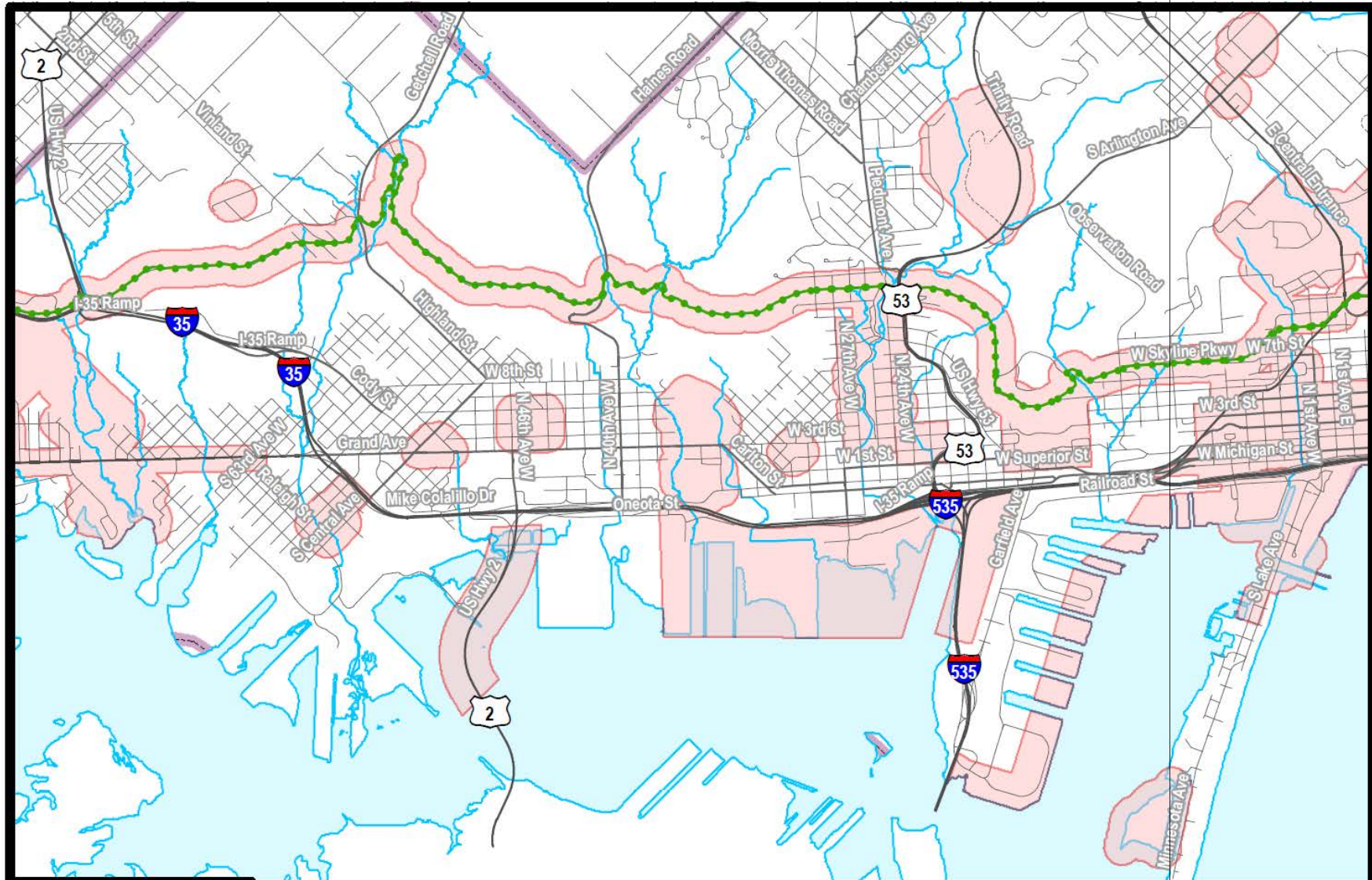
50-27.8 Scenic areas sign restrictions.

No off-premises sign in excess of 60 square feet shall be erected or maintained in any area shown on the maps in Exhibit 50-27.8-1:

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Legend

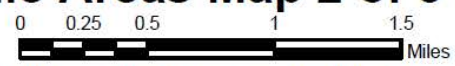
- Skyline Parkway
- Scenic Area
- Municipal Boundary



Exhibit 50-27.8-1

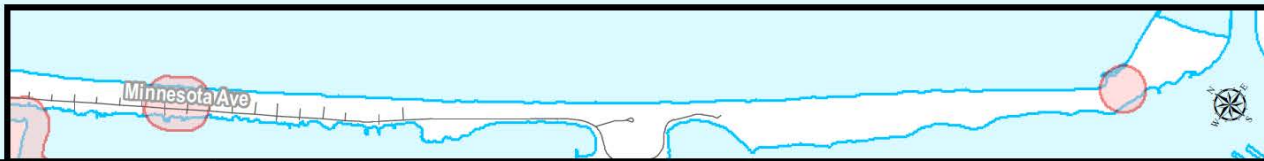
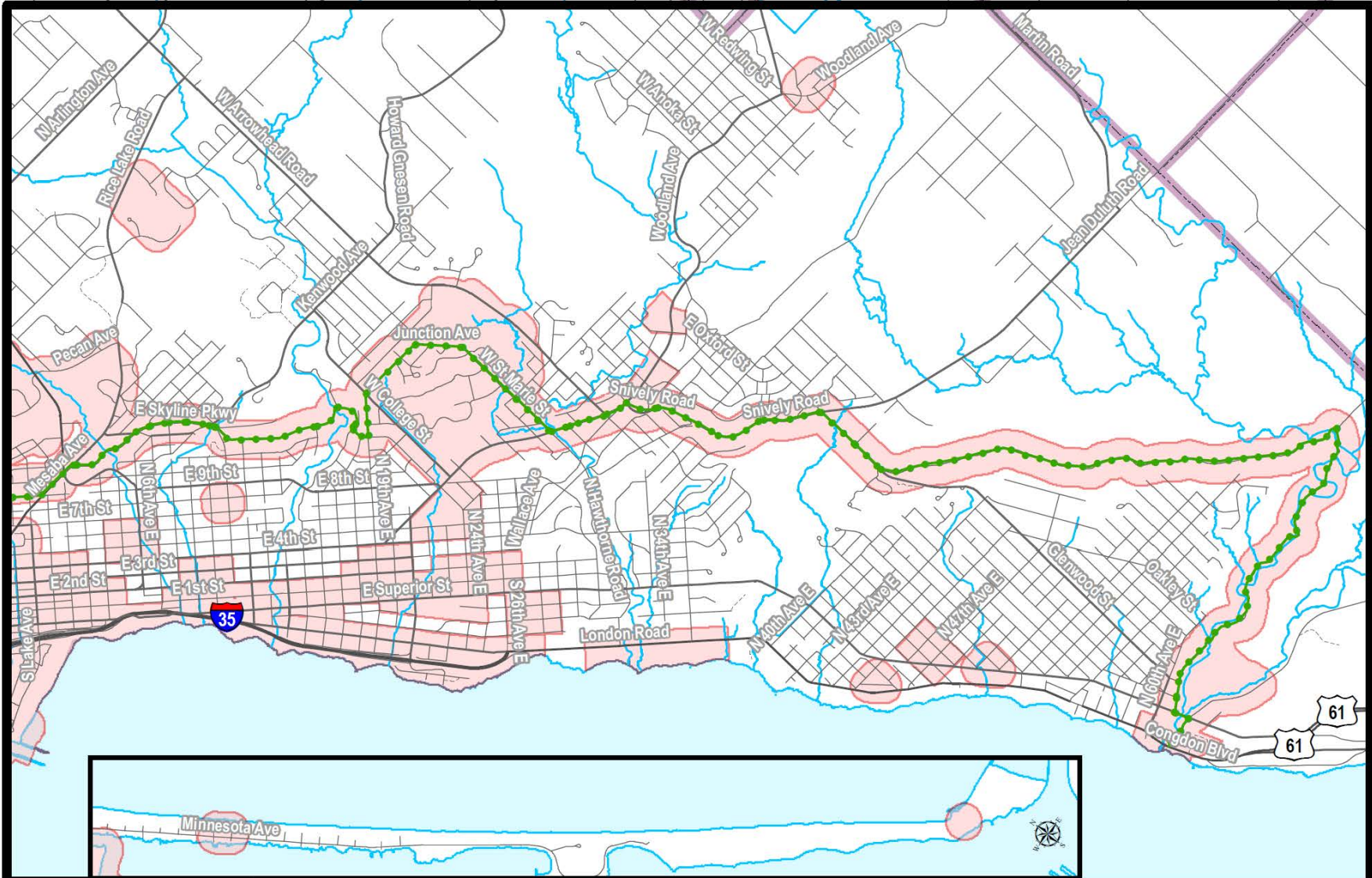
Scenic Areas Map 2 of 3

- 609 -



Aerial photography flown 2008. Prepared by: City of Duluth Planning Division, December 8, 2009. Source: City of Duluth, MnDNR.

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Legend

- - - Skyline Parkway
- Scenic Area
- Municipal Boundary



Exhibit 50-27.8-1

- 610 -

Scenic Areas Map 3 of 3



Aerial photography flown 2008. Prepared by: City of Duluth Planning Division, December 8, 2009. Source: City of Duluth, MnDNR.

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50-28 Storm water drainage and erosion control.

Storm water drainage and erosion control regulations and standards apply to all lands in the city, and are contained in Section 50-18.1.E.

50-29 Sustainability standards.

50-29.1 Applicability.

In order to promote sustainable development, all new residential development proposals containing three or more units, and all non-residential development with a gross floor area of 10,000 square feet or more, shall be required to comply with the provisions of this Section 50-29.

50-29.2 Points required.

Each new development shall be required to achieve at least a minimum number of points from the menu of options shown in Table 50-29-1:

A. Residential development minimum requirements.

1. Residential development with 3-29 units: 3 points.
2. Residential development with 30 or more units: 4 points;

B. Non-residential development minimum requirements.

1. Non-residential development with 10,000 to 25,000 square feet: 3 points.
2. Non-residential development with a total square footage of more than 25,000 square feet: 4 points;

Table 50-29-1: Sustainability Point System	
	Points Earned
LOCATION	
Development on previously used or developed land that is contaminated with waste or pollution (brownfield site)	1.50
Development on previously used or developed land that is not contaminated (site re-use)	0.75
Development on a previously undeveloped site that is located immediately adjacent to existing city roadway and utility infrastructure	0.25
ENERGY EFFICIENCY	
Meet ASHRAE standard 189.1 (Section 7.4.2) for building envelope design ^[1]	1.50
Meet ASHRAE standard 189.1 (Section 7.4.6) for lighting ^[1]	0.75
Meet ASHRAE standard 189.1 (Section 7.4.3) for HVAC equipment ^[1]	0.75
Meet Energy Star standards for low rise residential or exceed ASHRAE 90.1-2004 energy efficiency	1.00

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Table 50-29-1: Sustainability Point System	
	Points Earned
standards by 15%. ^[2]	
ALTERNATIVE ENERGY	
Generate or acquire a minimum of 15% of the electricity needed by the development from alternative energy sources (solar, wind, etc)	1.00
Install solar panels on a minimum of 15% of homes dwelling units contained in one-family, two-family, or townhouse dwellings	0.75
Pre-wire a minimum of 10% of residential dwelling units for solar panels	0.25
Install solar panels on primary structure, or at least 50% of buildings in a multi-building complex	0.75
PASSIVE SOLAR	
A minimum of 20% of residential dwelling units or lots are oriented within 20% of east-west for maximum passive solar exposure	1.00
At least 20% of non-residential buildings have one longer axis oriented east-west for maximum solar exposure	1.00
WATER	
Install a "cool roof" or green vegetated roof on the primary structure, or at least 50% of primary buildings in a multi-building complex. Cool roofs shall have a Solar Reflectance Index of 78 for flat roofs or 29 for roofs with a slope greater than 2:12. Green or vegetated roofs shall include vegetation on at least 50% of the roof area (25% for renovated buildings) and shall use only plant materials permitted by the landscaping standards in Section 50-25	2.00
Meet ASHRAE standard 189.1 (Section 6.3.1) for site water use reduction ^[1]	0.75
Meet ASHRAE standard 189.1 (Section 6.3.2) for building water use reduction ^[1]	0.50
VEGETATION	
Retain at least 20% of existing pre-development natural vegetation	0.75
Turf grass is limited to 40% of the landscaped area.	0.25
URBAN AGRICULTURE	
A fenced, centrally located community garden space is provided for residents and for urban gardening purposes at a ratio of 50 sq. ft. per dwelling unit as part of the overall landscape plan	1.00
A minimum of one on-site composting station is provided for every 25 units	0.25
TRANSPORTATION	
Source a minimum of 20% by cost of construction materials from recycled products or products manufactured, extracted, harvested, or recovered with 250 miles of the site	1.50
A minimum of 1% of required automobile parking spaces are signed and reserved for hybrid/electric/low energy vehicles in preferred locations near the primary building entrance	0.25
<p>[1] <i>Standard for the Design of High-Performance Green Buildings</i>, American Society of Heating, Refrigerating, and Air-Condition Engineers, 2009.</p> <p>[2] <i>Energy Standard for Buildings Except Low-Rise Residential</i>, American Society of Heating, Refrigerating, and Air-Condition Engineers, 2004.</p>	

C. LEED-certified building alternative.

Buildings that have achieved LEED requirements necessary to receive certification from the U.S. green building council at the silver level or above shall not be required

to meet the above requirements;

D. Documentation required.

Applicants shall provide documentation of techniques that will be used to satisfy the above requirement, as necessary, at the time of application submittal. Documentation for items that may not be visually verified as part of an inspection may be provided in the form of invoices, receipts, or delivery confirmation for the items in question.

50-30 Design standards.

The design standards of this Section 50-30 apply to all new construction and to all redevelopment or renovation of existing structures where the redevelopment or renovation expands the building gross square footage by more than 50%.

50-30.1 Multi-family residential design standards.

Each principal building or development in which a majority of the gross floor area is occupied by multi-family dwellings must comply with the standards set out in this Section, unless the provisions of Section 50-30.3, Mixed Use Development, apply:

A. Accessibility.

Multi-family dwelling developments containing more than one principal building on a single lot or parcel must include an unobstructed walkway or pathway providing access between the principal buildings for persons with disabilities. The walkway or pathway must be at least five feet wide, and, if curb ramps are necessary to provide such access, the curb ramps must comply with the slope and design requirements of the city;

B. Façade length and articulation.

Total length of any multi-family structure façade shall not exceed 200 feet and no façade wall shall extend more than 80 horizontal feet without projections or recesses. Each facade greater than 100 horizontal feet in length shall incorporate wall plane projections or recesses having a depth of at least three percent of the length of the facade and extending at least 20% of the length of the façade;

C. Roof design.

Rooflines longer than 100 horizontal feet shall include at least one vertical elevation change of at least two feet. All sloped roofs shall have overhanging eaves of at least one foot, and roofs with a pitch of less than 2:12 shall be screened by a parapet wall;

D. Four-sided design.

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All sides of a building open to view by the public, whether viewed from public or private property, shall display a similar level of quality and architectural interest;

E. Parking garages and carports.

To the maximum extent feasible, parking garages and carports shall not be located between the front or primary façade of a multi-family building and the street frontage adjacent to the front lot line, but shall instead be internalized within building groups so as not to be directly visible from the street frontage;

F. Design features.

At least three of the following design features should be provided for visual relief along all facades of each primary multi-family building:

1. Roof dormers;
2. Gables;
3. Recessed entries;
4. Covered porches;
5. Cupolas;
6. Pillars, pilasters or posts;
7. Bay windows;
8. Eaves of at least 12 inches beyond the building wall or a parapet wall with an articulated design (decorative cornice, etc.);
9. Multiple windows with minimum four inches trim;
10. Recesses/shadow lines;
11. Building foundation areas that face streets or public areas shall be landscaped to a minimum width of five feet with a minimum of three shrubs per 20 lineal feet of foundation;

G. Visibility of common areas.

To promote public safety, primary multi-family dwelling buildings and landscaping must be located and designed so that clear sight lines are provided to and between common open spaces, circulation paths and access points into the development, where applicable.

50-30.2 Commercial design standards.

A. Applicability.

1. The standards of this Section 50-30.2 shall apply to each principal building or development in which a majority of the gross floor area is occupied by

uses categorized in Table 50-19.8 as commercial uses, except for:

- (a) Any building or development located in one of the form districts;
 - (b) Any building or development located on a lot smaller than 10,000 square feet;
 - (c) Any building or development containing less than 10,000 square feet of gross floor area;
2. If a building or development containing less than 10,000 square feet of gross floor area is later expanded so that it contains 10,000 square feet of gross floor area or more, it shall be subject to these requirements;

B. Facades and articulation.

Each commercial principal building, other than large commercial retail buildings addressed in Section 50-30.2.D below, shall meet the transparency requirement described in subsection 1 below, and shall also comply with two of the remaining options listed in subsections 2 through 5 below, with the choice of those standards to be at the option of the owner:

1. Transparency requirement.

A minimum of ten percent of each facade area that faces a street shall be composed of transparent materials. At least 1/2 of this amount shall be provided so that the lowest edge of the transparent materials is no higher than four feet above the street level;

2. Wall plane articulation option.

Each facade greater than 100 feet in length abutting a street shall incorporate architectural features such as wall plane projections, recesses, or other building material treatments and textures that visually interrupt the wall plane. No uninterrupted length of any facade shall exceed 100 horizontal feet;

3. Vertical articulation option.

Each principal building taller than 30 feet in height must be designed so that the massing or facade articulation of the building presents a clear base, middle and top when viewed from the abutting street;

4. Roof articulation option.

Where sloping roofs are used, at least one projecting gable, hip feature, or other break in the horizontal line of the roof ridgeline shall be incorporated for each 60 lineal feet of roof. Where flat roofs are used, the design or height of the parapet shall include at least one change in setback or height of at least three feet along each 60 lineal feet of facade;

5. Foundation landscaping option.

Building foundation areas that face streets or public areas shall be landscaped to a minimum width of five feet with a minimum of three

shrubs per 20 lineal feet of foundation;

C. Entryway design and location.

Each principal building shall have clearly defined, highly visible main entrances for occupants and customers with features designed to emphasize the importance of the entrance, which must include at least two of the following features, with the choice of the features to be at the option of the owner:

1. A canopy or portico;
2. A roof overhang;
3. A horizontal recess or projection;
4. An arcade or arch;
5. A peaked roof form;
6. An outside patio;
7. A display window;
8. Architectural tilework or moldings integrated into the building design;
9. Integrated planters or wing walls that incorporate landscaped areas or seating areas;
10. Another architectural feature not found on the remainder of that building façade;

D. Additional standards for large commercial retail buildings.

In addition to meeting the standards in subsection A above, single-story retail buildings containing 65,000 square feet or more of gross floor area, in which one user or tenant occupies more than 75% of the gross floor area, shall meet the following additional standards:

1. Facade articulation.

Each building facade longer than 100 feet shall incorporate wall plane projections or recesses at least two feet deep, and extending at least 20% of the length of the façade. At least one of those wall plane projections or recesses shall repeat horizontally at an interval of no more than 30 feet;

2. Facade design.

Each building façade must have a repeating pattern that includes at least two instances of at least one of the following:

- (a) Color change;
- (b) Texture change;
- (c) Material module change;
- (d) Expression of an architectural or structural bay through a change in plane no less than 12 inches wide, such as an offset, reveal or

projecting rib;

3. Pedestrian oriented design features.

Ground-floor façades that face public streets or accessory parking areas shall have arcades, display windows, entry areas, awnings or other such features along no less than 60% of their horizontal length;

4. Pedestrian connections.

All principal entrances of principal buildings shall have direct access (i.e., access without having to cross a public street) to a sidewalk, walkway, path or pathway that leads to a public street. Each such sidewalk, walkway, path or pathway must be a minimum of five feet wide. If a sidewalk does not currently exist, and there is a sidewalk system in place, sidewalks on the property shall connect to the existing sidewalk system;

5. Bicycle access.

Bicycle access shall be provided between public bicycle lanes, paths, or routes on adjacent streets and on-site bicycle parking areas. Sites should be designed to avoid or minimize all conflicting bicycle/motor vehicle and bicycle/pedestrian movements;

E. Special provisions for MU-B district.

Not less than 30% of the exterior walls of all buildings shall be covered with finish grade brick, stone, concrete or masonry. No metal roofing materials shall be visible;

F. Alternate commercial design.

In lieu of compliance with the specific requirements of this Section 50-30.2, an owner may propose to the land use supervisor an alternative approach consistent with the intent of this Section. The land use supervisor may approve a proposal under this Section only if the proposed alternative achieves required façade design and articulation, entryway design and location, pedestrian oriented design features, pedestrian connections and bicycle access to the same degree or better than the provisions of this Section.

50-30.3 Mixed use design standards.

In a mixed use development, each residential principal building must comply with residential design standards, each commercial or institutional building must comply with commercial design standards, and each industrial building must comply with industrial design standards, unless the applicant chooses to request one of the alternative design requirements below.

A. Residential/commercial.

If a mixed use development contains a mix of (a) principal multi-family uses and (b)

principal commercial, public, institutional, or civic uses, the applicant shall comply with the multi-family design standards in Section 50-30.1 and the ground floor transparency standards in Section 50-30.2.B.1.

B. Commercial/industrial.

If a mixed use development contains a mix of (a) principal commercial or institutional uses and (b) principal industrial uses the applicant may choose to comply with either the commercial or industrial design standards.

50-30.4 Industrial design standards.

Each principal building, except a building greater than 100,000 square feet in gross floor area in the MU-B, I-G and I-W districts, or development in which a majority of the gross floor area is occupied by uses categorized industrial uses in Table 50-19.8 must comply with the following standards, unless the provisions applicable to mixed use development apply.

A. Facade articulation.

Each industrial principal building must meet at least one of the following four standards, with the choice of the standard to be at the option of the owner:

1. Wall plane horizontal articulation option.

Each facade greater than 100 feet in length abutting a street, measured horizontally, must incorporate architectural features such as wall plane projections, recesses or other building material treatments and textures that visually interrupt the wall plane. No uninterrupted length of any facade may exceed 100 horizontal feet;

2. Vertical articulation option (for buildings taller than 30 feet).

Each principal building greater than 30 feet in height must have a change in cladding material or surface plane. No single cladding material or surface plane may extend for an uninterrupted vertical distance of more than 30 feet;

3. Parapet variation option.

All facades visible from a public street must include a parapet that varies in height by at least two feet for each 60 lineal foot of façade length;

4. Foundation landscaping option.

Building foundation areas that face streets or public areas shall be landscaped to a minimum width of five feet with a minimum of three shrubs per 20 lineal feet of foundation;

B. Entryway design.

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Each principal building must have clearly defined, highly visible main entrances for occupants and patrons with features designed to emphasize the importance of the entrance, including at least one of the following elements, with the choice of the element to be at the option of the owner:

1. Canopy or portico;
2. Roof overhang;
3. Horizontal recess or projection;
4. Arcade or arch;
5. Peaked roof form;
6. Outside patio;
7. Display window;
8. Architectural tilework or moldings integrated into the building design;
9. Integrated planters or wing walls that incorporate landscaped areas or seating areas;
10. Similar architectural feature not found on the remainder of that building facade.

50-30.5 Parking garage design standards.

Each primary use or accessory parking garage shall comply with the following requirements:

- A. Each façade of the parking garage that faces a public street shall contain horizontal (rather than sloped) floor planes and shall not reveal interior ramps;
- B. All sides of the parking garage not occupied by retail, office or residential uses must be articulated through the applicant's choice of at least three of the following:
 1. Windows or window shaped openings;
 2. Decorative wall insets or projections;
 3. Awnings;
 4. Changes in color or texture of materials;
 5. Public art approved by the Duluth public arts commission pursuant to its established review and approval criteria;
 6. Integrated landscape planters;
 7. Pedestrian-scaled lighting;
 8. Benches, plazas, or other pedestrian areas;
 9. Other features as approved by the land use supervisor as providing an equivalent degree of architectural articulation, visual interest or pedestrian amenity;

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- C. Openings in the podium or tuck under parking areas shall be screened with architectural screens.

50-31 Exterior lighting.

50-31.1 Applicability.

A. General.

All exterior lighting for any multi-family, commercial, mixed use and industrial development after November 19, 2010, shall comply with the standards of this Section 50-31, unless excepted in subsection B below;

B. Exceptions.

The following types of lighting are not subject to the requirements of this Section 50-31:

1. Public street and right-of-way lighting;
2. Temporary decorative seasonal lighting;
3. Temporary lighting for emergency or nighttime work and construction;
4. Temporary lighting for theatrical, television and performance areas, or for special public events;
5. Lighting for a special district, street or building that, according to an adopted city plan or ordinance, is determined to require special lighting aesthetics as part of its physical character;
6. Lighting required and regulated by the FAA;
7. Lighting for outdoor recreational uses such as ball diamonds, playing fields, tennis courts and similar uses, provided that (a) light poles are not more than 80 feet tall, (b) maximum illumination at the property line is not brighter than two footcandles, and exterior lighting is extinguished no later than 11:00 p.m.

50-31.2 General review standard.

If installed, all exterior lighting shall meet the functional security needs of the proposed land use without adversely affecting adjacent properties or the community. For purposes of this Section 50-31, properties that comply with the design standards of Section 50-31.3 below shall be deemed to not adversely affect adjacent properties or the community.

50-31.3 Design and illumination standards.

All exterior lighting shall meet the following design standards:

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- A. Any light source or lamp that emits more than 900 lumens (13 watt compact fluorescent or 60 watt incandescent) shall be concealed or shielded with an Illuminations Engineering Society of North America (IESNA) full cut-off style fixture with an angle not exceeding 90 degrees to minimize the potential for glare and unnecessary diffusion on adjacent property;

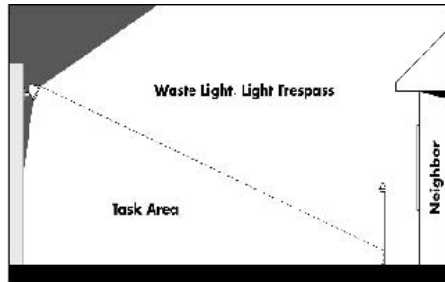


Figure 50-39.1-A: Does not comply -- Light trespass

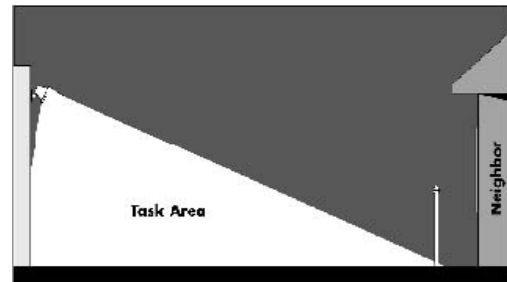


Figure 50-39.1-B: Complies -- No light trespass

- B. All lighting shall have the intensities and uniformity ratio consistent with the IESNA lighting handbook, and shall be designed and located so that the illumination measured in footcandles at the finished grade shall comply with the standards in Table 50-31-1, *Minimum and Maximum Illumination Values*. The illumination shall take into account changes in finished grade, walls, building and other existing or proposed site conditions;

Table 50-31-1: Minimum and Maximum Illumination Values (in Footcandles)				
Use	Minimum Light Levels in Parking Lots	Maximum Average Illumination in Parking Lots	Maximum Illumination at Property Line (Excluding Rights-of-Way)	Maximum Illumination at Right-of-Way
Agricultural Uses	None	2.5	1.0	2.0
Residential Uses	0.2	1.0	1.0	1.0
Commercial, Retail, Office, Industrial, Mixed Uses, and Institutional (Including Athletic Fields) Uses	0.2	2.5	1.0	2.0

- C. The maximum height of any lighting pole serving a residential use is 20 feet. The maximum height serving any other type of use is 25 feet, except that (1) in parking lots larger than five acres, the maximum height of any pole located at least 100 feet from any residential use is 35 feet, and (2) in the I-G and I-W zone districts, the maximum pole height is 50 feet;
- D. Floodlights shall not be utilized to light all or any portion of a building façade between 10:00 p.m. and 6:00 a.m.;

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- E. Lighting on automobile service station, convenience store and other outdoor canopies shall be fully recessed into the canopy and shall not protrude downward beyond the ceiling of the canopy. Maximum lighting level uniformity (maximum to minimum) on the site shall be 15:1;
- F. In no case shall an exterior lighting source be visible from any property line or add more than one footcandle to illumination levels at any point off-site;
- G. All outdoor light not necessary for security purposes shall be reduced, activated by motion sensor detectors, or turned off during non-operating hours;
- H. Light fixtures used to illuminate flags, statues or any other objects mounted on a pole, pedestal or platform shall use a narrow cone beam of light that will not extend beyond the illuminated object;
- I. For upward-directed architectural, landscape and decorative lighting, direct light emissions shall be contained by the buildings and not be visible above the building roof line;
- J. No flickering or flashing lights shall be permitted, except for temporary decorative seasonal lighting.

50-32 International Property Maintenance Code.

The city has adopted by reference the year 2000 edition of the International Property Maintenance Code, as the Housing Code of the city.

50-33 Plats.

50-33.1 General.

All subdivision plats and replats, and all registered land surveys, shall create lots, streets and walkways and open spaces consistent with the requirements of the zone district within which the land is located. Without limiting the generality of the previous sentence, all plats and land surveys approved after November 19, 2010, shall be consistent with the lot dimension requirements contained in sections 50-13 through 18 of this Chapter, as well as the requirements of Section 50-21, *Dimensional requirements*, 50-22, *Building form standards*, 50-23, *Connectivity and circulation*, 50-24, *Parking and loading*, and 50-18.1.E, *Storm water and rrosion control*. In addition, all subdivision plats and replats, and all registered land surveys approved after November 19, 2010, shall comply with the standards of this Section 50-33.

50-33.2 Site design.

- A. The site design process shall begin with an analysis of site constraints and natural resources, and shall avoid both to the degree practicable;
- B. In addition, the site design process shall include a pre-submittal evaluation of storm drainage to ensure that the proposed design will comply with the storm

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- drainage and erosion control standards in Section 50-18.1.E. This study shall be submitted prior to submission of a preliminary plat of the property;
- C. The site design process shall include an evaluation of minimal impact development and low impact development methods;
 - D. At a minimum, the lands included in the plat or survey shall be designed so that all developable parcels can be developed in compliance with the requirements of:
 - 1. Section 50-18.1, *Natural resources overlay district*, which identifies areas subject to flood plain, shorelands and wetland constraints;
 - 2. Section 50-28, *Storm water and erosion control*;
 - 3. Section 50-18.4, *Skyline Parkway overlay district*, which identifies constraints on the location of structures and fences on lands located within 200 feet downhill of Skyline Parkway;
 - E. Shore and bluff impact zones shall be included in common open space. Wetlands, floodplains, wildlife areas, steep slopes, rock outcrops, tree stands and areas in their natural state that are unsuitable for development shall be included in common open space if possible;
 - F. Whenever a portion of a tract is proposed for platting and it is intended to enlarge such platted portion in the future, a tentative plan for the entire tract shall be submitted;
 - G. To ensure a harmonious development in areas not subject to any zoning ordinance (areas now outside the corporate limits of Duluth), the subdivider may be required to place upon such plats restrictions comparable to those of this Chapter for similar areas.

50-33.3 Block size.

- A. In the MU-B, I-G and I-W zone districts, block lengths and widths shall be platted to accommodate the anticipated occupancy of the platted lots;
- B. In other zone districts, blocks shall be not less than 300 feet nor more than 600 feet in length;
- C. Through lots or double-frontage lots shall be avoided as far as practicable, but may be permitted when necessary to allow efficient use of the land in light of site topography.

50-33.4 General lot design and layout.

- A. All lots shall have frontage on a public street unless that is impracticable due to topography and the city engineer approves an alternative layout based on considerations of public safety and land use efficiency;
- B. Where practicable, side lot lines shall be at approximately right angles to the street on which the lot fronts;
- C. Where practicable, adjacent lots shall not be platted so that their long axes are

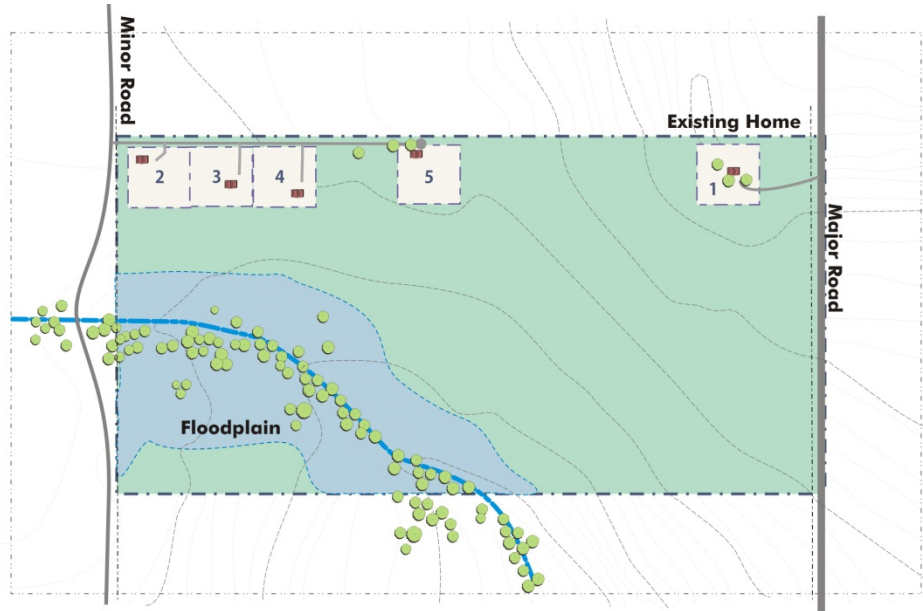
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at right angles to each other;

- D. No strips of land shall be platted for private ownership that control access to public streets or that are untaxable for special improvements;
- E. Where practicable, lots shall be oriented so that the long axis of the lot is within 15 degrees of east-west in order to increase solar orientation.

50-33.5 Specific layout standards for R-C, RR-1 and RR-2 districts.

- A. When (i) a tract or parcel of land in the R-C or RR-1 districts, or (ii) a parcel of land in the RR-2 districts with sewer service, is proposed for platting to create five or more residential building lots, those lots shall be clustered as described in this Section in order to retain the open character of the land and reduce the amount of the tract occupied by building sites;
- B. When these clustering requirements apply:
 1. The applicant may create only as many residential building lots as would be permitted under the minimum lot size provisions of sections 50-14.2, 50-14.3 or 50-14.4;
 2. If the parcel does not have sewer service, the minimum lot size for residential use shall be two acres and the maximum lot size shall be two-and-one-half acres. All new residential lots shall be clustered in close proximity to each other on a portion of the property that complies with the siting requirements of Section 50-21.2 so that the shortest line around the outer perimeter of all new residential lots encloses an area of land that:
 - a. In the R-C district, totals less than 20% of the total parcel being subdivided;
 - b. In the RR-1 district, totals less than 50% of the total parcel being subdivided;
 3. If the parcel has sewer service, the minimum lot size for residential use shall be one-half acre and the maximum lot size shall be one acre. All new residential lots shall be clustered in close proximity to each other on a portion of the property that complies with the siting requirements of Section 50-21.2 so that the shortest line around the outer perimeter of all new residential lots encloses an area of land that:
 - a. In the R-C district, totals less than 15% of the total parcel being subdivided;
 - b. In the RR-1 district, totals less than 25% of the total parcel being subdivided;
 - c. In the RR-2 district, totals less than 50% of the total parcel being subdivided;



4. To the maximum extent practicable, existing historic rural features shall be preserved as part of the cluster development. These features include but are not limited to rock walls, fences, functional and structurally safe farm buildings, monuments and landscape features;
5. To the maximum extent practicable, in the R-C district, the clustered residential lots shall be located so as to reduce visibility of residential development on the parcel when viewed from public streets adjacent to the parcel;
6. To the maximum extent practicable, the portion of the parcel not occupied by clustered residential lots shall be contiguous, shall not be fragmented by public or private road easements unless no other reasonable alternative exists, shall include any natural features listed in Section 50-33.2, and shall connect with open space on neighboring parcels in order to connect habitats and reduce fragmentation;
7. The portion of the parcel not occupied by clustered residential lots shall remain available for the use and benefit of the owners of the clustered residential lots, and need not be made available for the use or benefit of the public;
8. The portion of the parcel not occupied by clustered residential lots shall be shown on the preliminary and final plat, shall be owned and managed by a homeowners association and shall be encumbered through an easement, restrictive covenant, or other instrument suitable to the city to ensure that that it will provide continuing visual or use benefits to the owners of clustered residential lots and will not be developed until such time as the city may rezone all or a portion of the development for more intensive development;
9. The city may require the creation of a homeowner's association or other

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organization for ownership and maintenance of those portions of the property not included in clustered residential lots.

50-33.6 Streets.

A. Alignment.

1. New streets shall align with the existing street network on the same general alignment if practicable, unless the city engineer advises that an offset or alternate alignment is needed for public safety or topography;
2. Streets shall intersect at approximately right angles wherever practicable, and intersection angles less than 30 degrees shall be avoided;
3. On major and secondary streets the centerline radius of curvature shall be 350 feet. On minor and local streets the centerline radius of curvature shall be 100 feet;
4. Cul-de-sacs are discouraged in new and replatted developments except where through streets are not practicable due to site or topography constraints;

B. Grade.

1. Streets shall conform to existing contours as far as practicable so as to avoid grades in excess of five percent on major and secondary streets and ten percent on minor and local streets. Changes in grade shall be made by vertical curves of such length to meet the design speed of the road;
2. Where practicable, grades within 30 feet of street intersections, especially intersections on major streets, should not exceed three percent;
3. Where practicable, horizontal and vertical curves shall not occur together;

C. Width.

1. Major streets shall be platted at those widths shown in the major street plan and collector and local streets shall be platted not less than 66 feet, or 50 feet if there are no utilities, in right-of-way width, except as noted in subsection 2 below;
2. Where the plat includes parkways, streets along railway rights-of-way, immediate or future grade separations, bridges or viaducts, the city engineer shall specify the street width at the time of platting based on considerations of public safety and land use efficiency;
3. Dead-end streets shall be provided with ample turning spaces at or near the closed ends.

D. Names.

Proposed streets that are direct extensions or continuations of existing streets shall

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be given the same names as those existing streets. Other streets shall not be given names that duplicate existing street names or that may be confused with existing street names.

50-33.7 Alleys and easements.

- A. Alleys are encouraged in form districts and where the existing lot and block pattern in the surrounding area contains alleys. Where allowed they shall be not less than 20 feet in width in residential areas and 24 feet in width in commercial and mixed use areas;
- B. Where no alleys are located, the city engineer may require easements, not less than ten feet on each side of any lot line, for sewer, water, gas, telecommunications and other public or semi-public utilities;
- C. Regardless of whether alleys are provided, the city engineer may require that utility easements be provided across platted lots if necessary for the proper provision of continuous routes for those utilities.

50-33.8 Land for public purposes.

- A. The subdivider may be required to set aside lands to accommodate open spaces and sites for police stations, fire stations, schools or public utility facilities;
- B. The amount of land required to be set aside or dedicated to the city or the school district shall not exceed the proportionate share of the need for those facilities generated by the new development indicated on the proposed plat. The proportionate share shall be established either (1) through one or more formulas established by the city and generally applicable to development applications creating the need for the facility, or (2) an individualized review of the additional demands for city services or facilities represented by the proposed plat, in relation to the proposed capacity of the facility to be constructed on the lands set aside;
- C. Lands to be set aside for parks, trails or open space shall generally be located adjacent to, or connect with, or allow access from, any similar open lands located on adjacent lands, unless the city requests an alternate location for reasons of public health, safety or convenience;
- D. The size and location of lands to be set aside for police stations, fire stations, schools or utility facilities shall be negotiated with the city or the agency providing those services.

50-33.9 Improvements required.

Each subdivider shall be required to design and install the following improvements within five years following the approval of the plat, replat or registered land survey by the city. The city may enforce these requirements through a development agreement or the requirement of financial security for the required improvements as described in Article 5,

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Review and approval procedures.

- A. All streets located within the boundaries of the tract being subdivided or replatted shall be graded to established grade and surfaced with an approved material, in accordance with standards of the city engineering department;
- B. Storm sewers shall be constructed of sufficient capacity to drain the area in accordance with standards of the city engineering department;
- C. Culverts or bridges shall be built at points on watercourses crossed by streets;
- D. Sidewalks shall be constructed in accordance with Section 50-23;
- E. All improvements to streets or public utilities shall be made in accordance with city construction design standards and specifications, and shall be subject to the inspection by and approval of the city engineer.

50-34 Maintenance and operating standards.

50-34.1 General maintenance requirement.

When the standards and procedures of this Chapter require that any building or site feature be constructed or installed, or when conditions attached to a special use approval, variance or zoning permit approval require that building or site features be constructed or installed, the property owner shall be responsible for maintaining those building or site features in good repair, and for replacing them if they are damaged or destroyed or, in the case of living materials, if they die after installation. In addition, property owners shall be responsible for the additional maintenance, replacement and operating standards set forth in this Section 50-34.

A. Maintenance of signs.

Any private sign, including any sign for which a permit is not required, that has become damaged, dilapidated or dangerous shall be immediately, or within the time frame mandated by the building official, repaired or removed. If the paint on any sign has checked, peeled or flaked to the extent that the sign cannot be read in whole or in part, the sign shall be repainted or removed. Signs that contain messages that have become obsolete because of the termination of the use or business or product advertised, or for some other reason, shall have such message removed within 60 days of its becoming obsolete;

B. Landscape maintenance.

Landscaped areas and plant materials required by this Chapter shall be kept free from refuse and debris. Plant materials shall be maintained in a healthy growing condition and be neat and orderly in appearance. If any plant material required by this Chapter dies or becomes diseased, it shall be replaced by the property owner on or before October 1 of the year the dead or diseased planting is discovered or within the time frame mandated by the building official;

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C. Temporary erosion and sediment control maintenance.

All temporary erosion and sediment control measures required by Section 50-18.1.E shall be maintained as described in Section 50-18.1.E.4.

D. Storm water management system maintenance.

All storm water management systems required by Section 50-18.1.E shall be maintained as described in Section 50-18.1.E.8.

50-34.2 Operating standards.

All structures, uses and activities in all zone districts shall be used or occupied so as to avoid creating any dangerous, injurious, noxious or otherwise objectionable condition that would create adverse impacts on the residents, employees or visitors on the property itself or on neighboring properties. This responsibility shall include but not be limited to the following:

A. Glare.

Glare, whether direct or reflected, such as from floodlights or high temperature processes, and as differentiated from general illumination, shall not be visible at any property line;

B. Noise.

All activities shall comply with state statutes and regulations;

C. Odors.

All activities shall comply with state statutes and regulations;

D. Smoke.

All activities shall comply with state statutes and regulations;

E. Vibration.

Operations shall cause no inherent and recurring generated vibration perceptible without instruments at any point along the property line. Temporary construction is excluded from this restriction;

F. Electromagnetic radiation.

It shall be unlawful to operate, or cause to be operated, any planned or intentional source of electromagnetic radiation for such purposes as communication,

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experimentation, entertainment, broadcasting, heating, navigation, therapy, vehicle velocity measurement, weather survey, aircraft detection, topographical survey, personal pleasure or any other use directly or indirectly associated with these purposes that does not comply with the current regulations of the FCC regarding such sources of electromagnetic radiation. However, in case of governmental communications facilities, governmental agencies, and government owned plants, the regulations of the interdepartmental radio advisory committee shall take precedence over the regulations of the FCC regarding those sources of electromagnetic radiation;

G. Hazardous materials.

The storage and handling of flammable liquids, liquefied petroleum, gases and explosives shall comply with all applicable regulations of the state. All applicable federal, state and local laws, rules and regulations shall apply to the treatment, storage, transportation and disposal of any hazardous materials, hazardous wastes or solid waste;

H. Materials and waste handling.

No person shall cause or permit any materials to be handled, transported or stored in a manner that allows particulate matter to become airborne or liquid matter to drain onto or into the ground. All materials or wastes that might cause fumes or dust or that constitute a fire hazard or that may be edible by or otherwise be attractive to rodents or insects shall be stored outdoors only in closed, impermeable trash containers that are screened in accordance with the requirements of this Code. Toxic and hazardous materials and chemicals shall be stored, secured and maintained so that there is no contamination of ground, air or water sources at or adjacent to the site. Provisions shall be provided so that all lubrication and fuel substances shall be prevented from leaking or draining onto the property. All treatment, storage, disposal or transportation of hazardous waste shall be in conformance with all federal and state statutes, codes and regulations. All sewage and industrial wastes shall be treated and disposed of in such a manner as to comply with the water quality standards applicable to the classification assigned to the receiving water by the city, the state and the U.S. environmental protection agency;

I. Nuclear radiation.

Research operations shall cause no radiation at any property line that violates any regulation of the U.S. nuclear regulatory commission;

J. Nuisance prohibited.

All structures and land uses within the city shall be constructed, used, operated and maintained in such a manner so as to be free of nuisances, as defined in state law.

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Article V. Administration and Procedures.

This Section is intended to comply with all applicable provisions of MSA Chapter 462, as amended, and shall be interpreted to comply with those provisions wherever possible.

50-35 Summary table.

TABLE 50-35-1: PROCEDURES SUMMARY TABLE							
Type of Application			Review, Decision, & Appeal Authority				
	Public Notice Required	Pre-Application Required	Staff	Land Use Supervisor	Historic preservation commission	Planning Commission	Council
R = Review D = Decision A = Appeal <> = Hearing N = Newspaper Notice S = Sign Notice M = Mail Notice							
Comprehensive Land Use Plan Amendment	N			R		<R>	D
UDC Text or Zoning Map Amendment							
Text Amendment	N			R		<R>	D
Map Amendment	N, S, M*	✓		R		<R>	D
District Plan Adoption/Amendment	S	✓		R		<D>	<A>
Subdivision Plat Approval							
Concept Plan		✓		R			
Preliminary Plat	S			R		<D>	
Final Plat				R		<D>	
Quick Plat/Registered Land Survey				R		D	
Vacation of Street	S, M	✓		R		<R>	D
Concurrent Use of Streets Permit	S	✓		R		<R>	D
Historic Resource Designation	M	✓			R	<R>	D
Variance	S, M		R			<D>	<A>
Special Use Permit	S, M	✓		R		<D>	<A>
Interim Use Permit	S, M	✓		R		<R>	D
Planning Review							
General				D		<A>	
When required in Mixed Use Districts	S, M			R		<D>	<A>
Sidewalk Use Permit				D		<A>	
Zoning Permit**			D			<A>	
Airport Environs Permit			D			<A>***	
Historic Construction/Demolition Permit	S				R	<D>	<A>
Building Permit****			D				
Certificate of Occupancy****			D			<A>	

* Mailed notice is required to affected property owners within 350 ft. when the amendment involves changes in district boundaries affecting an area of 5 acres or less.

**This category includes temporary use permit, shoreland permit, erosion and sediment control permit, sign permit, and fence permit.

*** Appeals of Airport Environs Permits related to Duluth International Airport are heard by the airport board of adjustment.

**** Appeals heard by the building appeals board or the State Building Official.

50-36 Reviewers and decision-makers.

50-36.1 Council.

The council is the governing body of the city, with all of those powers granted by the state

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and the City Charter. In the context of this Chapter, the council has the following powers.

- A. To adopt the comprehensive land use plan and to approve all amendments to it pursuant to Section 50-37.2;
- B. To adopt the text, amendments to that text, and interim ordinances related to this Chapter pursuant to Section 50-37.3;
- C. To adopt the official zoning map and all amendments to it pursuant to Section 50-37.3;
- D. To approve the vacation a public street pursuant to Section 50-37.6;
- E. To approve the concurrent use of a public street pursuant to Section 50-37.7;
- F. To approve historic resource designations pursuant to Section 50-37.8;
- G. To approve interim use permits pursuant to Section 50-37.10;
- H. To hear appeals of decisions of the planning commission pursuant to Section 50-37.1.O.

50-36.2 Planning commission.

A. Creation.

The planning commission is that body authorized by MSA 462.354 and created by Ordinance 1809. In addition, the council hereby designates the planning commission as the board of adjustment authorized by MSA 462.354 and Section 27 of the City Charter. The planning commission shall have all powers authorized for a planning commission or a board of adjustment under the state law and this City Code. Procedures before the planning commission shall be governed by rules and regulations adopted by the commission. This Section is intended to comply with the provisions of MSA 462.354 as amended, and Section 27 of the City Charter, and shall be interpreted to comply with those provisions wherever possible;

B. Membership and terms.

Except as provided by Ordinance 9985, the planning commission shall consist of nine members, all of whom shall be citizens of the city and none of whom shall be a paid city employee, and all of whom shall be appointed by the mayor and with the consent of the council, and all of whom shall make and file with the city clerk an oath and affirmation as provided in Section 28 of the city Charter. Members shall be appointed for a term of four years, and the terms shall be staggered in accordance with Ordinance 9985. Vacancies shall be filled by appointment for the unexpired term only. Members of the board shall serve without compensation;

C. Meetings and proceedings.

1. All hearings of the planning commission shall be public and shall occur after 5:00 p.m.;

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2. The concurring vote of a majority of the members of the commission shall be sufficient to exercise any power granted to the planning commission by this Chapter;
3. The commission may delegate to a committee of the commission or to its secretary specific review and approval activities provided that it provides written criteria to guide the performance of the delegated duties, and the decisions made by the committee or secretary will be considered decisions of the commission;

D. Powers.

Except as otherwise provided in this Chapter or other law, the planning commission shall have the following powers within all zone districts:

1. Appeals.

To hear and decide appeals where an applicant alleges an error in any order, requirement, permit or decision made by the land use supervisor or the building official in the enforcement of any provisions of this Chapter, pursuant to Section 50-37.1.O. In the case of each appeal, the commission shall make written findings of facts and conclusions of law giving the facts upon which it acted and its legal conclusions from such facts;

2. District plans.

To approve, approve with modifications, or deny applications for approval of a district plan in those districts where approval of such a plan is required prior to development, pursuant to Section 50-37.4;

3. Subdivision plats.

To approve, approve with modifications, or deny preliminary and final plats for the subdivision of land pursuant to Section 50-37.5 and in accordance with the state law;

4. Variances.

To approve, approve with modifications or deny applications for variances to the provisions of this Chapter as provided in Section 50-37.9;

5. Special use permits.

To approve, approve with conditions or deny applications for a special use permit pursuant to Section 50-37.10;

6. Planning review for certain districts.

Planning review in the MU-N, MU-C, MU-I and MU-W districts pursuant to Section 50-37.11;

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7. Historic construction/demolition permits.

To approve, approve with conditions or deny applications for issue historic construction and demolition permits pursuant to Section 50-37.14;

8. Review and recommendation.

To review and comment on any application for which a review role for the commission is shown in Table 50-35-1.

50-36.3 Historic preservation commission.

A. Membership.

The commission shall consist of seven voting members, all of whom are to be citizens of the city, five of whom will be appointed by the mayor with the approval of the council; one will be appointed by the county historical society, and one will be appointed by the planning commission. Members shall be persons who have demonstrated an interest in the historical, cultural or architectural development of the city or who own property within a historic preservation district. At least two of the five members appointed by the mayor shall be preservation-related professionals;

B. Powers.

The historic preservation commission shall have the following powers:

1. Recommendation of historic preservation sites and districts to the planning commission;
2. Review construction and demolition activity for historic preservation sites and districts and make recommendations to the planning commission;
3. Recommend historic preservation guidelines specific to a landmark or district;
4. Make an annual report to the state historic preservation officer by October 31 of each year;
5. Conduct continuing survey of all areas, places, buildings, structures or similar objects in the city that the commission, on the basis of information available or presented to it, has reason to believe are or will be eligible for designation as historic preservation landmarks or districts;
6. Work for the continuing education of the citizens of the city with respect to the historic and architectural heritage of the city and keep current and public an official list of designated historic preservation landmarks and districts;
7. The commission may retain the services, on a permanent or part-time basis, of technical experts and other persons as may be required to perform the commission's duties;
8. The commission shall have authority to solicit gifts and contributions to be

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- made to the city and to assist in the preparation of applications for grant funds to be made to the city for the purpose of historic preservation;
9. The commission may recommend to the planning commission and council that certain properties eligible for designation as historic preservation landmarks or districts be acquired by gift, by negotiation or other legal means;
 10. Upon final designation of a historic preservation landmark or district, adopt historic preservation guidelines specific to the landmark or district. Such guidelines shall detail allowable architectural and/or site modifications, essential features to be retained and any other criteria by which future proposals for modifications shall be judged. These guidelines are intended to provide assurance to owners of properties within historic preservation landmarks or districts that any permit review process will be based on clear and objective standards rather than the taste of individual commission members;
 11. The commission may nominate a historic preservation landmark or district to the national register of historic places, but only with the consent of the council.

50-36.4 Land use supervisor.

The land use supervisor is that individual responsible for administration of all aspects of this Chapter where specific authority has not been delegated to another city official or employee, and is responsible for exercising those powers to implement adopted plans through the review of applications described in MSA 462.356 subdivision 2 and MSA 462.359. The land use supervisor may delegate specific responsibilities to any individual city employee under the supervisor's management, but shall remain responsible for all decisions made by those employees. Except as otherwise provided in this Chapter or other law, the land use supervisor's authority shall extend to all zone districts. The land use supervisor's authority shall include, but shall not be limited to, the following:

A. Planning review.

To approve, approve with modifications or deny applications for planning review pursuant to Section 50-37.11;

B. Sidewalk use permit.

To approve, approve with modifications or deny applications for approval of a sidewalk use permit pursuant to Section 50-37.12;

C. Review and recommendation.

To review and comment on any application for which a review role for the land use supervisor is shown in Table 50-35-1.

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50-36.5 Building official.

The building official shall be responsible for ensuring that applications for the following permits and approvals are only issued if the application complies with (a) the provisions of this Chapter, as such provisions may have been modified by any variance approved by the planning commission, and (b) any district plan approved by the planning commission and applicable to the area where the permit or approval is sought. The building official may delegate specific responsibilities to any individual city employee under the official's management, but shall remain responsible for all decisions made by those employees. Except as otherwise provided in this Chapter or other law, the building official's authority shall extend to all zone districts. The building official's authority shall include, but shall not be limited to, the following:

A. Zoning permits.

Approve, approve with conditions or deny applications for zoning permits pursuant to Section 50-37.13. Conditions shall only be applied to bring the application into conformity with this Chapter and related administrative regulations. In the administration of the State Building Code on projects where no permit is required under this Chapter, the building official shall, to the extent feasible and practical, utilize the erosion and sediment practice specifications as guidelines for adequate erosion control;

B. Airport environs permit.

Serve as the zoning administrator for the Duluth International Airport pursuant to the zoning regulations enacted by the joint airport zoning board and pursuant to MSA 360.063, subd. 3;

C. Building permits.

Approve, approve with conditions or deny applications for building permits pursuant to Section 50-37.15. Conditions shall only be applied to bring the application into conformity with this Chapter, the applicable building code(s) and related administrative regulations;

D. Certificates of occupancy.

Approve, approve with conditions or deny applications for certificates of occupancy pursuant to Section 50-37.16. Conditions shall only be applied to bring the application into conformity with this Chapter, the applicable building code(s) and related administrative regulations.

50-36.6 Other departments.

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

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

50-37 Review and approval procedures.

50-37.1 Common procedures and requirements

A. Pre-application meetings.

A pre-application meeting is an informal discussion between a potential applicant, interested citizen, city staff and the historic preservation commission (if applicable) regarding a possible project subject to this Chapter. The purpose of the pre-application meeting is to assist the applicant by identifying the types of approval needed to complete the project, application material and impact studies required, applicable comprehensive plan provisions and applicable review criteria. A pre-application meeting may include a site visit at the request of the city. Pre-application meetings are required for the following types of applications:

1. UDC zoning map amendment;
2. District plan adoption or amendment;
3. Subdivision concept plan;
4. Vacation of street;
5. Concurrent use of streets permit.
6. Historic resource designation;
7. Special use or interim use permit;

B. Authority to file applications.

1. A property owner or a contract purchaser may apply for any type of permit or approval unless a more specific application is stated in this Section 50-37.1.B or in sections 50-37.2 through 16 below. In the event of a conflict between the provisions of this Section 50-37.1.B and the provisions of sections 50-37.2 through 16, the provisions of sections 50-37.2 through 16 shall govern;
2. An agent of the property owner, or a resident of the property, may apply for any type of permit or approval provided the agent or resident has written authority of the property owner to do so;
3. Applications for designation of a historic resource are governed by Section 50-37.8;
4. Any person may request an interpretation of this Chapter, and the land use supervisor may issue interpretations of this Chapter as needed and shall post issued interpretations on the city web site;

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C. Application materials and fees.

1. Each application for a permit or approval, or for a modification of a permit or approval, pursuant to this Chapter, shall include all those application materials listed for that type of application or modification listed in the UDC application manual for this Chapter and a fee in the amount listed for that type of application or modification shown in the latest schedule of fees approved by council;
2. The city may reject applications not meeting the requirements of this Chapter, the UDC application manual, or as required or authorized by MSA 15.99;
3. Any and all representations made by the applicant to the city on the record during the application process, whether written or verbal, shall be deemed a part of the application and may be relied upon in good faith by the city;
4. The schedule of fees shall be adopted from time to time by the council by resolution, pursuant to Section 31-6 of the Code, to defray estimated staff costs and expenses of processing applications;
5. The schedule of fees may provide for additional fees if an applicant submits more than two applications that are incomplete, pursuant to Section D below, for the same proposed development;
6. All fees are non-refundable regardless of whether the applicant withdraws the application prior to a decision or whether the application is approved, approved with conditions or denied;

D. Determination of completeness.

A determination of completeness shall be made for each application pursuant to MSA 15.99;

E. Inactive complete applications.

If an application has been determined to be complete, but review of the application reveals possible additional impacts on the surrounding area, any request by the city for additional materials necessary to evaluate those impacts shall comply with the provisions of MSA 15.99;

F. Withdrawal of applications.

An applicant may withdraw an application at any time prior to a decision by the city by filing a written request to withdraw the application with the city. Any resubmission is subject to the provisions of subsection G below. If the application is later resubmitted, it shall be treated as a new application for purposes of review and scheduling. Any fees paid for a withdrawn application shall not be refunded;

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G. Successive applications.

If an application pursuant to this Chapter has been denied by the city, an application requesting the same or essentially the same approval shall not be accepted during the next 12 months;

H. Public notice.

1. Types of notice.

The city uses one or more of the following methods to notify the public about pending applications where there is an opportunity for public comment on the application. The type(s) of notice provided for different types of applications are shown in Table 50-35-1.

- (a) Newspaper notice means the publication of one notice in a newspaper of general circulation within the city at least ten days before the date of the public hearing, except in the case of amendments to the text of this Chapter or zoning map, in which case the notice shall be published at least once each week for three successive weeks before the date of the public hearing;
- (b) Mailed notice means a letter mailed by first class mail to property owners within a specific distance of the applicant's parcel at least ten days prior to the date of the public hearing. In the case of an application for vacation of a street, the notice shall be mailed to the owners of all properties abutting (a) the portion of the street proposed to be vacated, and (b) the portion of that street extending 350 feet from the ends of the portion proposed to be vacated. In the case of an application for rezoning an area of five acres or less, the notice shall be mailed to each property owner in the area to be rezoned and each owner of property located partly or entirely within 350 feet of the area to be rezoned. Failure to give mailed notice as required by this Section or any defect in the notice given shall not invalidate any action of the planning commission or council, provided that a bona fide attempt to comply with this Section has been made;
- (c) Sign notice means a sign with minimum dimensions of 24 inches by 30 inches posted as close as reasonably possible to each street frontage on the applicant's property with the text between three and five feet above grade level, with a title line reading "Zoning Notice" in letters at least three inches tall, and with the remainder of the text in letters at least 1/2 inch tall. Each sign must be posted at least two weeks before the date of the public hearing, and must remain in place and legible through the date of the public hearing as shown on the sign. If the sign will not be legible at the stated height due to snow accumulations it may be placed higher, but at the lowest elevation that will be legible to the public. If snow obscures the sign during the posting period, the snow shall be removed and/or the sign shall be relocated so as to be legible within 24 hours after snowfall ends. Evidence produced at or

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before the public hearing that one or more of the required signs were not in place or legible throughout that period shall be grounds for postponement of the public hearing and a requirement to repost the property. Required signs may not be posted in any portion of the public right-of-way;

2. Content of notice.

Each required notice shall include the following information:

- (a) The name of the applicant;
- (b) The address of the property;
- (c) A narrative description of the project including the proposed land uses, size (in square feet) and height (in feet and stories) of any proposed buildings or building expansions;
- (d) The type of permit or approval being sought;
- (e) Contact information where additional information can be obtained from the applicant (which may be an address, telephone number, web site, or e-mail address or other electronic site or method);
- (f) Contact information for the assigned city staff member;
- (g) The date, time and place of the public hearing;

3. Special notice provision for appeals.

In the case of an appeal to the planning commission or council pursuant to Section 50-37.1.O, mailed notice shall be provided to any interested parties that were notified of the original application and the right to receive notice of any appeal, and who have notified the city in writing that they would like to receive notice of the appeal;

I. Public hearings.

1. Public hearings before the planning commission and public hearings before the council on matters related to this Chapter shall be conducted pursuant to rules and practices established by each of those bodies and in compliance with state law;
2. Attendance shall be open to the public;
3. All hearing and decision timeframes shall comply with MSA 15.99;

J. Review criteria.

1. The planning commission shall approve or recommend approval of an application if it makes a written finding that:
 - (a) The application is consistent with the adopted comprehensive land use plan, as that plan may have been amended after adoption;
 - (b) The application complies with all applicable requirements of this Chapter, as those requirements may have been varied through a variance approved pursuant to Section 50-37.9;

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- (c) The application complies with all additional approval criteria listed in Section 50-37.2 below;
2. If the planning commission determines that the criteria in subsection 1 have not been met, the commission shall deny or recommend denial of the application or approve it with conditions to bring the application into conformance with the above criteria;
3. The council is encouraged, but not required, to make decisions on applications under this Chapter pursuant to the criteria listed in subsection 1. In no case may the city's final action result in the approval of a use variance;
4. The applicant bears the burden of proof that an application complies with all applicable standards and criteria in this Chapter;

K. Conditions on approval.

1. As an alternative to denying an application, the building official and the land use supervisor are authorized to approve applications with conditions necessary to bring them into compliance with the requirements of this Chapter or with any previously approved district plan for the property;
2. As an alternative to denying an application, the planning commission is authorized to recommend or impose conditions on approvals that it determines are necessary to (a) bring the application into compliance with the requirements of this Chapter, the purposes of the zone district where the property is located or any previously approved district plan for the property, or (b) prevent or minimize adverse effects upon surrounding areas or upon public facilities and services;
3. All conditions imposed on approved applications shall be reasonably related to the anticipated impacts of the proposed development or land use and to the purposes of this Chapter;
4. In the case of decisions made by the planning commission or council, where mitigation of the impacts of a proposed plan or development requires an applicant to dedicate land or pay money to a public entity in an amount that is not calculated according to a formula applicable to a broad class of applicants, any condition imposed shall be roughly proportional both in nature and extent to the anticipated impacts of the proposed development, as shown through an individualized determination of impacts;
5. Any conditions on approved applications shall be listed in or attached to the approval document, and violation of any approved condition shall be a violation of this Chapter;

L. Administrative adjustments.

Where an application concerns redevelopment of an existing platted lot and the applicant demonstrates practical difficulty in designing the redevelopment to comply

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with all requirements of this Chapter, the land use supervisor is authorized to approve applications that diverge from the requirements of this Chapter in up to two of the following ways:

1. The front, side or rear setbacks of a new structure or modified building are no more than one foot smaller than the minimum setbacks required by this Chapter;
2. The height of a new or modified structure is no more than two feet taller than the maximum required by this Chapter;
3. For properties where Section 50-24 requires more than three off street parking spaces, and the property does not contain a single-family residential structure (regardless of the use of that structure) the site contains one less parking space than is required;

M. Modifications of approvals.

1. Application.

An applicant who has received a permit or approval from the city pursuant to this Chapter may apply to modify that approval pursuant to this Section 50-37.1. An application for a modification shall be made to the building official, who shall determine whether it requests a minor or major modification pursuant to the criteria in subsections 2 or 3, as applicable;

2. Minor modifications.

Minor modifications are those that (a) relate to redevelopment of a single building on one or more existing platted lot(s), (b) qualify as administrative adjustments pursuant to subsection 50-37.1.L and (c) that the city determines are otherwise consistent with any district plan approved for the zone district where the property is located. Applications for minor modifications may be approved by the city if it determines that the applicant would have practical difficulties designing or constructing the project without the minor modification. However, the city may require that an application meeting the criteria for a minor modification be treated as an application for a major modification if it determines that the application raises a significant public controversy on which numerous parties other than the owner of the property may want to offer testimony;

3. Major modifications.

Major modifications are those that do not qualify as administrative adjustments pursuant to subsection 50-37.1.L or minor modifications pursuant to subsection 2 above. Applications for major modifications shall be treated as a new application for an approval of the same type being modified. However, if the city determines that an application for modification is not consistent with a district plan applicable to the property, and that the inconsistency may materially and adversely affect other property owners subject to the same district plan, the city may require that

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the applicant obtain approval of a revised district plan instead of a major modification. In the case of a major modification involving a natural resources permit, the city may require additional reports and data necessary to evaluate the impacts of the modification;

N. Lapsing of approvals.

Some permits and approvals issued pursuant to this Chapter shall lapse and be of no further force or effect if the action approved in the permit or approval does not begin within a specific period of time, as listed below:

1. Approved preliminary plats for subdivision shall lapse unless a complete application for a final plat of at least 50% of the land covered by the preliminary plat is submitted within five years of the preliminary plat approval;
2. Approved final subdivision plats shall lapse unless the approved final plat is recorded with the register of deeds within 90 days after approval;
3. Approved vacations of streets shall lapse unless a plat showing the vacation is recorded with the office of the county recorder within 90 days after final approval;
4. Approved planning reviews, zoning permits, special use permits, interim use permits, concurrent use of street permits, sidewalk use permits and variances shall lapse if the project or activity authorized by the permit or variance is not begun within one year of the permit date. The building official may extend this period one time for a period of up to one year if the property owner presents a written request showing the reasons for the delay was outside the owner's control;
5. Erosion and sediment control permits (ESCP) shall lapse one year after approval if all construction activities are not completed or the entire site is not fully stabilized with 70% successful establishment of vegetation. In case of a lapse of the ESCP, a new permit shall be obtained;
6. Approved building permits shall lapse one year after issuance unless construction has begun by that date;

O. Appeals.

This Section is intended to comply with the provisions of MSA 462.357 and MSA 360.068 as amended, and shall be interpreted to comply with those provisions wherever possible.

1. General provisions for appeal to planning commission.
 - (a) Except as noted in subsection 2, any person aggrieved by, or any department of the city affected by, any decision of any city official engaged in the administration or enforcement of this Chapter may appeal that decision to the planning commission. The appeal must be

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filed within ten days after the decision by filing with the building official a written notice of appeal addressed to the commission and specifying the grounds of the appeal;

- (b) If the appeal relates to a decision regarding the zoning of an airport or the Airport Overlay district, any person aggrieved by the decision, any taxpayer affected by the decision and any governing body of a municipality, county or airport zoning board, that believes the decision is an improper application of this Chapter as it concerns that governing body or board may appeal that decision to the airport board of adjustment. The appeal must be filed within ten days after the decision by filing with the building official a written notice of appeal addressed to the board and specifying the grounds of the appeal. If the appellant is a person aggrieved or a taxpayer affected by the decision regarding the zoning of an airport or the Airport Overlay district, the applicant shall submit an appeal to the city clerk in the manner set forth in Minnesota Statutes 360.068, Subdivision 2. All appeals shall be pursuant to and consistent with the procedures in the Duluth International Airport Zoning Ordinance adopted by the city and four other jurisdictions, and in the event of an inconsistency between that Airport Zoning Ordinance and this Chapter, the provisions of the Airport Zoning Ordinance shall govern;
- (c) The building official shall promptly transmit to the commission, or to the airport board of adjustment, as applicable, the documents and records related to the decision being appealed;
- (d) A timely appeal shall stay all proceedings involved in the appeal; and no appeal shall be deemed to permit the appellant to do or to continue doing, directly or indirectly, any act or thing prohibited by the decision being appealed. However, if the building official notifies the planning commission in writing that a stay would cause imminent peril to life or property, and provides written reasons for that opinion, the planning commission may order that proceedings not be stayed pending appeal;
- (e) The commission shall fix a time for a hearing on the appeal, shall provide notice of the hearing pursuant to Section 50-37.1.H, and shall hold a public hearing pursuant to Section 50-37.1.I;
- (f) Any party may appear at the hearing in person, by agent or by attorney. Notice of the decision of the board shall be mailed to the appellant;
- (g) If the appeal alleges that the boundaries of a wetlands or shorelands area on the Natural Resources Overlay map in Section 50-18.1 are in error, the appellant shall bear the burden of proving the map erroneous by the production of clear and convincing technical evidence;

2. Exceptions.

- (a) An appeal from any decision regarding the interpretation or application of sign regulations in subsections 50-27.1.I, *No safety obstructions*, 50-27.1.L, *Attachment to buildings*, 50-27.1.M, *Wind pressure design*, 50-

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27.1.N, *Electrical wiring*, or 50-27.1, *Certification of structural engineer*, must be taken to the state building official as provided in the State Building Code;

- (b) An appeal from a decision regarding a building permit must be taken to the building appeals board created in Article IV of Section 10 of the City Code or to the state building official;
 - (c) An appeal from any decision under the housing code provisions in Section 50-32 of this Chapter must be taken to the building appeals board;
 - (d) If an applicant believes that the decision of staff regarding compliance with the requirements of the SP-O zone district is incorrect or deprives the applicant of the reasonable use of his or her property, or is unreasonable given the size and shape of the property and its orientation to the protected views, the applicant may request review of the decision by the planning commission. The planning commission's review shall be based on the purpose and standards of this Section, but may authorize variations to those standards, in accordance with the procedures in Article 5 of this Chapter, if unusual site conditions not generally shared along Skyline Parkway make compliance with the standards unreasonable or ineffective to protect the intended views of Lake Superior, the St Louis River and the harbor;
3. Powers of planning commission on appeal.
- (a) The planning commission shall consider the record of the application and any testimony presented at the hearing regarding the application of this Chapter to the application and shall affirm, modify or reverse the decision appealed, and may make any orders, requirements, decisions or determinations that the building official or land use supervisor could have made regarding the application;
 - (b) In hearing permitted appeals of decisions regarding the sign regulations in Section 50-27, the planning commission shall have only the power to affirm, reverse or modify the decision of the building official;
 - (c) In the case of an appeal regarding the application of the NR-O Natural Resources Overlay district, no relief shall be granted that violates the limitations on variances applicable to that district;
 - (d) The decision of the planning commission shall be final unless a further appeal is filed pursuant to subsection 4 below;
4. Appeals of planning commission decisions to council.
- (a) Except as provided in subsection 5 below, any person aggrieved by, or any department of the city affected by, any decision of the planning commission on an appeal pursuant to subsection 1 above may appeal that decision to the council;
 - (b) Any appeal must be filed within ten days after the planning commission's decision by filing with the city clerk a written notice of

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- appeal addressed to the council and specifying the grounds for the additional appeal;
- (c) The filing of a notice of appeal shall stay all proceedings in furtherance of the decision appealed from. However, if the building official notifies the council in writing that a stay would cause imminent peril to life or property, and provides written reasons for that opinion, the council may order that proceedings not be stayed pending appeal;
 - (d) The council shall hear the appeal at the next scheduled meeting with time available, and may affirm, modify or reverse the board's decision, and may make any orders, requirements, decisions, or determinations it deems appropriate regarding the appeal;
 - (e) No decision on an appeal or variance shall have the effect of allowing a use that is not a permitted or special use in the zone district where the property is located;
 - (f) If the appeal is regarding an application in any district where the approval of a district plan is required or requested prior to development, the council shall only approve development plans if it finds that the requirements for the district plan in that district will be satisfied;
5. Appeal of planning commission decisions to the courts.
- (a) In the case of an appeal regarding the zoning of an airport or an Airport Overlay district, the appeal shall proceed pursuant to applicable state law and shall be perfected within 60 days after the decision appealed from is filed in the office of the planning commission;
 - (b) In case of decisions appealable to the district court pursuant to MSA 462.361, the appeal shall be perfected in 60 days after the decision appealed from is filed in the office of the planning commission;
 - (c) All other appeals not otherwise provided for above shall be pursuant to MSA 606.01;

P. Security for improvements.

1. If the provisions of this Chapter or conditions attached to a permit or approval under this Chapter require the applicant to construct or make improvements to the property, to protect the city or adjacent property owners from injury or damage, or to return the property to a stated condition following the completion of operations or construction, and those actions have not been completed, then the city shall require the applicant to post security to ensure that those improvements are made in a timely manner, and that if the applicant fails to make those improvements the city will have adequate funds on hand to complete the improvements at the applicant's expense;
2. Security shall be posted in a form acceptable to the city, which may include but are not limited to cash, a promissory note, a letter of credit issued by a financial institution acceptable to the city, or a performance

bond issued by a financial institution acceptable to the city. The security shall be in an amount equal to 110% of the estimated cost for the city to complete the improvements;

3. The city shall release posted financial security upon confirmation by the building official that the required improvements have been constructed in accordance with all applicable design and construction standards. In the case of any improvements to be dedicated to the city, the city shall release posted financial security upon acceptance of the improvements by the city. At the discretion of the building official, partial releases of financial security may be made after construction or dedication of some but not all of the required improvements, but financial security equal to 110% of the estimated cost of for the city to complete the improvements shall be retained;
4. As an alternative to requiring the posting of financial security, the city may authorize the issuance of a temporary certificate of occupancy for the property, provided that the applicant signs a development agreement with the city agreeing to pay the city a specific financial penalty per month if the required improvements are not constructed by a certain date. The amount of the penalty shall be calculated so that if the applicant does not construct the improvements within one year after the required date the penalties will equal at least 110% of the estimated cost for the city to complete the improvements.

Comprehensive Plan Amendment

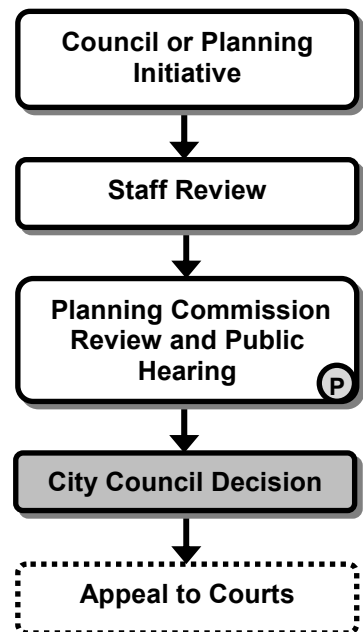
50-37.2 Comprehensive land use plan adoption or amendment.

A. Application.

Pursuant to state law, only the planning agency (planning commission or planning staff) or council may initiate amendments to the comprehensive land use plan;

B. Procedure.

The proposal shall be reviewed by the land use supervisor, who shall forward a recommendation to the planning commission. The planning commission shall then review the proposal and make a recommendation to council. Council shall then make a decision to adopt, modify or not adopt the plan or amendment pursuant to the criteria in subsection C below. Council action shall be by resolution, with the affirmative votes of at least two-thirds of those members constituting a quorum required to take action;



(P) Indicates Public Hearing Required

a quorum required to take

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C. Criteria.

The planning commission shall review the proposal, and council shall make a decision, based on whether the proposal promotes the best interests of the city and the general health, safety and welfare of the citizens of Duluth.

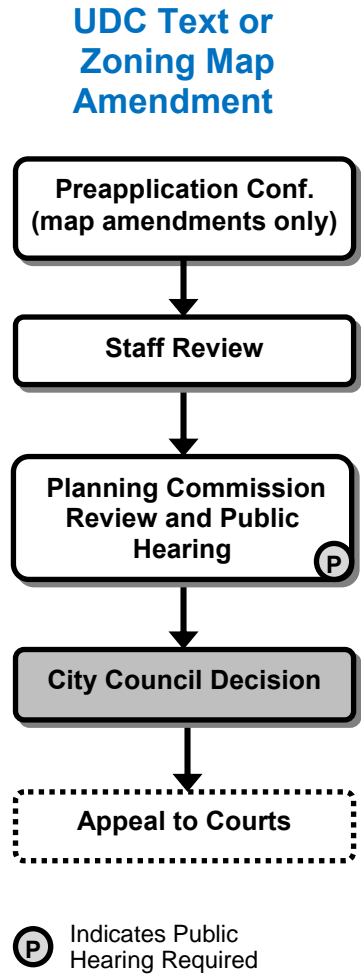
50-37.3 UDC text or zoning map amendment.

A. Application.

1. The planning commission may, upon its own motion, propose and hear amendments to the text of the UDC or the boundaries of the official zoning map. Any property owner may petition the planning commission to amend the district boundaries in which the property is located;
2. The application provisions of Section 37.1.B shall apply to the extent they are consistent with subsection 1 above.

B. Procedure.

1. Planning commission review.
The planning commission shall review the application, conduct a public hearing pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H, and make a written recommendation to council based on the criteria in subsection C below;
2. Council decision.
Upon receipt of the planning commission recommendation, the council shall make a decision to adopt, adopt with modifications, or deny the application based on the criteria in subsection C below. Council action shall be by ordinance;
3. When written consent or supermajority required.
The following provisions shall apply after the initial adoption of the zoning map reflecting the zone district consolidations reflected in this UDC.
(a) Where a proposed amendment to the zoning map would change any property from a residential district to a mixed use, form or special purpose district, a planning commission hearing and a notice of three



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weeks shall be required. In addition, the affirmative vote of 2/3 of the council shall be required if:

- (i) The city has not received the written consent of the owners of 2/3 of those properties located wholly or partially within 100 feet of the property proposed to be rezoned;
 - (ii) The planning commission has completed a study of an area containing at least 40 acres of land surrounding the applicant's property and the proposed rezoning is a result of that study, and a finding is made that it would be impractical to obtain the required written consent;
- (b) For purposes of this provision, the property proposed to be rezoned shall include all contiguous property owned by the applicant, including the parcel proposed for rezoning, as well as any contiguous properties purchased from the applicant within one year preceding map amendment application date;

C. Criteria.

The planning commission shall review the application, and council shall approve the application, or approve it with modifications, if it determines that the application:

1. Is consistent with the comprehensive land use plan;
2. Is reasonably related to the overall needs of the community, to existing land use, or to a plan for future land use;
3. Is required by public necessity, convenience, or general welfare, or good zoning practice;
4. Will not create material adverse impacts on nearby properties, or if material adverse impacts may be created they will be mitigated to the extent reasonably possible;

D. Interim ordinances.

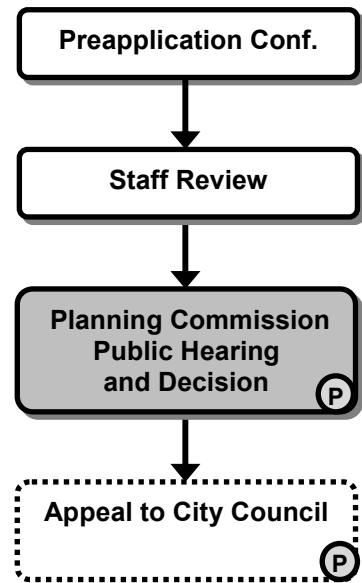
1. Council may adopt interim controls when changes to the text of this Chapter or the zoning map are under consideration. Upon introduction of an interim ordinance, council may provide by resolution that no use, development, project or subdivision for which an application has not been previously filed shall be established or expanded, and that no application for a UDC permit or approval, a license, or building permit that (a) concerns both the geographical area and subject matter of the interim ordinance and (b) is filed after the introduction of the interim ordinance, may be granted or further processed pending a final decision on the adoption of the interim ordinance;
2. Upon enactment of an interim ordinance, the following restrictions shall apply:
 - (a) No permits, licenses, or other approvals of any kind that concern both

- the geographical area and subject matter of the interim ordinance shall be processed or issued except in accordance with its terms;
- (b) No use, development, project, or subdivision that concerns both the geographical area and subject matter of the interim ordinance shall be established or expanded except in accordance with its terms;
3. If the interim ordinance is not adopted, the resolution establishing interim uses shall be null and void and requests for permits and other necessary approvals shall be processed promptly in accordance with the procedures governing the request.

50-37.4 District plan adoption or amendment.

Some of the zone districts described in Article 2 of this Chapter require that district plans be approved before UDC approvals and permits or building permits for new development may be issued, and that all development in the district must be consistent with the approved district plan. In addition, one district allows but does not require the approval of district plan before new development, but allows projects described in an approved district plan to be approved without the need for additional hearings once the plan is approved. Following the approval or amendment of a district plan, no UDC approval, permit or building permit shall be issued for a project, structure or land use that is inconsistent with the adopted or amended plan. Districts requiring or allowing district plan approval are listed in Table 50-37.4-1;

District Plan Adoption or Amendment



(P) Indicates Public Hearing Required

A. Application.

1. Any property owner within the boundaries of a zone district requiring or allowing the approval of a district plan may file an application for approval of a district plan.

Table 50-37.4-1: Zone Districts Requiring or Allowing District Plan Approval

Category	District
^P District Plan Required	R-P Planned Residential
^e District Plan Optional	MU-I Mixed Use Institutional

- property owner within the boundaries of an approved district plan may file an application for amendment of that district plan;
2. The application provisions of Section 37.1.B shall apply to the extent they are consistent with subsection 1 above;

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B. Procedure.

The planning commission shall review the application, conduct a public hearing pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H, and make a decision to adopt, adopt with modifications, or deny the application based on the criteria in subsection C below;

C. Criteria.

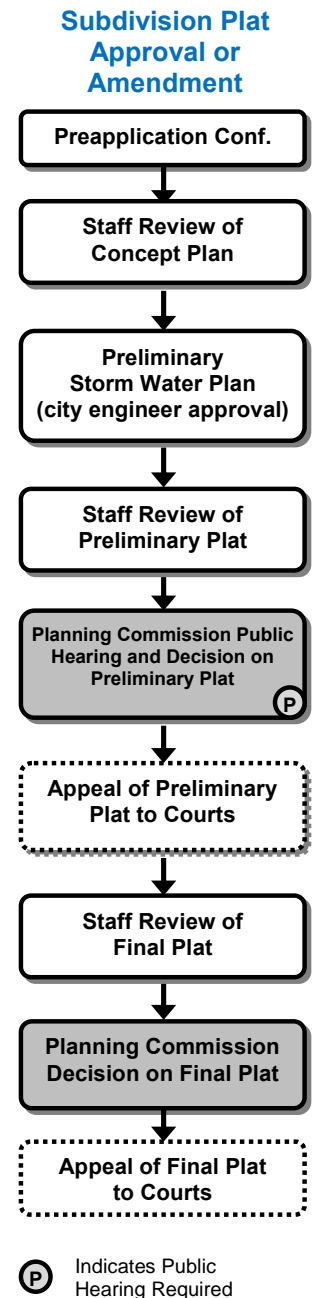
The planning commission shall approve the application, or approve it with modifications, if it determines that the application:

1. Is consistent with the comprehensive land use plan;
2. Is consistent with the purpose of the zone district and the plan approval requirements and criteria for the zone where the plan is proposed, as stated in Article 2 of this Chapter;
3. Will not create material adverse impacts on nearby properties, or if material adverse impacts may be created they will be mitigated to the extent reasonably possible.

50-37.5 Subdivision plat approval or amendment.

This Section applies to all applications to subdivide unplatted land, or to replat previously platted land, or to adjust the boundary lines between two or more platted lots. This Section is intended to comply with all applicable provisions of state law, including without limitation Laws of Minnesota 1933, Chapter 93 and Laws of Minnesota 1974, MSA Chapter 236 and any provisions of MSA 462.358 and Chapter 505, as amended, still applicable to the city, and shall be interpreted to comply with those provisions wherever possible. All applications shall follow the standard subdivision process in subsections B and C below except:

- (1) Applications to divide a parcel or tract of land that has not been previously subdivided into three or fewer lots for sale or development;
- (2) Applications for approval of a registered land survey pursuant to MSA Chapter 508 for a parcel or tract of land that has not been previously subdivided and that will contain three or fewer parcels for sale or development; or



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- (3) Applications to combine two or more previously platted lots into a smaller number of platted lots, each of which shall be processed pursuant to the quick plat process in subsection E below. No land that has been created by or included in a quick plat may be further divided through the quick plat process;

A. Application.

An application to adopt or amend a subdivision preliminary plat or a subdivision final plat shall be filed pursuant to Section 50-37.1.B;

B. Subdivision preliminary plat procedure.

1. Concept plan.

No application for a preliminary plat shall be accepted until the applicant has submitted a concept plan for the proposed subdivision. Concept plans shall reflect the general location of proposed lots, tracts, and streets, shall reflect all areas of the property where development is restricted pursuant to the NR-O overlay district in Section 50-18.1. The intent of the concept plan is to review general concepts for development of the site before applicants have incurred costs for engineering, soil, or storm water studies. The concept plans shall be reviewed in an informal discussion with planning staff;

2. Preliminary storm water plan.

A preliminary storm water plan shall be submitted and approved by the city engineer prior to submittal of the application for a preliminary plat;

3. Preliminary plat review and referral.

The applicant shall submit a preliminary plat and all required and proposed improvements to the city. The preliminary plat, together with the surveyor's mathematical calculations, shall be reviewed by the city engineer for accuracy of the surveys, the adequacy of the monuments, the proposed street improvements and other features of concern. The preliminary plat may be submitted to the county engineer if the plat involves features of concern to the county highway department, and to such other divisions of government or public utility corporations as the city deems necessary or desirable. The city engineer shall check the plat boundary survey with the county surveyor to determine the coinciding of the plat boundary lines with the boundary lines of adjoining plats, tracts or other subdivision lines or markers;

4. Preliminary plat decision.

The planning commission shall conduct a public hearing pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H, and shall make a decision to approve, adopt with modifications or deny the application based on the criteria in subsection 3 below;

5. Preliminary plat criteria.

The planning commission shall approve the application, or approve it with modifications if it determines that the application:

- (a) Is consistent with the comprehensive land use plan;
- (b) Is consistent with all requirements of MSA 462.358 and Chapter 505;
- (c) Is consistent with all applicable provisions of this Chapter;
- (d) Is consistent with any approved district plan covering all or part of the area of the preliminary plat;
- (e) Is located in an area where adequate police, fire and emergency facilities are available to serve the projected population of the subdivision within the city's established response times, or the applicant has committed to constructing or financing public facilities that will allow police, fire or emergency service providers to meet those response times;
- (f) Will not create material adverse impacts on nearby properties, or if material adverse impacts may be created they will be mitigated to the extent reasonably possible;

C. Subdivision final plat procedure.

1. Final plat review and decision.

After the approval of the preliminary plat, the applicant shall submit one or more final plats covering part or all of the land covered by the preliminary plat, together with evidence that the requirements of the approved plat have been met for the portion(s) of the land covered by the final plat. The planning commission shall approve, adopt with modifications or deny the final plat based on the criteria in subsection 2 below. The planning commission may refer the final plat to any city, county or other public or quasi-public agency deemed necessary to confirm whether the criteria in subsection 2 below have been met;

2. Final plat criteria.

The planning commission shall approve the application, or approve it with modifications, if the application meets the following criteria:

- (a) Is consistent with all provisions of MSA 462.358 and Chapter 505;
- (b) Is consistent with the terms and provisions of the preliminary plat approval for the property;
- (c) Demonstrates that all required improvements have been installed or that (a) the applicant has signed a development agreement committing to construct those improvements within one year after approval of the final plat and (b) adequate security for the construction of the required improvements has been posted with the city pursuant to Section 50-37.1.P;

3. Final plat recording.

After the final plat is approved, it must be recorded in the office of the county recorder as provided in MSA 505.04. A final plat that is not recorded within 90 days after approval will lapse and may not be recorded. After the final plat has been recorded, lots may be sold and building permits for structures on the platted lots may be issued; any sales of lots shown on the final plat before recording of the final plat shall be a violation of this Chapter;

D. Improvements.

The applicant shall be required to complete the following improvements related to a new subdivision, at the applicant's cost, unless (i) the planning commission waives or amends these requirements as part of a subdivision preliminary plat approval, or (ii) the subdivision is within an area covered by an approved district plan that does not require the improvements. All required improvements shall be designed and constructed to standards approved by the city. The city may, at its discretion, require that some or all of the requirements be dedicated to the city, and if those improvements are dedicated the applicant shall be relieved of responsibility to maintain the dedicated improvements:

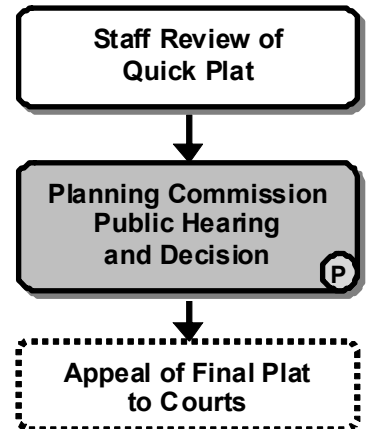
1. Streets allowing access to and among the platted lots and connecting each platted lot to the public street system. All streets shall be open to the public unless the planning commission waives this requirement;
2. Curbs, gutters, sidewalks and street lighting, except in the case of the R-C, RR-1 and RR-2 districts;
3. Water, gas, sanitary sewer and storm drainage improvements meeting all applicable requirements of the city or the applicable service provider;

E. Quick plat/registered land survey.

Applications to (1) divide a parcel or tract of land that has not been previously subdivided into three or fewer lots for sale or development, (2) approve a registered land survey (RLS) pursuant to MSA Chapter 508 for a parcel or tract of land that has not been previously subdivided and that will contain three or fewer parcels for sale or development, and (3) applications to combine two or more previously platted lots into a smaller number of platted lots shall be processed under this quick plat process.

1. No concept plan or preliminary plat shall be required. The applicant shall file a plat meeting all of the requirements for a final plat, or meeting all of the requirements for a RLS pursuant to MSA Chapter 508, as applicable;

Quick Plat Approval



(P) Indicates Public Hearing Required

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2. The planning commission shall approve, adopt with modifications or deny the application based on the criteria in subsection 3 below. The planning commission may refer the application to any city, county or other public or quasi-public agency deemed necessary to confirm whether the criteria in subsection 3 below have been met;
3. The planning commission shall approve the application, or approve it with modifications, if it determines that the application:
 - (a) Is consistent with all provisions of MSA 462.358 and 505 or 508, as applicable;
 - (b) Each resulting lot or parcel meets all of the dimensional requirements for the zone district in which the property is located;
 - (c) Each resulting lot or parcel has access to a public street;
4. After approval, the quick plat or RLS must be recorded in the office of the county recorder as provided in MSA 505.04. If not recorded within 90 days after approval, the approval will lapse and the quick plat or RLS may not be recorded. After recording, lots may be sold and building permits may be issued; any sales of lots before recording shall be a violation of this Chapter;

F. Boundary line adjustments.

1. An applicant may file an application to relocate the boundary line between up to three previously platted lots without the need to obtain subdivision approval if the proposed relocation will not result in the creation of an additional developable lot;
2. The land use supervisor shall approve the application, or approve it with modifications, if it is determined that the application:
 - (a) Will not result in the creation of any new developable lots;
 - (b) If each of the existing lots and the structures on those lots complies with the requirements of this Chapter, then after the adjustment each of the resulting lots will still comply with the requirements of this Chapter;
 - (c) If one or more of the existing lots, or a structure on one or more of those lots, does not comply with the requirements of this Chapter, the proposed relocation will not create any new nonconformity or increase any existing nonconformity between the requirements of this Chapter and any of the lots or any of the structures on the lots whose boundaries are to be adjusted;
3. After the application is approved, the applicant must prepare a survey reflecting the relocated boundaries, obtain the land use supervisor's signature on that survey, and record the survey in the county register of deeds. If the survey is not recorded within 90 days after the boundary line approval, that approval will lapse and the survey may not be recorded.

50-37.6 Vacation of street.

This Section applies to all applications to vacate a public street, highway or utility easement. This section is intended to comply with the provisions of City Charter Section 100.

A. Application.

1. An application for vacation of a public street, highway or utility easement must be accompanied by a petition of the person or persons who own a majority of the lineal frontage of the land abutting the portion of the street, highway or utility easement proposed to be vacated;
2. The application shall be filed with the city and forwarded to the planning commission for review;
3. Other application provisions of Section 37.1.B shall apply to the extent they are consistent with subsections 1 and 2 above;

B. Procedure.

1. Review and recommendation.

The city assessor shall review the application to determine the sufficiency of the signatures on the petition. The planning commission shall review the application, conduct a public hearing on the proposed vacation pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H and make a recommendation to council based on whether the petition meets the criteria in subsection C below;

2. Council decision.

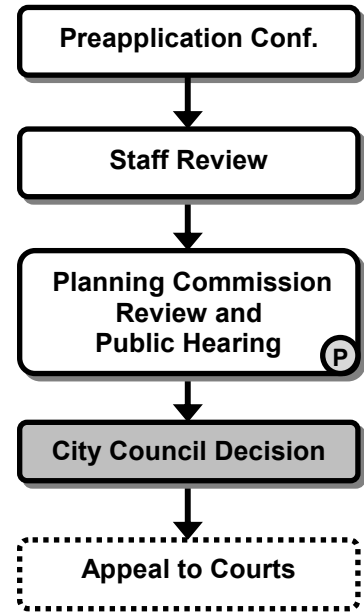
Upon receipt of the planning commission recommendation, the council shall make a final decision by resolution pursuant to Section 100(b)5 of the City Charter;

3. Recording.

After approval of a vacation, the applicant shall submit, at the applicant's expense, a plat showing the vacated street, highway or utility easement, and that plat shall be duly certified by the city clerk and recorded in the office of the county recorder. Failure of the applicant to submit the plat in a timely manner will result in lapsing and invalidation of the council's decision as described in Section 37.1.N;

C. Criteria.

Vacation of Street



(P) Indicates Public Hearing Required

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The planning commission shall review the proposed vacation, and council shall approve the proposed vacation, or approve it with modifications, if it determines that the street, highway or easement proposed for vacation:

1. Is not and will not be needed for the safe and efficient circulation of automobiles, trucks, bicycles or pedestrians or the efficient supply of utilities or public services in the city;
2. Where the street terminates at a waterfront or shoreline, the street is not and will not be needed to provide pedestrian or recreational access to the water;
3. Is not otherwise needed to promote the public health, safety or welfare of the citizens of Duluth.

50-37.7 Concurrent use of streets permit.

This Section applies to all applications for construction of a skywalk and to any other application requesting that the city approve the concurrent use of the street surface or the air rights above the street or the land beneath the street, but shall not apply to applications for concurrent use of a portion of a public sidewalk for a café, eating area or bicycle parking area.

A. Application.

An application for concurrent use of streets shall be filed pursuant to Section 50-37.1.B;

B. Procedure.

1. Review and recommendation.

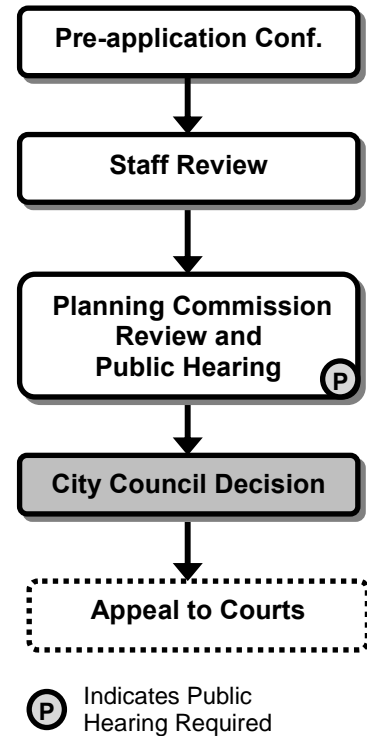
The planning commission shall review the petition, conduct a public hearing on the application pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H and make a recommendation to council based on whether the application meets the criteria in subsection C below;

2. Council decision.

Upon receipt of the planning commission recommendation, the council shall make a decision to approve, approve with modifications or deny the application, in whole or part, based on the criteria in subsection C below. The council action shall be by ordinance;

C. Criteria.

Concurrent Use of Street Permit



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The planning commission shall review the application, and council shall approve the application or approve it with modifications, if it determines that:

1. The proposed concurrent use is necessary to protect the health, safety and general welfare of the city;
2. Any proposed skywalk will significantly improve the circulation of pedestrians in the city without exposure to weather conditions;
3. No portion of a public easement proposed for use is being physically used or occupied by the public.

50-37.8 Historic resource designation.

A. Application.

An application for historic resource designation shall be filed pursuant to Section 50-37.1.B;

B. Procedure.

1. Review and recommendation by historic preservation commission.

The commission shall conduct an investigation and report on the historical, cultural and architectural significance of the buildings, structures, sites or objects proposed for designation. The report shall also attempt to determine the economic status of the property or properties by providing information such as assessed value, recent real estate transactions and other appropriate data. The report shall be given to the planning commission, and a copy of the report shall be sent to the state historic preservation officer for review and comment in accordance with MSA 471.193. Any comments made by the state historic preservation officer regarding a proposed designation must be received and forwarded to the council prior to final designation;

2. Review and recommendation by planning commission.

The planning commission shall review the application, conduct a public hearing pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H and make a recommendation to council. In its review and recommendation, the commission shall consider potential effects on the surrounding neighborhood, economics, environment and other planning considerations;

Historic Resource Designation



P Indicates Public Hearing Required

3. Designation by council.

Upon receipt of the planning commission recommendation, the council shall make a decision to approve, approve with modifications or deny the designation, in whole or part, based on the criteria in subsection C below. The council action shall be by ordinance;

4. Registration of historic sites.

The city clerk shall record or file with the county recorder the legal description of all properties affected by the council action. The city clerk shall also distribute an official list of all locally designated historic preservation landmarks and districts to the land use supervisor and the state historic preservation officer;

C. Criteria.

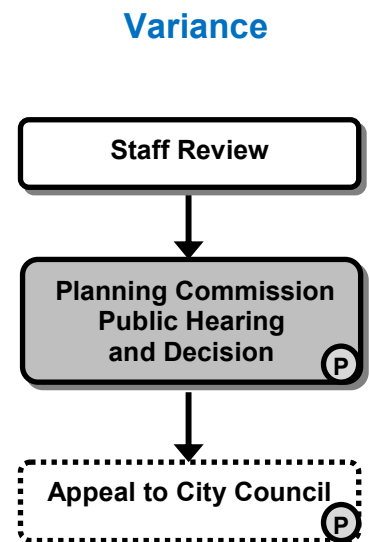
Historic preservation landmarks and districts shall only be designated when the property or properties are found to meet one of the following criteria:

1. It has character, interest or value as part of the development, heritage or cultural characteristics of the city, state, or the United States;
2. Its location was a site of a significant historical event;
3. It is identified with a person or persons who significantly contributed to the culture or development of the city, state, or the United States;
4. It embodies a distinguishing characteristic of an architectural type;
5. It is identified as the work of an architect or master builder whose individual work has influenced the development of the city or state;
6. It embodies elements of architectural design, detail, materials or craftsmanship that represents significant architectural innovation;
7. Its unique location or singular physical characteristics represents an established and familiar visual feature of a neighborhood, community or city.

50-37.9 Variance.

This Section applies to applications for a variance from the terms and provisions of this Chapter. Different types of variances are subject to differing criteria for approval, and in many cases are also subject to limitations on the types of variances that can be granted.

A. Application.



(P) Indicates Public Hearing Required

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An application for a variance shall be filed pursuant to Section 50-37.1.B;

B. Procedure.

The planning commission shall review the application, conduct a public hearing on the application pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H, and shall make a decision on the application based on the criteria in subsections C through M below, as applicable to the specific type of variance being requested. The planning commission may grant a different variance or different form of relief than that requested by the applicant if it determines that the alternative relief better meets the criteria in subsections C through M below. The commission may impose appropriate conditions and safeguards to protect adjacent properties and the public interest, including but not limited to financial security pursuant to Section 50-37.2.P or a development agreement regarding the design, construction and operation of the project, to protect the comprehensive land use plan, to conserve and protect property and property values in the neighborhood and to ensure that all conditions of the variance will continue to be met. Constructing any improvement or beginning any activity authorized by the variance shall constitute the applicant's agreement to conform to all terms and conditions of the permit;

C. General variance criteria.

Unless different or inconsistent criteria or limitations are stated in subsections D through M below for the specific type of variance being requested, the planning commission shall approve an application for a variance, or approve it with conditions, if it finds that the proposed variance meets the following criteria. If there is a direct conflict between a provision or criteria in subsections D through M below and the general criteria in this subsection C, the provisions in subsections D through M shall govern:

1. Because of the exceptional narrowness, shallowness or shape of the applicant's property, or because of exceptional topographic or other conditions related to the property, the strict application of the requirements of this Chapter would result in peculiar and exceptional practical difficulties or exceptional or undue hardship to the property owner;
2. The special circumstances or conditions that create the need for relief were not directly or indirectly created by the action or inaction of the property owner or applicant;
3. The special circumstances or conditions applying to the building or land in question are peculiar to such property or immediately adjoining property, and do not apply generally to other land or buildings in the vicinity;
4. The relief is necessary for the preservation and enjoyment of a substantial property right and not merely to serve as a convenience to the applicant;
5. The relief will not impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion in public streets or the

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danger of fire or imperil the public safety or unreasonably diminish or impair established property values within the surrounding areas or in any other respect impair the health, safety or public welfare of the inhabitants of the city;

6. The relief may be granted without substantially impairing the intent of this Chapter and the official zoning map;
7. The relief does not allow any type of sign that is not allowed in the zone district where the property is located, pursuant to Section 50-27;
8. The relief complies with any additional limitations or criteria applicable to that variance in subsections D through M below;

D. No use variances.

No variance may be permitted to allow any use that is not listed in Table 50-19.8 as a permitted or special use in the zone district where the property is located;

E. Variances to lot size in unsewered areas.

A variance from the minimum lot size in unsewered area shall not be granted without presentation of a permit or letter of intent to issue a permit for onsite sewerage treatment from the county.

F. Variances for two-family dwellings in the R-1 district.

The commission shall not grant any variance from the requirements for the allowance of two-family dwellings within the R-1 zone district except:

1. A variance from the required front yard setback;
2. A variance reducing the minimum dimensional requirements by up to ten percent;

G. Permitted parking variances.

1. Residential districts.

(a) A variance may be granted to allow parking on a portion of a lot in an R zone where parking is not permitted by Section 50-24.6.B in the following two cases:

- (i) On any non-corner lot in an R district where the permitted parking area as shown in Table 50-24-3 is of insufficient size or configuration to allow for compliance with the off street parking requirements of this Chapter, and the applicant demonstrates hardship;
- (ii) On any corner lot in an R district where the R district parking area is of insufficient size or configuration to allow for compliance with the off street parking requirements of this Chapter, without a

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showing of hardship;

- (b) The variance shall be subject to the following conditions, and any other conditions determined by the commission to be reasonable and necessary to protect the interests of the abutting property owners and the residential character of the surrounding neighborhood:
- (i) On a non-corner lot with frontage of less than 50 feet, only one parking area may be located outside the R district parking area;
 - (ii) On a corner lot with frontage of less than 50 feet, the variance may allow for compliance with the off street parking requirements of this Chapter;
 - (iii) On a corner or non-corner lot with frontage of 50 feet or greater, no variance may allow a parking area, including any driveway area leading to it, to exceed an additional 30% of the front yard;
 - (iv) The proposed parking area shall be entirely located on the applicant's lot and shall not encroach across any abutting lot line unless such abutting lot and the subject lot are under the same ownership and the abutting lot is not occupied by a dwelling unit;
 - (v) Where the proposed parking area will encroach into any unimproved area of a street, the variance shall expire upon improvement of the street;
 - (vi) Economic considerations, in whole or part, shall not constitute a hardship;

2. Mixed use, form and special purpose districts.

In mixed use, form and special purpose districts, variances from the minimum amount of off-street parking required may be approved if a smaller amount of off-site parking will be adequate to meet the needs of the facility because the facility is restricted to occupancy or use by populations with documented lower vehicle uses, such as the elderly or disabled;

H. Variances to reduce setbacks.

When the application is for the reduction of a required front, rear or side yard setback, the commission may require the submission of a landscaping and buffering plan, and may require that all required landscaping or buffering, or landscaping and buffering of equal effectiveness, be installed within the reduced setback area. Decorative fencing and decorative wall structures may be proposed where more intense vegetated landscaping will not provide adequate mitigation of impacts on adjacent properties. The commission shall only approve the variance if the landscaping and buffering will mitigate impacts on adjacent properties as effectively as those required by Sections 50-25 and 50-26 of this Chapter;

I. Variances in the MU-C district.

1. Within the MU-C district, the only variances that may be approved are

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variations in any dimensional standard in Sections 50-15.3 and 50-21 by no more than ten percent. However, if the need for a variance is the result of a government taking pursuant to eminent domain powers, then (a) the limits of this subsection I.1 shall not apply and (b) all or part of the required landscaping and buffering may be placed in the public right-of-way if the property owner executes a perpetual maintenance agreement with the owner of the right-of-way;

2. In the case of a setback reduction variance, the landscaping and buffering in any reduced setback area shall be at least four feet in height and screen out at least 50% of the view of any parking area, unless the setback is reduced to less than five feet, in which case it shall screen out at least 75% of the view of the parking area;

J. Variances in A-O airport overlay district.

Variances shall be pursuant to and consistent with the procedures in the Duluth International Airport Zoning Ordinance adopted by the city and four other jurisdictions, and in the event of an inconsistency between that Airport Zoning Ordinance and this Chapter, the provisions of the Airport Zoning Ordinance shall govern;

K. Variances from flood plain regulations.

Variances to the flood plain regulations in Section 50-18.1.C shall only be granted in compliance with the limitations in this subsection K.

1. In a floodway:
 - (a) No variance shall be granted that would result in any increase in flood levels during the base flood discharge;
 - (b) No variance shall authorize the placement of a manufactured home, dwelling unit or any structure designed for human habitation;
 - (c) No variance shall be granted authorizing a lesser degree of floodproofing or flood protection than is required by Section 50-18.1.C;
 - (d) Variances shall be limited to giving the applicant a minimal reasonable use of the site;
2. In a flood fringe:
 - (a) No variance shall authorize a lesser degree of floodproofing or flood protection than is required by Section 50-18.1.C;
 - (b) Variances shall not produce any adverse effects to the flood capacity or efficiency of the watercourse;
3. Flood insurance notice and recordkeeping.

The building official shall notify the applicant for a variance that:

- (a) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

to amounts as high as \$25 for \$100 of insurance coverage;

- (b) Construction below the 100 year or regional flood level increases risks to life and property. Such copy notification shall be maintained with a record of all variance actions. The building official shall maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its annual or biennial report submitted to the administrator of the national flood insurance program;

4. General considerations.

The city shall consider the following factors in granting variances and imposing conditions on permits and variances in flood plains:

- (a) The potential danger to life and property due to increased flood heights or velocities caused by encroachments;
- (b) The danger that materials may be swept onto other lands or downstream to the injury of others;
- (c) The proposed water supply and sanitation systems, if any, and the ability of these systems to minimize the potential for disease, contamination and unsanitary conditions;
- (d) The susceptibility of any proposed use and its contents to flood damage and the effect of such damage on the individual owner;
- (e) The importance of the services to be provided by the proposed use to the community;
- (f) The requirements of the facility for a waterfront location;
- (g) The availability of viable alternative locations for the proposed use that are not subject to flooding;
- (h) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;
- (i) The relationship of the proposed use to the comprehensive land use plan and flood plain management program for the area;
- (j) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (k) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site;

L. Standards for variances in shorelands.

No variance shall be granted that compromises the general purposes or intent of Section 50-18.1.D or results in adverse consequences to the environment. Variances shall include a requirement for the applicant to mitigate the impacts of the variance on shoreland areas;

M. Reconstruction of a non-conforming building.

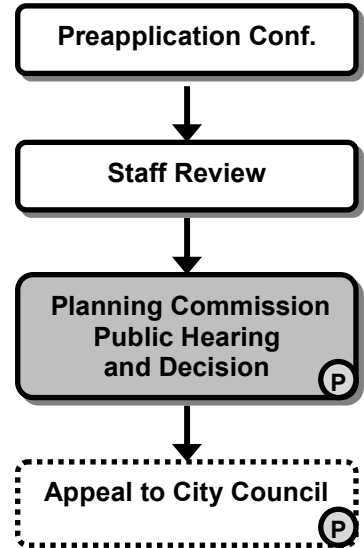
A variance may be granted to permit the reconstruction of a nonconforming building that has been damaged from any cause or has deteriorated to the extent of more

than 50% of its reproduction value, if the commission determines that it is necessary for the preservation and enjoyment of a substantial property right and is not detrimental to the public welfare of the city.

50-37.10 Special use or interim use permit.

This Section applies to all applications for those special uses listed for specific zone districts in Table 50-19.8. It also applies to applications for special uses that will be authorized for only a specified period of time, or that the council approves for only a specified period of time, which will be issued as an interim use permit rather than a special use permit. This Section is intended to comply with the provisions of MSA 462.3595 and 462.3597 as amended, and shall be interpreted to comply with those provisions wherever possible.

Special Use Permit



(P) Indicates Public Hearing Required

A. Applications.

An application for a special use or interim use shall be filed pursuant to Section 50.37.1.B;

B. Procedure.

1. The planning commission shall review the application, shall conduct a public hearing pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H. In the case of a special use permit, planning commission shall make, and in the case of an interim use permit, council shall make, a decision to adopt, adopt with modifications or deny the application based on the criteria in subsection C below. The commission or council may impose appropriate conditions and safeguards, including but not limited to financial security pursuant to Section 50-37.2.P, a development agreement regarding the design, construction, and operation of the special use, to protect the comprehensive land use plan, to conserve and protect property and property values in the neighborhood and to ensure that all conditions of the special use permit will continue to met;
2. If the permit is approved or approved with modifications, all future use of the land and structures erected on the land pursuant to the permit shall comply with its terms and conditions. The city may require that some or all of the documents presented by the applicant in support of the application, including without limitation any site plan, landscape plan, building elevation drawings, or development agreement, be recorded as a city public document prior to the issuance of any building permit. A decision not to require recording of some or all of those documents shall not relieve the applicant or any successors or assigns in title to the

property from the duty to comply with all terms and conditions of the permit. Constructing any improvement or beginning any activity authorized by the permit shall constitute the applicant's agreement to conform to all terms and conditions of the permit;

3. The city may approve an application or approve it with modifications, with a condition that if a structure authorized by the permit is not constructed by a specified date, or if an activity authorized by the permit is not begun by a specified date, the permit shall terminate. If that condition is attached, the city shall notify the applicant and the property owner when a permit has lapsed, and that decision may be appealed pursuant to Section 50-37.1.O;
4. The city may approve an application or approve it with modifications, with a condition that abandonment of an activity authorized by a permit longer than a stated period terminates the permit, and any future reactivation of the use will require the filing and approval of a new permit application;
5. The commission may not approve or approve with modifications, a special use permit valid only for a specific period of time, but must instead recommend to council an interim use permit pursuant to subsection D below for that purpose;
6. Any approved permit shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total, upon determination by the city;

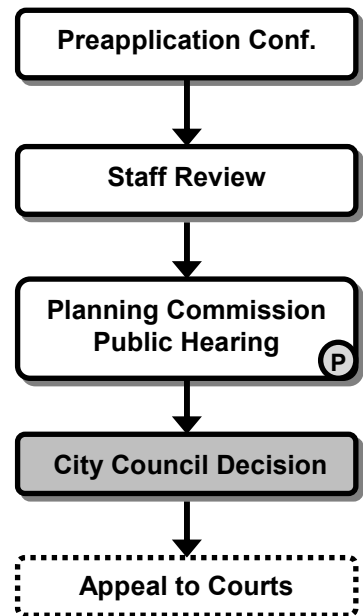
C. Criteria for special use permits.

The planning commission shall approve the application or approve it with modifications if the commission determines that the application meets the following criteria:

1. The application is consistent with the comprehensive land use plan;
2. The application complies with all applicable provisions of this Chapter, including without limitation any use-specific standards applicable to the proposed use, development or redevelopment, and is consistent with any approved district plan for the area;

Without limiting the previous criteria, the commission may deny any application that would result in a random pattern of development with little contiguity to existing or

Interim Use Permit



(P) Indicates Public Hearing Required

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programmed development or would cause anticipated negative fiscal or environmental impacts on the community;

D. Interim use permit.

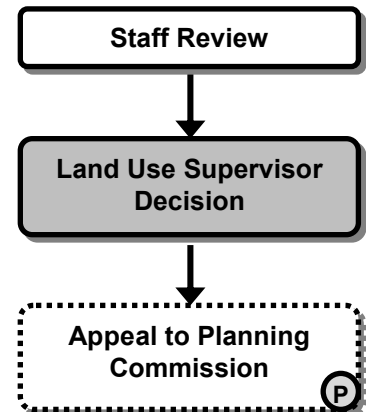
1. As an alternative to a special use permit, MSA 462.3597 authorizes the city to issue an interim use permit that authorizes a special use to exist until a specified date or until an amendment to this Chapter authorizes or prohibits that use. An applicant may apply for an interim use permit, and the commission may decide to recommend an interim use permit even if the application is for a special use permit;
2. An application for an interim use, or a decision to approve an interim use, shall be subject to the same procedures used for special uses, and the commission shall have all the powers described in Section 50-37.10.B.1 above, except that the commission shall forward a recommendation to council for action, and final approval of an interim use shall be by council resolution rather than commission action. The council may require financial security pursuant to Section 50-37.1.P to ensure that any improvements related to the interim use will be removed at the end of the interim use period;
3. An application to extend the period of an interim use permit shall be treated as major modifications of the initial permit and shall be processed pursuant to Section 50-37.1.N;

E. Criteria for interim use permits.

In addition to the criteria in subsection C above, the council shall only approve an interim use permit, or approve it with conditions, if it determines that:

1. A time limit is needed to protect the public health, safety and welfare from potential longer term impacts of the requested use in that location or to allow the city time to develop a regulation addressing the potential longer term impacts of the requested use in that location;
2. The applicant agrees to sign a development agreement with the city confirming that (a) approval of the permit will not result in increased costs to the city if the property is later acquired by the city through eminent domain; (b) the use will be terminated at the applicant's expense on the date(s) stated in the permit, (c) the termination of the interim use as stated in the permit will create no rights to a

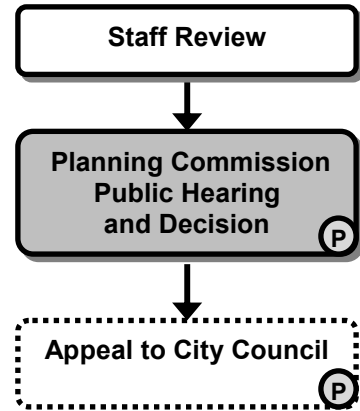
Planning Review General



P Indicates Public Hearing Required

nonconforming use and no rights to compensation for termination of the use or for the value of any structures or improvements related to the use, and (d) the applicant agrees to all conditions imposed by the city. No interim use permit shall be issued until a development agreement confirming these points is executed.

Planning Review in MU-N, MU-C, MU-I, or MU-W



(P) Indicates Public Hearing Required

50-37.11 Planning review.

This Section applies to all development and redevelopment activities except for the construction, reconstruction or modification of one- and two-family residential structures that are located (a) on lots platted and zoned for residential development, and (b) outside of the R-C district and SP-O district.

A. Applications.

An application for a planning review shall be filed pursuant to Section 50-37.1.B;

B. Procedure.

1. Building permit applications for certain types of development and redevelopment activities will trigger planning review for compliance with the standards of this Chapter. Except as stated in subsection 2 below, this planning review shall be conducted by the land use supervisor pursuant to the criteria in subsection C below;
2. For applications involving covered types of development and redevelopment activities in the MU-N, MU-C, MU-I, and MU-W zone districts, the planning commission shall review the application, conduct a public hearing pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H, and make a decision to adopt, adopt with modifications or deny the application based on the criteria in subsection C below;
3. The land use supervisor or the planning commission may refer the application to any city, county or other public or quasi-public agency deemed necessary to confirm whether the criteria in subsection C have been met;



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C. Criteria.

The land use supervisor or planning commission shall approve the planning review or approve it with modifications, if it is determined that the application complies with all applicable provisions of this Chapter.

50-37.12 Sidewalk use permit.

This Section applies to proposals to use a portion of a public sidewalk for a café, eating area, bicycle rack, temporary display or other purpose that does not involve the permanent vacation of any part of the street.

A. Application.

An application for a sidewalk use permit shall be filed pursuant to Section 50-37.1.B;

B. Procedure.

The land use supervisor shall refer the application to the city engineer for a recommendation as to whether the proposed design and location of the sidewalk use will provide for and not hinder the safety of pedestrians, bicyclists and motor vehicle drivers near the proposed use or structure. The land use supervisor shall then review and make a decision on an application for a sidewalk use permit based on the criteria in subsection C below. The land use supervisor may refer the application to any city, county or other public or quasi-public agency deemed necessary to confirm whether the criteria in subsection C have been met;

C. Criteria.

The land use supervisor shall approve the application, or approve it with modifications, if the supervisor determines that the following criteria have been met:

1. The city engineer has confirmed that the proposed use or structure will not hinder the safety of pedestrians, bicyclists and motor vehicle drivers near the proposed use or structure;
2. The proposed use or structure will not encroach into drive aisles, loading zones, fire lanes or parking lots;
3. The proposed use or structure will not encroach into any area located directly between any operating building entrance and the street curb (other than a building entrance intended only to serve patrons of an outside eating area);
4. The proposed use or structure will be set back at least 5 feet from the curb and at least five feet from all street trees and street furniture in order to allow for the free passage of pedestrians;
5. The applicant has signed an agreement with the city (a) to keep the

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sidewalk and street within 20 feet of the proposed use or structure free from any litter generated by the use or activity, (b) accepting all liability resulting from the proposed use or structure and holding the city harmless for any and all such liability, (c) providing liability insurance meeting city standards, and (d) determining the period of use.

50-37.13 Zoning permit.

This Section applies to a variety of permits covering development, redevelopment, and natural resources protection where the land use is a permitted use and the city must confirm whether the application complies with all other applicable provisions of this Chapter. The specific permits included in this Section are summarized in Table 50-37.2-2 below.

Table 50-37.2-2: Types of Zoning Permits	
Type of Permit	Primary Compliance Requirement ^[1]
Temporary Use Permit	Permitted Use Table 50-19.8 Use-specific Standards (Section 50-20.6)
Shoreland Permit	Shorelands (Section 50-18.1.D)
Erosion and Sediment Control Permit	Temporary Soil and Erosion Control (Section 50-18.1.E)
Sign Permit	Signs (Section 50-27)
Fence Permit	Fences and Walls (Section 50-26.4)
Airport Environs Permit	A-O Airport Environs Overlay district (Section 50-18.2)

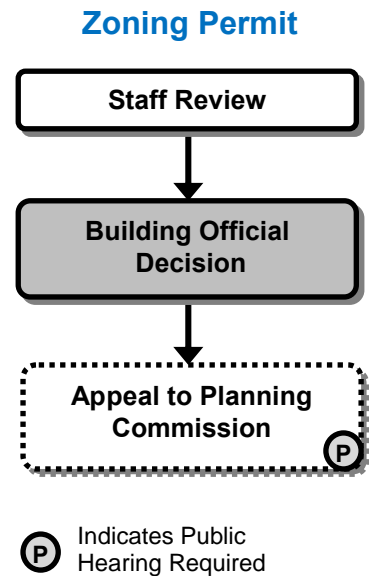
[1] All applications must comply with all applicable requirements of the UDC

A. Application.

An application for a zoning permit shall be filed pursuant to Section 50-37.1.B;

B. Procedure.

1. The building official shall review and make a decision on an application for a zoning permit based on the criteria in subsection C below. The building official may refer the application to any city, county or other public or quasi-public agency deemed necessary to confirm whether the criteria in subsection C have been met;
2. All buildings, structures and improvements must be constructed and maintained, and all land uses must operated, in accordance with the terms and conditions of this Chapter and any zoning permit issued pursuant to



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this Section 50-37.13;

C. General criteria.

The building official shall approve the application, or approve it with modifications, if the building official determines that the application complies with all applicable provisions of this Chapter;

D. Additional provisions for specific areas and types of permits.

1. Shoreland permit.

No zoning permit for land containing any shoreland shown on the Natural Resources Overlay map in Section 50-18.1 may be issued until the building official has confirmed that the application complies with all applicable requirements of Section 50-18.1.D;

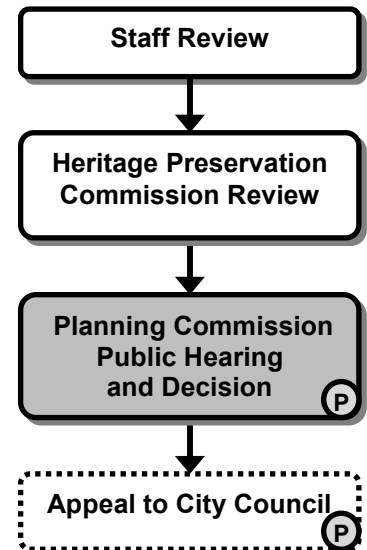
2. Erosion and sediment control permit (ESCP).

No land disturbance activity that requires an erosion and sediment control permit (ESCP) as indicated in Table 50-18.1.E-1 may be begin until a permit has been obtained. The building official shall refer the application to the city engineer, who shall review the plan to ensure that it complies with the requirements of section 50-18.1.E. The city engineer may require additional information and may require that any information submitted be verified by a licensed engineer, licensed surveyor or other technical professional. If the application is denied, the applicant shall be given a summary of the plan’s deficiencies. The ESCP permit shall be considered expired only after all construction activities are completed and the entire site is fully stabilized with 70% successful establishment of vegetation;

3. Airport environs permit.

No airport environs permit shall be issued unless all of the requirements of Section 50-18.2 have been met. A permit for a tree or structure of less than 75 feet of vertical height above the ground shall not be required in the horizontal and conical zones or in any approach and transitional zones beyond a horizontal distance of 4,200 feet from each end of the runway except when such tree or structure, because of terrain, land contour or topographic features, would violate the provisions of Section 50-18.2.

**Historic Construction/
Demolition Permit**



(P) Indicates Public Hearing Required

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

50-37.14 Historic construction/demolition permit.

This Section applies to applications for construction or demolition within a historic district or on a historic property listed in Section 50-18.3 where the city must confirm whether the application complies with the standards in Section 50-18.3 and with all other applicable provisions of this Chapter and state law.

A. Application.

An application for a historic construction/ demolition permit shall be filed pursuant to Section 50-37.1.B;

B. Procedure .

The application shall be reviewed by the historic preservation commission, who shall forward its recommendation to the planning commission. The planning commission shall review the application, conduct a public hearing pursuant to Section 50-37.1.I, with public notice as required by Section 50-37.1.H and make a decision to adopt, adopt with modifications, or deny the application based on the criteria in subsection C below;

C. Criteria.

The planning commission shall approve the application, or approve it with modifications, if the commission determines that the application complies with all applicable provisions of this Chapter and state law and that the work to be performed shall not adversely affect the historic preservation landmark or district based on adopted historic preservation guidelines.

50-37.15 Building permit.

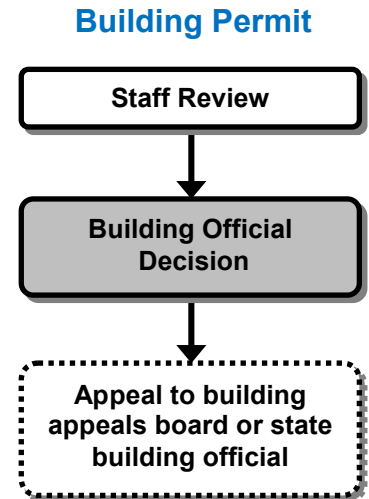
This Section applies to all applications for a building permit.

A. Application.

An application for a building permit shall be filed pursuant to Section 50-37.1.B;

B. Procedure.

1. The building official shall review and make a decision on an application for a building permit based on the criteria in subsection C below. The building official may refer the application to any city, county or other public or quasi-public agency deemed necessary to confirm whether the criteria in subsection C have been met;



(P) Indicates Public Hearing Required

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2. All buildings, structures and improvements must be constructed and maintained, and all land uses must be operated, in accordance with the terms and conditions of this Chapter and the building permit;

C. Criteria.

The building official shall approve the application, or approve it with modifications, if the building official determines that the application complies with all applicable provisions of this Chapter and all applicable provisions of any building code adopted by the city.

50-37.16 Certificate of occupancy.

Certificates of occupancy shall be required for any of the following, and no occupancy, use or change of use in this list shall occur until a certificate of occupancy has been issued by the building official.

- Occupancy and use of a building that has been erected or structurally altered;
- Change in use of an existing building to a use of a different classification as shown in Table 50-19.8;
- Occupancy and use of vacant land;
- Change in the use of land to a use of a different classification as shown in Table 50-19.8;
- Any change in the use of a nonconforming use.

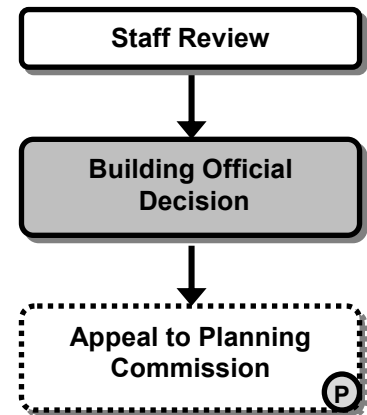
A. Application.

An application for a certificate of occupancy shall be filed pursuant to Section 50-37.1.B;

B. Procedure.

1. The building official shall review and make a decision on an application for a certificate of occupancy based on the criteria in subsection C below;
2. Each certificate of occupancy shall state that the building or the proposed use of a building or land complies with all provisions of law. A record of all certificates of occupancy shall be kept by the building official;
3. Upon application, a certificate of occupancy shall be issued for all lawful nonconforming uses of land or buildings;

Certificate of Occupancy



(P) Indicates Public Hearing Required

4. Any certificate issued upon a false statement of any fact that is material to the issuance of the permit shall be void. Whenever the building official determines that a material false statement has been made, the official shall revoke the certificate of occupancy and promptly notify the property owner in writing of that revocation. Any person who proceeds to occupy the building or engage in the use covered by a certificate of occupancy after its revocation without having first obtained a new certificate commits a violation of this Chapter;
5. The building official may revoke a certificate of occupancy if the city has determined that the property owner or an occupant of the property has failed to obtain any other required permit or approval under this Chapter or has otherwise violated this Chapter and the property owner has not responded to city requests to remedy the violation within a reasonable time;

C. Criteria.

The building official shall issue a certificate of occupancy or approve it with conditions if the building official determines that the construction of the building or structure complies with the terms of all applicable building permits and the use, development, and operation of the property comply with all applicable provisions of this Chapter.

50-38 Nonconformities.

This Section clarifies how this Chapter applies to those buildings, structures and land uses that do not comply with this Chapter, including without limitation (a) those that do not comply with the Chapter on the date it is adopted, and (b) those that comply with the Chapter on the date it is adopted but become nonconforming due to the adoption of an amendment to this Chapter. This Section is intended to comply with the provisions of MSA 462.357, subd. 1.e as amended, and shall be interpreted to comply with those provisions wherever possible.

50-38.1 Types of nonconformities.

The city recognizes five different types of nonconformities, each of which is addressed in the subsections below.

- A. Nonconforming buildings;
- B. Nonconforming uses;
- C. Nonconforming lots;
- D. Nonconforming on-premises signs;
- E. Nonconforming off-premises signs.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

50-38.2 General provisions.

A. Airport hazards.

1. The owner of any nonconforming structure or tree within the Airport Overlay is required to allow the installation, operation and maintenance on the structure or tree those markers and lights deemed necessary by the building official to indicate to aircraft the presence of the airport hazards. Any required markers and lights shall be installed, operated and maintained at the expense of the owner;
2. The regulations in Section 50-18.2 A-O Airport Overlay shall not:
 - (a) Require the removal, lowering or other alteration of any structure or tree not conforming to the regulations regarding Duluth International Airport on June 18, 1988, or not conforming to the regulations regarding Sky Harbor Municipal Airport on September 26, 1994;
 - (b) Interfere with the continuance of any nonconforming use as permitted by this Section 50-38;
 - (c) Require any change in the construction, alteration or intended use of any structure, the construction or alteration of which was begun before September 26, 1994 and completed on or before September 25, 1996;

B. Flood hazard areas.

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

1. No structural alteration or addition to any nonconforming structure in a flood fringe over the life of the structure shall exceed 50% of its market value at the time of loss or start of alteration to the structure, unless the entire structure is permanently changed to a conforming structure or unless the alteration or addition would reduce potential flood damages for the entire structure;
2. Any alteration or addition to a nonconforming structure or use that would result in increasing the flood damage potential of that structure or use shall be floodproofed in accordance with the State Building Code. Alterations or additions that equal or exceed 50% of the market value of the structure shall meet the specific flood protection standards in Section 50-18.1.B. No alteration or addition that would obstruct flood flow or raise regional flood elevation shall be permitted;
3. If any nonconforming use is destroyed by any means, including floods, to an extent of 50% or more of its market value, it shall not be reconstructed except in conformity with the provisions of Section 50-18.1.B;

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4. If any nonconforming structure is destroyed or damaged in any part, the structure may be repaired or replaced so long as it is not expanded or enlarged from the size of the structure prior to its destruction and so long as any such activity that occurs within a flood plain will provide for adequate protection of the portion of the structure being repaired or replaced to flood protection elevations where applicable and will not result in any increase in flood levels during the occurrence of the base flood discharge;
5. Any existing well or private sanitary sewer septic system may be repaired and maintained in accordance with standards prescribed by the appropriate state or county agencies;
6. The provisions of this Section 50-38 do not permit any use, repair, replacement, maintenance, improvement or expansion of any nonconformity that would make the city ineligible to participate in the national flood insurance program or would increase flood damage potential or increase the degree of obstruction to flood flows in the floodway.

50-38.3 Nonconforming buildings.

- A. A nonconforming building may continue to be used, and may be expanded provided that the expansion does not increase or extend any nonconformity horizontally or vertically. All additions must comply with the dimensional requirements in Article 2 and Section 50-21 or 50-22, as applicable, and the parking requirements of Section 50-24 must be satisfied for the expansion area;
- B. A nonconforming building that has been damaged from any cause or has deteriorated to the extent of more than 50% of its reconstruction value at the time of the damage shall not be restored, except in conformity with this Chapter, unless the owner obtains a variance pursuant to Section 50-37.9. When damaged by less than 50% of its reconstruction value, a nonconforming building may be repaired or reconstructed, provided that a building permit is applied for within 180 days and such repairs or reconstruction are completed within one year of the date of the damage.

50-38.4 Nonconforming uses of buildings and land.

- A. Any building existing on July 14, 1958, or existing on the date of the adoption of a city ordinance making it nonconforming, may continue to be used for the purposes it was used when it became nonconforming, even though that use does not conform to this Chapter, but may not be expanded or changed in a way that would increase any nonconformity;
- B. The nonconforming use of a building may be extended throughout those parts of the building that were clearly arranged or designed for such use on the date the building became nonconforming;
- C. A nonconforming use of a building or portion of a building that is discontinued

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for a continuous period of one year shall not again be used except for a permitted or special use in the district where the building is located, as shown in Table 50-19.8;

- D. A building containing a nonconforming use shall not be enlarged, extended, reconstructed or structurally altered, unless the use is changed to a permitted or special use in the district where the building is located, as shown in Table 50-19.8;
- E. A nonconforming use of land existing on July 14, 1958, may be continued but may not be expanded or extended, either on the same or adjoining property. If the nonconforming use of land or any portion of the use is discontinued for a continuous period of one year or changed, any future use of the land shall comply with this Chapter;
- F. If no structural alterations are made to a nonconforming building, a nonconforming use of a building or land may be changed to another nonconforming use with fewer adverse impacts on surrounding properties, as determined by the land use supervisor;
- G. Whenever a nonconforming use of a building or land has been changed to a use with fewer adverse impacts, as determined by the land use supervisor, the use shall not later be changed to a nonconforming use with greater adverse impacts on surrounding properties, as determined by the land use supervisor;
- H. Within the Airport Overlay, whenever the building official determines that a nonconforming structure or tree has been abandoned or more than 80% torn down, deteriorated or decayed, no permit shall be granted that would allow such structure or tree to exceed the applicable height limit in Section 50-18.2. Whether or not an application for a permit is filed, the building official may order the owner of the abandoned or partially destroyed nonconforming structure, at his own expense, to lower, remove, reconstruct or to equip the same in the manner necessary to conform to the provisions of Section 50-18.2;
- I. Whenever a nonconforming use of a building or land has been changed to a conforming use, all nonconforming uses expire, and the property may only be used for a permitted or special use in the district where the building is located, as shown in Table 50-19.8;
- J. A nonconforming use of a building or land existing on the date this Chapter is adopted shall remain a nonconformity unless it complies with all applicable provisions of this Chapter;
- K. The adoption of this Chapter shall not validate any temporary use beyond the expiration date of any temporary permit issued under prior approvals.

50-38.5 Nonconforming lots.

- A. A lot that that existed on July 14, 1958, and was held in separate ownership on that date and does not meet the minimum size or dimensional requirements

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for the zone district in which it is located may nevertheless be used for the construction of a primary structure permitted in that zone district, provided that the structure complies with all applicable dimensional standards in Article 2 and Section 50-21 or the applicant obtains a variance from those dimensional standards pursuant to Section 50-37.9;

- B. Nonconforming lots that are not provided with public sewer shall comply with county individual sewage treatment systems ordinance and standards. However a lot or parcel of record that was lawful as to lot area requirements and under separate ownership from any adjoining lot or parcel on May 23, 1993, shall not be deemed nonconforming as to lot area requirements unless subdivided after that date.

50-38.6 Nonconforming on-premises signs.

- A. Any sign lawfully placed prior to January 22, 1984, or prior to an amendment to the city's ordinances making the sign nonconforming, may be continued even though the sign does not conform to the provisions of this Chapter, with the exception of those signs listed in subsection B below. Subsection B shall not apply to any sign subject to the property acquisition provisions of MSA 173.17. Nonconforming signs may not be enlarged, extended, reconstructed or structurally altered. Normal maintenance, including repair and replacement of the sign face and support members so long as the location and configuration remain the same, and the changing, replacing or altering of the changeable copy of a nonconforming off-premises sign, shall not be considered as an enlargement, extension, reconstruction or structural alteration of the sign;
- B. Any lawfully erected on-premises sign not permitted by this Chapter, and located within a residential district or a scenic sign area defined in Section 50-27.8, shall be removed within five years after the date the sign becomes nonconforming.

50-38.7 Nonconforming off-premises signs.

In order to bring nonconforming off-premises signs into closer conformance with the purposes of Chapter, the following system is established to enable the reconstruction, structural alteration or relocation of certain nonconforming off-premises signs. Once rebuilt, the sign shall retain its status as a nonconforming off-premises sign.

A. Reconstruction of existing signs.

1. A sign permit for reconstruction on the same site of a nonconforming off-premises sign that either exists or has been destroyed no more than six months prior to written sign permit application, may be issued after the building official certifies that the sign to be reconstructed has less of an adverse impact on the area near the site than the sign being replaced. A reconstructed sign may be enlarged, up to the maximum size of an off-

premises sign permitted within the applicable zone district, by use of an exception credit pursuant to subsection 2. For purposes of this subsection the "same site" shall mean contiguous property owned by one person or entity, or a related person or entity, and not divided by an improved street;

2. No permit shall be issued until the sign to be reconstructed is removed;
3. All signs shall be constructed and placed in strict conformance with the permit and the failure to do so shall constitute a violation of this Chapter, and if not corrected shall be grounds for revocation of the permit and an order for removal of the sign;

B. Exception credit system.

1. The owner of a nonconforming off-premises sign may receive an exception credit if it is determined by the building official that a nonconforming off-premises sign is to be removed, or has been removed, due to a termination of lease for reasons beyond the reasonable control of the applicant, or other forced removal (not including destruction or other situations rendering the sign unusable). Such reasons include but are not limited to the refusal of a lessor to renew a lease or the applicant's inability to obtain a lease renewal on reasonable terms and conditions (including lease rent at a fair market rate). An exception credit may be issued for each such sign that has been removed no more than 30 days prior to written application for the exception credit;
2. The building official shall determine if the applicant is eligible to receive an exception credit and shall certify and keep a log of all such credits documenting the owner of the credit, cumulative square footage of sign area credited and number of locations available for sign structures. After approving the use of an exception credit, the building official shall notify the owner, in writing, of the owner's remaining credited total of available square footage of sign area and remaining credited number of locations available for sign structures;

C. Use of exception credits.

1. Exception credits may be used to permit the relocation of certain nonconforming off-premises signs that do not meet site, location or other requirements of this Chapter;
2. An application for an exception credit shall include a statement identifying the exception credit(s) to be used for the permit for the new location. No holder of a credit shall be granted a permit under this subsection 50-38.7 for more locations than it lost or for more square footage of sign area than it lost. No sign permit shall be issued until the sign(s) that is the basis for the credit is first removed;
3. All signs shall be constructed and placed in strict conformance with the sign permit and the failure to do so shall constitute a violation of this Section, and if not corrected, shall be grounds for revocation of the sign

permit and an order for removal of the sign. No sign permit issued under this Section shall be valid until the applicant has complied with all applicable requirements of the NR-O, Natural Resources Overlay district, and MSA Chapter 173;

D. Sign relocation permits.

Sign permits for relocation of nonconforming off-premises signs shall be approved only after the applicant demonstrates that the following requirements will be satisfied:

1. Location.

The property on which the sign is to be relocated must be within the MU-C district;

2. Compliance.

The application complies with all applicable requirements of Section 50-27 except for proximity to residential zone districts and except for sign spacing, which shall be subject to subsections 5 and 6 below;

3. Criteria.

The application is consistent with the intent stated in Section 50-27.1.A and will not cause material adverse impact on a significant scenic natural or manmade feature located near the site of the proposed sign through loss of view from or of such feature or through an architecturally inappropriate scale of the size of the sign in relationship to a nearby building or structure;

4. Height.

The maximum height of the relocated sign does not exceed 25 feet, except that the sign may have a height of up to 35 feet if it is found to be necessary for effective use of such sign and that such additional height will not have a material adverse impact on buildings or structures located near the sign or on views of significant natural or manmade features. For purposes of this subsection, the height of a sign shall be measured from the grade at the base of the sign or the surface of the roadway from which it is intended to be read, whichever is higher. A determination of whether a sign is intended to be read from a roadway shall be based upon the angle of the sign to the roadway, the duration of the view from the roadway, the size of the sign and any obstructions to the view from the roadway;

5. Signs near residential districts.

If the sign is located closer to a residential district than is permitted by Section 50-27, it is not located (a) within 50 feet of a residential district; or (b) within 75 feet, measured along a street or highway from which the sign is to be read, of any point on a street or highway where residential district

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meets with the MU-C district;

6. Spacing.

(a) The spacing restrictions for controlled highway sign districts in Section 50-27.7 shall not apply to signs permitted under this Section 50-38, but the following spacing restriction shall apply to such signs, and such signs must be located so that they do not interfere with the effectiveness of traffic signs or signals or interfere with a driver's view of approaching, merging or intersecting traffic. The highways subject to the spacing restrictions are as follows:

- (i) Interstate Highway No. 35;
- (ii) Interstate Highway No. 535;
- (iii) Minnesota Highway No. 194 between the city limits and 11th Street;
- (iv) U.S. Highway No. 53 between Central Entrance Road and West First Street;

(b) No relocated off-premises sign located on a segment of the highways described above shall be placed within 500 feet of another off-premises sign that is displayed principally towards the same highway. The 500 feet spacing shall be measured along the nearest edge of the highway pavement to which the nonconforming off-premises sign is displayed and between points directly opposite the center of the off-premises signs. These spacing limitations shall apply only to off-premises signs located on the same side of the same highway. For purposes of this subsection, multiple-faced signs, back-to-back signs, and signs that are closer than two feet from another sign shall be considered as one sign. The determination of whether an off-premises sign is intended to be read from a highway shall be determined under the same standard used in subsection D.4 above;

7. Setback from railroad tracks.

Setback restrictions from railroad tracks shall be relaxed if the building official determines that it would not create a risk to public safety;

8. MU-C districts.

In addition to those off-premises signs permitted in the MU-C district pursuant to Section 50-27, nonconforming off-premises signs may be relocated to or within MU-C districts as wall signs;

9. Scenic areas.

Scenic areas for purposes of sign control are shown on the scenic areas map in Section 50-27.8. Nonconforming off-premises signs may be relocated within the scenic areas listed below, but only if views of scenic, historic, park or educational features are not obstructed or materially distracted from.

(a) That part of the St. Louis Bay waterfront area, bounded by Interstate

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Highway No. 535, a line parallel to and 300 feet west of Garfield Avenue, a line parallel to and 100 feet south of Nelson Avenue and Interstate Highway No. 35 (the I-535 scenic area); provided that only exception credit(s) for nonconforming signs that were located in the I-535 scenic area may be used to relocate a nonconforming off-premises sign within such area;

- (b) The Evergreen Memorial Drive area;
- (c) The London Road area, provided that only exception credit(s) for nonconforming signs that were located in the London Road scenic area may be used to relocate a nonconforming off-premises sign within the that area;
- (d) The Downtown Renaissance District;
- (e) The areas near parks, school grounds, public ways and historic sites.

50-39 Enforcement and penalties.

This Section describes how this Chapter will be enforced, as well as the penalties for violation of the Chapter. This Section is intended to comply with the provisions of MSA 462.362 as amended, and shall be interpreted to comply with those provisions wherever possible. All violations of this Chapter are hereby declared to be public nuisances.

50-39.1 Violations.

A. Violations defined.

It shall be a violation of this Chapter, and a public nuisance, to do any of the following:

1. Activities inconsistent with UDC.

To erect, construct, reconstruct, remodel, alter, maintain, expand, move or use any building, structure or sign, or to engage in development or subdivision of any land inconsistent with this Chapter, or to fail to obtain required approvals for any of those activities;

2. Use of nonconformities inconsistent with UDC.

To use, occupy, create, expand, replace, or change a nonconforming use, structure, lot or sign except in compliance with this Chapter;

3. Making lots or setbacks nonconforming.

To reduce or diminish the lot area, setbacks, or open space on any parcel of land below the minimum required by this Chapter;

4. Increasing intensity of use.

To increase the intensity of use of any land or structure, except in accordance with the procedural and substantive standards of this Chapter;

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5. Activities inconsistent with approval or permit.

To engage in any development, redevelopment, use, construction, remodeling or other activity inconsistent with the terms and conditions of any permit or approval issued by the city;

6. Violation of stormwater permits.

In the case of violation of a stormwater permit, the permittee shall take the following actions prior to imposition of a penalty, if any, by the city:

- (a) Submit reports of noncompliance with requirements contained in a compliance schedule of the permit in writing within 14 days after the compliance schedule deadline. Reports of noncompliance shall include a description of the noncompliance, its cause, the steps taken or planned to reduce, eliminate and prevent reoccurrence of the noncompliance and the effect of the noncompliance on the permittee's ability to meet remaining deadlines;
- (b) Take all reasonable steps to minimize or prevent any adverse impacts on the waters of the state resulting from noncompliance with a stormwater permit;

7. Violations related to wireless telecommunications facilities.

Under the following circumstances, the city may declare the wireless telecommunications facility a public nuisance and take all available enforcement actions including, but not limited to, revocation of the special use permit:

- (a) The wireless telecommunications facility has been abandoned. A facility is deemed abandoned if it is not used as wireless telecommunications facility for a period exceeding 90 consecutive days or a total of 180 days in any 365 day period, except for periods caused by force majeure or Acts of God, in which case repair or removal shall commence within 90 days;
- (b) The wireless telecommunications facility fall into a state of disrepair and creates a health or safety hazard;
- (c) The wireless telecommunications facility has been located, constructed, repaired, maintained or modified without first obtaining the required special use permit, or in any manner that constitutes a violation of Section 50-20.4.D;
- (d) For a violation of the conditions and provisions of the special use permit;

8. Failure to remove signs.

To fail to remove any sign installed, created, erected or maintained in violation of this Chapter, or for which a required sign permit was not obtained, or for which the sign permit has lapsed;

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9. Failure to maintain.

To fail to maintain any property, including without limitation (a) any dwellings, dwelling units, housekeeping units, or rooming units, and (b) any sign, and (c) any required landscaping or screening in the condition required by this Chapter;

10. Failure to replace.

To fail to replace any site feature or element required by this Chapter if that site feature is removed, or to fail to replace any required landscaping or screening that dies or becomes diseased;

11. Unauthorized actions involving historic resources.

To fail to obtain required approvals before construction, remodeling, repainting or altering a historic preservation landmark or a structure in a historic preservation district identified in Section 50-18.3;

B. Continuing violations.

Each day that a violation occurs or remains uncorrected after receipt of notice of the violation from the city shall constitute a separate violation.

50-39.2 Enforcement.

A. Responsibility.

The building official is responsible for enforcing this Chapter. No permit or approval for the construction, alteration or demolition of any building, or for the use of land, shall be issued if the building as proposed to be constructed, altered or demolished would be a violation of this Chapter;

B. Authorization for inspections.

For the purposes of enforcing this Chapter, the building official is authorized to enter, examine and survey, between the hours of 8:00 a.m. and 5:00 p.m., any property subject to the regulations of this Chapter. Prior to making an inspection based on a possible violation, the building official shall inform the owner of the property to be inspected, or their agent, of the date and time of the inspection in writing at least four days prior to the inspection. Advance notice need not be given in the case of routine inspections. After written notice has been given, the owner or occupant of the property to be inspected, or the person in charge of that property, shall give the building official free access to the property between 8:00 a.m. and 5:00 p.m., for the purpose of inspection. The inspection shall not have for its purpose the harassment of the owner or occupant and shall be made so as to cause the least amount of inconvenience to the owner or occupant of the property consistent with the efficient performance of the duties of the building official. Nothing in this Section 50-39.2.B shall be construed to prohibit the entry of the building official:

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1. At any time when in the opinion of the building official an actual emergency tending to create an immediate danger to public health and safety exists;
2. At any time when an inspection is requested by the owner or occupant;

C. Enforcement tools.

The city may use any of the following tools and powers to enforce this Chapter, in any order, and the use of one tool or power shall not restrict the city from using an additional tool or power to remedy the same violation.

1. Order requiring compliance.
 - (a) The city may issue a written order identifying the violation(s) of this Chapter and requiring that the property owner or occupant bring the property into compliance with this Chapter, at the owner or occupant's expense, within a specified time. The notice shall state what actions are necessary to bring the property into compliance;
 - (b) The time allowed for correction shall be not less than 30 days, except that (i) if the order identifies a threat to public health or safety then a compliance shorter than 30 days may be required, and (ii) if the order involves a violation of the provisions of the Airport Overlay district or the sign regulations in Section 50-27, the time for compliance shall be ten days. In determining a reasonable time for performance the building official shall consider the nature and extent of the work involved, the season of the year, the existence of any immediate danger to public health and safety, and any other pertinent factors. The building official may extend the time for compliance in writing for good cause shown;
 - (c) The property may continue to be used for occupancy or habitation pending compliance with the order unless the notice identifies an imminent threat to public health or safety and requires that occupancy or habitation be limited or end by a certain date;
 - (d) When an order to correct a violation of this Chapter has been issued, the building official is authorized to enter and re-inspect the property subject to the order for the purpose of determining compliance with the order. The owner or occupant of the property, or the person in charge of the property, shall give free access to the property for the purpose of the inspection;
 - (e) Every occupant of property shall give the owner of the property, or his agent or employee, access to any part of the property at all reasonable times for the purpose of making repairs or alterations required to comply with the order;
 - (f) The city shall not charge a fee for inspections made in response to complaints or to confirm compliance with an order;

2. Enforcement of wireless telecommunications facility violations.

- (a) If the city determines that the wireless telecommunication facility is a public nuisance, the building official shall notify the holder of the special use permit in writing and order the correction of the violation or removal of the facility;
- (b) If the order requires removal of the wireless telecommunication facility the holder of the special use permit, or its successors or assigns, shall dismantle and remove such facility and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within the deadline provided for in the order to remove. If the owner of the property upon which the wireless telecommunications facilities are located wishes to retain any access roadway to the wireless telecommunications facilities, the owner may do so if the land use supervisor determines that the retention of those access roads would promote the purposes of this Chapter;
- (c) Notwithstanding anything in this subsection to the contrary, the building official may approve a temporary extension of the order, for no more 90 days, during which time a suitable plan for the repair, sale, removal, conversion, or re-location of the affected wireless telecommunications facilities shall be developed by the holder of the special use permit, subject to the approval of the city, and an agreement to such plan shall be executed by the holder of the special use permit and the city. If such a plan is not developed, approved and executed within the 90 day time period, then the city may exercise all available legal rights;
- (d) The holder of the special use permit for wireless telecommunications facilities may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with an order of the building official or any provision of Section 50-20.4.D;
- (e) If compliance or substantial progress towards compliance with the order has not been made by the compliance deadline, the city may exercise any legal remedies available to secure compliance with the order at the sole expense of the owner or special use permit holder;

3. Withholding permits or approvals.

The city may refuse to process applications for permits and approvals under this Chapter if the application concerns a property where (a) the building official has determined to be in violation of the Chapter, (b) the city has issued an order requiring that the violation be corrected, and (c) the owner occupant has not remedied the violation within the time stated in that order, unless the application is for the purposes of remedying the existing violation;

4. Prevention of violation.

If the city becomes aware that a building, structure, sign or site feature is about to be constructed in violation of this Chapter, the city may take

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appropriate action to prevent the violation. The city's action may include but is not limited to withdrawal of any permits or approval related to the construction or activity that would constitute a violation;

5. Abatement.

- (a) The city may take action to abate or remove the violation, and to charge the costs of the abatement or removal to the property owner if the property owner or occupant of a property fails to comply with an order to correct a violation of this Chapter within the time specified in the order, as that time may be extended by the building official in writing for good cause shown, and the building official determines that the continuance of the violation creates a threat to public health or safety;
- (b) Following the abatement or removal, the city shall issue an order that the owner of the land on which the violation occurred pay to the city the documented costs of the abatement or removal with 30 days;
- (c) If the owner of the land does not pay the documented costs of abatement or removal to the city within 30 days, those costs may be assessed against the land on which the violation occurred, and the city shall provide the owner of the land written notice of the assessment. Unless the assessment is paid within 90 days from the service of notice on the property owner, the sum shall bear interest at the rate of eight percent per annum from the date the cost was incurred until paid, and shall be collected in the same manner as are general taxes;
- (d) The city shall end the process of assessing abatement and removal costs against the land, or shall cancel the assessment if it has been finalized, upon receipt of payment in full of all costs documented in the order and all accrued interest on those costs;

6. Administrative citations.

The city may issue an administrative citation pursuant to Chapter 12 of the City Code and may take all actions authorized;

7. Court actions.

The city may enforce this Chapter by filing an action in law or equity in any court of competent jurisdiction, including without limitation a request for a declaratory judgment, a request for a restraining order or a temporary or permanent injunction, or a request for money damages based on the penalties for violation established in this Chapter or elsewhere in the City Code. The decision as to whether to seek enforcement in the courts, and what type of enforcement to seek, shall be at the discretion of the city;

8. Nuisance abatement.

If the building official determines that the violation constitutes a public nuisance under state law, the city may use all powers granted by state law to abate public nuisances;

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9. Other enforcement powers.

The city may enforce this Chapter through any other powers granted to the city by state law;

D. Notices and orders.

1. Any notice and order under Section 50-39.2.C.1 shall be served upon the owner or the owner's agent and the occupant as the case may require. In the case of a notice involving the sign regulations in Section 50-27, the notice shall also be served on the owner of the sign or the person or entity that erected or caused the erection of the sign;
2. The notice shall be deemed to be properly served upon those individuals or entities identified in subsection 1 if a copy of the notice is:
 - (a) Served personally; or
 - (b) Sent by United States mail, postage prepaid, to the last known address of the owner, occupant or agent shows in the city records; or
 - (c) Posted in a conspicuous place in or about the property affected by the notice; or
 - (d) Served by any other method authorized or required by state law;
3. Any notice served pursuant to subsection 1 shall automatically become an order if a written petition for a hearing is not filed with the building official within 15 days after the notice is served;
4. If the building official finds that an emergency exists that requires immediate action to protect the public health and safety, the building official may, without notice or hearing, issue an order declaring that emergency and requiring those actions that the building official deems necessary to meet the emergency notwithstanding the other provisions of this Chapter, and that order shall be effective immediately. Any person to whom the order is directed shall comply with the order immediately, but may file with the building official a request for a hearing following compliance with the order.

50-39.3 Penalties.

- A. The owner of any property where the violation of this Chapter occurs, and any person violating this Chapter, shall be guilty of a misdemeanor and may be fined as provided in Section 1-7 or Section 12-6 of the City Code;
- B. In the case of violation of a storm water permit, if the contractor or owner fails to install or correct deficiencies related to erosion or sediment control BMPs ordered by the city engineer, the city engineer may withhold payment from related work or levy a fine until adequate BMPs are installed by the contractor or owner. When the contractor or owner fails to conduct quality control or adequately inspect BMPs to ensure function, or fails to take action

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ordered by the city engineer to remedy erosion or sediment control problems, the city engineer will issue a written order to the contractor and owner. The contractor or owner shall respond within 24 hours with sufficient personnel, equipment, and materials and conduct the required remedial work or be subject to a \$500 per calendar day deduction or fine for noncompliance;

- C. Penalties shall be waived if the violation is corrected within the time stated in any enforcement notice or order.

Article VI. Definitions.

50-40 Rules of construction.

In addition to the rules of construction provided in Section 1-2 of this Code, the rules and definitions of this Section shall be observed and applied in the interpretation of this Chapter, except when the context clearly indicates otherwise.

- A. In case of any difference of meaning or implication between the text of this Chapter and any caption or illustration, the text shall control;
- B. The terms “standards” and “guidelines” have different meanings, as follows: Standards mandate the specific course of planning and design action that the applicant must incorporate in its project application. Compliance with standards is mandatory. Statements of standards are indicated by use of the word “shall” in the rule or directive. A failure to meet a mandatory standard may be used as a basis for the city’s denial of a project application. In comparison, “guidelines,” if any, follow the standards and are indicated by the words “may” or “should.” Guidelines are voluntary and not mandatory; however, compliance is strongly encouraged to fulfill the intent of this Chapter. A failure to meet a voluntary guideline cannot be used by the city as a basis for a project denial.

50-41 Definitions.

1. Accessory agriculture roadside stand.

A structure erected for the display and sale of agriculture products grown on the premises and that is subordinate to the primary residential or agricultural use of the premises.

2. Accessory bed and breakfast.

An owner-occupied building designed as a one-family dwelling that provides no more than five guest rooms for lodging accommodations by prior arrangements for compensation. The primary residence in the building or a separate, lawfully existing building located on the same site must be occupied by the building owner on a permanent basis. It may or may not include serving of meals to guests.

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3. Accessory boat dock, residential.

A personal use boating structure, subordinate to a primary residential use of property, that is built over or floats upon the water of a lake, river, or stream, and that serves one property owner for mooring boats or as a landing place for marine transport.

4. Accessory caretaker quarters.

A subordinate dwelling unit intended for an employee or owner who looks after or takes charge of goods or property. The unit shall be either inside or attached to a main structure by a common wall. The unit is a complete, independent living facility with provisions for cooking, eating, sanitation and sleeping.

5. Accessory communications tower for private use.

Any structure, subordinate to a primary use of land, that is designed and constructed primarily for the purpose of supporting one or more wireless analog or digital telecommunication facilities, that is located on the ground or anchored to the ground and exceeds 24 feet in height. Such a tower may have a variety of configurations, including a monopole, a lattice tower or a guyed tower.

6. Accessory day care facility.

A private or public establishment licensed by the state that regularly provides one or more dependents with care, training, supervision, rehabilitation or developmental guidance on a regular basis, for periods less than 24 hours a day, for gain or otherwise, as a secondary and subordinate activity to a permitted or approved special use of the property.

7. Accessory dwelling unit.

A subordinate dwelling unit added to, created within, or detached from a single-family residence, but located on the same lot or parcel as a primary residential structure, that provides basic requirements for living, sleeping, cooking and sanitation.

8. Accessory heliport.

An area used or intended to be used for the landing and takeoff of helicopters that is secondary and incidental to, and is operated in support of, a permitted or approved special use on the same property, including operations facilities, such as maintenance, loading, and unloading, storage, fueling or terminal facilities.

9. Accessory home occupation.

A business or occupation incidental and subordinate to the principal residential use

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conducted within a dwelling. All home occupations must comply with the conditions in Section 50-20.5.I. Examples include but are not limited to: artist's studio; dressmaking; accessory beauty salon or barber shop, office of a physician or dentist for consultation or emergency treatment but not for general professional practice, lawyer, engineer, architect or accountant; teaching, with musical instruction limited to not more than two pupils at the same time. A home occupation shall not be interpreted to include accessory bed and breakfast, restaurants or tea rooms.

10. Accessory recycling collection point.

A facility used for the collection and temporary storage of empty beverage containers, aluminum, glass, paper or clothing for recycling purposes conducted totally within an enclosed structure or container, and that is accessory to a permitted or approved special use in the zone district. This definition does not include processing except for can banks that crush cans as they are deposited.

11. Accessory sidewalk dining area.

An outdoor eating and drinking area that is generally associated with and subordinate to a permitted or approved special use on the same property and that is, located on a public sidewalk. This use may include removable tables, chairs, planters, or similar features and equipment.

12. Accessory solar or geothermal power equipment.

Accessory uses and structures that are clearly subordinate in size and use to the primary use and structure on the property, and that are used to reduce energy consumption or to generate energy from non-fossil fuel and non-carbon dioxide emitting sources on the property. These structures and uses may include but are not limited to the following, and may be located at ground level or above or below ground unless specifically limited in this Chapter, provided that they meet all other applicable requirements of this Chapter: solar photovoltaic modules, solar thermal hot water collectors, solar arrays; and geothermal heat pumps, earth tubes, or downhole heat exchangers.

13. Accessory use or structure.

A use or structure subordinate in use, area or purpose to the principal use or structure on the same lot and serving a purpose naturally and normally incidental to the principal use or structure and that is not included in a separate definition of an accessory use or structure in this Chapter. Where an accessory building is attached to the principal building in a substantial manner by a wall or a roof, it shall be considered part of the principal building. An accessory building or use may be permitted on a lot of record that abuts or is separated by a public easement of no more than 25 feet in width to another lot or lots on which the primary use is located, provided all lots are owned by the same owner and none of the parcels are severed, legally sold, conveyed, or used without the other parcels. Examples include but are

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not limited to: pet houses, storage sheds, swimming pools, garages, accessory uses and structures for energy conservation and renewable energy production, and accessory structures for storm water management and water conservation.”

14. Accessory wind power equipment.

A small scale accessory wind power generating or distribution system, that is clearly subordinate in size and use to the primary use and structure on the property, and that is used to reduce energy consumption or to generate energy from non-fossil fuel and non-carbon dioxide emitting sources on the property. Accessory wind power equipment is designed to generate no more than 10Kw of energy.

15. Accessory wireless antenna attached to existing structure.

Any wireless service antenna located in or on the roof or upper facade of a structure that is not a telecommunications tower, such as a building, water tower, steeple, silo or utility pole.

16. Adjacent developed lots facing the same street.

Where a dimensional standard is related to dimensions on “adjacent developed lots facing the same street” the measurement shall only include those lots that contain a primary structure and that share a side lot line with the subject property and shall not include corner lots where the primary structure faces a different street. If there is only one adjacent developed lot that fronts the same street, the measure shall refer only to the dimension on that lot. For purposes of this measurement, all contiguous lots in common ownership shall be considered as a single lot, not as separate platted lots.

17. Adult entertainment establishment.

See definition in Chapter 5 of the City Code.

18. Adult book store.

See definition in Chapter 5 of the City Code.

19. Agriculture, general.

The production of livestock, dairy animals, dairy products, poultry or poultry products, fur-bearing animals, horticultural or nursery stock, fruit, vegetables, forage, grains, timber, trees, or bees and apiary products primarily for distribution and consumption beyond the Duluth/Superior area. This use also includes wetlands, pasture, forest land, wildlife land, and other uses that depend on the inherent productivity of the land, but not include a use meeting the definition of “agriculture, urban.”

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20. Agriculture, urban.

The raising of crops and small livestock primarily for local sustenance, rather than commercial purposes, for sale and consumption within the immediate Duluth/Superior area.

21. Airport boundary.

Those lands including the property owned by the city, state, and the United States, and their respective political subdivisions, that are used for aeronautical purposes and are contiguous with the runway and building area facilities. The Duluth International Airport boundaries are illustrated on Sheet 3, airport property map, of the approved set of airport layout plans on file in the offices of the Duluth Airport Authority. The Sky Harbor Municipal Airport boundaries are illustrated on Exhibit 50-18.2-2.

22. Airport elevation.

The established elevation of the highest point on the usable landing area, which elevation is established to be 1,438 feet above mean sea level for Duluth International Airport and 610 feet above mean sea level for Sky Harbor Municipal Airport.

23. Airport hazard.

Any structure, tree, or use of land that obstructs the air space required for, or is otherwise hazardous to, the flight of aircraft in landing or taking off at the airport; and any use of land that is hazardous to persons or property because of its proximity to the airport.

24. Airport and related facilities.

An area of land that is used or intended for the landing and takeoff of aircraft, and includes its buildings and facilities, if any. Accessory uses may include but are not limited to: car rental, aircraft servicing, fueling, or leasing, private aviation clubs or associations, and hotels.

25. Alley.

A public thoroughfare less than 30 feet in width.

26. Alley line.

The established side line of an alley easement.

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27. Antenna.

A system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals.

28. Apartment.

A part of a building consisting of a room or suite of rooms intended, designed or used as a residence by an individual or a one-family, including full cooking and bathroom facilities for individual use.

29. Apartment hotel.

A building designed for or containing not less than 20 apartments, individual guest rooms or suites and in which may be furnished services ordinarily furnished by hotels, such as drugstores, tea room, barbershop, cigar and newsstands when such uses are located entirely within the building with no separate entrance from the street, and having no sign or display visible from the outside of the building indicating the existence of such use.

30. Assisted living facility (elderly).

A building used exclusively as a residential rooming house for occupancy by persons 50 years of age or more.

31. Automobile and light vehicle sales, rental, or storage.

The sale, display, lease, rental, or storage of light motor vehicles, including automobiles, vans, light trucks, light trailers, boats, and recreational vehicles. This shall not include salvage operations, scrap operations, vehicle impound yards, or commercial parking lots available for short-term use.

32. Automobile and light vehicle repair and service.

Any building, structure, or lot used for the business of repairing automobiles or the sale and installation of tires, batteries, and other minor accessories and services for automobiles. This shall not include car washes, retail sale of automotive supplies, tires, or parts unrelated to repairs being performed on the premises, the retreading or vulcanizing of tires, filling stations, or convenience stores that sell gasoline or lubricating oil, but not other automotive accessories or services.

33. Average lot depth.

The average of the lengths of the two side lot lines of a platted lot. In the case of flag lots (lots where the buildable portion of the lot is connected to a public street by an access or driveway 20 feet wide or less), the length of the access or driveway portion of the lot shall be ignored in measuring either side lot line.

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34. Bank.

An establishment that provides retail banking, mortgage lending, and financial services to individuals and businesses, and including check-cashing facilities. Accessory uses may include automatic teller machines, offices, and parking.

35. Basement.

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

36. Bed and breakfast.

A building designed as a one-family dwelling and operated as a primary use of land containing habitable units providing up to 12 guest rooms of lodging accommodations by prior arrangements, for compensation. It may or may not include serving of meals to guests and the general public, and the operator need not live inside the dwelling.

37. Block.

An area of land enclosed by four public or dedicated private streets, or by a combination of public or dedicated private streets and a railroad right-of-way or a natural feature such as a lake shore, riverfront or stream.

38. Block face.

All lots abutting both sides of a street (street A) between the nearest two streets that intersect street A.

39. Bluff.

A topographic feature such as a hill, cliff, or embankment having all of the following characteristics:

- A. Part or all of the feature is located in a shoreland area;
- B. The slope rises at least 25 feet above the ordinary high water level of the water body or bottom of the bluff;
- C. The grade of the slope from the toe of the bluff to the top of the bluff averages 30% or greater.

40. Bluff, bottom of.

The ordinary high water level or the lower point of a horizontal ten foot segment with an average slope exceeding 18%.

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41. Bluff, top of.

The higher point of a horizontal 10 feet segment with an average slope exceeding 18%.

42. Bluff impact zone.

A bluff and land located within 20 feet of a bluff.

43. Bluff line.

The designation of a line to administratively divide the city as above or below the escarpment for purposes of requiring storm water detention for future development.

44. Boathouse.

A structure designed and used solely for the storage of boats or boating equipment and that is not used for human habitation. Any door or opening exceeding 40 inches in width in a boathouse shall face the water.

45. Buffer.

Land that is used to protect adjacent lands and waters from development and more intensive land uses. The land is kept in a natural state of trees, shrubs, and low ground cover and understory of plants and functions to filter runoff, control sediment and nutrient movement, and protect fish and wildlife habitat.

46. Build-to zone

The maximum horizontal distance, or a range of maximum horizontal distances, between a front lot line and a building or structure required by this Chapter.

47. Building.

Any structure designed or built for the support, enclosure, shelter or protection of persons, animals, chattels or property of any kind, and when separated by party or division walls without openings, each portion of such building so separated shall be deemed a separate building.

48. Building material sales.

An establishment engaged in the storage, distribution, and sale of building materials such as lumber, brick, tile, cement, insulation, floor covering, lighting, plumbing supplies, electrical supplies, cabinetry and roofing materials. Accessory uses may include repair or delivery services and outside sale of plants and gardening supplies.

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49. Bulk storage not listed elsewhere.

An establishment engaged in the storage of oils, lubricants, grains, mineral products or other commodities not listed separately as specific types of warehousing, wholesaling or storage.

50. Bus or rail transit station.

A facility or structure where bus transit or rail transit vehicles stop to provide transportation services to the public. Accessory uses can include convenience retail or restaurants.

51. Business, art, or vocational school.

A school, other than a college, that provides specialized training and education beyond the high school level, principally in the business, commercial or vocational arts, that does not provide lodging or dwelling units for students or faculty, and that has programs that typically result in the awarding of a certificate.

52. Business park support activities.

An establishment primarily engaged in rendering services to business establishments on a fee or contract basis, such as advertising and mailing, consulting services, protective services, equipment rental, leasing and financial services. Uses must be incidental to and supportive of business park uses and shall not include activities that are primarily retail in nature and devoted to the sale of consumer goods.

53. Cemetery or mausoleum.

Land used or dedicated to the burial of the dead or the storage of cremated remains in a columbaria, and including necessary sales and maintenance facilities.

54. Channel.

A natural or artificial depression of perceptible extent with a definite bed and banks to confine and conduct flowing water either continuously or periodically.

55. Club or lodge (private).

A building or portion of a building or premises owned or operated by a corporation, association, person or persons for a social, educational or recreational purpose, but not primarily for profit or to render a service that is customarily carried on as a business. This category includes fraternities and sororities.

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56. Co-housing facility.

A residential development that combines individual owned dwelling units with smaller or partial kitchens and a larger community kitchen and dining room intended for communal use on a regular basis, and in which all residents agree to share in the provision of regular communal services such as cooking meals or providing child care.

57. Co-location.

The use of an existing tower or structure to support antennae for the provision of wireless services. A replacement tower that is constructed on the same site as an existing tower will be considered a co-location as long as the new tower is no taller than the old tower and that the old tower is removed in a reasonably short time frame after the new tower is constructed.

58. Coldwater river.

Rivers including trout streams and their tributaries.

59. Commercial impracticability or commercially impracticable.

The inability to perform an act on terms that are reasonable in commerce; the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone, shall not deem a situation to be commercial impracticable and shall not render an act or the terms of an agreement commercially impracticable.

60. Common open space.

A portion of a development permanently set aside to preserve elements of the natural landscape for public or private use, which will not be developed or subdivided.

61. Common plan of development or sale.

A contiguous area where multiple separate and distinct construction activities are planned to occur at different times on different schedules under one plan.

62. Composting.

The controlled microbial degradation of organic waste to yield a humus-like product.

63. Confined animal feeding operation.

A facility, area, or place where the feeding of livestock, poultry, pigs, or small

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animals takes place for commercial purposes in lots, pens, ponds, sheds or buildings where food is supplied primarily by means other than grazing, foraging, or other natural means.

64. Construction debris.

Waste building materials, packaging and rubble resulting from construction, remodeling, repair and demolition of buildings and roads.

65. Contractor's shop and storage yard.

A lot or portion of a lot or parcel used to store and maintain construction equipment and other materials and facilities customarily required in the building trade by a construction contractor. This definition includes architects, engineers, surveyors' construction offices and shops, real estate sign placement service, and showroom and shops for the display and sale of electrical, plumbing, heating, air conditioning, sheet metal and other material in connection with contracting services.

66. Convention or event center.

A facility specially designed to host conferences, exhibitions, events, large meetings, seminars and training facilities, which may be associated with a hotel or motel.

67. Critical root radius.

An area around a tree measured with a radius of one foot for every in. diameter of the tree, which is generally the area of soil that must remain undisturbed to ensure long-term viability of the tree.

68. Cutoff angle.

For purposes of exterior lighting regulations, the angle formed by a line drawn from the direction of light rays at the light source and a line perpendicular to the ground from the light source above from which no light is emitted.

69. Day care facility.

A private or public establishment licensed by the state that regularly provides one or more dependents with care, training, supervision, rehabilitation or developmental guidance on a regular basis, for periods less than 24 hours a day, for gain or otherwise, in a place other than the dependent's domicile.

70. Decorative fence.

A powder coated steel fence, solid core ornamental fence, decorative wood fence, or fence of similar construction or appearance, but not including a snow fence, chain

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link or highway guard rail.

71. Demolition debris.

Solid waste resulting from the demolition of buildings, roads and other man-made structures including concrete, brick, bituminous concrete, untreated wood, masonry, glass, trees, rock and plastic building parts. It does not include asbestos wastes, appliances, furniture or household refuse.

72. Dense urban screen.

Continuous screening wall, berm, fence, or row of planting at least six feet tall, with screening material designed to provide 75% opacity one year after planting along the full required height and length of the screening buffer.

73. Design storm.

A rainfall event used in the analysis and design of drainage facilities.

74. Detention.

The temporary storage of drainage water.

75. Deteriorated.

A building or component of a building shall be deemed to have deteriorated when its function has been so impaired by natural forces including but not limited to weathering or decay that it needs to be replaced to restore its functionality.

76. Developable area.

All land within a zone district not occupied by streets and public rights-of-way.

77. Development.

The construction of a building or structure, any clearing, grading, excavation or other movement of land, or the division of a parcel of land into two or more parcels.

78. Diameter at breast height (DBH).

The primary method of measuring the diameter of a tree trunk. Diameter is measured in inches 54 inches above the ground. If the tree splits into multiple trunks at a height below 54 inches, but above the ground, the diameter is measured at the highest point beneath the split.

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79. Direct illumination.

Illumination by light sources that are effectively visible, either directly or through a translucent material, as a part of the sign and illuminating outward.

80. Discharge.

The discharge of any pollutant into the waters of the state from any point source.

81. Discharge rate.

The rate at which drainage water is released from a specific site and expressed as a volume per unit of time, such as cubic feet per second.

82. District.

Any section of the city within which the zoning regulations are uniform.

83. DNR.

Minnesota department of natural resources.

84. Drainage basin.

The tributary area through which drainage water is collected, regulated, transported and discharged to receiving waters.

85. Drainage system.

Any system that conveys storm water or surface water including sewers culverts, ditches, and swales.

86. Drainage water.

Storm water, snow melt, surface and irrigation water, water from footing drains and sump pumps or other drains approved by the city.

87. Drip line.

A vertical line extending from the outermost edge of a tree's canopy to the ground.

88. Dry cleaning or laundry plant.

An establishment where laundry or dry cleaning is performed in bulk and primarily for commercial and institutional customers. This use does not include facilities where the public drops off or picks up dry cleaning or laundry that is cleaned off-site.

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89. Dwelling.

Any building or portion of a building that is designed for or used for residential purposes and that either (a) has a minimum width of 20 feet, or (b) has a principal entrance facing the front lot line.

90. Dwelling unit.

A habitable unit in a dwelling providing sleeping, cooking, eating, living and sanitation facilities designed for and occupied by one family only, occupied by the owner or by another family for periods of occupancy exceeding one week, and that is physically separated from any other habitable unit that may be located in the same building.

91. Dwelling unit, efficiency.

A dwelling unit consisting of one principal room, exclusive of bathroom, kitchen, hallway, closets or dining alcove directly off the principal room, providing that such dining alcove does not exceed 125 square feet in area.

92. Dwelling, live-work.

A dwelling unit containing an integrated living and working space that is intended to function predominately as business workspace with incidental residential use. The unit typically has a store-front, with the workspace, public display area, or showroom on the ground floor of the unit and the majority of the residence located either on the upper floor if there are two floors, or the back of the unit if there is only one floor.

93. Dwelling, multi-family.

A building containing 3 or more dwelling units that is not a townhouse.

94. Dwelling, one-family.

A building containing one dwelling unit designed for exclusive occupancy by one family and occupied exclusively by one family, having a minimum outside width of 20 feet measured at its narrowest point and placed on a permanent foundation that complies with the State Building Code. This definition includes a manufactured or modular home that meets this definition and the requirements of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. Sections 5401 et. seq.).

95. Dwelling, townhouse.

A structure containing three to eight dwelling units each sharing two vertical party or division walls, except that each end unit will have a single party or division wall, with

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no dwelling units sharing a common horizontal surface.

96. Dwelling, two-family.

A building containing two dwelling units designed for exclusive occupancy by two families and occupied exclusively by two families.

97. Electric power or heat generation plant.

A facility or area that generates electricity from mechanical power produced by the firing of fossil fuels, or that produces heat or steam for space heating and other similar uses.

98. Electric power transmission line or substation.

A conductor of electric energy and associated facilities designed for and capable of operation at a nominal voltage of more than 46 kilovolts and less than 200 kilovolts. Associated facilities shall include insulators, towers and terminals operating at a nominal voltage greater than 46 kilovolts and less than 200 kilovolts, as well as substations related to those facilities.

99. Elevation (flood).

In the context of flood related regulation, that elevation above mean sea level referenced in the National Geodetic Datum of 1929.

100. Encroachment lines.

In the context of flood related regulation, the lateral limits or lines drawn along each side and generally parallel to a stream or another body of water, which delineates the floodway and within which the flood carrying capacity of the stream or other body of water is to be preserved. Their location, if along a stream, should be such that the floodway between them will effectively carry and discharge a flood not less than the regional flood.

101. Equal degree of encroachment.

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

102. Erosion.

Any process that wears away the surface of the land by the action of water, wind, ice

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or gravity. Erosion can be accelerated by the activities of man and nature.

103. Erosion and sediment control plan.

A plan that is designed to minimize the accelerated erosion and sediment runoff at a site during construction activities.

104. Erosion and sedimentation practice specifications, or practice.

The management procedures, techniques and methods adopted by the city to adequately and effectively control soil erosion and sedimentation incident to land disturbing activity within the city. The specifications are primarily based upon the MPCA handbook entitled Protecting Water Quality in Urban Areas, published in October of 1989, but may be varied on a case by case basis to effectively control erosion and sedimentation.

105. Established residential neighborhood in a built up urban area (ERN BUUA).

In the context of airport regulation, an area that, if it existed on or before January 1, 1978 (for low density structures and lots) and an area that, if it existed on or before July 2, 1979 (for all other land uses) shall be considered a conforming use that shall not be prohibited except as provided in this Chapter. The following criteria shall be applied and considered in determining what constitutes an ERN BUUA:

- A. Location of the airport;
- B. Nature of the terrain within safety zones A and B;
- C. Existing land uses and character of the neighborhood around the airport;
- D. Population of the community;
- E. That the average population density in all areas within one mile of any point on a runway shall be equal to or greater than one dwelling unit per acre;
- F. Population density near the airport compared with population density in other areas of the community;
- G. The age, and the economic, political, and social stability of the neighborhood and the community as a whole;
- H. The proximity of supporting school, commercial, religious, transportation and other facilities, and their degree of integration with residential land uses;
- I. Presence or absence of public utilities including, but not limited to, public sanitary sewer system, electric service and gas mains;
- J. Whether or not the factors listed in subparagraphs H and I above tend to make the community surrounding the airport a self sufficient unit;
- K. Whether the areas within one mile of the perimeter of the airport property would be considered primarily residential in character;
- L. Other material factors deemed relevant in distinguishing the area in question as

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established, residential, urban, and built up.

106. Excepted parcel (airport overlay).

In the context of airport regulation, any parcel of land exempted from any or all of the regulations imposed by Section 50-18.2, Airport Overlay, because the joint airport zoning board determines that the otherwise applicable requirements or proscriptions are not reasonably necessary to effectuate the purposes of Section 50-18.2 by reason of flying operations expected to be conducted, the location of the airport, the nature of the terrain within the airport hazard area, existing land uses and character of the neighborhood around the airport, the uses to which the property to be zoned are planned and adaptable and the social and economic costs of restricting land uses versus benefits derived from application of Section 50-18.2, as authorized by MSA 360.066, subd. 1.

107. Expression line.

A decorative, three-dimensional, linear element, horizontal or vertical, protruding or indented at least one inch from the exterior facade of a building and extending the length or height of the building with minimal interruptions from doors and windows. This element typically delineates the floors or stories of a building.

108. FAA.

The federal aviation administration or its duly designated and authorized successor agency.

109. Family.

One or more persons related by blood, marriage or adoption, including foster children, and in addition to and including five other unrelated persons occupying a dwelling and living as a single housekeeping unit.

110. FCC.

The federal communications commission or its duly designated and authorized successor agency.

111. Filling station.

A building, structure or land used primarily for the dispensing, sale or offering for sale at retail of any automobile fuels, oils or accessories, including lubrication of automobiles and replacement or installation of minor parts and accessories but not including major repair work such as motor replacement, body and fender repair or spray painting. This use may include the retail sales of convenience goods.

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112. Flood.

A temporary increase in the flow or stage of a stream or in the stage of a wetland or lake that results in the inundation of normally dry areas.

113. Flood frequency.

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

114. Flood fringe.

That portion of the flood plain outside of the floodway. Flood fringe is synonymous with "floodway fringe."

115. Flood hazard area.

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

116. Flood peak.

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

117. Flood plain.

The beds proper and the areas adjoining a wetland, lake, or watercourse that have been or may in the future be covered by a regional flood.

118. Flood profile.

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

119. Floodproofing.

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

120. Flood protection elevation.

An elevation corresponding with a point not less than two feet above the water surface profile associated with the regional flood plus any increases in flood stages attributable to encroachments on the flood plain.

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121. Floodway.

The bed of a wetland or lake and the channel of a watercourse and those portions of the adjoining flood plain that are reasonably required to carry and store the regional flood discharge.

122. Food processing.

The sorting, treatment, or preparation of food products for sale or as inputs to further processing, but not including the slaughtering of small or large livestock or confined animal feeding operations. Examples include: creamery operations and poultry processing.

123. Forest management.

Tree removal from a predominantly forested area with the intent of maintaining forest cover and not resulting in conversion to non-forest, such as grassy fields or pavement. Clearcuts constitute forest management as long as tree cover returns by planting or natural regeneration.

124. Frontage.

All the property on one side of a street between two streets that intersect such street (crossing or terminating), measured along the line of the street, or if the street is dead ended, then all of the property abutting on one between a street that intersects such street and the dead end of the street.

125. Funeral home or crematorium.

An establishment providing services such as preparing the human dead for burial, cremating human remains, and arranging and managing funerals. This use does not include cemeteries and columbaria.

126. Garage, private.

An accessory building designed or used for the storage only of not more than four motor driven vehicles. Not more than one of the vehicles may be a commercial vehicle, and that vehicle shall not exceed a two ton capacity.

127. Garden material sales.

An establishment engaged in the storage, distribution, and sale of garden materials, including a green house used to raise flowers, shrubs and plant for sale. Accessory uses may include delivery services.

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128. General development waters.

Includes lakes that are generally large, deep lakes or lakes of varying sizes and depths with high levels and mixes of existing development at the time of the original classification. These lakes often are extensively used for recreation. General development rivers include agriculture and urban rivers. This class has a wide variety of existing land and recreational land use characteristics.

129. General flood plain.

The area within a flood plain that is not in a floodway or flood fringe.

130. Golf course.

A tract of land laid out with at least 9 holes for playing the game of golf and improved with tees, greens, fairways and hazards. This use does not include a miniature golf course. A golf course may include a driving range, clubhouse, restaurant, putting and chipping greens, maintenance facilities, and shelters as accessory uses.

131. Government building or public safety facility.

A building or facility housing the offices or operations of a department or agency of the city, county, state, or federal government, or a quasi-governmental, including but not limited to a building or facility that provides fire protection, police protection, or emergency medical services (not including a hospital or medical or dental clinic), together with incidental storage and maintenance of necessary vehicles.

132. Grade.

- A. For buildings having walls adjoining one street only, the elevation of the sidewalk at the center of the wall adjoining the street;
- B. For buildings having walls adjoining more than one street, the average of the elevations of the sidewalk at the centers of all walls adjoining the streets;
- C. For buildings having no wall adjoining a street, the average level of the finished surface of the ground adjacent to the exterior walls of the building;
- D. Any wall approximately parallel to and not more than 15 feet from a street line is to be considered as adjoining the street. Where sidewalks do not exist the grade shall be as established by the office of the city engineer.

133. Grocery store.

A retail sales establishment selling primarily food and beverages for off-site preparation and consumption that maintains a sizable inventory of fresh fruits, vegetables, fresh-cut meats, or fresh seafood or specialize in the sale of one type of food item. This use may also include sales of personal convenience and small household goods.

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- A. A small grocery store is one that contains less than 50,000 square feet of gross floor area;
- B. A large grocery store is one that contains 50,000 square feet or more of gross floor area.

134. Groundwater management area.

A geographically defined area that may be particularly sensitive in terms of groundwater quantity or quality by nature of the use or movement of groundwater, or the relationship between groundwater and surface water, and where special management measures are deemed necessary to protect groundwater and surface water resources.

135. Groundwater recharge volume.

The portion of the water quality volume used to maintain groundwater recharge rates at development sites.

136. Habitable room.

Any room used or intended to be used for sleeping, cooking, living or eating purposes, excluding such enclosed spaces as closets, pantries, bath or toilet facilities, service rooms, corridors, laundries, unfinished attics, foyers, storage space, utility rooms or similar spaces.

137. Habitable unit.

Any habitable room or group of habitable rooms that provide sleeping facilities alone or in combination with required cooking, eating or living facilities.

138. Hardship.

The property in question cannot be put to reasonable use under existing regulations and the plight of the landowner is due to circumstances unique to the property and not created by the landowner. Economic considerations alone shall not constitute a hardship.

139. Hazardous waste.

Any refuse, sludge or other waste material or combinations of refuse, sludge or other waste material in solid, semisolid, liquid or contained gaseous form that because of its quality, concentration, or chemical, physical or infectious characteristics may:

- A. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or
- B. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or

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otherwise managed. Categories of hazardous waste materials include, but are not limited to: explosives, flammables, oxidizers, poisons, irritants and corrosives. Hazardous waste does not include: source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended.

140. Height of building.

The vertical distance at the center of the principal front of a building, measured from the grade on that front to the highest point of a flat roof or to the deck line of a mansard roof or to the average height of the highest gable or of a mean height level between eaves and hip or gambrel roof.

141. Height of tower or structure.

The vertical distance measured from the pre-existing grade level to the highest point on the tower or structure, even if said highest point is an antenna or lightening protection device.

142. Height of wall or fence.

The vertical distance measured from finished grade on the highest side of the fence or wall to the top of the fence or wall.

143. Historic preservation district.

A contiguous collection or group of lands, parcels, sites, structures, buildings or objects that is determined to be historically, culturally or architecturally significant as a whole and has been locally designated as a historic preservation district pursuant to Section 50-18.3 of this Chapter.

144. Historic preservation guidelines.

The established criteria by which any proposed changes, including architectural or site modifications to a designated historic preservation district or landmark shall be judged.

145. Historic preservation landmark.

Any individual property, parcel, place, building, structure, work of art or other object that has been determined to be historically, culturally or architecturally significant and has been locally designated as a historic preservation landmark pursuant to Section 50-18.3 of this Chapter.

146. Hotel or motel.

A building or series of buildings operated as a commercial establishment providing

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accommodations to the transient traveling public in habitable units for compensation, and including both short-stay and extended stay facilities, and that may offer customarily incidental services.

147. Hospital.

An institution or place where sick or injured in-patients are given medical or surgical care, at either public or private expense, but excluding a nursing home and excluding institutions where persons suffering from permanent types of illness, injury, deformity or deficiency or age are given care and treatment on a prolonged or permanent basis.

148. Impaired waters.

Those streams, rivers and lakes that currently do not meet their designated use classification and associated water quality standards under the federal Clean Water Act.

149. Impervious surface.

A constructed hard surface that either prevents or retards the entry of water into the soil and causes water to run off the surface in greater quantities or at an increased rate than prior to development. Examples include but are not limited to: conventional roofs, concrete/bituminous surfaces, stone pavers and gravel surfaces.

150. Indirect illumination.

Illumination that is derived from light sources that are not visible to intended viewers of the sign but which illuminate the sign by being directed at the sign's reflective face.

151. Indoor entertainment facility.

A facility providing entertainment or recreation activities where all activities take place within enclosed structures, but not including a theater or a convention or event center. Examples include but are not limited to: bowling alleys, trampoline centers, video arcades, climbing wall centers, paintball or laser tag centers.

152. Industrial services.

A facility or area where industrial services such as heating, ventilation, cooking and refrigeration supplies, motion picture production, plumbing supplies, printing and photocopying, publishing, engraving, exposition building or center, and other uses designed to support industrial or heavy commercial activities in the vicinity, provided that such services are not listed separately as a permitted of special use in this Chapter.

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153. Industrial storm water permit.

A national pollutant discharge elimination system (NPDES) permit issued to a commercial industry or group of industries that regulates the pollutant levels associated with industrial storm water discharges or specifies on-site pollution control strategies.

154. Industrial use.

The use of land or buildings for the production, manufacture, warehousing, storage, or transfer of goods, products, commodities or other wholesale items.

155. Infill development.

Land development that occurs within designated areas based on local land use, watershed, or utility plans where the surrounding area is generally developed, and where the site or area is either vacant or has previously been used for another purpose.

156. Infiltration.

The process of percolating storm water into the subsoil.

157. Infiltration facility.

Any structure or device designed to infiltrate retained water to the subsurface. These facilities may be above grade or below grade.

158. Institution.

An established organization or foundation, especially one dedicated to education, medicine, public service, or culture, or an organization founded for a specific purpose, such as a hospital, synagogue, college, service club, or charitable entity.

159. Institutional support use.

An establishment primarily engaged in rendering services to institutions on a fee or contract basis, such as advertising and mailing, consulting services, protective services, equipment rental, leasing and financial services. Uses must be incidental to and supportive of institutional uses and shall not include activities that are primarily retail in nature and devoted to the sale of consumer goods.

160. Junk or salvage service.

A facility or area for storing, keeping, selling, dismantling or salvaging scrap or discarded material or equipment, including ore and elevators. The term "scrap or discarded materials" includes but is not limited to metal, paper, rags, tires, bottles or

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inoperable or wrecked motor vehicles, motor vehicle parts, machinery, structural steel, equipment and appliances. This definition includes indoor facilities for recycling recoverable resources, such as newspapers, magazines, books and other paper products, glass, metal cans and other products, to return such products to a condition in which they may again be used for production.

161. Jurisdictional wetland.

An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

162. Kennel.

Any facility, public or private, where domesticated animals are temporarily boarded, groomed, and sold for compensation, including animal day care/spa facilities, but not including zoos or veterinary hospitals. This use also includes public facilities for the temporary impoundment of animals.

163. Land development.

A human-made change to, or construction on, the land surface that changes its runoff characteristics.

164. Land disturbing activity.

Land change that may result in soil erosion from water or wind and the movement of sediments into or upon waters or lands of or downstream of the city, including clearing, grading, excavating, transporting and filling of land. Land disturbing activity does not include:

- A. Minor land disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;
- B. Construction, installation and maintenance of electric, telephone and cable television utility lines or individual service connection to these utilities;
- C. Installation of septic tank lines or drainage fields unless included in an overall plan for a land disturbance activity relating to construction of a building to be served by the septic tank system;
- D. Tilling, planting or harvesting of agricultural, horticultural or silviculture crops;
- E. Installation of fence, sign, telephone and electric poles and other kinds of posts or poles;
- F. Emergency work to protect life, limb or property and emergency repairs, except if the land disturbing activity would have required an approved erosion and sediment control plan except for the emergency, then the land area

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disturbed shall be shaped and stabilized in accordance with the requirements of Section 50-18.1.E.

165. Landing area.

The area of the airport used for the landing, taking off, or taxiing of aircraft.

166. Land owner.

The legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

167. Landscape plan.

An accurate scale drawing that indicates the major natural features of a site and all proposed buildings, structures and site improvements in sufficient detail to allow the evaluation of impacts on natural systems and other aspects of the development. The landscape plan shall contain, insofar as applicable, the following minimum information: lot dimensions; the location and size of all existing and proposed buildings and other structures; walls and fences; existing coniferous trees having a height of eight feet or greater and existing deciduous trees having a trunk diameter of more than four inches, provided that boundaries for areas containing groups of such trees may be delineated as prime tree stands without identifying individual trees if the species and average tree size within such areas is indicated, and if there will be no construction of buildings or roadways within such areas; marshes, swamps and other wetlands; rock outcrops and severe slopes of 25% or greater; floodplains; the location, size and specific type of all proposed landscaping material; existing and proposed drainageways; existing and proposed contours at an interval of not less than two feet; vehicular, pedestrian and service access, including parking areas; areas to be conveyed, dedicated or reserved as common open areas, including public parks and recreational areas; drainage improvements such as culverts, retention/detention basins, major drainage swales and storm water pipes in excess of six inches; north arrow; scale; title; and date.

168. Laundromat.

An establishment providing home type (large institutional or commercial type) washing, drying or ironing machines for use on the premises.

169. Link.

For purposes of the connectivity index described in Section 50-23.3, links are stretches of road that connect "nodes" as defined below. Street stub-outs are considered as links, but temporary dead-end streets internal to a development, private streets in gated sections or alleys shall not be counted as links. Every road segment that connects a node in the development to the external street network shall be counted as a link in the index calculation.

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170. Loading space.

A space within the principal building or on the same lot as the principal, providing for the off street standing, loading or unloading of trucks and trailers.

171. Local watershed.

All the water that drains to a natural waterway located primarily within the city.

172. Lot.

Land occupied or intended for occupancy by a use permitted in this Chapter, including one main building together with its accessory buildings, and the yards and parking spaces required by this Chapter, and having its principal frontage upon a street or upon an officially approved place. For the purposes of this Chapter, the term "lot" may include two or more lots of record that are contiguous or separated only by a public easement not exceeding 25 feet in width, are owned by the same owner and where none of the parcels can be severed or legally sold, conveyed or used without the other parcels by virtues of a legally binding agreement that runs with the land and is recorded in the office of the county recorder. If at any time any parcel that had been recognized as part of any lot by reason of such proximity, ownership and agreement are severed, legally sold, conveyed or used separately from the other parcel or parcels making up said lot, the parcel so severed, legally sold, conveyed or used shall henceforth not be considered part of the lot, any uses relying on its status as part of the lot shall become nonconforming and the provision of Section 50-39 shall not be applicable to any such use.

173. Lot, corner.

A lot abutting upon two or more streets at their intersection.

174. Lot, double frontage.

A lot having a frontage on two streets as distinguished from a corner lot.

175. Lot frontage.

Frontage shall be the dimension of the lot line at the street, except where the lot line at the street is not straight, in which case the frontage shall be the dimension across the lot at the required front yard line.

176. Lot of record.

A parcel of land that is part of a subdivision, the map of which has been recorded by the county recorder or a parcel of land described by metes and bounds the description of which has been recorded by the county recorder.

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177. Lots on the block face.

When a dimensional standard is calculated based on a dimension measured for “lots on the block face” the measurement shall apply only to (a) developed lots on the same side of the street between the next two intervening side streets, and (b) lots that face developed streets (not to streets shown on a plat or map that have not been constructed). For purposes of this measurement, all contiguous lots in common ownership shall be considered as a single lot (not as separate platted lots).

178. Low density residential lot.

A single lot located in an area that is zoned for one-family or two-family residences and in which the predominant land use is such type of residences.

179. Low density residential structure.

A one-family or two-family home.

180. Lowest floor.

The lowermost floor of the lowest enclosed area, including basement and crawl space. An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage in an area other than a basement or crawl space area, is not considered a building’s lowest floor.

181. Maintenance agreement.

A legally recorded document that acts as a property deed restriction, and that provides for long-term maintenance of storm water BMPs.

182. Major system.

In the context of storm water management, one of the 42 major watercourses, or tributaries, as described by the Urban Study for Duluth Area Storm Water Flooding March 1976. Includes Lester/Amity Creeks, Tischer Creek, Brewery, Oregon, Miller, Coffee, Kingsbury, Knowlton, Stewart, Sargent, Mission, Buckingham, Chester and other systems as designated by the city.

183. Manufacturing, light.

A facility or area used for the assembly, fabrication, or processing of goods and materials using processes that ordinarily do not create noise, smoke, fumes, odors, glare, or health or safety hazards outside of the building or lot where such assembly, fabrication, or processing takes place, where such processes are housed entirely within a building, or where the area occupied by outside operations or storage of goods and materials used in the assembly, fabrication, or processing does not exceed 25% of the floor area of buildings on the lot. Examples include but are not

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limited to: food processing, electronic equipment assembly and manufacturing and assembly from finished products.

184. Manufacturing, heavy.

An establishment or use of land that includes the assembly, fabrication, or processing of goods and materials using processes that ordinarily have impacts on the environment or significant impacts on the use and enjoyment of surrounding properties in terms of noise, smoke, fumes, odors, glare, or health or safety hazards, or any use where the area occupied by outside storage of goods and materials used in the assembly, fabrication, or processing exceeds 25% of the floor area of buildings on the lot. Examples include but are not limited to: battery, chemicals, machinery, and plastics manufacture; mushroom plant; batching plant; beverage bottling and distribution, packaging plant; slaughterhouse; and rendering plant. This use does not include any use that meets the definition of "light manufacturing" or "hazardous or special manufacturing", or a solid waste disposal site, or a yard waste compost facility, and does not include any use that constitutes a public nuisance.

185. Manufacturing, hazardous or special.

An establishment or business that uses hazardous inputs or creates hazardous by-products in the course of manufacturing, assembly, fabrication, or materials treatment, or that uses manufacturing, assembly, fabrication, or treatment processes that create potentially hazardous impacts on the environment or surrounding areas. Examples include but are not limited to: acid manufacture; acid bulk storage; cement, lime, gypsum or plaster of paris manufacture; central concrete mixing or concrete proportioning plant; distillation, manufacture or refining of bones, coal or tar asphalt; explosives, manufacture or storage; fat, grease, lard or tallow rendering or refining; fertilizer manufacture from organic matter; glue or size manufacture; paper manufacture; petroleum or asphalt refining or storage; smelting of tin, copper, zinc or iron ores; storage or processing raw hides or fur; and stockyards or slaughter of animals other than poultry.

186. Marina or yacht club.

A facility or area for storing, servicing, fueling, berthing, securing, and launching of private pleasure craft that may include the sale of fuel and incidental supplies for the boat owners, crews and guests. Accessory uses may include restaurants and bars.

187. Maximum extent practicable (MEP).

The statutory standard (33 U.S.C. 1342(p)(3)(B)(iii)) that establishes the level of pollutant reductions that an Owner or Operator of Regulated MS4s must achieve. The USEPA has intentionally not provided a precise definition of MEP to allow maximum flexibility in MS4 permitting. The pollutant reductions that represent MEP may be different for each Small MS4, given the unique local hydrologic and geologic concerns that may exist and the differing possible pollutant control strategies.

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Therefore, each permittee will determine appropriate BMPs to satisfy each of the six minimum control measures through an evaluative process. The USEPA envisions application of the MEP standard as an iterative process.

188. Medical or dental clinic.

An establishment where patients who are not lodged overnight are admitted for examination and treatment by a group of licensed health care practitioners, dentists, or licensed health care practitioners and dentists in practice together.

189. Migratory bird flight path.

The zone of jurisdictional land located from the Lake Superior and Saint Louis River shorelines to no less than two miles inland or where Skyline Parkway runs parallel to the shoreline, an area from the shoreline to Skyline Parkway or two miles inland, whichever is greater.

190. Mining, extraction and storage.

The extraction, removal or the processing of sand, clay, loam, gravel, rock, top soil or fill materials (exclusive of sod) for commercial purposes, except as a necessary incident to any construction on the premises.

191. Mini-storage facility..

A building or group of buildings in a controlled access and fenced compound that contains varying sizes of individual, compartmentalized and controlled access units or lockers.

192. Minor system.

Those other city drainage systems that empty into the major system, which mainly consists of storm sewer, culverts and smaller open channel sections such as swales and small ditches.

193. Minor utilities.

A piece or system of service equipment or infrastructure that is necessary to support development within the immediate vicinity and that involves only small structures. Employees typically are not located at the site on an ongoing basis. Examples include but are not limited to: electric transformer stations, gas regulator stations, telephone exchange buildings, cable equipment boxes, district power distribution lines, electric utility boxes, and well, water and sewer pumping stations.

194. Modify or modification.

When used in the context of wireless telecommunications facility, the addition,

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removal or change of any of the physical and visually discernable components or aspects of a wireless facility, such as antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade or changeout of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to a telecommunications tower or telecommunications site as a co-location is a modification. A modification shall not include the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without adding, removing or changing anything.

195. Municipal Separate Storm Sewer System (MS4).

A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels or storm drains):

- A. Owned or operated by a state, city, town, borough, county, parish, district, association or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial water, storm water or other wastes. Including special district, or similar entity or an Indian tribe or an authorized Indian tribal organization or a designated and approved management agency under Section 208 of the CWA (33 U. S. C.1288) that discharges to waters of the United States;
- B. Designed or used for collecting or conveying storm water;
- C. That is not a combined sewer; and
- D. That is not part of a publicly owned treatment works (POTW) as defined in 40 CFR 122.2.

196. MPCA.

Minnesota pollution control agency.

197. Museum, library, or art gallery.

A facility or area that is open to the public and is intended for the acquisition, preservation, study, and exhibition of works of artistic, historical or scientific value.

198. Nameplate.

An accessory sign containing only the name of the occupant of a dwelling and an occupation permitted in that zone district.

199. National register of historic places.

The nation's official list of properties worthy of preservation designated by the United

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States department of the interior, national park service.

200. Natural environment waters.

Include rivers that are forest previously classified remote, forest, transitional river segments, and tributary river segments that flow into natural environment lakes. The types and intensities of recreational uses within this class vary widely.

201. Natural resource inventory.

An inventory that identifies and maps the critical natural resources on a site, including the following resources: existing land cover of vegetative types; streams; wetlands; lakes; significant, sensitive, threatened, or endangered species; critical wildlife habitat; soil types; geologic hazards (floodplains, unstable slopes, highly erodible soils); and mineral resources.

202. Natural state.

Where vegetation exists in a wild state, where the condition of the ground and shrub layers and floristic composition of the plant community is substantially unaltered by humans, where restoration has been consistent with Commissioner 525 Guidelines or local government approved plans, or where the vegetation has been unaltered for at least one growing season.

203. Navigable airspace.

Airspace at and above the minimum flight altitudes prescribed in the FARs including airspace needed for safe takeoff and landing (refer to FAR Part 77 and 91).

204. NIER.

Non-ionizing electromagnetic radiation.

205. Node.

For purposes of the connectivity index described in Section 50-23.3, a node exists at each street intersection and cul-de-sac head within the development subject to the connectivity index.

206. Nonconforming use.

Any building or land lawfully occupied by a use at the time of passage of this Chapter or an amendment to this Chapter that does not conform after the passage of this Chapter or amendment to this Chapter with the use regulations of the district in which it is situated.

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207. Nonpoint source pollution.

Pollution from any source other than from any discernible, confined, and discrete conveyances, and shall include but not be limited to pollutants from agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.

208. Nonprecision instrument runway.

A runway having an existing or planned straight-in instrument approach procedure utilizing air navigation facilities with only horizontal guidance, and for which no precision approach facilities are planned or indicated on an approved planning document.

209. Non-structural measure.

When used in the context of storm water control, a storm water control and treatment technique that uses natural processes, restoration or enhancement of natural systems, or design approaches to control runoff or reduce pollutant levels. Such measures are used in lieu of or to supplement structural practices on a land development site. Non-structural measures include but are not limited to: minimization or disconnection of impervious surfaces; development design that reduces the rate and volume of runoff; restoration or enhancement of natural areas such as riparian areas, wetlands, and forests; and on-lot practices such as rain barrels, cisterns, and vegetated areas that intercept roof and driveway runoff.

210. NPDES.

National pollution discharge elimination system.

211. Nursing home.

Licensed facilities primarily engaged in providing shelter, food and intermediate or long term nursing and health related care for individuals, including assisted living facilities, but not including hospitals, clinics or similar institutions devoted primarily to the diagnosis and treatment of the sick or injured.

212. Obstruction.

In the context of flood protection, any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel modification, culvert, building, wire, fence, stockpile, refuse, fill, structure or matter in, along, across or projecting into any channel, watercourse or regulatory flood plain that may impede, retard or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water.

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213. Office.

A facility where business or philanthropic activities are conducted in an office environment. Examples include but are not limited to: administration of business, civic, religious, or charitable organizations, financial services processing, and radio or television broadcasting stations or studio.

214. Off-site facility.

As used in storm water management, a storm water best management practice located outside the subject property boundary described in the permit application for land development activity.

215. On-site facility.

As used in storm water management, a storm water best management practice located within the subject property boundary described in the permit application for land development activity.

216. Ordinary high water mark.

A mark delineating the highest water level that has been maintained for a sufficient period of time to leave evidence upon the landscape. The ordinary high water mark is commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial.

217. Outdoor entertainment or recreation use.

An outdoor facility whose main purpose is to provide entertainment or recreation, with or without charge, including amusement parks, batting cages, drive-in theatres, golf driving ranges, miniature golf courses, go-cart tracks, target sport ranges, skating rinks, skateboard parks, swimming pools, tennis courts, sports courts, water parks, zoological parks and similar uses, but not including auto or horse race tracks.

218. Owner.

In the context of storm water management, the owner or owners of the freehold or a lesser estate of a premises, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a piece of land. Owner also refers to, in the appropriate context: (a) any other person authorized to act as the agent for the owner, (b) any person who submits a storm water management concept or design plan for approval or requests issuance of a permit, when required, authorizing land development to commence, and (c) any person responsible for complying with an approved storm water management design plan.

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219. Park, playground or forest reserve.

A facility or area for recreational, cultural, or aesthetic use owned or operated by a public or quasi-public agency and available to the general public. This definition may include but is not limited to: parks, public lawns, active and passive recreation areas, playgrounds, water courses and wooded areas. Facilities may also include fountains, swimming pools, pavilions and similar public facilities within their boundaries.

220. Parking area.

An open unoccupied space used or required for use for parking of vehicles exclusively and in which no gasoline or vehicular accessories are sold or no other business is conducted and no fees are charged.

221. Parking garage.

A building or portion of a building designed or used for storing motor driven vehicles as a primary use of land.

222. Parking lot.

An open unoccupied space used for storing motor vehicles as a primary use of land.

223. Parking space.

A surfaced area, enclosed or unenclosed, permanently reserved for the temporary storage of 1 vehicle and connected with a street or alley by a surfaced driveway that affords satisfactory ingress and egress for vehicles.

224. Patterned wall.

Walls with a patterned or textured look to mimic stone or similar design or patterned to create reveals and shadow lines. No blank concrete or wood timber walls shall be permitted.

225. Permanent storm water best management practice (BMP).

A storm water best management practice (BMP) that will be operational after the construction phase of a project and that is designed to become a permanent part of the site for the purposes of managing storm water runoff.

226. Personal services and repair (small).

An establishment containing less than 10,000 square feet of gross floor area and generally having no more than ten employees on site at one time, that is engaged in the provision of informational, instructional, personal improvement, personal care,

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and similar services. Examples include but are not limited to: catering establishments, custom dressmaking, film processing, garment printing and embroidering, licensed massage salons, optical and optician services, real estate sign placement service, service and repair establishments, sun tan centers, bicycle rental, small craft rental, tailor shops, and laundromats.

227. Personal services and repair (large).

An establishment, containing 10,000 square feet of gross floor area and generally having more than 10 employees on site at one time, that is engaged in the provision of informational, instructional, personal improvement, personal care, and similar services.

228. Personal wireless facility.

See wireless telecommunications facilities.

229. Personal wireless service or PWS.

This term, which is sometimes also referred to as “personal telecommunications service” or “PCS,” shall have the same meaning as defined and used in the 1996 Federal Telecommunications Act.

230. Place.

An open, unoccupied space or thoroughfare other than a street or alley permanently reserved as a principal means of access to abutting property.

231. Place of public or semi-public assembly.

A place of public or semi-public assembly is defined as a building or portions of a building used for the gathering of persons for such purposes as deliberation, education, instruction, worship, entertainment, amusement, drinking, dining or awaiting transportation.

232. Planned future airport improvement.

As used in Section 50-18.2, Airport Overlay, those proposed future airport developments that are indicated on a planning document having the approval of the federal aviation administration, Minnesota department of transportation, office of aeronautics, and Duluth airport authority.

233. Power transmission line.

A conductor of electric energy and associated facilities designed for and capable of operation at a nominal voltage of more than 46 kilovolts and less than 200 kilovolts. Associated facilities shall include insulators, towers and terminals operating at a

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nominal voltage greater than 46 kilovolts and less than 200 kilovolts.

234. Precision instrument runway.

A runway having an existing instrument approach procedure utilizing an instrument landing system (ILS) or a precision approach radar (PAR), or a runway for which a precision instrument approach system is planned and is so indicated on an approved planning document.

235. Premises.

A lot together with all buildings and structures existing on the lot.

236. Principal use or structure.

All uses or structures that are not accessory uses or structures.

237. Public assembly bulletin board.

A bulletin board accessory to and located on the same property as a religious assembly or educational use listed in Table 50-19.8 that identifies the name of the institution and the dates and times of events related to that institution to which some or all of the public are invited.

238. Pylon.

A decorative extension above the roof line of a building that is designed as an integral part of the building and that is constructed of masonry or is completely enclosed by the same material as the main exterior walls of the building.

239. R-district parking area.

The area on a lot in a residential district where vehicles may be parked, unless a front yard parking variance has been approved pursuant to Section 50-37.9. The parking area shall be limited to an area that may include one side yard, the rear yard, and the following additional areas of the lot:

- A. On a lot, other than a corner lot, containing a dwelling unit without garage, the parking area also includes the area between one side lot line and the nearest wall of the dwelling unit and its extension to the improved street abutting the front yard;
- B. On a lot, other than a corner lot, containing a dwelling unit with a detached garage, the parking area also includes the area between the closest side lot line to the side wall of the dwelling unit nearest the garage and its extension to the improved street abutting the front yard;
- C. On a lot, other than a corner lot, containing a dwelling unit with attached

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garage, the parking area also includes the area between the closest side lot line and the common wall separating the dwelling unit and the garage and its extension to the improved street abutting the front yard;

- D. On any corner lot, any parking area in addition to the rear yard and one side yard may be granted by variance as provided in Section 50-37.9.

240. Radio or television broadcasting tower.

A structure that is designed and constructed primarily for the purpose of supporting one or more antennae that transmit information (audio, video, data, but not personal wireless communications) in the form of electromagnetic signals to one or more receivers without the use of a physical connection between the transmitting and receiving source. The term includes but is not limited to: lattice towers, guyed towers, and monopole towers. The term does not include a wireless communication tower, clock tower, bell tower, steeple, light pole, power pole, water tower, or similar structure that incidentally supports antennae.

241. Railroad yard or shipyard and related facilities.

An area of land, a portion of which is covered by a system of tracks, that provides for the making up of trains by one or more railroads or private industry concerns including roadhouses and repair and overhaul shops. Necessary functions of a railroad yard include but are not limited to the classifying, switching, storing, assembling, distributing, consolidating, repairing, weighing, or transferring of cars, trains, engines, locomotives, and rolling stock. In addition, this use includes a facility or area containing wharves, docks, or other facilities used in connection with water transportation or navigation, and for the repair, service, sales or storage of boats.

242. Rainfall events.

The design storm definitions for Duluth from "Bulletin – 71" 1992, Rainfall Frequency Atlas of the Midwest.

	Design Year	Inches
100 yr 24 hr Rainfall	100	5.2
50 yr 24 hr Rainfall	50	4.64
10 yr 24 hr Rainfall	10	3.36
5 yr 24 hr Rainfall	5	2.88
2 yr 24 hr Rainfall	2	2.31

243. Reach.

As used in the context of flood prevention, the hydraulic engineering term used to describe longitudinal segments of a stream or river influenced by a natural or manmade obstruction. In an urban area, the segment of a stream or river between two consecutive bridge crossings would typically constitute a reach.

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244. Receiving stream or channel.

The body of water or conveyance into which storm water runoff is discharged.

245. Receiving waters.

Lake Superior, St. Louis River and St. Louis Bay, which are the major receivers of city drainage.

246. Recharge.

The replenishment of underground water reserves.

247. Recycling collection point (primary use).

A facility used for the collection and temporary storage of empty beverage containers, aluminum, glass, paper or clothing for recycling purposes conducted totally within an enclosed structure or container. This definition does not include processing except for can banks that crush cans as they are deposited.

248. Redevelopment.

A change to previously existing, improved property, including but not limited to the demolition or building of structures, filling, grading, paving or excavating, but excluding ordinary maintenance activities. For purposes of the erosion and storm water controls in Section 50-18.1.E, redevelopment does not include remodeling of buildings on the existing footprint, resurfacing of paved areas, and exterior changes or improvements that do not result in the disturbance of equal to or greater than one acre of land.

249. Regional flood.

A flood that is representative of large floods known to have occurred generally in the state and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of a 100-year recurrence interval.

250. Regional storm water.

Storm water BMPs designed to control storm water runoff from multiple properties or a particular land use district, and where the owners or developers of the individual properties may participate in the provision of land, financing, design, construction or maintenance of the facility.

251. Religious assembly.

A facility or area for people to gather together for public worship, religious training or other religious activities including a church, temple, mosque, synagogue, convent,

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monastery or other structure, together with its accessory structures, including a parsonage or rectory. This use does not include home meetings or other religious activities conducted in a privately occupied residence. Accessory uses may include meeting rooms and childcare provided for persons while they are attending assembly functions.

252. Repairs and maintenance.

When used in the context of wireless telecommunications, the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without the addition, removal or change of any of the physical or visually discernable components or aspects of a wireless facility that will add to the visible appearance of the facility as originally permitted.

253. Research laboratory.

A facility or area for conducting scientific research, investigation, testing, or experimentation, but not including facilities for the manufacture or sale of products, except as incidental to the main purpose of the laboratory. This definition also includes labs for the manufacture of dentures and prostheses.

254. Residential care facility.

A public or private establishment, which, for gain or otherwise, regularly provides one or more dependents with 24 hour care, food, lodging, training, education, supervision, rehabilitation and treatment.

255. Responsible party.

In the context of storm water regulations, any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity or their legal representatives, agents or assigns, that is named on a storm water maintenance agreement as responsible for long-term operation and maintenance of one or more storm water BMPs.

256. Restaurant (no drive-in/drive-through).

A commercial establishment, including but not limited to taverns and brewpubs, where food and beverages are prepared, served, and consumed primarily within the principal building.

257. Restaurant (with drive-in/drive-through).

A commercial establishment, including but not limited to taverns and brewpubs, where customers order and are served their food and beverages at a walk-up

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counter or in a motor vehicle to be consumed on or off the site.

258. Retail store.

A facility or area for the retail sale of general merchandise or food to the general public for direct consumption and not for wholesale. Typical general merchandise includes clothing and other apparel, equipment for hobbies or sports, gifts, flowers and household plants, dry goods, convenience and specialty foods, toys, furniture, books and stationery, pets, drugs, hardware and similar consumer goods. This definition does not include retail uses defined elsewhere in this Chapter.

A. A small retail store is one that contains less than 15,000 square feet of gross floor area;

B. A large retail store is one that contains 15,000 square feet or more of gross floor area.

259. Riding stable.

An establishment or area for keeping horses or other domestic animals other than for the property owner's personal use, for compensation, hire, boarding, riding or show.

260. Rooming house.

A building containing habitable units and that provide sleeping or living accommodations by prior arrangements, regardless of whether those accommodations are offered for compensation or not, and for definite time periods. Some or all bathroom and/or kitchen facilities, where provided, are for use on a communal basis. Individual habitable units are not owned by occupants, except that a habitable unit may be occupied by the owner of the building.

261. Runway.

Any existing or planned paved surface or turf covered area of the airport that is specifically designated and used or planned to be used for the landing or taking off of aircraft.

262. School, elementary.

An public or private establishment providing educational services from kindergarten or Grade 1 through Grade 5, or from kindergarten or first grade through Grade 8, or some combination of those included years, together with incidental sports and outdoor activity areas.

263. School, middle or high.

A public or private establishment providing educational services from Grade 6 through

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Grade 12, or from Grade 6 through 8, or from Grade 9 through Grade 12, or some combination of those included years, together with incidental sports and outdoor activity areas.

264. Seasonal camp or cabin.

A facility containing one or more tent sites or cabins that is offered for use on short-term during defined seasons of the year, for compensation, and that may include accessory facilities such as showers, laundries or cooking and dining facilities.

265. Sediment.

Solid mineral or organic material that, in suspension, is being transported, or has been moved from its original site by air, water, gravity or ice and has been deposited at another location.

266. Sedimentation.

The process or action of depositing sediment that is determined to have been caused by erosion.

267. Setback.

The minimum horizontal distance between a lot line and a building or structure required by this Chapter.

268. Shore impact zone.

Land located between the ordinary high water level of public waters and a line parallel to it at a setback of 50% of the required structure setback, but not less than 50 feet. This zone serves as all or part of the shoreline buffer.

269. Shoreland.

Lands within 1,000 feet of a lake or within 300 feet of a river and its floodplain, as shown on the NR-O map. The limits of shorelands may be less than the above limits whenever the waters involved are bounded by topographic divides that extend landward from the waters for lesser distances and when approved by the commissioner.

270. Sign.

Any letter, word, symbol, model, printed, projected or affixed device, poster, picture, reading matter or representation in the nature of an advertisement, announcement, direction or informative device including its structure or component parts, which is located outdoors, when more than one square foot in area; but shall not be deemed to include (a) temporary parks and recreation signs permitted pursuant to Chapter 35

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of the City Code, or (b) overhead banners and devices regulated under Article III of Chapter 45 of the City Code, or (c) any street name sign, public directional, utility or transportation sign, or motor vehicle traffic signs of any kind when officially placed, or to advertising or other information affixed to any motor vehicle, provided that such vehicle's primary use is not as a stationary advertising device, or (d) any inscription on any publicly owned building when the inscription is incorporated into the architectural design as a permanent feature.

271. Sign, animated.

An animated sign is one that has any moving, rotating or otherwise physically animated part, as distinguished from lights that give the appearance of animation by flashing, blinking or fluctuating, but does not include changeable message signs that are stationary for a continuous time period of at least four seconds in each eight second period.

272. Sign, awning.

Any sign affixed to an awning, as that term is defined in Section 4506 of the Uniform Building Code, 1982 Edition.

273. Sign, changeable message (CMS).

Any off-premises advertising sign, display or device that changes the message or copy on the sign by means of electronic rotation or panels or slats. CMSs are outdoor advertising signs and must comply with all requirements applicable to outdoor advertising signs. This includes a flashing sign that is off-premises.

274. Sign, construction contractor.

An accessory sign informing the public that construction or remodeling is taking place on the property and identifying the architect(s), engineer(s), prime contractor(s) and subcontractor(s) working on the project.

275. Sign, double or triple faced.

A double or triple faced sign is any sign having displays on an integral structure that has two or three faces that are either back to back or "V" or triangular shaped with no internal angle of more than 60 degrees.

276. Sign, electronic.

An off-premise advertising sign, display or device that changes the message copy on the sign by means of light emitting diodes (LEDs), fiber optics, light bulbs or other illumination devices with the display area.

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277. Sign, ground.

Any sign, other than a pole sign, that is supported vertically by a structure attached to the ground.

278. Sign, home occupation.

An accessory sign identifying a home occupation that is permitted in the zone district where the property is located and the individual or entity performing the home occupation.

279. Sign, flashing.

A sign that has direct illumination that is not kept constant in intensity at all times when in use, or that exhibits sudden or marked changes in lighting effects. Signs with direct illumination that indicate the time, temperature, date or other public service information shall not be considered flashing signs.

280. Sign, marquee.

Any sign affixed to a marquee, as that term is defined in Section 414 of the Uniform Building Code, 1982 Edition.

281. Sign, mobile.

Any sign so constructed as to permit movement from place to place, whether on wheels or otherwise.

282. Sign, off-premises.

A sign that directs attention to a business, product, service or entertainment not conducted, sold or offered upon the premises where the sign is located.

283. Sign, on-premises.

A sign that directs attention to the name of the building or the name of the building management firm or to a business, principal product, service or entertainment conducted, sold or offered upon the premises where such sign is located.

284. Sign, pole.

Any free standing, elevated sign erected on a pole or poles connected to the ground and that is less than 60 square feet in area.

285. Sign, political.

Any sign that directs attention to an issue in an election or to either the name of a

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candidate running for election to a public office or the name of the office for which he is a candidate, or both.

286. Sign, projecting.

An accessory sign that is affixed to the outside of an exterior wall of any building and that extends more than 18 inches from the building wall face.

287. Sign, property identification/management.

An accessory sign containing only messages related to the identification or management of the property where the sign is located, including but not limited to signs identifying entrances, exits, parking areas or hazardous areas, prohibiting trespassing, or information about limits on property use.

288. Sign, property owner opinion.

A sign that conveys a noncommercial message.

289. Sign, recreational field.

Recreational field complex signs include no more than one directional sign identifying the entrance to the complex, no more than one building mounted sign identifying the complex, and up to one scoreboard sign for each play area.

290. Sign, real estate.

An accessory sign advertising property for sale, lease or rent, or informing that property has been sold, leased or rented.

291. Sign, residential complex.

An accessory sign identifying a multi-building residential complex that identifies the name of the complex or the property management company.

292. Sign, roof.

Any sign erected, constructed or maintained above and connected to the roof of any building. For purposes of this definition a penthouse, elevator housing or any structure housing mechanical equipment of any kind shall not be deemed a part of the roof of any building.

293. Sign, temporary.

A sign usually made of a relatively lightweight and inexpensive material, that is easily moved, and generally is displayed only until the event advertised by the sign is completed. Examples include but are not limited to: balloons or other inflatable

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devices, flags, streamers, sandwich signs, banners, posters, sidewalk or curb signs.

294. Sign, wall.

A sign that is affixed to the outside of an exterior wall of any building when such sign extends no more than four feet above the top of such exterior wall and is parallel to that wall, and when such sign projects no more than 18 inches from the building wall face or from a parapet constructed on the wall face. Signs painted directly on the surface material of a building shall be considered a wall sign only if limited in content to the name of the principal firm or establishment located in such building or the name of the building's management firm.

295. Sign area.

The space inside a continuous line drawn around and enclosing all letters, designs and background material, except that the area of a double or triple faced sign shall be the area of the largest face, and the area of a spherical sign shall be the area of the outline against the horizon formed by the largest dimension of the sphere.

296. Sign height.

The vertical distance from the average finished grade directly below the sign to the uppermost point on the sign or sign structure, whichever is higher.

297. Significant tree.

All trees of more than ten inches DBH, and all special tree species of more than six inches DBH shall be considered significant, unless they are under power lines or deemed hazardous by a certified arborist or landscape architect or professional forester. In addition, any replacement tree planted as part of a tree replacement plan shall be considered significant, even if it does not meet the size definition above.

298. Site.

A parcel or several adjoining parcels of land under common ownership. For purposes of the natural resources overlay district, this definition is limited to apply to any parcel of land upon which work requiring a permit under this Chapter is to be performed, and includes any adjacent lands owned by the owner of the subject parcel on the date of application for any permit and any lands adjacent to the subject parcel that were owned by the same person owning the subject parcel as of January 1, 1980.

299. Site plan.

An accurate scale drawing that indicates the major features of a proposed development in sufficient detail to allow the evaluation of the land planning, building design and other aspects of the development, and meeting all requirements of the

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UDC application manual.

300. Slope.

An incline from the horizontal expressed in an arithmetic ratio of horizontal magnitude to vertical magnitude (e.g., slope = 3:1 = 3 feet horizontal to 1 feet vertical).

301. Solar, geothermal or biomass power facility (primary use).

Uses and structures that are used to reduce energy consumption or to generate energy from non-fossil fuel and non-carbon dioxide emitting sources on the property. These structures and uses may include but are not limited to the following: solar panels (photovoltaic and hot water), heat exchanges, biomass firing equipment, piping, and other transfer mechanisms, controls and related structural support for transporting and storing collected energy from solar, geothermal, or biomass energy systems. These structures and uses may be located at ground level or above or below ground unless specifically limited in this Chapter, provided that they meet all other applicable requirements of this Chapter.

302. Solid land.

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

303. Solid waste.

As defined in MSA 116.06, Subd. 22, and also including medical wastes and petroleum contaminated soils.

304. Solid waste disposal or processing facility.

Any tract or parcel of land, including any constructed facility that is designed or operated for the purpose of disposing of solid waste on or in the land, at which solid waste is disposed of in or on the land or processed for disposal or reuse, together with any appurtenant facilities needed to process solid waste for disposal or for transfer to another solid waste facility, and that is not listed as a separate use in this Chapter.

305. Special tree species.

White pines, red (Norway) pines, white cedars, white spruces, eastern hemlocks, sugar maples, American basswoods, American elms, yellow birches and all oak species.

306. Special use.

A specific type of structure or land use listed in Table 50-19.8 that may be allowed

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only after review and evaluation of potential impacts on surrounding properties and the attachment of any conditions necessary to mitigate those impacts.

307. Stealth or stealth technology.

When used in the context of wireless telecommunications, to minimize adverse aesthetic and visual impacts on the land, property, buildings and other facilities adjacent to, surrounding and in generally the same area as the requested location of such wireless telecommunications facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.

308. Steep slope.

Land having average slopes over 12%, as measured over horizontal distances 50 feet or more, and that are not bluffs.

309. Storage warehouse.

A structure containing an area available for storing raw materials, produce, goods or property, but not including mini-storage facilities.

310. Storm water.

Storm water runoff, snowmelt runoff, surface runoff and drainage.

311. Storm water management.

The use of structural or non-structural practices that are designed to reduce storm water runoff pollutant loads, discharge volumes, peak flow discharge rates and detrimental changes in stream temperature that affect water quality and habitat.

312. Storm water pollution prevention plan.

A plan, usually required by a permit, to manage storm water associated with industrial, commercial, public, institutional, civic or other land use activities, including construction. The plan commonly describes and ensures the implementation of practices that are to be used to reduce pollutants in storm water and non-storm water discharges.

313. Storm water pollution prevention program (MS4 program).

A compilation of best management practices (BMPs) to address the six minimum control measures and other provisions of the MS4 permit, that is designed and managed to reduce the discharge of pollutants from your MS4 to the maximum extent practicable as appropriate to the community.

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314. Storm water best management practice (BMP).

A measure, either structural or nonstructural, that is determined to be the most effective, practical means of preventing or reducing point source or nonpoint source pollution inputs to storm water runoff and water bodies. Non-structural BMPs are those practices that require modified or additional operational or behavioral practices, such as sweeping or having spill response equipment on site. Structural BMPs are those that require the construction of a structure or other physical modification on the site.

315. Storm water retrofit.

A storm water BMP designed for an existing development site that previously had either no storm water BMP in place or a practice inadequate to meet the storm water management requirements of the site.

316. Storm water runoff.

Flow on the surface of the ground resulting from precipitation.

317. Story.

That portion of a building included between the surface of any floor and the surface of the floor next above it, or if there be no floor above it, then the space between the floor and the ceiling next above it.

318. Story, half.

A partial story under a gable, hip or gambrel roof, the wall plates of which on at least two opposite exterior walls are not more than 4 feet above the floor of such story, except that any partial story used for residence purposes, other than for a janitor or caretaker or his family, or by a family occupying the floor immediately below it, shall be deemed a full story.

319. Stream buffer.

An area of land at or near a stream bank, wetland or water body that has intrinsic water quality value due to the ecological and biological processes it performs or is otherwise sensitive to changes that may result in significant degradation to water quality.

320. Street.

A thoroughfare 30 feet or more in width, dedicated to the public or privately owned and approved by council. This term includes street, avenue, boulevard, road, lane, alley, viaduct and other ways.

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321. Street line.

The established side line of a street easement or right-of-way.

322. Structure.

Anything constructed or erected, the use of which requires a location on the ground, or attached to some thing having a location on the ground. Examples include but are not limited to: backstops for tennis courts, fences or pergolas, but excluding signs as defined in Chapter 44 of the City Code.

323. Structural alteration.

Any change in the supporting members of a building, such as bearing walls, columns, beams or girders, or any substantial changes in the roofs or exterior walls but not including openings in bearing walls as permitted by existing ordinances.

324. Subdivision.

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

325. Telecommunications.

The transmission or reception of audio, video, data, and other information by wire, radio frequency, light and other electronic or electromagnetic systems.

326. Telecommunications site.

See wireless telecommunications facilities.

327. Telecommunications structure.

A structure used in the provision of services described in the definition of wireless telecommunications facilities.

328. Temporary.

In the context of wireless telecommunications, temporary in relation to all aspects of the city's wireless telecommunications regulations, something intended not to exist, or that does not exist, for more than 90 days.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

329. Temporary construction office or yard.

A facility or area used as a temporary field construction office, temporary outdoor storage of construction equipment and materials associated with an active permit to demolish or construct buildings, structures or infrastructure.

330. Temporary event or sales.

A temporary outdoor use of land for the purposes of an event or sale including but not limited to: a circus, carnival, fair, part, or celebration that reasonably may be expected to attract more than 100 persons at any one time; or any sale made by a person, firm or corporation engaging in the temporary business of selling goods, wares or merchandise from a tent, truck, vending cart or other area outside of a permanent structure on property owned or leased by the person, firm or corporation. The temporary event or sale must be secondary to or incidental to the permitted use or structure existing on the property and not incompatible with the intent of the zone district.

331. Temporary moveable storage container.

A container designed for the storage of personal property that is typically rented to owners or occupants of property for their temporary use, and that customarily is delivered and removed by truck.

332. Temporary real estate sales office.

A facility or area used as a temporary office to sell land or buildings within a specified area or subdivision.

333. Theater.

A facility with fixed seats for the viewing of movies or live presentations of musicians or other performing artists.

334. Tourist or trailer camp.

Any park, trailer park, trailer court, camp, site, lot, parcel or tract of land designed, maintained or intended for the purpose of supplying a location or accommodations for any trailer coach or trailer coaches or upon which any trailer coach or trailer coaches are parked, and shall include all buildings used or intended for use as part of the equipment or establishment, whether or not a charge is made for the use of the trailer camp and its facilities. Trailer camp shall not include automobile or trailer sales lots on which unoccupied trailers are parked for purposes of inspection and sale.

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335. Tower.

In the context of wireless telecommunications, any structure designed primarily to support an antenna for receiving or transmitting a wireless signal.

336. Trailer.

Any vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle. The term shall include trailers whose wheels or axles have been removed.

337. Truck.

Every motor vehicle designed, used or maintained primarily for the transportation of property.

338. Truck freight or transfer terminal.

A facility in which goods shipped by truck are loaded, unloaded, or transferred between trucks for shipping or distribution, together with incidental truck storage, maintenance, and administrative offices.

339. Truck or heavy vehicle sales, rental, repair or storage.

A facility that is engaged in the sales, rental, repair or storage of heavy equipment typically used in agricultural, commercial or industrial operations, including tractors, trucks with a gross vehicle weight of over 10,000 pounds, semi trucks or trailers, harvesters, loaders and tracked vehicles as well as sales of parts, whether new or used, for heavy equipment.

340. University or college.

An institution other than a trade school that provides full-time or part-time education beyond high school.

341. Useable open space.

Open space, other than required building setback areas, that is utilized exclusively for active recreational purposes such as softball, tennis or playgrounds or for passive recreational purposes such as pedestrian walkways or trails that have been preserved in their natural setting or landscaped. Areas with slopes of 15% or greater, and areas of wet, spongy land saturated and partially or intermittently covered with water shall not be considered useable open space. Useable open space shall not include streets or other vehicular access not used exclusively for the maintenance of such open space. Land on which buildings or other facilities are located may be considered useable open space if those buildings or other facilities are used for noncommercial, recreational or cultural purposes that are compatible

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

with useable open space objectives and have been specifically approved as part of the development plan.

342. Utility, major.

A facility providing an important regional utility service, such as water, sewer, or drainage, that normally entails construction of new buildings or structures, and that typically has employees on the site on an ongoing basis. Examples include but are not limited to: water works, sewage treatment plants, reservoirs, regional storm water detention ponds and other similar facilities.

343. Utility, minor.

Equipment necessary to support utility services to development within the immediate vicinity and that involves only minor accessory structures. Employees typically are not located at the site on an ongoing basis. Examples include but are not limited to: electric transformer stations and service boxes, gas regulator stations, telephone service boxes, and well, water and sewer pumping stations, and related underground and aboveground pipes and wires, but excluding those that meet the definition of an electric power transmission line.

344. Utility runway.

A runway that is constructed for and intended to be used by propeller driven aircraft of 12,500 pounds maximum gross weight and less.

345. Veterinarian or animal hospital.

A facility for the diagnosis, treatment or hospitalization of animals, and including the incidental boarding or breeding of animals.

346. Visual runway.

A runway intended solely for the operation of aircraft using visual approach procedures, with no straight in instrument approach procedure and no instrument designation indicated on an approved planning document.

347. Watercourse.

A channel in which a flow of water occurs either continuously or intermittently in a definite direction. The term applies to either natural or artificially constructed channels.

348. Water-dependent bulk storage or wholesaling not listed elsewhere.

A bulk storage or wholesaling use as defined by this Chapter, but not separately defined, that must be located near water because of the nature of the goods being

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

stored or wholesaled or the means by which they are being transferred to or from the site, or because the establishment's suppliers or customers must be located near water.

349. Water dependent manufacturing, light or heavy.

A light or heavy manufacturing use, as defined by this Chapter, that must be located near water because of the nature of the goods being manufactured, assembled, fabricated, or treated or the means by which they or their inputs are being transferred to or from the site, or because the establishment's suppliers or customers must be located near water.

350. Water management district.

Land that by definition is in a flood plain district, a shoreland district, or a wetland.

351. Water or sewer pumping station/reservoir.

Facilities to collect or distribute water or wastewater from a defined service area, and that typically does not have employees at the site, including but not limited to water-pumping stations, water reservoirs and sewage pumping stations.

352. Water or sewer treatment facility.

An establishment to treat water or wastewater from a defined service area, and that typically has employees at the site, including but not limited to water treatment plants, sewage treatment plants and sewage disposal plants.

353. Waters of the state.

All streams lakes ponds, marshes, water course, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, that are contained within, flow through or border upon the state or any portion of the state. Constructed wetlands designed for wastewater treatment are not waters of the state.

354. Wetland.

Those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support and that under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands must have the following attributes:

A. A predominance of hydric soils;

B. Inundated or saturated by surface water or groundwater at a frequency and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in a saturated soil condition;

C. Under normal circumstances support a prevalence of such vegetation.

355. Wholesaling.

A use engaged in enclosed wholesale of manufactured products, supplies, and equipment, including accessory offices and showrooms. Products may be picked up on-site or delivered to the customer. This use does not include sales to the public at large or to consumers who are members or a club or association, regardless of whether the name of the business includes some version of the word "wholesale."

356. Wind power facility (primary use).

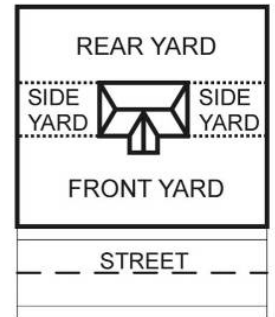
A primary use of land including an aggregation of parts including the base, tower, generator, rotor, blades, supports, guy wires and accessory equipment such as utility interconnect and battery banks, in a configuration necessary to convert the power of wind into mechanical or electrical energy. Examples include but are not limited to: wind charger, windmill and wind turbine.

357. Wireless telecommunications facilities.

A structure, facility or location designed, or intended to be used as, or used to support antennas or other transmitting or receiving devices. This includes without limit, towers of all types and kinds and structures, including but not limited to buildings, church steeples, silos, water towers, signs or other structures that can be used as a support structure for antennas or the functional equivalent of antennas. It also includes all related facilities and equipment such as cabling, equipment shelters and other structures associated with the site. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, SMR, paging, 911, personal communications services (PCS), commercial satellite services, microwave services and any commercial wireless telecommunication service not licensed by the FCC. This term also includes a telecommunications site and personal wireless facility.

358. Yard.

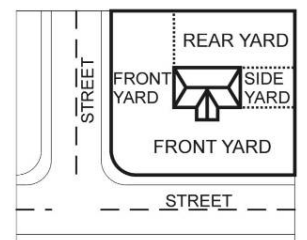
An open space at grade between a building and the adjoining lot lines, unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise provided herein.



INTERIOR LOT

359. Yard depth or width.

In measuring a yard for the purpose of determining the width of a side yard, the depth of a front yard or the depth of a rear yard, the minimum horizontal distance between the lot line and the



CORNER LOT

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

main building shall be used.

360. Yard, front.

A yard extending across the front of a lot between the side lot lines, and being the minimum horizontal distance between the street line and the primary building, but ignoring projections permitted by this Chapter. On corner lots the front yard shall be considered as parallel to the street upon which the lot has its least dimension. Where lines are equal, the front yard shall be the line that is the front by reason of the established pattern of the platting or development along the street(s).

361. Yard, rear.

A yard extending across the rear of a lot between the side lot lines and being the minimum horizontal distance between the rear of the primary building, but ignoring projections permitted by this Chapter. On all lots the rear yard shall be at the opposite end of the lot from the front yard.

362. Yard, side.

A yard between the main building and the side line of the lot, and extending from the front yard to the rear yard, and being the minimum horizontal distance between a side lot line and the side of the primary building, but ignoring projections permitted by this Chapter.

363. Yard waste.

The garden wastes, leaves, lawn cuttings, weeds and prunings generated at residential or commercial properties.

364. Yard waste compost facility.

A site used to compost or co-compost yard waste that originates off of the site including all structures or processing equipment used to control drainage, collect and treat leachate, and storage area for the incoming yard waste, the final product and residual resulting from the composting process.

Section 7. That this ordinance shall take effect and be in force 60 days from and after its passage and publication. (Effective date: November 19, 2010)

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

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

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed August 16, 2010
Approved August 16, 2010
DON NESS, Mayor

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, August 30, 2010, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: None -- 0

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

10-0830-01 City of Duluth engineering division petition to vacate 16 foot alley between 43rd and 46th avenues West and Grand Avenue within Blocks 69 and 72, Oneota Industrial Park, and a 20 foot utility easement reserved in a portion of the vacated Traverse Street; rescinding Resolution 05-0156 and rededicating property. -- Assessor

10-0830-02 J&S Partnership, LLP, by Hanft, Fride, PA, amended application and rezoning petition for property between 44th and 46th avenues West and Grand Avenue (lower side). -- Assessor

10-0830-09 John H. Owen communication regarding the board of zoning appeals denial of a request to relax the side yard setback and aggregate side yard setback for the construction of an addition to an attached garage on property located at 2617 East Eighth Street (10-00440R and 10-0441R). -- Received

10-0830-03 The following communications regarding sale of certain city property in the Upper Riverside area to the Spirit Valley Land Company, LLC, FOR \$67,000 (10-011-O): (a) Allan Beaulier; (b) Art Johnston; (c) Bill Majewski. -- Received

- - -

REPORTS FROM THE ADMINISTRATION

10-0830-29 Mayor Ness 2011 proposed property tax levy and general fund budget summary. -- Received

- - -

REPORTS FROM OTHER OFFICERS

10-0830-04 Letter of sufficiency of petitions to:

(a) Reclassify property between 44th and 46th avenues West and Grand Avenue (lower side);

(b) Vacate:

(1) 16 foot alley between 43rd and 46th avenues West and Grand Avenue within Blocks 69 and 72, Oneota Industrial Park, and a 20 foot utility easement reserved in a portion of the vacated Traverse Street; rescinding Resolution 05-0156 and rededicating property;

(2) The south end of Viewcrest Avenue; Lots 14 and 15, Block 3, and Lot 1 and a portion of Lot 8, Block 4, Riverside. -- Received

10-0830-05 Building official appeal of board of zoning appeals denial of a request to relax the side yard setback and aggregate side yard setback for the construction of an addition to an attached garage on property located at 2617 East Eighth Street (Doug J. Breiland). -- Committee 2 (planning and economic development)

10-0830-16 Purchasing agent emergency order for zoo repairs due to flooding. -- Received

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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REPORTS OF BOARDS AND COMMISSIONS

10-0830-06 Duluth human rights commission minutes of July 14, 2010, meeting. -- Received

10-0830-07 Duluth transit authority: (a) Income statement for April 2010; (b) Information on proposed fare increase. -- Received

10-0830-08 Library board minutes of May 25, 2010, meeting. -- Received

10-0830-10 Spirit Mountain recreation area authority minutes of July 15, 2010, meeting. -- Received

- - -

At this time, 7:02 p.m., the public hearing regarding the proposed Duluth transit authority (DTA) fare increase began.

Jim Hellig, representing the DTA, reviewed how this proposed fare increase was initiated by citizens who wanted more evening, weekend and holiday services. He noted that the proposed increase rate is based on what it would cost to add the services requested.

Karen Lewis stated her support for the rate increase and expressed a concern for a phase in of the new rate at the end of the year.

At this time, 7:08 p.m., the public hearing was declared closed.

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OPPORTUNITY FOR CITIZENS TO BE HEARD

Carlyle Eckart showed pictures and commented on the issues he previously raised about the individuals selling food and beer in the parking areas at the Blues Festival.

- - -

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

RESOLVED, that Amendment No. One to the city's technical consulting Agreement No. 21149 with Elert & Associates Networking Division, Inc., substantially in the form of that on file in the office of the city clerk as Public Document No. 10-0830-17, is hereby approved for Phase II and Phase III services in accordance with the vendor's original proposal, at an increase of \$159,600, and a contract amount not to exceed \$207,600, payable as follows:

Amount	Requisition	Fund	Dept./Agy.	Org.	Obj.	Proj. No.
\$28,000	10-0442	Energy Management Fund 257	025		5580	DOE-GPS
\$62,100	10-0443	Energy Management Fund 257	025		5580	DOE-GPS
\$17,375	10-0446	Capital Equipment Fund 250	015	2010	5580	

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

\$52,125 10-0446 Special Projects 030 3163 5580 CE-250-
Fund 210 E1002

Resolution 10-0442 was unanimously adopted.
Approved August 30, 2010
DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the renewal and issuance of 84 on sale intoxicating liquor, 89 on sale Sunday intoxicating liquor, seven additional bar, 12 on sale dancing, and 39 2:00 a.m. beverage licenses, for the period beginning September 1, 2010, and ending August 31, 2011, 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. 10-0830-11.

Resolution 10-0448 was unanimously adopted.
Approved August 30, 2010
DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves renewal of 13 on sale wine licenses for the period beginning September 1, 2010, and ending August 31, 2011, 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. 10-0830-12.

Resolution 10-0449 was unanimously adopted.
Approved August 30, 2010
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, 2010, and ending August 31, 2011, 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. 10-0830-13.

Resolution 10-0450 was unanimously adopted.
Approved August 30, 2010
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, 2010, and ending August 31, 2011, 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. 10-0830-14.

Resolution 10-0451 was unanimously adopted.
Approved August 30, 2010
DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby approves renewal of three brewery malt liquor off sale intoxicating liquor licenses for the period beginning

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

September 1, 2010, and ending August 31, 2011, 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. 10-0830-15.

Resolution 10-0452 was unanimously adopted.

Approved August 30, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a proprietary contract with Evolving Solutions, Inc., for the purchase of a software upgrade for the city's central storage solution for \$79,965.09 plus \$5,497.60 sales tax for a total amount of \$85,462.69, payable from the Clean Water Surcharge Fund 532, Department/Agency 500, Object 5580.

Resolution 10-0456 was unanimously adopted.

Approved August 30, 2010

DON NESS, Mayor

- - -

RESOLVED, that:

(a) The city council grants the request submitted by Scott and Christine Schafer for a Section 50-35(c) special use permit for a beauty salon in an R district to be located at 2915 Nighthawk Lane and legally described as Lot 4, Block 2, Hidden Estates; and

(b) Pursuant to Section 50-32 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 August 10, 2010, 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 10078).

FURTHER RESOLVED, that the city council of the city of Duluth approves the special use permit, subject to the following conditions:

(a) That the project be constructed and maintained according to the documents provided by the applicant titled Schafer Residence, Site Plan dated 3-4-10, including salon details and parking locations, and shown on Public Document No. 10-0830-18;

(b) That Christine Schafer, licensed cosmetologist salon manager, shall be the only worker at the salon and must remain living on the premises;

(c) That the applicant secure and maintain all permits required by federal, state, county or city laws and regulations;

(d) 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 IV.

Resolution 10-0436 was unanimously adopted.

Approved August 30, 2010

DON NESS, Mayor

- - -

RESOLVED, that the city council approves the reclassification to nonconservation and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

sale of the tax forfeited parcels (FN 10083) needed for I.S.D 709's Grant Elementary School renovation by the board of county commissioners of Saint Louis county, such parcels listed below and in Public Document No. 10-0830-19:

Lots 13 and 14 and the northerly 95 feet of Lots 15 and 16, including parts of vacated street and alley adjacent to Lots 14-16, Block 26, Lakeview Division (Parcel ID 2790-2470, 2480, 2490, 2500, 2510 and 2520).

Resolution 10-0437 was unanimously adopted.

Approved August 30, 2010

DON NESS, Mayor

- - -

RESOLVED, that:

(a) The city council grants the request for a special use permit submitted by Lt. Kerry Kolodge, representing the Duluth police department, for a construction of a 68,000 square foot building for a new city of Duluth police headquarters building along with vehicle and fire access lanes, parking areas, sidewalks and the necessary utilities, stormwater drainage and treatment facilities areas for the new building, and legally described as part of Unplatted Section 16, T-50-N, R-14-W, Parcel #271003940; and

(b) Pursuant to Section 50-32 and Section 50-35(cc) 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 August 10, 2010, considered the petition's effect on the comprehensive plan and property values in the neighborhood and voted 11-3 to recommend approval of the petitioned for the construction of the new city of Duluth police headquarters; and

(d) 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 construction of a 68,000 square foot building for a new city of Duluth police headquarters building along with vehicle and fire access lanes, parking areas, sidewalks and the necessary utilities, stormwater drainage and treatment facilities areas for the new building subject to the following conditions:

(a) The site improvements be limited to, constructed and maintained according to the documents provided by LHB Inc., titled "City of Duluth Police Headquarters":

(1) Site Plan for City of Duluth Variance and Special Use Permit Applications, Sheets SITE 1.0, LANDSC 1.0, LANDSC 1.1 (dated 06/29/10), Storm Water Pollution Prevention Plan Exhibit, Sheet CO.01 (dated 06/08/10), Grading and Storm Drainage Plan, Sheets C2.00, C2.01 (dated 06/08/10), Garage Level Overall Floor Plan, Sheet AX.20 (dated 05/05/10), Main Level Exterior Elevations Overall Floor Plan, Sheet AX.21 (dated 05/05/10), Photometric map and light specifications sheets titled Duluth Police Station (HQ) (dated 06/24/2010) and shown on Public Document No. 10-0830-20; and

(b) That the applicant secure all permits required by federal, state, county, or city laws and regulations; and

(c) Any alternations 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 IV.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Resolution 10-0453 was unanimously adopted.
Approved August 30, 2010
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to allow modification to City Contract No. 20095 to accept an additional \$19,380 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. 10-0830-21, capacity building funds to be deposited in Fund No. 110, Agency 110, Organization 1104, Revenue Source 4209-02.

Resolution 10-0439 was unanimously adopted.
Approved August 30, 2010
DON NESS, Mayor

- - -

BY PRESIDENT ANDERSON:

RESOLVED, that the city council hereby authorizes a contribution to the Greater Downtown Council ("GDC") in an amount up to \$13,000 to be used solely toward the completion of a Downtown parking study, to be completed in 2010 for a total estimated cost of \$25,000 plus supplemental expenses, the remainder of which shall be paid by the GDC, funds payable from the Parking Fund 505-015-1481-5441.

Resolution 10-0462 was unanimously adopted.
Approved August 30, 2010
DON NESS, Mayor

- - -

RESOLVED, that the city of Duluth has applied to the commissioner of transportation for a grant from the Minnesota state transportation fund for the rehabilitation of bridges 92277A through 92277K over Miller Creek at 26th Avenue West, City Project No. 0540TR.

RESOLVED, that the grant has been approved and the amount of the grant has been determined to be \$875,540.

FURTHER RESOLVED, that the city of Duluth agrees to the terms and conditions of the grant consistent with Minnesota Statutes, Section 175.40, subdivision 5, clause (30), and will pay any additional amount by which the cost exceeds the estimate and will return to the Minnesota state transportation fund any amount appropriated for the bridges but not required. The proper city officials are hereby authorized to execute a grant agreement, on file in the office of the city clerk as Public Document No. 10-0830-22, concerning the above referenced grant. Grant monies received hereunder shall be deposited into the Permanent Improvement Fund 0411, Department/Agency 035, Object 5530, City Project No. 0540TR, S.A.P. 118-080-039.

Resolution 10-0438 was unanimously adopted.
Approved August 30, 2010
DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Boyer Ford Truck, Inc., for the purchase and delivery of a utility body with canopy, liftgate, air compressor, lighting system and power inverter mounted on a 2011 Model Ford FS50 chassis ready for service in

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

accordance with city-approved specifications and the vendor's low bid of \$77,455.25 plus \$5,034.59 sales tax plus \$150 tax exempt plates and registration for a total amount of \$82,639.84, terms net 30, FOB destination, and payable as follows:

(a) \$66,111.87 from Water Fund 510, Department/Agency 500, Organization 1905, Object 5580;

(b) \$16,527.97 from Gas Fund 520, Department/Agency 500, Organization 1905, Object 5580.

Resolution 10-0454 was unanimously adopted.

Approved August 30, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Charles Bailey, dba Bailey Construction, for the 2010 CDBG-ARRA sidewalk replacement project for the apparent low bid of \$53,054.50, payable out of CDBG Fund 0262, Agency 025, Object 5434, City Project No. 0817TR.

Resolution 10-0455 was unanimously adopted.

Approved August 30, 2010

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 Public Document No. 10-0830-23, with the Minnesota department of natural resources for the maintenance of the Duluth cross country trails for the 2010-2011 season in the amount of \$5,000; said funds to be deposited in the General Fund 110-121-1217-2150-4225.

Resolution 10-0457 was unanimously adopted.

Approved August 30, 2010

DON NESS, Mayor

- - -

RESOLVED, that proper city officials are hereby authorized to accept a grant from the Great Lakes basin program substantially in the form of that on file in the office of the city clerk as Public Document No. 10-0830-24, from the Great Lakes Basin program (GLBP) in the amount of \$3,900, to be deposited in Fund 0535-500-1915-5439-01, for the project entitled: *THE MISSING LINK: RESIDENTIAL EROSION & SEDIMENT CONTROL EDUCATION* and committing to \$1,400 in local match, \$500 of which will be in the form of salaries and benefits and \$900 of which will in the form of materials and supplies.

Resolution 10-0459 was unanimously adopted.

Approved August 30, 2010

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. 10-0830-25, with St. Louis County to provide for the design, construction and maintenance of surface water drainage facilities in connection with the construction of the new city police headquarters facility.

Resolution 10-0433 was unanimously adopted.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Approved August 30, 2010
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept a grant from the Target Corporation in the amount of \$500 for the purchase of law enforcement equipment, funds to be deposited in Fund 110-160-1610-4660, and to execute any documents required to be executed to accept such grant.

Resolution 10-0435 was unanimously adopted.
Approved August 30, 2010
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute an agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 10-0830-26, with St. Louis County pursuant to a 2009 Operation Stonegarden grant from the United States department of homeland security bureau of customs and border protection, under which grant agreement the city shall perform services to protect and secure the international border and port of entry between St. Louis County and Canada from August 15, 2010, through February 28, 2011.

FURTHER RESOLVED, that the proper city officials are hereby authorized to accept reimbursement from St. Louis County for stated services in an amount not to exceed \$53,217.71, said funds to be deposited in Fund 215-200-2297-4210-02.

Resolution 10-0446 was unanimously adopted.
Approved August 30, 2010
DON NESS, Mayor

- - -

BY COUNCILORS FOSLE AND CUNEO:

RESOLVED, that the home energy conservation program Phase IV guidelines approved by Resolution 90-0719, a copy of which are on file in the office of the city clerk as Public Document No. 90-0723-31, are hereby amended as follows:

Section 6. Program Requirements

6.06. City officials may agree to subordinate the city's mortgage lien under the following circumstances:

- (a) The owner continues to meet the program requirements of Section 6.01; and
- (b) The subordination will assist in mortgage refinancing; and
- (c) The city will enjoy the same lien position after refinancing as it enjoyed prior to such refinancing.

City officials are authorized to establish other standards necessary to determine whether subordination is appropriate in any given case and shall apply such standards in a fair and consistent manner to all similarly situated persons.

Resolution 10-0458 was unanimously adopted.
Approved August 30, 2010
DON NESS, Mayor

- - -

WHEREAS, the Duluth transit authority wishes to expand services as requested by the public; and

WHEREAS, there are not additional federal or state dollars available for an expansion;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

and

WHEREAS, the Duluth transit authority has determined that a fare increase will offset the cost of the service increase; and

WHEREAS, the Duluth transit authority has held the required public hearings and requested that the city council approve the fare system changes;

THEREFORE, BE IT RESOLVED, that the Duluth city council hereby approves the Duluth transit authority request to increase Duluth transit authority fares effective January 1, 2011:

Regular Route	Current	Proposed
Base fare	\$ 1.25	\$ 1.50
Off-peak fare	\$ 0.60	\$ 0.75
Off-peak elderly and disabled	\$ 0.60	\$ 0.75
Youth fare (peak)	\$ 1.00	\$ 1.50
DASH/MASH	\$ 0.25	no change (\$0.25)
Day pass	\$ 3.00	\$ 4.00
Seven day pass	\$12.00	\$14.00
Adult 31 day pass	\$35.00	\$40.00
Youth pass (31 day)	\$30.00	\$37.50
Summer youth pass (June, July, August)	\$45.00	\$55.00
Transfers	free	(no change) good for 60 minutes
STRIDE		
Peak	\$ 2.50	\$ 3.00
Off-peak	\$ 1.25	\$ 1.50
*\$2.00 additional charge for a contactless card. If reused, no additional cost.		

Resolution 10-0460 was unanimously adopted.

Approved August 30, 2010

DON NESS, Mayor

- - -

The following resolutions were also considered:

WHEREAS, the city of Duluth, Minnesota (the city), annually establishes a street reconstruction, preservation and maintenance program (the SIP); and

WHEREAS, effective in 2009, 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 2011 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 \$6,000,000 from the CIT fund to the street improvement capital project fund (Fund 440) to provide monies for the 2011 street reconstruction, preservation and maintenance program. Such transfer is based on the estimated 2011 revenues from the Fond-du-Luth Casino. The transfers authorized in Section

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

1 above, from the CIT fund to the street improvement capital project fund, shall be made quarterly over 2011 but in no event later than needed to pay project costs.

Section 2. The projects for the 2011 SIP shall be established by further resolution or resolutions of the council.

Resolution 10-0327 was unanimously adopted.

Approved August 30, 2010

DON NESS, Mayor

- - -

Resolution 10-0447, recommending approval of the consumption and display license for Duluth Woman's Club, 2400 East Superior Street, was introduced by Councilor Cuneo for discussion.

Councilor Stauber moved to table the resolution so there can be information to the neighborhood as to the nature of this and hear their reactions, which motion was seconded and carried upon the following vote:

Yeas: Councilors Boyle, Cuneo, Fedora, Fosle, Gauthier, Hartman, Stauber and President Anderson -- 8

Nays: Councilor Gardner -- 1

- - -

Resolutions 10-0440 and 10-0441, affirming and reversing, respectively, the decision of the board of zoning appeals to deny an application for a variance from the minimum required side yard and aggregate side yard setbacks (Doug J. Breiland re: 2716 East Eighth Street), were introduced by Councilor Stauber for discussion.

Councilor Stauber felt that there was a hardship here, in this current day, since a two car garage is a necessity of any homeowner who wants one.

Councilor Stauber moved to amend Resolution 10-0441 by inserting the following hardship language into subsection (a) of the first paragraph as follows:

"There is not an alley, the lot is steep and times have changed so a one car garage is now a necessity,"

which motion was seconded and unanimously carried.

Resolution 10-0441, as amended, was adopted as follows:

BY COUNCILOR STAUBER:

RESOLVED, that the decision of the board of zoning appeals to deny a request for a variance to reduce the minimum required side yard setback from six feet to 2.5 feet and the aggregate side yard setback from 14 feet to 12.5 feet for the construction of an attached garage is reversed upon the following findings:

(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:

There is not an alley, the lot is steep and times have changed so a one car garage is now a necessity; and

(b) It is necessary for the preservation and enjoyment of a substantial property right and not merely a convenience; and

(c) That granting a variance would not impair adequate light and air supply to adjacent properties, nor unreasonably increase traffic, or diminish property valued in the neighborhood.

Resolution 10-0441, as amended, was unanimously adopted.

Approved August 30, 2010

DON NESS, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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Resolution 10-0440 failed unanimously (Public Document No. 10-0830-27).

- - -

Resolutions 10-0443 and 10-0444, affirming and reversing, respectively, reversing the decision of the board of zoning appeals to deny a request to increase the area of an oversized off-premise sign in a scenic area (Nick G. Patronas), were introduced by Councilor Stauber for discussion.

In support of Resolution 10-0444, Councilor Stauber stated that he felt that the signs are informative, tasteful and that the area is not residential or scenic.

Councilor Stauber moved to amend Resolution 10-0444 by inserting the following hardship language into subsection (f) of the first paragraph as follows:

“Official controls have inappropriately named the district a scenic area, that the sign controls go too far for this site, that a sign was there before and that the sign site in question is open,

which motion was seconded and unanimously carried.

Resolution 10-0444, as amended, was adopted as follows:

BY COUNCILOR STAUBER:

RESOLVED, that the decision of the board of zoning appeals to deny the application by Nick G. Patronas for a variance from the sign ordinance restricting the size of off premise signage in a scenic area for property located at 2120 London Rd. is reversed for the following reason:

(a) The appellant seeks a variance from the provisions of the Sign Code regulating signs in a scenic zone. Section 44-34(b) of the City Code restricts the size of a sign in a scenic area to 60 square feet;

(b) The board of zoning appeals (board) denied the variance request finding that the applicant failed to demonstrate the existence of a hardship and that the request was contrary to the intent of the scenic area regulations;

(c) The appellant has now appealed the decision of the board to the city council;

(d) Section 44-35(a) of the City Code provides that the power to grant a variance is limited to the powers specified in sections 50-47(a) and (b) of the City Code. These sections require an applicant for a variance to present evidence demonstrating the existence of all of the following factors:

(1) The exceptional narrowness, shallowness or shape of a specific piece of property, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property, the strict application of the terms of the Code will result in peculiar and exceptional practical difficulties to or exceptional or undue hardship upon the owner of such property; and

(2) That the relief may be granted without substantial detriment to the public good and without substantially impairing the intent of the Code; and

(3) The special circumstances or conditions applying to the building or land in question are peculiar to such property or immediately adjoining property, and do not apply generally to other land or buildings in the vicinity; and

(4) The granting of the variance is necessary for the preservation and enjoyment of a substantial property right and not merely to serve as a convenience to the applicant; and

(f) The authorizing of the variance will not impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion in public streets or

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

increase the danger of fire or imperil the public safety or unreasonably diminish or impair established property values within the surrounding areas or in any other respect impair the health, safety, comfort, morals or general welfare of the inhabitants of the city;

(e) The appellant has previously received two variances from the size restriction as follows:

(1) A variance approving a total of 240 square feet of signage by the city council by Resolution 01-0488 approved on June 25, 2001;

(2) A second variance increasing the size of the nonconforming sign area to 360 square feet by Resolution 03-0595 approved on August 25, 2003;

(f) The appellant has presented evidence establishing the existence of the factors required in Section 50-47(b) of the Code to support the granting of a variance. In particular the appellant has demonstrated that the following hardship exists:

Official controls have inappropriately named the district a scenic area, that the sign controls go too far for this site, that a sign was there before and that the sign site in question is open;

(g) The variance is granted subject to the following conditions:

(1) The additional signage is limited to an additional 60 square feet;

(2) The sign shall be constructed and maintained in accordance with all applicable codes, standards and requirements of the building official;

(3) No lighting or changes to lighting currently lawfully in existence are authorized by this variance and any unauthorized lighting shall be removed prior to construction of the additional square footage.

Resolution 10-0444, as amended, was unanimously adopted.

Approved August 30, 2010

DON NESS, Mayor

- - -

Resolution 10-0443 failed unanimously (Public Document No. 10-0830-28).

- - -

BY COUNCILOR FOSLE:

WHEREAS, the Stowe skate shack located in Gary New Duluth suffered extensive damage by vandalism in 2009 and has since been closed to the public; and

WHEREAS, in order to reopen, the skate shack is in need of major repair or replacement; and

WHEREAS, the council feels the Stowe skate shack provides a recreational benefit to the community and should be reopened or an equivalent replacement be provided.

THEREFORE, BE IT RESOLVED, that the city council hereby requests that the administration explore options for reopening the Stowe Skate Shack or replacing the recreational benefit it provided.

Resolution 10-0461 was unanimously adopted.

Approved August 30, 2010

DON NESS, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

ORDINANCE RECONSIDERED

INTRODUCED BY COUNCILOR HARTMAN

10-011 - AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN CITY PROPERTY IN

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

THE UPPER RIVERSIDE AREA TO THE SPIRIT VALLEY LAND COMPANY, LLC, FOR \$67,000.

Councilor Hartman moved to reconsider the ordinance, which motion was seconded and unanimously carried.

Councilor Hartman moved to return the ordinance to the administration, which motion was seconded and unanimously carried.

- - -

The following entitled ordinance was read for the first time:

INTRODUCED BY PRESIDENT ANDERSON

10-043 - AN ORDINANCE AMENDING CHAPTER 28 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO HEALTH AND SANITATION.

- - -

The following entitled ordinances were read for the second time:

BY COUNCILOR FEDORA

10-041 (10045) - AN ORDINANCE ADDING A NEW SECTION 34-42 TO THE DULUTH CITY CODE, 1959, AS AMENDED, REGARDING THE PROHIBITION OF SYNTHETIC CANNABINOIDS.

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

Robert Johnson, Electric Fetes employee, Brian Premo, Robert Knoepfler, Joe Gellerman and Jim Carlson, representing the Last Place on Earth, expressed opposition to the ordinance for reasons of: the effect from the synthetic cannabinoids (K2) is basically the same in all products, the difference is the legal psycho active herbs that they use to spray the synthetic urine on, that cause the different reactions; K2 has never been carried in Duluth, so if there are products with it, you should not condemn all brands; the reporting in the newspaper is inaccurate; more tragedies are from alcohol than use of this particular product; business has doubled from the stories of this legal alternative; like alcohol, this should be regulated and kept out of the hands of youth, not banned; in the middle of a deficit, more time will be spent on a chemical that cannot be detected, unless by lab analysis; a ban will create a black market, which will be harder to control; revenue can be received from a tax on this product; this is an alternative to not abusing alcohol; the vote should be based on fact, not emotion; there has not been one death determined by the Poison Control Center to be directly related to JWH-01A; the FDA has only stated that it is not approved for human consumption; alcohol and tobacco have been proven to be killers; this creates an unfair retail problem in Duluth, because it would be legal to purchase in the surrounding communities and on the internet; big brother is taking another product away from consumers; this product affects each individual differently, just like alcohol and this incense is designed to help the effect of chemotherapy on cancer patients.

Cheryl Berg, registered nurse, Eau Claire, Wisconsin, spoke in support of the ordinance for reasons of: there is no ingredient listing on the product; this is being promoted as an alternative to marijuana; it produces panic attacks, paranoia, hallucinations and seizures and in June of this year, her son started acting strange and he is still in a county hospital/home recovering from taking this product.

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

Yeas: Councilors Boyle, Cuneo, Fedora, Fosle, Gardner, Gauthier, Hartman and Stauber -- 8

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Nays: None -- 0

Abstention: President Anderson -- 1

INTRODUCED BY COUNCILOR STAUBER

10-038 (10046) - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, ZONING DISTRICT MAP NO. 28 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-B, ONE-FAMILY RESIDENTIAL, AND R-2, TWO-FAMILY RESIDENTIAL, TO C-5, PLANNED COMMERCIAL, THE REAR HALF OF PROPERTY LOCATED AT 323-335 EAST CENTRAL ENTRANCE (A+A INVESTMENTS AND KENNETH LARSON).

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

BY PRESIDENT ANDERSON AND COUNCILOR STAUBER

10-042 (10047) - AN ORDINANCE AMENDING ORDINANCE 10-030-O RELATING TO THE UNIFIED DEVELOPMENT CHAPTER, AMENDING SECTION 50-27.1, SECTION 50-27.3, SECTION 50-27.4, SECTION 50-38.7, SECTION 50-41.244, SECTION 50-41.277, SECTION 50-41.282, SECTION 50-41.290 AND TABLE 50-27-2.

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

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

Nays: Councilor Gauthier -- 1

BY COUNCILORS STAUBER AND BOYLE

10-039 - AN ORDINANCE AMENDING SECTION 34-40 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO SMOKING PROHIBITIONS IN CITY PARKS AND PLAY-GROUNDS.

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

INTRODUCED BY COUNCILOR FOSLE

10-040 (10048) - AN ORDINANCE AMENDING SECTION 8-24 OF THE DULUTH CITY CODE, 1959, AS AMENDED RELATING TO GAMBLING IN LICENSED ESTABLISHMENTS.

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

The meeting was adjourned at 8:37 p.m.

JEFFREY J. COX, City Clerk

ORDINANCE NO. 10045

BY COUNCILOR FEDORA:

AN ORDINANCE ADDING A NEW SECTION 34-42 TO THE DULUTH CITY CODE, 1959, AS AMENDED, REGARDING THE PROHIBITION OF SYNTHETIC CANNABINOIDS.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

The city of Duluth does ordain:

Section 1. That Chapter 34 of the Duluth City Code, 1959, as amended, is hereby amended by adding a new Section 34-42 which reads as follows:

Sec. 34-42. Synthetic cannabinoids prohibited.

(a) Definition. For purposes of this Section, "synthetic cannabinoid" shall mean:

(1) A synthetic equivalent of the substance contained in the Cannabis plant, or in the resinous extractives of the genus Cannabis, or a synthetic substance, derivative, or its isomers with similar chemical structure or pharmacological activity such as the following:

(A) 1-Pentyl-3-(1-naphthoyl)indole; some trade or other names; also known as JWH-018;

(B) 1-Butyl-3-(1-naphthoyl)indole; some trade or other names; also known as JWH-073;

(C) Phenol, CP 47, 497 and homologues, or 2-[(1R,3S)]-3-[hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol, where side chain n=5, and homologues where side chain n=4, 6 or 7;

(D) Any similar structural analogs;

(2) Products, by whatever trade name, that are treated, sprayed, or saturated with one or more of the above chemicals. Some currently marketed products containing synthetic cannabinoids identified in subdivision (1) include K2, Spice, Mojo, Smoke, Genie, Yucatan Fire, Diamond Spice, Red Dragon Smoke, Skunk, K2 Summit and Pandora Potpourri;

(b) Prohibited acts. No person shall use, possess, purchase, sell, give away, barter, exchange, dispense, deliver, distribute or manufacture any synthetic cannabinoid, as defined in Section 34-42, within the city;

(c) Exceptions. Acts otherwise prohibited under this Chapter shall not be unlawful if performed by or under the direction of a licensed physician, dentist or other medical health professional authorized to direct or prescribe such acts.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: October 3, 2010)

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

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

Nays: None -- 0

Abstention: President Anderson -- 1

ATTEST:
JEFFREY J. COX, City Clerk

Passed August 30, 2010
Approved August 30, 2010
DON NESS, Mayor

- - -

ORDINANCE NO. 10046

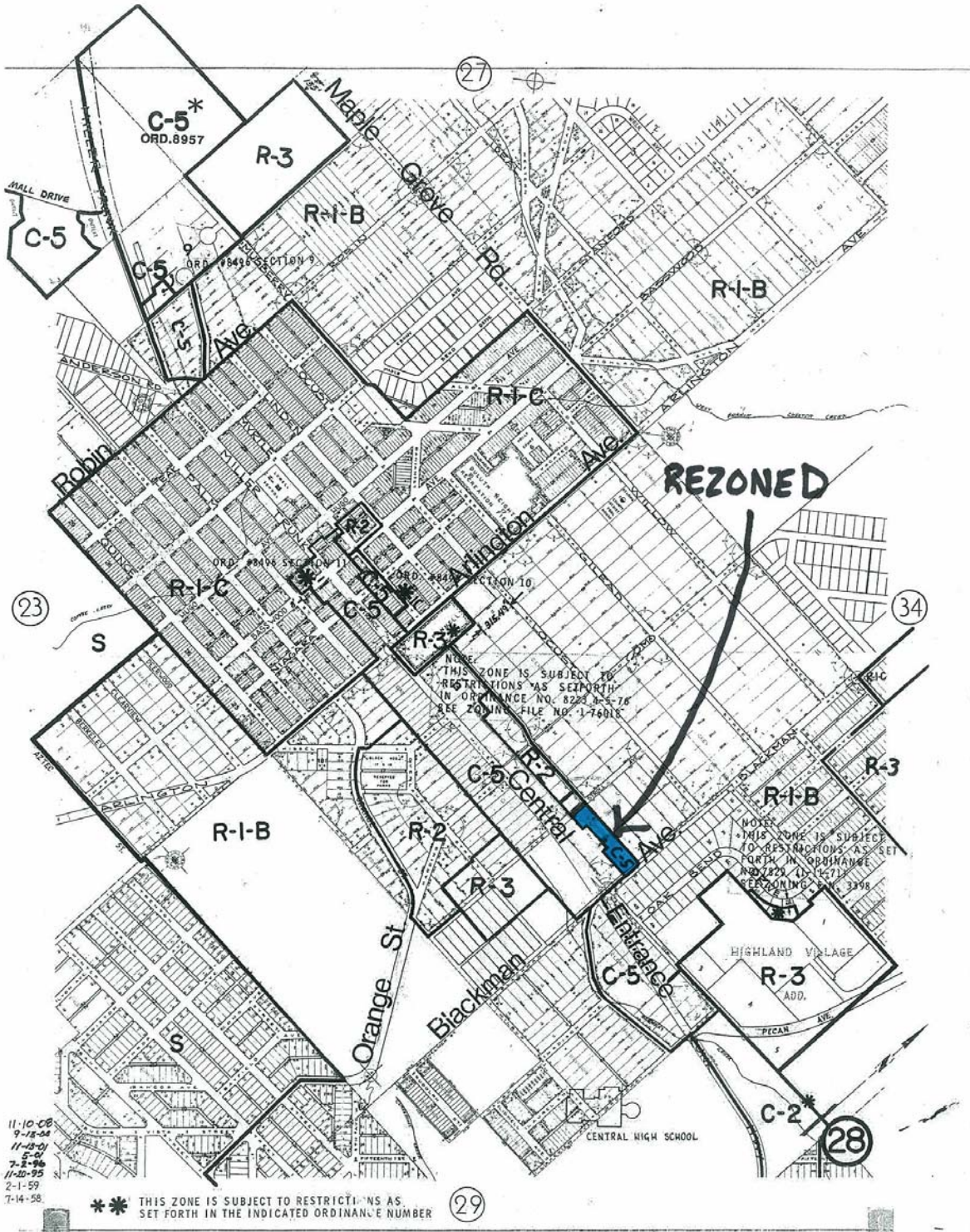
AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, ZONING DISTRICT MAP NO. 28 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-B, ONE-

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

FAMILY RESIDENTIAL, AND R-2, TWO-FAMILY RESIDENTIAL, TO C-5, PLANNED COMMERCIAL, THE REAR HALF OF PROPERTY LOCATED AT 323-335 EAST CENTRAL ENTRANCE

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

(Ref. File No. 10060)

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: October 17, 2010)

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

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

Nays: None -- 0

Passed August 30, 2010

Approved August 30, 2010

DON NESS, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10047

AN ORDINANCE AMENDING ORDINANCE 10-030-O RELATING TO THE UNIFIED DEVELOPMENT CHAPTER, AMENDING SECTION 50-27.1, SECTION 50-27.3, SECTION 50-27.4, SECTION 50-38.7, SECTION 50-41.244, SECTION 50-41.277, SECTION 50-41.282, SECTION 50-41.290 AND TABLE 50-27-2.

The city of Duluth does ordain:

Section 1. That Section 50-27.1 of Ordinance 10-030-0, Section 6, is hereby amended to read as follows:

50-27 Signs.

50-27.1 General.

- A. Intent. It is not the intention of this Section 50-27 to engage in any form of content-based regulation of sign content prohibited by the federal or state constitution, statutes, or court decisions. A noncommercial message may be substituted for a commercial message on any sign permitted by this Section 50-27. If any portion of this section is determined to include any form of impermissible content-based regulation of sign content, that provision shall be severed from the remainder of this Section and the remainder of this Section 50-27 shall remain in effect. It is the specific intent of the city that any unintentional impermissible content-based regulation of sign content not result in the invalidation of this Section 50-27;
- B. Compliance required. All signs erected or maintained in the city – whether accessory to a primary use of property or themselves a primary use of property – shall comply with the provisions of this Section 50-27;
- C. Permits and exceptions. Unless an exception is listed in this Section 50-27, no person, firm or corporation shall erect any sign, or cause or allow a sign to be erected unless a sign permit for that sign has been issued pursuant to Article 5;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

- D. Limits apply per property. Whenever the number of signs permitted is limited by this Section 50-27, the limitation shall refer to each piece of property held under separate ownership;
- E. Signs for nonconforming uses. If the use of a property constitutes a legal nonconforming use, all signs erected on the property shall be erected and maintained in conformance with the provisions of this Section 50-27 applying to the most restrictive district in which that use is a permitted use of the property;
- F. No signs on streets, trees or fences. Except for A-frame signs allowed pursuant to Section 50-27.4 and temporary signs approved pursuant to this Section 50-27, no sign shall be placed on any street, highway or pedestrian easement or be attached to or painted on a tree, fence or accessory building. This provision shall not be deemed to prohibit holiday season decorations or those items regulated by Article III of Chapter 45;
- G. Name of installer on sign. All signs for which a permit is required shall contain, on the face of the sign and in a legible manner, the permit number and installer's name. This provision shall not apply to awning signs;
- H. Setbacks apply. No sign shall be located within a required front, side or rear yard space, except for wall signs, projecting signs and pole signs;
- I. No safety obstructions. No sign shall obstruct access to fire escapes or windows, doors, exits or standpipes. No pole sign or monument sign shall be constructed in such a manner that it projects over any building;
- J. Illumination and glare. All sign illumination, whether direct or indirect, shall be so shaded or concealed that it does not create unreasonable and annoying illumination on residential structures constructed prior to the installation of such lighting apparatus. No sign illumination shall shine in any manner that interferes with the vision of motor vehicle operators;
- K. Signs in the public right-of-way. Where any sign is permitted on the public right-of-way (including but not limited to a portable A-frame sign on the sidewalk), no sign shall be placed in the public right-of-way unless a sign permit has been issued for that sign, and no sign shall be issued until the applicant has submitted evidence of a certificate of insurance approved as to form by the city evidencing that the applicant has in force insurance in the minimum amounts required by the city for bodily injuries or property damage in any one year protecting such person or organization and the city against liability for injuries or damages resulting from the placement of such objects or materials in the public right-of-way;
- L. Attachment to buildings. All signs attached to a building shall be thoroughly and rigidly secured and shall be repaired and maintained as necessary to keep them secure, safe and free from becoming a hazard;
- M. Wind pressure design. All permanent signs and supports shall be designed to withstand a wind pressure of not less than 30 pounds per square foot of area subject to such pressure, or to the value found in the current edition of

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

the Uniform Building Code, whichever is greater;

- N. Electrical wiring. All electrical wiring of signs shall comply with the provisions of the National Electrical Code and any other applicable provision of the State Building Code;
- O. Certification by structural engineer. The structural design of all supporting members of pole signs, monument signs and projecting signs that have an area of more than 80 square feet, shall be certified by a structural engineer registered in the state or an architect registered in the state. In lieu of the above, if a structural design book showing basic standard sign designs is filed with the city building official, and the designs therein are certified by a structural engineer licensed in the state, and the permit filed is for one of the signs shown in the standard design book, no individual certification shall be required. However, all signs with deviations from the standard designs shall be certified by a Minnesota registered structural engineer or architect.

Section 2. That Section 50-27.3 of Ordinance 10-030-0, Section 6, is hereby amended to read as follows:

50-27.3 Prohibited signs.

The following types of signs are prohibited:

- A. Portable stand signs;
- B. Private signs that resemble public authority signs;
- C. Roof signs;
- D. Wind oscillating pennants and propellers for use on a permanent basis (use for carnivals, bazaars and similar events for up to ten days per calendar year are permitted);
- E. Signs with flashing, oscillating or revolving lights that could be confused with emergency or traffic lights;
- F. Signs that involve rapid rotation of all or part of the structure, except for changeable message signs and electronic signs that comply with Section 50-27.4;
- G. Signs that involve rapid rotation of all or part of the structure, except for changeable message signs and electronic signs that comply with Section 50-27.4.

Section 3. That Section 50-27.4 of Ordinance 10-030-0, Section 6, is hereby amended to read as follows:

50-27.4 Regulations for specific sign types.

- A. Awning sign.
 1. The message of an awning sign shall consist of the letters and

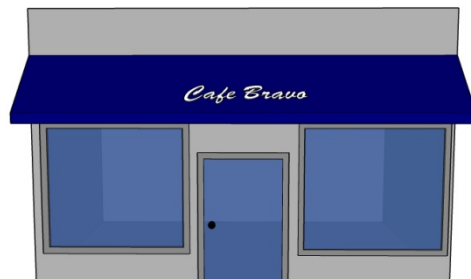


Figure 50-27.4-A: Awning sign

numbers not more than ten inches high and a logo not exceeding 18 inches square;

2. The message shall be fabricated into or printed on the awning cover;
3. The message shall convey only the name or address of the building or the name of the principal occupant or business;

B. Changeable message sign (CMS) and electronic sign (ES).

Changeable message signs and electronic signs shall conform to the following additional conditions in those zone districts where they are permitted:

1. Separation. The sign must be separated from other changeable message signs and electronic signs by at least 100 feet;
2. Orientation. In all districts, the sign must be oriented so that no portion of the sign face is visible from a park that is over 1 acre in area and contains improvements for recreational use, if the park is within 150 feet of the sign, and no portion of the sign face is visible from a school that is within 150 feet of the sign;
3. Brightness. The maximum brightness of a changeable message sign and electronic sign shall not exceed 5,000 nits (equivalent to 464 candelas per square foot) during daylight hours, or of 500 nits (equivalent to 46 candelas per square foot) between dusk to dawn. The sign must have an automatic dimmer control that produces a distinct illumination change from a higher allowed illumination level to a lower allowed level for the time period between one-half hour before sunset and one-half hour after sunrise;
4. Duration. Any image or message or part of a message displayed on the sign shall have a minimum duration of eight seconds and shall be static display. Transition time between images or messages or part of a message must be no longer than two seconds;
5. Default Mechanism. CMS and ES shall contain a default design that will freeze the design in one position if a malfunction occurs;
6. Audio or Pyrotechnics. Audio speakers or any form of pyrotechnics are prohibited;

C. Marquee sign.

1. Structurally Integrated. Must be structurally integrated into the fascia of a marquee, and may not project above or below such fascia;
2. Lettering. Marquee signs shall be constructed of individual



Figure 50-27.4-B: Marquee sign

numbers and letters not exceeding ten inches in height and may contain a logo 28 inches square or less, all of which are individually attached to the fascia and do not project outward more than three in. from such fascia;

3. Placement. The message may be placed on up to three sides of the marquee;
4. Illuminated. Letters, numbers and logos may be individually illuminated only, and shall not flash or convey an animated message;
5. Size. Marquee signs shall cover no more than one square foot of sign area for each linear foot of building frontage;

D. Portable A-frame sign.

1. Size restriction. Between 36 and 40 inches tall and between 24 and 30 inches wide;
2. Location. Shall extend no more than three feet into the public right-of-way and must provide an unobstructed sidewalk width of at least five feet for pedestrian passage;
3. Time. Shall be displayed only during the hours in which the business is open;
4. Snow removal. Shall be removed during city snow removal operations and the city is not liable for any damage to signs caused by snow removal operations;
5. Insurance. Applicant must provide and maintain in force a certificate of insurance, approved as to form by the city, evidencing that such person or organization has in force insurance in the minimum amounts required by the city for bodily injuries or property damage in any one year protecting such person or organization and the city against liability for injuries or damages resulting from the placement of such objects or materials on public sidewalks or boulevard areas;



Figure 50-27.4-C: Portable A-frame sign

E. Projecting sign.

1. Projection distance. May not project more than four feet from the building;
2. Projection height. May not project higher than three feet above an exterior wall of the building;

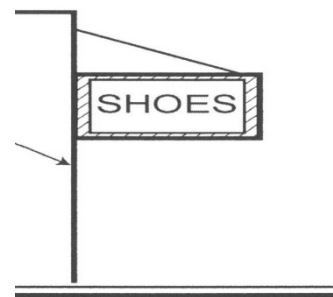


Figure 50-27.4-D: Projecting sign

F. Window sign.

1. In districts other than form districts, window signs shall cover no more than 15 percent of the window area visible from any public street unless a more specific standard for the district is provided by this Section 27;
2. In form districts, window signs shall comply with those standards in Section 50-22.

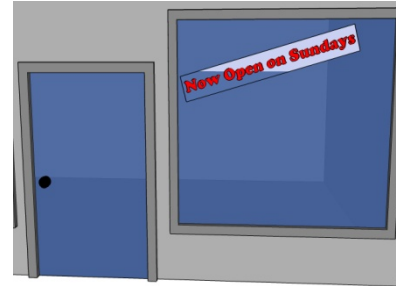


Figure 50-27.4-E: Window sign

Section 4. That Section 50-38.7 of Ordinance 10-030-0, Section 6, is hereby amended to read as follows:

50-38.7. Nonconforming off-premises signs.

In order to bring nonconforming off-premises signs into closer conformance with the purposes of Chapter, the following system is established to enable the reconstruction, structural alteration or relocation of certain nonconforming off-premises signs. Once rebuilt, the sign shall retain its status as a nonconforming off-premises sign.

A. Reconstruction of existing signs.

1. A sign permit for reconstruction on the same site of a nonconforming off-premises sign that either exists or has been destroyed no more than six months prior to written sign permit application, may be issued after the building official certifies that the sign to be reconstructed has less of an adverse impact on the area near the site than the sign being replaced. A reconstructed sign may be enlarged, up to the maximum size of an off-premises sign permitted within the applicable zone district, by use of an exception credit pursuant to subsection 2. For purposes of this subsection the "same site" shall mean contiguous property owned by one person or entity, or a related person or entity, and not divided by an improved street;
2. No permit shall be issued until the sign to be reconstructed is removed;
3. All signs shall be constructed and placed in strict conformance with the permit and the failure to do so shall constitute a violation of this Chapter, and if not corrected shall be grounds for revocation of the permit and an order for removal of the sign;

B. Exception credit system.

1. The owner of a nonconforming off-premises sign may receive an exception credit if it is determined by the building official that a nonconforming off-premises sign is to be removed, or has been removed, due to a termination of lease for reasons beyond the reasonable control of the applicant, or other forced removal (not including destruction or other situations rendering the sign unusable). Such reasons include but are not

limited to the refusal of a lessor to renew a lease or the applicant's inability to obtain a lease renewal on reasonable terms and conditions (including lease rent at a fair market rate). An exception credit may be issued for each such sign that has been removed no more than 30 days prior to written application for the exception credit;

2. The building official shall determine if the applicant is eligible to receive an exception credit and shall certify and keep a log of all such credits documenting the owner of the credit, cumulative square footage of sign area credited and number of locations available for sign structures. After approving the use of an exception credit, the building official shall notify the owner, in writing, of the owner's remaining credited total of available square footage of sign area and remaining credited number of locations available for sign structures;

C. Use of exception credits.

1. Exception credits may be used to permit the relocation of certain nonconforming off-premises signs that do not meet site, location or other requirements of this Chapter;
2. An application for an exception credit shall include a statement identifying the exception credit(s) to be used for the permit for the new location. No holder of a credit shall be granted a permit under this subsection 50-38.7 for more locations than it lost or for more square footage of sign area than it lost. No sign permit shall be issued until the sign(s) that is the basis for the credit is first removed;
3. All signs shall be constructed and placed in strict conformance with the sign permit and the failure to do so shall constitute a violation of this section, and if not corrected, shall be grounds for revocation of the sign permit and an order for removal of the sign. No sign permit issued under this section shall be valid until the applicant has complied with all applicable requirements of the NR-O, Natural Resources Overlay District, and MSA Chapter 173;

D. Sign relocation permits.

Sign permits for relocation of nonconforming off-premises signs shall be approved only after the applicant demonstrates that the following requirements will be satisfied:

1. Location.

The property on which the sign is to be relocated must be within the MU-B, MU-C, or I-G districts;

2. Compliance.

The application complies with all applicable requirements of Section 50-27 except for proximity to residential zone districts and except for sign

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spacing, which shall be subject to subsections 5 and 6 below;

3. Criteria.

The application is consistent with the intent stated in Section 50-27.1.A and will not cause material adverse impact on a significant scenic natural or manmade feature located near the site of the proposed sign through loss of view from or of such feature or through an architecturally inappropriate scale of the size of the sign in relationship to a nearby building or structure;

4. Height.

The maximum height of the relocated sign does not exceed 25 feet, except that the sign may have a height of up to 35 feet if it is found to be necessary for effective use of such sign and that such additional height will not have a material adverse impact on buildings or structures located near the sign or on views of significant natural or manmade features. For purposes of this subsection, the height of a sign shall be measured from the grade at the base of the sign or the surface of the roadway from which it is intended to be read, whichever is higher. A determination of whether a sign is intended to be read from a roadway shall be based upon the angle of the sign to the roadway, the duration of the view from the roadway, the size of the sign and any obstructions to the view from the roadway;

5. Spacing.

(a) The spacing restrictions for controlled highway sign districts in Section 50-27.7 shall not apply to signs permitted under this Section 50-38, but the following spacing restriction shall apply to such signs, and such signs must be located so that they do not interfere with the effectiveness of traffic signs or signals or interfere with a driver's view of approaching, merging or intersecting traffic. The highways subject to the spacing restrictions are as follows:

- (i) Interstate Highway No. 35;
- (ii) Interstate Highway No. 535;
- (iii) Minnesota Highway No. 194 between the city limits and 11th Street;
- (iv) U.S. Highway No. 53 between Central Entrance Road and West First Street;

(b) No relocated off-premises sign located on a segment of the highways described above shall be placed within 500 feet of another off-premises sign that is displayed principally towards the same highway. The 500 feet spacing shall be measured along the nearest edge of the highway pavement to which the nonconforming off-premises sign is displayed and between points directly opposite the center of the off-premises signs. These spacing limitations shall apply only to off-premises signs located on the same side of the same highway. For

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

purposes of this subsection, multiple-faced signs, back-to-back signs, and signs that are closer than two feet from another sign shall be considered as one sign. The determination of whether an off-premises sign is intended to be read from a highway shall be determined under the same standard used in subsection D.4 above;

6. Setback from railroad tracks.

Setback restrictions from railroad tracks shall be relaxed if the building official determines that it would not create a risk to public safety;

7. MU-B, MU-C, and I-G districts.

In addition to those off-premises signs permitted in the MU-B, MU-C, and I-G districts pursuant to Section 50-27, nonconforming off-premises signs may be relocated to or within the MU-B, MU-C, and I-G districts as wall signs;

8. Scenic areas.

Scenic areas for purposes of sign control are shown on the scenic areas map in Section 50-27.8. Nonconforming off-premises signs may be relocated within the scenic areas listed below, but only if views of scenic, historic, park or educational features are not obstructed or materially distracted from;

- (a) That part of the St. Louis Bay waterfront area, bounded by Interstate Highway No. 535, a line parallel to and 300 feet west of Garfield Avenue, a line parallel to and 100 feet south of Nelson Avenue and Interstate Highway No. 35 (the I-535 scenic area); provided that only exception credit(s) for nonconforming signs that were located in the I-535 scenic area may be used to relocate a nonconforming off-premises sign within such area;
- (b) The Evergreen Memorial Drive area;
- (c) The London Road area, provided that only exception credit(s) for nonconforming signs that were located in the London Road scenic area may be used to relocate a nonconforming off-premises sign within the that area;
- (d) The Downtown Renaissance District;
- (e) The areas near parks, school grounds, public ways and historic sites.

Section 5. That Section 50-41-244 of Ordinance 10-030-0, Section 6, is hereby amended to read as follows:

244. Readerboard. A sign or portion of a sign face that allows for the creation of messages by physical manipulation of simple block letters, but not including a changeable message sign (MCS) or electronic sign (ES).

[Editor's Note: "Receiving stream or channel", currently numbered 50-41-244 will be renumbered to 50-41-245 as a result of this amendment and shall continue to read as follows: "The body of water or conveyance into which storm water runoff is discharged".]

Section 6. That Section 50-41-277 of Ordinance 10-030-0, Section 6, is hereby

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amended to read as follows:

277.

[Editor’s Note: “Sign, electronic” currently number 50-41-276 will be renumbered to 50-41-277 as a result of this amendment shall continue to read as follows: “An off-premise advertising sign, display or device that changes the message copy on the sign by means of light emitting diodes (LEDs), fiber optics, light bulbs or other illumination devices with the display area.”]

Section 7. That Section 50-41-282 of Ordinance 10-030-O, Section 6 is hereby amended to read as follows:

282. Sign, monument. A permanent sign in which all or substantially all of the bottom of the sign is affixed to the ground or to a base structure, not to a post, pole, or portion of a building.

[Editor’s Note: “Sign, off-premises” currently numbered 50-41-282 will be renumbered to 50-41-283 as a result of this amendment and shall continue to read as follows: “A sign that directs attention to a business, product, service or entertainment not conducted, sold or offered upon the premises where the sign is located.”]

Section 8. That Section 50-41-290 of Ordinance 10-030-O, Section 6 is hereby amended to read as follows:

290. Sign, readerboard. A sign, including a portable or temporary sign, where all or substantially all of at least one sign face is a readerboard.

[Editor’s Note: “Sign, real estate”, currently number 50-41-290 will be renumbered to 50-41-292 as a result of this amendment and shall continue to read as follows: “An accessory sign advertising property for sale, lease or rent, or informing that property has been sold, leased or rented.”]

Section 9. That Table 50-27-2 is hereby amended to read as follows:

Table 50-27-2: Sign Regulations for Specific Zone Districts		
Zone District	Type of Sign	Conditions on Sign
Residential Districts		
All residential districts	Construction contractor sign	Residential: 1 sign with maximum size 20 sq. ft. Non-residential: 1 sign with maximum size of 32 sq. ft. plus 16 sq. ft. to identify architects, engineers, or subcontractors. Not permitted in required front, side, or rear yard areas. Indirect illumination only. Must be removed 7 days after construction is complete.
	Home occupation sign	Maximum size: 20 sq. ft. in RC, RR-1 and RR-2. 1 sq. ft. in R-1 and R-2. Must be set back 20 ft. from front property line in RC, RR-1 and RR-2. Must be attached to building in R-1 and R-2. May not be illuminated.
	Nameplate	1 per dwelling. Maximum size: 2 sq. ft. in RC, RR-1, RR-2 and R-1. Indirect illumination only.
	Political sign or property owner opinion sign	Minimum setback from property lines and street or sidewalk improvements: 3 ft. If illuminated must comply with Section 50-31. Building permit required if more than 6 ft. tall.

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Table 50-27-2: Sign Regulations for Specific Zone Districts

Zone District	Type of Sign	Conditions on Sign
	Property identification/management sign	Maximum size: 3 sq. ft. in RC, RR-1, RR-2 and R-1. 6 sq. ft. in R-2. No illumination or animation.
	Public assembly bulletin board	Maximum size: 25 sq. ft. Minimum setback from property lines: 10 ft. Indirect illumination.
	Real estate sign	Maximum size: 32 sq. ft. in RC, RR-1, and RR-2. 6 sq. ft. in R-1. In R-2, may contain name of building and/or management firm. Minimum setback from property lines; 10 ft, unless attached to a building. Must be removed within 7 days after sale, lease, or rental. No illumination.
	Recreational field sign	Directional sign: Maximum size: 20 ft. Maximum Height 10 ft. Building mounted sign: Maximum size 10 ft. Each scoreboard sign may contain up to 10 sq. ft. of advertising. Indirect illumination only.
	Residential complex sign	In R-2 district only. 1 <u>monument</u> sign constructed of individual letters and numbers attached to a structure that is similar in color, texture and material to the primary exterior of the complex buildings. Maximum height of 4 ft., maximum width of 8 ft., maximum depth of 1 ft. Minimum setback from property lines: 10 ft. Indirect illumination only.
	School (grades K-12) sign	1 wall identification sign not exceeding 32 sq. ft. Maximum height of wall identification sign shall be 16 ft. or top of wall, whichever is less. Corner lots limited to 2 wall identification signs per building. 1 freestanding <u>monument</u> sign not exceeding 32 sq. ft. in area and 8 ft. in height also allowed. Either the wall sign or the <u>monument</u> sign, but not both, may be illuminated. Flashing, animated and revolving signs are not permitted.
	Temporary sign	May not advertise on-going business activity. Maximum size: 6 sq. ft. Minimum setback from property lines and street and sidewalk improvements: 3 ft. Maximum length of use: 2 days. No illumination.
	Off-premises sign	Not permitted.
Mixed Use and Form Districts		
All residential uses	All signs permitted for residential uses in the R-2 district	
MU-N (formerly R-4 and C-1), MU-W, F-1, F-2, F-3, F-4, F-5, F-6 and F-9 Zones		
Non-residential uses	Awning sign	Permitted on first floor awnings only. Indirect illumination only, but no lighting apparatus shall be attached to the awning itself.
	Marquee signs	Maximum number: 1 for first street frontage plus. 1 for any additional street frontage longer than 100 ft. Permanent signage shall be included. Changeable copy shall be limited to no more than 2/3 of the sign face.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Table 50-27-2: Sign Regulations for Specific Zone Districts

Zone District	Type of Sign	Conditions on Sign
	Pole sign	<p>Maximum number: 1 for first street frontage plus 1 for any additional street frontage longer than 100 ft.</p> <p>Maximum height: 15 ft.</p> <p>Minimum height of sign face base above ground: 8 ft. (decorative planters without advertising and not more than 3 ft. above ground are permitted) for signs 8 ft. total in height and no more than 8 sq. ft. per sign face, no minimum clearance required.</p> <p>Maximum thickness: 30 in. (except spherical signs).</p> <p>Maximum sign area: 1 sign per pole, maximum 40 sq. ft. per sign face.</p> <p>The area of a double or triple faced pole sign shall be the area of the largest face.</p> <p>Location: If pole signs are located in the required front, side, or rear yards they shall not be closer than 100 ft. from any residential structure located in a residential zone. Not permitted on or projecting into or over any public street or utility easement.</p> <p>In the Form Districts, this type is limited for use with the Corridor, Cottage Commercial, and Iconic building types.</p> <p>Materials: Solid or composite finished wood, metal, masonry, neon, glass.</p> <p>Direct and indirect illumination permitted.</p>
	Wall sign	<p>Maximum aggregate sign size: 40 sq. ft. or 2 times the number of lineal ft. of the length the building wall where it is mounted, whichever is greater.</p> <p>Materials: Solid or composite finished wood, metal, masonry, neon, glass.</p> <p>Direct and indirect illumination permitted.</p>
	Portable A-frame sign	<p>1 per street frontage.</p>
	Monument	<p>Maximum number: 1 for first street frontage plus 1 for any additional street frontage longer than 100 ft.</p> <p>Maximum height of 6 ft., maximum area 48 sq. ft. per sign face.</p> <p>Setback from corners and driveways for vehicular site triangles.</p> <p><u>In the Form Districts, this type is limited for use with the Corridor, Cottage Commercial, and Iconic building types.</u></p> <p>Materials: Solid or composite finished wood, metal, masonry, neon, glass.</p> <p>Direct and indirect illumination permitted.</p> <p>Landscape at base of sign shall not be taller than 18 in. at mature height.</p>
	Projecting sign	<p>1 per each building façade facing a street, alley, or sidewalk.</p> <p>Maximum sign area: 150 sq. ft. or 1.5 times the number of lineal ft. of the wall where the sign is located, whichever is less. The area of a double faced projecting sign shall be the area of the largest face.</p> <p>Minimum height above sidewalk: 10 ft.; for signs projecting 2 ft. or less, 7 ft.</p> <p>Minimum height above street or alley: 16 ft. Shall not extend closer than 1 ft. to back of any curb or over any alley.</p> <p>Materials: Solid or composite finished wood, metal, masonry, neon, glass.</p> <p>Direct and indirect illumination permitted.</p>
	Window sign	<p>Shall not block more than 30% of any window panel as measured by drawing a box around the outer edges of any typeface or image.</p> <p>Materials: Painted directly on the window, mounted neon on inside of window, or mounted sign on a wall inside the window area.</p>
	Off-premises sign	<p>Not permitted.</p>
MU-C (formerly C-5), F-7 and F-8 Zones		

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Table 50-27-2: Sign Regulations for Specific Zone Districts

Zone District	Type of Sign	Conditions on Sign
	Awning sign Marquee sign Wall sign Portable A-frame sign	Same as for MU-N, MU-W, F-1, F-2, F-3, F-4, F-5, F-6 and F-9 zones.
	Projecting sign	1 per each building façade facing a street, alley, or sidewalk. Maximum sign area: 150 sq. ft. or 1.5 times the number of lineal ft. of the wall where the sign is located, whichever is less. The area of a double faced projecting sign shall be the area of the largest face. Minimum height above sidewalk: 10 ft.; for signs projecting less than 2 ft., 7 ft. Shall not extend closer than 1 ft. to back of any curb or over any alley. Materials: Solid or composite finished wood, metal, masonry, neon, glass. Direct and indirect illumination permitted.
	Window sign	Shall not block more than 30% of any window panel as measured by drawing a box around the outer edges of any typeface or image. Materials: Painted directly on the window, mounted neon on inside of window, or mounted on a wall inside the window area.
	Pole sign	<u>Maximum number: 1 for first street frontage plus 1 for any additional street frontage longer than 100 ft.</u> <u>Maximum height: 25 ft.</u> <u>Minimum height of sign face base above ground: 8 ft. (decorative planters without advertising and not more than 3 ft. above ground are permitted). For signs not more than 8 ft. total height and no more than 8 sq. ft. per sign face, no minimum clearance required.</u> <u>Maximum thickness: 30 in. (except spherical signs).</u> <u>Maximum sign area: 1 sign per pole, maximum area not exceeding 30 percent of the lineal street frontage on the street nearest the sign. The area of a double or triple faced pole sign shall be the area of the largest face.</u> <u>Location: If pole signs are located in the required front, side, or rear yards they shall not be closer than 100 ft. from any residential structure located in a residential zone. Not permitted on or projecting into or over any public street or utility easement.</u> <u>In the Form Districts, this type is limited for use with the Corridor, Cottage Commercial, and Iconic building types.</u> <u>Materials : Solid or composite finished wood, metal, masonry, neon, glass.</u>
	Off-premises sign	Off-premises wall signs prohibited. All other off-premises signs subject to approval under Section 50-15.3.D
	<u>Monument sign</u>	<u>Maximum number: 1 for the first street frontage plus 1 for any additional street frontage longer than 100 ft.</u> <u>Maximum height: 18 ft.</u> <u>Maximum sign area: 144 sq. ft.</u> <u>Location: Sign may not be located in defined sight triangles for street and driveways.</u> <u>In the Form Districts, this type is limited for use with the Corridor, Cottage Commercial, and Iconic building types.</u> <u>Direct and indirect illumination permitted.</u> <u>Landscaping at base of sign shall not be taller than 18 in. at mature height.</u>
MU-I District		
	All signs permitted in the MU-N district	Maximum sign area on any wall: Number of sq. ft. equal to the number of lineal ft. of the wall. All signs, including public signs, shall be approved by staff based on the consistency of the size, texture, and scale of signs with the character and scale of signs and development in the surrounding area. However, review and permits shall not be required for (a) property information/management signs less than 4 sq. ft., (b) political signs, and (c) property owner opinion signs.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Table 50-27-2: Sign Regulations for Specific Zone Districts

Zone District	Type of Sign	Conditions on Sign
MU-B District		
	Wall signs, projecting signs, and monument signs	Maximum sign size of wall and projecting signs: 5% of the total sq. ft. area of building façade on which they are placed. All wall signs attached to the building shall be flush mounted and shall not extend above the roof line. All monument signs must be architecturally designed and located directly at grade, shall be limited to 1 sign on each street frontage, shall be limited to 60 sq. ft. in area and eight ft. in height and shall be located no closer than 15 ft. from the property lines. Neon signs are not permitted. Direct and indirect illumination is permitted. Spotlighting of signs is permissible if the lighting is shielded so as to direct light to the sign only and the light source is not visible from the property lines. Flashing and animated signs are not permitted.
	Property identification/management sign	Maximum size: 4 sq. ft. Maximum height: 5 ft. No illumination, animation, or flashing.
	Off-premises signs	Not permitted.
Special Purpose Districts		
I-G and I-W Districts	All signs permitted in the MU-C district	On-premises signs only.
P-1 District	Construction contractor sign	Non-residential: 1 sign with maximum size of 32 sq. ft. plus 16 sq. ft. to identify architects, engineers, or subcontractors. No illumination or animation. Must be removed 7 days after construction is complete.
	Property identification/management sign	Maximum size: 6 sq. ft. in R-2. No illumination or animation.
	Public assembly bulletin board	Maximum size: 25 sq. ft. Minimum setback from property lines: 10 ft Indirect illumination.
	Recreational field sign	Directional sign: Maximum size: 20 ft. Maximum Height 10 ft. Building mounted sign: Maximum size 10 ft. Each scoreboard sign may contain up to 10 sq. ft. of advertising. Indirect illumination only.
	Temporary sign	May not advertise on-going business activity. Maximum size: 6 sq. ft. Minimum setback from property lines and street and sidewalk improvements: 3 ft. Maximum length of use: 30 days. No illumination or animation.
	Off-premises sign	Not permitted.

Section 10. That this ordinance shall be operative only if Ordinance 10-030-O is passed, and take effect and be in force on the same date as Ordinance 10-030-O. (Effective date: November 19, 2010)

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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

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

Nays: Councilor Gauthier -- 1

Passed August 30, 2010
Approved August 30, 2010
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

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ORDINANCE NO. 10048

AN ORDINANCE AMENDING SECTION 8-24 OF THE DULUTH CITY CODE, 1959, AS AMENDED RELATING TO GAMBLING IN LICENSED ESTABLISHMENTS.

The city of Duluth does ordain:

Section 1. That Section 8-24 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 8-24. Gambling devices, prostitution, etc., prohibited.

(a) Except as provided below, no licensee shall keep, possess, operate or permit the keeping, possession or operation of any roulette wheel, football boards or other sports score betting boards, slot machine, dice or other gambling device or apparatus designed to facilitate betting on the premises or in any room adjoining the licensed premises controlled by him, permit any gambling therein, or permit the licensed premises or any room in the same or in any adjoining building, directly or indirectly under his control, to be used as a resort for prostitutes or other disorderly persons;

(b) A charitable organization licensed by the state of Minnesota pursuant to Minnesota Statutes, Chapter 349, to conduct lawful gambling may conduct such gambling on premises for which an intoxicating or 3.2 malt liquor license has been issued. The operation of lawful gambling in establishments licensed to sell alcoholic beverages shall be subject to the regulations set forth herein and no licensee or other person shall violate any of said regulations. In addition to criminal penalties, the city council shall, pursuant to Minnesota Statutes, Section 349.213, disapprove of the issuance of any lawful gambling license or premises permit by the Minnesota gambling control board if the issuance of such license or permit would violate these regulations. The regulations are as follows:

(1) Only one organization may operate lawful gambling on each premises licensed to sell alcoholic beverages;

(2) No organization shall pay lease payments in excess of \$1,000 per month to any establishment in the city licensed to sell alcoholic beverages for leases entered into prior to May 31, 2003. For booth operation leases negotiated after May 31, 2003, no organization shall pay lease payments in excess of ten percent of gross profits or a maximum of \$1,750 per month. For booth operation leases negotiated after May 31, 2003, the maximum lease payment allowed for sites with less than \$4,000 gross profit per month shall be

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

\$400 per month. For bar operation leases in an establishment that has no booth operation, which are negotiated after May 31, 2003, if the organization only operates pull-tab dispensing devices at an establishment where redemption is made by an employee of the lessor, the organization shall not pay lease payments in excess of 20 percent of gross profits or a maximum of \$2,000 per month, with a maximum of \$200 per month on the first \$1,000 of gross profits. For the purpose of this Section, any money or other thing of value given by an organization directly or indirectly to the liquor establishment or to any other entity in furtherance of the liquor establishment's interests shall be considered a lease payment, regardless of the stated purpose of the transaction. No liquor establishment shall accept lease payments in excess of any lawful limit;

(3) The area where pull-tabs are sold or other lawful gambling is operated shall be separate and away from the bar and liquor dispensing service areas of any establishment licensed to sell alcoholic beverages;

(4) No pull-tabs shall be sold by any employee of the establishment licensed to sell alcoholic beverages;

(c) The provisions of regulations (b)(3) and (b)(4) shall not apply to any situation where the same organization holds both the alcoholic beverage license and the lawful gambling license;

(d) The provisions of regulation (b)(1) shall not apply to the Duluth Entertainment Convention Center;

(e) Minnesota state lottery tickets authorized by Minnesota Statutes, Chapter 349A, may be sold on premises licensed to sell alcoholic beverages;

(f) Gambling equipment may be kept or operated and raffles conducted on licensed premises and adjoining rooms when the use of the gambling equipment is authorized by:

(1) A tribal ordinance in conformity with the Indian Gaming Regulatory Act, Public Law Number 100-497; or

(2) A tribal-state compact authorized under Minnesota Statutes, Section 3.9221.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: October 3, 2010)

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

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

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed August 30, 2010
Approved August 30, 2010
DON NESS, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, September 13, 2010, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: None -- 0

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

10-0913-01 Goodwill Industries Vocational Enterprises, Inc., et al. (three signatures), petition to vacate West Birch Street from Garfield Avenue to property owned by the Burlington Northern Sante Fe Railroad. -- Assessor

10-0913-02 St. Luke's Hospital, et al. (four signatures), petition to reclassify from R-4 to Medical District 205 and 211 North Tenth Avenue East and 925 East Second Street. -- Assessor

10-0913-03 City of Duluth Retired Employees Ad Hoc Committee communication regarding the proposed five year agreement with HealthPartners Administrators, Inc., for administrative services and stop loss insurance for the city's health plan (10-0463R and 10-0465R). -- Received

10-0913-11 The following communications regarding the proposed 2011 tax levy (10-0487R): (a) J. Dahl; (b) Erik Holmstrom; (c) Jennifer Jackson; (d) Jerry Kortesmaki; (e) Dale Lewis; (f) Gail Mantay; (g) Jim Peterson; (h) Diana Sunde. -- Received

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REPORTS FROM THE ADMINISTRATION

10-0913-25 Mayor 2011 proposed annual budget book. -- Received

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REPORTS FROM OTHER OFFICERS

10-0913-04 Assessor letter of sufficiency regarding the petition to vacate alley and easements between the lower side of property between 44th and 46th avenues West and Grand Avenue. -- Received

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REPORTS OF BOARDS AND COMMISSIONS

10-0913-05 Commission on disabilities minutes of August 4, 2010, meeting. -- Received

10-0913-06 Duluth airport authority: (a) Minutes of July 20, 2010, meeting; (b) Unaudited balance sheet of June 30, 2010. -- Received

10-0913-07 Duluth economic development authority minutes of June 16, 2010 meeting. -- Received

10-0913-08 Duluth human rights commission minutes of July 14, 2010, meeting. -- Received

10-0913-09 Library board minutes of: (a) June 8; (b) June 22, 2010, meetings. -- Received

10-0913-10 Seaway Port authority of Duluth budget summary of June 2010. -- Received

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OPPORTUNITY FOR CITIZENS TO BE HEARD

Celia Sheer reviewed that the cost of government day is August 19, which means that it takes until then for our tax dollars to pay for all the government programs.

- - -

Jerry Schlafer thanked the council for passing the ordinance banning the synthetic drug, but added that the only way to stop the war on drugs is to stop the demand for drugs.

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RESOLUTION TABLED

Councilor Stauber moved to remove Resolution 10-0447, recommending approval of the consumption and display license for Duluth Woman's Club, 2400 East Superior Street, introduced by Councilor Cuneo, from the table, which motion was seconded and unanimously carried.

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

Fran Bernstein, Jean Olson and Sandra Boese of the Duluth Woman's Club urged the council to pass the resolution as this would allow their members to bring their own alcoholic beverages to the club; they are respectful of the laws of Duluth; the woman's club has been at this location for over 70 years with no citations issued; members have only two days of the week where they gather at the club; their policies respect the nature of the neighborhood and the board oversees all functions of the club which average around 24 functions that are for members and their guests only.

Kathleen Gordon reviewed that there are several problems with the operation at the woman's club and by passing this resolution the council would be allowing a commercial operation to continue in a residential neighborhood causing the loud music and parking issues to continue.

Lisa Ciorlieri explained she is new to the neighborhood and questioned if the club was properly zoned for the activities that occur there.

Councilor Stauber stated that the woman's club has been grandfathered in with the Zoning Code in 1958 and voiced concern that the activities at the club have changed and increased. He also stated that their website is advertising to the public to rent their club for an event and added that he would not support this and that the club should meet with the neighbors to resolve these issues.

Resolution 10-0447 was adopted as follows:

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 ending March 31, 2011, subject to departmental approvals and the payment of sales and property taxes:

Woman's Club, 2400 East Superior Street.

Resolution 10-0447 was adopted upon the following vote:

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

Nays: Councilor Stauber -- 1

Approved September 13, 2010

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

WHEREAS, pursuant to Resolution 09-0432 adopted on July 13, 2009, the city accepted a state bonding grant in the amount of \$4,900,000 for Phase I of the Duluth airport terminal project and authorized the execution of a grant agreement with the state of Minnesota and a memorandum of understanding with the Duluth Airport Authority for Phase I; and

WHEREAS, the city has been awarded \$11,700,000 by the state of Minnesota for Phase II of the Duluth airport terminal project; and

WHEREAS, the state of Minnesota desires that the city enter into an amended and restated state bonding grant agreement relating to both phases I and II of the Duluth airport terminal project.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are hereby authorized to accept a Phase II state bonding grant from the state of Minnesota in the amount of \$11,700,000 for the Duluth airport terminal project, said funds to be deposited into Fund 411 - permanent improvement fund and transferred to Fund 590 - Duluth Airport Authority.

FURTHER RESOLVED, that the proper city officials are hereby authorized to execute an amended and restated 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. 10-0913-12, related to phases I and II of the Duluth airport terminal project at the Duluth International Airport.

FURTHER RESOLVED, that the proper city officials are hereby authorized to enter into an amended and restated memorandum of understanding, substantially in the form of that on file in the office of the city clerk as Public Document No. 10-0913-12, with the Duluth Airport Authority pursuant to which the city will reimburse the authority for eligible costs under phases I and II of the Duluth airport terminal project.

Resolution 10-0467 was unanimously adopted.

Approved September 13, 2010

DON NESS, Mayor

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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 2011 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 10-0486 was unanimously adopted.

Approved September 13, 2010

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

DON NESS, Mayor

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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 2011 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 10-0488 was unanimously adopted.

Approved September 13, 2010

DON NESS, Mayor

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RESOLVED, that the city's construction Contract No. 21037 with Max Gray Construction, Inc., for remodeling of the Duluth City Council Chamber is hereby amended, thereby authorizing Change Order No. One, to include additional demolition, electrical and carpentry work and the removal of window treatments from the contract, for a net increase of \$30,228.09, payable from Capital Improvements Fund 450, Department/Agency 030, Object 5520.

Resolution 10-0468 was unanimously adopted.

Approved September 13, 2010

DON NESS, Mayor

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BE IT RESOLVED, that the city council of the city of Duluth hereby approves the transfer of the following on sale intoxicating liquor license and on sale Sunday license for the period beginning October 5, 2010, and ending August 31, 2011, subject to departmental approvals and the payment of sales and property taxes:

Apple Minnesota, LLC (Applebee's Neighborhood Grill & Bar), 1600 Miller Trunk Highway, transferred from Apple American Ltd Partnership, same address.

Resolution 10-0472 was unanimously adopted.

Approved September 13, 2010

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 theater license for the period ending August 31, 2011, subject to departmental approvals and the payment of sales and property taxes:

Duluth Playhouse, Inc. (Norshor Theater), 211 East Superior Street.

Resolution 10-0474 was unanimously adopted.

Approved September 13, 2010

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 3.2 percent malt liquor license and approves issuance of an on sale wine license for the periods ending April 30, 2011, and August 31, 2011, respectively, subject to department approvals and the payment of sales and property taxes, and further subject to approval of the liquor control commissioner:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Takk for Maten/Kippis, LLC (Takk for Maten Cafe), 11 East Superior Street, with Sandra Thompson, 25 percent stockholder, James Ross, 37.5 percent stockholder, and Mark Sowl, 37.5 percent stockholder.

Resolution 10-0475 was unanimously adopted.
Approved September 13, 2010
DON NESS, Mayor

- - -

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

College of St. Scholastica, 1200 Kenwood Avenue, for October 2, 2010, with Carrie Emslander, manager.

Resolution 10-0476 was unanimously adopted.
Approved September 13, 2010
DON NESS, Mayor

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BE IT RESOLVED, that the Duluth City Council hereby approves of the Minnesota gambling control board issuing a lawful gambling exemption to St. Michael's Lakeside School 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 10-0490 was unanimously adopted.
Approved September 13, 2010
DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into an amendment to CDBG Agreement 21161 with the YMCA, substantially in the form of that on file in the office of the city clerk as Public Document No. 10-0913-13, increasing the amount payable thereunder from \$87,213 to \$93,610, in Federal Program Fund 262, Agency 020, Object 5434, HUD-funded community development account as set forth below:

Project	Project Name	Budget	New Amount	Amount of Change
PSVC-1168	Youth development program YMCA	87,213	93,610	6,397
PSVC-13489	Housing access program - Damiano Center	34,000	27,603	(6,397)

Resolution 10-0470 was unanimously adopted.
Approved September 13, 2010
DON NESS, Mayor

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RESOLVED, that the proper city officials are authorized to enter into a first amendment to the G.O. bond infrastructure grant agreement with DEED, substantially in the form of that on file in the office of the city clerk as Public Document No. 10-0913-14, to amend the legal description to reflect the real property in the North Business Development Area of the Duluth

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

International Airport upon which grant funds are to be expended, and further authorizing the execution and recording in the office of the St. Louis County recorder of a new declaration in the form prescribed by the state of Minnesota containing the revised legal description.

FURTHER RESOLVED, that the proper city officials are authorized to enter into an amendment to the cooperative agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 10-0913-14, with the Duluth Airport Authority acknowledging the amended legal description in the G.O. bond infrastructure grant between the city and DEED for the North Business Development Area.

Resolution 10-0480 was unanimously adopted.

Approved September 13, 2010

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to execute a termination and claims run-out service agreement, together with supporting documents, with Blue Cross Blue Shield of Minnesota substantially the same as that on file in the office of the city clerk as Public Document No. 10-0913-15, to continue to provide administrative services and stop loss insurance to the city's group health insurance plan for all claims incurred prior to the termination of the 2010 Blue Cross Blue Shield service agreement (but not paid until after January 1, 2011), on file in the office of the city clerk as Public Document No. 10-0510-19.

FURTHER RESOLVED, that the proper city officials are hereby authorized to pay Blue Cross Blue Shield of Minnesota \$113,233 for claims run-out services further described in those documents referenced above, said funds payable from the city's group health fund.

Resolution 10-0463 was unanimously adopted.

Approved September 13, 2010

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to execute a service agreement, together with supporting documents, with HealthPartners Administrators, Inc., substantially the same as that on file in the office of the city clerk as Public Document No. 10-0913-16, to provide administrative services and stop loss insurance to the city's group health insurance plans for a period of five years, effective January 1, 2011, for an estimated annual cost of \$1,100,000 funds payable from the city's group health fund.

Resolution 10-0465 was unanimously adopted.

Approved September 13, 2010

DON NESS, Mayor

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RESOLVED, that calculation of monthly steam customer charges as described in Public Document No. 08-0619-25 approved pursuant to Resolution No. 08-0376 is hereby amended by the rate calculation on file in the office of the city clerk as Public Document No. 10-0913-17 to authorize charging customers discharging steam condensate to the city's sanitary sewer system for the actual cost to the district thereof, effective for steam provided to customers on and after October 1, 2010.

Resolution 10-0464 was unanimously adopted.

Approved September 13, 2010

DON NESS, Mayor

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RESOLVED, that the proper city officers are hereby authorized to execute the

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Minnesota snowmobile trails assistance program capital improvements grant agreement, a copy of which is on file in the office of the city clerk as Public Document No. 10-0913-18, with the Minnesota department of natural resources to fund reconstruction of a wooden bridge near Cody Street which is part of the city trail system in the amount of \$7,900, said funds to be deposited in the General Fund 110-121-1217-2150-4226.

Resolution 10-0479 was unanimously adopted.

Approved September 13, 2010

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Wagner Construction, Inc., for the Cody Street box culvert project in the amount of \$1,089,973.60, payable out of Stormwater Utility Fund 535, Department/Agency 500, Organization 1905, Object 5533, City Project No. 0895ST.

Resolution 10-0482 was unanimously adopted.

Approved September 13, 2010

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with SEH, Inc., to perform professional engineering services for preliminary engineering of the Joshua Avenue Duluth Heights connector project in the amount of \$576,940, payable from Permanent Improvement Fund 411, Department 035, Object 553, City Project No. 0646TR, S.P. 118-082-36 to be reimbursed from federal and local funds.

Resolution 10-0483 was unanimously adopted.

Approved September 13, 2010

DON NESS, Mayor

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RESOLVED, that the city of Duluth does hereby accept on behalf of the general public the dedication of an easement for parking purposes described on that document on file in the office of the city clerk as Public Document No. 10-0913-19 from St. Mary's Medical Center, a Minnesota corporation, over easterly 11 feet of the northerly 90 feet of Lot 64, East Fourth Street, DULUTH PROPER, First Division, in connection with the establishment of diagonal parking on Fourth Avenue East, at no cost to city.

Resolution 10-0484 was unanimously adopted.

Approved September 13, 2010

DON NESS, Mayor

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RESOLVED, that the city of Duluth does hereby accept on behalf of the general public the dedication of an easement for parking purposes described on that document on file in the office of the city clerk as Public Document No. 10-0913-20 from the Benedictine Sisters Benevolent Association and St. Mary's Medical Center, a Minnesota corporation, over easterly 11 feet of the southerly 50 feet of Lot 64, East Fourth Street, DULUTH PROPER, First Division, in connection with the establishment of diagonal parking on Fourth Avenue East, at no cost to city.

Resolution 10-0485 was unanimously adopted.

Approved September 13, 2010

DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, a copy of which is on file in the office of the city clerk as Public Document No. 10-0913-21, with Keglers, Inc., for the abandonment of a sidewalk vault located on the lower side of West First Street and west of Sixth Avenue West and for the termination of that vault abandonment agreement filed of record in the office of the county recorder for St. Louis County, Minnesota, in Book 36 of Agreements at page 240.

Resolution 10-0491 was unanimously adopted.

Approved September 13, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute an agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 10-0913-22 with St. Louis County, by and through its sheriff's office to share the cost of providing a public safety grant coordinator for the year 2010 in the amount of \$30,000, funds payable to Fund 110-160-1610-XXXX.

Resolution 10-0471 was unanimously adopted.

Approved September 13, 2010

DON NESS, Mayor

- - -

BE IT RESOLVED, that pursuant to Section 8-22(b) of the Duluth City Code, the Duluth City Council hereby authorizes consumption of alcoholic beverages in public places on Fourth Street between Fifth and Seventh avenues East on September 18, 2010, between 3:00 p.m. and 7:00 p.m. to coincide with Neighborhood Housing Services of Duluth special events license, provided that all alcoholic beverages consumed outside of the designated serving areas of licensed establishments be consumed only from paper or plastic cups.

BE IT FURTHER RESOLVED, that the dates of this authority may be amended, in the case of inclement weather, if requested in writing by the licensee and approved by the administration.

Resolution 10-0481 was unanimously adopted.

Approved September 13, 2010

DON NESS, Mayor

- - -

The following resolutions were also considered:

Resolution 10-0487, proposing the sum to be raised by taxation for general purposes for the year 2011, was introduced by Councilor Fedora for discussion.

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, urged the council to pass the proposed levy which is a modest increase and appreciates the mayor showing the restraint needed at this time by keeping the levy increase modest.

Councilor Gardner introduced an amendment to increase the budget and levy [see *Resolution 10-0489 discussion below*] to allow the libraries to resume full hours at the main and branch libraries as the city needs to invest in the quality of life for the community, which motion was seconded for discussion.

Councilor Gardner continued saying that the city needs to define local priorities and become aware of the benefits of investing in the quality of life assets.

Councilor Fosle stated that even the small amount that this amendment would increase

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

the levy by is too much for many people on fixed incomes.

Councilor Stauber stated that although the amendment is for a noble cause for 2011, the money would only be for one year and there would be a battle next year for the same money to keep the library hours extended.

Councilor Hartman stated that the library is a city facility that has the most users in a single day and this is a time when the library is needed most with its free usage of the Internet to look for jobs with the downturn in the economy.

Councilor Cuneo reviewed that this is only setting the cap to the budget and changes can be made to the budget in December when the final levy is set by the council.

Councilor Fosle stated that he has heard from a lot of people on fixed incomes who think even \$1 or \$2 will be too much for them.

Councilor Boyle stated studies show that the public demand of library use coincides with the recession and the city needs to recognize this increase and support the amendment to increase the funding for the library.

Councilor Gardner's amendment failed upon the following vote:

Yeas: Councilors Boyle, Cuneo, Gardner and Hartman -- 4

Nays: Councilors Fedora, Fosle, Gauthier, Stauber and President Anderson -- 5

To President Anderson's question, Chief Administrative Officer David Montgomery replied that the mayor's budget is a responsible and balanced budget with no levy increase except for the 2.9 percent for the new police station. He continued saying that there are many unmet services that could be eligible for additional funding which would include the libraries. Mr. Montgomery said if the council chooses to raise the levy limit, the administration would work with the council to decide on the best way to prioritize the needs of the city as to where to spend that increased levy amount.

Councilor Fedora reviewed that although the mayor has submitted a budget that shows a slight decrease of approximately \$580,000 in the general fund, in reality it is a \$1.3 million increase in spending because of the \$1.9 million reduction in retiree healthcare.

Resolution 10-0487 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 2011 for general operations is hereby determined to be the sum of \$17,791,500 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 \$11,469,800.

Section 3. For the payment of debt, there will be levied for the general obligation debt fund the sum of \$5,899,600.

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 10-0487 was adopted upon the following vote:

Yeas: Councilors Boyle, Cuneo, Fosle, Gardner, Gauthier, Hartman and President Anderson -- 7

Nays: Councilors Fedora and Stauber -- 2

Approved September 13, 2010

DON NESS, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

- - -

Resolution 10-0489, setting a proposed budget for the fiscal year 2011, was introduced by Councilor Fedora for discussion.

Councilor Gardner withdrew her earlier amendment.

Resolution 10-0489 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, 2011.

GENERAL		
010	Total legislative and executive	3,464,900
117	Total management information systems	2,675,700
121	Total public administration	18,638,000
125	Total finance	3,244,900
132	Total planning and construction services	2,226,400
135	Total business and community development	677,600
150	Total fire	13,254,900
160	Total police	17,558,600
500	Total public works	2,006,400
700	Total transfers	11,200,600
110	General fund total	74,948,000

Resolution 10-0489 was unanimously adopted.

Approved September 13, 2010

DON NESS, Mayor

- - -

Resolution 10-0473, approving issuance of a temporary on sale intoxicating liquor license to Lake Superior Brewing Company, LLC (Lake Superior Brewing Company), 2711 West Superior Street, was introduced by Councilor Cuneo.

President Anderson pulled the resolution from the agenda.

- - -

Resolution 10-0477, approving proposed specifications for the civil service classification of utility maintenance worker and specifying contract benefits for same, was introduced by Councilor Boyle.

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

- - -

Resolution 10-0469, requesting the Charter commission recommend adoption of an amendment to Chapter III, Section 13, of the city of Duluth Home Rule Charter, 1912, as amended, pertaining to ordinance amendment publication requirements, was introduced by President Anderson for discussion.

President Anderson moved to amend Section 13 of the proposed ordinance amendment as follows:

- (a) Delete the phrase "in the official paper of the city" and insert "on the city's official website";

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

(b) Add the following sentence: "Said publication shall remain on the city's official website for a period of at least 30 days,"

which motion was seconded and unanimously carried.

Resolution 10-0469, as amended, was adopted as follows:

RESOLVED, that the city council hereby requests the Charter commission to recommend an amendment to Chapter III, Section 13, of the Duluth Home Rule Charter, 1912, as amended, pertaining to ordinance amendment publication requirements, which proposed ordinance amendment is on file in the office of the city clerk as Public Document No. 10-0913-23.

Resolution 10-0469, as amended, was unanimously adopted.

Approved September 13, 2010

DON NESS, Mayor

- - -

RESOLVED, that the city council hereby requests the Charter commission to recommend an amendment to Chapter VIII, Section 54, of the Duluth Home Rule Charter, 1912, as amended, pertaining to establishment of a parks fund in the city treasury, which proposed ordinance is on file in the office of the city clerk as Public Document No. 10-0913-24.

Resolution 10-0478 was unanimously adopted.

Approved September 13, 2010

DON NESS, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

BY COUNCILOR STAUBER

10-045 - AN ORDINANCE REPEALING CHAPTER 2, ARTICLE VII, OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO THE POWERS AND DUTIES OF THE PLANNING COMMISSION.

- - -

INTRODUCED BY COUNCILOR GAUTHIER

10-046 - AN ORDINANCE AUTHORIZING ASSESSMENT FOR SIDEWALK VAULT REPAIR OR ABANDONMENT.

- - -

INTRODUCED BY COUNCILOR FOSLE

10-044 - AN ORDINANCE AMENDING SECTION 12-2 OF THE DULUTH CITY CODE, 1959, AS AMENDED, AMENDING DEFINITIONS OF VIOLATION AND PROPERTY VIOLATION TO REFLECT THE UDC AND ADDING CHAPTER 5 AMUSEMENTS TO PROPERTY VIOLATIONS.

- - -

The following entitled ordinance was read for the second time:

INTRODUCED BY PRESIDENT ANDERSON

10-043 (10049) - AN ORDINANCE AMENDING CHAPTER 28 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO HEALTH AND SANITATION.

President Anderson moved passage of the ordinance and the same was adopted upon a unanimous vote.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

- - -

The meeting was adjourned at 9:05 p.m.

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

- - -

ORDINANCE NO. 10049

AN ORDINANCE AMENDING CHAPTER 28 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO HEALTH AND SANITATION.

The city of Duluth does ordain:

Section 1. That sections 28-1 through 28-16 of the Duluth City Code, 1959, as amended, be repealed in their entirety.

Section 2. That Section 28-17 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 28-17. Use of carbon tetrachloride for cleaning, etc.

No person within the city shall engage in the business of dry cleaning with the use of the carbon tetrachloride process or the use of any process involving washing in compounds of carbon tetrachloride without first securing written permission therefor from the city.

Section 3. That sections 28-18, 28-19, 28-20 and 28-22 of the Duluth City Code, 1959, as amended, be repealed in their entirety.

Section 4. That Article III of Chapter 28 of the Duluth City Code, 1959, as amended, be repealed in its entirety.

Section 5. That Article IV of Chapter 28 of the Duluth City Code, 1959, as amended, be repealed in its entirety.

Section 6. That Article V of Chapter 28 of the Duluth City Code, 1959, as amended, be repealed in its entirety.

Section 7. That sections 28-63 through 28-68 of the Duluth City Code, 1959, as amended, be repealed in their entirety.

Section 8. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: October 17, 2010)

President Anderson moved passage of the ordinance and the same was adopted upon the following vote:

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

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed September 13, 2010
Approved September 13, 2010
DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, September 27, 2010, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: None -- 0

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The minutes of council meetings held on May 24, June 14 and June 28, 2010, were approved upon a unanimous vote.

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

10-0927-08 Heartland Digital Outdoor, by Greg C. Gilbert, attorney, communication regarding the proposed amendment of a C-5 plan for construction and operation of an off premise electronic billboard at 1011 Mall Drive (10-0502R and 10-0510R). -- Received

10-0927-07 Linda Holmgren communication regarding the proposed vacation of a portion of 44th Avenue East (10-0505R). -- Received

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REPORTS FROM OTHER OFFICERS

10-0927-01 Assessor letters of sufficiency regarding petitions to:

(a) Reclassify from R-4 to Medical District 205 and 211 North Tenth Avenue East and 925 East Second Street;

(b) Vacate West Birch Street from Garfield Avenue to property owned by the Burlington Northern Sante Fe Railroad. -- Received

10-0927-02 Clerk application for exempt permit (raffle) to the Minnesota gambling control board from Northland Family Programs on December 1, 2010. -- Received

--

REPORTS OF BOARDS AND COMMISSIONS

10-0927-03 Duluth economic development authority minutes of August 25, 2010, meeting. -- Received

10-0927-04 Duluth public utilities commission minutes of September 7, 2010, meeting. -- Received

10-0927-05 Entertainment and convention center authority minutes of August 31, 2010, meeting. -- Received

10-0927-06 Parks and recreation commission minutes of August 11, 2010, meeting. -- Received

--

RESOLUTION TABLED

Councilor Boyle moved to remove Resolution 10-0477, approving proposed specifications for the civil service classification of utility maintenance worker and specifying contract benefits for same, which motion was seconded and unanimously carried.

Resolution 10-0477 was adopted as follows:

RESOLVED, that the proposed specifications for the new civil service classification of

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

utility maintenance worker, which were approved by the civil service board on July 7, 2009, and which are filed with the city clerk as Public Document No. 10-0927-16, are approved; that said classification shall be subject to the city's collective bargaining agreement with its basic unit employees. The pay for the classification shall be that determined by law and the applicable collective bargaining agreement. 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 10-0477 was unanimously adopted.
Approved September 27, 2010
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 Anderson 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 the same as that on file with the city clerk as Public Document No. 10-0927-09, with Kanuit & Bray, Ltd., under which that firm will represent the city in regard to a local sales tax enforcement and collection action against various internet lodging facilities, at a cost to the city of \$5,000, with a 20 percent contingency fee payable thereafter, which shall be payable from Fund 110, Department 700, Division 1407, Object 5304.

Resolution 10-0508 was unanimously adopted.
Approved September 27, 2010
DON NESS, Mayor

- - -

RESOLVED, that Resolution 09-0742 adopting license, permit and fee charges for 2010 be amended by adding the following fee, pursuant to Section 2-5 of the Duluth City Code:

Planning	
License, Permit, Fee Name	2010 Fee
UDC printing fee	\$48.00

Resolution 10-0509 was unanimously adopted.
Approved September 27, 2010
DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Venture Fuels for the purchase and delivery of approximately 56,000 tons of Spring Lake coal per year to the Duluth Steam Cooperative District One in accordance with city-approved specifications and the vendor's bid of \$45.48 per ton at a base price of approximately \$2,546,880 per heating season (November 1 - October 31) and a three-year contract for approximately 168,000 tons at approximately \$7,640,640, terms net 10, FOB destination and payable from Steam Fund 540, Department/Agency 920, Organization 1490, Object 5387.

Resolution 10-0495 was unanimously adopted.
Approved September 27, 2010

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with Viele Contracting, Inc., for the completion of bituminous paving improvements at Duluth city fire halls 1, 4 and 7 in accordance with city-approved plans and specifications and the vendor's low bid of \$144,026, payable from the Capital Improvements Fund 450, Department/Agency 030, Cost Center 5530.

Resolution 10-0503 was unanimously adopted.

Approved September 27, 2010

DON NESS, Mayor

- - -

RESOLVED, that:

(a) The city council finds sufficient petitions were filed with the city clerk requesting the vacation of 225 feet of the existing alley located behind 208-210 North Central Avenue and 5300 Bristol 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 petitions were duly referred to the city planning commission (FN 10090) 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 either useless for vehicular, or pedestrian purposes now, but that the entire width and length of the petitioned alley is needed for utility purposes as noted in (c) below; and

(c) The city engineer has requested retention of utility easement across the entire width and length of the petitioned alley for a sanitary sewer collection pipe; and

(d) The city planning commission, at its September 14, 2010, regular meeting, recommended approval of the vacation petition subject to retention of the utility easement; and

(e) The city council of the city of Duluth approves the vacation of the following, subject to retaining utility easements over portions of the streets, both more particularly described below and in Public Document No. 10-0927-10:

Lots 8-14, Block 19, and Lots 15, 16, Block 18, all in WEST DULUTH FIRST DIVISION City of Duluth, St. Louis County, Minnesota; TOGETHER WITH that part of the west half of vacated 54th Avenue West which lies adjacent to said Lots 15, 16, Block 18; TOGETHER WITH that part of vacated Roosevelt Street Bounded on the north by the south lines of said Blocks 18 and 19, on the east by the centerline of vacated 54th Avenue West, on the south by the I-35 right-of-way line, and on the west by the west line of said Block 19 extended southerly; and

(f) That the city clerk is, pursuant to Section 100(b)(7) of the Home Rule Charter of the city of Duluth, 1912, as amended authorized to record, with the register of deeds and/or the registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution and Public Document No. 10-0927-10 showing the portions of the streets and alleys to be vacated, utility easements retained and alley dedicated.

Resolution 10-0500 was unanimously adopted.

Approved September 27, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to contract with Infratech, Infrastructure Technologies, Inc., for the purchase and delivery of two CCTV (closed circuit television) Ford E-350 commercial cutaway van trucks with Ibak RapidView camera

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

equipment in accordance with Minnesota State Contract No. 443418, Release S-986(5), specifications and pricing in the amount of \$376,580, less \$14,000 for trade-ins plus \$24,927.38 sales tax plus \$250 for license, registration, and title fees, for a combined total amount of \$387,757.38, terms net 30, FOB destination, payable from Sewer Fund 530, Department/Agency 500, Organization 1905, Object 5580.

Resolution 10-0466 was unanimously adopted.

Approved September 27, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to contract with Avrio RMS Group, LLC, for the purchase and installation of a port security camera system with wireless communication for the city of Duluth, Minnesota, in accordance with city-approved plans and specifications and the firm's proposal of \$478,399, payable as follows:

(a) \$358,799.25, Special Projects Fund 210, Department/Agency 030, Division 3163, Cost Center 5580;

(b) \$119,599.75, Capital Equipment Fund 250, Department/Agency 015, Division 2010, Cost Center 5580, Project No. CE250.

Resolution 10-0496 was unanimously adopted.

Approved September 27, 2010

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with SHI Software House International Corporation for the tax-exempt purchase and delivery of 20 Panasonic laptops for use by the Duluth police department in its new emergency vehicles, in accordance with Minnesota State Contract #436392, Release C-816(5), specifications and pricing for a total amount of \$83,120, terms net 30, FOB destination, payable from the Capital Equipment Fund 250, Department/Agency 015, Organization 2010, Object 5580, Project CE250-V1001.

Resolution 10-0498 was unanimously adopted.

Approved September 27, 2010

DON NESS, Mayor

- - -

BY COUNCILOR GARDNER:

RESOLVED, that the city council finds as follows:

(a) Park Point is a unique place in the city of Duluth with limited infrastructure, access, and a desire by all to enjoy the beauty and recreation afforded on the point;

(b) The city council supports the city pursuing a small area plan for the portion of Park Point from the lift bridge to the intersection of Minnesota Avenue and 13th Street South.

THEREFORE, BE IT RESOLVED, that the council requests that city administration initiate and fund a small area plan for Park Point for completion in 2012.

Resolution 10-0494 was unanimously adopted.

Approved September 27, 2010

DON NESS, Mayor

- - -

The following resolutions were also considered:

Resolution 10-0493, in the matter of the off sale intoxicating liquor license of Dajer, Inc.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

(Lake Superior Bottle Shop), 31 East First Street, was introduced by Councilor Cuneo for discussion.

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

Duluth Police Lieutenant Pete Stauber reviewed the violation and that the police department recommends a fine even though the alcohol, gambling and tobacco commission was deadlocked in their recommendation. He noted that this is this licensee's third violation within the last three years and that there is a secondary negative effect of alcohol in the Downtown area, like fights, domestic violence and property damage.

President Anderson moved to amend the resolution, by:

(a) At the end of subsection (c) of the first paragraph, delete the word "adopted" and insert the words "modified as follows: The council finds that an employee of Dajer, Inc., d/b/a Lake Superior Bottle Shop, indirectly sold and furnished an alcoholic beverage to an obviously intoxicated person in violation of Duluth City Code Chapter 8, Section 26; that Dajer, Inc., d/b/a Lake Superior Bottle Shop, is liable for its employee's offense pursuant to Duluth City Code Chapter 8, Section 26; that this violation is the first offense of the licensee under the presumptive penalty language of Duluth City Code Chapter 8, Section 9; that absent significant aggravating or mitigating circumstances, the presumptive penalty for a first offense violation is a \$500 civil penalty";

(b) At the end of the second and final paragraph, delete the words "impose no penalty in this matter" and insert the words "imposes a \$500 civil penalty, payable within 30 days of council action,"

which motion was seconded and carried upon the following vote:

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

Nays: Councilors Fosle and Stauber -- 2

Resolution 10-0493, 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 7, 2010, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Dajer, Inc., d/b/a Lake Superior Bottle Shop, 31 East First Street, and has submitted its report to the city council of the city of Duluth as Public Document No. 10-0927-11;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on September 27, 2010, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 10-0927-11 regarding any suspension, revocation and/or civil penalty relating to the off sale intoxicating liquor license of Dajer, Inc., d/b/a Lake Superior Bottle Shop, 31 East First Street, are modified as follows: The council finds that an employee of Dajer, Inc., d/b/a Lake Superior Bottle Shop, indirectly sold and furnished an alcoholic beverage to an obviously intoxicated person in violation of Duluth City Code Chapter 8, Section 26; that Dajer, Inc., d/b/a Lake Superior Bottle Shop, is liable for its employee's offense pursuant to Duluth City Code Chapter 8, Section 26; that this violation is the first offense of the licensee under the presumptive penalty language of Duluth City Code Chapter 8, Section 9; that absent significant aggravating or mitigating circumstances, the presumptive penalty for a first offense violation is a \$500 civil penalty.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: the Duluth City Council imposes a

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

\$500 civil penalty, payable within 30 days of council action.

Resolution 10-0493, as amended, was adopted upon the following vote:

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

Nays: Councilor Stauber -- 1

Approved September 27, 2010

DON NESS, Mayor

- - -

RESOLVED, that:

(a) The city council finds sufficient petitions were filed with the city clerk requesting the vacation of the following:

(1) The 16 foot alley between 44th and 46th Avenues West and Grand Avenue within Blocks 69 and 70 of Oneota Industrial Park; and

(2) The utility easement retained in the previous vacation of West Second Street also known as Traverse Street under Resolution 93-0393; 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 petitions were duly referred to the city planning commission (FN 10089), and such commission gave due notice of public hearing and did consider same in public hearing and the city planning commission found as follows:

(1) The petitioned alley is useless for vehicular and pedestrian purposes, but not for utility purposes; and

(2) The petitioned utility easement is useless for utility purposes; and

(c) The city engineer has requested retention of a utility easement for the entire width and length of the subject alley for maintenance of water distribution pipes; and

(d) The city has received an offer to dedicate to the city of Duluth utility easements as follows:

(1) The southerly ten feet of Lots 1, 2, 3, 4, 5, 6, 7 and 8, Block 69. Oneota, as more particularly described in Exhibit B;

(2) The northerly ten feet of Lots 9, 10, 11, 12, 13, 14, 15 and 16, Block 70, Oneota as more particularly described in Exhibit C; and

(3) The southeasterly 15 feet, more or less, of Lot 3, said Block 70, in the town of Oneota, lying southeasterly of a line drawn parallel with and 100 feet normally distant northwesterly from the original main track centerline of the former Northern Pacific Railway Company, as more particularly described in Exhibit D; and

(e) The city planning commission, at its September 14, 2010, regular meeting, recommended approval of the vacation petitions, retention of utility easement, and acceptance of utility easement dedications; and

(f) The city council of the city of Duluth approves the vacation of the following subject to retention of utility easement over the full width and length of the alley, both more particularly described in Public Document No. 10-0927-12:

(1) The alley within Blocks 69 and 70 ONEOTA;

(2) The northerly 20 feet of that portion of West Second Street (also known as Traverse Street), lying south of the Burlington Northern Railroad line and adjacent to Lots 15 and 16, Block 1, Oneota Industrial Park Division, as more particularly described in Resolution 93-0393; and

(g) The city council of the city of Duluth accepts, on behalf of the general public, the dedication of the utility easements described above and as more particularly described in

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Public Document No. 10-0927-12;

(h) That the vacations approved pursuant to this resolution are hereby conditioned upon the execution and recordation of the dedication described in (f) and (g); and

(i) That the city clerk is, pursuant to Section 100 (b)(7) of the Home Rule Charter of the city of Duluth, 1912, as amended authorized to record, with the register of deeds and/or the registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution and Public Document No. 10-0927-12 showing the portions of the alley and utility easement to be vacated, utility easements retained and utility easements dedicated.

Resolution 10-0501 was adopted upon the following vote:

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

Nays: None -- 0

Abstention: Councilor Fedora -- 1

Approved September 27, 2010

DON NESS, Mayor

- - -

Resolution 10-0505, vacating a portion of 44th Avenue East between Lot 9, Block 108, and Lot 16, Block 109, London Addition, and retaining a utility easement over the entire vacation area, petitioned by Jarrod B. Novotny, 4401 Dodge Street, 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.

Jarrod Novotny requested support for the vacation, noting that he has had a survey done to determine the property ownership and the centerline of the vacated street.

Councilors reviewed the pictures and clarified with the applicant this issue.

Linda Holmgren, neighbor to the applicant, noted that: the driveway was paved long before she purchased the house; the problems with moving the driveway over because of a catch basin; the planning commission noted that this access should not be blocked at all because of the Minnesota Power access to the power lines and that it would not block access to their garage.

Councilors discussed this issue with Ms. Holmgren.

Resolution 10-0505 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 44th Avenue East located between Lot 9, Block 108, and Lot 16, Block 109, both in London Addition; and

(b) Pursuant to Section 100 of the City Charter and Article IV of Chapter 45 of the Duluth City Code, 1959, as amended, such petition was duly referred to the city planning commission (FN 10076) and such commission gave due notice of public hearing and did consider same in public hearing and, the city planning commission found that the petitioned street is useless for vehicular and pedestrian purposes, but that the street is needed for utility purposes as noted in (c) below; and

(c) Minnesota Power has requested a utility easement be retained over the entire vacation area to preserve access to an existing power distribution line and the City Engineer has also requested a utility easement for a portion of the requested vacation area for storm sewer improvements; and

(d) The city planning commission, at its September 14, 2010, regular meeting,

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

recommended approval of the vacation petition and easement reservation; and

(e) The city council of the city of Duluth approves the vacation of the following, and retaining a utility easement over the entire vacation area, both more particularly described on Public Document No. 10-0927-14:

That part of 44th Avenue East abutting Blocks 108 and 109, London Addition, described as follows:

Beginning at the northeast corner of Lot 9, Block 108; thence easterly in a straight line to the northwest corner of Lot 16, Block 109; thence deflecting to the right and continuing southerly along the westerly line of said Block 109 to southwest corner of Lot 16, Block 109; thence deflecting to the right and continuing westerly in a straight line to the southeast corner of Lot 9, Block 108; thence deflecting to the right and continuing northerly along the easterly line of said Block 108 to the point of beginning and there terminating; and

(f) That the city clerk is, pursuant to Section 100(b)(7) of the Home Rule Charter of the city of Duluth, 1912, as amended, authorized to record with the register of deeds and/or the registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution and Public Document No. 10-0927-14 showing the portion of the street to be vacated and utility easement retained.

Resolution 10-0505 was adopted upon the following vote:

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

Nays: Councilor Gauthier -- 1

Approved September 27, 2010

DON NESS, Mayor

- - -

Resolution 10-0502, issuing to Heartland Digital Outdoor denial of a C-5 plan amendment for construction and operation of an off premise electronic billboard at 1101 Mall Drive, and Resolution 10-0510, approving an application to amend a C-5 plan for construction and operation of an off premise electronic billboard at 1101 Mall Drive submitted by Heartland Digital Outdoor, were 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

Warren Olsen, John Diedrick and Greg Gilbert spoke in support of Resolution 10-0510, noting: that customers benefit from a dynamic, effective means to display an advertising message; public safety announcement and Amber Alerts are also being widely displayed on these digital signs; the economic impact of constructing this sign has a large effect on the community; the applicant and architect are aware of the environmental sensitivity of this site; recent zoning changes have been made to allow for this sign; when the zoning changes the restrictions change from the original community unit plan restrictions; the developers support reasonable non-required conditions of a community unit plan which is no longer in effect.

Councilor Gauthier opposed the application for reasons of: the community unit plan is still in force; this area of 93 trees will be mowed down and this is just an attempt to make money.

Resolution 10-0510 failed upon the following vote (Public Document No. 10-0927-13):

Yeas: Councilors Fedora, Fosle, Stauber and President Anderson -- 4

Nays: Councilors Boyle, Cuneo, Gardner, Gauthier and Hartman -- 5

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Resolution 10-0502 was adopted as follows:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

RESOLVED, that the city council finds the following:

(a) Warren Olson of Heartland Digital Outdoor has submitted to the city council a request for C-5 plan approval, in accordance with Section 50-140 of the City Code, for construction and operation of an off premise electronic billboard on the Home Depot property located at 1101 Mall Drive; and

(b) Said permit application was duly referred to the city planning commission for a study, report and public hearing at their September 14, 2010, regular meeting and city planning commission has subsequently reported its failure to recommend approval to the city council with a 2-9-0 vote; and

(c) Said permit for amendment of a C-5 plan for 1101 Mall Drive, including the removal of 57 buffer trees along the Central Entrance frontage for the construction and operation of an off-premise electronic billboard is hereby denied for the following reasons:

(1) The proposed project is inconsistent with the previously approved landscape plan that shows the edge of the tree canopy extending to Central Entrance;

(2) Collectively, the stand of trees makes a significant and aesthetic environmental impact;

(3) Modification of the approved plan to allow for tree removal is contrary to the purpose of C-5 plan review to, in part, reduce adverse effects of development on the natural environment [and] enhance the visual and aesthetic quality of development; and

(4) Removal of the identified trees and installation of the proposed off-premise sign would have adverse effects on the natural environment and the visual and aesthetic quality of the development.

Resolution 10-0502 was adopted upon the following vote:

Yeas: Councilors Boyle, Cuneo, Gardner, Gauthier and Hartman -- 5

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

Approved September 27, 2010

DON NESS, Mayor

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Resolution 10-0499, by Councilor Stauber and President Anderson, of support for the Heartsafe Northland program sponsored by the Northland Chapter of the Red Cross and other community partners, was introduced for discussion.

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

Judy Hanne Gonzalez spoke in support of the resolution, citing the recent uses of this equipment, which saves lives.

Resolution 10-0499 was adopted as follows:

BY COUNCILOR STAUBER AND PRESIDENT ANDERSON:

WHEREAS, the city council recognizes that each year over 335,000 people die in the United States from sudden cardiac arrest (SCA), many in this city and surrounding region, without being hospitalized or admitted to the emergency room; and

WHEREAS, there are over 1.2 million heart attacks in the United States each year in which nearly half result in death and that sometimes there are just minutes before the chance of survival begins to rapidly diminish without early CPR and early defibrillation; and

WHEREAS, the Northland Chapter of the Red Cross has partnered with key members of the community in an effort to improve cardiovascular health and survival rates in the Duluth/Superior region, with the purposes of:

(a) Recognizing EMS and community partners who are working to improve survival

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

and recovery rates for cardiovascular events; and

(b) Enhancing partnerships, resources and services to improve cardiovascular health, and decrease deaths and disability due to SCA and heart attack.

THEREFORE, BE IT RESOLVED, the Duluth City Council along with the Northland Chapter of the Red Cross hereby encourage all citizens to recognize the chain of survival from an SCA or heart attack, including:

- (a) Early access to care - know the signs and call 911;
- (b) Early cardiopulmonary resuscitation - CPR;
- (c) Early defibrillation - automatic external defibrillators, or AEDs;
- (d) Early advanced care - local EMS teams.

The council and Red Cross encourages all local citizens to participate in the steps to survival, including:

- (a) Learn SCA and heart attack warning signs;
- (b) Get trained in CPR and AEDs;
- (c) Talk with family and friends about warning signs and calling 911; and
- (d) Watch for signs in friends, family, co-workers and neighbors and act quickly - call

911.

FURTHER RESOLVED, the council hereby recognizes the value of promoting a basic healthy heart program in our region including:

- (a) Community CPR and AED sessions;
- (b) Community education and awareness initiatives to promote cardiovascular

health;

- (c) First response vehicles equipped with AEDs and AED trained personnel; and
- (d) AEDs in public areas with people at higher risk of cardiac arrest.

FURTHER RESOLVED, the council hereby encourages business, industry, government, churches and any place of gathering where there are large numbers of people to be equipped with AEDs and that staff, employees and every capable citizen be trained in CPR and the simple use of AEDs.

FURTHER RESOLVED, the council hereby recognizes the Northland Chapter of the Red Cross, the Duluth fire department, the Duluth police department, St. Luke's Cardiology Associates; Gold Cross Ambulance and the Arrowhead EMS Association for their efforts in making Duluth a healthier place to live through the Heartsafe Northland program.

Resolution 10-0499 was unanimously adopted.

Approved September 27, 2010

DON NESS, Mayor

- - -

Resolution 10-0507, by Councilor Gardner, recognizing Dan Proctor for his exceptional volunteer efforts working at Chester Bowl and Lester Park and requesting the main Chester Bowl trail be named in his honor, was introduced for discussion.

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

Jess Koski spoke in support of the resolution, noting all the work that Mr. Proctor has done at the Chester Park trails.

Resolution 10-0507 was adopted as follows:

BY COUNCILOR GARDNER:

RESOLVED, that the city council hereby recognizes the exceptional hard work and years of volunteer service Dan Proctor has provided to the city through his work on the trails in

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Chester Bowl and Lester Park.

FURTHER RESOLVED, the city council would like to thank Dan Proctor for his years of volunteer service and hereby requests the administration begin the process of having the main Chester Bowl trail named in Dan Proctor's honor.

Resolution 10-0507 was unanimously adopted.

Approved September 27, 2010

DON NESS, Mayor

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INTRODUCTION AND CONSIDERATION OF ORDINANCES

ORDINANCE TABLED

BY COUNCILORS STAUBER AND BOYLE

10-039 - AN ORDINANCE AMENDING SECTION 34-40 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO SMOKING PROHIBITIONS IN CITY PARKS AND PLAYGROUNDS.

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

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The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR FEDORA

10-050 - AN ORDINANCE AMENDING CHAPTER 2, ARTICLE XV, OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO DUTIES OF THE CITY DEFERRED COMPENSATION PLAN COMMISSION.

- - -

INTRODUCED BY COUNCILOR STAUBER

10-048 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, ZONING DISTRICT MAP NO. 17 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM M-1, MANUFACTURING, AND I-P, INDUSTRIAL PARK, TO C-5, PLANNED COMMERCIAL, PROPERTY BETWEEN 44TH AND 46TH AVENUES WEST SOUTH OF GRAND AVENUE (J&S PARTNERSHIP).

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INTRODUCED BY COUNCILOR STAUBER

10-049 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, AMENDING PUBLIC DOCUMENT NO.03-0324-15 TITLED "RAMSEY VILLAGE NEIGHBORHOOD DOCUMENTS OF IMPLEMENTATION."

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INTRODUCED BY COUNCILOR STAUBER

10-051 - AN ORDINANCE GRANTING TO JEFFREY B. SMITH AND PETER S. LAMBERT A CONCURRENT USE PERMIT FOR OFF STREET PARKING AREA INTO THE RIGHT-OF-WAY OF THE WEST SKYLINE PARKWAY ADJACENT TO PROPERTIES LOCATED AT 610 AND 618 WEST SKYLINE PARKWAY.

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INTRODUCED BY COUNCILOR GAUTHIER

10-047 - AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN PROPERTY IN THE LINCOLN PARK AREA TO PAUL JEFFREY AND MELISSA LYNN-SCHULTZ ODENBACH

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

FOR \$10,000.

- - -

The following entitled ordinances were read for the second time:

BY COUNCILOR STAUBER

10-045 - AN ORDINANCE REPEALING CHAPTER 2, ARTICLE VII, OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO THE POWERS AND DUTIES OF THE PLANNING COMMISSION.

Councilor Stauber felt that it is an elected official's responsibility to have the final authority.

Other councilors felt that the planning commission is the best entity to serve this regularity role.

Councilor Stauber moved passage of the ordinance and the same failed upon the following vote (Public Document No. 10-0927-15):

Yeas: Councilor Stauber -- 1

Nays: Councilors Boyle, Cuneo, Fedora, Fosle, Gardner, Gauthier, Hartman and President Anderson -- 8

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INTRODUCED BY COUNCILOR GAUTHIER

10-046 (10050) - AN ORDINANCE AUTHORIZING ASSESSMENT FOR SIDEWALK VAULT REPAIR OR ABANDONMENT.

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

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INTRODUCED BY COUNCILOR FOSLE

10-044 (10051) - AN ORDINANCE AMENDING SECTION 12-2 OF THE DULUTH CITY CODE, 1959, AS AMENDED, AMENDING DEFINITIONS OF VIOLATION AND PROPERTY VIOLATION TO REFLECT THE UDC AND ADDING CHAPTER 5 AMUSEMENTS TO PROPERTY VIOLATIONS.

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 8:23 p.m.

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10050

AN ORDINANCE AUTHORIZING ASSESSMENT FOR SIDEWALK VAULT REPAIR OR ABANDONMENT.

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 45-82.6 which reads as follows:

Sec. 45-82.6. Sidewalk vault repair or abandonment--assessment.

(a) If the city engineer determines in the exercise of his or her discretion that the existence or condition of a vault under any city street, sidewalk or alley is in such a condition or state of disrepair as to pose a danger to the

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public or that it imperils the condition or integrity of such street, sidewalk or alley, the city engineer may cause a notice thereof to be mailed to those persons appearing by name in the office of the city assessor as being subject to a real estate tax on the property upon which the vault is located, or if such property is not subject to a real estate tax, the owner of such property as shown in the office of the city assessor, such notice to be mailed to the address of such person as listed on the records of the assessor. Said notice shall inform said person or persons of the determination of the city engineer, shall notify said person or persons that the city requires said person or persons, within 60 days of the sending of the notice, to either repair said vault in a manner acceptable to the city engineer or to abandon, close and fill said vault in a manner acceptable to the city engineer. Said person or persons shall be required to obtain a permit from the city engineer for any such repair or abandonment work and to provide bonds and insurance as is required in this Chapter and the plans therefore shall be subject to the prior approval of the city engineer;

(b) If the vault referenced in subsection (a) above is not repaired or abandoned in accordance with the requirements of said subsection within the time established in the notice requiring such repair or abandonment, the city engineer may proceed to seek authorization from the city council under Section 45-77.1 of this Code to have said work performed and to assess the cost of said work against the benefitted property pursuant to this Article VII of Chapter 45 of the Code.

Section 2. That this ordinance shall take effect 30 days from and after its passage and publication. (Effective date: October 31, 2010)

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

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

Nays: None -- 0

Passed September 27, 2010
Approved September 27, 2010
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

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ORDINANCE NO. 10051

AN ORDINANCE AMENDING SECTION 12-2 OF THE DULUTH CITY CODE, 1959, AS AMENDED, AMENDING DEFINITIONS OF VIOLATION AND PROPERTY VIOLATION TO REFLECT THE UDC AND ADDING CHAPTER 5 AMUSEMENTS TO PROPERTY VIOLATIONS.

The city of Duluth does ordain:

Section 1. That Section 12-2 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 12-2. Definitions.

For the purposes of this Chapter, the following terms shall have the meanings hereinafter ascribed to them:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

- (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) | <u>Chapter 5.</u> | <u>Amusements;</u> |
| (2) | Chapter 10. | Buildings; |
| (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 44A. | Skywalk System; |
| (11) | Chapter 48. | Water and Gas; |
| (12) | Chapter 50. | <u>Unified Development;</u> |
- (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; |

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

- (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 21. Fire Protection;
- (10) Chapter 24. Garbage and Other Solid Waste;
- (11) Chapter 25. Gasoline Filling Stations;
- (12) Chapter 26. Harbors, Docks and Bridges;
- (13) Chapter 27. Hawkers, Peddlers and Transient Businesses;
- (14) Chapter 28. Health and Sanitation;
- (15) Chapter 29. Hotels, Motels and Motor Courts;
- (16) Chapter 29A. Housing Code;
- (17) Chapter 30. Abandoned Property and Abandoned or Inoperative Vehicles;
- (18) Chapter 33. Motor Vehicles and Traffic;
- (19) Chapter 34. Offenses--Miscellaneous;
- (20) Chapter 35. Parks and Recreation;
- (21) Chapter 36. Pawnbrokers and Metal Dealers;
- (22) Chapter 43. Sewers and Sewage Disposal;
- (23) Chapter 44A. Skywalk System;
- (24) Chapter 45. Streets, Sidewalks and Public Grounds;
- (25) Chapter 47. Vehicles for Hire;
- (26) Chapter 48. Water and Gas;
- (27) Chapter 49. Weapons;
- (28) Chapter 50. Unified Development;

(l) Violator. A person alleged to have committed a violation or to be legally responsible for the commission of a violation under this Chapter.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: November 19, 2010)

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

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

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed September 27, 2010
Approved September 27, 2010
DON NESS, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, October 11, 2010, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: Councilor Cuneo -- 1

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

10-1011-01 Duluth Area Family YMCA acceptance of concurrent use permits granted by: (a) Ordinance No. 9964 on April 13, 2009; (b) Ordinance No. 10023 on April 12, 2010. -- Received

REPORTS FROM OTHER OFFICERS

10-1011-02 Clerk application for exempt permit (raffle) to the Minnesota gambling control board from Regents of the University of Minnesota on April 14, 2011. -- Received

REPORTS OF BOARDS AND COMMISSIONS

10-1011-03 Building appeal board minutes of: (a) July 14; (b) August 11, 2010, meetings. -- Received

10-1011-04 Duluth airport authority: (a) Minutes of: (1) August 17; (2) September 8, 2010, meetings; (b) Unaudited balance sheet of July 31, 2010. -- Received

10-1011-05 Duluth public arts commission minutes of August 16, 2010, meeting. -- Received

10-1011-06 Duluth Seaway Port authority minutes of: (a) May 27; (b) July 22, 2010, meetings. -- Received

10-1011-07 Duluth transit authority: (a) Income statement for May 2010; (b) Minutes of: (1) May 26; (2) June 30, 2010, meetings. -- Received

10-1011-10 Entertainment and convention center minutes of September 28, 2010, meeting. -- Received

10-1011-08 Housing and redevelopment authority of Duluth minutes of August 31, 2010, meeting. -- Received

10-1011-09 Library board minutes of August 24, 2010, meeting. -- Received

At this time, 7:03 p.m., the public hearing pertaining to the Atlas site brownfield cleanup grant was opened.

No one appeared who wished to be heard and the public hearing was closed at 7:05 p.m.

At this time, 7:05 p.m., the public hearing pertaining to Northstar Aerospace MIF loan and promissory note modification agreement amendments was opened.

No one appeared who wished to be heard and the public hearing was closed at 7:06 p.m.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

OPPORTUNITY FOR CITIZENS TO BE HEARD

Loren Martell urged the councilors not to think that it is too late to stop the school board's consolidation plan for the Western Middle School and questioned that, if the city is trying to get Duluth to grow, why are schools being closed.

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K.L. Lewis expressed concern over bullying in schools and the young people who have killed themselves because of the way they have been treated. She stated the school district needs to take action on this issue and the community also needs to become involved.

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Jacob Randa questioned if the city will take a stand on bullying as more kids commit suicide.

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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 Anderson 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 taxable general obligation airport improvement refunding bonds, Series 2010D, in the approximate amount of \$1,870,000 (the "bonds"), pursuant to Minnesota Statutes, Chapter 475, and the City Charter, for the purpose of refunding the city's taxable general obligation airport improvement bonds, Series 2002A, dated February 1, 2002;

(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. 10-1011-11. 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 10-0524 was unanimously adopted.

Approved October 11, 2010

DON NESS, Mayor

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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

(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 2010E, in the approximate amount of \$2,425,000 (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 2002H, dated December 1, 2002, and general obligation improvement bonds, Series 2003H, dated December 1, 2003;

(b) Issuance and sale of bonds. The terms and conditions of the bonds and the sale thereof are set forth in the official terms of offering on file with the city clerk as Public Document No. 10-1011-12. 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. 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 10-0525 was unanimously adopted.
Approved October 11, 2010
DON NESS, Mayor

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RESOLVED, that Resolution No. 05-0320 is hereby amended by modifying the authorization contained therein to transfer funds from the community investment trust fund, established pursuant to Section 54 of the Charter, to the housing investment fund for the year 2010 and by substituting therefore the transfer of such funds to the street improvement fund.

Resolution 10-0526 was unanimously adopted.
Approved October 11, 2010
DON NESS, Mayor

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WHEREAS, pursuant to Resolution 09-0432 adopted on July 13, 2009, the city accepted a state bonding grant in the amount of \$4,900,000 for Phase I of the Duluth airport terminal project and authorized the execution of a grant agreement with the state of Minnesota and a memorandum of understanding with the Duluth airport authority for Phase I;

WHEREAS, the city has been awarded \$11,700,000 by the state of Minnesota for Phase II of the Duluth airport terminal project;

WHEREAS, pursuant to Resolution 10-0467 adopted on September 13, 2010, the city authorized execution of an amended and restated state bonding grant agreement relating to both phases I and II of the Duluth airport terminal project;

WHEREAS, subsequent to the council's adoption of Resolution 10-0467, the state of Minnesota office of aeronautics required language regarding matching funds be added to the amended and restated state bonding grant agreement related to phases I and II of the Duluth airport terminal project.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

NOW, THEREFORE, BE IT RESOLVED, that Resolution No. 10-0467 adopted on September 13, 2010, is hereby amended by deleting Public Document No. 10-0913-12 therefrom and replacing it with an agreement substantially in the form of that on file in the office of the city clerk as Public Document No. 10-1011-13 related to phases I and II of the Duluth airport terminal project at the Duluth International Airport (the "amended and restated state bonding grant agreement").

FURTHER RESOLVED, that Attachment II, *Source and Use of Funds for the Project*, to said amended and restated state bonding grant agreement may be updated or amended from time to time as additional federal funding becomes available to the airport terminal project; any such update or amendment to be agreed upon between the city's auditor and the state office of aeronautic's regional airport engineer.

FURTHER RESOLVED, that Resolution 10-0467 is hereby amended by deleting Public Document No. 10-0913-12 and replacing it with an agreement substantially in the form of that on file in the office of the city clerk as Public Document No. 10-1011-13 pursuant to which the city will reimburse the Duluth airport authority for eligible costs under phases I and II of the Duluth airport terminal project.

Resolution 10-0543 was unanimously adopted.

Approved October 11, 2010

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to contract with The Boldt Company, d.b.a. Oscar J. Boldt Construction, for the replacement of structural floor slabs at the city maintenance shop located at 1532 West Michigan Street in Duluth, Minnesota, accordance with city-approved specifications and the vendor's low bid of \$134,100 (not including electrical work), payable from the Capital Improvements Fund 450, Department/Agency 030, Object 5520, Project No. CP2010-1008B-2010.

Resolution 10-0516 was unanimously adopted.

Approved October 11, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to contract with Aramark Uniform Service (Aramark Uniform & Career Apparel, LLC), for laundry services and the rental of uniforms, linens and other miscellaneous items for various city of Duluth users at various locations for an estimated amount of \$65,000 in year 2010, terms net 30, pick up and delivery service, payable from various funds, agencies, organizations and objects.

Resolution 10-0527 was unanimously adopted.

Approved October 11, 2010

DON NESS, Mayor

- - -

RESOLVED, that the Duluth City Council hereby approves of the Minnesota department of commerce issuing a 2011 currency exchange license to Pawn America Minnesota, LLC, 339 East Central Entrance.

Resolution 10-0530 was unanimously adopted.

Approved October 11, 2010

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby issues the following

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

on sale 3.2 percent malt liquor license for the period ending April 30, 2011, subject to department approvals and the payment of sales and property taxes;

Maclard's Enterprises, LLC (Lola's to Go), 1516 Kenwood Avenue, with Matthew DeNoyer, 38 percent stockholder, Sylvan Larson, 47 percent stockholder, and Jesse Smith, 15 percent stockholder.

Resolution 10-0532 was unanimously adopted.

Approved October 11, 2010

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, 2011, subject to departmental approvals and the payment of sales and property taxes:

Osaka Duluth, Inc. (Osaka Sushi Hibachi Steakhouse), 5115 Burning Tree Road, with Dan Xu, 60 percent stockholder, and Lester Teseng, 40 percent stockholder.

Resolution 10-0533 was unanimously adopted.

Approved October 11, 2010

DON NESS, Mayor

- - -

BE IT RESOLVED, that the Duluth City Council hereby approves of the Minnesota gambling control board issuing a lawful gambling exemptions to Lincoln Park Business Group, Ridgeview Country Club, St. Mary's Medical Center and SMDC Medical Center 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 10-0534 was unanimously adopted.

Approved October 11, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to contract with Otis Elevator Company for the decommissioning and modernization of the two main City Hall passenger elevators (#1 and #2), located at 411 West First Street in accordance with city specifications and the vendor's low bid of \$552,164, payable as follows:

(a) \$206,275 from Capital Improvements Fund 450, Department/Agency 030, Object 5520, Project No. CP2009-0907B;

(b) \$345,889 from Capital Improvements Fund 450, Department/Agency 030, Object 5520, Project No. CP2010-1007B.

Resolution 10-0539 was unanimously adopted.

Approved October 11, 2010

DON NESS, Mayor

- - -

RESOLVED, that the appointment by Mayor Ness of Nancy Bratrud to the housing and redevelopment authority for a term expiring on January 6, 2014, replacing James Booth who resigned, is confirmed.

Resolution 10-0511 was unanimously adopted.

Approved October 11, 2010

DON NESS, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

- - -

RESOLVED, that the following appointments by Mayor Ness to the American Indian commission are confirmed:

(a) Donna Bergstrom and Terry Goodsky for terms expiring March 31, 2011, replacing Antoinette Dickenson and Renee Van Nett who resigned;

(b) Terry Smith for a term expiring on March 31, 2012; replacing Beatrice Kitto who resigned.

Resolution 10-0512 was unanimously adopted.

Approved October 11, 2010

DON NESS, Mayor

- - -

BY COUNCILOR BOYLE:

RESOLVED, that the city council hereby reappoints Ray Klosowski to the Seaway Port authority of Duluth for a term expiring on October 10, 2016.

Resolution 10-0540 was unanimously adopted.

Approved October 11, 2010

DON NESS, Mayor

- - -

RESOLVED, pursuant to the requirements of Minnesota Statutes Section 645.021, Subdivision 3, the Duluth City Council hereby approves Laws of Minnesota 2010, Chapter 382, Section 84, amending parcel code numbers contained in Laws of Minnesota 2009, Chapter 88, Section 17.

Resolution 10-0513 was unanimously adopted.

Approved October 11, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a fourth amendment to the MIF loan agreement and a fourth promissory note modification agreement substantially in the form of those on file in the office of the city clerk as Public Document No. 10-1011-14 with Northstar Machine and Tool, Inc., d.b.a. Northstar Aerospace, allowing Northstar to make interest-only payments retroactive to July 1, 2010, through March 31, 2011.

FURTHER RESOLVED, that the proper city officials are hereby authorized to execute a fourth amendment to the grant agreement with the state of Minnesota, such amendment to reflect the fourth amendment to the MIF loan agreement and fourth promissory modification agreement.

Resolution 10-0517 was unanimously adopted.

Approved October 11, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept a Brownfield petroleum assessment grant from the U.S. environmental protection agency (EPA), Region 5, in the amount of \$200,000 and to execute Assistance Agreement No. BF-00E00433-0 substantially in the form of that on file in the office of the city clerk as Public Document No. 10-1011-15, in connection therewith.

Resolution 10-0518 was unanimously adopted.

Approved October 11, 2010

DON NESS, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

- - -

RESOLVED, that the city council hereby makes the following findings:

(a) That Resolution 05-0156 was not recorded with the register of deeds and/or the registrar of titles of St. Louis County, Minnesota;

(b) That sufficient petitions were filed with the city clerk requesting the vacation of the following:

(1) That portion of 43rd Avenue West, adjoining Lot 16, Block 71, and Lot 9, Block 72, TOWN OF ONEOTA, lying within 110 feet of vacated West Second Street, previously platted as Traverse Street, as described in Exhibit A;

(2) That portion of 44th Avenue West, adjoining Lots 8 and 16, Block 70, and Lots 1 and 9, Block 71, all in the recorded plat of Town of Oneota, that is within 161 feet of the northwest right-of-way of vacated West Second Street, previously platted as Traverse Street, subject to retention of a utility easement, all as described in Exhibit B;

(3) That utility easement retained in the previous vacation of West Second Street, TOWN OF ONEOTA, previously platted as Traverse Street pursuant to Resolution 02-0408, as described in Exhibit B;

(4) That portion of 45th Avenue West, adjoining Lot 16, Block 69, and Lot 9, Block 70, TOWN OF ONEOTA, lying within 113 feet of vacated West Second Street, previously platted as Traverse Street, retaining a utility easement over the westerly 50 feet of the vacated portion, as described in Exhibit C;

(5) That utility easement on part of the vacated West Second Street, TOWN OF ONEOTA, previously platted as Traverse Street, as described in Exhibit B;

(c) Pursuant to Section 100 of the City Charter and Article IV of Chapter 45 of the Duluth City Code, 1959, as amended, such petitions were duly referred to the city planning commission (FN 10057), and such commission gave due notice of public hearing and did consider same in public hearing and the city planning commission found that the petitioned streets are useless for vehicular, pedestrian and utility purposes, but that portions of the petitioned streets are needed for utility purposes as noted in (b) and further described in Exhibit B and Exhibit C;

(d) The city has received the following grants of easement, in trust for the general public, from the following persons and entities:

(1) An easement for roadway and utility purposes from J&S Partnership LLP over a portion of vacated West Second Street, TOWN OF ONEOTA, previously platted as Traverse Street, as shown on Public Document No. 10-1011-16(a), a copy of which is on file in the office of the city clerk;

(2) An easement for roadway and utility purposes from J&S Partnership LLP over a portion of vacated 44th Avenue West, TOWN OF ONEOTA, lying south of Grand Avenue, as shown on Public Document No. 10-1011-16(b), a copy of which is on file in the office of the city clerk;

(3) An easement for utility purposes from J&S Partnership LLP over a portion of vacated 44th Avenue West, TOWN OF ONEOTA, lying south of Grand Avenue, as shown on Public Document No. 10-1011-16(c), a copy of which is on file in the office of the city clerk;

(4) An easement for roadway and utility purposes from Roadrunner Investments LLC over a portion of vacated West Second Street, TOWN OF ONEOTA, previously platted as Traverse Street, as shown on Public Document No. 10-1011-16(d), a copy of which is on file in the office of the city clerk;

(5) An easement for roadway and utility purposes from Roadrunner

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Investments LLC over a portion of vacated 44th Avenue West, TOWN OF ONEOTA, lying south of Grand Avenue, as shown on Public Document No. 10-1011-16(e), a copy of which is on file in the office of the city clerk;

(6) An easement from Wade E. and Mindy Plaisted, individually, over a portion of vacated West Second Street, TOWN OF ONEOTA, previously platted as Traverse Street, as shown on Public Document No. 10-1011-16(f), a copy of which is on file in the office of the city clerk;

(e) The city planning commission, at its September 14, 2010, regular meeting, recommended approval of the vacation petitions, retention of utility easements, and acceptance of right-of-way and utility easement dedications.

FURTHER RESOLVED, that Resolution No. 05-0156, approved on March 14, 2005, is hereby rescinded.

FURTHER RESOLVED, that the city council of the city of Duluth approves the vacations subject to retention of utility easements described above and as more particularly described in exhibits A, B and C and identified as Public Document No. 10-1011-16(g).

FURTHER RESOLVED, that said city council accepts, on behalf of the general public, the dedication of those easements described above as shown on Public Document Nos. 10-1011-16(a)-(f).

FURTHER RESOLVED, that the city clerk is, pursuant to Section 100(b)(7) of the Home Rule Charter of the city of Duluth, 1912, as amended authorized to record, with the register of deeds and/or the registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution and Public Document Nos. 10-1011-16(a)-(f) showing the portions of the streets and alleys to be vacated, utility easements to be retained and the acceptance of dedication of new easements, all as authorized hereunder.

Resolution 10-0538 was unanimously adopted.

Approved October 11, 2010

DON NESS, Mayor

- - -

RESOLVED, that MSA Professional Services, Inc.'s Contract No. C20772, for professional engineering services for Arlington pump station improvements be hereby amended for additional design and construction engineering services in the estimated amount of \$22,478.10 for a new total of \$274,309.10, payable from the Water Bond Fund 511, Agency 500, Object 5532, City Project No. 0695WA.

Resolution 10-0506 was unanimously adopted.

Approved October 11, 2010

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Utility Systems of America, Inc., for 2010 lift station improvements (Lift Stations No. 3 and No. 9) in the amount of \$375,476, payable from the Sanitary Sewer Fund 530, Department/Agency 500, Organization 1905, Object 5536, City Project No. 0857SN.

Resolution 10-0515 was unanimously adopted.

Approved October 11, 2010

DON NESS, Mayor

- - -

RESOLVED, that pursuant to Section 61 of the City Charter, the city council hereby

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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

36th Avenue East from Superior Street to Fourth Street.

Resolution 10-0529 was unanimously adopted.

Approved October 11, 2010

DON NESS, Mayor

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The city council finds as follows:

(1) The municipality of Duluth implemented municipal state aid street projects in 2010 which required state aid funds in excess of those available in its state aid construction account; and

(2) Said municipality has proceeded with the construction of said projects with local and state aid funds and proposes to complete said projects through the use of an advance from the municipal state aid street fund to supplement the available funds in its state aid construction account; and

(3) The advance is based on the following determination of estimated expenditures:

Account balance as of 8/24/2010		\$0.00
Less estimated disbursements:		
Project #118-162-013	\$1,296,487.85	
Project #118-080-037	\$62,235.00	
Total estimated disbursements		\$1,358,722.85
Advance amount (amount in excess of account balance)		\$1,358,722.85

(4) Repayment of the funds so advanced will be made in accordance of the provisions of Minnesota Statutes 162.14, subd. 6, and Minnesota Rules, Chapter 8820.1500, subp. 10b; and

(5) The municipality acknowledges advance funds are released on a first-come, first-serve basis, and this resolution does not guarantee the availability of funds.

RESOLVED, that the commissioner of transportation be and is hereby requested to approve this advance for financing approved municipal state aid projects of the municipality of Duluth in an amount up to \$1,358,722.85. The city of Duluth hereby authorizes payments from subsequent accruals to the municipal state aid construction account of the city of Duluth in accordance with the schedule herein indicated:

Repayment from entire future year allocation until fully repaid;

\$1,358,722.85 paid from year 2011.

Resolution 10-0535 was unanimously adopted.

Approved October 11, 2010

DON NESS, Mayor

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RESOLVED, that the city of Duluth hereby finds that:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

(a) There is a need for all energy consumers to work to conserve valuable energy resources;

(b) It is in the best interests of the citizens of the city, both as the owner of a natural gas utility and as a part of the greater Minnesota community, to encourage such conservation;

(c) The city and Minnesota Power, a division of ALLETE, Inc., currently offer, at no cost, basic energy auditing services to users of natural gas and electrical services in the city;

(d) There is a need to offer more comprehensive home audit services to those consumers;

(e) It is in the best interests of the citizens of the city and of the state of Minnesota and therefore a public purpose for the city to join with MP in establishing and funding a more comprehensive energy audit program to encourage the conservation of energy resources, especially natural gas resources, in the city, and create an infrastructure of home performance auditors, air sealing contractors and insulation contractors;

(f) Because the program hereby established is untried, it may be necessary to adjust the program parameters based on the city's experience and the acceptance of the program by the targeted consumer groups.

FURTHER RESOLVED, that the city of Duluth does hereby establish the pilot home performance audit program as described in the program guidelines, a copy of which is on file in the office of the city clerk as Public Document No. 10-1011-17.

FURTHER RESOLVED, that said program guidelines are hereby approved.

FURTHER RESOLVED, that the director of public works and utilities or his or her designee is hereby authorized to implement and administrate the pilot home performance audit program for up to 150 customers of the city's natural gas utility by April 1, 2011, under the terms and conditions set forth in said program guidelines, up to the amount of \$30,000, payable from the Public Works and Utilities Fund 555, Agency 500, Account No. 5441.

Resolution 10-0537 was unanimously adopted.

Approved October 11, 2010

DON NESS, Mayor

- - -

RESOLVED, that pursuant to Section 61 of the City Charter, the city council hereby expresses its intent to cause the construction of a sanitary sewer in Eighth Avenue East beginning at Eighth Street Alley and extending 150 feet northerly, and hereby requests that the mayor prepare or cause to have prepared plans, specifications and estimates therefor, and file such plans and estimates with the special assessment board, together with a recommendation as to what portion of the costs shall be paid by special assessment, the number of installments in which assessments may be paid, and the properties which should include the special assessment:

721, 723 and 729 North Eighth Avenue East.

Resolution 10-0544 was unanimously adopted.

Approved October 11, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to accept grant CFMS Contract No. B49124 from the Minnesota department of public safety, state fire marshal's office, a copy of which amendment is on file in the office of the city clerk as Public Document No. 10-1011-18, in the amount of up to \$50,000, said funds to be deposited in Fund 110,

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Agency, 150, Organization 1501, Revenue Source 4220, to reimburse the fire department for medical supplies used in the provision of emergency medical services.

Resolution 10-0519 was unanimously adopted.

Approved October 11, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept a public safety interoperable communications subgrant from the northeast regional radio board, the conditions of which are on file in the office of the city clerk as Public Document No. 10-1011-19, in the amount of \$33,713, payable to Fund 210, Agency 030, Organization 3173, for the purchase of interoperable radio equipment for the city's police and fire departments and committing the local matching funds required, in the amount of \$8,428.25 to be payable from Fund 110, Agency, 700, Organization 1408.

Resolution 10-0520 was unanimously adopted.

Approved October 11, 2010

DON NESS, Mayor

- - -

RESOLVED, that in accordance with Section 33-82 of the Duluth City Code, 1959, as amended, parking shall be allowed on both sides of 59th Avenue West between Highland Street and Raleigh Street.

Resolution 10-0528 was unanimously adopted.

Approved October 11, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with RJS Construction Group, LLC, for the construction of a new police headquarters building with links to an existing public safety building, a training room addition, and renovation of existing lobby and records area at the 911 Saint Louis County Communications Center, located at 2030 North Arlington Avenue, Duluth, Minnesota, in accordance with city-approved specifications completed by LHB, Inc., the project engineer, and the vendor's low bid of \$10,274,105, payable from Capital Improvements Fund 450, Department/Agency 030, Object 5520, Project No. CP 2009-0928B.

Resolution 10-0536 was unanimously adopted.

Approved October 11, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute an agreement, together with supporting documents, with St. Louis County, the University of Minnesota-Duluth police department, the city of Hermantown, the city of Proctor and the city of Floodwood, substantially the same as that on file in the office of the city clerk as Public Document No. 10-1011-20, to accept a 2011 pilot county enforcement project grant from the Minnesota department of public safety, said funds shall be deposited into Fund 215-200-2292-4220-02, all reimbursement payments pursuant to the agreement shall be paid from Fund 215-200-2292-5447.

Resolution 10-0541 was unanimously adopted.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Approved October 11, 2010
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept a grant from the Northland Foundation in the amount of \$5,000 and to execute any documents required to be executed to accept such grant, grant funds shall be used to help sponsor an Americorps VISTA fellow from the University of Minnesota to work on a domestic violence and community prosecution initiative through the Duluth city attorney's office, funds to be deposited in Fund 210-030-3118-4270.

Resolution 10-0542 was unanimously adopted.
Approved October 11, 2010
DON NESS, Mayor

- - -

The following resolutions were also considered.

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. 10-0004 on January 11, 2010, declaring its intent to issue capital improvement bonds in 2010 in an amount not to exceed \$2,240,000. It is hereby found, determined, and declared to be necessary, and in the best interests of the city and its residents, that the city should issue general obligation capital improvement bonds, Series 2010A, in the approximate amount of \$2,240,000 (the "bonds"), pursuant to Minnesota Statutes, Section 475.521 and Chapter 475, and the City Charter, for the purpose providing funds for capital improvements projects pursuant to an approved capital improvement plan;

(b) Issuance and sale of bonds. The terms and conditions of the bonds and the sale thereof are set forth in the official terms of offering on file with the city clerk as Public Document No. 10-1011-21. 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 10-0521 was adopted upon the following vote:

Yeas: Councilors Boyle, Fedora, Fosle, Gardner, Gauthier, Hartman and President Anderson -- 7

Nays: Councilor Stauber -- 1

Absent: Councilor Cuneo -- 1

Approved October 11, 2010
DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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. 09-0760 on December 21, 2009, declaring its intent to issue general obligation capital equipment notes in 2010 in the approximate amount of \$2,268,000 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 2010B, in the approximate amount of \$2,315,000 (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. 10-1011-22. 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 10-0522 was adopted upon the following vote:

Yeas: Councilors Boyle, Fedora, Fosle, Gardner, Gauthier, Hartman and President Anderson -- 7

Nays: Councilor Stauber -- 1

Absent: Councilor Cuneo -- 1

Approved October 11, 2010

DON NESS, Mayor

- - -

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

(a) Authorization of bonds. It is hereby found, determined, and declared to be necessary, and in the best interests of the city and its residents, that the city should issue its approximately \$4,490,000 general obligation utilities revenue refunding bonds, Series 2010C (the "bonds"), pursuant to Minnesota Statutes, Chapter 475, and sections 115.46 and 444.075, and Section 55 of the Home Rule Charter of the city for the purpose of refunding the city's general obligation utilities revenue bonds, Series 2002C, dated September 1, 2002, and the city's general obligation utilities revenue bonds, Series 2002G, dated December 1, 2002;

(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. 10-1011-23. Each and all of the terms and provisions set forth in the official terms of offering are adopted and confirmed as the terms and conditions of the bonds and the sale thereof, and the city council shall meet at the time and place fixed herein to consider bids for the purchase of the bonds;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

(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 10-0523 was unanimously adopted.

Approved October 11, 2010

DON NESS, Mayor

- - -

Resolution 10-0514, amending Resolution 09-0007 as amended retaining Maki and Overom, Chartered, increasing the amount by \$150,000 for a new total amount not to exceed \$460,000, was introduced by President Anderson.

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

Yeas: Councilors Boyle, Fedora, Fosle, Gardner, Gauthier, Hartman and President Anderson -- 7

Nays: Councilor Stauber -- 1

Absent: Councilor Cuneo -- 1

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INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR STAUBER

10-052 - AN ORDINANCE DESIGNATING THE PROPERTY KNOWN AS THE JOHN J. ASTOR PARK A/K/A HISTORICAL PARK AS A LOCAL HERITAGE PRESERVATION LANDMARK.

- - -

BY PRESIDENT ANDERSON

10-053 - AN ORDINANCE RELATING TO THE PLANTING, MAINTAINING AND REMOVAL OF VEGETATION ON PUBLIC AND PRIVATE PROPERTY; ADDING A NEW DIVISION 6 TO ARTICLE 2 OF CHAPTER 20 AND AMENDING ARTICLE IV OF CHAPTER 35 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

- - -

INTRODUCED BY COUNCILOR FOSLE

10-054 - AN ORDINANCE AMENDING CHAPTER 40, ARTICLE II, OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO LOST, STOLEN OR ABANDONED PROPERTY.

- - -

BY COUNCILOR GARDNER

10-055 - AN ORDINANCE ADDING A NEW ARTICLE III, CHAPTER 33 OF THE DULUTH CITY CODE, 1959, AS AMENDED REGARDING MINI-TRUCK REGULATIONS.

- - -

The following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR FEDORA

10-050 (10052) - AN ORDINANCE AMENDING CHAPTER 2, ARTICLE XV, OF THE DULUTH

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

CITY CODE, 1959, AS AMENDED, PERTAINING TO DUTIES OF THE CITY DEFERRED COMPENSATION PLAN COMMISSION.

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

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INTRODUCED BY COUNCILOR STAUBER

10-048 (20053) - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, ZONING DISTRICT MAP NO. 17 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM M-1, MANUFACTURING, AND I-P, INDUSTRIAL PARK, TO C-5, PLANNED COMMERCIAL, PROPERTY BETWEEN 44TH AND 46TH AVENUES WEST SOUTH OF GRAND AVENUE (J&S PARTNERSHIP).

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

Yeas: Councilors Boyle, Fosle, Gardner, Gauthier, Hartman, Stauber and President Anderson -- 7

Nays: None -- 0

Abstention: Councilor Fedora -- 1

Absent: Councilor Cuneo -- 1

- - -

INTRODUCED BY COUNCILOR STAUBER

10-049 (10054) - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, AMENDING PUBLIC DOCUMENT NO. 03-0324-15 TITLED "RAMSEY VILLAGE NEIGHBORHOOD DOCUMENTS OF IMPLEMENTATION."

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

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INTRODUCED BY COUNCILOR STAUBER

10-051 (10055) - AN ORDINANCE GRANTING TO JEFFREY B. SMITH AND PETER S. LAMBERT A CONCURRENT USE PERMIT FOR OFF STREET PARKING AREA INTO THE RIGHT-OF-WAY OF THE WEST SKYLINE PARKWAY ADJACENT TO PROPERTIES LOCATED AT 610 AND 618 WEST SKYLINE PARKWAY.

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

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INTRODUCED BY COUNCILOR GAUTHIER

10-047 (10056) - AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN PROPERTY IN THE LINCOLN PARK AREA TO PAUL JEFFREY AND MELISSA LYNN-SCHULTZ ODENBACH FOR \$10,000.

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

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The meeting was adjourned at 7:35 p.m.

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

- - -

ORDINANCE NO. 10052

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE XV, OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO DUTIES OF THE CITY DEFERRED COMPENSATION PLAN COMMISSION.

The city of Duluth does ordain:

Section 1. That Section 2-90 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 2-90. City of Duluth deferred compensation plan commission.

A city of Duluth deferred compensation plan commission is hereby established. The commission shall have seven members, who shall be appointed by the mayor, but only with the approval of the city council. At least one person from each of the city's collective bargaining units shall be appointed, and any person so appointed shall be qualified to be a member of the commission only while being a member of the collective bargaining unit from which he or she was appointed. The term for any member shall be as the mayor and the city council shall specify at the time of appointment, but no such term shall be for more than four years. Any member or former member may be reappointed.

The duties of the commission shall be:

(a) To monitor the administration of the city of Duluth deferred compensation plan;

(b) To advise the city administration regarding the operation of the plan and the desirability of amending the plan.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: November 21, 2010)

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

Yeas: Councilors Boyle, Fedora, Fosle, Gardner, Gauthier, Hartman, Stauber and President Anderson -- 8

Nays: None -- 0

Absent: Councilor Cuneo -- 1

Passed October 11, 2010
Approved October 11, 2010
DON NESS, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

- - -

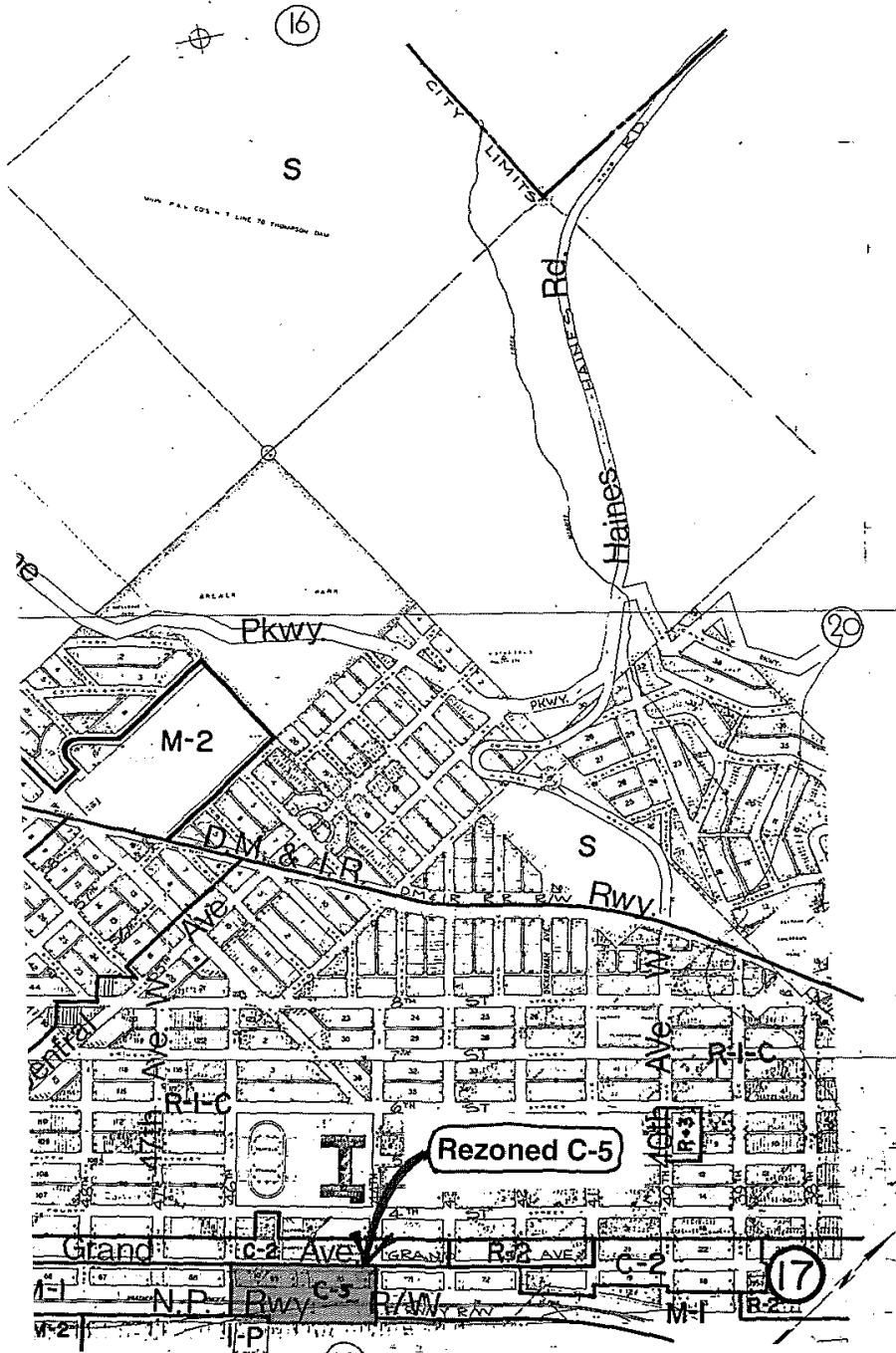
ORDINANCE NO. 10053

AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, ZONING DISTRICT MAP NO. 17 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM M-1, MANUFACTURING, AND I-P, INDUSTRIAL PARK, TO C-5, PLANNED COMMERCIAL, PROPERTY BETWEEN 44TH AND 46TH AVENUES WEST SOUTH OF GRAND AVENUE (J&S PARTNERSHIP).

The city of Duluth does ordain:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Section 1. That the properties located between 44th and 46th avenues West south of Grand Avenue and as more particularly described in Exhibit A, be reclassified from M-1, Manufacturing, and I-P, Industrial Park, respectively, to C-5, Planned Commercial, and that Plate No. 17 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:



(Ref. File No. 10088)

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: December 12, 2010)

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

Yeas: Councilors Boyle, Fosle, Gardner, Gauthier, Hartman, Stauber and President Anderson -- 7

Nays: None -- 0

Absent: Councilor Cuneo -- 1

Abstention: Councilor Fedora -- 1

Passed October 11, 2010

Approved October 11, 2010

DON NESS, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10054

AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, AMENDING PUBLIC DOCUMENT NO. 03-0324-15 TITLED "RAMSEY VILLAGE NEIGHBORHOOD DOCUMENTS OF IMPLEMENTATION."

The city of Duluth does ordain:

Section 1. That development within the boundaries of Traditional Neighborhood District Number 1, as governed by and regulated in accordance with Public Document No. 03-0324-15, "Ramsey Village Neighborhood Documents of Implementation," as amended by Ordinance No. 9635, Ordinance No. 9753, Ordinance No. 9911 and Ordinance No. 9928, be further amended to add an appendix to the documents of implementation.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: November 21, 2010)

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

Yeas: Councilors Boyle, Fedora, Fosle, Gardner, Gauthier, Hartman, Stauber and President Anderson -- 8

Nays: None -- 0

Absent: Councilor Cuneo -- 1

Passed October 11, 2010

Approved October 11, 2010

DON NESS, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10055

AN ORDINANCE GRANTING TO JEFFREY B. SMITH AND PETER S. LAMBERT A CONCURRENT USE PERMIT FOR OFF STREET PARKING AREA INTO THE RIGHT-OF-WAY OF THE WEST SKYLINE PARKWAY ADJACENT TO PROPERTIES LOCATED AT 610 AND 618 WEST SKYLINE PARKWAY.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

The city of Duluth does ordain:

Section 1. Under the authority of Section 100 of the 1912 Home Rule Charter of the city of Duluth, as amended, and subject to the conditions, limitations, and restrictions hereinafter set forth, permission is granted to Jeffrey B. Smith and Peter S. Lambert and their successors in interests, referred to herein as the permittees, to construct , occupy and maintain an off street parking area referred to herein as the private improvements, upon or within the following described areas of the public easement and to temporarily occupy such easement for such purpose: the southerly 15 feet of the right-of-way of West Skyline Parkway, adjoining Lot 102 and Lot 104, Block 74, Duluth Proper Third Division, as shown in Public Document No. 10-1011-24.

Section 2. Before this ordinance shall be effective for any purpose whatsoever, the permittees shall file with the city clerk a duly executed and acknowledged written acceptance of the terms of this ordinance and a certificate of insurance approved as to form by the city attorney evidencing that the permittees have in force policies of insurance meeting the following requirements:

(a) Comprehensive general liability insurance in an amount not less than \$1,500,000 for bodily injuries and in an amount not less than \$500,000 for property damage or \$1,500,000 single limit coverage; and

(b) Insurance coverage shall include all permittee's activities occurring upon or within the public easement occupied pursuant to this ordinance whether said activities are performed by the permittees or their employees, agents or contractors; and

(c) The insurance policy shall be approved by the city attorney; and

(d) The policy shall contain a condition that it may not be cancelled without 30 days written notice to the city of Duluth and directed to the attention of the city attorney; and

(e) The city of Duluth shall be named as an additional insured; and

(f) The certificate shall also reference this ordinance by its ordinance number.

Current ISO additional insured endorsement CG 20 10 is not acceptable. If the ISO 20 10 is used, it must be a pre-2004 edition.

Permittees shall cause a current version of the required insurance certificate to be filed with the city clerk while the permission granted by this ordinance is exercised.

Section 3. The permit granted by this ordinance may be terminated at any time by the city official exercising departmental authority of the public easement if the city of Duluth determines to use the area occupied by the permittees for any public purpose in accordance with the duly dedicated public easement or other lawful use.

Unless a shorter notice period is necessitated by emergency circumstances, or the violation of the conditions set forth in this ordinance, giving the permittees 30 days written notice delivered via electronic transmission, facsimile transmission or standard United States Postal Service mail delivery to the last known electronic address, facsimile number, or mailing address of the permittees shall be sufficient notice of termination.

Upon termination permittees shall cause all private improvements to be removed by the deadline provided in the termination notice. Permittees shall be responsible for all costs incurred to remove the private improvements, including any costs associated with repairing damage caused to the public easement by the removal and without right to claim from the city of Duluth, or any of its officers, agents or servants, any compensation or reimbursement for damages of any kind whatsoever.

Section 4. By accepting the terms of this ordinance, the permittees agree to save

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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 the existence of the private improvements, or any act or omission of the permittees, its employees, agents, and assigns. The permittees agrees that the city of Duluth shall not be liable for damage caused to the private improvements while the city is engaged in the repair and maintenance to, or replacement of, the public improvements or public utilities, including any snow removal operations. The permittees agrees to pay to the city of Duluth all extra costs of installation of any public improvements or public utilities made necessary by the presence of the private improvements.

Section 5. The permittees shall, at its expense, protect, support, temporarily disconnect, or remove from the public easement, the private improvements when required by city officials by reason of snow removal, traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines and tracks, the installation or repair of any other type of structures or improvements by governmental agencies, when acting in a governmental or proprietary capacity.

Section 6. Upon the sale or transfer of permittee's interest in the permit granted by this ordinance, the permittees shall provide written notice to the city clerk within five days of such transfer. The permittee's successor in interest shall file with the city clerk within ten days of such transfer a duly executed and acknowledged written acceptance of the terms of this ordinance and the certificate of insurance required in Section 2, above.

Section 7. The permit granted by this ordinance is subject to termination by the city of Duluth upon permittee's failure to comply with any of the terms and conditions of this permit. Ten days written notice, delivered as provided in Section 3, above shall be sufficient notice of termination. Upon termination, permittees shall remove the private improvements as provided in Section 3, above.

Section 8. The permittees shall observe the following additional conditions:

(a) Permittee's use of the public easement shall be limited to the designated area shown on page III C 7 of the January 12, 2010, staff report to the planning commission, FN 10004 (Public Document No. 10-1011-24); and

(b) Permittee agrees that the private improvements shall be constructed and maintained in such a manner so as in no way to interfere with or damage any portion of any public improvements, or other public utilities now or to be hereinafter located in any part of said public easement.

Section 9. The following events shall automatically cause the termination of the term of this ordinance:

(a) The failure by the permittee to file acceptance of this ordinance as specified in Section 2 within 30 days after this ordinance takes effect; or

(b) The failure by the permittees to file the required insurance certificate as specified in Section 2 within 14 days after this ordinance takes effect; or

(c) The failure of the permittees to commence the improvements authorized by this ordinance within 120 days after this ordinance takes effect.

Section 10. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: November 21, 2010)

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

Yeas: Councilors Boyle, Fedora, Fosle, Gardner, Gauthier, Hartman, Stauber and President Anderson -- 8

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Nays: None -- 0
Absent: Councilor Cuneo -- 1

Passed October 11, 2010
Approved October 11, 2010
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10056

AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN
PROPERTY IN THE LINCOLN PARK AREA TO PAUL JEFFREY
AND MELISSA LYNN-SCHULTZ ODENBACH FOR \$10,000.

The city of Duluth does ordain:

Section 1.

(a) As per Section 2-176(a), of the Duluth City Code, 1959, as amended (the Code), the manager of the city's physical planning division has reviewed this proposed conveyance and found conveyance thereof to be in conformity with the city's comprehensive land use plan;

(b) As per Section 2-176(b) of the Code, the city assessor has provided an estimate of the market value to be \$10,000 which estimated market value is hereby established as the minimum acceptable bid or reserve;

(c) The property described in Section 2 below is hereby determined to be surplus to the city's future needs and is therefore appropriate for sale 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 \$10,000. 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 \$10,000 for the property proposed to be sold.

Section 2. That the proper city officials are hereby authorized to sell and convey the following described property, by quit claim deed, to Paul Jeffrey and Melissa Lynn-Schultz Odenbach, husband and wife, for the amount of \$10,000 to be deposited into Fund 100, Agency 700, Organization 1420, Object 4640, and further to execute all documents necessary with regard to said conveyance:

Lots 1 and 2, Block 17, SPALDING'S ADDITION.

Section 3. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: November 21, 2010)

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

Yeas: Councilors Boyle, Fedora, Fosle, Gardner, Gauthier, Hartman, Stauber and President Anderson -- 8

Nays: None -- 0

Absent: Councilor Cuneo -- 1

Passed October 11, 2010
Approved October 11, 2010
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, October 25, 2010, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: None -- 0

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

10-1025-01 J&S Partnership, LLC, J&S V, LLC, and Grand Avenue Development Company, LLC, by William M. Burns, attorney, petition to vacate portions of 45th Avenue West. -- Assessor

10-1025-02 St. Luke's Hospital of Duluth, by Kenneth D. Butler, attorney, petition to vacate the alley between Blocks 36 and 40, Portland Division of Duluth. -- Assessor

10-1025-03 The Velmeir Companies, et al. (three signatures) petition to vacate a 26 foot easement in Block 69, Oneota, from 46th Avenue West north to the north property line of Lot 4, Block 69, Oneota. -- Assessor

10-1025-07 Mary M. Evans communication regarding the proposed designation of the John J. Astor Park, aka Historical Park, as a heritage preservation landmark (10-052-O). -- Received

10-1025-08 Davy Jones communication regarding the proposed permit program for long-term disability parking (10-056-O). -- Received

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REPORTS OF BOARDS AND COMMISSIONS

10-1025-04 Commission on disabilities minutes of September 1, 2010, meeting. -- Received

10-1025-05 Duluth human rights commission minutes of August 11, 2010, meeting. -- Received

10-1025-06 Duluth public utilities commission minutes of September 15, 2010, meeting. -- Received

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OPPORTUNITY FOR CITIZENS TO BE HEARD

Stan Henricksen noted that he has heard nothing from the city since he first brought his issue forward. He went through the history and details for the agreement that he had with the city for the improvement of a sewer line, claiming the city has not fully paid what he feels they are obligated to pay for.

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RESOLUTION TABLED

President Anderson moved to remove Resolution 10-0514, amending Resolution 09-0007 as amended retaining Maki and Overom, Chartered, increasing the amount by \$150,000 for a new total amount not to exceed \$460,000, from the table, which motion was seconded and unanimously carried.

Councilor Stauber expressed concerns that: the city should hire attorneys to deal with this at a much less cost than this; this relationship with the tribe is ongoing and thus we should

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

have someone in house to keep up on this and with outside counsel there is no incentive to come to resolution.

Resolution 10-0514 was adopted as follows:

RESOLVED, that the city council hereby amends Resolution 09-0007, as amended, retaining Maki and Overom, Chartered, to provide legal services to the city related to a gaming matter, increasing the amount by \$150,000 for a new total amount not to exceed \$460,000, payable from Fund 256, Department 030, Object 5304, and authorizes the proper city officials to execute a third amendment to professional services agreement substantially the same as that on file in the office of the city clerk as Public Document No. 10-1025-09.

Resolution 10-0514 was adopted upon the following vote:

Yeas: Councilors Cuneo, Fedora, Fosle, Gardner, Gauthier, Hartman and President Anderson -- 7

Nays: Councilor Stauber -- 1

Abstention: Councilor Boyle -- 1

Approved October 25, 2010

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

RESOLVED, that Resolution 09-0742 adopting license, permit and fee charges for 2010 be amended by adding the following fees, pursuant to sections 2-5, 31-6(a) and 50-37.1.C of the Duluth City Code:

Planning		
License, Permit, Fee Name		2010 Fee
Appeals to:		
	City council	\$350
	Planning commission	\$350
Concurrent use of streets permit		\$700
District plan adoption or amendment		\$1,000
Environmental review		\$2,500
Historic construction/demolition permit		\$50
Historic resource designation		\$75
Permanent water quality and discharge rate controls		
	3,000 square feet to one acre	\$250
	One acre to five acres	\$500
	Over five acres	\$750
Planning review (when required in R-2 and mixed use districts)		\$800
Sidewalk use permit		\$100
Special use or interim use permit		\$650

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Planning		
License, Permit, Fee Name		2010 Fee
Subdivision plat amendment		\$250
Subdivision plat approval		
	Concept plan	\$250
	Final plat	\$750
	Preliminary plat	\$1,000
	Quick plat/registered land survey	\$250
Temporary erosion and sediment controls		
	3,000 square feet up to 10,000 square feet	\$150
	10,000 square feet up to one acre	\$300
UDC text amendment or zoning map amendment		\$800
Vacation of street		\$700
Variance		\$600

RESOLVED FURTHER, that the following fees are hereby eliminated:

Eliminated Fees			
Dept./Div.	License, Permit, Fee Name	Current Fee	
Building Safety	Board of zoning appeals filing fee	\$125	
	Water resource management district		
	Special use permit	\$156	
	Variance	\$156	
Citywide	Zoning booklets	\$11	
Clerk	C-3 shopping center district revision	\$178	
	Concurrent use permit	\$224	
	Rezoning petition	\$447	
	Special use permit		
		Filing fee	\$279
	Low density planned development and community unit plans		
		Initial fee	\$558
		Plan alteration review	\$224
		Plan unit development	\$558
	Vacation petition filing fee		
		Easement	\$447
	Street		
		Less than or equal to 200 feet	\$447
		Greater than 200 feet	\$782
Planning	C-3 and C-5 plan review	\$263	
	EAW's (city as RGU)	\$525	
	Platting		
		Final review	
		Five or less lots	\$104
		Six to 70 lots	\$184
		Over 70 lots - per lot	\$3
	Preliminary review	\$525	

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Eliminated Fees		
Dept./Div.	License, Permit, Fee Name	Current Fee
	Zoning text change	\$263
Public Works	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
	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

RESOLVED FURTHER, that any prior resolutions inconsistent or conflicting with this resolution are hereby rescinded.

RESOLVED FURTHER, that these fees shall become effective on November 19, 2010.

Resolution 10-0550 was unanimously adopted.

Approved October 25, 2010

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. 10-1025-10 with SAS + Associates for landscape architectural services in providing ADA (Americans with Disabilities Act) compliant access to various city of Duluth locations for an amount not to exceed \$27,050, payable from General Fund 100, Department/Agency 700, Division 1420, Object 5530, Project No. CM100-ADA.

Resolution 10-0557 was unanimously adopted.

Approved October 25, 2010

DON NESS, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

- - -

RESOLVED, that the city of Duluth ("city") act as the legal sponsor for the Duluth Spring project as contained in the contamination cleanup grant program application to be submitted on November 1, 2010, and that the mayor and clerk are hereby authorized to apply to the department of employment and economic development (DEED) for a grant in the amount of \$460,924 for funding of this project.

FURTHER RESOLVED, that the city has the legal authority to apply for financial assistance, and the institutional, managerial and financial capability to ensure adequate project administration.

FURTHER RESOLVED, that the city hereby commits to provide no less than \$153,641 in a qualified match contribution to be provided by 300 Canal Park LLC.

FURTHER RESOLVED, that the city has not violated any federal, state and local laws pertaining to fraud, bribery, graft, kickbacks, collusion, conflict of interest, or other unlawful or corrupt practices.

FURTHER RESOLVED, that upon approval of its application by the state, the mayor and clerk may enter into a grant agreement with the state of Minnesota for the above referenced project, and that the city certifies that it will comply with all applicable laws and regulation as stated in the grant agreement.

Resolution 10-0558 was unanimously adopted.

Approved October 25, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials hereby authorize Supplemental Agreement No. 1 with Noble Nursery Retail, Inc., to plant additional trees for the 2010 tree planting project in the amount of \$20,132, payable from Street Improvement Fund 440, Department 038, Object 5530, City Project No. 0587TR.

Resolution 10-0545 was unanimously adopted.

Approved October 25, 2010

DON NESS, Mayor

- - -

RESOLVED, that an increase for Agreement No. 20626 with St. Louis County and the city of Hermantown for the installation of a new signal system at the intersection of Haines Road and Anderson Road, as set forth in State Project No. 69-691-22 (CP8276)/MSA 118-198-01/MSA 202-102-02, City Project 0670TR, in the amount of \$2,832.14 for a new total of \$12,832.14, payable from the municipal state aid account, is hereby authorized.

Resolution 10-0556 was unanimously adopted.

Approved October 25, 2010

DON NESS, Mayor

- - -

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 19, 2010, during the Christmas City of the North parade, and from 5:00 p.m. until 12:00 a.m. on November 20, 2010, through December 26, 2010, during Bentleyville Tour of Lights 2010.

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 19, 2010,

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

during the Christmas City of the North parade, and from 5:30 p.m. until 12:00 a.m. on November 20, 2010, through December 26, 2010, during Bentleyville Tour of Lights 2010.

Resolution 10-0547 was unanimously adopted.

Approved October 25, 2010

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. 10-1025-11 with the organized crime drug enforcement task forces program under the direction of the United States bureau of alcohol, tobacco, firearms and explosives enforcement (ATF) to reimburse the city for its costs in providing criminal investigative services from October 1, 2010, through September 30, 2011, related to on-going federal criminal investigations (OCDETF GL-MN-193), in an amount not to exceed \$25,000, funds received payable to Fund 110-160-1610-4220-02.

Resolution 10-0548 was unanimously adopted.

Approved October 25, 2010

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. 10-1025-12 with the organized crime drug enforcement task forces program under the direction of the United States bureau of alcohol, tobacco, firearms and explosives enforcement (ATF) to reimburse the city for its costs in providing criminal investigative services from October 1, 2010, through September 30, 2011, related to on-going federal criminal investigations (OCDETF GL-MN-181), in an amount not to exceed \$25,000, funds received payable to Fund 110-160-1610-4220-02.

Resolution 10-0549 was unanimously adopted.

Approved October 25, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials 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 an amount not to exceed \$16,199.10 to be deposited in Fund 110-160-1610-4209-02, and to execute any documents required to be executed to accept such grant.

FURTHER RESOLVED, that the proper city officials are authorized to accept a bullet-proof vest reimbursement grant from the Minnesota department of public safety in an amount not to exceed \$22,199.10, to be deposited in Fund 110-160-1610-4209-02, and to execute any documents required to be executed to accept such grant.

Resolution 10-0554 was unanimously adopted.

Approved October 25, 2010

DON NESS, Mayor

- - -

The following resolutions were also considered:

Resolution 10-0546, authorizing a contract with Morton International, Inc., Morton Salt Division, for the purchase and delivery of road salt for the 2010 - 2011 season (October - April) at a total amount of \$772,808.85, was introduced for discussion.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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

Linda Sellner expressed concerns about the amount spent on road salt and the quantity that is put on the roads. She cited information and specifics of how the streams have been hurt by salt runoff.

Resolution 10-0546 was adopted as follows:

RESOLVED, that city officials are hereby authorized to contract with Morton International, Inc., Morton Salt Division, for the purchase and delivery of an estimated 13,200 tons of road salt for the 2010-2011 season (October - April) in accordance with State of Minnesota Contract No. 443277, Release S-803(5), specifications and pricing at \$54.78 per ton in the amount of \$723,096 plus sales tax of \$49,712.85 for a total combined amount of \$772,808.85, terms net 30, FOB destination, payable as follows from General Fund 110, Department/Agency 121, Organization 1217-2140, Object 5223:

- (a) \$309,123.54 5,280 tons for budget year 2010 (October - December 2010); and
- (b) \$463,685.31 7,920 tons for budget year 2011 (January - April 2011).

Resolution 10-0546 was unanimously adopted.

Approved October 25, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into first amendment to City Contract No. 21070, substantially in the form of that on file in the office of the city clerk as Public Document No. 10-1025-13, with Infor Global Solutions (Michigan), Inc., increasing services related to the installation of a call center portion and the I&I portion of the CMMS software previously contracted for and increasing the amount of the contract by the amount of not to exceed \$75,000, \$18,750 of which shall be payable from each of the following funds:

- 510 - 500 - 1915 - 5201 \$18,750;
- 520 - 500 - 1915 - 5201 \$18,750;
- 530 - 500 - 1915 - 5201 \$18,750;
- 535 - 500 - 1915 - 5201 \$18,750.

Resolution 10-0551 was unanimously adopted.

Approved October 25, 2010

DON NESS, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR STAUBER

10-057 - AN ORDINANCE TO RENAME STREETS IN COFFEE CREEK PARK DEVELOPMENT AS FOLLOWS: MOCHA WAY TO VALLEY VIEW LANE, JAVA LANE TO VISTA VIEW LANE, ESPRESSO COURT TO MALLARD LANE, CAFÉ COURT AND CAFÉ AVENUE TO DEER VALLEY ROAD AND LATTE LANE TO CLEARWATER COURT.

- - -

INTRODUCED BY COUNCILOR GAUTHIER

10-056 - AN ORDINANCE ESTABLISHING A PERMIT PROGRAM FOR LONG-TERM DISABILITY PARKING AND SETTING FORTH THE TERMS THEREOF, ADDING NEW

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

SECTIONS 33-88.3.1 AND 33-88.3.2 OF THE CODE.

- - -

The following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR STAUBER

10-052 (10057) - AN ORDINANCE DESIGNATING THE PROPERTY KNOWN AS THE JOHN J. ASTOR PARK, A/K/A HISTORICAL PARK, AS A LOCAL HERITAGE PRESERVATION LANDMARK.

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

- - -

BY PRESIDENT ANDERSON

10-053 - AN ORDINANCE RELATING TO THE PLANTING, MAINTAINING AND REMOVAL OF VEGETATION ON PUBLIC AND PRIVATE PROPERTY; ADDING A NEW DIVISION 6 TO ARTICLE 2 OF CHAPTER 20 AND AMENDING ARTICLE IV OF CHAPTER 35 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

Councilor Fedora moved to amend Section 35-26(f) of the ordinance to add the language "but not including areas between public streets and public sidewalks" at the end, which motion was seconded and carried as follows:

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

Nays: Councilor Gauthier -- 1

Councilor Fedora expressed concern about the issue of the tree inspector coming upon private property and moved to amend the ordinance by deleting Section 35-27(b), which motion was seconded and discussed.

Councilors discussed this amendment and various other options.

The amendment failed as follows:

Yeas: Councilors Fedora, Fosle and Stauber -- 3

Nays: Councilors Boyle, Cuneo, Gardner, Gauthier, Hartman and President Anderson -- 6

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

- - -

INTRODUCED BY COUNCILOR FOSLE

10-054 (10058) - AN ORDINANCE AMENDING CHAPTER 40, ARTICLE II, OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO LOST, STOLEN OR ABANDONED PROPERTY.

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

- - -

BY COUNCILOR GARDNER

10-055 - AN ORDINANCE ADDING A NEW ARTICLE III, CHAPTER 33, OF THE DULUTH CITY CODE, 1959, AS AMENDED, REGARDING MINI-TRUCK REGULATIONS.

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

Ben Fisher Merritt and Steven Whevila expressed support for the ordinance for reasons of: crash testing has done been in Japan and Canada and it is legal in 17 states; the

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Carlton County volunteer fire department rescue unit will be using one of these vehicles; names and messages from individuals who support these vehicles were cited; these vehicles are cost effective and they are not made for speed and will only be used to haul.

Councilors Fosle, Boyle and Gauthier opposed the ordinance for reasons of: the environment protection agency is against these vehicles; a restrictor under the gas pedal is illegal; these vehicles are intended for only hunting and farming, like an ATV; the local office of the department of transportation and the police department do not recommend these for street use and the safety standards have not been tested in this county.

Councilors Cuneo, Gardner and Hartman supported the ordinance for reasons of: the state has left the decision for local use up to each city or county; in the last year the environment protection agency has approved these vehicles; they have been crash tested and used in Japan and Canada; they do not go much faster than 55 m.p.h. and in the city the speed limits are much less; they are much more environmentally friendly than large trucks; there is a permitting process, so it will be regulated; other cities' concerns are because their ordinances are not as detailed as Duluth's would be and many smart cars that are now on the streets are smaller than these vehicles.

The ordinance failed as follows (Public Document No. 10-1025-14):

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

Nays: Councilors Boyle, Fedora, Fosle, Gauthier and Stauber -- 5

- - -

The meeting was adjourned at 8:16 p.m.

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10057

AN ORDINANCE DESIGNATING THE PROPERTY KNOWN AS THE JOHN J. ASTOR PARK, A/K/A HISTORICAL PARK, AS A LOCAL HERITAGE PRESERVATION LANDMARK.

The city of Duluth does ordain:

Section 1. That pursuant to Section 28A-4 of the Duluth City Code, 1959, as amended, the property located at 133rd Avenue West and Second Street in the city of Duluth, legally described as Lot 39, Second Street, Fond du Lac and known as the John J. Astor Park or Historical Park is designated a local heritage preservation landmark.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: November 28, 2010)

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

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

Nays: None -- 0

Passed October 25, 2010
Approved October 25, 2010
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

ORDINANCE NO. 10058

AN ORDINANCE AMENDING CHAPTER 40, ARTICLE II, OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO LOST, STOLEN OR ABANDONED PROPERTY.

The city of Duluth does ordain:

Section 1. That Section 40-4 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 40-4. Abandoned property defined.

For the purposes of this Article, property shall be deemed to be abandoned if it has been in the possession of the city or any officer or agent thereof for more than 30 days from the date of the mailing of a written notice by the chief of police to such owner to appear and present proof of his or her ownership.

Section 2. That Section 40-6 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 40-6. Sale at public auction or destruction after 30 days.

If the owner of any lost, stolen or abandoned property in the possession of the city cannot be found within 30 days after the date of its coming into the possession of the city, the chief of police or any duly authorized person acting under his direction shall cause such property to be sold at public auction to the highest bidder or destroyed. Notice of the time and place of the holding of such auction shall be published once a week for two consecutive weeks in the official newspaper of the city.

Section 3. That Section 40-8 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 40-8. Owner may claim proceeds within six months of sale; disposition of unclaimed proceeds.

If the owner of property sold under the provisions of this Article or his legal representatives shall, at any time within six months after such money has been deposited in the city treasury, furnish satisfactory evidence of his ownership thereof to the city treasurer, the city treasurer shall pay to such person the amount so deposited. If such money is unclaimed within such time, the same shall belong to the city and shall be credited to the police department forfeited funds account in the general fund. This Section does not apply to property destroyed pursuant to Section 40-7.

Section 4. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: November 28, 2010)

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

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

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed October 25, 2010
Approved October 25, 2010
DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

OFFICIAL PROCEEDINGS

Special meeting of the Duluth City Council held on Thursday, November 4, 2010, 5:15 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Boyle, Cuneo, Fedora, Gardner, Hartman, Stauber and President Anderson -- 7

Absent: Councilors Fosle and Gauthier -- 2

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

10-1104-01 The PFM Group bid results regarding the proposed bond sales (10-0560R, 10-0561R, 10-0562R, 10-0563R and 10-0564R). -- Received

- - -

MOTIONS AND RESOLUTIONS

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 2010 through 2014 (the "Plan").

(b) The City Council held a public hearing on the proposed Plan on December 7, 2009, and approved the Plan on December 21, 2009.

1.03 (a) On January 11, 2010, the City Council held a public hearing on the issuance of bonds in an amount not to exceed \$2,240,000 to provide funds for 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 in accordance with the Plan (collectively, the "Project"). Each element of the Project is a capital improvement within the meaning of the Act.

(b) Pursuant to resolution of the City Council adopted on January 11, 2010, the City Council has determined that it is necessary and expedient to issue general obligation capital improvement bonds in an amount not to exceed \$2,240,000 of the City to provide funds to finance the Project and for payment of the costs of issuing such bonds.

(c) A notice of intent to issue such bonds was published in accordance with the Act on January 15, 2010.

(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 \$2,175,000 General Obligation Capital Improvement Bonds, Series 2010A, of the City (the "Bonds") pursuant to the above-described authority, to provide funds to finance the Project and for payment of the costs of issuing the Bonds.

(f) The maximum amount of principal and interest to become due in any year on the Bonds and all the outstanding bonds issued by the City pursuant to Section 475.521, subd. 4 of the Act will not exceed \$9,167,960, which is an amount equal to 0.16% of taxable

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

market value of property in the City for taxes payable in 2010.

(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 UBS Financial Services, Inc. of New York New York (the "Purchaser"), to purchase the Bonds at a cash price of \$2,220,919.00, and upon condition that the Bonds mature and bear interest at the times and annual rates set forth in Section 2. The City, after due consideration, finds such offer reasonable and proper and the offer of the Purchaser is hereby accepted. Upon receipt of the good faith deposit, the mayor and the city clerk are authorized and directed to execute on the part of the City a contract for the sale of the Bonds in accordance with the Purchaser's bid. The city treasurer is directed to deposit the good faith check of the successful bidder. In the event the Purchaser fails to provide the good faith deposit in accordance with the Official Terms of Offering, the mayor shall reject the Purchaser's bid and may award the sale of the Bonds to the bidder with the next best bid, or if such next best bidder fails to enter into a contract for sale of the Bonds and fails to satisfy such deposit requirements, the mayor is authorized to schedule a sale of the Bonds in substantial conformance with the Official Terms of Offering. All actions of the mayor and the clerk and Public Financial Management, Inc., independent financial advisor to the City, taken with regard to the sale of the Bonds are hereby ratified and approved.

Section 2. Terms of Bonds.

2.01 The Bonds to be issued hereunder shall be dated the date of delivery, as the date of original issue, shall be issued in the denomination of \$5,000 each, or any integral multiple thereof, in fully registered form and lettered and numbered R-1 and upward. The Bonds shall mature on February 1 in the respective years and amounts and shall bear interest at the annual rates stated as follows:

Year	Amount	Interest Rate
2012	\$185,000	2.00%
2013	200,000	2.00%
2014	205,000	2.00%
2015	210,000	2.50%
2016	215,000	2.50%
2017	220,000	3.00%
2018	225,000	3.00%
2019	230,000	3.00%
2020	240,000	3.00%
2021	245,000	3.00%

2.02 The Bonds are not subject to optional redemption and prepayment before maturity.

2.03 Interest on the Bonds shall be payable semiannually on February 1 and August 1 in each year (each referred to herein as an "Interest Payment Date"), commencing August 1, 2011. 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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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

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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.

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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 2010A

R- \$ _____

Rate	Maturity	Date of Original Issue	CUSIP
%	February 1, ____	November __, 2010	

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, 2011. 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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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 \$2,175,000, all of like date and tenor, except as to number, amount, maturity date, redemption privilege and interest rate, pursuant to the authority contained in Minnesota Statutes, Section 475.521 and Chapter 475, the City's approved Capital Improvement Plan for the years 2010 through 2014 (the "Plan") and all other laws thereunto enabling, and pursuant to an authorizing resolution adopted by the governing body of the City on November 4, 2010 (the "Resolution"). This Bond is issued for the purpose of providing funds for capital improvement projects designated by the City Council and pursuant to the Plan and the costs of issuing the Bonds, as more fully set forth in the Plan and the Resolution and for the payment of part of the interest cost of the Bonds. The City has levied a direct, annual ad valorem tax upon all taxable property within the City which shall be extended upon the tax rolls for the years and in the amounts sufficient to produce sums not less than five percent in excess of the amounts of principal and interest on the Bonds, as such principal and interest respectively come due.

The Bonds are not subject to optional redemption and prepayment before maturity.

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

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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

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11/___/2010

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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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 2010 Capital Improvement Bonds Construction Account (the "Construction Account") within its Capital Improvement Project Fund 450, Agency 030, to which there shall be credited the proceeds of the Bonds, less discount, together with any additional funds, which may be available and are appropriated for the Project. This account shall be used to pay, or reimburse, expenses duly approved and allowed, which, under generally accepted accounting principles, constitute capital expenditures for the Project and to pay the costs of issuance for the Bonds.

3.02 A separate debt service account is hereby created and designated as the "2010 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 \$3,079.00, 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
2010	2011	\$265,686
2011	2012	266,202
2012	2013	267,252
2013	2014	268,197
2014	2015	267,934
2015	2016	267,540
2016	2017	265,860
2017	2018	264,023
2018	2019	267,278
2019	2020	264,968

Said levies are such that if collected in full they will produce at least five percent in excess of the amount needed to meet when due the principal and interest on the Bonds.

Such tax levies shall be irrevocable as long as any of the Bonds issued hereunder are outstanding and unpaid; provided, however, that prior to approval of its budget each year (approximately December 1) while any Bonds issued hereunder remain outstanding, the city council shall reduce or cancel the above levies to the extent of an irrevocable appropriation to

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the Debt Service Fund of monies actually on hand for payment of the principal and interest payable in the ensuing year and shall direct the county auditor to reduce the levy for such calendar year by that amount.

(b) If the balance in the Debt Service Fund is ever insufficient to pay all principal and interest then due on the Bonds, the treasurer shall nevertheless provide sufficient money from any other funds of the City which are available for that purpose, and such other funds shall be reimbursed from the Debt Service Fund when the balance therein is sufficient.

3.04 Proceeds of the Bonds on deposit in the Construction Account and in the Debt Service Fund may, in the discretion of the city treasurer, be invested in securities permitted by Minnesota Statutes, Chapter 118A; provided, that any such investment shall mature at such time and in such amounts as will permit the payment of costs for the improvement program and/or payment of the principal and interest on the Bonds when due.

Section 4. Tax Covenants; Miscellaneous.

4.01 The city council covenants and agrees with the holders of the Bonds that the City will (i) take all action on its part necessary to cause the interest on the Bonds to be excluded from gross income for federal income taxes including, without limitation, restricting, to the extent necessary, the yield on investments made with the proceeds of the Bonds and investment earnings thereon, making required payments to the federal government, if any, and maintaining books and records in a specified manner, where appropriate, and (ii) refrain from taking any action which would cause interest on the Bonds to be subject to federal income taxes, including, without limitation, refraining from spending the proceeds of the Bonds and investment earnings thereon on certain specified purposes.

4.02 (a) No portion of the proceeds of the Bonds shall be used directly or indirectly to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments, except for a reasonable temporary period until such proceeds are needed for the purpose for which the Bonds were issued. To this effect, any proceeds of the Bonds and any sums from time to time held in the Debt Service Fund (or any other City account which will be used to pay principal and interest to become due on the Bonds) in excess of amounts which under the applicable federal arbitrage regulations may be invested without regard as to yield shall not be invested at a yield in excess of the applicable yield restrictions imposed by the arbitrage regulations on such investments after taking into account any applicable temporary periods of minor portion made available under the federal arbitrage regulations.

(b) In addition, the proceeds of the Bonds and money in the Debt Service Fund shall not be invested in obligations or deposits issued by, guaranteed by or insured by the United States or any agency or instrumentality thereof if and to the extent that such investment would cause the Bonds to be federally guaranteed within the meaning of Section 149(b) of the Internal Revenue Code of 1986, as amended (the "Code").

(c) The City hereby covenants not to use the proceeds of the Bonds, or to cause or permit them to be used, in such a manner as to cause the Bonds to be "private activity bonds" within the meaning of Sections 103 and 141 through 150 of the Code.

4.03 (a) Pursuant to Section 1.148-7(d) of the Treasury Regulations, relating to exception from rebate, the City hereby represents that with respect to the gross proceeds of the Bonds, the following schedule is expected to be met: (i) at least 15% of the gross proceeds of the Bonds will be allocated to expenditures for the governmental purpose of the Bonds within six months of the date of issue of the Bonds; (ii) at least 60% of such proceeds will be allocated for such purposes within the one year period of such date; and (iii) 100% of such

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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 2010B (the “Notes”), General Obligation Utilities Revenue Refunding Bonds, Series 2010C (the “Series 2010C Bonds”), and General Obligation Improvement Refunding Bonds, Series 2010E (the “Series 2010E Bonds”). The Bonds will not be paid out of substantially the same source of funds as the Series 2010C Bonds and the Series 2010E 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. 10-1104-02.

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

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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 10-0560 was adopted upon the following vote:

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

Nays: Councilor Stauber -- 1

Absent: Councilor Gauthier -- 1

Approved November 4, 2010

DON NESS, Mayor

- - -

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

Section 1. Notes Purpose and Authorization.

1.01 Under and pursuant to the provisions of Minnesota Statutes, Sections 410.32 and 412.301 and Minnesota Statutes, Chapter 475 (collectively, the "Act"), and the City Charter, the City is authorized to issue its general obligation capital equipment notes to provide funds to purchase capital equipment having an expected useful life at least as long as the term of the capital equipment notes.

1.02 The city council adopted Resolution No. 09-0760 on December 21, 2009 (the "Intent Resolution"), declaring the intention of the City to issue such capital equipment notes in the amount of approximately \$2,400,000 to finance the purchase of capital equipment authorized by the Act and to pay for costs of issuance of such capital equipment notes. It is hereby certified that the amount of the capital equipment notes to be issued by the City pursuant to this resolution is less than 0.25% of the market value of the taxable property of the City.

1.03 The city council hereby determines that it is necessary and expedient to issue \$2,295,000 General Obligation Capital Equipment Notes, Series 2010B, 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

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received and considered all bids presented pursuant to the official terms of offering and has determined that the most favorable bid is that of United Bankers' Bank of Bloomington, Minnesota (the "Purchaser"), to purchase the Notes at a cash price of \$2,285,246.25, 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
2012	\$455,000	0.60%
2013	455,000	0.75%
2014	460,000	1.00%
2015	465,000	1.25%
2016	470,000	1.55%

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, 2011. 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.

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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

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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.

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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

GENERAL OBLIGATION CAPITAL EQUIPMENT NOTE, SERIES 2010B

R-__ \$_____

Interest Rate	Maturity Date February 1, ____	Date of Original Issue November __, 2010	CUSIP
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REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT:

The City of Duluth, in St. Louis County, Minnesota (the "City"), for value received, promises to pay to the registered owner specified above, or registered assigns, the principal amount specified above on the maturity date specified above, and to pay interest on said principal amount to the registered owner hereof from the Date of Original Issue, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, until the principal amount is paid or discharged, said interest being at the rate per annum specified above. Interest is payable semiannually on February 1 and August 1 of each year (each referred to herein as an "Interest Payment Date") commencing on August 1, 2011. 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 \$2,295,000, 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 4, 2010 (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

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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.

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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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 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 11/___/2010	Registered Owner Cede & Co. c/o The Depository Trust Company 55 Water Street New York, NY 10041 Federal Taxpayer I.D. No.: 13-2555119	Signature of Bond Registrar _____
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ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns, and transfers unto _____

(Name and Address of Assignee)

Social Security or Other
Identifying Number of Assignee

the within Note and all rights thereunder and does hereby irrevocably constitute and appoint _____ attorney to transfer the said

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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 \$2,285,000 from the proceeds for the Notes, together with any additional funds which may be available and are appropriated for the capital equipment purchase program. This account shall be used only to pay or reimburse other City funds or accounts for "capital equipment," as described in Minnesota Statutes, Section 412.301, with an expected useful life of at least the term of the Notes, and costs of issuance of the Notes, as such payments become due. The City's intent is to acquire and finance the capital equipment listed in the Intent Resolution with the proceeds of the Notes.

3.02 (a) There shall be and is hereby levied a direct, annual, ad valorem tax upon all taxable property within the City, which shall be extended upon the tax rolls for the years and in amounts sufficient to produce sums not less than five percent in excess of the amounts of principal and interest on the Notes as such principal and interest respectively become due as follows:

Levy Year	Collection Year	Tax Levy
2010	2011	\$496,936

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Levy Year	Collection Year	Tax Levy
2011	2012	499,916
2012	2013	501,583
2013	2014	502,003
2014	2015	501,150

(b) A separate debt service account is hereby created and designated as the "2010 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, and the rounding amount of \$246.25 paid by the Purchaser upon closing and delivery of the Notes.

3.03 If the balance in the Debt Service Fund is ever insufficient to pay all principal and interest then due on the Notes, the treasurer shall nevertheless provide sufficient money from any other funds of the City which are available for that purpose, and such other funds shall be reimbursed from the Debt Service Fund when the balance therein is sufficient. All proceeds of said taxes will be appropriated and paid when collected into the Debt Service Fund. Said taxes shall be irrevocable until the Notes and interest are fully paid, except that if the City in any year shall make an irrevocable appropriation to said accounts of monies actually on hand, the city clerk shall certify to the county auditor of St. Louis County the fact and the amount thereof, and the county auditor shall reduce by the amount so certified the amount otherwise to be included in the rolls next thereafter prepared.

3.04 The full faith and credit and taxing power of the City are irrevocably pledged for the prompt and full payment of the Notes and the interest thereon, in accordance with the terms set forth in this resolution.

3.05 Proceeds of the Notes on deposit in the acquisition account created in Section 3.01 and in the Debt Service Fund may, in the discretion of the city treasurer, be invested in securities permitted by Minnesota Statutes, Section 118A; provided, that any such investment shall mature at such time and in such amounts as will permit the payment of costs for the equipment purchases and/or payment of the principal and interest on the Notes when due.

Section 4. Tax Covenants.

4.01 The City covenants and agrees with the holders of the Notes that the City will (i) take all action on its part necessary to assure that the interest on the Notes will be excluded from gross income for federal income taxes including, without limitations, restricting, to the extent necessary, the yield on investments made with the proceeds of the Notes and investment earnings thereon, making required payments to the federal government, if any, and maintaining books and records in a specified manner, where appropriate, and (ii) refrain from taking any action which would cause interest on the Notes to be subject to federal income taxes, including, without limitation, refraining from spending the proceeds of the Notes and investment earnings thereon on certain specified purposes.

4.02 (a) No portion of the proceeds of the Notes shall be used directly or indirectly to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments, except (i) for a reasonable temporary period until such proceeds are needed for the purpose for which the Notes were issued, and (ii) in addition to

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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 represents that with respect to the gross proceeds of the Notes, the following schedule is expected to be met: (i) at least 15% of the gross proceeds of the Notes will be allocated to expenditures for the governmental purpose of the Notes within six months of the date of issue of the Notes; (ii) at least 60% of such proceeds will be allocated for such purposes within the one year period of such date; and (iii) 100% of such proceeds will be allocated for such purposes within the 18 month period beginning on such date; subject to an exception for reasonable retainage of 5% of the available proceeds of the Notes, and that 100% of the available proceeds of the Notes will be allocated within 30 months from the date of issue of the Notes.

(b) The City shall use its best efforts to comply with any federal procedural requirements which may apply in order to effectuate the designation made by this section.

4.04 In 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 2010A (the "Series 2010A Bonds"), General Obligation Utilities Revenue Refunding Bonds, Series 2010C (the "Series 2010C Bonds"), and General Obligation

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Improvement Refunding Bonds, Series 2010E (the "Series 2010E Bonds"). The Notes will not be paid out of substantially the same source of funds as the Series 2010C Bonds and the Series 2010E Bonds; consequently, the Notes will not be combined with them for a single issue. However, the Notes and the Series 2010A 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. 10-1104-02.

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 10-0561 was adopted upon the following vote:

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

Nays: Councilor Stauber -- 1

Absent: Councilor Gauthier -- 1

Approved November 4, 2010

DON NESS, Mayor

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

BE IT RESOLVED by the city council (the "City Council") of the city of Duluth, St. Louis County, Minnesota (the "City"), as follows:

Section 1. Bond Purpose and Authorization.

1.01 The City has previously issued its \$7,250,000 General Obligation Utilities Revenue Bonds, Series 2002C, dated September 1, 2002 (the "2002C Bonds"), and its \$4,635,000 General Obligation Utilities Revenue Bonds, Series 2002G, dated December 1, 2002 (the "2002G Bonds") (the 2002C Bonds and the 2002G Bonds are collectively, the "2002 Bonds"). The 2002 Bonds were authorized and issued pursuant to the City Charter, Minnesota Statutes, Chapter 475 and other pertinent provisions of Minnesota Statutes.

1.02 Under and pursuant to the provisions of Minnesota Statutes, Chapter 475 (the "Act") and Section 475.67, Subdivisions 1 through 4 of the Act, the City is authorized to issue and sell its general obligation bonds to refund obligations and the interest thereon six months or less before the due date or the redemption date of the obligations, if consistent with covenants made with the holders thereof, when determined by the City to be necessary or desirable for the reduction of debt service cost to the City or for the extension or adjustment of maturities in relation to the resources available for their payment.

1.03 It is necessary and desirable that the City issue \$4,405,000 General Obligation Utilities Revenue Refunding Bonds, Series 2010C (the "Bonds"), in order to (i) reduce debt service costs to refund the outstanding 2002 Bonds maturing on and after February 1, 2012 (the "Refunded Bonds"), of which \$6,425,000 in principal amount is outstanding (consisting of \$3,925,000 in outstanding principal amount of the 2002C Bonds and \$2,500,000 in outstanding principal amount of the 2002G Bonds), and (ii) pay the costs of issuance of the Bonds. The 2002 Bonds maturing on and after February 1, 2012, are subject to prepayment and redemption on February 1, 2011 (February 1, 2011 is herein referred to as the "Redemption Date").

1.04 (a) The 2002C Bonds were issued as combined municipal utilities bonds in a single issue consisting of (i) general obligation sewer utility revenue bonds (Sewer Utility Bonds); (ii) general obligation gas utility revenue bonds ("Gas Utility Bonds"); (iii) general obligation water utility revenue bonds ("Water Utility Bonds"); and (iv) general obligation stormwater utility revenue bonds ("Stormwater Utility Bonds"). The portion of the Refunded Bonds allocable to each type of utility bonds included within the 2002C Bonds are as follows:

Sewer Utility Bonds	\$1,084,000
Gas Utility Bonds	1,154,000
Water Utility Bonds	916,000
Stormwater Utility Bonds	<u>771,000</u>
Total	\$3,925,000

(b) The 2002G Bonds were issued as combined municipal utilities bonds in a single issue consisting of (i) Sewer Utility Bonds; (ii) Gas Utility Bonds; and (iii) Water Utility Bonds. The portion of the Refunded Bonds allocable to each type of utility bonds included within the 2002G Bonds are as follows:

Sewer Utility Bonds	\$ 985,000
Gas Utility Bonds	770,000
Water Utility Bonds	<u>745,000</u>
Total	\$2,500,000

(c) The City's plan of finance for the Refunding Bonds is that (i) the revenues of the respective utility will pay the principal maturity due on February 1, 2011, and interest on

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

the respective utility's bonds due on February 1, 2011; (ii) the municipal gas utility revenues and excess cash will be used to pay the portion of the Refunded Bonds allocable to the Gas Utility Bonds (\$1,924,000); and (iii) the proceeds of the Bonds will be used to pay the portion of the Refunded Bonds allocable to the Sewer Utility Bonds, the Water Utility Bonds and the Stormwater Utility Bonds.

1.05 (a) The City has heretofore issued and sold the following Sewer Utility Bonds: 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 \$2,935,000; general obligation sewer utility revenue bonds dated December 19, 2005, now outstanding in the amount of \$2,785,000; general obligation utilities revenue bonds dated December 19, 2006, the sewer utility portion of such bonds now outstanding in the amount of \$800,000; 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 \$1,910,000; 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 \$996,979; general obligation utilities revenue bonds dated February 19, 2009, the sewer utility portion of such bonds now outstanding in the amount of \$1,369,000; general obligation sewer utility revenue note dated August 3, 2009, authorized in the amount of \$796,835; general obligation sewer utility revenue note dated December 16, 2009, authorized in the amount of \$2,414,150; general obligation utilities revenue bonds dated December 17, 2009, the sewer utility portion of such bonds now outstanding in the amount of \$1,618,186; general obligation sewer utility revenue note dated September 14, 2010, authorized in the amount of \$9,087,385; and general obligation sewer utility revenue note dated September 14, 2010, authorized in the amount of \$3,753,059. 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 12, 2003, December 1, 2004, December 19, 2005, December 19, 2006, July 12, 2007, December 13, 2007, February 19, 2009, August 3, 2009, December 16, 2009, December 17, 2009, and September 14, 2010.

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.

(b) The City has heretofore issued and sold the following Water Utility Bonds: general obligation water utility revenue note dated August 25, 2003, authorized in the amount of \$970,000; general obligation water utility revenue note dated July 23, 2004, authorized in the amount of \$2,485,231; general obligation utilities revenue bonds dated December 19, 2006, the water utility portion of such bonds now outstanding in the amount of \$950,000; 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 \$738,021; general obligation utilities revenue bonds dated February 19, 2009, the water utility portion of such bonds now outstanding in the amount of \$186,000; general obligation water utility revenue note dated November 23, 2009, authorized in the amount of \$1,698,450; and general obligation water utility revenue note dated September 14, 2010, authorized in the amount of

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

\$1,371,653. 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 August 25, 2003, July 23, 2004, December 19, 2006, December 13, 2007, February 19, 2009, November 23, 2009, and September 14, 2010.

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.

(c) The City has heretofore issued and sold the following Stormwater Utility Bonds: general obligation stormwater utility revenue bonds dated September 7, 2006, now outstanding in the amount of \$1,445,000. Under the provisions of the ordinance authorizing said bonds, the City reserved the privilege of issuing additional bonds payable from said net revenues on a parity with the bonds dated September 7, 2006.

The City reserves the right and privilege of issuing additional bonds and of pledging and appropriating the net revenues of the municipal stormwater 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 stormwater 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.

1.06 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 Hutchinson, Shockey, Erley & Co. of Chicago, Illinois (the "Purchaser"), to purchase the Bonds at a cash price of \$4,546,617.65, upon condition that the Bonds mature and bear interest at the times and annual rates set forth in Section 2. The City, after due consideration, finds such offer reasonable and proper and the offer of the Purchaser is hereby accepted. The mayor and the city clerk are authorized and directed to execute on the part of the City a contract for the sale of the Bonds in accordance with the Purchaser's bid. The city treasurer is directed to deposit the good faith check of the successful bidder.

Section 2. Terms of Bonds.

2.01 The Bonds to be issued hereunder shall be dated the date of delivery, as the date of original issue, shall be issued in the denomination of \$5,000 each, or any integral multiple thereof, in fully registered form, and lettered and numbered R-1 and upward. The Bonds shall mature on February 1 in the respective years and amounts and shall bear interest at the annual rates stated as follows:

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Year	Water Utility Portion	Sewer Utility Portion	Stormwater Utility Portion	Total	Interest Rate
2012	\$210,000	\$260,000	\$ 95,000	\$565,000	2.00%
2013	225,000	280,000	105,000	610,000	2.00%
2014	225,000	285,000	105,000	615,000	2.00%
2015	235,000	290,000	110,000	635,000	2.00%
2016	235,000	295,000	110,000	640,000	2.00%
2017	245,000	300,000	115,000	660,000	3.00%
2018	250,000	315,000	115,000	680,000	3.00%

2.02 The Bonds are not subject to optional redemption and prepayment before maturity.

2.03 Interest on the Bonds shall be payable semiannually on February 1 and August 1 in each year (each referred to herein as an "Interest Payment Date"), commencing August 1, 2011. Interest will be computed on the basis of a 360-day year of twelve 30-day months and will be rounded pursuant to the rules of the municipal securities rulemaking board. The Bond Registrar designated below shall make all interest payments with respect to the Bonds by check or draft mailed to the registered owners of the Bonds shown on the bond registration records maintained by the Bond Registrar at the close of business on the 15th day (whether or not a business day) of the month next preceding the Interest Payment Date at such owners' addresses shown on such bond registration records.

2.04 (a) The Bonds shall be prepared for execution in accordance with the approved form and shall be signed by the manual or facsimile signature of the mayor and attested by the manual or facsimile signature of the city clerk. In case any officer whose signature or a facsimile of whose signature shall appear on the Bonds shall cease to be an officer before delivery of the Bonds, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, as if he or she had remained in office until delivery.

(b) The city clerk is authorized and directed to obtain a copy of the approving legal opinion of Fryberger, Buchanan, Smith & Frederick, P.A. of Duluth, Minnesota, and cause the opinion to be attached to each Bond.

2.05 The City hereby appoints Wells Fargo Bank, National Association, in Minneapolis, Minnesota, as registrar, authenticating agent, paying agent and transfer agent for the Bonds (such bank or its successor is herein referred to as the "Bond Registrar"). To provide for the Bond Registrar services, the mayor and the clerk are authorized and directed to execute a bond registrar/paying agent agreement substantially in the form of the agreement currently on file in the office of the city clerk as public document No. 04-0219-02. No Bond shall be valid or obligatory for any purpose until the Bond Registrar's authentication certificate on such Bond, substantially set forth in Section 2.12 hereof, shall have been duly executed by an authorized representative of the Bond Registrar. Authentication certificates on different Bonds need not be signed by the same representative. The manual signature of one officer of the City or the executed authentication certificate on each Bond shall be conclusive evidence that it has been authenticated and delivered under this resolution.

2.06 (a) In order to make the Bonds eligible for the services provided by DTC, the City has previously agreed to the applicable provisions set forth in the blanket issuer letter of representations which has been executed by the City and DTC (the "Representation Letter").

(b) Notwithstanding any provision herein to the contrary, so long as the Bonds shall be in Book-Entry Form, the provisions of this Section 2.06 shall govern.

(c) All of the Bonds shall be registered in the name of Cede & Co., as

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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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

to be registered or transferred as herein provided. In the event of the resignation or removal of the Bond Registrar or its incapability of acting as such, the bond registration records shall be maintained at the office of the successor Bond Registrar as may be appointed by the City Council. Upon surrender for transfer of any Bond at the principal corporate office of the Bond Registrar, the City shall execute and the Bond Registrar shall authenticate, if required by law or this resolution, and deliver, in the name(s) of the designated transferee or transferees, one or more new Bonds of the like aggregate principal amount, as requested by the transferor.

2.08 Each Bond delivered upon transfer of or in exchange for or in lieu of any other Bond shall carry all of the rights to interest, accrued and unpaid and to accrue, which are carried by such other Bond. Each Bond shall be dated by the Bond Registrar as of the date of its authentication. The City and the Bond Registrar shall not be required to make any transfer or exchange of any Bonds called for redemption or to make any such exchange or transfer of the Bonds during the 15 days next preceding the date of the mailing of the notice of redemption in the case of a proposed redemption of the Bonds.

2.09 The City and the Bond Registrar may treat the person in whose name any Bond is registered as the owner of such Bond for the purpose of receiving payment of principal of and interest on such Bond and for all other purposes whatsoever, whether or not such Bond be overdue, and neither the City nor the Bond Registrar shall be affected by notice to the contrary.

2.10 The principal of and interest on the Bonds shall be payable by the Bond Registrar, as paying agent, in such funds as are legal tender for the payment of debts due the United States of America. The City shall pay the reasonable and customary charges of the Bond Registrar for the disbursement of principal and interest.

2.11 Delivery of the Bonds and payment of the purchase price shall be made at a place mutually satisfactory to the City and the Purchaser. Printed or typewritten and executed Bonds shall be furnished by the City without cost to the Purchaser. The Bonds, when prepared in accordance with this Resolution and executed, shall be delivered by or under the direction of the treasurer to the Purchaser upon receipt of the purchase price plus accrued interest.

2.12 The Bonds shall be printed or typewritten in substantially the following form:

UNITED STATES OF AMERICA
STATE OF MINNESOTA
COUNTY OF ST. LOUIS

CITY OF DULUTH
GENERAL OBLIGATION UTILITIES REVENUE BOND, SERIES 2010C

R-__ \$_____

Interest Rate	Maturity Date	Date of Original Issue	CUSIP
	February 1, __	November __, 2010	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT:

The City of Duluth, in St. Louis County, Minnesota (the "City"), for value

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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, 2011. 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 \$4,405,000, 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 475.67, Subdivisions 1 through 4, and Section 55 of the Home Rule Charter of the City, and all other laws and charter provisions thereto enabling and pursuant to a resolution adopted on November 4, 2010, by the governing body of the City (the "Resolution"), and is issued to refund on a current refunding basis the outstanding principal amount of the City's \$7,250,000 General Obligation Utilities Revenue Bonds, Series 2002C, dated September 1, 2002, and the \$4,635,000 General Obligation Utilities Revenue Bonds, Series 2002G, dated December 1, 2002.

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

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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.

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 stormwater utility are payable from the net revenues to be derived from the operation of the municipal stormwater 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 stormwater 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 stormwater 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 stormwater 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 stormwater utility.

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

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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

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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
11/__/2010	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

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assignment must correspond with the name of the registered owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

(Bank, Trust Company, member of
National Securities Exchange)

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City or its agent for registration of transfer, exchange, or payment, and any bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL, inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

Section 3. Escrow Agreement; Escrow Agent.

3.01 Wells Fargo Bank, National Association of Minneapolis, Minnesota, which is a suitable financial institution within the State of Minnesota whose deposits are insured by the Federal Deposit Insurance Corporation whose combined capital and surplus is not less than \$500,000, is hereby designated escrow agent (the "Escrow Agent") with respect to the outstanding 2002 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. 10-1104-03. 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 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

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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 municipal water 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) Until the Water Portion of 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. Unless deposited in the Escrow Account, the treasurer shall credit to the Water Debt Service Fund unused discount (\$3,716.46) and the amount of accrued interest on the Water Portion of the Bonds, if any. 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.

(c) 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.

4.02 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 municipal sewer utility and segregate and account for the revenues thereof as provided in this section.

The City will place all such charges, when collected, and all money received from the sale of any facilities or equipment of the municipal sewer utility in a separate Sewer Utility Operating Account within the Public Utility Sewer Fund maintained under Section 54 of the City

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Charter. Except as provided in this section, this account shall be used only to pay claims duly approved and allowed for payment of expenses which, under generally accepted accounting principles, constitute normal, reasonable and current expenses of operating and maintaining the municipal sewer utility, and to maintain such reasonable reserves for such expenses as the director of finance shall determine to be necessary from time to time in accordance with policies established by the City Council. Sums from time to time on hand in this account, in excess of sums required to make such payments and maintain such reserves, constitute the net revenues which are herein pledged and appropriated first to pay the principal of and interest on all sewer utility bonds when due.

(b) Until the Sewer Portion of 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 unused discount (\$5,407.43) and the amount of accrued interest on the Sewer Portion of the Bonds, if any. 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.

(c) Surplus utility revenues from time to time received in the Sewer Utility Operating Account, in excess of payments due from and reserves required to be maintained in the Sewer Utility Operating Account and in the 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.

4.03 Stormwater 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 stormwater 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 Stormwater Portion of the Bonds and on all other bonds heretofore or hereafter issued and made payable from said net revenues, and will operate the municipal stormwater 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 stormwater utility in a separate Stormwater Utility Operating Account within the Public Utility Stormwater 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 stormwater utility, and to maintain such reasonable reserves for such expenses as the director of finance shall determine to be necessary from

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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 stormwater utility bonds when due.

(b) Until the Stormwater Portion of 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 "Stormwater Debt Service Fund") in the Public Utility Stormwater Fund to be used solely for the payment of the principal and interest, as such principal and interest become due and payable, on the Stormwater 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 stormwater utility. Unless deposited in the Escrow Account, the treasurer shall credit to the Stormwater Debt Service Fund unused discount (\$2,493.76) and the amount of accrued interest on the Stormwater Portion of the Bonds, if any. The treasurer shall transfer from the Stormwater Utility Operating Account to the Stormwater Debt Service Fund amounts of the net revenues sufficient for the payment of all interest and principal then due on the Stormwater 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 Stormwater Utility Operating Account, in excess of payments due from and reserves required to be maintained in the Stormwater Utility Operating Account and in the Stormwater Debt Service Fund, may be used for necessary capital expenditures for the improvement of the municipal stormwater utility, for the prepayment and redemption of bonds constituting a lien on the municipal stormwater utility, and for any other proper municipal purpose consistent with policies established by resolutions of the City Council.

4.04 Escrow account.

(a) The City hereby creates an Escrow Account for payment of the 2002 Bonds. To the Escrow Account there is hereby pledged and irrevocably appropriated and there shall be credited: (a) the proceeds of the Bonds received from the Purchaser which are not appropriated to the Debt Service 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 pay the principal due on the 2002 Bonds on February 1, 2011, to pay the interest due on the 2002 Bonds on February 1, 2011, the portion of the Refunded Bonds allocable to the Gas Utility Bonds and to meet the other requirements of the Escrow Account (the "Funds"); and (e) investment earnings on such monies referenced in clauses (a), (b), (c) and (d), for the payment of principal and interest due on the 2002 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 2002 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 2002 Bonds is irrevocably appropriated to the

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payment of the principal of and interest due on the 2002 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 for the 2002 Bonds 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 2002 Bonds have previously been terminated and all bond proceeds therein have been expended.

(g) The City treasurer is authorized to pay the costs of issuance of the Bonds in the amount of \$34,000.00.

4.05 It is hereby determined that upon the receipt of proceeds of the Bonds (the "Proceeds") for payment of the 2002 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 2002 Bonds for collection in the year 2011 and thereafter.

4.06 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 five percent in excess of the amounts needed to meet when due the principal and interest payments thereon and, accordingly, no tax is presently levied for this purpose. It is recognized, however, that the City's liability on the Bonds is not limited to the revenues so pledged, and the City Council covenants and agrees that it will levy upon all taxable property within the City, and cause to be extended, levied and collected, any taxes found necessary for full payment of the principal of and interest on the Bonds, without limitation as to rate or amount.

Section 5. Refunding, Findings, Prepayment of Refunded Bonds.

5.01 It is hereby found and determined that based upon information presently available from the City's financial advisers, the issuance of the Bonds is consistent with covenants in the Council's resolutions authorizing the 2002 Bonds (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 2002 Bonds due on February 1, 2011, 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

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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 2002 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 2002 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 2002 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 The proceeds of the 2002 Bonds have been totally expended for the governmental purpose for which they were issued; the gross proceeds of the Bonds will be totally expended for the purpose of refunding the outstanding principal amount of the Refunded Bonds and paying the costs of issuance of the Bonds within six months of the date of issuance of the Bonds. Therefore, no rebate of arbitrage profit is required for the refunding portion of the Bonds under the Code pursuant to Section 148(f)(4)(B) of the Code under Regulation Section 1.148-9(h).

6.04 In addition to the Bonds, the City is selling, pursuant to a single offering document and on the same date, the following tax-exempt obligations: General Obligation Capital Improvement Bonds, Series 2010A (the "Series 2010A Bonds"), General Obligation

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Capital Equipment Notes, Series 2010B (the "Notes"), and General Obligation Improvement Refunding Bonds, Series 2010E (the "Series 2010E Bonds"). The Bonds will not be paid out of substantially the same source of funds as the Series 2010A Bonds, the Notes and the Series 2010E Bonds; consequently, the Bonds will not be combined with them for a single issue.

6.05 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.

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. 10-1104-02.

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.

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Resolution 10-0562 was unanimously adopted.

Approved November 4, 2010

DON NESS, Mayor

- - -

BE IT RESOLVED, by the city council (the "City Council") of the city of Duluth, St. Louis County, Minnesota (the "City"), as follows:

Section 1. Bond Purpose and Authorization.

1.01 The City has previously issued its \$3,400,000 Taxable General Obligation Airport Improvement Bonds, Series 2002A, dated February 1, 2002 (the "2002 Bonds"). The 2002 Bonds were authorized and issued pursuant to the provisions of Minnesota Laws 1974, Chapter 130, Minnesota Statutes, Chapter 475 and other pertinent provisions of Minnesota Statutes.

1.02 Under and pursuant to the provisions of Minnesota Statutes, Chapter 475 (the "Act") and Section 475.67, Subdivisions 1 through 4 of the Act, the City is authorized to issue and sell its general obligation bonds to refund obligations and the interest thereon six months or less before the due date or the redemption date of the obligations, if consistent with covenants made with the holders thereof, when determined by the City to be necessary or desirable for the reduction of debt service cost to the City or for the extension or adjustment of maturities in relation to the resources available for their payment.

1.03 It is necessary and desirable that the City issue \$1,850,000 Taxable General Obligation Airport Improvement Refunding Bonds, Series 2010D (the "Bonds"), in order to (i) reduce debt service costs to refund the outstanding 2002 Bonds maturing on and after February 1, 2012 (the "Refunded Bonds"), of which \$1,820,000 in principal amount is outstanding, and (ii) pay the costs of issuance of the Bonds. The 2002 Bonds maturing on and after February 1, 2012, are subject to prepayment and redemption on February 1, 2011 (February 1, 2011 is herein referred to as the "Redemption Date").

1.04 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.

1.05 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 United Bankers' Bank of Bloomington, Minnesota (the "Purchaser"), to purchase the Bonds at a cash price of \$1,840,750, 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

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Bonds in substantial conformance with the Official Terms of Offering. All actions of the mayor and the clerk and Public Financial Management, Inc., independent financial advisor to the City, taken with regard to the sale of the Bonds are hereby ratified and approved.

Section 2. Terms of Bonds.

2.01 The Bonds to be issued hereunder shall be dated the date of delivery, as the date of original issue, shall be issued in the denomination of \$5,000 each, or any integral multiple thereof, in fully registered form, and lettered and numbered R-1 and upward. The Bonds shall mature on February 1 in the respective years and amounts and shall bear interest at the annual rates stated as follows:

Year	Total	Interest Rate
2012	\$290,000	0.75%
2013	300,000	1.00%
2014	305,000	1.25%
2015	310,000	1.70%
2016	320,000	2.10%
2017	325,000	2.45%

2.02 The Bonds are not subject to 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, 2011. 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.

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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

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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
TAXABLE GENERAL OBLIGATION AIRPORT IMPROVEMENT BOND, SERIES
2010D

R-__ \$_____

Interest Rate	Maturity Date	Date of Original Issue	CUSIP
	February 1, ____	November __, 2010	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT:

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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, 2011. 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 \$1,850,000, all of like date and tenor, except for number, denomination, maturity date and interest rate, pursuant to the authority contained in Minnesota Statutes, Chapter 475, and Section 475.67, Subdivisions 1 through 4, and all other laws and charter provisions thereto enabling and pursuant to a resolution adopted on November 4, 2010, by the governing body of the City (the "Resolution"), and is issued to refund the outstanding principal amount of the City's \$3,400,000 Taxable General Obligation Airport Improvement Bonds, Series 2002A, dated February 1, 2002. The Bonds are payable from ad valorem taxes.

The Bonds are not subject to optional redemption and prepayment before maturity.

The Bonds of this series are issued as fully registered bonds without coupons, in the denomination of \$5,000 or any integral multiple thereof. Subject to limitations set forth in the Resolution, this Bond is transferable by the registered owner hereof upon surrender of this Bond for transfer at the principal corporate office of the Bond Registrar, duly endorsed or accompanied by a written instrument of transfer in form satisfactory to the Bond Registrar and executed by the registered owner hereof or the owner's attorney duly authorized in writing. Thereupon the City shall execute and the Bond Registrar shall

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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

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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
11/___/2010	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

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whatsoever.

Signature Guaranteed:

(Bank, Trust Company, member of
National Securities Exchange)

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation (“DTC”), to the City or its agent for registration of transfer, exchange, or payment, and any bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL, inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

Section 3. Escrow Agreement; Escrow Agent.

3.01 Wells Fargo Bank, National Association of Minneapolis, Minnesota, which is a suitable financial institution within the State of Minnesota whose deposits are insured by the Federal Deposit Insurance Corporation whose combined capital and surplus is not less than \$500,000, is hereby designated escrow agent (the “Escrow Agent”) with respect to the outstanding 2002 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. 10-1104-03. The execution and delivery of the Escrow Agreement by the mayor and the clerk, in the form presented to the City Council with such changes, omissions, insertions and revisions as the mayor and the clerk deem advisable is hereby approved, and the execution by such officers shall be conclusive evidence of such approval. All essential terms and conditions of the Escrow Agreement, including payment by the City of reasonable charges for the services of the Escrow Agent, are hereby approved and adopted and made a part of this Resolution, and the City covenants that it will promptly enforce all provisions thereof in the event of default thereunder by the Escrow Agent.

Section 4. Revenues, Accounts and Covenants.

4.01 (a) For the convenience and proper administration of the monies to be borrowed and repaid on the Bonds and to provide adequate and specific security for the Purchaser and holders from time to time of the Bonds there is hereby created a separate debt service account to be designated the 2010 Taxable Airport Improvement Refunding Bonds Debt Service Account (“Debt Service Fund”) within the City’s debt service fund, to be administered and maintained by the city treasurer as a bookkeeping account separate and apart from all other funds maintained in the official financial records of the City. The Debt Service Fund shall be maintained in the manner herein specified until all of the Bonds and interest thereon have been fully paid.

(b) To the Debt Service Fund there is hereby pledged and irrevocably appropriated and there shall be credited: (i) any balance remaining in the 2002 Taxable

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General Obligation Airport Improvement Bonds Debt Service Account (the “2002 Debt Service Fund”) after payment of the 2002 Bonds; (ii) any collections of all ad valorem taxes hereafter levied for the payment of the Bonds and interest thereon; (iii) all ad valorem taxes collected after the date of this resolution, if any, pursuant to levies made in resolution 02-0098 authorizing and approving the 2002 Bonds adopted February 7, 2002 (the “2002 Resolution”); (iv) accrued interest, if any, received upon delivery of the Bonds; and (v) any and all other monies which are properly available and are appropriated by the City to the Debt Service Fund. The amount of any surplus remaining in the Debt Service Fund when the Bonds and interest thereon are paid shall be used as provided in Section 475.61, Subdivision 4 of the Act.

(c) Unless deposited in the Escrow Account, the proceeds of the Bonds in the amount of \$1,750.00 paid by the Purchaser upon closing and delivery of the Bonds are hereby irrevocably appropriated to the Debt Service Fund representing unused discount (\$1,750.00) and the amount of accrued interest on the Bonds, if any.

(d) The city treasurer shall transfer from the 2002 Debt Service Fund, to the Escrow Agent for deposit in the Escrow Account on the date of issuance of the Bonds \$302,895.00, the amount sufficient for the payment of all interest and principal due on the 2002 Bonds on February 1, 2011. Upon redemption of the Refunded Bonds on the Redemption Date, the 2002 Debt Service Fund shall be terminated, and all monies remaining therein not required to refund the Refunded Bonds shall be transferred to the Debt Service Fund.

(e) The city treasurer is authorized to pay the costs of issuance of the Bonds in the amount of \$19,000.00.

4.02 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 2002 Debt Service Fund 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 2002 Resolution.

4.03 (a) There shall be and is hereby levied a direct, annual, ad valorem tax upon all taxable property within the City, which shall be extended upon the tax rolls for the years and in amounts sufficient to produce sums not less than five percent in excess of the amounts of principal and interest on the Bonds as such principal and interest respectively become due as follows:

Levy Year	Collection Year	Tax Levy
2010	2011	\$340,627
2011	2012	343,104
2012	2013	345,204
2013	2014	346,451
2014	2015	351,417
2015	2016	349,611

(b) All proceeds of said taxes set out in Sections 4.03(a) are hereby appropriated and shall be paid when collected into the 2010 Taxable Airport Improvement Refunding Bonds Account within the Debt Service Fund.

(c) Such tax levies shall be irrevocable as long as any 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 Debt Service Fund of monies actually on hand for payment of the portion of such principal and interest payable from ad valorem taxes, and may direct the county auditor to reduce the levy for such calendar year by that amount.

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The City has entered into a sub-lease agreement with Cirrus Design Corporation ("Cirrus") in which the City is leasing the Project to Cirrus. It is the intention of the city council to annually appropriate the net rentals from such sub-lease to the Debt Service Fund to provide funds to cancel such tax levy and to pay all or a portion of the principal of and interest on the Bonds.

4.04 Escrow account.

(a) The City hereby creates an Escrow Account for payment of the 2002 Bonds. To the Escrow Account there is hereby pledged and irrevocably appropriated and there shall be credited: (a) the proceeds of the Bonds received from the Purchaser which are not appropriated to the Debt Service Fund or are not to be used for payment of costs of issuance of the Bonds; (b) Accrued Interest, if any; (c) Additional Interest [amounts referenced in clauses (a), (b) and (c) are herein referred to as the "Proceeds"]; (d) funds of the City in an amount sufficient to 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 2002 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 due on the 2002 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 2002 Bonds is irrevocably appropriated to the payment of the principal of and interest due on the 2002 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 2002 Bonds shall be used solely for the purposes herein set forth and for no other purpose, except that any surplus in the Escrow Account may be remitted to the City all in accordance with the Escrow Agreement. Any monies remitted to the City upon termination of the Escrow Agreement shall be deposited in the Debt Service Fund.

(e) Securities purchased for the Escrow Account shall be purchased simultaneously with the delivery of and payment for the Bonds. The mayor and clerk or their designee are authorized and directed to purchase such securities.

(f) The construction fund created for the 2002 Bonds have previously been terminated and all bond proceeds therein have been expended.

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 2002 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 due on the 2002 Bonds due on February 1, 2011, 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

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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 2002 Bonds and all interest thereon have been discharged as provided in this section, all pledges, covenants and other rights granted by the 2002 Resolution to the holders of the 2002 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 2002 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. 10-1104-02.

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 10-0563 was unanimously adopted.

Approved November 4, 2010

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 Pursuant to Chapter 475 of Minnesota Statutes and the home rule charter of the

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City, the City previously issued \$2,220,000 General Obligation Improvement Bonds, Series 2002H, dated December 1, 2002 (the "2002 Bonds"), and \$2,010,000 General Obligation Improvement Bonds, Series 2003H, dated December 1, 2003 (the "2003 Bonds"), for the purpose of financing local public improvements.

1.02 Under and pursuant to the provisions of Minnesota Statutes, Chapter 475 (the "Act") and, specifically, Section 475.67, Subdivisions 1 through 12 of the Act, the City is authorized to issue and sell its general obligation bonds to refund certain maturities of the 2002 Bonds and the 2003 Bonds in advance of their scheduled maturities, if consistent with covenants made with the holders thereof, when determined by the City to be necessary or desirable for the reduction of debt service cost to the City or for the extension or adjustment of maturities in relation to the resources available for their payment.

1.03 The City Council hereby determines that it is necessary, expedient and in the best interest of the City's residents that the City issue, sell and deliver its \$2,340,000 General Obligation Improvement Refunding Bonds, Series 2010E (the "Bonds"), to refund the outstanding 2002 Bonds maturing on and after February 1, 2012, of which \$1,205,000 in principal amount is outstanding (the "2002 Refunded Bonds"), and to refund the outstanding 2003 Bonds maturing on and after February 1, 2013, of which \$1,090,000 in principal amount is outstanding (the "2003 Refunded Bonds"), in order to reduce debt service cost to the City. (The 2002 Refunded Bonds and the 2003 Refunded Bonds are collectively referred to as the "Refunded Bonds.") The 2002 Bonds maturing on and after February 1, 2012, are subject to prepayment and redemption on February 1, 2011. (February 1, 2011 is herein referred to as the "2002 Bonds Redemption Date.") The 2003 Bonds maturing on and after February 1, 2013, are subject to prepayment and redemption on February 1, 2012. (February 1, 2012 is herein referred to as the "2003 Bonds Redemption Date.")

1.04 The City's plan of finance for the payment and prepayment of the 2002 Bonds and the 2003 Bonds is as follows:

(a) The City will provide funds from the debt service account for the 2002 Bonds to pay the principal and interest due on the 2002 Bonds on February 1, 2011, and proceeds of the Bonds will provide the funds to prepay and redeem the 2002 Refunded Bonds on the 2002 Bonds Redemption Date; such funds shall be deposited in the Escrow Account held under the Escrow Agreement described in Section 4 and Section 5.01(b); and

(b) The City will provide funds from the debt service account for the 2003 Bonds to pay the principal of and interest due on the 2003 Bonds on February 1, 2011, and proceeds of the Bonds will provide the funds to pay the interest on the 2003 Refunded Bonds on August 1, 2011, and on February 1, 2012, and to prepay and redeem the 2003 Refunded Bonds on the 2003 Bonds Redemption Date. The February 1, 2012 maturity of the 2003 Bonds in the amount of \$130,000, together with interest due thereon on August 1, 2011, and February 1, 2012, shall be paid from the debt service account for the 2003 Bonds and not from the Escrow Account. The February 1, 2012 maturity shall remain outstanding and interest thereon on August 1, 2011, and February 1, 2012, shall not be defeased pursuant to this Resolution and the Escrow Agreement. Funds shall be deposited in the Escrow Account held under the Escrow Agreement described in Section 4 and Section 5.01(b), which together with investment earnings thereon, will be sufficient to pay (i) the principal and interest on the 2003 Bonds due on February 1, 2011; (ii) interest on the 2003 Refunded Bonds due on August 1, 2011, and February 1, 2012; and (iii) redemption and prepayment of the 2003 Refunded Bonds on the 2003 Bonds Redemption Date.

1.05 Public Financial Management, Inc., financial consultant to the City, has given

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notification by mail, facsimile or electronic data transmission to at least five firms determined by Public Financial Management, Inc. to be prospective bidders on the Bonds at least two days (omitting Saturdays, Sundays and legal holidays) before the date set for receipt of bids on the Bonds. All actions of the mayor, the clerk and Public Financial Management, Inc. taken with regard to the sale of the Bonds are hereby ratified and approved.

1.06 Pursuant to such solicitation for bids for the sale of the Bonds, the City Council has received and considered all bids presented pursuant to the official terms of offering and has determined that the most favorable bid is that of Wells Fargo Advisors of St. Louis, Missouri (the "Purchaser"), to purchase the Bonds at a cash price of \$2,366,523.11, upon condition that the Bonds mature and bear interest at the times and annual rates set forth in Section 2. The City, after due consideration, finds such offer reasonable and proper and the offer of the Purchaser is hereby accepted. The mayor and the city clerk are authorized and directed to execute on the part of the City a contract for the sale of the Bonds in accordance with the Purchaser's bid. The city treasurer is directed to deposit the good faith check of the successful bidder.

Section 2. Terms of the Bonds.

2.01 The Bonds shall be dated as of the date of delivery, as the date of original issue, shall be issued in the denomination of \$5,000, or any integral multiple thereof, in fully registered form and lettered and numbered R-1 and upward. The Bonds shall mature on February 1 in the respective years and amounts and shall bear interest at the annual rates stated as follows:

Year	Amount	Interest Rate
2012	\$160,000	2.25%
2013	305,000	2.25%
2014	320,000	2.25%
2015	330,000	2.25%
2016	340,000	2.25%
2017	350,000	2.25%
2018	355,000	2.25%
2019	180,000	2.40%

2.02 The Bonds are not subject to optional redemption and prepayment prior to maturity.

2.03 The interest shall be payable semiannually on February 1 and August 1 in each year (each herein referred to as an "Interest Payment Date") commencing on August 1, 2011. Interest will be computed upon the basis of a 360-day year of twelve 30-day months and will be rounded pursuant to the rules of the Municipal Securities Rulemaking Board. The Bond Registrar appointed below shall make all interest payments with respect to the Bonds by check or draft mailed to the registered owners of the Bonds shown on the bond registration records maintained by the Bond Registrar at the close of business on the 15th day (whether or not on a business day) of the month next preceding the Interest Payment Date at such owners' addresses shown on such bond registration records.

2.04 (a) The Bonds shall be prepared for execution in accordance with the approved form and shall be signed by the manual or facsimile signature of the mayor and attested by the manual or facsimile signature of the clerk. The corporate seal of the City may be omitted as permitted by law. In case any officer whose signature shall appear on the Bonds shall cease to be an officer before delivery of the Bonds, such signature shall nevertheless be valid and sufficient for all purposes, as if he or she had remained in office until delivery.

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(b) The clerk is authorized to obtain a copy of the proposed approving legal opinion of Fryberger, Buchanan, Smith & Frederick, P.A. of Duluth, Minnesota, and cause the opinion to be attached to each Bond.

2.05 The City hereby appoints Wells Fargo Bank, National Association, in Minneapolis, Minnesota, as registrar, authenticating agent, paying agent and transfer agent for the Bonds (such bank or its successor is herein referred to as the "Bond Registrar"). To provide for the Bond Registrar services, the mayor and the clerk are authorized and directed to execute a bond registrar/paying agent agreement substantially in the form of the agreement currently on file in the office of the city clerk as public document No. 04-0219-02. No Bond shall be valid or obligatory for any purpose until the Bond Registrar's authentication certificate on such Bond, substantially set forth in Section 3.01 hereof, shall have been duly executed by an authorized representative of the Bond Registrar. Authentication certificates on different Bonds need not be signed by the same representative. The manual signature of one officer of the City or the executed authentication certificate on each Bond shall be conclusive evidence that it has been authenticated and delivered under this resolution.

2.06 (a) In order to make the Bonds eligible for the services provided by DTC, the City has previously agreed to the applicable provisions set forth in the blanket issuer letter of representations which has been executed by the City and DTC (the "Representation Letter").

(b) Notwithstanding any provision herein to the contrary, so long as the Bonds shall be in Book-Entry Form, the provisions of this Section 2.06 shall govern.

(c) All of the Bonds shall be registered in the name of Cede & Co., as nominee for DTC. Payment of interest on and principal of any Bond registered in the name of Cede & Co. shall be made by wire transfer or New York Clearing House or equivalent same day funds by 10:00 a.m. CT or as soon as possible thereafter following the Bond Registrar's receipt of funds from the City on each Interest Payment Date to the account of Cede & Co. on each Interest Payment Date at the address indicated in or pursuant to the Representation Letter.

(d) DTC (or its nominees) shall be and remain recorded on the Bond Register as the holder of all Bonds which are in Book-Entry Form. No transfer of any Bond in Book-Entry Form shall be made, except from DTC to another depository (or its nominee) or except to terminate the Book-Entry Form. All Bonds of such stated maturity of any Bonds in Book-Entry Form shall be issued and remain in a single Bond certificate registered in the name of DTC (or its nominee); provided, however, that upon termination of the Book-Entry Form pursuant to the Representation Letter, the City shall, upon delivery of all Bonds of such series from DTC, promptly execute, and the Bond Registrar shall thereupon authenticate and delivery, Bonds of such series to all persons who were beneficial owners thereof immediately prior to such termination; and the Bond Registrar shall register such beneficial owners as holders of the applicable Bonds.

The Bond Registrar shall maintain accurate books and records of the principal balance, if any, of each such outstanding Bond in Book-Entry Form, which shall be conclusive for all purposes whatsoever. Upon the authentication of any new Bond in Book-Entry Form in exchange for a previous Bond, the Bond Registrar shall designate thereon the principal balance remaining on such bond according to the Bond Registrar's books and records.

No beneficial owner (other than DTC) shall be registered as the holder on the Bond Register for any Bond in Book-Entry Form or entitled to receive any bond certificate. The beneficial ownership interest in any Bond in Book-Entry Form shall be recorded, evidenced and transferred solely in accordance with the Book-Entry System.

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Except as expressly provided to the contrary herein, the City and the Bond Registrar may treat and deem DTC to be the absolute owner of all Bonds of each series which are in Book-Entry Form (i) for the purpose of payment of the principal of and interest on such Bond, (ii) for the purpose of giving notices hereunder, and (iii) for all other purposes whatsoever.

(e) The City and the Bond Registrar shall each give notices to DTC of such matters and at such times as are required by the Representation Letter, including the following:

- (i) with respect to notices of redemption; and
- (ii) with respect to any other notice required or permitted under this Bond Resolution to be given to any holder of a Bond.

All notices of any nature required or permitted hereunder to be delivered to a holder of a Bond in Book-Entry Form shall be transmitted to beneficial owners of such Bonds at such times and in such manners as shall be determined by DTC, the participants and indirect participants in accordance with the Book-Entry System and the Representation Letter.

(f) All payments of principal, redemption price of and interest on any Bonds in Book-Entry Form shall be paid to DTC (or Cede & Co.) in accordance with the Book-Entry System and the Representation Letter in same day funds by wire transfer.

2.07 The City shall cause to be kept by the Bond Registrar a bond register in which, subject to such reasonable regulations as the Bond Registrar may prescribe, the City shall provide for the registration of the Bonds and the registration of transfers of the Bonds entitled to be registered or transferred as herein provided. In the event of the resignation or removal of the Bond Registrar or its incapability of acting as such, the bond registration records shall be maintained at the office of the successor Bond Registrar as may be appointed by the city council. Upon surrender for transfer of any Bond at the principal corporate office of the Bond Registrar, the City shall execute and the Bond Registrar shall authenticate, if required by law or this Resolution, and deliver, in the name(s) of the designated transferee or transferees, one or more new Bonds of the like aggregate principal amount, as requested by the transferor.

2.08 Each Bond delivered upon transfer of or in exchange for or in lieu of any other Bond shall carry all of the rights to interest, accrued and unpaid and to accrue, which are carried by such other Bond. Each Bond shall be dated by the Bond Registrar as of the date of its authentication. The City and the Bond Registrar shall not be required to make any transfer or exchange of any Bonds called for redemption or to make any such exchange or transfer of the Bonds during the 15 days next preceding the date of the mailing of the notice of redemption in the case of a proposed redemption of the Bonds.

2.09 The City and the Bond Registrar may treat the person in whose name any Bond is registered as the owner of such Bond for the purpose of receiving payment of principal of and interest on such Bond and for all other purposes whatsoever, whether or not such Bond be overdue, and neither the City nor the Bond Registrar shall be affected by notice to the contrary.

2.10 The principal of and interest on the Bonds shall be payable by the Bond Registrar, as paying agent, in such funds as are legal tender for the payment of debts due the United States of America. The City shall pay the reasonable and customary charges of the Bond Registrar for the disbursement of principal and interest.

2.11 Delivery of the Bonds and payment of the purchase price shall be made at a place mutually satisfactory to the City and the Purchaser. Printed or typewritten and executed Bonds shall be furnished by the City without cost to the Purchaser. The Bonds, when prepared in accordance with this Resolution and executed, shall be delivered by or under the direction of the treasurer to the Purchaser upon receipt of the purchase price plus accrued

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interest.

Section 3. Form of the Bonds.

3.01 The Bonds shall be printed or typewritten in substantially the following form:

UNITED STATES OF AMERICA
STATE OF MINNESOTA
COUNTY OF ST. LOUIS

CITY OF DULUTH
GENERAL OBLIGATION IMPROVEMENT REFUNDING BOND, SERIES 2010E

R-__ \$_____

Interest Rate	Maturity Date	Date of Original Issue	CUSIP
	February 1,	November __, 2010	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: DOLLARS

The City of Duluth, in St. Louis County, Minnesota (the "City"), for value received, promises to pay to the registered owner specified above, or registered assigns, the principal amount specified above, on the maturity date specified above, and to pay interest on said principal amount to the registered owner hereof from the Date of Original Issue, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, until the principal amount is paid or discharged, said interest being at the interest rate per annum specified above. Interest is payable semiannually on February 1 and August 1 of each year (each referred to herein as an "Interest Payment Date") commencing on August 1, 2011. Both principal hereof and interest hereon are payable in lawful money of the United States of America by check or draft at the main office of Wells Fargo Bank, National Association of Minneapolis, Minnesota, as registrar, paying agent, authenticating agent and transfer agent (the "Bond Registrar"), or at the office of such successor bond registrar as may be designated by the City. The Bond Registrar shall make all interest payments with respect to this Bond directly to the registered owner hereof shown on the bond registration records maintained on behalf of the City by the Bond Registrar at the close of business on the 15th day of the month next preceding the Interest Payment Date (whether or not a business day) at such owner's address shown on said bond registration records, without, except for payment of principal on the Bond, the presentation or surrender of this Bond, and all such payments shall discharge the obligations of the City to the extent of the payments so made. Payment of principal shall be made upon presentation and surrender of this Bond to the Bond Registrar when due. For the prompt and full payment of such principal and interest as they become due, the full faith and credit of the City are irrevocably pledged.

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This Bond is one of a series issued by the City in the aggregate amount of \$2,340,000, all of like original issue date and tenor, except as to number, maturity date, denomination and interest rate, pursuant to: (i) the authority contained in Minnesota Statutes, Chapter 475, Section 475.67, Subdivisions 1 through 12 and all other laws thereunto enabling; and (ii) an authorizing resolution adopted by the governing body of the City on November 4, 2010 (the "Resolution"), for the purpose of providing money to refund in advance of maturity the outstanding principal amount of the City's General Obligation Improvement Bonds, Series 2002H, dated December 1, 2002, and a portion of the outstanding principal amount of the General Obligation Improvement Bonds, Series 2003H, dated December 1, 2003. The Bonds and interest thereon will be payable from special assessments levied against property specially benefitted by local public improvements as described in the Resolution.

The Bonds are not subject to optional redemption and prepayment prior to 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 and deliver, in exchange for this Bond, one or more new fully registered Bonds in the name of the transferee, of an authorized denomination, in an aggregate principal amount equal to the principal amount of this Bond, of the same maturity, and bearing interest at the same rate.

IT IS CERTIFIED AND RECITED that all acts and conditions required by the Charter of the City and by the laws and the Constitution of the State of Minnesota to be done, and to exist precedent to and in the issuance of this Bond in order to make it a valid and binding general obligation of the City in accordance with its terms, have been done and do exist in form, time, and 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

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entitled to any security or benefit under the Resolution until the Bond Registrar's Authentication Certificate hereon shall have been executed by the Bond Registrar by one of its authorized representatives.

IN WITNESS WHEREOF, the City of Duluth, in St. Louis County, Minnesota, by its City Council, has caused this Bond to be executed in its name by the facsimile signatures of the mayor and the clerk.

ATTEST:

Clerk

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 maturity date stated above and this Bond is one of the Bonds of the series issued pursuant to the Resolution hereinabove described.

WELLS FARGO BANK, NATIONAL ASSOCIATION
Bond Registrar

By _____
Authorized Representative

REGISTRATION CERTIFICATE

This Bond must be registered as to both principal and interest in the name of the owner on the books to be kept by Wells Fargo Bank, National Association, of Minneapolis, Minnesota, as Bond Registrar. No transfer of this Bond shall be valid unless made on said books by the registered owner or the owner's attorney thereunto duly authorized and similarly noted on the registration books. The ownership of the unpaid principal balance of this Bond and the interest accruing thereon is registered on the books of Wells Fargo Bank, National Association as Bond Registrar, in the name of the registered owner last noted below.

Date
11/___/2010

Registered Owner
Cede & Co.
c/o The Depository Trust Company
55 Water Street
New York, NY 10041
Federal Taxpayer I.D. No.: 13-
2555119

Signature of Bond
Registrar

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ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto _____

(Name and Address of Assignee)

_____ Social Security or Other
_____ Identifying Number of Assignee

the within Bond and all rights thereunder and does hereby irrevocably constitute and appoint _____

_____ attorney to transfer the said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____

NOTICE: The signature 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.

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Section 4. Escrow Agreement; Escrow Agent.

4.01 Wells Fargo Bank, National Association of Minneapolis, Minnesota, which is a suitable financial institution within the State of Minnesota whose deposits are insured by the Federal Deposit Insurance Corporation whose combined capital and surplus is not less than \$500,000, is hereby designated escrow agent (the "Escrow Agent") with respect to the February 1, 2011 maturities of the 2002 Bonds and the 2003 Bonds and the Refunded Bonds.

4.02 On or prior to the delivery of the Bonds, the mayor and the clerk are hereby authorized and directed to execute on behalf of the City an escrow agreement (the "Escrow Agreement") with the Escrow Agent in substantially the form now on file with the clerk as Public Document No. 10-1104-03. The execution and delivery of the Escrow Agreement by the mayor and the clerk, in the form presented to the City Council with such changes, omissions, insertions and revisions as the mayor and the clerk deem advisable is hereby approved, and the execution by such officers shall be conclusive evidence of such approval. All essential terms and conditions of the Escrow Agreement, including payment by the City of reasonable charges for the services of the Escrow Agent, are hereby approved and adopted and made a part of this Resolution, and the City covenants that it will promptly enforce all provisions thereof in the event of default thereunder by the Escrow Agent.

Section 5. Covenants, revenues, accounts and tax levies.

5.01 (a) Debt service fund. For the convenience and proper administration of the monies to be borrowed and repaid on the Bonds and to provide adequate and specific security for the Purchaser and holders from time to time of the Bonds, there is hereby created a separate account within the special assessment debt service fund to be designated the 2010E Improvement Refunding Bonds Debt Service Account (the "Debt Service Fund") to be administered and maintained by the treasurer as a bookkeeping account, separate and apart from all other accounts maintained in the official financial records of the City. The Debt Service Fund shall be maintained in the manner herein specified until all of the Bonds and interest thereon have been fully paid. To the Debt Service Fund 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 Refunded Bonds; (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 2002 Bonds (Resolution No. 02-0792R) and the 2003 Bonds (Resolution No. 03-0839R) (the "Prior Resolutions") after payment of principal and interest on the 2002 Refunded Bonds on the 2002 Bonds Redemption Date and on the 2003 Refunded Bonds on the 2003 Bond Redemption Date; (iii) all special assessments levied for the projects listed in Section 1.01 of the Prior Resolutions; (iv) any collections of ad valorem taxes hereafter levied for the payment of the Bonds and interest thereon; (v) all investment earnings on funds in the Debt Service Fund; (vi) accrued interest, if any, received from the Purchaser upon delivery of the Bonds to the extent not required to fund the Escrow Account (the "Accrued Interest"); (vii) any amount of additional interest permitted by Section 475.56 of the Act paid by the Purchaser (the "Additional Interest"), to the extent not required to fund the Escrow Account; (viii) all taxes pledged to repayment of the Refunded Bonds in the Prior Resolutions hereafter collected pursuant to levies made in the Prior Resolutions; and (ix) any and all other monies which are properly available and are appropriated by the City to the Debt Service Fund including taxes levied in Section 5.02 hereof. The amount of any surplus remaining in the Debt Service Fund when the Bonds and interest thereon are paid shall be used as provided in Section 475.61, Subdivision 4 of the Act.

(b) Escrow account.

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(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 the Debt Service Fund or are not to be used for payment of costs of issuance of the Bonds; (b) Accrued Interest; (c) Additional Interest [amounts referenced in clauses (a), (b) and (c) are herein referred to as the "Proceeds"]; (d) funds of the City in an amount sufficient to pay the principal of and interest on the 2002 Bonds and the 2003 Bonds due and payable on February 1, 2011 (the "Funds"); and (e) investment earnings on such monies referenced in clauses (a), (b), (c) and (d), for the payment of (i) principal and interest due on the 2002 Bonds on the 2002 Bonds Redemption Date; (ii) the principal of the 2002 Refunded Bonds called for redemption and prepayment on the 2002 Bonds Redemption Date; (iii) principal of and interest due on the 2003 Bonds on February 1, 2011; (iv) interest on the 2003 Refunded Bonds on August 1, 2011, and on February 1, 2012; and (v) the principal of the 2003 Refunded Bonds called for redemption and prepayment on the 2003 Bonds 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, which investments will provide sufficient funds together with any cash or other funds retained in the Escrow Account for the 2002 Bonds for the payment of principal and interest due on the 2002 Bonds on the 2002 Bonds Redemption Date and the principal of the 2002 Refunded Bonds called for redemption and prepayment on the 2002 Bonds Redemption Date, and for the 2003 Bonds for the payment of principal and interest on the 2003 Bonds due on February 1, 2011, for the interest on the 2003 Refunded Bonds on August 1, 2011, and February 1, 2012, and the principal of the 2003 Refunded Bonds called for redemption and prepayment on the 2003 Bonds Redemption Date.

(iii) From the Escrow Account there shall be paid: (a) all principal of and interest to be paid on the 2002 Bonds on the 2002 Bonds Redemption Date; (b) the principal of the 2002 Refunded Bonds called for redemption and prepayment on the 2002 Bonds Redemption Date; (c) all principal of and interest due on the 2003 Bonds on February 1, 2011; (d) interest on the 2003 Refunded Bonds on August 1, 2011, and February 1, 2012; and (e) the principal of the 2003 Refunded Bonds called for redemption and prepayment on the 2003 Bonds Redemption Date.

(iv) The Escrow Account for the 2002 Bonds as set forth above is irrevocably appropriated to the payment of the principal of and interest due on the 2002 Bonds on the 2002 Bonds Redemption Date and to prepayment and redemption of the 2002 Refunded Bonds due by reason of redemption on the 2002 Bonds Redemption Date, and for the 2003 Bonds as set forth above for the payment of principal of and interest on the 2003 Bonds due on February 1, 2011, for the interest on the 2003 Refunded Bonds on August 1, 2011, and February 1, 2012, and to prepayment and redemption of the 2003 Refunded Bonds due by reason of redemption and prepayment on the 2003 Bonds Redemption Date. The monies in the Escrow Account for the Bonds shall be used solely for the purposes herein set forth and for no other purpose, except that any surplus in the Escrow Account may be remitted to the City all in accordance with the Escrow Agreement. Any monies remitted to the City upon termination of the Escrow Agreement shall be deposited in the Debt Service Fund.

(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.

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(c) The construction funds created for the 2002 Bonds and the 2003 Bonds have previously been terminated and all bond proceeds therein have been expended.

(d) The city treasurer is authorized to pay the costs of issuance of the Bonds in the amount of \$29,700.00.

5.02 The city council hereby declares that it has assessed against benefitted property not less than 20% of the cost of the projects financed by each of the 2002 Bonds and 2003 Bonds. The City further declares that it has completed the special assessment process, including any and all supplemental assessments or reassessments that were required to lawfully assess the benefitted property.

5.03 It is estimated that the special assessments levied and appropriated to the Debt Service Fund will be received at the times and in amounts not less than five percent in excess of the amounts needed to meet when due the principal and interest payments on the Bonds 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 6. Refunding; findings; redemption of Refunded Bonds.

6.01 (a) It is hereby found and determined, based upon information presently available from the City's financial advisers, that as of the date of issuance of the Bonds, the issuance of the Bonds will result in a reduction of debt service cost to the City. In accordance with Section 475.67, Subdivision 12 of the Act, as of the date of issuance of the Bonds, the present value of the dollar amount of the debt service on the Bonds, computed to their stated maturity dates, after deducting any premium, is lower by at least three percent than the present value of the dollar amount of debt service, on the Refunded Bonds, exclusive of any premium, computed to their stated maturity dates.

(b) It is hereby found and determined that the Proceeds and Funds available and appropriated to the Escrow Account for the 2002 Bonds as set forth in Section 5 will be sufficient, together with the permitted earnings on the investment of the Escrow Account, to pay the principal and interest due on the 2002 Bonds on the 2002 Bonds Redemption Date and to prepayment and redemption of the 2002 Refunded Bonds due by reason of redemption on the 2002 Bonds Redemption Date, and for the 2003 Bonds, for the payment of principal of and interest on the 2003 Bonds due on February 1, 2011, for the interest on the 2003 Refunded Bonds on August 1, 2011, and February 1, 2012, and the principal of the 2003 Refunded Bonds called for redemption and prepayment on the 2003 Bonds Redemption Date.

6.02 The Refunded Bonds shall be redeemed and prepaid in accordance with their terms and in accordance with the terms and conditions set forth in the forms of notices of call for redemption attached to the Escrow Agreement, which terms and conditions are hereby approved and incorporated herein by reference. The Escrow Agent is hereby authorized and directed to send written notice of the call for redemption to the paying agent or bond registrar, as the case may be, and bond insurance company (if any), for the Refunded Bonds in accordance with their terms and the Escrow Agreement.

6.03 The Escrow Agent is authorized and directed to cause to be provided a material event notice regarding the refunding of the 2002 Refunded Bonds and the defeasance of the portion of the 2003 Bonds in accordance with the continuing disclosure certificates of the City dated December 1, 2002, and delivered in connection with the 2002 Bonds, and dated December 1, 2003, and delivered in connection with the 2003 Bonds.

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Section 7. Defeasance.

7.01 When all Bonds and all interest thereon have been discharged as provided in this paragraph, all pledges, covenants and other rights granted by this Resolution to the holders of the 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 of and interest on the Bonds shall remain in full force and effect. The City may discharge all Bonds which are due on any date by depositing with the Bond Registrar on or before that date a sum sufficient for the payment thereof in full. If any Bond should not be paid when due, it may nevertheless be discharged by depositing with the Bond Registrar designated in Section 2.05 hereof a sum sufficient for the payment thereof in full with interest accrued to the date of such deposit. The City may also at any time discharge and cause defeasance of the Bonds in their entirety by complying with the provisions of Section 475.67 of the Act, except that the funds deposited in escrow in accordance with said provisions may (to the extent permitted by law) but need not be, in whole or in part, proceeds of bonds as therein provided, without the consent of any bondholders.

Section 8. Certificate of proceedings.

8.01 The clerk is directed to file with the county auditor a certified copy of this Resolution and such other information as the county auditor may require, and to obtain from the county auditor a certificate stating that the Bonds have been duly entered on his register.

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 mayor and clerk are hereby authorized and directed to certify that they have examined the official statement prepared and circulated in connection with the issuance and sale of the Bonds and that to the best of their knowledge and belief the official statement is a complete and accurate representation of the facts and representations made therein as of the date of the official statement.

Section 9. Tax covenants.

9.01 The City covenants and agrees with the holders of the Bonds that the City will (i) take all action on its part necessary to cause the interest on the Bonds to be exempt from federal income taxes including, without limitation, restricting, to the extent necessary, the yield on investments made with the proceeds of the Bonds and investment earnings thereon, making required payments to the federal government, if any, and maintaining books and records in a specified manner, where appropriate, and (ii) refrain from taking any action which would cause interest on the Bonds to be subject to federal income taxes, including, without limitation, refraining from spending the proceeds of the Bonds and investment earnings thereon on certain specified purposes.

9.02 (a) No portion of the proceeds of the Bonds shall be used directly or indirectly to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments, except (i) for a reasonable temporary period until such proceeds are needed for the purpose for which the Bonds were issued, and (ii) in addition to the above, in an amount not greater than the lesser of five percent of the proceeds of the Bonds or \$100,000. To this effect, any proceeds of the Bonds and any sums from time to time

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held in the Debt Service Fund (or any other City account which will be used to pay principal and interest to become due on the Bonds) in excess of amounts which under the applicable federal arbitrage regulations may be invested without regard as to yield shall not be invested at a yield in excess of the applicable yield restrictions imposed by the arbitrage regulations on such investments after taking into account any applicable temporary periods or minor portion made available under the federal arbitrage regulations.

(b) The proceeds of the Bonds and money in the Debt Service Fund shall not be invested in obligations or deposits issued by, guaranteed by or insured by the United States or any agency or instrumentality thereof if and to the extent that such investment would cause the Bonds to be federally guaranteed within the meaning of Section 149(b) of the Internal Revenue Code of 1986, as amended (the "Code").

(c) The City hereby covenants not to use the proceeds of the Bonds, or to cause or permit them to be used, in such a manner as to cause the Bonds to be "private activity bonds" within the meaning of Sections 103 and 141 through 150 of the Code.

9.03 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.

9.04 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 2010A (the "Series 2010A Bonds"), General Obligation Capital Equipment Notes, Series 2010B (the "Notes"), and General Obligation Utilities Revenue Refunding Bonds, Series 2010C (the "Series 2010C Bonds"). The Bonds will not be paid out of substantially the same source of funds as the Series 2010A Bonds, the Notes and the 2010C Bonds; consequently, the Bonds will not be combined with any of them for a single issue under Treasury Regulations Section 1.150-1(c).

9.05 (a) The City covenants and certifies to and for the benefit of the owners of the Bonds that no use will be made of the proceeds of the Bonds, which will cause the Bonds to be arbitrage bonds within the meaning of Section 148(a) of the Code and the Treasury Regulations promulgated thereunder. Pursuant to such covenant, the City hereby agrees to comply throughout the term of the issue of the Bonds with the requirements of Section 148 of the Code and any Treasury Regulations promulgated thereunder; to this end, the City shall:

(i) maintain records identifying all "gross proceeds" (as defined in Section 148(f)(6)(B) of the Code) attributable to the Bonds, the yield at which such gross proceeds are invested, any arbitrage profit derived therefrom (earnings in excess of the yield on the Bonds) and any earnings derived from the investment of such arbitrage profit;

(ii) make, or cause to be made as of the end of each Bond Year, the

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

annual determinations of the amount, if any, of excess arbitrage required to be paid to the United States by the City (hereinafter, the "Rebate Amount");

(iii) pay, or cause to be paid, to the United States at least once every five Bond Years the amount, if any, which is required to be paid to the United States, including the last installment which shall be made no later than 60 days after the day on which the Bonds are paid in full;

(iv) not invest, or permit to be invested, "gross proceeds" in any acquired non-purpose obligations so as to deflect arbitrage otherwise payable to the United States as a "prohibited payment" to a third party;

(v) retain all records of the annual determinations of the foregoing amounts until six years after the Bonds have been fully paid; and

(vi) in order to comply with the foregoing paragraph, the City shall determine the Rebate Amount within 30 days after the close of each Bond Year and upon payment in full of the Bonds; upon each such determination, the City shall deposit in the Rebate Fund the Rebate Amount so determined; the City shall separately account for the earnings from the investment of the Rebate Amount and such earnings shall become part of the Rebate Amount.

(b) For purposes of this section, "Bond Year" shall mean the 12-month period beginning on the date of issuance of the Bonds or such other 12-month period designated by the Board which is permitted by the Code or any Treasury Regulation promulgated thereunder.

Section 10. 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. 10-1104-02.

Resolution 10-0564 was unanimously adopted.

Approved November 4, 2010

DON NESS, Mayor

- - -

The meeting was adjourned at 5:25 p.m.

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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, November 8, 2010, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: None -- 0

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

10-1108-01 Minnesota state auditor Duluth/North Shore Sanitary District audit report for the year ended December 31, 2009. -- Received

10-1108-02 Peter S. Lambert and Jeffrey B. Smith acceptance of the terms and conditions of a concurrent use permit granted by Ordinance No. 10055 on October 11, 2010. -- Received

10-1108-12 Mark Wick communication regarding the proposed intent to improve a portion of Anderson Road (10-0569R). -- Received

10-1108-11 The following communications regarding the proposed request for the administration to review the feasibility of creating four way stops along the intersections of First through Fourth streets and 12th, 14th and 19th avenues East (10-0575R): (a) Gerald Cleveland; (b) Andy Golz; (c) Dave and Ann Kreager. -- Received

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REPORTS FROM OTHER OFFICERS

10-1108-03 Assessor letters of sufficiency regarding petitions to vacate:

(a) A 26 foot easement in Block 69, Oneota, from 46th Avenue West north to the north property line of Lot 4, Block 69, Oneota;

(b) The alley between Blocks 36 and 40, Portland Division of Duluth;

(c) Portions of 45th Avenue West. -- Received

- - -

REPORTS OF BOARDS AND COMMISSIONS

10-1108-10 Alcohol, gambling and tobacco commission minutes of: (a) July 7; (b) August 4, 2010, meetings. -- Received

10-1108-04 Duluth airport authority: (a) Minutes of September 28, 2010, meeting; (b) Unaudited balance sheet of August 31, 2010. -- Received

10-1108-05 Duluth economic development authority minutes of September 15, 2010, meeting. -- Received

10-1108-06 Duluth public arts commission minutes of September 20, 2010, meeting. -- Received

10-1108-07 Duluth transit authority: (a) Income statement of July 2010; (b) Minutes of: (1) August 5; (2) August 25, 2010, meetings. -- Received

10-1108-08 Library board minutes of September 28, 2010, meeting. -- Received

10-1108-09 Parks and recreation commission minutes of September 8, 2010, meeting. -- Received

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MOTIONS AND RESOLUTIONS

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

CONSENT AGENDA

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

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 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. 10-1108-13; payment by the city will be made from the General Fund 110, Agency 700, Organization 1407, Object 5407.

Resolution 10-0573 was unanimously adopted.

Approved November 8, 2010

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. 10-1108-14, with the Minnesota department of natural resources for the maintenance of the Duluth snowmobile trails for the 2010-2011 season in the amount of \$13,925; said funds to be deposited in the General Fund 110-121-1217-2150-4226.

Resolution 10-0565 was unanimously adopted.

Approved November 8, 2010

DON NESS, Mayor

- - -

RESOLVED, that for public health reasons and by Resolution of Intent numbered 10-0544 the council did request the administration to prepare plans and specifications for the construction of approximately 110 feet of sanitary sewer in Eighth Avenue East beginning in Eighth Street Alley and extending northerly (City Project No. 0941SN). It is hereby ordered that Eighth Avenue East from Eighth Alley to Eighth Street be improved.

FURTHER RESOLVED, that said work be done by contract, and that the estimated total cost of said improvement as estimated by the city engineer is \$28,700, assessable to benefitting properties and payable from Special Assessment Fund 0410, Agency 038, Object 5530, City Project No. 0941SN.

FURTHER RESOLVED, that assessment shall be levied upon lands benefitting per the preliminary assessment roll and may be paid in 15 annual installments at the prime interest rate plus 1.50 percent.

FURTHER RESOLVED, that the council order in subject project in accordance with the provisions of Section 61 of the City Charter, and that said improvement be hereby ordered.

Resolution 10-0567 was unanimously adopted.

Approved November 8, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, a copy of which is on file in the office of the city clerk as Public Document

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

No. 10-1108-15, with the Rendfield Land Company, Inc., for the maintenance of window coverings on the south-facing skywalk window of the Fur Storage Building property elevator and stair tower.

Resolution 10-0572 was unanimously adopted.

Approved November 8, 2010

DON NESS, Mayor

- - -

RESOLVED, that Change Order No. 1 to Contract 21234 with Stack Brothers Mechanical Contractors, Inc., is hereby approved in the replacement of the McCarthy Manor sanitary sewer near Arlington Avenue in Duluth, Minnesota, (part of the new police headquarters project) for an increase of \$30,000 and a total contract total of \$73,800, payable from the Capital Improvements Fund 450, Department/Agency 030, Object 5520, Project CP2009-0928B, and a total contract amount of \$73,800.

Resolution 10-0574 was unanimously adopted.

Approved November 8, 2010

DON NESS, Mayor

- - -

BY COUNCILOR GAUTHIER:

RESOLVED, that the city council hereby requests the parking commission and administration review the feasibility of removing parking meters currently installed from 19th Avenue West to 22nd Avenue West and from Michigan Street to First Street, which area is commonly referred to as the Lincoln Park Business District.

Resolution 10-0576 was unanimously adopted.

Approved November 8, 2010

DON NESS, Mayor

- - -

RESOLVED, that in accordance with Section 33-84 of the Duluth City Code, 1959, as amended, parking shall be allowed on both sides of Grand Avenue between 58th Avenue West and 59th Avenue West for a maximum of three hours between 8:30 AM and 5:30 PM, Monday through Friday.

Resolution 10-0559 was unanimously adopted.

Approved November 8, 2010

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:

The west side of St. Louis Avenue from 86 feet north of South 15th Street to 245 feet south of South 15th Street on Park Point.

Resolution 10-0566 was unanimously adopted.

Approved November 8, 2010

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, effective upon installation of signing as such, on the following street:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Both sides of Anderson Road from Haines Road to Chambersburg Avenue.
Resolution 10-0570 was unanimously adopted.
Approved November 8, 2010
DON NESS, Mayor

- - -

The following resolutions were also considered:

Resolution 10-0552, in the matter of the off sale intoxicating liquor license of J&J Jauss, Inc. (Gary Liquors), 1431 Commonwealth Avenue, was introduced by Councilor Cuneo for discussion.

President Anderson moved to amend the last paragraph of the resolution to delete the phrases:

(a) "with \$250 of said fine stayed for a period of one year and abated if licensee has no same or similar violations from the violation date of March 4, 2010"; and

(b) "said one day stayed for a period of one year and abated if the licensee has no same or similar violations for a period of one year from the violation date of March 4, 2010" and insert the phrase "to occur on the second Monday following council passage";

which motion was seconded and carried upon the following vote:

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

Nays: Councilor Stauber -- 1

Resolution 10-0552, 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 August 4, 2010, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of J&J Jauss, Inc., d/b/a Gary Liquors, 1431 Commonwealth Avenue, and has submitted its report to the city council of the city of Duluth as Public Document No. 10-1108-16;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on November 8, 2010, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 10-1108-16 regarding any suspension, revocation and/or civil penalty relating to the off sale intoxicating liquor license of J&J Jauss, Inc., d/b/a Gary Liquors, 1431 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: payment of a \$750 penalty payable within 30 days of final council action; and a one day suspension of the licensee's liquor license to occur on the second Monday following council passage.

Resolution 10-0552, as amended, was adopted upon the following vote:

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

Nays: Councilor Stauber -- 1

Approved November 8, 2010

DON NESS, Mayor

- - -

Resolution 10-0553, in the matter of the off sale intoxicating liquor license of George's Liquor, Inc. (George's Liquor), 1340 West Arrowhead Road, was introduced by Councilor Cuneo for discussion.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

President Anderson moved to amend the last paragraph of the resolution to:

(a) Delete the second reference to "60 days" and insert "30 days";

(b) Delete the following phrase: "said one day stayed for a period of one year and abated if the licensee has no same or similar violations for a period of one year from the violation date of March 4, 2010" and insert the phrase "to occur on the second Monday following council passage";

which motion was seconded and carried upon the following vote:

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

Nays: Councilor Stauber -- 1

Resolution 10-0553, 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 August 4, 2010, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of George's Liquor, Inc., d/b/a George's Liquor, 1340 West Arrowhead Road, and has submitted its report to the city council of the city of Duluth as Public Document No. 10-1108-17;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on November 8, 2010, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 10-1108-17 regarding any suspension, revocation and/or civil penalty relating to the off sale intoxicating liquor license of George's Liquor, Inc., d/b/a George's Liquor, 1340 West Arrowhead Road, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: payment of a \$750 penalty within 60 days of final council action; and payment of the previously stayed \$250 penalty within 30 days of final council action; and a one day suspension of the licensee's liquor license to occur on the second Monday following council passage.

Resolution 10-0553, as amended, was adopted upon the following vote:

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

Nays: Councilor Stauber -- 1

Approved November 8, 2010

DON NESS, Mayor

- - -

BY COUNCILOR HARTMAN:

WHEREAS, Duluth is home to over 3,000 active military members and 14,000 veterans; and

WHEREAS, a Duluth Yellow Ribbon steering committee, consisting of community members, were convened by Mayor Don Ness to pursue the Yellow Ribbon designation for Duluth and to engage the community in support of military service members and their families; and

WHEREAS, Duluth developed an action plan to identify resources and programs for sustaining its military service members and their families during deployment and re-integration; and

WHEREAS, on September 22, 2010, Governor Pawlenty recognized Duluth as a Yellow Ribbon City; and

WHEREAS, Duluth is the only city of the first class to be recognized with the honor.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

THEREFORE, BE IT RESOLVED, that the city council, in recognition of the Yellow Ribbon steering committee's work and Duluth's Yellow Ribbon designation, hereby pledges its continuing support for this initiative and requests that the administration designate a city representative to the committee and requests that it continue to help host and promote the meetings and events related to Beyond the Yellow Ribbon of Duluth and the Duluth Yellow Ribbon committee.

Resolution 10-0577 was unanimously adopted.
Approved November 8, 2010
DON NESS, Mayor

- - -

Resolution 10-0575, requesting the administration review the feasibility of creating four way stops along the intersections of First through Fourth streets and 12th, 14th and 19th avenues East, was introduced by President Anderson for discussion.

Councilor Gauthier moved to amend the resolution as follows:

- (a) In the title, add the phrase "AND/OR STOP LIGHTS" after the phrase "FOUR WAY STOPS";
 - (b) In the body, add the phrase "and/or stop lights" after the phrase "installing stop signs"; and after the phrase "19th avenues East" insert the word "potentially";
 - (c) In the statement of purpose, insert the word "potentially" after the phrase "the feasibility of";
- which motion was seconded and unanimously carried.

Resolution 10-0575, as amended, was adopted as follows:

BY PRESIDENT ANDERSON:

RESOLVED, that the city council hereby requests the administration review the feasibility of installing stop signs and/or stop lights along First through Fourth streets at the intersections of 12th, 14th and 19th avenues East, potentially creating four way stops at those intersections.

Resolution 10-0575, as amended, was unanimously adopted.
Approved November 8, 2010
DON NESS, Mayor

- - -

Resolution 10-0569, of intent to improve a portion of Anderson Road and to assess a portion of the costs thereof, was introduced by Councilor Gauthier for discussion.

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

Mark Wick explained that a sewer and water line were put in on one side of Anderson Road five years ago, and at the time they questioned why the road was not reconstructed then. He continued saying that they were told that it was on the Minnesota state aid (MSA) plan to be done in 2009, and now the Anderson Road reconstruction in 2011 will be assessed to the homeowners, which is on top of the sewer assessment and would create a heavy financial burden. Mr. Wick questioned if there was a way to get the assessment lowered or do a smaller project on the road.

Councilor Gauthier reviewed that the first community meeting did not go well with the public where the citizens shared their thoughts that there was going to be MSA funds for the road reconstruction. He continued by explaining that the second meeting went better as it focused on street design, but the neighbors also voiced their concern on a second assessment on top of their current sewer assessment. Councilor Gauthier expressed his desire to see the

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

terms of the assessment be extended to reduce the payment and that the administration would continue to work with the neighbors to come up with a better plan.

Chief Administrative Officer David Montgomery explained that large assessments are not unusual in the city and reviewed that the sewer system put in five years ago was put in at the request of the citizens. He also explained that proposed budgeted streets in MSA plans come with no guarantees to be done in that year and reminded the council that the assessment process was changed in 2009. Mr. Montgomery also stated that if the sewer system was to be done along with the road reconstruction this year, the homeowners would be assessed for both the sewer and the road reconstruction. He continued by saying that he is going to work with the special assessment board to see if the assessments can be stretched to lower the impact on homeowners.

Resolution 10-0569 was adopted as follows:

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

Anderson Road from Haines Road to Chambersburg Avenue.

Resolution 10-0569 was adopted upon the following vote:

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

Nays: Councilor Fosle -- 1

Approved November 8, 2010

DON NESS, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

ORDINANCE TABLED

BY PRESIDENT ANDERSON

10-053 - AN ORDINANCE RELATING TO THE PLANTING, MAINTAINING AND REMOVAL OF VEGETATION ON PUBLIC AND PRIVATE PROPERTY; ADDING A NEW DIVISION 6 TO ARTICLE 2 OF CHAPTER 20 AND AMENDING ARTICLE IV OF CHAPTER 35 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

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

President Anderson moved to amend Section 4 of the ordinance by amending subsection (b) of Section 35-27 to add the language "provided that, prior to commencing performance of any other of such duties, a tree inspector shall endeavor to provide verbal notice to an occupant of the subject premises of his identity and the purpose of his entry onto the premises," which motion was seconded for discussion.

Councilor Fedora explained that he did not like the wording in this amendment, stating that the city needs to give verbal notice to the resident and introduced his amendment that would notify residents in the area by mail that city workers will be in on their property

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

inspecting trees. The amendment would amend Section 4 of the ordinance by amending subsection (b) of Section 35-27 to add the language "provided that, prior to commencing performance of any other of such duties, a tree inspector shall have sent written notice by U.S. mail addressed to 'occupant' of the subject premises notifying such occupant of his intent to enter upon the premises to perform such duties and the purpose of his entry onto the premises, which notice shall have been sent at least two business days prior to such proposed entry," which motion was seconded for discussion.

Councilor Fosle reviewed that letters are sent to homeowners for the I&I program before an inspection takes place.

President Anderson's amended carried upon the following vote:

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

Nays: Councilor Fedora and Fosle -- 2

Councilor Gardner moved to amend the ordinance as follows:

(a) Amend Section 2 of the ordinance by inserting a new subsection (a) of Section 35-26 to read as follows and by re-lettering the remaining sections accordingly:

"(a) Boulevard. That portion of a public right-of-way lying between an improved public street and a public sidewalk;"

(b) Amend Section 2 of the ordinance by amending subsection (f) of Section 35-26 to read as follows:

"(f) Public property. All property owned by the city, and all property located within the improved portion of any street or highway easement under the jurisdiction of the city including boulevards";

(c) Amend Section 6 of the ordinance to read as follows:

"Sec. 35-28. Planting and damaging vegetation on public property.

(a) Except as otherwise provided for in this Article, no person shall:

(1) Plant any vegetation on public property without having received the prior written approval of a tree inspector;

(2) Damage, cut, carve, kill or injure any vegetation located on public property;

(3) Attach any rope, wire or other contrivance or affix a sign to any tree, shrub or plant located on public property without the prior written approval of a tree inspector;

(4) Dig in or otherwise disturb any vegetation located on public property; ignite, build or enlarge any fire which may damage vegetation located on public property; or in any other way injure or impair the natural beauty or usefulness of any vegetation located on public property;

(b) The provisions of this Section shall not apply to vegetation located on boulevards except for trees having a diameter in excess of three-quarters of an inch located on boulevards;

(c) Dig in or otherwise disturb any vegetation located on public property; ignite, build or enlarge any fire which may damage vegetation located on public property; or in any other way injure or impair the natural beauty or usefulness of any vegetation located on public property,"

which motion was seconded and unanimously carried.

President Anderson moved to amend Section 14 of the ordinance to add the language "or on January 1, 2011, whichever is later," which motion was seconded and unanimously

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

carried.

Councilor Fedora withdrew his previous amendment.

Councilor Fedora moved the amend Section 6 of ordinance to read as follows:

“Sec. 35-28. Planting and damaging vegetation on public property.

(a) Except as otherwise provided for in this Article, no person shall:

(1) Plant any vegetation on public property without having received the prior written approval of a tree inspector;

(2) Damage, cut, carve, kill or injure any vegetation located on public property;

(3) Attach any rope, wire or other contrivance or affix a sign to any tree, shrub or plant located on public property without the prior written approval of a tree inspector;

(4) Dig in or otherwise disturb any vegetation located on public property; ignite, build or enlarge any fire which may damage vegetation located on public property; or in any other way injure or impair the natural beauty or usefulness of any vegetation located on public property;

(b) The provisions of this Section shall not apply to work performed by or for the owners of the underlying fee interest in property which work is performed on vegetation located on boulevards or street rights-of-way except for trees having a diameter in excess of one inch,”

which motion was seconded for discussion.

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

Ethan Perry, representing the tree commission, stated that the amendment needs to be clearly stated that pruning should be done by city crews, as bad pruning can damage a tree and cost the city money if it has to be replaced.

Councilor Fedora stated the purpose of this amendment is to allow people to clean up the suckers on the base of the tree without having to have the city crews come out and take care of it.

Councilor Fedora’s amendment failed upon the following vote:

Yeas: Councilors Fedora, Fosle and Stauber -- 3

Nays: Councilors Boyle, Cuneo, Gardner, Gauthier, Hartman and President Anderson -- 6

City Attorney Gunnar Johnson stated that with all the amendments, the ordinance needs to be considered a first reading tonight with a second reading at the next meeting.

- - -

The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR FEDORA

10-058 - AN ORDINANCE AMENDING CHAPTER VIII, SECTION 54, OF THE CITY OF DULUTH HOME RULE CHARTER, 1912, AS AMENDED, PERTAINING TO ESTABLISHMENT OF A PARKS FUND IN CITY TREASURY.

- - -

INTRODUCED BY COUNCILOR STAUBER

10-060 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, ZONING DISTRICT MAP NO. 35 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-4, APARTMENT RESIDENTIAL DISTRICT, TO MC, MEDICAL CENTER DISTRICT, PROPERTY AT THE

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

NORTHWEST CORNER OF TENTH AVENUE EAST AND SECOND STREET (ST. LUKE'S HOSPITAL).

- - -

INTRODUCED BY PRESIDENT ANDERSON

10-059 - AN ORDINANCE AMENDING CHAPTER III, SECTION 13, OF THE CITY OF DULUTH HOME RULE CHARTER, 1912, AS AMENDED, PERTAINING TO ORDINANCE PUBLICATION REQUIREMENTS.

- - -

The following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR STAUBER

10-057 (10059) - AN ORDINANCE TO RENAME STREETS IN COFFEE CREEK PARK DEVELOPMENT AS FOLLOWS: MOCHA WAY TO VALLEY VIEW LANE, JAVA LANE TO VISTA VIEW LANE, ESPRESSO COURT TO MALLARD LANE, CAFÉ COURT AND CAFÉ AVENUE TO DEER VALLEY ROAD AND LATTE LANE TO CLEARWATER COURT.

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

- - -

INTRODUCED BY COUNCILOR GAUTHIER

10-056 (10060) - AN ORDINANCE ESTABLISHING A PERMIT PROGRAM FOR LONG-TERM DISABILITY PARKING AND SETTING FORTH THE TERMS THEREOF, ADDING NEW SECTIONS 33-88.3.1 AND 33-88.3.2 OF THE CODE.

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

- - -

The meeting was adjourned at 8:20 p.m.

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

- - -

ORDINANCE NO. 10059

AN ORDINANCE TO RENAME STREETS IN COFFEE CREEK PARK DEVELOPMENT AS FOLLOWS: MOCHA WAY TO VALLEY VIEW LANE, JAVA LANE TO VISTA VIEW LANE, ESPRESSO COURT TO MALLARD LANE, CAFÉ COURT AND CAFÉ AVENUE TO DEER VALLEY ROAD AND LATTE LANE TO CLEARWATER COURT.

The city of Duluth does ordain:

Section 1. That the following public thoroughfares shall be and are hereby renamed as follows: Mocha Way to Valley View Lane, Java Lane to Vista View Lane, Espresso Court to Mallard Lane, Café Court and Café Avenue to Deer Valley Road, and Latte Lane to Clearwater Court.

Section 2. That the city clerk, upon passage of this ordinance, shall:

(a) Notify the director of public works to proceed with erection of street signs relating to such change;

(b) Notify the following agencies and utilities of the specific changes:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

- (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, department of public works and utilities;
- (8) City assessor;
- (9) City 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: December 12, 2010)

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

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

Nays: None -- 0

Passed November 8, 2010
Approved November 8, 2010
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10060

AN ORDINANCE ESTABLISHING A PERMIT PROGRAM FOR LONG-TERM DISABILITY PARKING AND SETTING FORTH THE TERMS THEREOF, ADDING NEW SECTIONS 33-88.3.1 AND 33-88.3.2 OF THE CODE.

The city of Duluth does ordain:

Section 1. That Chapter 33 of the Duluth City Code, 1959, as amended, is hereby amended by the addition of a new Section 33-88.3.1 thereof, which reads as follows:

Sec. 33-88.3.1. Long-term disability parking program--created.

(a) Program created. A long-term disability parking program is hereby created to govern the use of parking privileges granted under this Article to persons with disabilities and to accord additional privileges to such persons under the terms and conditions hereinafter set forth;

(b) Persons eligible. All persons to whom a certificate has been issued pursuant to Minnesota Statutes Section 169.345 shall be deemed to be a permittee under the program established by this Section and eligible to exercise the privileges granted hereunder and under applicable statutes, subject to the limitations herein contained;

(c) Metered parking. Notwithstanding the provision of Minnesota Statutes Section 169.345, subdivision 1(2), no permittee shall park for more than four hours at a parking meter which is otherwise limited to parking for not more than one hour, 90 minutes or two hours;

(d) Contract parking discount. At all city owned and operated parking

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

ramps and parking lots at which monthly parking is offered to the general public on a contract basis, the city shall offer such parking to permittees with vehicles displaying appropriate certification at a cost of 50 percent of the cost at which such parking is offered to other members of the public and otherwise on the same basis at which such parking is offered to the general public.

Section 2. That Chapter 33 of the Duluth City Code, 1959, as amended, is hereby amended by the addition of a new Section 33-88.3.2 thereof, which reads as follows:

Sec. 33-88.3.2. Special needs permit.

(a) Issuance. Upon proof of qualification therefore, the city's human rights officer shall issue a special needs permit to persons meeting the qualifications set forth in paragraph (b) below, upon payment of a monthly fee established pursuant to Section 31-6 of this Code, which permit shall continue to be valid for as long as the permittee pays the monthly fee or until such time as permittee no longer so qualifies, whichever is sooner. Upon ceasing to so qualify, the permittee shall be obligated to return such permit to the human rights officer. In addition, if the human rights officer determines that a permittee no longer qualifies, the human rights officer may require the permittee to return such permit. Failure to so turn in such permit or to respond to the reasonable request of the human rights officer therefore shall be a misdemeanor;

(b) Eligibility. Any disabled person who meets the following qualifications shall be entitled to a special needs permit hereunder:

(1) Is a "physically disabled person" as defined in Minnesota Statutes Section 169.345, subd. 2(f);

(2) Is regularly employed for not less than 20 hours per week;

(3) Has provided a written certification by a physician, physician's assistant, advanced practice registered nurse or chiropractor licensed to practice in the states of Minnesota or Wisconsin that unless such person is allowed to park on the street immediately adjacent to his or her place of employment, such person will be physically unable to continue such employment;

(c) Special needs permit parking. Upon display of the special needs permit on his or her vehicle, a holder of special needs permit shall be allowed to park in any legal parking space without payment of any additional fee and without any durational limit; provided, however, that the provisions of this subsection (c) shall not apply to the holder of a special needs permit parking at an on-street metered parking space if a city owned or operated parking lot or parking ramp is located within 100 feet of the main entrance to his or her place of employment.

Section 3. This ordinance shall take effect 30 days from and after its passage and publication. (Effective date: December 12, 2010)

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

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

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed November 8, 2010
Approved November 8, 2010
DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, November 22, 2010, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: None -- 0

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The minutes of the council meeting held on July 12, 2010, were approved upon a unanimous vote.

--

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

10-1122-09 Dennis and Vicky Zimmerman communication regarding the proposed housing, property maintenance and rental code amendments (10-062-O). -- Received

--

REPORTS FROM OTHER OFFICERS

10-1122-01 Assessor amended assessment roll of solid waste collection expenses during the period of March 1, 2009, to June 1, 2010, for which the licensed collector has not been reimbursed. -- Received

10-1122-02 Clerk applications for exempt permits (raffle) to the Minnesota gambling control board from: (a) Amyotrophic Lateral Sclerosis Association on February 11, 2011; (b) CHOICE, Unlimited, on April 29, 2011. -- Received

--

REPORTS OF BOARDS AND COMMISSIONS

10-1122-03 Charter commission minutes of July 14, 2010, meeting. -- Received

10-1122-04 Commission on disabilities minutes of October 6, 2010, meeting. -- Received

10-1122-08 Duluth public arts commission minutes of October 18, 2010, meeting. -- Received

10-1122-05 Entertainment and convention center authority minutes of October 26, 2010, meeting. -- Received

10-1122-06 Housing and redevelopment authority minutes of September 28, 2010, meeting. -- Received

10-1122-07 Spirit Mountain recreation area authority minutes of October 21, 2010, meeting. -- Received

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At this time, 7:05 p.m., the public hearing on the proposed City Charter amendment pertaining to the establishment of a parks fund in the city treasury (10-058-O) was declared open.

Karen Lewis voiced support for the fund and that beyond volunteers, staff is needed for the parks.

At this time, 7:06 p.m., the public hearing was declared closed.

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At this time, 7:06 p.m., the public hearing on the proposed City Charter amendment pertaining to ordinance publication requirements (10-059-O) was declared open.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

No one appeared who wished to be heard and at 7:07 p.m. the public hearing was declared closed.

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OPPORTUNITY FOR CITIZENS TO BE HEARD

Karen Lewis commented on: the shortage of salt being put on the avenues; a washout under the street at approximately 112 West Fourth Street; Western Lake Superior Sanitary District's old drug collection should be more conveniently located and brick streets have poor traction and should be reduced.

- - -

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 Anderson 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 2011 currency exchange license to The Title Loan Company, Inc., 22 North Second Avenue West.

Resolution 10-0584 was unanimously adopted.

Approved November 22, 2010

DON NESS, Mayor

- - -

RESOLVED, that the following appointments by Mayor Ness to the parks and recreation commission are confirmed:

(a) Thomas Beery (District 3) and Jon C. Welles (District 2) for terms expiring on March 31, 2011, replacing Elizabeth Mackay and Jim Topie who resigned;

(b) Andy Holak (professional) for a term expiring on March 31, 2013, replacing Carole Newkumet who resigned.

Resolution 10-0582 was unanimously adopted.

Approved November 22, 2010

DON NESS, Mayor

- - -

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

Section 1. Recitals.

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

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

1.03 On March 1, 2000, the time for appeal of the order having expired, a certified

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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 persons, who are voters residing in the area of the sanitary district, be nominated for election to the board of managers for the term indicated:

(a) Katherine Kuettel, of the city of Duluth, Minnesota, whose term shall commence upon on the first business day of January, 2011, and shall expire on the first business day of January, 2014;

(b) Dean Korri, of the town of Duluth, Minnesota, whose term shall commence upon on the first business day of January, 2011, and shall expire on the first business day of January, 2014.

Section 3. Election of board of managers. Election of the above-named persons to the board of managers of the sanitary district is approved and such persons are elected for the term 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 10-0586 was unanimously adopted.

Approved November 22, 2010

DON NESS, Mayor

- - -

RESOLVED, that Resolution 10-0455 awarding a contract to Charles Bailey, dba Bailey Construction, for the 2010 CDBG-ARRA sidewalk replacement project be amended to increase the amount by \$24,076.89 for a new total of \$77,131.39, payable out of CDBG Fund 0262, Agency 025, Object 5434, City Project No. 0817TR.

Resolution 10-0568 was unanimously adopted.

Approved November 22, 2010

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. 10-1122-10, with Visual Communications, Inc., to provide professional services in project management, public involvement, a cultural resources inventory, wayfinding and signs, and web page development for the Skyline Parkway wayfinding project for an amount not to exceed \$92,000, payable from Special Projects Fund 210, Department/Agency 030, Organization 3160, Object 5441.

Resolution 10-0585 was unanimously adopted.

Approved November 22, 2010

DON NESS, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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RESOLVED, that:

(a) The city council adopted Resolution 05-0094 on February 14, 2005, granting a Section 50-38 special use permit to Mark Lambert of Summit Management, LLC, for Campus Park II, a common interest community development on 31 acres near Rice Lake Road and Blackman Avenue; and

(b) The city council adopted Resolution 05-0481 on July 11, 2005, granting an amendment to the previously approved Section 50-38 special use permit; and

(c) The city council adopted Resolution 07-0626 on September 14, 2007, granting an amendment to the previously approved Section 50-38 special use permit; and

(d) Mark Lambert of Summit Management, LLC, has submitted to the city council a request for a third amendment to the Section 50-38 special use permit for a common interest community development on 31 acres of property legally described as follows:

(1) In Clague and Prindle's Addition to Duluth: all of Blocks 2, 3, 4 and those parts of Blocks 5 and 6 lying southwest of Rice Lake Road, including those parts of dedicated unbuilt streets and alleys lying adjacent thereto;

(2) In Triggs and Kennedy's Addition to Duluth: those parts of Blocks 38, 39, 42, 43, 44 and 45 lying southwest of Rice Lake Road, and that part of Lots 10, 12, 14 and 16, Block 41, lying southeast of the northeasterly extension of Hickory Street to intersect with Rice Lake Road at Chinook Drive, including those parts of dedicated unbuilt streets and alleys lying adjacent thereto; and

(3) In Benson Heights Addition to Duluth, Lots 5, 6 and Outlot; and

(e) Said permit application was duly referred to the city planning commission for a study, report and public hearing held during their regular meeting on November 8, 2010, and the commission has subsequently reported its recommendation of conditional approval to the city council; and

(f) The applicant's compliance with conditions set out in this permitting resolution will remedy any shortcomings identified by the city planning commission's findings of inadequacies in the submitted documents, and that compliance with the conditions contained herein, will adequately protect the comprehensive plan and conserve and protect property values in the neighborhood and comply with City Code Section 50-32 (reference Planning Commission File No. 10106); and

(g) That an amendment to the previously approved amended special use permit is hereby granted to Mark Lambert and Summit Management, LLC, for a common interest community development of apartments and townhouses, a recreation building, and a maintenance building on 31 acres of property located on the southwest side of Rice Lake Road between Pecan Avenue and Hickory Street, with the following terms and conditions:

(1) That the project be developed and maintained according to the following plans and identified as Public Document No. 10-1122-11:

- (A) Grading Plan (Sheet C2-3);
Landscape Plan (Sheet C3-3);
Structure G-1 (Sheet A8 and A8A);
Trash Enclosure (Sheet A11);
Structure H-1 (Sheet A9);
Lighting Plan (created November 1, 2010); and

(B) Applicant must take steps to ensure that lighting is shielded and downcast in a way as to prevent glare and light pollution from impacting the surrounding

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

neighborhood, including (but not limited to), shielding on the lights near proposed structure H-1 and associated garage building; and

(C) The temporary parking lot will be discontinued when structures G-1 and H-1 are constructed, or October 18, 2015, whichever occurs first, and that the within 30 days, the applicant shall remove gravel, apply a layer of topsoil at least four inches thick, and seed it to grass; and

(D) Prior to construction of Building E-1, the applicant gain written approval for the Secretary of the planning commission for the color and materials to be used on the building exterior, per 2007 conditions; and

(E) That the project secure necessary building, grading, wetland erosion control and stormwater management permits from the city and MPCA.

Resolution 10-0587 was unanimously adopted.

Approved November 22, 2010

DON NESS, Mayor

- - -

RESOLVED, that:

(a) The city council finds a sufficient petition was filed with the city clerk requesting the vacation of a portion of the 26 foot wide utility easement in Block 69, Oneota Division, located between the northeasterly line of 46th Avenue West and the northeasterly line of Lot 4, Block 69, ONEOTA DIVISION (legal description subject to survey); and

(b) Pursuant to Section 100 of the City Charter and Article IV of Chapter 45 of the Duluth City Code, 1959, as amended, such petition was duly referred to the city planning commission (FN 10108) 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 will be useless upon appropriate relocation of utilities currently sited in the easement as noted in (c) below; and

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

(d) The city planning commission, at its November 9, 2010, regular meeting, recommended approval of the vacation petition subject to appropriate utility relocation and dedication of replacement easements; and

(e) The city council of the city of Duluth approves the vacation of the following petitioned utility easement more particularly described below and on Public Document No. 10-1122-12, subject to the relocation of utilities presently located in the easement to be vacated to locations and in a manner approved by the city engineer and the subsequent dedication of easements, acceptable to the city engineer, necessary to the construction, maintenance, operation, repair and replacement of said utilities:

That part of the 26 foot wide utility easement in Block 69, Oneota Division, described as follows:

Beginning at the westerly corner of Lot 9, Block 69; thence continuing northeasterly along the northwesterly line of platted Lots 9 through 12 to the northerly corner of Lot 12, Block 69; thence deflecting to the left along the northeasterly line of Lot 4, Block 9, extended to the southeast, to a point on said northeasterly line of said Lot 4 ten feet northwesterly of the easterly corner of said Lot 4; thence deflecting to the left and continuing

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

southwesterly on a line ten feet distant from and parallel with the southeasterly line of platted Lots 1 through 4, Block 9, to the southwest line of Lot 1, Block 69; thence deflecting to the left and continuing along the southwesterly line of said Block 69 to the point of beginning and there terminating; and

(f) That the city clerk is, pursuant to Section 100(b)(7) of the Home Rule Charter of the city of Duluth, 1912, as amended, authorized to record, with the register of deeds and/or the registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution and Public Document No. 10-1122-12 showing the portion of the utility easement to be vacated upon receipt of the dedications of replacement easements and relocation of all utilities presently located in the vacated easement into said replacement easements in the manner approved by the city engineer.

Resolution 10-0588 was unanimously adopted.

Approved November 22, 2010

DON NESS, Mayor

- - -

WHEREAS, the city of Duluth is a participating member of the northeast regional radio board, a joint powers entity formed pursuant to Minnesota statutes 403.39 and 471.59 and executed pursuant to City Council Resolution 08-0662; and

WHEREAS, a joint powers agreement creating the northeast regional radio board was approved by the eleven counties and four cities comprising the board, including the city of Duluth; and

WHEREAS, the current joint powers agreement provides for membership by counties and cities within homeland security emergency management region two; and

WHEREAS, the Minnesota legislature has amended Minnesota Statute 471.59 to provide authority for federally recognized Indian tribes to participate in joint powers agreements; and

WHEREAS compliance with this amendment to Minnesota statute requires modification of the existing joint powers agreement; and

WHEREAS, the northeast regional radio board recommends amendment of the joint powers agreement governing the northeast regional radio board to provide for the authority for federally recognized Indian tribes meeting the same requirements as counties and cities within homeland security emergency management region two to participate in the northeast regional radio board; and

WHEREAS, the northeast regional radio board further recommends amendment of the joint powers agreement to provide management and administration of regional emergency management functions by the regional radio board.

NOW THEREFORE, BE IT RESOLVED, that the city council hereby authorizes the proper city officials to execute an amendment to the joint powers agreement with the northeast regional radio board, substantially the same as that on file in the office of the city clerk as Public Document No. 10-1122-13.

Resolution 10-0583 was unanimously adopted.

Approved November 22, 2010

DON NESS, Mayor

- - -

RESOLVED, that Resolution 07-0012 awarding a contract to LHB, Inc., for professional engineering services for the development of final design and construction plans for Bridge No.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

92277 at 26th Avenue West over Miller Creek be amended by an amount of \$95,559 to implement the construction administration for the rehabilitation of Bridge No. 92277, for a new total of \$167,390. The increase will be payable from Permanent Improvement Fund 0411, Department/Agency 035, Object 5530, City Project No. 0540TR.

Resolution 10-0578 was unanimously adopted.

Approved November 22, 2010

DON NESS, Mayor

- - -

THE CITY COUNCIL FINDS AS FOLLOWS:

(a) That the city of Duluth desires to complete engineering services for the sanitary sewer, watermain, storm sewer and street improvements for Duluth's Riverside community;

(b) The city desires to hire a consulting engineer to provide the design and construction engineering services required for the project;

(c) Ayres Associates has submitted a proposal for engineering services in connection with this project and is the top-ranked firm.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with Ayres Associates to provide the city with such engineering services.

FURTHER RESOLVED, that the cost of said engineering services, estimated at \$594,036, with the Street Improvement Fund 0440 being the working fund, with \$154,896 payable from the Street Improvement Program Fund 0440, Department 038, Object 5530, \$51,632 from the Special Assessment Fund 410, Department 038, Object 5530, \$182,160 from the Sanitary Sewer Fund 530, Department 500, Organization 1905, Object 5536, \$49,814 from the Stormwater Fund 0535, and \$142,454 from the Water Fund 0510 Department 500, Organization 5533, Object 5533, and \$13,080 from the Gas Fund 520, Department 500, Organization 1905, Object 5533, City Project No. 0699SN/0699TR.

Resolution 10-0580 was unanimously adopted.

Approved November 22, 2010

DON NESS, Mayor

- - -

The following resolutions were also considered:

Resolution 10-0579, adopting license, permit and fee charges for 2011, was introduced by Councilor Fedora.

Councilor Fedora moved to table the resolution for a December 20 public hearing on alcoholic beverage license fees, which motion was seconded and unanimously carried.

- - -

Resolution 10-0581, amending Resolution 10-0377 for a contract with Interstate Improvement, Inc., for 2010 concrete pavement rehabilitation, increasing the amount by \$520,000 for a new contract total of \$1,755,868.50, was introduced by Councilor Gauthier for discussion.

Councilor Gauthier commented that the newly resurfaced 24th Avenue West is like a washboard and that corrections should be made.

Resolution 10-0581 was adopted as follows:

RESOLVED, that the proper city officials are hereby authorized to amend Resolution 10-0377 awarding a contract to Interstate Improvement, Inc., for the 2010 concrete pavement

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

rehabilitation, increasing the amount by \$520,000 for a new contract total of \$1,755,868.50, payable out of Street Improvement Fund 440, Department/Agency 038, Object 5530, City Project No. 0822TR.

Resolution 10-0581 was adopted upon the following vote:

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

Nays: Councilor Gauthier -- 1

Approved November 22, 2010

DON NESS, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR STAUBER

10-063 - AN ORDINANCE AUTHORIZING THE HOUSING AND REDEVELOPMENT AUTHORITY OF DULUTH TO EXERCISE POWERS UNDER MINNESOTA STATUTES, CHAPTER 462C, ON BEHALF OF THE CITY OF DULUTH.

Councilor Stauber moved to remove the ordinance from the agenda per a request from the administration, which motion was seconded and unanimously carried.

- - -

BY PRESIDENT ANDERSON

10-062 - AN ORDINANCE AMENDING CHAPTER 29A OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO THE CITY HOUSING, PROPERTY MAINTENANCE AND RENTAL CODE.

- - -

The following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR FEDORA

10-058 - AN ORDINANCE AMENDING CHAPTER VIII, SECTION 54, OF THE CITY OF DULUTH HOME RULE CHARTER, 1912, AS AMENDED, PERTAINING TO ESTABLISHMENT OF A PARKS FUND IN CITY TREASURY.

The ordinance failed upon the following vote (Public Document No. 10-1122-14):

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

Nays: Councilor Stauber -- 1

(Editor's note: City Charter amendments require a 9-0 vote to become adopted.)

- - -

INTRODUCED BY COUNCILOR STAUBER

10-060 (10061) - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, ZONING DISTRICT MAP NO. 35 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-4, APARTMENT RESIDENTIAL DISTRICT, TO MC, MEDICAL CENTER DISTRICT, PROPERTY AT THE NORTHWEST CORNER OF TENTH AVENUE EAST AND SECOND STREET (ST. LUKE'S HOSPITAL).

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

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

BY PRESIDENT ANDERSON

10-053 (10062) - AN ORDINANCE RELATING TO THE PLANTING, MAINTAINING AND REMOVAL OF VEGETATION ON PUBLIC AND PRIVATE PROPERTY; ADDING A NEW DIVISION 6 TO ARTICLE 2 OF CHAPTER 20 AND AMENDING ARTICLE IV OF CHAPTER 35 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

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

Ethan Perry, representing the tree commission, reviewed components of the ordinance and expressed support for the approval of the ordinance.

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

- - -

INTRODUCED BY PRESIDENT ANDERSON

10-059 (10063) - AN ORDINANCE AMENDING CHAPTER III, SECTION 13, OF THE CITY OF DULUTH HOME RULE CHARTER, 1912, AS AMENDED, PERTAINING TO ORDINANCE PUBLICATION REQUIREMENTS.

President Anderson moved passage of the ordinance and the same was adopted upon a unanimous vote.

(Editor's note: This ordinance was repealed by Ordinance No. 10071 on December 20, 2010.)

- - -

The meeting was adjourned at 7:21 p.m.

JEFFREY J. COX, City Clerk

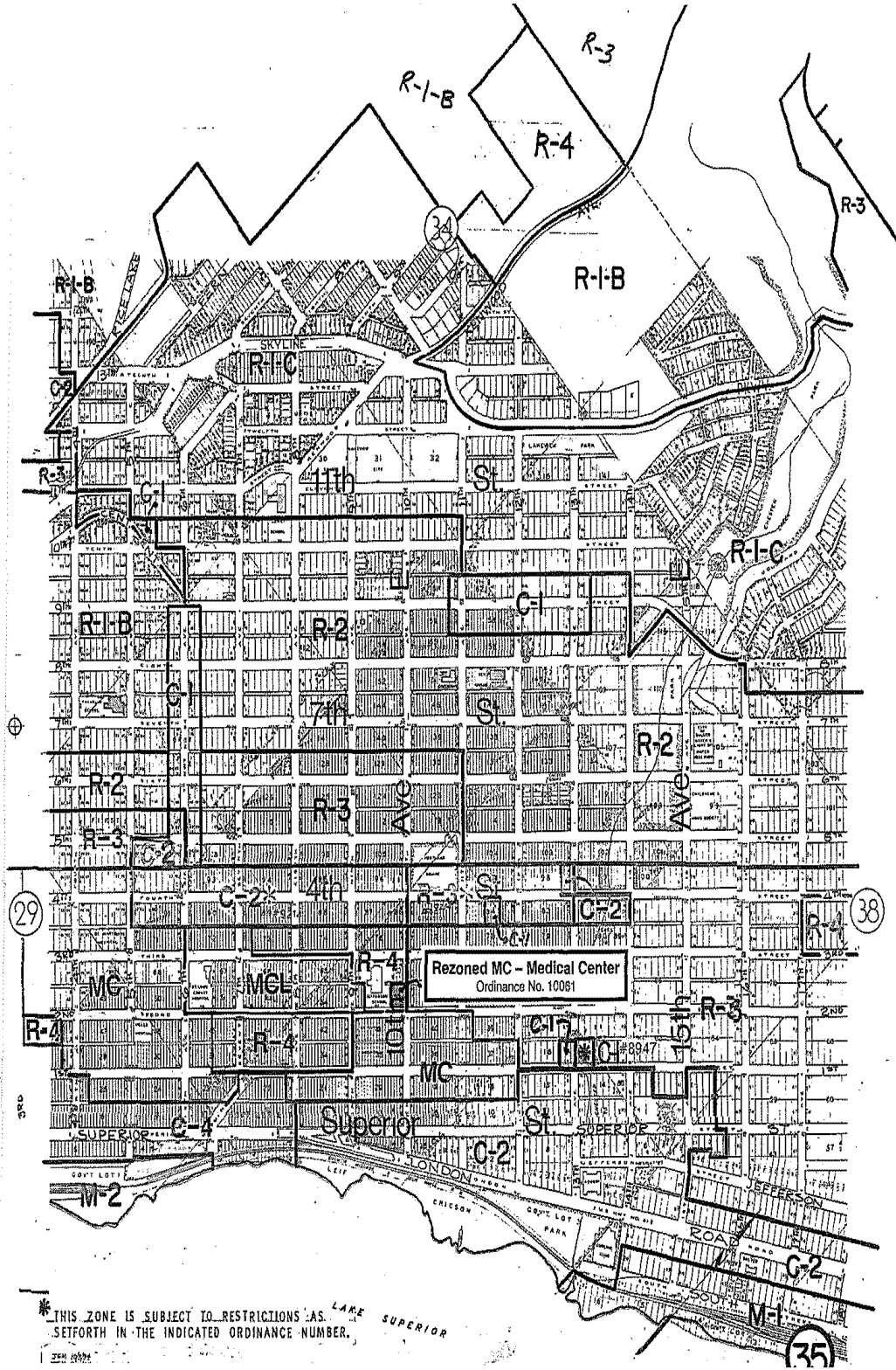
- - -

ORDINANCE NO. 10061

AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, ZONING DISTRICT MAP NO. 35 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-4, APARTMENT RESIDENTIAL DISTRICT, TO MC, MEDICAL CENTER DISTRICT, PROPERTY AT THE NORTHWEST CORNER OF TENTH AVENUE EAST AND SECOND STREET (ST. LUKE'S HOSPITAL).

The city of Duluth does ordain:

Section 1. That Lots 13-16, Block 55, of Portland Division be reclassified from R-4, Apartment Residential, to MC, Medical Center, and that Plate No. 35 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:



(Ref. File No. 10101)

Section 2. That this ordinance shall take effect and be in force 30 days from and after

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

its passage and publication. (Effective date: January 16, 2011)

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

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

Nays: None -- 0

Passed November 22, 2010
Approved November 22, 2010
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10062

BY PRESIDENT ANDERSON:

AN ORDINANCE RELATING TO THE PLANTING, MAINTAINING AND REMOVAL OF VEGETATION ON PUBLIC AND PRIVATE PROPERTY; ADDING A NEW DIVISION 6 TO ARTICLE 2 OF CHAPTER 20 AND AMENDING ARTICLE IV OF CHAPTER 35 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

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 Division 6 to Article II of Chapter 20 which reads as follows:

Division 6. Tree Fund.

Sec. 20-23. Tree fund created.

There is hereby established in the treasury of the city of Duluth a special fund designated as the tree fund for the purpose of funding costs related to the planting, maintenance and care of trees and vegetation located on public property, all as defined in Section 35-26 of this Code. Into such fund shall be paid all monies appropriated by the city and the proceeds of all civil or criminal fines, civil penalties and all judgments or settlement of legal proceedings arising under Article IV of Chapter 35 of this Code and payments from developers made pursuant to Section 50-25.9B2(g) of the Code.

Sec. 20-23.1. Limitations on the expenditure of funds.

Monies in the tree fund shall be expended only for payment of costs incurred in planting, maintaining and caring for the trees and other vegetation on public property, all as defined in Section 35-26 of this Code and payment of expenses incurred in the administration thereof.

Section 2. That Section 35-26 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 35-26. Definitions.

For the purpose of this Article the following terms shall have the meanings hereinafter ascribed to them:

(a) Boulevard. That portion of a public right-of-way lying between an improved public street and a public sidewalk;

(b) Construction. The construction or maintenance of any structure, roadway, driveway, sidewalk, other facility or any other land disturbing activity occurring within the perimeter of the critical root radius of any tree located on

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

public property and which disturbs vegetation located on public property;

(c) Critical root radius. The radius of a circle around any tree equal to its DBH multiplied by 12 inches;

(d) DBH (diameter at breast height). The diameter of a tree trunk measured in inches 54 inches above the ground or if the tree splits into more than one stem below 54 inches but above the ground, the diameter of the trunk at its highest point beneath the split;

(e) Director. The director of the department in charge of maintaining and operating the city's forestry operations or his or her designee;

(f) Heritage tree. Any tree or group of trees with unique and intrinsic value to the general public because of size, form, age, rarity or historic association designated as a heritage tree pursuant to Section 35-30.1 below;

(g) Public property. All property owned by the city and all property located within the improved portion of any street or highway easement under the jurisdiction of the city including boulevards;

(h) Preserved tree. A tree whose critical root radius lies within an area of soil-disturbing activities and which is not to be removed or damaged by said activity;

(i) Special tree species. White pines, red or Norway pines, white cedars, white spruces, eastern hemlocks, sugar maples, American basswoods, American elms, yellow birches and all oak species;

(j) Tree. A perennial plant having a permanent woody, self-supporting main stem or trunk, ordinarily growing to a considerable height and usually developing branches at some distance from the ground;

(k) Vegetation. Trees, shrubs, bushes and other perennial plant life with woody, above-ground stems.

Section 3. That Chapter 35 of the Duluth City Code, 1959, as amended, is hereby amended by the addition of a new Section 35-26.1 which reads as follows:

Sec. 35-26.1. Findings and purposes.

(a) The city council hereby finds that trees and other vegetation provide many benefits to the city, including:

- (1) Increased property values;
- (2) Reduced stormwater runoff and soil erosion;
- (3) Noise buffering;
- (4) Aesthetic value;
- (5) Reduced energy costs from shade in summer and windbreaks in winter;
- (6) Removal of greenhouse gases (CO₂) and other pollutants from the air.

(b) The purposes of this Article are to:

- (1) Promote appreciation for the city's trees and other vegetation;
- (2) Protect consumers of commercial tree services;
- (3) Encourage the planting and maintenance of trees and other vegetation in the city;
- (4) Reduce damage to trees and other vegetation from construction activities;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

(5) Establish a mechanism for removing some public trees for maintaining views;

(6) Protect trees from pests.

Section 4. That Section 35-27 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 35-27. Tree inspector.

(a) It shall be the duty of the director to coordinate all activities of the city related to this Article. The director shall designate the city forester, or the successor to the responsibilities of that position, and such other city employees as the director shall deem appropriate as tree inspectors for the city for the purposes of enforcing the provisions of this Article and for complying with the provisions of Minnesota Statutes, Section 89.63, as amended from time to time relating to shade tree disease control;

(b) A tree inspector may enter upon private premises at any reasonable time for the purpose of carrying out any of the duties assigned to him under this Article; provided that, prior to commencing performance of any other of such duties, a tree inspector shall endeavor to provide verbal notice to an occupant of the subject premises of his identity and the purpose of his entry onto the premises;

(c) It is unlawful for any person to prevent, delay or interfere with a tree inspector while they are engaged in the performance of duties imposed by this Article.

Section 5. That Chapter 35 of the Duluth City Code, 1959, as amended, is hereby amended by the addition of a new Section 35-27.1 which reads as follows:

Sec. 35-27.1. Tree service contractor's licensing.

(a) No person shall engage in the business of maintaining, removing or treating trees, including stump removal, within the city unless such person shall have applied for and received a tree service contractor's license under this Section. The fee for such license shall be established pursuant to Section 31-6 of this Code;

(b) Applications for a tree service contractor's license shall be made on forms provided by the city clerk. The application for a tree service contractor's license shall include at least the following:

(1) Name, business address and telephone number of applicant or applicants;

(2) Name, address and telephone number of the principal or principals of applicant, if different from subparagraph (1) above;

(3) Proof that applicant is currently registered with the Minnesota State Commissioner of Agriculture in accordance with the requirements of Minnesota Statutes Section 18G.07;

(4) Proof that the applicant is a member of the International Society of Arboriculture or the Tree Care Industry Association;

(5) Proof that the applicant is insured by a company or companies licensed to do business in the state of Minnesota of the types and in at least the amounts set forth below, which policies of insurance shall be subject to approval by the city attorney:

(A) Public liability insurance in the amount of \$1,500,000

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

for injury to or death of one or more persons or damage to or destruction of property;

(B) Automobile liability insurance in the amount of \$1,500,000 for injury to or death of one or more persons or damage to or destruction of property;

(C) Worker's compensation insurance as required by Minnesota law;

(c) The city clerk shall issue a license to any applicant whose application satisfies the above requirements. Any applicant denied a license may appeal such denial within ten days of such denial by submitting a written notice of appeal to the city clerk. All such appeals shall be heard by the city's chief administrative officer in the same manner as an appeal under subsection (h) below;

(d) In addition to the tree service contractor's license provided for above, all vehicles used by a licensed tree service contractor to provide such services shall secure from the city and display on said vehicle a sticker or decal issued by the city clerk. The fee for such sticker or decal shall be established pursuant to Section 31-6 of this Code;

(e) All licenses issued pursuant to the provisions of this Section shall be for a period of one year, except as expressly set forth in this Section, commencing January 1 in each year and expiring on December 31 of that year. Licenses shall not be transferred. Those making application for licenses prior to July 1 in each license year shall pay the full license fee; those making application thereafter shall pay 75 percent of the license fee;

(f) All planting, maintaining, removing or treating of trees by a licensed tree service contractor shall comply with American National Standard Institute Standard A300;

(g) Any license issued pursuant to this Section may be revoked by the chief administrative officer for good cause. If the tree inspector believes that good cause exists to revoke a license issued hereunder, said inspector shall prepare a notice of hearing which states the allegations against the licensee and the time and place of the hearing. The notice shall be mailed to the licensee at least 14 days before the hearing and a copy of the notice shall be served on the chief administrative officer. At the hearings, the chief administrative officer shall hear all relevant evidence and arguments concerning the matter before deciding the matter. Without excluding other sufficient grounds for revocation, the filing of an application containing any statement or information known to the applicant to be false, a violation of this Section or any state or federal law relating to tree care services, or the failure to substantially perform tree care services to customers shall each be sufficient cause for revocation. Any order of revocation shall be mailed by certified mail to the licensee at the licensee's place of business as recorded with the city clerk. The chief administrative officer shall make written findings of fact, conclusions of law and revocation order in any case where a license is revoked;

(h) Any licensee whose license is revoked by the chief administrative officer pursuant to this Section may appeal such revocation to the city council within ten days of the date of mailing of the order of such revocation. Such

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

appeal shall be in writing, and failure to file such an appeal within the ten day period shall make the order final and the tree inspector shall notify the city clerk of the revocation of such license. The appeal shall be limited to a review of the findings and conclusions of the chief administrative officer;

(i) No license required by this Section shall be granted or issued to any person or entity whose license has been revoked, pursuant to the provisions of this Section, for a period of one year from and after the date of such revocation or to an entity owned or controlled by a person in control of an entity whose license has been so revoked. No such license shall be granted or issued to any such person or entity or any combination of such person and entities which have been subject to two such license revocations;

(j) No licensed tree service contractor shall perform any chemical treatment services with regard to trees unless such contractor also has a commercial pesticide applicator license from the Minnesota state department of agriculture.

Section 6. That Section 35-28 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 35-28. Planting and damaging vegetation on public property.

(a) Except as otherwise provided for in this Article, no person shall:

(1) Plant any vegetation on public property without having received the prior written approval of a tree inspector;

(2) Damage, cut, carve, kill or injure any vegetation located on public property;

(3) Attach any rope, wire or other contrivance or affix a sign to any tree, shrub or plant located on public property without the prior written approval of a tree inspector;

(4) Dig in or otherwise disturb any vegetation located on public property; ignite, build or enlarge any fire which may damage vegetation located on public property; or in any other way injure or impair the natural beauty or usefulness of any vegetation located on public property;

(b) The provisions of this Section shall not apply to vegetation located on boulevards except for trees having a diameter in excess of three-quarters of an inch located on boulevards;

(c) Dig in or otherwise disturb any vegetation located on public property; ignite, build or enlarge any fire which may damage vegetation located on public property; or in any other way injure or impair the natural beauty or usefulness of any vegetation located on public property.

Section 7. That Section 35-29 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 35-29. Construction activities affecting trees on public property.

(a) It is the intent of this Section that, whenever any construction, as defined herein, is to be undertaken affecting vegetation on public property, to the extent reasonably possible, vegetation on public property, and particularly heritage trees and special tree species, should be protected from damage or loss, unless such damage or loss or intentional removal is determined by the tree inspector to be not reasonably avoidable or is determined to be in the best interests of other vegetation located on public property or otherwise is

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

determined to be in the best interests of the city;

(b) Whenever construction, as defined herein, is proposed, prior to the issuance of any permit for such construction, the letting of any city contract for such construction, or the performance of such construction by city personnel, the city staff responsible for issuing such permit or for designing the project to be contracted for shall consult with the tree inspector to determine the area and the vegetation to be impacted by the construction and to determine how best to implement the intent of this Article as described in paragraph (a) above. When said construction may require removing trees within city street rights-of-way, input shall be sought from the owners of property adjacent to the property where the construction activity is to take place. The initial decision on the design of the construction and the methods of work shall be that of the city staff responsible for issuing such permit or for designing the project to be contracted for in cooperation with the city forester. In the event that such staff and the city forester cannot agree on said design as it impacts affected vegetation, the final decision shall be that of the director of public works and utilities. Provided, however, in the event that an emergency situation arises with regard to which the public safety or welfare requires that construction take place in a time frame which will not permit the process set forth in this paragraph to be followed, it shall be the responsibility of said city staff to design and construct the project in a manner which is as respectful as is reasonably possible of the objectives set forth in paragraph (a) above;

(c) Preserved vegetation shall be protected from damage and soil compaction in accordance with the state of Minnesota department of transportation's standard specifications for construction, 2572.3A "protecting and preserving";

(d) Protection requirements for all vegetation on public property to be protected, as determined pursuant to subsection (b) above, shall be included in all city contracts for construction;

(e) Notwithstanding the foregoing in this Section, in the event that due to requirements imposed by state, federal or county authorities arising out of entering into cooperative or coordinated agreements or to the use of funding from such authorities, the city cannot implement the provisions of this Article without jeopardizing the subject relationship or funding, the provisions of this Article shall not apply to such agreement.

Section 8. That Chapter 35 of the Duluth City Code, 1959, as amended, is hereby amended by the addition of a new Section 35-29.1 which reads as follows:

Sec. 35-29.1. Cutting trees for view.

(a) Not less than ten days prior to the removal of any trees from public property by the city for the purpose of improving views from public overlooks, all landowners owning property adjacent to and within 200 feet of the trees to be removed, as determined from the records of the city assessor, shall be notified by mail of the intent to do so. Removal shall be performed under the supervision of the tree inspector, provided that removal of five or more trees shall occur only after consultation with the tree commission. The requirements of this subsection shall not apply to pruning which does not endanger the health or viability of the tree pruned;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

(b) Property owners desiring to remove vegetation on public property for the purpose of improving the view from private property may apply for permission to remove such vegetation to the tree inspector. The applicant is required to demonstrate that the view obstruction did not exist at the time they acquired the property;

(c) The tree inspector shall meet with the applicant or applicants on site to review a request for removal and the condition and character of the site. Not less than ten days prior to said meeting, the tree inspector shall cause notice of the date, time and place of said meeting to be given to all landowners owning property adjacent to and within 200 feet of the trees proposed to be removed which shall invite them to attend such meeting;

(d) In the event that the tree inspector determines that more than 50 percent of the applicant's view of Lake Superior, the Duluth-Superior Harbor, the St. Louis River Estuary or the St. Louis River from any point within the above-grade portion of the applicant's dwelling is obstructed by vegetation located on public property, he or she may authorize the removal of a specified portion of such vegetation such that said view is not so obstructed. The tree inspector shall deny the request for removal if he or she finds that the proposed removal is likely to cause identifiable environmental damage to the site or to surrounding property or is likely to cause identifiable, material degradation to adjacent properties. The tree inspector shall not approve the removal of trees identified as special tree species under the authority of this Section;

(e) The applicant or applicants shall hire at their own expense a properly licensed tree service or other qualified contractor to remove the vegetation authorized to be removed by the tree inspector. Before starting work, such tree service or contractor shall meet with the tree inspector on site to insure the work is done as agreed upon. The tree inspector shall be given notice at least two business days before the work begins and may terminate the project at any time. The tree inspector shall not allow work to be done by the property owner.

Section 9. That Chapter 35 of the Duluth City Code, 1959, as amended, is hereby amended by the addition of a new Section 35-30.1 which reads as follows:

Sec. 35-30.1. Heritage trees.

(a) Any citizen or resident of the city may submit a nomination to the tree commission nominating any tree in the city for designation as a heritage tree. The commission shall decide on an annual basis whether to recommend such designation to the city council, which makes designations by resolution. Heritage trees may be on public or private property, but designation of privately owned trees must be approved by the owner of the land on which the nominated tree is located in writing as part of the nomination. For the tree commission to consider a nomination, a tree must meet at least one of the following criteria:

- (1) Size: Unusual trunk diameter or height for the species;
- (2) Form: A peculiar growth form for the species of the tree which gives it unique character;
- (3) Rarity: A locally rare species;
- (4) Age: At least 100 years old, estimated by counting rings collected by increment borer;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

(5) Historic significance: A tree associated with a noted person or persons, a historic structure or a significant event in Duluth's history;

(b) The tree inspector shall keep a record of all heritage trees so designated and their location;

(c) Designated heritage trees on public property may not be removed or harmed by such activities as trunk girdling, removing more than 30 percent of a healthy tree's limbs, or damaging tree roots, unless the tree is determined a hazard to persons or property by the tree inspector.

Section 10. That Section 35-31 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 35-31. Transporting or storing infectious plant materials.

(a) It is unlawful for any person to transport within the city any bark-bearing elm or oak wood without having obtained written permission from the tree inspector. The tree inspector shall grant such permission only when the proposed transporting will be done in a manner that will not result in the spread of Dutch elm disease or oak wilt disease;

(b) It is unlawful for any person to store elm logs with bark intact within the city for more than 72 hours during the period from April 1 through September 15 in any year;

(c) It is unlawful for any person to transport or store any material or horticultural product contaminated with Asian long-horned beetle, emerald ash borer or gypsy moth;

(d) Any material or product stored contrary to the provisions of this Section may be seized and destroyed by the tree inspector or his authorized agent.

Section 11. That Section 35-32 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 35-32. Appeals to director.

Any person aggrieved by any decision of a tree inspector can appeal that decision to the director by causing to be delivered to the director a written appeal, setting forth the decision of the tree inspector being appealed from, all relevant facts supporting such appeal and the relief requested, which written appeal shall have been delivered not less than 14 days after the decision of the tree inspector being appealed from. The director may grant the appeal or may affirm or affirm as modified the decision of the tree inspector. The decision of the director shall be final.

Section 12. That Section 35-33 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 35-33. Penalties and damages.

In the event that any person causes any damage to or destruction of any vegetation in violation of the terms of any permit or contract issued by the city or otherwise causes damage to or destruction of any vegetation on public property in violation of the provisions of this Article, such person shall be guilty of a misdemeanor, shall be subject to the imposition of a civil penalty as provided for in Chapter 12 and Section 31-6 of this Code and shall, in addition, be liable to the city for damages for the cost of repairing, restoring or replacing the vegetation so damaged or destroyed.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Section 13. That Section 35-34 of the Duluth City Code, 1959, as amended, is hereby repealed.

Section 14. This ordinance shall take effect 30 days from and after its passage and publication or on January 1, 2011, whichever is later. (Effective date: January 2, 2011)

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

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

Nays: None -- 0

Passed November 22, 2010

Approved November 22, 2010

DON NESS, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

ORDINANCE NO. 10063

AN ORDINANCE AMENDING CHAPTER III, SECTION 13, OF THE CITY OF DULUTH HOME RULE CHARTER, 1912, AS AMENDED, PERTAINING TO ORDINANCE PUBLICATION REQUIREMENTS.

The city of Duluth does ordain:

Section 1. That Section 13 of the city of Duluth Home Rule Charter, 1912, as amended, is hereby amended as follows:

Section 13. Every ordinance or a summary thereof shall be published at least once in the official paper of the city within ten days after its passage and approval. Summary publication of ordinances shall conform to Minnesota Statutes Section 331A.01, subd. 10, and as the same may from time to time be amended.

Section 2. That this ordinance was recommended by the Charter commission and shall take effect 90 days after its passage and publication. (Effective date: March 10, 2010)

President Anderson moved passage of the ordinance and the same was adopted upon the following vote:

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

Nays: None -- 0

Passed November 22, 2010

Approved November 22, 2010, pursuant to Section 12 of the Duluth City Charter.

(Editor's note: This ordinance was repealed by Ordinance No. 10071 on December 20, 2010.)

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, December 6, 2010, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: None -- 0

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The minutes of council meetings held on July 15 and 19, 2010, were approved upon a unanimous vote.

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

10-1206-06 The following communications regarding the proposed housing, property maintenance and rental code amendments (10-062-O): (a) Nancy Anderson; (b) Tom Borst; (c) Glen Filipovich; (d) Allan Kehr; (e) Scott Vesterstein. -- Received

10-1206-07 The following communications regarding the proposed repeal of the rental housing 300 foot rule (10-070-O): (a) Pedro H. Albuquerque; (b) Chris Bacigalupo; (c) Kay Biga; (d) Karen Heisick; (e) Yolande Jenny; (f) Karen Kilpo; (g) Kelly Mattson; (h) Pete Mattson; (i) Peter S. Mattson, Sr.; (j) Mary Ross; (k) Sue Swendsen. -- Received

10-1206-08 The following communications regarding the Fourth District city councilor vacancy (10-0625R): (a) Carol Anderson; (b) Beth C. Austin; (c) Mary Austin; (d) David L. Bard; (e) Scot Bol; (f) Jodi Broadwell; (g) Sarah Butler; (h) Lyn Clark Pegg; (i) Anna Cook; (j) Emily Flesch; (k) Jennifer Julsrud; (l) Pam Kleinschmidt; (m) Susan Knauss; (n) Rosie Loeffler-Kemp; (o) Elizabeth A. Pappas; (p) Lori Rothstein; (q) Scott Wallschlaeger. -- Received

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REPORTS FROM OTHER OFFICERS

10-1206-01 Clerk application for exempt permit (raffle) to the Minnesota gambling control board from Rotary Club of Duluth on March 10, 2011. -- Received

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REPORTS OF BOARDS AND COMMISSIONS

10-1206-02 Duluth airport authority: (a) Minutes of October 19, 2010, meeting; (b) Unaudited balance sheet of September 30, 2010. -- Received

10-1206-03 Duluth economic development authority minutes of October 20, 2010, meeting. -- Received

10-1206-04 Duluth public utilities commission minutes of October 13, 2010, meeting. -- Received

10-1206-05 Duluth transit authority: (a) Income statement for August 2010; (b) Minutes of September 29, 2010, meeting. -- Received

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At this time, 7:03 p.m., the public hearing regarding the 2011 tax levy and budget was opened.

No one appeared who wished to be heard and the public hearing was closed at 7:04 p.m.

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

At this time, 7:04 p.m., the public hearing regarding capital improvement projects was opened.

No one appeared who wished to be heard and the public hearing was closed at 7:05 p.m.

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President Anderson to consider Resolution 10-0625 at this time, which motion was seconded and unanimously carried.

Resolution 10-0625, by Councilor Gardner and President Anderson, establishing a procedure for selecting a candidate to fill the fourth district council seat of Kerry Gauthier, was introduced for discussion.

Councilor Stauber suggested that this procedure in appointing a replacement councilor be made part of the council's Standing Rules so there would not be a question on procedure whenever a vacancy occurred on the council. He also stated that Councilor Gauthier should vote in this process as he represents the council district seat and knows the people and issues.

Resolution 10-0625 was adopted as follows:

BY COUNCILOR GARDNER AND PRESIDENT ANDERSON:

RESOLVED, that the city council desires to establish a procedure for selecting a candidate for the fourth district council seat currently held by Kerry Gauthier as follows:

(a) Whereas the city council conducted interviews with applicants on December 2, 2010. On Monday, December 6, 2010, each councilor shall rank their top three candidates with #1 receiving three points, #2 receiving two points and #3 receiving one point. Councilors will submit their selections to the city clerk who will tabulate them by the end of the council meeting on December 6. The top three candidates will proceed to a second round of interviews. If one or more candidate has tied for the third position, those candidates shall also proceed to the second round of interviews;

(b) The city council will conduct 20 minute interviews with the candidates selected for the second round on January 6, 2011. The council will then vote on a resolution appointing a candidate;

(c) If in the event the council president determines that the council is not able to agree upon a candidate using the resolution process described above, the council shall proceed to ranked choice voting to select a winner.

Resolution 10-0625 was adopted upon the following vote:

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

Nays: None -- 0

Abstention: Councilor Gauthier -- 1

Approved December 6, 2010

DON NESS, Mayor

- - -

REPORTS OF COUNCIL OPEN ISSUES

President Anderson directed councilors to vote for their first, second and third choices for fourth district councilor and the votes were tallied by the clerk.

President Anderson announced the vote for the top three candidates: Jacqueline Halberg with 13 points, Sara Priest with 12 points and Garry Krause with 10 points. He stated that these three applicants will move on to the January 6, 2011, interviews with the city council.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

- - -

OPPORTUNITY FOR CITIZENS TO BE HEARD

KL Lewis voiced concern regarding public safety at the house at 112 West Fourth Street, the need for stop lights at Lake Avenue and Fourth Street which has a lot of pedestrian traffic at that intersection, and questioned if the Western Lake Superior Sanitary District (WLSSD) could have drop-off sites for recycling so pedestrians would have easier access to recycling then walking from the bus to their facility.

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

RESOLVED, that the operation budget for the fiscal year January 1, 2011, to December 31, 2011, in the amount of \$3,832,150 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 10-0611 was unanimously adopted.

Approved December 6, 2010

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 ALS Association 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 10-0592 was unanimously adopted.

Approved December 6, 2010

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
Community Charities of Minnesota	Stadium Lanes, 312 North 34th Avenue West

Resolution 10-0593 was unanimously adopted.

Approved December 6, 2010

DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the permanent expansion of the designated serving area of the following on sale intoxicating liquor license for the period ending August 31, 2011, subject to departmental approvals:

Duluth Entertainment Convention Center, 350 Harbor Drive, licensed premises to include Amsoil Arena.

Resolution 10-0620 was unanimously adopted.

Approved December 6, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proposed amendments to the specifications for the civil service classification of maintenance worker, which were approved by the civil service board on October 5, 2010, and which are filed with the city clerk as Public Document No. 10-1206-09, 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 10-0603 was unanimously adopted.

Approved December 6, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to apply for a grant from the Minnesota department of natural resources in an amount up to \$100,000 to help cover expenses related to increasing public access to Enger Tower.

Resolution 10-0591 was unanimously adopted.

Approved December 6, 2010

DON NESS, Mayor

- - -

RESOLVED, that Resolution 86-0426, which created the voting accessibility advisory committee, is hereby repealed.

Resolution 10-0594 was unanimously adopted.

Approved December 6, 2010

DON NESS, Mayor

- - -

RESOLVED, that Resolution 10-0424 to Ayres Associates, Inc., for professional engineering services for the reconstruction of Anderson Road from Haines Road to Chambersburg Avenue be amended by an amount of \$124,100 for a new total of \$432,001, payable from Permanent Improvement Fund 411, Department 035, Object 5530, City Project 0357TR.

Resolution 10-0589 was unanimously adopted.

Approved December 6, 2010

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 09-0609 are hereby amended by substituting therefore those guidelines on file in the office of the city clerk as Public Document No. 10-1206-10 which are hereby adopted and approved.

Resolution 10-0600 was unanimously adopted.

Approved December 6, 2010

DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

RESOLVED, that the proper city officials are hereby authorized to increase the original purchase order to Arrowhead Concrete Works, Inc., dated May 12, 2010, for the purchase and delivery of ready-mix concrete by \$35,000 (including sales tax), terms net 30, FOB destination, payable from General Fund 110, Department/Agency 121, Organization 1217-2140, Object 5334.

Resolution 10-0609 was unanimously adopted.
Approved December 6, 2010
DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an amendment to City Contract No. 21014, substantially in the form of that on file in the office of the city clerk as Public Document No. 10-1206-11, with LHB Engineers and Architects, Inc., for special inspection and materials testing services related to the construction of the new police headquarters facility, increasing the amount payable thereunder by \$34,379.

Resolution 10-0595 was unanimously adopted.
Approved December 6, 2010
DON NESS, Mayor

- - -

The following resolutions were also considered:

Resolution 10-0590, distributing the estimated 2011 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 a speaker on the resolution.

Ken Buehler, representing the joint powers alliance for the Northern Lights Express, reviewed past progress in transportation for Duluth that has been made through public funding such as the airport and I-35 and stated that the high speed rail in America will be built. He added that the state's government leaders will help get this project ready in May 2011 and Duluth needs to have a voice at the table and can do so by approving this funding.

Mr. Buehler thanked the councilors for their support of tourism dollars for the St. Louis County Heritage and Arts Center.

Councilor Fedora introduced an amendment deleting \$40,000 from the rail alliance and adding that amount to the undesignated fund balance, which motion was seconded.

Councilor Fedora stated that it does not make sense economically as the city needs to spend money more responsibly. He reviewed that the tourism tax was started initially to help the zoo, Spirit Mountain, Visit Duluth and the Duluth Entertainment Convention Center (DECC), and this \$40,000 could be used to help any one of those places with their projects.

Councilor Fedora's amendment failed upon the following vote:

Yeas: Councilors Fedora, Fosle and Stauber -- 3

Nays: Councilors Boyle, Cuneo, Gardner, Gauthier, Hartman and President Anderson -- 6

Resolution 10-0590 was adopted as follows:

RESOLVED, that the 2011 tourism taxes of hotel-motel and food and beverages, as estimated, be distributed in the following manner:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

	3% Hotel-Motel	1% Hotel-Motel	2.25% Food & Beverage	Add'l 2.5% Hotel-Motel	Total
Visit Duluth	538,600	178,600	596,000	167,600	\$1,480,800
DECC Amsoil Arena debt service			1,344,300		\$1,344,300
DECC	1,000,400				\$1,000,400
Transfer to general fund	81,000	260,100	300,000	96,800	\$737,900
DECC expansion debt service			720,400		\$720,400
Lake Superior Zoo fund			413,800	106,200	\$520,000
Spirit Mountain DEBT/CAPITAL				350,000	\$350,000
Great Lakes Aquarium		16,800	184,000	99,200	\$300,000
Reserve for debt service			175,800	50,800	\$226,600
Lake Superior Center Debt service				201,200	\$201,200
Business Improvement District			200,000		\$200,000
Heritage and Arts Center		81,500	56,100	14,200	\$151,800
Capital projects - Enger Tower				100,000	\$100,000
Rail alliance				40,000	\$40,000
Duluth public arts commission			20,000	10,000	\$30,000
Sister cities			10,000	10,000	\$20,000
Reserve for capital projects				14,000	\$14,000
Undesignated fund balance			12,600		\$12,600
TOTALS	1,620,000	537,000	4,033,000	1,260,000	\$7,450,000

Resolution 10-0590 was adopted upon the following vote:

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

Nays: Councilor Stauber -- 1

Approved December 6, 2010

DON NESS, Mayor

- - -

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

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bonding plan for the city of Duluth for the year 2011:	
General obligation bonds and notes to be issued in 2011	\$11,409,265
General obligation bonds and notes to be retired in 2011	
Scheduled general obligation bonds anticipated to mature and be retired	\$15,892,083
General obligation bonds anticipated to be called and retired with CIT funds	<u>\$ 2,045,000</u>
Total Anticipated general obligation bond retirements for 2011	<u>\$17,937,083</u>
Net anticipated increase (decrease) in general obligation bonding for 2011	<u>(\$ 6,527,818)</u>

Resolution 10-0596 was adopted upon the following vote:

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

Nays: Councilors Fosle and Stauber -- 2

Approved December 6, 2010

DON NESS, Mayor

- - -

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. 10035 adopted July 12, 2010 (the "ordinance"), ordered the issuance, sale and delivery of a general obligation water utility revenue note, in one or more series, in the maximum amount of \$5,500,000 of the city, for the payment of the costs of rehabilitation of the Highland pump station and for construction and equipping of a new Highland water tank. The city has previously issued its \$1,371,653 general obligation water utility revenue note, Series 2010C, for construction and equipping of the Highland pump station pursuant to the ordinance. The PFA has authorized a loan to the city in the amount of \$3,534,265 for a new Highland water tank consisting of the demolition of two elevated water storage tanks and replacement with one elevated tank with a one million gallon capacity and a single pedestal, spheroid design (the "project").

1.03 The general obligation water utility revenue note to be issued under the Ordinance shall be issued in the principal amount of \$3,534,265 (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. 10-1206-12, for the project to the PFA pursuant to a Minnesota public facilities authority bond purchase and project loan agreement dated October 26, 2010, between the PFA and the city, in substantially the form

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presented to the council and on file in the office of the clerk (the "loan agreement"), as Public Document No. 10-1206-12 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 \$3,534,265, in fully registered form and lettered and numbered R-1. Interest on the note shall be at the rate of 1.076 percent per annum. Principal and interest payments shall be made in the respective years and amounts set forth on Exhibit A to the note, subject to adjustment as provided in the loan agreement. If the principal and interest payments are paid by check and mailed to the registered holder of the note, such payment shall be mailed by the city at least five business days prior to the payment date.

2.02 The note shall be prepared for execution in accordance with the approved form and shall be signed by the manual signature of the mayor and attested by the manual signature of the clerk. In case any officer whose signature shall appear on the note shall cease to be an officer before delivery of the note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. All actions of the officers of the city regarding the loan agreement, including but not limited to, the officers of the city executing the loan agreement, are ratified, confirmed and approved as of the date of the loan agreement.

2.03. The city will cause to be kept at its offices a register in which, subject to such reasonable regulations as the city may prescribe, the city shall provide for the registration of transfers of ownership of the note. The note shall be initially registered in the name of the PFA and shall be transferable upon the register by the PFA in person or by its agent duly authorized in writing, upon surrender of the note, together with a written instrument of transfer satisfactory to the clerk, duly executed by the PFA or its duly authorized agent.

2.04. Delivery of the note shall be made at a place mutually satisfactory to the city and the PFA. The note shall be furnished by the city without cost to the PFA. The note, when prepared in accordance with this resolution and executed, shall be delivered to the PFA by and under the direction of the treasurer. Disbursement of the proceeds of the note shall be made pursuant to the loan agreement.

2.05. In the event of an inconsistency between a provision of this resolution and a provision of the loan agreement, the provision of the loan agreement shall govern.

Section 3. Revenues, accounts and covenants.

3.01 The city council covenants and agrees with the PFA and with its taxpayers that it will impose and collect just and equitable charges for all use and for the availability of all facilities of the municipal 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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

proper city official shall determine to be necessary from time to time in accordance with policies established by the city council. Sums from time to time on hand in this account, in excess of sums required to make such payments and maintain such reserves, constitute the net revenues which are herein pledged and appropriated first to pay the principal of and interest on all water utility bonds or notes when due.

3.02 The city hereby creates a separate construction account (the "construction account") within the public utility water fund to which there shall be credited the proceeds of the note as received, together with investment income thereon and any additional funds which may be available and are appropriated for improvements to the project. This account shall be used only to pay expenses duly approved and allowed which, under generally accepted accounting principles, constitute capital expenditures for the completion of the project and costs of the issuance of the note.

3.03 Until the note issued hereunder is fully paid or duly called for redemption, or otherwise discharged, the city will also maintain a separate debt service account (the "water debt service fund") in the public utility water fund to be used solely for the payment of the principal and interest, as such principal and interest become due and payable, on the note and on any other bonds or notes which have been or may be issued and made payable from said net revenues of the water utility. All investment income on funds in the water debt service fund are pledged to payment of the note and other bonds and notes payable from the water debt service fund. The treasurer shall transfer from the water utility operating account to the water debt service fund amounts of the net revenues sufficient for the payment of all interest and principal then due on the note and other bonds and notes payable from the water debt service fund. Such transfers shall be made at the times and in the amounts determined by the treasurer, in accordance with policies established by resolutions of the city council.

3.04 Surplus utility revenues from time to time received in the water utility operating account, in excess of payments due from and reserves required to be maintained in the water utility operating account and in the water debt service fund, may be used for necessary capital expenditures for the improvement of the municipal water utility, for the prepayment and redemption of bonds or notes constituting a lien on the municipal water utility, and for any other proper municipal purpose consistent with policies established by resolutions of the city council.

3.05 A. In the event the monies and payments appropriated to the water debt service fund are insufficient to pay principal of and interest on the note and the bonds and notes payable from such fund as the same become due, the city is required by law and by contract with the holders of the note and such bonds and notes and hereby obligates itself to levy and cause to be extended, assessed and collected any additional taxes found necessary for full payment of the principal of and interest on the note;

B. The full faith and credit and taxing powers of the city are irrevocably pledged for the prompt and full payment of the principal of and interest on the note, as such principal and interest respectively become due. However, the net revenues of the water utility appropriated to the water debt service fund are estimated to be not less than five percent in excess of the principal of and interest on the note and the other bonds and notes payable from such fund, and accordingly, no tax is levied at this time.

3.06 Monies on deposit in the construction account and the water debt service fund may, at the discretion of the city, be invested in securities permitted by Minnesota Statutes, Chapter 118A; provided, that any such investments shall mature at such times and in such amounts as will permit payment of the project costs and/or the principal and interest on the note and bonds or notes payable from the water debt service fund when due, as applicable.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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 percent 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 percent of such proceeds will be allocated for such purposes within the one-year period of such date; and (iii) 100 percent 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 five percent of the available proceeds of the note, and that 100 percent 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.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

5.02 The officers of the city are authorized and directed to prepare and furnish to the purchaser and to bond counsel certified copies of all proceedings and records of the city relating to the authorization and issuance of the note and other affidavits and certificates as may reasonably be requested to show the facts relating to the legality and marketability of the note as such facts appear from the official books and records of the officers' custody or otherwise known to them. All of such certified copies, certificates and affidavits, including any heretofore furnished, constitute representations of the city as to the correctness of facts recited therein and the actions stated therein to have been taken.

Resolution 10-0597 was adopted upon the following vote:

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

Nays: Councilors Fosle and Stauber -- 2

Approved December 6, 2010

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 2011 through 2015 which has been presented to the council in the section entitled "capital improvement bond summary" in the document entitled "2011-2015 Capital Improvement Plan-Capital Budget and Plan" (the "plan");

(b) The council has caused due notice to be given and has held on December 6, 2010, 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 general obligation capital improvement bonds under the act and Minnesota Statutes, Chapter 475, in an amount not to

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

exceed \$2,275,000 (the "bonds"), for the purpose of providing funds for the acquisition and betterment of the following projects: improvements to eligible facilities under the act, to buildings citywide including furnace and boilers, a storage building, security and entry systems and facility needs priorities related to energy improvements; improvements to City Hall including remodeling projects and window replacements; improvements to fire department facilities including remodeling and window replacements; a new public safety communications system; an upgrade of the library's mechanical systems; and payment of discount and costs of issuance;

(b) The city hereby expresses its intent to issue the bonds for the projects in an aggregate principal amount not to exceed \$2,275,000, 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.

2.02 The council shall hold a public hearing on the issuance of the bonds at 7:00 p.m. on January 10, 2011. 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. 10-1206-13, 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 10-0598 was adopted upon the following vote:

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

Nays: Councilors Fosle and Stauber -- 2

Approved December 6, 2010

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 2011 in an amount up to \$4,380,000 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 \$170,000.

Section 3. The capital equipment to be financed includes those items of equipment set forth on the list (Public Document No. 10-1206-14), which list of equipment is hereby approved for purchase in 2011.

Section 4. The terms and conditions of the capital equipment notes and the sale thereof shall be established by further resolution of the council.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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 10-0599 was adopted upon the following vote:

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

Nays: Councilors Fedora, Fosle and Stauber -- 3

Approved December 6, 2010

DON NESS, Mayor

- - -

RESOLVED, that the operation budget for the fiscal year January 1, 2011, to December 31, 2011, in the amount of \$13,257,263 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 10-0610 was unanimously adopted.

Approved December 6, 2010

DON NESS, Mayor

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Resolution 10-0612, approving the fiscal year January 1, 2011, to December 31, 2011, budgets of the Duluth economic development authority [DEDA], was introduced by Councilor Fedora for discussion.

Councilor Stauber voiced concern that DEDA's main fund and storefront loan program will be reduced by 60 percent during 2011 and if the budget for 2012 is as large, there could be nothing left in the funds in two years.

Councilor Fosle expressed his concern that DEDA is buying buildings before finishing work on the ones they already own and not spending their money responsibly.

Resolution 10-0612 was adopted as follows:

RESOLVED, that the DEDA operating fund, debt service fund, capital project fund, storefront loan funds and NWA maintenance facility fund budgets on file in the office of the city clerk as Public Document No. 10-1206-15 are hereby approved.

Resolution 10-0612 was adopted upon the following vote:

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

Nays: Councilors Fosle and Stauber -- 2

Approved December 6, 2010

DON NESS, Mayor

- - -

Resolution 10-0624, by Councilor Fedora, stating council policy regarding snow dump sites for the 2010/2011 snow season, was introduced for discussion.

Councilor Stauber explained that he has done some research on where other cities, such as on the East Coast, dump their snow and found that they have very clear requirements that they cannot dump their snow near fresh water. He reviewed that three years ago he started requesting the administration to find a new place to dump the snow and last year the

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

administration stated they would find a suitable new location. Councilor Stauber continued saying that after a year, the administration's answer for a suitable site at Spirit Mountain is not reasonable as it will cost too much money and has given the council a tough decision on where to dump the snow.

Chief Administrative Officer David Montgomery replied that he committed to look for suitable sites and looked at seven different sites in the city and settled on Spirit Mountain's lower parking lot and the Atlas Cement Site, but the distance to these sites would cost more than the DEDA sites.

Resolution 10-0624 was adopted as follows:

BY COUNCILOR FEDORA:

Whereas, the city has dumped snow near the harbor for many years; and

Whereas, the council requested the administration explore alternatives to dumping snow near the harbor; and

Whereas, the administration has presented an alternative site on Spirit Mountain; and

Whereas, the additional cost of hauling to the alternative site is estimated to be between \$86,400 and \$136,440 per year; and

Whereas, the council supports efforts to keep salt and grime out of Lake Superior, but the council also has to balance other factors, including the incidental environmental benefits of moving the snow further away from Lake Superior with the environmental impacts of additional fuel consumption, the pollution of the Spirit Mountain area, and the budgetary trade-off needed to devote additional resources to snow removal verses other services, such as police, parks or libraries.

Therefore, as a matter of policy, the council would like the administration to explore using the atlas cement site and DEDA lot D as snow dump areas for the 2010/2011 snow season.

The council further resolves that it would like the administration to make all reasonable efforts to keep salt and grime out of Lake Superior at these sites.

The council further resolves that it would like the administration to continue to explore snow dump options for the 2011/2012 snow season.

Resolution 10-0624 was adopted upon the following vote:

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

Nays: Councilors Stauber -- 1

Approved December 6, 2010

DON NESS, Mayor

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Resolution 10-0601, approving proposed specifications for the civil service classification of payroll practitioner and specifying contract benefits for same; Resolution 10-0602, approving proposed specifications for the civil service classification of human resources assistant and specifying contract benefits for same; Resolution 10-0604, approving proposed amendment to the title of the civil service classification of payroll coordinator to payroll administrator; Resolution 10-0605, approving proposed specifications for the civil service classification of employee benefits administrator and specifying contract benefits for same; Resolution 10-0606, approving proposed specifications for the civil service classification of employee benefits representative and specifying contract benefits for same; Resolution 10-0607, approving proposed specifications for the civil service classification of human resources

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

administrator and specifying contract benefits for same; and Resolution 10-0608, approving proposed amendments to the specifications for the civil service classification of human resources benefits technician including a title change to human resources technician, were introduced by Councilor Boyle for discussion.

Councilor Fosle voiced concern that when job descriptions are rewritten, that usually means that a raise increase will follow.

Mr. Montgomery explained that these job descriptions are for the restructuring of the human resources division and the issue is having the right structure and skill set to get things done effectively and efficiently.

Resolutions 10-0601, 10-0602, 10-0604, 10-0605, 10-0606, 10-0607 and 10-0608 were adopted as follows:

RESOLVED, that the proposed specifications for the new civil service classification of payroll practitioner, which were approved by the civil service board on October 5, 2010, and which are filed with the city clerk as Public Document No. 10-1206-16, are approved; that said classification shall be subject to the city's collective bargaining agreement with its basic unit employees; and that pay range for 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 10-0601 was adopted upon the following vote:

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

Nays: Councilors Fosle and Stauber -- 2

Approved December 6, 2010

DON NESS, Mayor

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RESOLVED, that the proposed specifications for the new civil service classification of human resources assistant, which were approved by the civil service board on October 5, 2010, and which are filed with the city clerk as Public Document No. 10-1206-17, 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 127. 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 10-0602 was adopted upon the following vote:

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

Nays: Councilors Fosle and Stauber -- 2

Approved December 6, 2010

DON NESS, Mayor

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RESOLVED, that the proposed amendment to the title of the civil service classification of payroll coordinator to payroll administrator, which was approved by the civil service board on October 5, 2010, and which is filed with the city clerk as Public Document No. 10-1206-18, is approved. This classification shall be subject to the city's collective bargaining agreement with its confidential employees; and that pay range for said classification shall be Range 10A. The proper city officials are authorized to execute and implement an agreement with the union to

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

provide for employing one or more unit members consistent with this resolution.

Resolution 10-0604 was adopted upon the following vote:

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

Nays: Councilors Fosle and Stauber -- 2

Approved December 6, 2010

DON NESS, Mayor

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RESOLVED, that the proposed specifications for the new civil service classification of employee benefits administrator, which were approved by the civil service board on October 5, 2010, and which are filed with the city clerk as Public Document No. 10-1206-19, are approved; that said classification shall be subject to the city's collective bargaining agreement with its confidential unit employees; and that pay range for said classification shall be Range 10A. 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 10-0605 was adopted upon the following vote:

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

Nays: Councilors Fosle and Stauber -- 2

Approved December 6, 2010

DON NESS, Mayor

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RESOLVED, that the proposed specifications for the new civil service classification of employee benefits representative, which were approved by the civil service board on October 5, 2010, and which are filed with the city clerk as Public Document No. 10-1206-20, are approved; that said classification shall be subject to the city's collective bargaining agreement with its confidential unit employees; and that pay range for said classification shall be 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 10-0606 was adopted upon the following vote:

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

Nays: Councilors Fosle and Stauber -- 2

Approved December 6, 2010

DON NESS, Mayor

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RESOLVED, that the proposed specifications for the new civil service classification of human resources administrator, which were approved by the civil service board on October 5, 2010, and which are filed with the city clerk as Public Document No. 10-1206-21, are approved; that said classification shall be subject to the city's collective bargaining agreement with its confidential unit employees; and that pay range for said classification shall be Range 11. 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 10-0607 was adopted upon the following vote:

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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Nays: Councilors Fosle and Stauber -- 2
Approved December 6, 2010
DON NESS, Mayor

- - -

RESOLVED, that the proposed amendments to the specifications for the civil service classification of human resources benefits technician, including a title change to human resources technician, which were approved by the civil service board on October 5, 2010, and which are filed with the city clerk as Public Document No. 10-1206-22, are approved. This classification shall be subject to the city's collective bargaining agreement with its confidential employees; and that pay range for said classification shall be Range 9. The proper city officials are authorized to execute and implement an agreement with the union to provide for employing one or more unit members consistent with this resolution.

Resolution 10-0608 was adopted upon the following vote:

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

Nays: Councilors Fosle and Stauber -- 2
Approved December 6, 2010
DON NESS, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR FEDORA

10-066 - AN ORDINANCE DETERMINING THE SUM TO BE RAISED BY TAXATION FOR GENERAL PURPOSES FOR THE YEAR 2011.

- - -

INTRODUCED BY COUNCILOR FEDORA

10-067 - AN ORDINANCE SETTING THE BUDGET FOR THE FISCAL YEAR 2011 APPROPRIATION MONIES FOR THE SUPPORT OF THE CITY GOVERNMENT, PUBLIC UTILITIES, AND PUBLIC ENTERPRISE FUNDS AND FOR OTHER PURPOSES.

- - -

INTRODUCED BY COUNCILOR FEDORA

10-069 - AN ORDINANCE DETERMINING THE SUM TO BE RAISED BY TAXATION FOR THE SPECIAL TAXING DISTRICT, DULUTH TRANSIT AUTHORITY, FOR THE YEAR 2011.

- - -

INTRODUCED BY COUNCILOR STAUBER

10-063 - AN ORDINANCE AUTHORIZING THE HOUSING AND REDEVELOPMENT AUTHORITY OF DULUTH TO EXERCISE POWERS UNDER MINNESOTA STATUTES, CHAPTER 462C, ON BEHALF OF THE CITY OF DULUTH.

- - -

INTRODUCED BY COUNCILOR STAUBER

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

- - -

BY PRESIDENT ANDERSON

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

10-061 - AN ORDINANCE ADDING NEW SECTIONS 34-15 AND 34-16 TO THE DULUTH CITY CODE, 1959, AS AMENDED, REGARDING TRUANCY ABATEMENT.

- - -

INTRODUCED BY PRESIDENT ANDERSON

10-062 - AN ORDINANCE AMENDING CHAPTER 29A OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO THE CITY HOUSING, PROPERTY MAINTENANCE AND RENTAL CODE.

Councilor Fedora moved to amend Section 29A-32(f) of the ordinance as follows:

(a) In the first sentence, insert the phrase "Except as otherwise provided in this Section" before the phrase "All multi-tenant";

(b) Add the following subsections:

"(1) The building appeal board may grant a variance from the nonconformance fee when a hardship, as defined by Section 29A-27(i), exists. The board shall review the application and conduct a public hearing pursuant to Section 10-5. The board may grant a variance from all or a portion of the nonconformance fee requirement;

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

which motion was seconded for discussion.

To Councilor Hartman's question, City Attorney Gunnar Johnson replied that a hardship would be defined by physical characteristics of the property and not because the landlord chose not to create a parking spot.

Mr. Montgomery stated that the building appeal board would need clear and precise guidelines for the board to follow and not create an ordinance where hardships undercut the purpose of the ordinance.

Councilor Stauber moved to table the amendment, which motion failed upon the following vote:

Yeas: Councilors Boyle, Gardner and Stauber -- 3

Nays: Councilors Cuneo, Fedora, Fosle, Gauthier, Hartman and President Anderson -- 6

Councilor Hartman stated the off street parking provision in this ordinance was created to be a disincentive to continue to rent homes out because they are unsustainable for the neighborhoods and not clearly defining what a physical hardship is could be a real challenge for the building appeal board.

Councilor Boyle stated that the amendment does have some merit, but without defined hardships, it will make the ordinance unenforceable and create nothing but problems for the building appeal board.

Councilor Fedora's amendment carried upon the following vote:

Yeas: Councilors Cuneo, Fedora, Fosle, Gardner and Gauthier -- 5

Nays: Councilors Boyle, Hartman, Stauber and President Anderson -- 4

- - -

INTRODUCED BY PRESIDENT ANDERSON

10-065 - AN ORDINANCE REPEALING ORDINANCE FILE NO. 10-059 AND AMENDING CHAPTER III, SECTION 13, OF THE CITY OF DULUTH HOME RULE CHARTER, 1912, AS AMENDED, PERTAINING TO ORDINANCE PUBLICATION REQUIREMENTS.

- - -

BY PRESIDENT ANDERSON

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

10-070 - AN ORDINANCE AMENDING SECTION 29A-27, AND REPEALING SECTION 29A-32.1, OF CHAPTER 29A OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO THE RENTAL LICENSING 300 FOOT RULE.

- - -

INTRODUCED BY COUNCILOR GAUTHIER

10-064 - AN ORDINANCE DESIGNATING THE DPUC TO HEAR APPEALS UNDER CHAPTERS 43 AND 48 OF THE CODE, AMENDING SECTIONS 43-33.2, 48-1 AND 48-15.3 AND ARTICLE XV OF CHAPTER 48 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

- - -

The meeting was adjourned at 9:05 p.m.

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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, December 20, 2010, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: None -- 0

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

10-1220-16 Councilor Kerry Gauthier resignation from the office of Fourth District City Councilor effective January 1, 2011. -- Received

10-1220-07 Life House communication regarding community development block grant (CDBG) funding (10-0627R). -- Received

10-1220-14 Richard Paulson communication regarding snow disposal (10-0622R and 10-0638R). -- Received

10-1220-08 Mike Ronning communication regarding the proposed 2011 alcoholic beverage license fees (10-0579R). -- Received

10-1220-01 The following communications regarding the proposed repeal of the rental housing 300 foot rule (10-070-O): (a) Barbara Brooks; (b) Glorias and Leif Brush; (c) Len and Bobbi Edwards; (d) Mary Gallegos; (f) Mark Ham; (g) Carrie Heffernan; (h) Mary Madill; (i) Scott Miller; (j) Barbara Montee; (k) Sharon Nelson; (l) Lani and John Paszak; (m) Sandy Robinson; (n) Peter Williamson. -- Received

10-1220-15 The following communications regarding the proposed housing, property maintenance and rental code amendments (10-062-O): (a) Jerry Henneck; (b) Claire Kirch; (c) John Peterson; (d) ShipRock Management, Inc. -- Received

- - -

REPORTS FROM OTHER OFFICERS

10-1220-02 Clerk applications for exempt permits (raffles) to the Minnesota gambling control board from: (a) Pheasants Forever on April 15, 2011; (b) St. Johns the Evangelist Church on March 19, 2011. -- Received

10-1220-09 Public works and utilities department director notice of installation of a loading zone on the south side of First Street just west of Lake Avenue, pursuant to Section 33-87 of the Duluth City Code. -- Received

- - -

REPORTS OF BOARDS AND COMMISSIONS

10-1220-03 Commission on disabilities minutes of November 3, 2010, meeting. -- Received

10-1220-11 Duluth economic development authority minutes of November 17, 2010, meeting. -- Received

10-1220-12 Entertainment and convention center authority minutes of November 30, 2010, meeting. -- Received

10-1220-04 Library board minutes of October 26, 2010, meeting. -- Received

10-1220-10 Parking commission: (a) Minutes of November 23, 2010, meeting; (b) Recommendation on the removal of parking meters in the Lincoln Park Business District (10-0665R). -- Received

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

10-1220-05 Parks and recreation commission minutes of: (a) October 13; (b) November 10; (c) November 22, 2010, meetings. -- Received

10-1220-13 Planning commission minutes of November 9, 2010, meeting. -- Received

10-1220-06 Spirit Mountain recreation area authority minutes of November 18, 2010, meeting. -- Received

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At this time, 7:02 p.m., the public hearing on 2011 alcoholic beverage license fees began.

At this time, 7:03 p.m., the public hearing was declared closed.

- - -

At this time, 7:03 p.m., the public hearing on the proposed Charter amendment pertaining to ordinance publication requirements began.

At this time, 7:04 p.m., the public hearing was declared closed.

- - -

At this time, Councilor Fedora moved to suspend the rules to consider Resolution 10-0659, which motion was seconded and unanimously approved.

Resolution 10-0659, by Councilor Fedora, President Anderson and Councilor Hartman, honoring the University of Minnesota - Duluth [UMD] football team, was introduced for discussion.

Councilor Fedora moved to amend the resolution by deleting the third "WHEREAS" paragraph and inserting in its place the following:

"WHEREAS, on December 18, 2010, UMD beat Delta State University 20-17;

and

WHEREAS, this victory was due in large part to UMD's unsurpassed defense and the strong leg of their kicker; and

WHEREAS, UMD is the Division II football national champions,"

which motion was seconded and unanimously carried.

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

Bob Nielson, coach of the UMD football team, thanked the council for this recognition.

Mayor Ness presented a proclamation recognizing the great accomplishment of the team.

Resolution 10-0659, as amended, was adopted as follows:

BY COUNCILOR FEDORA, PRESIDENT ANDERSON AND COUNCILOR HARTMAN:

WHEREAS, the city council recognizes the UMD football team for their icy 17-13 victory over D2 powerhouse Northwest Missouri State University on Saturday, December 11, 2010, and for advancing to the December 18, 2010, NCAA Division II championship in Florence, Alabama, against Delta State University; and

WHEREAS, UMD has appeared in the NCAA Division II playoffs in 2002, 2005 and 2008, and UMD won the 2008 Division II national championship; and

WHEREAS, on December 18, 2010, UMD beat Delta State University 20-17; and

WHEREAS, this victory was due in large part to UMD's unsurpassed defense and the strong leg of their kicker; and

WHEREAS, UMD is the Division II football national champions.

THEREFORE, BE IT RESOLVED, the Duluth City Council honors the UMD football

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

team for an outstanding season and recognizes the UMD players, coaches, administration and student body for another exceptional season.

Resolution 10-0659, as amended, was unanimously adopted.

Approved December 20, 2010

DON NESS, Mayor

- - -

REPORTS OF COUNCIL OPEN ISSUES

Councilor Gauthier presented his resignation letter from the office of Fourth District City Councilor effective January 1, 2011 (Public Document No. 10-1220-16). He reflected on his tenure as a councilor, recognized the high quality of performance by city employees and spoke of his goals at the legislature.

President Anderson presented Councilor Gauthier with a plaque recognizing his tenure on the city council.

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RESOLUTION TABLED

Councilor Fedora moved to remove Resolution 10-0579, adopting license, permit and fee charges for 2011, from the table, which motion was seconded and unanimously carried.

Councilor Fosle commented that he always thought that there was a funding fee for street lighting, noting the charges on a Minnesota Power bill.

Resolution 10-0579 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, 5-20, 6-3, 6-12, 6-14, 6-36.1, 6-36.3, 6-39, 6-77, 6-79, 6-82, 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, 48-210 and 50-37.1.C of the Duluth City Code, the license, permit and fee charges for 2011 as listed on Public Document No. 10-1220-17 shall be adopted.

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, 2011.

Resolution 10-0579 was adopted upon the following vote:

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

Nays: Councilors Fedora and Fosle -- 2

Approved December 20, 2010

DON NESS, Mayor

- - -

At this time, Councilor Fedora moved to suspend the rules to consider Resolution 10-0658 and ordinances 10-062 and 10-070, which motion was seconded and unanimously carried.

Resolution 10-0658, amending Resolution 10-0579 adopting license, permit and fee charges for 2011; adding housing, property maintenance and rental code fees, was introduced by Councilor Fedora for discussion.

Councilor Cuneo stated that upon advice from the city attorney, he would be abstaining from voting on this issue.

Councilor Stauber moved to amend the resolution by changing the Rental Conversion Fee – Single Tenant License from “\$1,000” to “\$2,500,” which motion was seconded by

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Councilor Gauthier and discussed.

Councilors Fedora, Gardner, Boyle and Hartman opposed the amendment for the reasons of: this is too high, the \$1,000 is adequate; the fee structure should be based on the actual cost of providing services and this is a punitive fine for individuals who want and/or need to convert their home to rental property.

Councilor Gauthier supported the amendment for reasons of: the city is backlogged for inspections and more than the one current inspector is needed; by converting to rental, you are giving the city a long term responsibility and the city will not be putting the same or close to the amount of staff time into a single-tenant license as a multi-tenant license.

Mayor Ness supported the fee as proposed in the resolution, or lower, but did not support the amendment.

The amendment failed as follows:

Yeas: Councilors Gauthier and Stauber -- 2

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

Abstention: Councilor Cuneo -- 1

Councilor Boyle moved to amend the resolution by changing the Rental Conversion Fee – Multi Tenant license from “\$1,000” to “\$7,500,” which motion was seconded by Councilor Gardner and discussed.

Councilors Boyle, Gardner, Hartman and Stauber supported the amendment for reasons of: there is no bigger stress aspect for a neighborhood than going from a single family housing to a multi tenant license, due to parking and increased mass; this should be a one-time fee for the life of the house; this is entirely different than the single tenant licensing with much lower stress on the neighborhood; police and fire will be required to enforce the parking requirements; multi tenant units use the police and fire department significantly more than single tenant units; this is also a zoning issue that will be dealt with in the small area plan; there is a lot more process and work involved with multi tenant unit permitting and inspections; it is important to reduce the density with the likely removal of the 300 foot rule; there is a need to slow the growth of multi tenant units; there is the intent to not spread the problem that is around the college campus farther throughout the city; if in a neighborhood, a house converts to a multi tenant unit, it has been proven that the property values decrease; it is against zoning regulations to have boarding houses in residential neighborhoods; there are costs more than the one time inspection that are involved here and this is not against students, it is about the number of tenants, regardless of age.

Councilors Fedora, Gauthier and Fosle opposed the amendment for reasons of: the fee should be appropriate for the service provided; this is a citywide housing code, not just for the UMD area, that is being punished; you have the same problems with single or multi tenant units; this will apply throughout the city; this may only be the difference of one person between single versus multi tenant, and cost \$6,500 more and this fee amount is punitive.

Mayor Ness expressed concerns that this particular amendment is out of line, because it needs to be based on the costs associated with this license.

Fire Chief John Strongitharm responded to councilor inquiry that there are fines charged to a landlord if a complaint is filed and it is determined that the problem is justified and not corrected.

The amendment fails as follows:

Yeas: Councilors Boyle, Gardner, Hartman and Stauber -- 4

Nays: Councilors Fedora, Fosle, Gauthier and President Anderson -- 4

Abstention: Councilor Cuneo -- 1

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

President Anderson moved to amend the resolution by changing the Rental Conversion Fee – Multi Tenant license from “\$1,000” to “\$2,500,” which motion was seconded and carried as follows:

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

Nays: Councilors Fedora and Fosle -- 2

Abstention: Councilor Cuneo -- 1

Councilor Stauber moved to amend the resolution by changing the Rental Conversion Fee – Multi Tenant license from “\$2,500” to “\$3,500,” which motion was seconded and carried upon the following vote:

Yeas: Councilors Boyle, Gardner, Gauthier, Hartman and Stauber -- 5

Nays: Councilors Fedora, Fosle and President Anderson -- 3

Abstention: Councilor Cuneo -- 1

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

Elaine Freely expressed her concerns that many rental units have no space possibility and financial means for providing for off street parking.

Becky Hall expressed opposition to the proposed tenant licensing fee proposals for reasons of: these are a blatant violation of one’s constitutional rights to fully manage personal property; it punishes law abiding landlords with financial repercussions; the focus should be on the offenders, like the false alarm ordinance does; tenants have more legal protections from being evicted that landlords do in evicting them and these new fees will increase the cost of rents.

Councilor Fosle opposed the ordinance for reasons of: many individuals are in dire financial straits at this time and this council appears to not have a problem with raising fees.

Resolution 10-0658, as amended, was adopted as follows:

RESOLVED, that Resolution 10-0579 adopting license, permit and fee charges for 2011 be amended by adding the fees as listed on Public Document No. 10-1220-18, pursuant to Section 29A-30 of the Duluth City Code.

Resolution 10-0658, as amended, was adopted upon the following vote:

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

Nays: Councilors Fedora and Fosle -- 2

Abstention: Councilor Cuneo -- 1

Approved December 20, 2010

DON NESS, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the second time:

INTRODUCED BY PRESIDENT ANDERSON

10-062 (10064) - AN ORDINANCE AMENDING CHAPTER 29A OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO THE CITY HOUSING, PROPERTY MAINTENANCE AND RENTAL CODE.

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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Gary Kalligher expressed support for the ordinance because this has been worked on for a long time by a lot of individuals.

President Anderson moved to amend the ordinance by changing in Section 17 the words "30 days" to "March 14, 2011," which motion was seconded and carried as follows:

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

Nays: Councilor Fosle -- 1

Abstention: Councilor Cuneo -- 1

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

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BY PRESIDENT ANDERSON

10-070 (10065) - AN ORDINANCE AMENDING SECTION 29A-27, AND REPEALING SECTION 29A-32.1, OF CHAPTER 29A OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO THE RENTAL LICENSING 300 FOOT RULE.

President Anderson moved to amend the ordinance by changing in Section 3 the words "30 days" to "March 14, 2011," which motion was seconded and carried as follows:

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

Nays: Councilors Fedora and Fosle -- 2

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

Rick Ball, Susan Schumacker and Sandy Robinson expressed opposition to the ordinance for reasons of: it is premature to repeal the 300 foot rule until some of the rental reforms of Ordinance 10-062 have been implemented; this should remain in place until the small area study is completed; this is a very complex situation that needs time for each aspect to "play out" to see if it works; this is a citywide problem, not just in the area of the university; you cannot do "anything" you want with the property you own and just because you have a rental license, does not guarantee that you will sell your house.

Gary Kalligher and Teresa Koivula supported the ordinance for the reasons that: while at one time there might have been a good reason for the 300 foot rule, since then there has been issues that have come forth, such as the housing recession, that have caused unexpected suffering; there have been investors who wanted buy houses, who have now looked outside the city; the lack of economical housing adversely affects students coming to Duluth and employment is different here, so the housing costs need to be economical.

Councilor Stauber urged that the second and third district councilors have done a lot of work contacting and working with those in their districts and that their recommendations should be supported.

Councilors Fedora, Gauthier, Cuneo, Hartman and Fosle supported the ordinance for reasons of: the 300 foot rule has caused more problems than it was intended to solve; it has hurt many individuals financially; the rental reform regulations actually target the bad behaviors; it is the people who do not adhere to social norms that are the problems, not renters or students collectively; the 300 foot rule has always been intended to be temporary and replaced when an alternative solution exists and in 1970, under Mayor Boo, it was reported that the city was working on rentals around the campus neighborhood.

Councilors Boyle and Gardner opposed the ordinance for reasons of: while the 300 foot rule has some problems, the changes to rental reform will not solve those problems; the

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

homeowners' who remain in areas within the 300 feet still have needs and concerns; this is a quality of life issue not a social issue; high density housing developments in the future will address some of the issues here and this needs more time to see how the rental reform details are implemented.

Mayor Ness expressed support for the ordinance, noting that while both sides have different perspectives and there still are concerns from both sides, there is not an overheated packed Council Chamber, as has been in the past. He further noted that the new UMD chancellor wants to work with the community to address their concerns and that housing for young families is affordable.

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

Yeas: Councilors Cuneo, Fedora, Fosle, Gauthier, Hartman and President Anderson -- 6

Nays: Councilors Boyle, Gardner and Stauber -- 3

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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 Anderson 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. 10-1220-19 with The Valuation Group, Inc., for appraisal services anticipated to be needed during 2011 related to various tax court proceedings in the total amount of not to exceed \$37,000, payable from the assessor's budget, Account 110-125-1213-5441.

Resolution 10-0639 was unanimously adopted.

Approved December 20, 2010

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:

Minnesota Ballet (Celebrity Dance Challenge), 1215 Rice Lake Road, for February 10, 2011, with Willy McManus, manager.

Resolution 10-0619 was unanimously adopted.

Approved December 20, 2010

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 Heritage Sports Center, Inc. and does hereby waive the 60 day waiting period which it has to object to the issuance of said exemptions.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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 10-0663 was unanimously adopted.

Approved December 20, 2010

DON NESS, Mayor

- - -

BY COUNCILOR BOYLE:

RESOLVED, that the city council hereby appoints City Councilor Patrick Boyle to the Duluth public utilities commission for a term expiring on March 31, 2011, replacing City Councilor Kerry Gauthier who resigned.

Resolution 10-0634 was unanimously adopted.

Approved December 20, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to execute an agreement with DEDA, substantially in the form of that on file in the office of the city clerk as Public Document No. 10-1220-20, which allows DEDA to participate in the city's self insurance fund program during 2011; DEDA funds in the amount of \$6,500 to be deposited into Self Insurance Fund 610-036-1656-4904.

Resolution 10-0621 was unanimously adopted.

Approved December 20, 2010

DON NESS, Mayor

- - -

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 2011 action plan portion of the FY 2010-2014 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 10-0627 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 10-0628 and 10-0629 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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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 10-0626 was unanimously adopted.
 Approved December 20, 2010
 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, 2010 HUD-funded community development account as set forth below:

2010 HOME Program - Fund 260 - Project CD10HM					
Sub-project	Activity	Project	Amount	New Grant	Difference
CH03	1228	East Side Housing	\$105,868	-0-	(\$105,868)
CH01	1227	WCDO Properties Rehab	\$150,000	\$355,108	\$205,108
2009 HOME Program - Fund 260 - Project CD09HM					
CH-03	1226	Property Acquisition Rehab	\$99,240	-0-	(\$99,240)
					\$205,108

Resolution 10-0653 was unanimously adopted.
 Approved December 20, 2010
 DON NESS, Mayor

- - -

RESOLVED, that the city of Duluth does hereby accept the conveyance of a public easement substantially in the form of that on file in the office of the city clerk as Public Document No. 10-1220-21 from Minnesota Power, a division of Allete, Inc. (Minnesota Power), said easement being for public roadway and utility purposes over property in St. Louis County legally described in said public document.

Resolution 10-0660 was unanimously adopted.
 Approved December 20, 2010
 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. 10-1220-22, with Duluth-Superior Public Access Community Television, Inc. (PACT) for providing cablecasting, training and production and administrative services in 2011 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 10-0618 was unanimously adopted.
 Approved December 20, 2010
 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. 10-1220-23, with the Historic Union Depot, Inc. (Depot), in an amount not to exceed \$151,800, payable from Fund 258-030-5436-03.

Resolution 10-0637 was unanimously adopted.
 Approved December 20, 2010

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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. 10-1220-24, 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 the Atlas site located adjacent to the old U.S. Steel plant site.

Resolution 10-0622 was unanimously adopted.

Approved December 20, 2010

DON NESS, Mayor

- - -

RESOLVED, that pursuant to Section 61 of the City Charter, the city council hereby expresses its intent to cause the following portions of the streets named below to be improved as part of Duluth's Riverside community sanitary sewer, water main and storm sewer improvement project and hereby requests that the mayor prepare or have prepared plans, specifications and estimates therefor, and to 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, the number of installments in which assessments may be paid, and the properties which should include the special assessment:

St. Louis Court from Industrial Avenue to Industrial Avenue;
Industrial Avenue from St. Louis Court to Riverside Drive;
Riverview Avenue from Viewcrest Avenue to Industrial Avenue;
Marine Court from Riverview Avenue to Spring Street;
Spring Street from Grand Avenue to Penton Boulevard;
Riverside Drive from Spring Street to Manitou Street;
Manitou Street from Riverside Drive to Cato Avenue;
Sunnyside Street from Riverside Drive to East Penton Boulevard Alley;
Union Street from Riverside Drive to East Penton Boulevard Alley;
England Avenue from Penton Boulevard to Sunnyside Street;
Cato Avenue from East Penton Boulevard Alley to Manitou Street;
Penton Boulevard from Spring Street to England Avenue;
East Penton Boulevard Alley from England Avenue to Calais Street.

Resolution 10-0623 was unanimously adopted.

Approved December 20, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, a copy of which is on file in the office of the city clerk as Public Document No. 10-1220-25, with Andrew J. and Kristin J. Brown allowing them to connect their property located at 20 North 40th Avenue East to the Western Lake Superior Sanitary District's Lakeside interceptor, subject to the approval of the district and setting forth conditions therefore.

Resolution 10-0631 was unanimously adopted.

Approved December 20, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Supplemental Agreement No. 2 to Department of the Army Easement No. DACW35-2-91-3001, a copy of which is on file in the office of the city clerk as Public Document No. 10-1220-26, with the department of the army, Detroit district, corps of engineers, allowing the posting of "no wake" signs on the north and south piers of the Duluth Ship Canal.

Resolution 10-0645 was unanimously adopted.

Approved December 20, 2010

DON NESS, Mayor

- - -

RESOLVED, that plans for Project 69-604-065 showing proposed alignments, profiles, grades and cross sections for the construction, reconstruction or improvement of County State Aid Highway No. 4 (Rice Lake Road) within the limits of the city as a state aid project have been prepared and presented to the city, and that said plans be in all things approved.

Resolution 10-0651 was unanimously adopted.

Approved December 20, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are authorized to enter into an agreement with St. Louis County, a copy of which is on file in the office of the city clerk as Public Document No. 10-1220-27, to make traffic signal and roadway improvements to Arrowhead Road between the southerly and northerly Rice Lake Road intersections, and southerly Rice Lake Road from the intersection of Arrowhead Road approximately 700 feet south, as set forth in State Aid Project 69-604-0655/118-160-022, in an amount not to exceed \$250,000, payable from Permanent Improvement Fund 0411, Department/Agency 035, Object 5530, and will be reimbursed from the city's municipal state aid construction account, City Project No. 0662TR.

Resolution 10-0652 was unanimously adopted.

Approved December 20, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept an amended grant from the state of Minnesota, commissioner of public safety, office of justice programs, in the amount of \$163,313 and to execute an amended grant agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 10-0111-20, for the purpose of supporting the operations of the Lake Superior drug and gang task force for 2011, funds to be deposited in Fund 215-200-2263-4210-02, and authorizing said officials to execute all documents necessary thereto.

Resolution 10-0617 was unanimously adopted.

Approved December 20, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized and directed to enter into a joint powers agreement with the city of Superior, Wisconsin, and the counties of St. Louis, Minnesota, and Douglas, Wisconsin, providing for the participation by the city of Duluth in the Lake Superior forensic technology and internet crimes against children task force. The agreement to be substantially in the form of Public Document No. 10-1220-28 on file in the office of the city clerk.

Resolution 10-0633 was unanimously adopted.

Approved December 20, 2010

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a second amendment to City Contract No. 21014, substantially in the form of that on file in the office of the city clerk as Public Document No. 10-1220-29, with LHB Engineers and Architects, Inc., for additional inspection and survey services related to the construction of the new police headquarters facility, increasing the amount payable thereunder by \$16,292.

Resolution 10-0640 was unanimously adopted.

Approved December 20, 2010

DON NESS, Mayor

- - -

RESOLVED, that city officials are hereby authorized to execute an agreement in year 2010 with St. Louis County for four quarters of shield maintenance software associated with NEMESIS (Northeastern Minnesota enforcement and safety information system) in the amount of \$66,975, terms net 30, payable from General Fund 110, Department/Agency 160, Organization 1610, Object 5404.

Resolution 10-0643 was unanimously adopted.

Approved December 20, 2010

DON NESS, Mayor

- - -

RESOLVED, that in accordance with the provisions of Section 33-97.8 of the Duluth City Code, 1959, as amended, the following alternate side parking from 1:00 AM to 6:00 AM zone is hereby established on the following streets:

On both sides of Second Street between Ninth Avenue East and Tenth Avenue East.

Resolution 10-0648 was unanimously adopted.

Approved December 20, 2010

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 29th Avenue East between Second Street and the alley north of Second Street.

Resolution 10-0649 was unanimously adopted.

Approved December 20, 2010

DON NESS, Mayor

- - -

BY COUNCILOR FOSLE:

RESOLVED, that the city council hereby requests the administration and the Duluth transit authority review the possibility of removing the bus stop and shelter in front of 5705 Grand Avenue.

Resolution 10-0655 was unanimously adopted.

Approved December 20, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept a grant from

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

the Duluth legacy endowment fund in the amount of \$1,031 for the planting of trees on public property, funds to be deposited in Fund 210-030-3150-4660, 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 \$1,235 for the purchase of ice skates to loan to the public during free family ice skating events, funds to be deposited in Fund 210-030-3111-4660, with matching funds in the amount of \$1,235 from the "600 for Kids" account.

FURTHER RESOLVED, that the proper city officials are hereby authorized to accept a grant from the Duluth legacy endowment fund in the amount of \$820 for the purchase of e-book readers for check-out by library users, funds to be deposited in Fund 110-121-1218-4270.

Resolution 10-0632 was unanimously adopted.

Approved December 20, 2010

DON NESS, Mayor

- - -

RESOLVED, that the city council finds the following:

(a) Pursuant to Section 35-6 of the Duluth City Code, 1959, as amended, the city council may establish special trails or paths for use by snowmobiles, bicycles, hikers, horseback riders, cross-country skiers or snowshoers;

(b) The parks and recreation commission, at its June 9, 2010, regular meeting, did recommend, unanimously, to designate as an official hiking and biking trail that area in Central Park indicated by red dot global positioning system marks on the map of Central Park on file in the city clerk's office as Public Document No. 10-1220-30;

(c) The parks and recreation commission, at its October 13, 2010, regular meeting did recommend, unanimously, to designate as an official hiking trail that one-half mile of walking trail in Web Woods as indicated on the map of Web Woods on file in the city clerk's office as Public Document No. 10-1220-30.

BE IT FURTHER RESOLVED, that the city council of the city of Duluth approves the recommendations of the parks and recreation commission set forth above and hereby establishes as an official hiking and biking trail that area in Central Park as indicated on the map of Central Park on file as Public Document No. 10-1220-30 and also establishes as an official hiking trail that one-half mile of walking trail in Web Woods as indicated on the map of Web Woods on file as Public Document No. 10-1220-30.

Resolution 10-0641 was unanimously adopted.

Approved December 20, 2010

DON NESS, Mayor

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The following entitled resolutions were also considered:

RESOLVED, that the city council hereby makes the following findings:

(a) That sufficient petitions were filed with the city clerk requesting the vacation of portions of 45th Avenue West adjoining Lot 8 and Lot 16, Block 69 and Lot 1 and Lot 9, Block 70, TOWN OF ONEOTA, legally described as follows (see also Exhibit A):

(1) The westerly ten feet lying within 118 feet of Grand Avenue; and

(2) The easterly ten feet lying within 118 feet of Grand Avenue; and

(3) All that part lying northerly of a line parallel with the northerly line of vacated Second Street and 113 feet northerly therefrom and southerly of a line parallel with

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Grand Avenue and 118 feet southerly therefrom subject to retention of a utility easement over the entire vacated area; 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 petitions were duly referred to the city planning commission (FN 10109), 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 portion of 45th Avenue West is useless for vehicular and pedestrian purposes, but not for utility purposes; and

(c) The presence of utilities in 45th Avenue West makes the following utility easements necessary:

(1) The westerly ten feet lying within 118 feet of Grand Avenue; and

(2) All that part lying northerly of a line parallel with the northerly line of vacated Second Street and 113 feet northerly therefrom and southerly of a line parallel with Grand Avenue and 118 feet southerly therefrom subject to retention of a utility easement over the entire vacated area; and

(d) The city planning commission, at its December 14, 2010, regular meeting, recommended approval of the vacation petition subject to retention of utility easements; and

(e) The city council of the city of Duluth approves the vacation of the following subject to retention of utility easements, both more particularly described in Exhibit A and Public Document No: 10-1220-31:

(1) The westerly ten feet lying within 118 feet of Grand Avenue subject to retention of a utility easement over the entire vacated area; and

(2) The easterly ten feet lying within 118 feet of Grand Avenue; and

(3) All that part lying northerly of a line parallel with the northerly line of vacated Second Street and 113 feet northerly therefrom and southerly of a line parallel with Grand Avenue and 118 feet southerly therefrom subject to retention of a utility easement over the entire vacated area; and

(f) That the city clerk is, pursuant to Section 100 (b)(7) of the Home Rule Charter of the city of Duluth, 1912, as amended authorized to record, with the register of deeds and/or the registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution and Public Document No. 10-1220-31 showing the portions the street to be vacated and utility easements to be retained.

Resolution 10-0662 was adopted upon the following vote:

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

Nays: None -- 0

Abstention: Councilor Fedora -- 1

Approved December 20, 2010

DON NESS, Mayor

- - -

Resolution 10-0614, in the matter of the on sale intoxicating liquor license of Bergey's, LLC, (Bergey's), 2232 West Superior Street; and Resolution 10-0615, in the matter of the on sale intoxicating liquor license of Piedmont Bottle Shop, Inc. (Piedmont Bottle Shop), 2818 Piedmont Avenue, were introduced by Councilor Cuneo.

President Anderson moved to amend the last paragraph of both resolutions as follows:

(a) Impose a "\$750," instead of a "\$500," civil penalty;

(b) That "\$500," instead of "\$250," of the penalty be payable within 30 days;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

which motion was seconded and discussed.

President Anderson noted that the recommendations from the alcohol, gambling and tobacco commission are less than what these establishments previously received and that his amendments stay in line with the two previous fines that these establishments received.

The amendment to Resolution 10-0614 carried as follows:

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

Nays: Councilors Fosle, Gauthier and Stauber -- 3

Resolution 10-0614, 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 September 1, 2010, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of 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. 10-1220-32;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on December 20, 2010, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 10-1220-32 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 city council impose a \$750 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 \$500 of the penalty be payable within 30 days of final council action.

Resolution 10-0614, as amended, was adopted upon the following vote:

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

Nays: Councilors Fosle and Stauber -- 2

Approved December 20, 2010

DON NESS, Mayor

- - -

The amendment to Resolution 10-0615 carried as follows:

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

Nays: Councilors Fosle, Gauthier and Stauber -- 3

Resolution 10-0615, 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 September 1, 2010, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of 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. 10-1220-33;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on December 20, 2010, the city council considered the records and evidence submitted;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

(c) The finding of facts as set forth in Public Document No. 10-1220-33 regarding any suspension, revocation and/or civil penalty relating to the on 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 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 \$500 of the penalty be payable within 30 days of final council action.

Resolution 10-0615, as amended, was adopted upon the following vote:

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

Nays: Councilors Fosle and Stauber -- 2

Approved December 20, 2010

DON NESS, Mayor

- - -

Resolution 10-0627, authorizing a request for HUD federal community development block grant (CDBG) funds for the 2011 program year as well as approving the reallocation of certain prior CDBG funds and authorizing agreements with appropriate agencies, was introduced by Councilor Stauber for discussion.

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

Pam Kramer, representing the At Home in Duluth Collaborate, expressed support for the growing neighborhood businesses project and the need for the investment in small businesses.

Resolution 10-0627 was adopted as follows:

WHEREAS, City Council Resolution No. 10-0626, adopted December 20, 2010, approved FY 2011 annual action plan portion of the 2010-2014 consolidated 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:

2011 CITY OF DULUTH COMMUNITY DEVELOPMENT BLOCK

GRANT (CDBG) PROGRAM-FUND 262, AGENCY 020, OBJECT 5434 PROJECT CD10CD

SUB

<u>PROJECT</u>	<u>ACTIVITY</u>	<u>AMOUNT</u>	<u>PROJECTS</u>
			<u>HOUSING PROJECTS</u>
HOUS	1734	\$ 705,253	Duluth Property Rehab Program - HRA
HOUS	1291	\$ 60,000	FAIM IDA Housing Counseling/Downpayment Assistance - Community Action Duluth
HOUS	1091	\$ 180,000	Duluth Weatherization Program - AEOA
HOUS	2270	\$ 200,000	Multi-family Development - NCLT

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

HOUS	227A	\$ 116,500	Duluth Energy Efficiency Program - NCLT/Common Ground
<u>ECONOMIC DEVELOPMENT PROJECTS</u>			
ECDV	2412	\$ 160,000	SOAR Duluth At Work - SOAR Career Solutions
ECDV	1244	\$ 120,000	CHUM Support Services for Employment - Churches United in Ministry
ECDV	2805	\$ 40,000	NYS JET (Jobs, Education and Training) - Neighborhood Youth Services
ECDV	2264	\$ 66,500	Growing Neighborhood Businesses - Northeast Entrepreneur Fund, Inc.
ECDV	1974	\$ 48,000	Futures Program - Life House
ECDV	1291	\$ 90,000	Circles of Support -Community Action Duluth
<u>PUBLIC FACILITY IMPROVEMENT PROJECTS</u>			
PFAC	PF01	\$ 132,000	Curb Ramp Accessibility & Sidewalk Improvements
PFAC	PF04	\$ 84,000	Street Assessment Assistance - Community Development
<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	1226	\$ 20,000	Permanent Supportive Housing - Center City
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 CCHC
PSVC	1168	\$ 93,000	Youth Development Collaborative: Valley Youth Center, Grant Community School Collaborative, Boys & Girls Club, YMCA Mentor Duluth Collaborative, YWCA Girls & Youth Programs
PSVC	251A	\$ 30,000	Housing Support Program - Salvation Army
PSVC	1291	\$ 26,500	Jump Start - Community Action Duluth
<u>PLANNING/PROGRAM ADMINISTRATION</u>			
ADMC	AD01	\$ 507,000	CDBG Program Administration
ADMC	AD02	\$ 50,000	Neighborhood Revitalization Planning
ADMC	2805	\$ 20,000	Skills2Success - NYS
ADMC	AD07	\$ 15,000	Housing for Inmates Plan - Housing for Inmates, Inc.
ADMC	AD08	\$ 10,000	At Home Targeted Revitalization - NHS/SVCNDA
ADMC	2511	\$ 10,000	Developing Housing Support Program - Salvation Army

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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

SOURCE OF FUNDING

Year 2011	CDBG grant - city	\$3,070,000
Year 2006	CDBG grant - city	\$ 2,059
Year 2007	CDBG grant - city	\$ 2,591
Year 2010	CDBG grant - city	\$ 27,603

Total \$3,102,253

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>2006 CD06CD</u>			
ADMC-AD-03 Contingency Account	\$ 5,059	(\$ 2,059)	\$ 3,000
<u>2007 CD07CD</u>			
ADMC-AD Contingency Account	\$ 969	(\$ 969)	-0-
PFAC-PF-02 Damiano Parking Lot	\$123,000	(1,622)	\$121,378
<u>2010</u>			
PSVC-134A Housing Access Project	\$ 27,603	(\$ 27,603)	-0-
	\$32,253 - <u>Total Amount Reprogrammed</u>		

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 10-0627 was unanimously adopted.

Approved December 20, 2010

DON NESS, Mayor

- - -

WHEREAS, City Council Resolution No. 10-0626, adopted December 20, 2010, approved FY 2011 annual action plan portion of the 2010-2014 consolidated 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:

2011 HOME PROGRAM - FUND 260, AGENCY 020, OBJECT 5434, PROJECT CD11HM

SUB

<u>PROJECT</u>	<u>ACTIVITY</u>	<u>PROJECTS</u>	<u>AMOUNT</u>
GN10	1736	Homeless Rental Asst. Program (TBRA)- HRA	\$121,500

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

GN10	1737	TBRA Admin - HRA	\$ 19,400
GN10	1738	Duluth Property Rehabilitation Program-HRA	\$200,000
CH10	2270	Housing Predevelopment - NCLT	\$ 20,000
CH10	1226	Housing Redevelopment - Center City Housing	\$ 20,000
CH10	227A	Multi-family Development - NCLT	\$300,000*
CH10	2271	Rehabilitation - Resale - NCLT	\$367,500
GN10	AD03	Program Administration (City)	\$ 61,600
Total			\$810,000

* Pre-commitment for FY 2012-2013

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

Year 2011	HOME grant	\$810,000
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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 10-0628 was unanimously adopted.

Approved December 20, 2010

DON NESS, Mayor

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WHEREAS, City Council Resolution No. 10-0626, adopted December 20, 2010, approved FY 2011 annual action plan portion of the 2010-2014 consolidated 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:

2011 ESG PROGRAM - FUND 262, AGENCY 020, OBJECT 5434, PROJECT CD11ES

<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 CCHC	\$ 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:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Source of funding

2011 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 10-0629 was unanimously adopted.

Approved December 20, 2010

DON NESS, Mayor

- - -

Resolution 10-0646, of intent to support the use of tax increment financing for the Westwood Heights Townhomes Housing Development initiative, was introduced by Councilor Stauber for discussion.

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

Bill Kemp, representing the developer, reviewed the project, the nature of this resolution and answered councilor questions.

Debbie Isabell Nelson expressed concern that the neighborhood has not had time to review that this project is coming back and review what changes there are since it was originally presented five years ago and then again over a year and half ago.

Councilor Gauthier moved to table the resolution, which motion was seconded and carried as follows:

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

Nays: Councilor Fosle -- 1

- - -

Resolution 10-0635, authorizing a parking ramp management contract with Fond du Lac Band for casino ramp in the amount of \$185,000 per year for three years, was introduced by President Anderson for discussion.

Councilors Fedora and Fosle opposed the resolution for reasons of: the city is in the midst of a large financial litigation with the band; there are other companies that can operate a parking ramp; an automated attendant should be considered and the return on running this ramp should be at least double what is being paid for the operations.

Councilors and the administration discussed various aspects of the operation of this ramp and parking ramps in general.

Resolution 10-0635 was adopted as follows:

RESOLVED, that the proper city officials are authorized to enter into an agreement, substantially the same as that on file with the clerk as Public Document No. 10-1220-34, between the city and Fond du Lac Band of Lake Superior Chippewa for operation of a parking concession at the parking ramp adjacent to the Fond du Luth Casino for years 2011, 2012 and 2013 for a fee of \$185,000 per year from Parking Fund 505-015-1480-2511-5307.

Resolution 10-0635 was adopted upon the following vote:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Yeas: Councilors Cuneo, Gardner, Hartman and Stauber -- 4
Nays: Councilors Fedora, Fosle and President Anderson -- 3
Abstention: Councilors Boyle and Gauthier -- 2
Approved December 20, 2010
DON NESS, Mayor

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Resolution 10-0656, amending Resolution 09-0007, as amended, retaining Maki and Overom, Chartered, increasing the amount by \$300,000 for a new total amount not to exceed \$760,000, was introduced by President Anderson for discussion.

Councilor Stauber opposed the resolution for reasons of: by approving this resolution, the council will not be seeing the actual charges; the council should continue to approve charges as they are billed; other law firms have indicated that they felt that the city is making a mistake here and the public has a right to know what the actual charges are.

Councilors discussed at length with City Attorney Gunnar Johnson that the firm will continue to calculate the bill to the city for services, but that it will not be "billed" other than out of pocket expenses and the outside contracted counsel and experts, until there is a recovery by the city in the litigation.

Resolution 10-0656 was adopted as follows:

RESOLVED, that the city council hereby amends Resolution 09-0007, as amended, retaining Maki and Overom, Chartered, to provide legal services to the city related to a gaming matter, increasing the amount by \$300,000 for a new total amount not to exceed \$760,000, payable from Fund 256, Department 030, Object 5304, and authorizes the proper city officials to execute a fourth amendment to professional services agreement substantially the same as that on file in the office of the city clerk as Public Document No. 10-1220-35.

Resolution 10-0656 was adopted upon the following vote:

Yeas: Councilors Cuneo, Fedora, Fosle, Gardner, Gauthier, Hartman and President Anderson -- 7

Nays: Councilor Stauber -- 1

Abstention: Councilor Boyle -- 1

Approved December 20, 2010

DON NESS, Mayor

- - -

Resolution 10-0657, approving agreement with Fryberger, Buchanan, Smith and Frederick, P.A., for legislative services not to exceed \$44,940, was introduced by President Anderson for discussion.

Councilor Stauber opposed the resolution for reasons of: the city does not need a lobbyist to talk to our delegation; the city has a good legislative delegation that looks out for our concerns and Duluth is not a wealthy city.

Resolution 10-0657 was adopted as follows:

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. 10-1220-36, with Fryberger, Buchanan, Smith and Frederick, P.A., under which that firm will provide professional services related to the city's 2011 state legislative program, at a cost to the city not to exceed \$44,940 for the year 2011, and ability for the administration to renew for a second year, which shall be payable from Fund 100-700-1402-5312.

Resolution 10-0657 was adopted upon the following vote:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

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

Nays: Councilor Stauber -- 1

Approved December 20, 2010

DON NESS, Mayor

- - -

BY PRESIDENT ANDERSON AND COUNCILOR HARTMAN:

RESOLVED, that the historic preservation commission conduct a study and report on the appropriateness of designating the historic location of the Incline Railway staircase as an historic preservation landmark.

Resolution 10-0630 was adopted upon the following vote:

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

Nays: Councilor Gauthier -- 1

Approved December 20, 2010

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. 10-1220-37, 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 located west of Bayfront Park.

Resolution 10-0638 was adopted upon the following vote:

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

Nays: Councilor Stauber -- 1

Approved December 20, 2010

DON NESS, Mayor

- - -

Resolution 10-0665, by councilors Gauthier and Stauber, removing designation of portions of Lincoln Park Business District as a metered parking zone, was introduced for discussion.

To a councilor inquiry, Chief Administrative Officer David Montgomery suggested that the correct process should be to do a study and analysis with input from the businesses in this area.

Councilor Fedora opposed the resolution because the parking commission did not support this.

Resolution 10-0665 was adopted as follows:

BY COUNCILORS GAUTHIER AND STAUBER:

RESOLVED, that pursuant to section 33-108 of the Duluth City Code, 1959, as amended, the existing designation of those streets within the area bounded by 19th Avenue West, West First Street, 22nd Avenue West and Michigan Street as being within a parking meter zone is hereby removed.

Resolution 10-0665 was adopted upon the following vote:

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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Nays: Councilor Fedora -- 1

Approved December 20, 2010, pursuant to Section 12 of the Duluth City Charter.

[Editor's Note: Resolution 10-0665 was reconsidered and failed on January 10, 2011.]

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RESOLVED, that in accordance with the provisions of Section 33-101 of the Duluth City Code, 1959, as amended, the following parking meter rates and time limits are established:

(a) On both sides of Second Street between Ninth Avenue East and Tenth Avenue East: 12 hour time limit with a rate of \$0.25/40 minutes (28 meters);

(b) The south side of First Street between Eighth Avenue East and Tenth Avenue East: 12 hour time limit with a rate of \$0.25/40 minutes (18 meters).

Resolution 10-0650 was unanimously adopted.

Approved December 20, 2010

DON NESS, Mayor

- - -

Resolution 10-0644, adopting the parks and recreation master plan for the city of Duluth, was introduced by Councilor Gardner.

Councilor Stauber moved to table the resolution for further public input and review, which motion was seconded and carried as follows:

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

Nays: Councilors Fedora and Fosle -- 2

- - -

BY COUNCILOR GARDNER:

WHEREAS, sexual trafficking and exploitation is a major problem shown to affect the health and well-being of individuals, families, communities and society; and

WHEREAS, historically Duluth has led the country by creating "The Duluth Model" power and control wheel, which depicts abusive behavior and responses which helps victims understand the patterns contributing to the cycle of violence in their lives; and

WHEREAS, in fiscal year 2006, the Minnesota department of health reported that government spending on sexual assault perpetrators and victims was \$221,000,000; and

WHEREAS, sexual trafficking victims in Duluth do not have adequate resources to combat the cycle of prostitution and trafficking which prevents victims from moving forward with their lives and identify the crime to help promote enforcement and ultimately prevention; and

WHEREAS, organizations in Duluth, including the Program to Aid Victims of Sexual Assault, the American Indian Community Housing Organization, the American Indian commission, the Domestic Abuse Intervention Program, the Life House, the city of Duluth police department and other organizations recognize and have identified there is a serious problem with sexual trafficking and sexual violence and have formed the Duluth trafficking task force to address ways to prevent and resolve the problem; and

WHEREAS, current law for people who solicit and purchase trafficked women is not adequate to deter this destructive behavior.

NOW, THEREFORE, BE IT RESOLVED that the Duluth city council supports the work of the Duluth trafficking task force by encouraging community participation in the task force to work to raise community awareness, encourage policies to promote prevention, identify and reduce the demand fueled by internet predators, and work with law enforcement to focus on enforcement and prevention of trafficking related crimes.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Resolution 10-0661 was unanimously adopted.

Approved December 20, 2010

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a second amendment to City Contract No. 20949, substantially in the form of Public Document No. 10-1220-38 on file in the office of the city clerk, with Hoisington Koegler Group, Inc., for professional services required for the completion of Phase 5, the Duluth trail and bikeway plan, of the parks and recreation master plan, for an increase of \$29,875, and a total contract amount not to exceed \$142,675, payable from General Fund 110, Department/Agency 121, Organization 1219, Object 5441, Project No. CM100-OT0817.

Resolution 10-0664 was adopted upon the following vote:

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

Nays: Councilor Gauthier -- 1

Approved December 20, 2010

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

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

- - -

INTRODUCED BY COUNCILOR STAUBER

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

- - -

BY COUNCILOR GAUTHIER

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

- - -

The following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR FEDORA

10-066 (10066) - AN ORDINANCE DETERMINING THE SUM TO BE RAISED BY TAXATION FOR GENERAL PURPOSES FOR THE YEAR 2011.

Councilor Fedora opposed the ordinance because with the projected savings with the retiree healthcare insurance being approximately \$1.9 million, only \$600,000 is being passed on to taxpayers.

The ordinance was adopted as follows:

Yeas: Councilors Boyle, Cuneo, Gardner, Gauthier, Hartman and President Ander-

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

son -- 6

Nays: Councilors Fedora, Fosle and Stauber -- 3

- - -

INTRODUCED BY COUNCILOR FEDORA

10-067 (10067) - AN ORDINANCE SETTING THE BUDGET FOR THE FISCAL YEAR 2011 APPROPRIATION MONIES FOR THE SUPPORT OF THE CITY GOVERNMENT, PUBLIC UTILITIES, AND PUBLIC ENTERPRISE FUNDS AND FOR OTHER PURPOSES.

The ordinance was adopted as follows:

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

Nays: Councilors Fedora, Fosle and Stauber -- 3

- - -

INTRODUCED BY COUNCILOR FEDORA

10-069 (10068) - AN ORDINANCE DETERMINING THE SUM TO BE RAISED BY TAXATION FOR THE SPECIAL TAXING DISTRICT, DULUTH TRANSIT AUTHORITY, FOR THE YEAR 2011.

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

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INTRODUCED BY COUNCILOR STAUBER

10-063 (10069) - AN ORDINANCE AUTHORIZING THE HOUSING AND REDEVELOPMENT AUTHORITY OF DULUTH TO EXERCISE POWERS UNDER MINNESOTA STATUTES, CHAPTER 462C, ON BEHALF OF THE CITY OF DULUTH.

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

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INTRODUCED BY COUNCILOR STAUBER

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

Councilor Stauber moved to table the ordinance, per the request of the administration, which motion was seconded and carried unanimously.

- - -

BY PRESIDENT ANDERSON

10-061 (10070) - AN ORDINANCE ADDING NEW SECTIONS 34-15 AND 34-16 TO THE DULUTH CITY CODE, 1959, AS AMENDED, REGARDING TRUANCY ABATEMENT.

President Anderson moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

INTRODUCED BY PRESIDENT ANDERSON

10-065 (10071) - AN ORDINANCE REPEALING ORDINANCE FILE NO. 10-059 AND AMENDING CHAPTER III, SECTION 13, OF THE CITY OF DULUTH HOME RULE CHARTER, 1912, AS AMENDED, PERTAINING TO ORDINANCE PUBLICATION REQUIREMENTS.

President Anderson moved passage of the ordinance and the same was adopted upon a unanimous vote.

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

At this time, Councilor Stauber left the meeting.

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INTRODUCED BY COUNCILOR GAUTHIER

10-064 (10072) - AN ORDINANCE DESIGNATING THE DPUC TO HEAR APPEALS UNDER CHAPTERS 43 AND 48 OF THE CODE, AMENDING SECTIONS 43-33.2, 48-1 AND 48-15.3 AND ARTICLE XV OF CHAPTER 48 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

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

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COUNCILOR QUESTIONS AND COMMENTS

As per the standing rules, Councilor Gardner announced her intention to be a candidate for council president for 2011. Councilors Hartman and Fosle announced their intention to be candidates for council vice president for the year 2011.

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The meeting was adjourned at 10:43 p.m.

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 10064

AN ORDINANCE AMENDING CHAPTER 29A OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO THE CITY HOUSING, PROPERTY MAINTENANCE AND RENTAL CODE.

The city of Duluth does ordain:

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

HOUSING, PROPERTY MAINTENANCE AND RENTAL CODE.

Section 2. That Section 29A-1 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 29A-1. IPMC adopted.

The city of Duluth does hereby adopt by reference the year 2000 edition of the International Property Maintenance Code, as hereinafter amended pursuant to this ordinance, as the Housing and Property Maintenance Code of the city of Duluth. Adoption of amendments and new editions to the International Property Maintenance Code as the Housing and Property Maintenance Code shall be established by resolution of the city council.

Section 3. That Section 29A-2 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 29A-2. Applicability of article.

This Article shall apply to dwellings, dwelling units, housekeeping units, rooming units, rental units, buildings and premises located within the city, except that it shall not apply to suites and sleeping rooms in hotels which are let to the public for periods of less than one week and to common areas in such hotels.

Section 4. That Section 29A-3 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 29A-3. Inspections; enforcement; fees.

(a) For the purposes of attaining uniform acceptable building and

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maintenance standards in the city and enforcing this Chapter the code official is hereby authorized to enter, examine and survey, between the hours of 8:00 a.m. and 5:00 p.m. all dwellings, dwelling units, housekeeping units, rooming units and other building and premises. The code official, prior to making such inspection, shall inform the owner or their agent of the date and time of the inspection by written notice. After notice has been given, the owner, occupant or the person in charge of the premises to be inspected, shall give the code official free access to conduct the inspection. Nothing in this Section shall be construed to prohibit the entry of the code official:

(1) At any time when in the opinion of the code official an actual emergency tending to create an immediate danger to public health and safety exists; or

(2) At any time when such inspection, examination or survey may be requested by the owner or occupant;

(b) When an order to correct as provided in this Chapter has been issued, the code official is hereby authorized to enter and reinspect the premises. The reinspection shall be made by the code official and any other public officers as deemed appropriate by the code official. The owner, occupant or the person in charge of the premises shall give free access to the premises for the reinspection;

(c) Every occupant of a dwelling, dwelling unit or housekeeping unit shall give the owner thereof, or his agent or employee, access to any part of the premises, at all reasonable times, for the purpose of making repairs or alterations necessary to effect compliance with the provisions of this Chapter or any lawful order issued pursuant to this Chapter.

Section 5. That Section 29A-4 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 29A-4. Service of notices and orders.

(a) Whenever the code official determines that there exists a violation of any provisions of this Chapter, notice of the violation shall be issued to the owner of record or the owner's agent if known, as hereinafter provided.

Such notice shall:

(1) Be written;

(2) Identify the violations;

(3) Provide a correction deadline. In determining the deadline, the code official shall consider, along with all other pertinent factors, the nature and extent of the work involved, the season of the year and the existence of any immediate danger to public health and safety;

(4) The notice may be delivered by any reasonable means including, but not limited to personal delivery, e-mail notification or by United States mail, postage prepaid, to the last-known address of the owner or owner's agent, or by posting the notice in a conspicuous place on or about the premises;

(b) Notices served pursuant to this Section shall become final orders unless an appeal is filed as provided in Section 29A-5. All final orders shall be complied with or the premises vacated by the deadline provided in the order;

(c) Whenever the code official finds that an emergency exists which requires immediate action to protect the public health and safety, the code official

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may, without notice or hearing, issue an order declaring the existence of such an emergency and requiring that such action be taken as deemed necessary to meet the emergency notwithstanding the other provisions of this Chapter. Such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately.

Section 6. That Section 29A-5 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 29A-5. Appeals.

Any property owner aggrieved by an action of the code official against the owner's property in the enforcement of this Chapter may appeal such action to the building appeal board as provided in Section 10-5 of this Code.

Section 7. That Article II of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Article II. Rental Licensing.

Section 8. That Section 29A-27 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 29A-27. Definitions.

(a) Except as otherwise defined in this Section, the definitions contained in the International Property Maintenance Code, as adopted by Section 29A-1 of this Chapter, shall apply to this Article;

(b) For purposes of this Article, "protection zone" means any parcel of land, lot or part thereof within or abutting the area described as follows: a point beginning at the point of intersection of the Lake Superior shoreline and the extended centerline of platted Eighth Avenue East, thence northwesterly along said Eighth Avenue East centerline to its point of intersection with the centerline of Superior Street Alley, thence southwesterly along the centerline of Superior Street Alley to its point of intersection with the centerline of North Sixth Avenue East, thence north westerly along the centerline of North Sixth Avenue East to its point of intersection with Central Entrance Drive, thence westerly along the centerline of Central Entrance Drive to its point of intersection with the centerline of Rice Lake Road, thence northerly along the centerline of Rice Lake Road to its point of intersection with the centerline of West Arrowhead Road, thence easterly along the centerline of West Arrowhead Road to its point of intersection with the centerline of Blackman Avenue, thence northerly along the centerline of Blackman Avenue to its point of intersection with the centerline of MacFarlane Road, thence easterly along the centerline of MacFarlane Road to its point of intersection with the centerline of Howard Gnesen Road, thence southeasterly along the centerline of Howard Gnesen Road to its point of intersection with the centerline of Old Howard Gnesen Road, thence north/northeasterly along the centerline of Old Howard Gnesen Road to its point of intersection with the centerline of South Road, thence easterly along the centerline of South Road in a straight line to its point of intersection with the northwest corner of the Third Glen Avon Division of Duluth, thence north in a straight line to its point of intersection with the centerline of Anoka Street, thence easterly along the centerline of Anoka Street to its point of intersection with the centerline of St. Paul Avenue, thence south along the centerline of St. Paul Avenue to its point of intersection with the centerline of Carlisle Avenue, thence easterly along the centerline of Carlisle

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Avenue to its point of intersection with the centerline of Grove Street, thence northeasterly along the centerline of Grove Street to its point of intersection with the centerline of Princeton Place, thence northeasterly along the centerline of Princeton Place to its point of intersection with the southerly boundary of Park Hill Cemetery, thence easterly along the southern boundary of Park Hill Cemetery until its point of intersection with the western easement line of Livingston Avenue, thence easterly in a straight line to its point of intersection with the centerline of Livingston Avenue, thence northerly along the centerline of Livingston Avenue to its point of intersection with the centerline of Everett Street, thence easterly along the centerline of Everett Street to its point of intersection with the centerline of Jean Duluth Road, thence southwesterly along the centerline of Jean Duluth Road to its point of intersection with the centerline of Lakeview Drive, thence southwesterly along the centerline of Lakeview Drive to its point of intersection with the centerline of Vermilion Road, thence southerly along the centerline of Vermilion Road to its point of intersection with the centerline of Congdon Park Drive, thence southeasterly along the centerline of Congdon Park Drive to its point of intersection with the centerline of 32nd Avenue East, thence southeasterly along the centerline of 32nd Avenue East to its point of intersection with the centerline of London Road, thence northeasterly along the centerline of London Road to its point of intersection with the west bank of Tischer Creek, thence southeasterly along the west bank of Tischer Creek to its point of intersection with the Lake Superior shoreline, thence southwesterly along the Lake Superior shoreline to the point of beginning, and as depicted on the map on file with the city clerk as Public Document No. 08-0609-20;

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

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

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

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

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

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

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

(2) A tenant shall not include a tenant’s natural children, adopted children, foster children, spouse, other blood relations, any significant

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

other, and any other dependent minors, residing with the tenant as a family unit; significant other means romantic partner;

(i) Hardship means the property in question cannot meet the off-street parking requirements of this Chapter due to the physical characteristics of the property and not created by the landowner.

Section 9. That Section 29A-28 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 29A-28. License required.

No owner of any rental unit shall permit the occupancy of any portion of a unit by any tenant unless that portion is licensed as required by this Article.

Section 10. That Section 29A-29 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

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

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

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

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

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

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

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

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

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

(f) Except as otherwise provided, all new rental license, short term license, change of license type and rental license renewal applications shall be completed and applicable fees paid for a specified maximum number of bedrooms that can be occupied by tenants. The maximum allowable number of bedrooms that can be occupied by tenants in a rental unit is determined by Section 29A-32;

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

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

(h) A multi-tenant rental license authorizes the occupancy of the rental unit by more than one tenant;

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

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

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

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

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

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

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

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

Section 11. That Section 29A-30 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 29A-30. Fees.

Fees provided for in this Article shall be established by resolution of the city council.

Section 12. That Section 29A-32 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 29A-32. License conditions.

All rental units are subject to the following conditions:

(a) No license shall be transferred to another rental unit;

(b) At the principal exterior entrance to a rental unit an informational notice shall be posted that complies with the following requirements:

(1) The notice shall be displayed in a conspicuous place;

(2) The notice shall indicate the name, e-mail address and telephone number of the owner or managing agent;

(c) If there is a change in ownership of a rental unit, the new owner shall apply for a transfer of the license within 30 days of the change and pay the license transfer fee. If the rental unit is sold pursuant to a contract for deed, the

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

purchaser shall be responsible for applying for the license transfer and providing a recorded copy of said contract for deed from the St. Louis County recorders office. A new license shall be issued for the remainder of the license period;

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

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

(f) Except as otherwise provided in this Section, all multi-tenant licensed one family or two family dwellings shall provide a minimum of two off-street parking spaces. In addition, for each additional bedroom in excess of three, there shall be provided one additional off-street parking space. Failure to comply with these requirements will result in an additional nonconformance fee per parking space;

(1) The building appeal board may grant a variance from the nonconformance fee when a hardship, as defined by Section 29A-27(i), exists. The board shall review the application and conduct a public hearing pursuant to Section 10-5. The board may grant a variance from all or a portion of the nonconformance fee requirement;

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

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

(1) All one-family or two-family dwellings, licensed on September 1, 2007, may continue to be licensed even though the property does not conform to the off-street parking provisions of this Section. The rental unit shall be treated as a lawful nonconforming use; however, the nonconformance parking fees provided for in this Section shall apply. If the number of bedrooms, or number of rooms occupied as bedrooms, is increased, the off-street parking requirements of this Section shall apply to the entire licensed property. If the license for the nonconforming use is revoked or lapses for any period of time, all nonconforming use rights related to off-street parking requirements shall terminate;

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

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

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

(2) In no case shall a bedroom be allowed that does not comply

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

with all applicable state and city building and housing codes.

Section 13. That Section 29A-32.1 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 29A-32.1. Rental restrictions in the protection zone.

(a) In areas zoned residential-traditional and located within the protection zone, no license shall be issued for any rental unit within a distance of 300 feet from any other licensed rental unit. The distance restriction shall not apply to the following:

- (1) A two family dwelling;
- (2) Any multiple family dwelling containing less than five dwelling units;
- (3) An owner occupied one family dwelling, provided that the number of is limited to one person;

(b) In areas zoned residential-urban and located within the protection zone, no license shall be issued for any one family dwelling within a distance of 300 feet from any other licensed one family dwelling. The restriction shall not apply to the following:

- (1) An owner occupied one family dwelling, provided that the number of tenants is limited to one person;

(c) This Section shall not apply to short-term licenses;

(d) This Section shall not apply to a one-family or two-family dwelling that is subject to a purchase agreement for the sale of the dwelling when all of the following conditions are met:

- (1) The dwelling is occupied by a seller; and
- (2) The buyer and seller agree that the buyer may occupy the dwelling prior to completion of the sale; and
- (3) The buyer, pursuant to a written early occupancy agreement between the buyer and seller, occupies the dwelling; and
- (4) The sales transaction is completed or cancelled in writing within 120 days from the date of the written early occupancy agreement;

(e) Any licensed rental unit lawfully existing in the protection zone on July 19, 2008, may continue, even though such use does not conform to the provisions of this Section;

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

(g) If a rental license lapses as a result of the failure to comply with Section 29A-29, the owner fails to comply with paragraph (f) of this Section, and the provisions of paragraphs (a) and (b) prohibit issuance of a license, the owner may appeal the license denial pursuant to Section 29A-5. The building appeal board may authorize issuance of a license without regard to the provisions of paragraphs (a) or (b) of this Section if the owner demonstrates by clear and convincing evidence the existence of good cause for the failure to comply with Section 29A-29. For purposes of this paragraph, good cause shall be defined as circumstances beyond the control of the owner which made compliance with

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Section 29A-29 impossible;

(h) The building appeal board may grant a variance from the provisions of paragraphs (a) and (b) of this Section where a hardship exists. For purposes of this Section, a hardship exists when it can be demonstrated by clear and convincing evidence that the property no longer retains a reasonable economic value as an owner occupied dwelling and the ability to rent the property is necessary in order to retain a reasonable economic use.

Section 14. That Section 29A-33 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 29A-33. Inspection procedure.

(a) All premises licensed pursuant to this Article shall be made available for inspection by the code official at any reasonable time whether the request for inspection is in conjunction with the licensing of the rental unit or the result of a complaint. In addition, the code official may require the single-tenant licensee to produce records and information demonstrating that the single-tenant rental unit complies with the occupancy limits of the single-tenant license;

(b) If during the inspection or other investigation, violations of the provisions of this Chapter, or other applicable provisions of this Code are identified, or the licensee fails to produce records or information as requested by the code official, written notice shall be mailed to the licensee at the notification address on file with the code official. The notice shall identify all violations identified and establish a reasonable time, not to exceed 180 days, in which all violations must be corrected or the rental unit vacated. At the end of the correction time, the rental unit shall be reinspected. If the rental unit is not vacated or the violations are not corrected, the code official may take any of the following actions:

(1) Provide for an additional correction period. In no case may the total amount of correction time provided by the initial period and any additional period exceed 180 days;

(2) Revoke the license and order the vacation of the rental unit of all persons and property. The code official shall provide a reasonable time for vacation which shall not exceed 30 days;

(c) If the code official revokes a license, written notice shall be mailed to the licensee at the notification address on file with the code official and posted in a conspicuous place at the rental unit.

Section 15. That Section 29A-34 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 29A-34. Violations, enforcement and penalties.

(a) Violations. It shall be a violation of this Article, and a public nuisance, to do any of the following:

(1) Allow tenant occupancy in any portion of an unlicensed rental unit;

(2) Allow tenant occupancy in any unlicensed portion of a licensed rental unit;

(3) Allow multi-tenant occupancy in a rental unit licensed for single-tenant occupancy;

(4) Refuse entry to an inspection official where such entry is

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

allowed pursuant to Section 29A-3:

(5) Fail to comply with any final order of the code official;

(6) Advertisement by a property owner or owner's representative of any dwelling or rental unit or any portion thereof as available for rent that is not licensed for rental at the time the advertisement is made. For purposes of this Section, advertisement includes, but is not limited to, oral or written notice, such as a poster or a paid announcement in the print, broadcast, or electronic media, designed to attract public attention or patronage;

(7) Advertisement by a property owner or owner's representative of any dwelling or rental unit or any portion thereof in excess of the number of bedrooms licensed for rental at the time the advertisement is made. For purposes of this Section, advertisement includes, but is not limited to, oral or written notice, such as a poster or a paid announcement in the print, broadcast, or electronic media, designed to attract public attention or patronage;

(8) Advertisement by a property owner or owner's representative of any dwelling or rental unit or any portion thereof as available for rent without the rental application license number for the rental unit appearing in the advertisement. For purposes of this Section, advertisement includes, but is not limited to, oral or written notice, such as a poster or a paid announcement in the print, broadcast, or electronic media, designed to attract public attention or patronage;

(b) Continuing violations. Each day that a violation occurs or remains uncorrected after the final order of the code official shall constitute a separate violation;

(c) Enforcement. The city has the following enforcement powers:

(1) The city may issue an administrative citation pursuant to Chapter 12 of this Code;

(2) The city may issue a citation as authorized by Section 1-7 of this Code;

(3) The city may pursue any other civil action in law or equity in any court of competent jurisdiction, including without limitation a request for a declaratory judgment, restraining order or a temporary or permanent injunction;

(4) The city may revoke a rental license and issue an order for vacation of the premises;

(d) Penalties. The owner of any property where a violation of this Article occurs, and any person violating this Article, shall be guilty of a misdemeanor and may be fined as provided in Section 1-7 or Section 12-6 of this Code.

Section 16. That Section 29A-42 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 29A-42. Abatement notice; procedure.

(a) The city shall respond as follows to a violation of the provisions of this Article:

(1) Upon occurrence of the first instance of a determination by the city that a rental unit was the location of an incident of disorderly behavior, the city shall cause notice to be made to the licensee, a property manager whose identity and address is on file in the office of the code official and the tenant of

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the rental unit. The notice shall direct the licensee to take steps to prevent further violations;

(2) Upon the occurrence of the second instance of an incident of disorderly behavior occurring at the rental unit within 12 months of the notice provided in (a)(1) of this Section, the property manager shall be required to attend crime free multi housing training offered through the city police department. If there is no designated property manager in the rental license application, then the property owner shall be required to attend crime free multi housing training offered through the city police department. The property owner shall be responsible for any training costs. The city shall cause notice to be made to the licensee, a property manager whose identity and address is on file in the office of the code official, and the tenant of the rental unit. The notice shall direct the licensee to submit, within ten days of the date of the notice, a written abatement report of all actions taken by the licensee since the first notice and actions the licensee intends to take to prevent further disorderly behavior. Failure of either owner or property manager to attend said crime free multi housing training within 180 days of said notice may result in an administration fine and rental license revocation;

(3) Upon the occurrence of the third instance of disorderly behavior occurring at the rental unit within 12 months after the first of two previous notices, the city shall cause notice to be made to the licensee, a property manager whose identity and address is on file in the office of the code official, and the tenant of the rental unit. In addition to such notice, the code official shall revoke, suspend, or reject an application to renew the license. The code official shall make the decision to revoke, suspend or refuse to renew the license within 15 days of the notice;

(b) For purposes of this Section, second and third instances of disorderly behavior shall be those which:

- (1) Occur at the same rental unit; or
- (2) Involve tenants of the same rental unit; or
- (3) Involve guests of a tenant at the same rental unit; or
- (4) Involve guests of the same tenant; or
- (5) Involve the same tenant;

(c) Notwithstanding the provisions of Section 29A-41, above, no adverse license action shall be imposed where the instance of disorderly behavior occurred during a pending unlawful detainer action or other eviction proceeding or within 30 days of notice given by the licensee to a tenant to vacate the rental unit, except that if the code official determines that the licensee has failed to diligently pursue such process, such adverse license action shall proceed. Further, an action to deny, revoke, suspend or not renew a license based upon violations of this Article may be postponed or discontinued at any time if the code official determines that the licensee has taken appropriate measures which will prevent further instances of disorderly behavior. Such measures may include, but are not limited to, evidence of a failed eviction process despite the licensee's diligent pursuit of same;

(d) A determination that the rental unit has been the location of disorderly behavior shall be made by a preponderance of the evidence to support

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such a determination. It shall not be necessary that criminal charges be brought in order to support a determination of disorderly behavior, nor shall the fact or dismissal or acquittal of such a criminal charge operate as a bar to adverse license action under this Article;

(e) The code official shall notify the licensee or the licensee's agent in writing of the basis for the revocation, suspension, denial or non-renewal and the date upon which the action takes effect. Notice of the action shall be posted at the rental unit and/or licensed premise by the code official. No person, other than the code official, shall remove or alter any posting. The notice shall indicate the date the rental unit or licensed premise shall be vacated and no person shall reside in, occupy or cause to be occupied the rental unit or licensed premise until the code official has so removed said posting and issued a valid license therefore.

Section 17. That this ordinance shall take effect on March 14, 2011, after its passage and publication. (Effective date: March 14, 2011)

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

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

Nays: Councilor Fosle -- 1

Abstention: Councilor Cuneo -- 1

Passed December 20, 2010
Approved December 20, 2010
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

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ORDINANCE NO. 10065

BY PRESIDENT ANDERSON:

AN ORDINANCE AMENDING SECTION 29A-27, AND REPEALING SECTION 29A-32.1, OF CHAPTER 29A OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO THE RENTAL LICENSING 300 FOOT RULE.

The city of Duluth does ordain:

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

Sec. 29A-27. Definitions.

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

Section 2. That Section 29A-32.1 of the Duluth City Code, 1959, as amended, relating to the 300 foot rental license distance requirement, is hereby repealed in its entirety.

Section 3. That this ordinance shall take effect on March 14, 2011, and after its passage and publication. (Effective date: March 14, 2011)

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

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Yeas: Councilors Cuneo, Fedora, Fosle, Gauthier, Hartman and President Anderson -- 6

Nays: Councilors Boyle, Gardner and Stauber -- 3

Passed December 20, 2010
Approved December 20, 2010
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

ORDINANCE NO. 10066

AN ORDINANCE DETERMINING THE SUM TO BE RAISED BY TAXATION FOR GENERAL PURPOSES FOR THE YEAR 2011.

The city of Duluth does ordain:

Section 1. The sum to be raised by taxation for the year 2011 for general operations is hereby determined to be the sum of \$17,791,500 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 \$11,469,800.

Section 3. For the pay of debt, there will be levied for the general obligation debt fund the sum of \$5,899,600.

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.

Section 5. That this ordinance shall take effect January 1, 2011.

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

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

Nays: Councilors Fedora, Fosle and Stauber -- 3

Passed December 20, 2010
Approved December 20, 2010
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

ORDINANCE NO. 10067

AN ORDINANCE SETTING THE BUDGET FOR THE FISCAL YEAR 2011 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, 2011, the city council hereby budgets, determines and states the amount of money required to meet the principal and interest of

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maturing obligations comprising the outstanding indebtedness of such city; the amounts of money necessary to be provided for each such fund and each department of such city; and estimates the amount of income from all other sources and revenues, exclusive of taxes upon property, together with the probable amount required to be levied and raised by taxation to defray all expenses and obligations of such city during such fiscal year.

That the monies as so budgeted and hereinafter set forth shall be paid upon the presentation of properly verified vouchers bearing thereon the budget distribution for which such expenditures are to be charged in accordance with the detailed classification of accounts and the explanatory information of such as set forth in ordinance in effect governing same, excepting, however, payments for interest and sinking funds, which shall be paid in the manner set forth in Section 53 of the City Charter.

That any monies received by the several city departments as reimbursement for damages or repairs to city property or work done for others and not anticipated in the original budget may be credited to and added to the appropriate budget item upon approval by the chief administrative officer or their designee.

That use of general fund balance that has been designated for a specific purpose in a prior year, must be approved by the city council if used for a purpose other than what has been specified.

That grants which have been approved by the appropriate state or federal agency and accepted by resolution of the city council may be added to the respective budget items upon approval of the city auditor.

Section 2. That the city auditor be authorized to approve the payments of \$3,614,400 from the gas and steam public utility funds to the general fund for administrative services; comprised of \$3,493,400 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 2011.

GENERAL FUND

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GENERAL FUND		
110	Legislative and executive - total	\$3,464,900
117	Management information systems - total	\$2,675,700
121	Public administration - total	\$18,638,000
125	Finance - total	\$3,244,900
132	Planning and construction services - total	\$2,226,400
135	Business and development resources - total	\$677,600
150	Fire - total	\$13,254,900
160	Police - total	\$17,558,600
500	Public works - total	\$2,006,400
700	Transfers and other functions - total	\$11,200,600
	Total general fund	\$74,948,000
PUBLIC ENTERPRISE		
503	Golf fund - total	\$1,977,600
505	Parking fund - total	\$3,450,200
PUBLIC UTILITIES		
510	Water fund - total	\$12,278,600
520	Gas fund - total	\$43,376,700
530 and 532	Sewer and clean water fund - total	\$18,496,700
535	Stormwater fund - total	\$4,219,400
540	Steam fund - total	\$7,233,600
550	Street lighting - total	\$2,069,500

Section 8. That the chief administrative officer or their designee shall provide the council with a final budget report within three months of the end of the budget year setting forth the original approved and the modified budgets for each line item included in this ordinance and explaining in narrative form the reasons for any significant differences between the original approved and the modified budgets.

Section 9. That the city will review all state and federal grants prior to acceptance to determine the program's funding status. A statement should be included on each grant resolution outlining items such as whether the grant represents a one time revenue, an ongoing funding source, or a partial funding source with a local match required. The future fiscal impact of the program on the budget will be discussed prior to acceptance of the grant.

The programs funded by state and federal grants shall be reduced or eliminated

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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.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2010

Section 10. That this ordinance shall take effect January 1, 2011.

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

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

Nays: Councilors Fedora, Fosle and Stauber -- 3

Passed December 20, 2010
Approved December 20, 2010
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

ORDINANCE NO. 10068

AN ORDINANCE DETERMINING THE SUM TO BE RAISED BY TAXATION FOR THE SPECIAL TAXING DISTRICT, DULUTH TRANSIT AUTHORITY, FOR THE YEAR 2011.

The city of Duluth does ordain:

Section 1. The sum to be raised by taxation for the year 2011 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, 2011.

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

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

Nays: None -- 0

Passed December 20, 2010
Approved December 20, 2010
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

ORDINANCE NO. 10069

AN ORDINANCE AUTHORIZING THE HOUSING AND REDEVELOPMENT AUTHORITY OF DULUTH TO EXERCISE POWERS UNDER MINNESOTA STATUTES, CHAPTER 462C, ON BEHALF OF THE CITY OF DULUTH.

The city of Duluth does ordain:

Section 1. That pursuant to the provisions of Minnesota Statutes Section 462C.02, subd. 6, the housing and redevelopment authority of Duluth is hereby authorized to exercise, on behalf of the city, the powers conferred by Minnesota Statutes Sections 462C.01 through 462C.10.

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Section 2. This ordinance shall take effect 30 days from and after its passage and publication. (Effective date: January 23, 2011)

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

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

Nays: None -- 0

Passed December 20, 2010
Approved December 20, 2010
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

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ORDINANCE NO. 10070

BY PRESIDENT ANDERSON:

AN ORDINANCE ADDING NEW SECTIONS 34-15 AND 34-16 TO THE DULUTH CITY CODE, 1959, AS AMENDED, REGARDING TRUANCY ABATEMENT.

The city of Duluth does ordain:

Section 1. That the Duluth City Code, 1959, as amended, is hereby amended by adding a new Section 34-15 as follows:

Sec. 34-15. Truancy abatement.

(a) Prohibited acts. No minor under the age of 17 years who is subject to compulsory education 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 on days and times when said minor's school is in session; provided, that the provisions of this Section shall not apply under the following circumstances:

(1) When the minor is accompanied by his or her parent, guardian or other adult person having the care and custody of the minor;

(2) When the minor is on an emergency errand directed by his or her parent, guardian or other adult person having the care and custody of the minor;

(3) When the minor is going to, or coming directly from, his or her place of school-approved employment;

(4) When the minor is going to, or coming directly from, a medical appointment;

(5) When the minor has permission to leave the school campus for lunch and has in his or her possession a valid, school-issued, off-campus permit;

(6) When the minor is going to, or coming directly from, a compulsory alternative education program activity;

(7) When the minor is going to, or coming directly from, a school, religious or government-sponsored activity, or other recreational activity supervised by adults;

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(8) When the minor is attending, going to or coming directly from an activity directly related to a medical condition of a sibling or parent;

(9) When the minor has passed a general educational development test and received a Minnesota high school equivalency certificate;

(10) When the minor is enrolled in a private school or "home school" qualified under Minnesota statutes;

Any minor violating the provisions of this Section shall be dealt with in accordance with juvenile court law and procedures;

(b) 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) of this Section.

Section 2. That the Duluth City Code, 1959, as amended, is hereby amended by adding a new Section 34-16 as follows:

Sec. 34-16. Same--Responsibility of parents and guardians.

(a) No parent, guardian or other adult person having the care and custody of a minor under the age of 17 years who is subject to compulsory education shall knowingly permit such minor to be in violation of the provisions of Section 34-15(a).

Section 3. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: January 23, 2011)

President Anderson moved passage of the ordinance and the same was adopted upon the following vote:

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

Nays: None -- 0

Passed December 20, 2010
Approved December 20, 2010
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

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ORDINANCE NO. 10071

AN ORDINANCE REPEALING ORDINANCE FILE NO. 10-059 AND AMENDING CHAPTER III, SECTION 13, OF THE CITY OF DULUTH HOME RULE CHARTER, 1912, AS AMENDED, PERTAINING TO ORDINANCE PUBLICATION REQUIREMENTS.

The city of Duluth does ordain:

Section 1. That Ordinance File No. 10-059, adopted on November 22, 2010, pertaining to ordinance publication requirements, is hereby repealed in its entirety.

Section 2. That Section 13 of the city of Duluth Home Rule Charter, 1912, as amended, is hereby amended as follows:

Section 13. Every ordinance shall be published in full at least once on the city's official website within ten days after its passage and approval. Said publication shall remain on the city's official website for a period of at least 30 days.

Section 3. That this ordinance was recommended by the Charter commission and shall take effect 90 days after its passage and publication. (Effective date: March 24, 2011)

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President Anderson moved passage of the ordinance and the same was adopted upon the following vote:

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

Nays: None -- 0

Passed December 20, 2010
Approved December 20, 2010
DON NESS, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

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ORDINANCE NO. 10072

AN ORDINANCE DESIGNATING THE DPUC TO HEAR APPEALS UNDER CHAPTERS 43 AND 48 OF THE CODE, AMENDING SECTIONS 43-33.2, 48-1 AND 48-15.3 AND ARTICLE XV OF CHAPTER 48 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

The city of Duluth does ordain:

Section 1. That Section 43-33.2 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 43-33.2. Certificate of noncontribution.

(a) Upon inspection of any building by the director for compliance with the requirements of Section 43-31 above and based on that inspection, the director is authorized to issue a certificate of noncontribution in a form suitable for recording among the property records of St. Louis County recorder if he or she determines either that:

(1) The sump pump, footing drain disconnect, and building trap removal are in compliance with Section 43-31 above;

(2) The plumbing materials and equipment as installed and operating in that building are in compliance with the requirements of Section 43-31 above;

(3) The plumbing and equipment in said building is not in compliance with the requirements of Section 43-31 above but the director determines that the building is not contributing any material or observable amounts of unpolluted water to the public wastewater collection system and is not likely to do so in the future;

(b) Certificates of noncontribution shall only be issued by the director and persons designated by him or her to issue such certificates. The director shall establish standards and procedures for certifying persons authorized to issue certificates of noncontribution on his or her behalf;

(c) In the event that the director determines after reasonable investigation that any building for which a certificate of noncontribution has been issued is now contributing a material or observable amount of unpolluted water to the public wastewater collection system, the director may give notice in the manner provided for in Section 43-33 above of his or her intention to revoke such certificate of noncontribution and that such revocation shall become final 15 days of the date of giving such notice unless the affected owner or person in control of

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the affected building files a written appeal of that decision with the city clerk prior to the revocation of the certificate. Any such appeal shall be heard by the Duluth public utilities commission in accordance with the procedures established by the commission. When the revocation of any certificate of noncontribution has become final, the director shall cause notice there to be filed in the office of the St. Louis County recorder.

Section 2. That Section 48-1 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 48-1. Definitions.

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

Applicant. Any person or persons applying for water or gas service from the department and any guarantor of payment for such service as provided for in this Chapter.

Commission. The Duluth public utilities commission established pursuant to Article XXXV of Chapter 2 of this Code.

Department. The department of public works and utilities.

Domestic applicant. A noncommercial or nonindustrial applicant who uses gas solely for purposes other than heat; i.e., cooking, hot water, clothes dryer, etc., and an applicant for water or sewage or both.

Fire service. An unmetered, large capacity water service which is used only for the suppression of fire and which is protected by appropriate backflow preventers to insure that potable water supplies are not contaminated.

High pressure gas line. Any gas line transmitting gas at a pressure in excess of 0.50 pounds per square inch (14 inches water column).

High volume gas service. Service used to provide gas at a rate in excess of 1,000,000 BTU's per hour.

High volume water service. Any service which is capable of providing in excess of 35 gallons of water per minute at water pressure levels which are normal at the location of such service.

House piping. The pipe or system of pipes conveying water or gas from the meter on a house service to the points of use of water or gas.

House service. That portion of a water service which extends from the curb stop controlling the flow through the house service, to and including the meter through which the flow in the house service is measured.

Master box. The primary curb stop on a water service or private line which controls one or more curb stops downstream.

Meter. Meter is a registration device connected directly to a water or gas service line directly registering the amount of water or gas passing through it.

Privately owned service. A water or gas service supplying one or more parcels of private property that has not been accepted by the department as a part of its distribution facilities.

Remote register. A registration device attached to a meter replicating the reading on that meter.

Residential heating applicant. An applicant whose primary use of gas is as fuel for heating of a residence or residential building.

Service. A pipe for conveying an individual supply of water or gas of a

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premises from the common supply in the main to and including the meter registering the flow of water or gas to the service.

Standard volume gas service. Any gas service capable of using not more than 400,000 BTU's per hour.

Standard volume water service. Any water service which is capable of providing up to 35 gallons of water per minute at water pressure levels which are normal at the location of such service.

Street. A street, avenue, alley or other regularly established and existing public highway or public right-of-way.

Street service. That portion of a water service which extends from its connection with the main to and including the curb stop, which controls the flow through the street service.

Section 3. That Section 48-15.3 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 48-15.3. Same--Disputes.

Whenever an applicant advises the department that any part of a billing for water or gas service is in dispute, the department shall investigate the dispute promptly, advise the applicant of the result of its investigation and attempt to resolve the dispute. The department shall not take any action relating to the disputed matter until the investigation is completed, the applicant is informed of the findings of the department, the applicant has been informed of his right to appeal any adverse finding to the commission, and the applicant has either waived his or her right to appeal or failed to appeal within the required time period, or the appeal has been resolved in favor of the department.

Section 4. That Article XV of Chapter 48 of this Code is hereby amended to read as follows:

Article XV. Hearing of Disputes.

Sec. 48-237. Duluth public utilities commission--hearings.

The commission shall hear and decide appeals by water and gas applicants from department determinations concerning disputes over charges for water or gas service department decisions to terminate service to an applicant, department determinations on the ability of an applicant to pay service charges immediately made pursuant to Section 48-208(b)(3) of this Code, and the department's denial of a prospective applicant's application for service; provided that no applicant is entitled to obtain service pending the hearing and decision by the commission. The commission has no power to cancel a debt to the department. All decisions of the commission shall be binding on the department unless contrary to law, and decisions of the commission relating to the ability of the applicant to pay service charges shall be binding upon the applicant.

Sec. 48-238. Same--Procedure for appeal--payment plans.

If a determination of the department is adverse to the applicant and such matter is appealable to the commission under Section 48-237 of this Code, the department shall communicate its findings to the applicant and shall inform the applicant of the applicant's right to appeal the determination. If an applicant desires to appeal the department's determination, applicant shall give notice of the appeal in writing to the director of the department and shall briefly state the nature of the dispute and the basis for the appeal. If the appeal involves a

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termination of service, the appeal must be filed prior to the proposed date of termination to avoid action by the department. All appealable actions of the department may be appealed at any time within six months of the occurrence that gives rise to the appeal. The department shall advise the applicant of the above requirements. Any payment plan approved by the commission shall ensure that the applicant will be current in paying the water and gas bills in the shortest affordable period of time not to exceed 18 months. The commission shall serve written notice of its approval of any payment plan upon the department director and upon the applicant. If after 30 days from the date of such order, the applicant experiences a change in circumstances which makes compliance with such payment plan impossible, the applicant, upon five days notice to the department, may petition the commission for a revised order to take into account these changed circumstances. If the applicant fails to comply with the payment plan as determined by the commission, the department may terminate service to such applicant by giving five days notice of termination by first class mail to the applicant and by first class mail to all commission members. Sec. 48-239. Same--Procedure for hearings.

(a) Appeals shall be heard at the first meeting of the commission following the filing of an appeal. Appeals shall be heard in an order determined by the commission. The commission may limit the number of people allowed to speak on any appeal, and the time allowed for presentation of any appeal, as long as the applicant and one employee of the department are allowed reasonable time to present information relevant to the appeal. Failure of an applicant to attend the commission meeting shall be grounds to dismiss that applicant's appeal, unless circumstances beyond the control of the applicant (as determined by the commission) cause the failure to appeal. Continuances shall be granted at the discretion of the commission only upon a showing of circumstances beyond the control of the applicant;

(b) Whenever possible, names of the parties to each appeal shall be furnished to all members of the commission at least one week prior to the meeting. A commissioner who has a conflict of interest on a particular case shall disqualify himself or herself from discussion or voting on the appeal;

(c) The commission may use the department for reasonable staff services. The city attorney shall advise the board. The commission may promulgate reasonable rules to govern their deliberations which are not inconsistent with this Chapter.

Section 5. This ordinance shall take effect 30 days after its passage and publication.
(Effective date: January 23, 2011)

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

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

Nays: None -- 0

Absent: Councilor Stauber -- 1

ATTEST:
JEFFREY J. COX, City Clerk

Passed December 20, 2010
Approved December 20, 2010
DON NESS, Mayor