



CITY OF DULUTH

proceedings of the CITY COUNCIL 2004

OFFICIAL PROCEEDINGS

Special meeting of the Duluth City Council held on Monday, January 5, 2004, 6:00 p.m. in the Harborside Ballroom, Duluth Entertainment Convention Center, Duluth, Minnesota.

Roll call: Present: Councilors Atkins, Gilbert, Johnson, Little, Ness, Stewart, Stover and President Stauber -- 8

Absent: None -- 0

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REPORTS OF COUNCILORS

Councilor Bergson submitted his letter of resignation from the city council (Public Document No. 04-0105-02).

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Judge Martin administered oaths of office to newly elected councilors Johnson and Little and re-elected councilors Ness, Stewart and Stover.

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ELECTION OF OFFICERS

Rob Stenberg, 2003 council president, announced that the election of officers for 2004 would now take place.

Councilor Stauber was elected president upon a unanimous vote.

Councilor Ness was elected vice president upon a unanimous vote.

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INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinance was read for the second time:

BY COUNCILOR STOVER

03-072 - AN ORDINANCE AUTHORIZING SALE OF CERTAIN PROPERTY IN DULUTH HEIGHTS TO THE HOUSING AND REDEVELOPMENT AUTHORITY OF DULUTH.

Councilor Stover moved to table the ordinance, which motion was seconded and unanimously carried.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

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Councilor Stenberg spoke of the accomplishments of the council during the past year. He introduced President Stauber.

President Stauber presented plaques to outgoing councilors Bergson, Hogg and Stenberg.

Ken Hogg and Rob Stenberg each commented about their years and experiences on the city council.

President Stauber thanked councilors for their support and introduced Mayor Bergson.

Mayor Bergson presented the 2004 State of the City Address (Public Document No. 04-0105-01.)

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Mayor Bergson introduced the 2003 employees of the month and announced the selection of Paul Bernard as employee of the year.

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

JEFFREY J. COX, City Clerk

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, January 12, 2004, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Atkins, Gilbert, Johnson, Little, Ness, Stewart, Stover and President Stauber -- 8

Absent: None -- 0

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The minutes of the city council meeting held on November 10, 2003, were unanimously approved.

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

04-0112-01 Robert Finnigan submitting petition to vacate the West Cascade Street easement in Lots 10, 11 and 12, Block 79, Duluth Proper Third Division. -- Assessor

04-0112-02 Gordon and Tracy Ramsey submitting petition to vacate a 20 foot utility easement located over the easterly 20 feet of Lot 3, Block 2, Woodridge Division. -- Assessor

04-0112-28 Alison Clarke submitting communications regarding the proposed Lakewalk Townhomes development project (03-0789R). -- Received

04-0112-03 Rachel Edstrom submitting letter regarding the proposed ordinance relating to rental licensing (03-063-O). -- Received

04-0112-26 The following submitting communications regarding the city council's appointment to the vacant at large city councilor position (04-0030R): (a) Mike Bergh; (b) Mary Dragich; (c) Charles Gessert; (d) Dan Green; (e) Mary Alice Harvey; (f) Steve Kinney; (g) Micky McGilligan; (h) Rebecca Moen; (i) Jim Olson; (j) Margaret Robare; (k) Katie Sandell; (l) Marian Syrjamaki-Kuchta; (m) Jenny Townsend; (n) Roger Wedin. -- Received

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REPORTS OF OFFICERS

04-0112-04 Assessor submitting letters of sufficiency of petitions to vacate:

(a) A 20 foot utility easement located over the easterly 20 feet of Lot 3, Block 2, Woodridge Division;

(b) The southerly 40 feet of the sewer easement located along the eastern property line of Lot 13, Block 1, Second Rearrangement in Congdon Park Division;

(c) The 400 foot alley between Blocks 8 and 9, Motorline Division;

(d) The West Cascade Street easement in Lots 10, 11 and 12, Block 79, Duluth Proper Third Division. -- Received

04-0112-05 Clerk submitting application to the Minnesota gambling control board for exemption from lawful gambling license from Minnesota Program Development, Inc., on April 7, 2004 (raffle). -- Received

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REPORTS OF BOARDS AND COMMISSIONS

04-0112-06 Civil service board minutes of: (a) October 7; (b) November 4, 2003, meetings. -- Received

04-0112-07 Commission on disabilities minutes of December 3, 2003, meeting. -- Received

04-0112-09 Duluth airport authority: (a) Balance sheet for October 31, 2003; (b) Minutes of November 18, 2003, meeting. -- Received

04-0112-08 Duluth human rights commission minutes of December 20, 2003, meeting. -- Received

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

04-0112-10 Duluth transit authority: (a) Income statement for October, 2003; (b) Minutes of October 29, 2003, meeting. -- Received

04-0112-11 Heritage preservation commission minutes of: (a) October 28; (b) November 18, 2003, meetings. -- Received

04-0112-12 Planning commission minutes of: (a) September 24; (b) October 14; (c) October 22, 2003, meetings. -- Received

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At this time, 7 :03 p.m., President Stauber recessed the regular meeting and announced that the public hearing on the issuance of capital improvement bonds would begin.

Administrative Assistant Winson reviewed the necessity and purpose for this hearing.

At this time, 7:05 p.m., President Stauber closed the public hearing and the regular order of business was resumed.

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Councilor Ness moved to suspend the rules to consider Resolution 03-0032, of the city of Duluth, Minnesota, stating the intent to issue \$800,000 general obligation capital improvement bonds, Series 2004, by Councilor Little, at this time, which motion was seconded and unanimously carried.

Resolution 04-0032 was adopted as follows:

BY COUNCILOR LITTLE:

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, Section 410.326, and Minnesota Statutes, Chapter 475 (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 1, 2003 (the plan).

Section 2. The city council held a public hearing on this day on the city's intention to issue bonds in 2004 in an amount not to exceed \$800,000 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 2004 (the bonds), in an amount not to exceed \$800,000, for the purpose of providing funds for design and installation of a City Hall air-conditioning system; modify customer service areas of City Hall offices to meet ADA requirements; restore the granite and brick facades of City Hall; replace fire station overhead doors; install ventilation system in firehalls; roof replacement at Firehall #1; update and expand locker room at Firehall #1; restore exterior masonry at Firehall #10; and remodel first floor police offices in City Hall.

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. 04-0112-25 as soon as practicable following the public hearing in the official newspaper of the city;

(b) If, within 30 days after January 12, 2004, a valid petition is filed with the city clerk calling for a vote on the proposition of issuing the bonds, signed by voters residing within the boundaries of the city equal to five percent of the votes cast in the city in the last general election, the bonds shall not be issued until the question of their issuance has been authorized by a majority

of the voters voting on the question at the next general or special election called to decide the question.

Resolution 04-0032 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

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OPPORTUNITY FOR CITIZENS TO BE HEARD

Bruce Mattson spoke in reference to Public Document No. 04-0112-04, regarding the vacation of land adjoining his property and stated that he would prefer that the city not vacate the property.

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RESOLUTION TABLED

Councilor Ness moved to remove Resolution 03-0692, authorizing amendment to Agreement No. 18314 with Hermantown for the Miller Creek joint powers board, from the table, which motion was seconded and unanimously carried.

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

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MOTIONS AND RESOLUTIONS

CONSENT AGENDA

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

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

BY COUNCILOR LITTLE:

RESOLVED, that the proper city officers are hereby authorized to execute an agreement with Fryberger, Buchanan, Smith & Frederick, P.A., under which that firm will provide professional services related to the city's 2004 state legislative program, which agreement is on file in the office of the city clerk as Public Document No. 04-0112-13, at a cost to the city of not to exceed \$42,230, which shall be payable from the General Fund 0100-700-1403-5312.

Resolution 04-0033 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR ATKINS:

RESOLVED, that Xerox Corporation be and hereby is awarded a contract for furnishing copier rental/maintenance during year 2004 for the various departments/divisions in accordance with specifications at an estimated amount of \$48,944.33, terms net, FOB destination, payable out of various funds, various departments/agencies, various organizations, various objects.

Resolution 04-0035 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR ATKINS:

RESOLVED, that the proper city officers are hereby authorized to execute an administrative services agreement with SuperiorUSA Benefits Corporation to provide communication, implementation and management of a flexible benefits plan for city employees for year 2004, in

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

accordance with the provisions of Section 125 of the Internal Revenue Code, which agreement shall be substantially in the form of Public Document No. 04-0112-14, on file with the city clerk, at an estimated cost of \$11,642, which shall be paid from the General Fund 0100, Agency 700, Organization 1479.

Resolution 04-0036 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR ATKINS:

WHEREAS, the following organizations have applied to the Minnesota gambling control board for a premise permit; and

WHEREAS, a copy of said applications were also filed with the city of Duluth as required by Minnesota Statutes 349.213, Subdivision 2, and were investigated by the Duluth police department and reviewed and approved by the Duluth alcohol, gambling, and tobacco commission; and

WHEREAS, the city council approves of the issuance of said licenses.

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

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.

<u>Licensee</u>	<u>Gambling Site</u>
National Multiple Sclerosis Society	Horseshoe Billiards
VFW Post #137	2024 West Superior Street
American Legion Post #71	5814 Grand Avenue
Welch Center	Alpine Bar & Lounge Tappa Keg Inn

Resolution 04-0045 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR ATKINS:

WHEREAS, the St. Louis and Carlton County Chapter of Pheasants Forever has applied to the Minnesota gambling control board for a lawful gambling exemption (raffle); and

WHEREAS, the Duluth City Council has received a copy of said exemption application to the Minnesota gambling control board and has 60 days in which to present a resolution to said Minnesota gambling control board objecting to the exemption application; and

WHEREAS, the city council approves of the exemption application and wishes to waive the 60 day waiting period.

NOW, THEREFORE, BE IT RESOLVED, that the Duluth City Council hereby approves of the Minnesota gambling control board issuing a lawful gambling exemption to the St. Louis and Carlton County Chapter of Pheasants Forever and does hereby waive the 60 day waiting period which it has to object to the issuance of said exemption.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

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 04-0046 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR ATKINS:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the transfer of the following off sale intoxicating liquor license for the period ending August 31, 2004, subject to departmental approvals, the payment of sales and property taxes and further subject to approval of the liquor control commissioner: Thomas George (George's Liquors), 1340 West Arrowhead Road, transferred from DAC, LLC (Good Times Liquor & Tobacco Shop), 11 North Fourth Avenue West.

Resolution 04-0047 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR ATKINS:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the transfer of the following off sale intoxicating liquor license for the period ending August 31, 2004, subject to departmental approvals, the payment of sales and property taxes and further subject to approval of the liquor control commissioner: Kenwood Liquor, Inc. (Kenwood Liquor), 3904 Grand Avenue, with Shawn Proudlock, 100 percent stockholder, transferred from Kenwood Liquor, Inc. (Kenwood Liquor), 1340 Arrowhead Road.

Resolution 04-0048 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR ATKINS:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the transfer of the following on sale nonintoxicating malt liquor license and on sale wine license for the period ending April 30, 2004, and August 31, 2004, respectively, subject to departmental approvals, the payment of sales and property taxes and further subject to approval of the liquor control commissioner: Pindos, Inc. (Yannie's), 1500 London Road, with John Papaioannou, 100 percent stockholder, transferred from Louis' Café of Duluth, Inc. (Louis' Café), same address.

Resolution 04-0049 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR ATKINS:

BE IT RESOLVED, that the city council of the city of Duluth hereby issues the following on sale nonintoxicating malt liquor license and on approves the issuance of the following sale wine license for the period ending April 30, 2004, and August 31, 2004, respectively, subject to departmental approvals, the payment of sales and property taxes, and further subject to approval

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

of the liquor control commissioner: Vietnamese Lotus Inn, Inc. (Vietnamese Lotus Inn), 1314 Commonwealth Avenue, with Cuc Thi Allen, president and Steven Allen, vice president.

Resolution 04-0050 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR ATKINS:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the 2:00 a.m. closing license for the following alcoholic beverage license for the period ending August 31, 2004: Grandma's, Inc. (Grandma's Saloon & Grill), 522 Lake Avenue South.

Resolution 04-0051 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

RESOLVED, that the following appointments by Mayor Bergson are hereby confirmed:

DULUTH ECONOMIC DEVELOPMENT AUTHORITY

Donny Ness (city councilor) for a term expiring April 27, 2008, replacing Ken Hogg.

Jim Stauber (city councilor) for a term expiring April 27, 2010, replacing Rob Stenberg.

Resolution 04-0044 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

WHEREAS, the city of Duluth established certain CDBG accounts; and

WHEREAS, the community development committee (CD committee) for the CDBG community development block grant program established the following CDBG programs.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are authorized to make the following transfer in the Federal Program Fund 262-2003 HUD-funded community development as set forth below:

2003 CDBG Transfers				
Project#	Project	Budget amount	New amount	Amount of increase or decrease
6601	Duluth property rehabilitation	\$836,000	\$1,011,000	\$175,000
4211	Revenue source	\$175,000	-0-	\$(175,000)

Resolution 04-0017 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that pursuant to the requirements of Resolution No. 99-0239, Resolution No. 03D-65 of the Duluth economic development authority (DEDA), a copy of which is on file in

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

the office of the city clerk as Public Document No. 04-0112-15, approved at its meeting of December 15, 2003, is hereby approved.

FURTHER RESOLVED, that pursuant to said Resolution No. 03D-65, the city is hereby authorized to accept a forgivable loan from DEDA in the amount of \$75,000, payable from DEDA Fund 0865 to City Fund 0262, to be used to defray a portion of the costs of property acquisition and demolition for the San Marco Wethouse project.

FURTHER RESOLVED, that the proper city officials are hereby authorized to repay said loan to DEDA from said Fund 0262 in the event that the project is funded in part by funds provided by the Minnesota state housing and finance agency instead of through the use of low income housing tax credits or in the event that the project is financed through the use of low income housing tax credits but is sold before all such credits allocated to the project are received.

Resolution 04-0005 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that pursuant to the requirements of Resolution No. 99-0239, the Duluth economic development authority's (DEDA) authorization to transfer funds in the amount of \$203,800, payable from Fund 0865 to the city of Duluth, pursuant to DEDA Resolution No. 03D-76, approved at DEDA's meeting of December 15, 2003, a copy of which is on file in the office of the city clerk as Public Document No. 04-0112-16, is hereby approved.

Resolution 04-0006 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the proper city officers are hereby authorized to enter into a development agreement with CC San Marco L.L.C., substantially in the form of that on file in the office of the city clerk as Public Document No. 04-0112-17, for the acquisition of the San Marco site as described therein, the demolition of structures thereon and the development of a residential project containing 40 units of SRO housing available to persons of low income and an additional 25 such units to be made available to chronic alcoholics, especially those whose alcoholism has resulted in chronic homelessness.

Resolution 04-0011 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

WHEREAS, the Duluth economic development authority has filed a sufficient petition with the city clerk requesting the vacation of a portion of the alley between 38th and 39th Avenues West between West Michigan and Superior Streets legally described as the alley between and adjoining Lots 6 - 16, Block 6, and Lots 6 - 16, Block 7, Harrington's Addition; and

WHEREAS, 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

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WHEREAS, the city planning commission approved unanimously the vacation petition at its December 9, 2003, meeting (Reference File No. 03136).

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation of a portion of the alley between 38th and 39th Avenues West between West Michigan and Superior Streets described above and as more particularly described on Public Document No. 04-0112-18.

RESOLVED FURTHER, that the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of St. Louis County, Minnesota, a certified copy of this resolution together with a plat showing the portion of the alley to be vacated.

Resolution 04-0012 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

WHEREAS, Christine Schafer has submitted to the city council a request for a special use permit for a home beauty salon on property located at 4508 Oakley Street and described as Lot 9, Block 12, Lakeside Gardens (Reference File No. 03137), and said permit application was duly referred to the city planning commission for a study, report and public hearing and the city planning commission has subsequently reported its approval to the city council; and

WHEREAS, the approval was made because of the city planning commission's findings that appropriate safeguards will exist to protect the comprehensive plan and to conserve and to protect property values in the neighborhood if conditions are observed.

NOW, THEREFORE, BE IT RESOLVED, that a special use permit is hereby granted to Christine Schafer to allow for the operation of a home beauty salon at 4508 Oakley Street, on the following conditions:

- (a) That the operation be limited to and maintained in perpetual compliance with Section 51-35(r) and in accordance with the plans as identified as Public Document No. 04-0112-19;
- (b) That the necessary inspections are received; and
- (c) That the term of the permit run for ten years at which time renewal may be considered.

Resolution 04-0013 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the proper city officers are hereby authorized to enter into an amendment to Agreement No. 19447 with HRA, substantially in the form of that on file in the office of the city clerk as Public Document No. 04-0112-20, increasing the amount payable thereunder from \$836,000 to \$1,011,000 and payable from Fund 0262-626-6601, said additional funding being received from Neighborhood Housing Services (NHS) revolving loan fund program income and deposited into Fund 0262-020-2600-4211.

Resolution 04-0015 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

BY COUNCILOR JOHNSON:

RESOLVED, that the proper city officers are hereby authorized to execute an agreement substantially in the form of that on file in the office of the city clerk as Public Document No. 04-0112-21, with the Greater Downtown Council (GDC) under which the GDC will conduct certain activities in the Downtown area, in an amount not to exceed \$87,000, payable from General Fund 0100-700-1410-SP05.

Resolution 04-0040 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR NESS:

RESOLVED, the proper city officers are hereby authorized to execute an agreement containing substantially the terms as that contract on file with the city clerk, Public Document No. 04-0112-22, between the city of Duluth and the St. Louis County Board for the furnishing, under the city of Duluth senior dining program, of home-delivered meals for senior citizens for the period of January 1, 2004, through December 31, 2004. Monies collected under said contract shall be deposited in Federal Program Fund 0272, Department 031, Organization 6304, Revenue Source 4654.

Resolution 04-0009 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the proper city officers are hereby authorized to accept from Clark Builders, LLC, the dedication of a 20 foot wide utility easement in the following described parcel of land located within the city of Duluth, county of St. Louis, state of Minnesota:

Lot 11, block 2, Richards First Addition;

said easement being more particularly described as follows, to-wit:

the westerly 20 feet of Lot 11, Block 2, Richards First Addition.

Resolution 04-0003 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

WHEREAS, the state of Minnesota, through the Minnesota department of natural resources, division of waters, administers financial assistance for coastal management purposes through Minnesota's Lake Superior coastal program; and

WHEREAS, the city of Duluth in conjunction with the regional stormwater protection team and the Duluth streams partnership desires financial assistance from the coastal management assistance program for the purposes of employing the services of university of Minnesota staff from the natural resources research institute, Minnesota sea grant, to expand and enhance the duluthstreams.org web site as part of the stormwater education program.

RESOLVED, that the proper city officials are hereby authorized to prepare and submit a grant application to the Minnesota department of natural resources in an amount of \$45,580 for said web site improvement.

BE IT FURTHER RESOLVED, that the proper city officers are authorized to act as legal sponsor of said grant, to accept said grant if tendered by the Minnesota department of natural

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resources, to execute any documents required to be executed to accept such grant and to obligate up to \$18,000 in matching funds, payable from Fund 0535, Division 1915, Object 5441, and in addition, in-kind match to be provided by WLSSD, city staff, NRRI, UMD and RSPT partners in the amount of \$39,270.

Resolution 04-0004 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are authorized to enter into a lease agreement substantially in the form of that on file in the office of the city clerk as Public Document No. 04-0112-23 with Centaur L.L.C. for the lease of a shop and warehouse facility in West Duluth for \$1,200 per month, one-half payable from the Water Fund 0510, Agency 500, Organization 1915, Object 5441 and one-half payable from the Gas Fund 0520, Agency 500, Organization 1519, Object 5441.

Resolution 04-0014 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Resolution 03-0720 to Stack Brothers Mechanical Contractors, Inc., for installing supply and return chilled water links to the St. Louis County courthouse and St. Louis County government services center for the Duluth Steam District #1, be amended to increase the amount by \$136,315 for a new total of \$364,315, payable out of Steam District #1 Fund 0540, Department/Agency 920, Organization 1490, Object 5530.

Resolution 04-0016 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that K.A. Steel Chemicals, Inc., be and hereby is awarded a contract for furnishing and delivering 100,000 gallons of caustic soda for the utility operations division in accordance with specifications on its low specification bid of \$66,360, terms net 30, FOB destination, payable out of Water Fund 0510, Department/Agency 500, Organization 1955, Object 5238.

Resolution 04-0018 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Western Lake Superior Sanitary District be and hereby is awarded a contract for 25 percent of construction costs of the sanitary sewer storage basin in Gary/New Duluth for the utility operation division in accordance with agreement on file in the city clerk's office as Public Document No. 03-0527-37 in the amount of \$99,084.88, payable out of Sewer Fund

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0530, Department/Agency 500, Organization 1905, Object 5533.

Resolution 04-0021 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Thunder Bay Chemicals, Ltd, be and hereby is awarded a contract for furnishing and delivering 150,000 gallons of liquid aluminum sulfate for the utility operations division in accordance with specifications on its low specification bid of \$57,825, terms net 30, FOB destination, payable out of Water Fund 0510, Dept./Agency 500, Organization 1955, Object 5237.

Resolution 04-0022 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that LaRoche Industries, Inc., be and hereby is awarded a contract for furnishing and delivering approximately 40,000 pounds of anhydrous ammonia for the utility operations division in accordance with specifications on its low specification bid of \$17,600, terms net 30, FOB destination, payable out of Water Fund 0510, Department/Agency 500, Organization 1955, Object 5234.

Resolution 04-0023 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Viking Electric Supply, Inc., be and hereby is awarded a contract for furnishing and delivering the replacement parts for Downtown area and Canal Park area ornamental street lighting system for the traffic operations division in accordance with specifications on its low specification bid of \$11,565.90, terms net 30, FOB destination, payable out of Capital Equipment Fund 0250, Department/Agency 015, Organization NR02, Object E213.

Resolution 04-0029 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

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. 04-0112-24, with Minnesota Power (MP), a division of Allete, Inc., for the provision by MP of professional services related to the purchase, transportation and management of the natural gas supply for the city's natural gas utility in the amount of not to exceed \$30,000, payable from gas fund.

Resolution 04-0034 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are authorized to pay to State Farm Insurance,

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

as subrogee of Ralph Kersten, the amount of \$24,762.49 in full settlement of all claims for building damage to their insured's property at 314 East Sixth Street resulting from a watermain break which occurred on July 14, 2003; payment to be made from the Self Insurance Fund 0610.

Resolution 04-0037 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are authorized to pay to State Farm Insurance, as subrogee of Ralph Kersten, the amount of \$13,558.11 in full settlement of all claims for damage to their insured's personal property at 314 East Sixth Street resulting from a watermain break which occurred on July 14, 2003; payment to be made from the Self Insurance Fund 0610.

Resolution 04-0038 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

WHEREAS, the lower St. Louis River estuary is recognized as a globally important natural area due to its unique wetlands in the Lake Superior watershed and surrounding upland forest; and

WHEREAS, important wetland habitat for breeding birds and fish has declined in the estuary due to excessive sediment inputs from past development and road building; and

WHEREAS, planned bridge reconstructions provide an opportunity to concurrently restore adjacent riparian and upland habitat; and

WHEREAS, the St. Louis River Citizens Action Committee, the Nature Conservancy, the Minnesota Deer Hunters Association, and the U.S. bureau of Indian affairs have formed a conservation partnership under the state habitat corridors partnership to conserve and restore priority habitat in the lower St. Louis River estuary; and

WHEREAS, conservation partners have pledged matching funds for a one million dollar proposal before Congress to appropriate federal transportation funds for habitat restoration in the lower St. Louis River estuary to mitigate effects of bridge reconstructions at Minnesota trunk highways 23, 210, and 53 over the St. Louis River and its tributaries of Kingsbury Creek, Keene Creek and Miller Creek.

NOW, THEREFORE, BE IT RESOLVED, that the Duluth City Council supports efforts to appropriate federal funds for habitat restoration related to bridge reconstructions over the St. Louis River and priority tributaries and urges Congress to pass legislation for this purpose.

BE IT FURTHER RESOLVED, that the clerk shall provide a copy of this resolution to Congressman Oberstar and to Minnesota's two senators.

Resolution 04-0043 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

- - -

BY PRESIDENT STAUBER:

RESOLVED, that the proper city officers are authorized to execute the grant agreement to accept monies from the U.S. department of justice, office of justice programs, office on violence against women, grant program to provide personnel, equipment and training for the period September 1, 2003, through August 31, 2005.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

BE IT FURTHER RESOLVED, that all revenue from such grant are to be deposited into Police Grant Fund 0215, Agency 200, Organization 2470.

Resolution 04-0007 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

- - -

BY PRESIDENT STAUBER:

WHEREAS, the state of Minnesota, department of natural resources, division of waters, administers financial assistance for coastal management purposes, through Minnesota's Lake Superior coastal program; and

WHEREAS, the city of Duluth desires financial assistance under the coastal management assistance grant program;

NOW, THEREFORE, BE IT RESOLVED, as follows:

(a) That the Duluth City Council approves of and supports the city administration in filing an application to Minnesota's Lake Superior coastal management program for financial assistance for the Chester Creek and Miller Creek ownership mapping project;

(b) That the director of planning and development is hereby authorized and directed to execute and file an application with the Minnesota department of natural resources and to provide all information and documentation as required to become eligible for possible funding assistance;

(c) That the director of planning and development has signatory authority to apply for the funds;

(d) That the city of Duluth does agree to act as legal sponsor and to obligate funds required to satisfactorily complete the proposed project and become eligible for reimbursement under the terms and conditions of Minnesota's Lake Superior coastal program matching funds to come from General Fund 0210-030-2154.

Resolution 04-0008 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

- - -

BY PRESIDENT STAUBER:

RESOLVED, that proper city officials are hereby authorized to pay the county of St. Louis an approximate \$40,000 payable out of General Fund 0100, Department/Agency 200, Organization 1610, Object 5445 for the St. Louis County jail during the year 2004 of persons charged with violations of the Duluth City Code, 1959, as amended; said boarding fees to be paid in four equal quarterly installments on March 31, June 30, September 30 and December 31.

Resolution 04-0019 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

- - -

BY PRESIDENT STAUBER:

RESOLVED, that St. Louis County department of communications be and hereby is awarded a contract for furnishing computer aided dispatch system access during the year 2004 for the police department in accordance with specifications at an estimated amount of \$25,440, terms net 30, FOB destination, payable out of General Fund 0100, Department/Agency 200,

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Organization 1610, Object 5441.

Resolution 04-0024 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

- - -

BY PRESIDENT STAUBER:

RESOLVED, that Stratus Computer Company be and hereby is awarded a contract for furnishing 12 months of maintenance covering computer hardware and software during the year 2004 for the police department in accordance with specifications at an estimated amount of \$28,548, terms net 30, FOB destination, payable out of General Fund 0100, Department/Agency 200, Organization 1610, Object 5404.

Resolution 04-0025 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

- - -

BY PRESIDENT STAUBER:

RESOLVED, that Arrowhead Regional Corrections be and hereby is awarded a contract for providing for reimbursement of the St. Louis County sheriff for certain identification services during year 2004, at an estimated cost to the city of \$13,102 payable out of General Fund 0100, Department/Agency 200, Organization 1610, Object 5319.

Resolution 04-0026 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

- - -

BY PRESIDENT STAUBER:

RESOLVED, that the city is hereby authorized to accept from the division of homeland security and emergency management, Minnesota department of public safety, a 2003 state homeland security Part 1 equipment/exercise/training grant in the amount of \$55,000.

BE IT FURTHER RESOLVED, that the proper city officials are authorized to execute any agreements necessary to implement the project on behalf of the fire department. All monies from this grant will be deposited into Special Projects Fund 0210, Agency 030, Organization 2164, Revenue Source 4230.

Resolution 04-0041 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

- - -

BY PRESIDENT STAUBER:

BE IT RESOLVED, that the proper city officials are authorized to execute and implement a contract, containing substantially the terms of that contract on file with the city clerk as Public Document No. 04-0112-27, with Minnesota department of administration providing that the city building official is authorized to administer building and life safety codes that apply to public buildings and state licensed facilities, as set out in M.S.A. §16B.60 and §16B.65, and collect fees therefore.

Resolution 04-0042 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

BY PRESIDENT STAUBER:

RESOLVED, that Sivertson Fisheries, Inc., be and hereby is awarded a contract for furnishing cold storage rental and fish purchases as needed for year 2004 for the Lake Superior Zoo in accordance with specifications at an estimated amount of \$10,000, terms net 30, FOB destination, \$7,000 payable out of General Fund 0100, Department/Agency 400, Organization 1814, Object 5419 and \$3,000 payable out of General Fund 0100, Department/Agency 400, Organization 1814, Object 5245.

Resolution 04-0020 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

- - -

BY PRESIDENT STAUBER:

RESOLVED, that Resolution 03-0014 to St. Louis County social services for furnishing approximately 51,800 catered meals at eight senior dining locations for a 12 month period during year 2004, be amended to increase the amount by \$161,991 for a new total of \$657,379.50, payable out of Senior Nutrition Fund 0272, Department/Agency 031, Organization 6304, objects 0071, 0070, 0072, 0073.

Resolution 04-0027 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

- - -

The following resolutions were also considered:

BY COUNCILOR NESS:

WHEREAS, young people who have mentors have a better chance of succeeding and are more likely to make positive choices; and

WHEREAS, research shows volunteer mentors can play a powerful role in reducing risky adolescent behaviors such as drug and alcohol abuse and youth violence, while greatly enhancing a young person's prospects for leading a healthy and productive life; and

WHEREAS, in Minnesota there are an estimated 450,000 young people who could benefit from an adult mentor; and

WHEREAS, with the support of businesses, communities and caring adults we can help introduce a child to new ideas and opportunities through mentoring.

RESOLVED, that the great city of Duluth recognizes January of 2004 as National Mentoring Month.

FURTHER RESOLVED, the city celebrates the hundreds of adult mentors already volunteering their mentoring services to the community and expresses its determination to recruit more adult mentors to meet the still unmet need for such services.

Resolution 04-0010 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR NESS:

WHEREAS, the residents of the city of Duluth place a high value on the responsiveness of elected officials and policymakers to their needs; and

WHEREAS, the city council welcomes opportunities for citizens and elected officials to learn more about constituent concerns and resulting policy impact; and

WHEREAS, the walk a mile program exists to bridge relationships between policymakers and low income constituents that explore the practical and personal dynamics of public policy; and

WHEREAS, the result of such an experience allows an opportunity for policymakers to get a personal understanding of poverty from an expert - an individual or family living in poverty; and

WHEREAS, the low income constituent also has an opportunity to play an active role in government; and

WHEREAS, the walk a mile program is based on the belief that mutual respect grows from personal relationships in which individuals have the opportunity to see life from another person's point of view - to walk a mile in another person's shoes.

NOW, THEREFORE, BE IT RESOLVED, that the council recognizes the value of the walk a mile program and encourages all councilors, particularly those newly elected, to participate in the 2004 program activities. Some of these activities will include:

- visit a social services office;
- visit a food bank;
- visit an employment training program;
- attend a public hearing;
- visit the state legislature;
- attend a community meeting;
- visit your partner's home;
- go grocery shopping together;
- visit a head start program.

BE IT FURTHER RESOLVED, that the Duluth City Council shall encourage broad community participation in the walk a mile program for policymakers and community members alike.

Resolution 04-0055 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Resolution 03-0018 to Carlson and Kirwan for furnishing and marketing and media purchasing services for the natural gas advertising program, be amended to increase the amount by \$93,174 for a new total of \$383,774, payable out of Gas Fund 0520, Department/Agency 500, Organization 2430, Object 5340.

Resolution 04-0028 was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

- - -

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

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**INTRODUCTION AND CONSIDERATION OF ORDINANCES
ORDINANCE TABLED**

BY COUNCILOR STOVER

03-072 (9642) - AN ORDINANCE AUTHORIZING SALE OF CERTAIN PROPERTY IN DULUTH HEIGHTS TO THE HOUSING AND REDEVELOPMENT AUTHORITY OF DULUTH.

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

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

- - -

The following entitled ordinance was read for the first time:

BY COUNCILOR JOHNSON

04-003 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NO. 29 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-2, TWO FAMILY RESIDENTIAL, TO R-3, APARTMENT RESIDENTIAL, PROPERTY LOCATED NORTHWEST OF MESABA AVENUE BETWEEN SECOND AVENUE WEST AND WEST CASCADE STREET (FINNIGAN).

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

Dianna Hunter, Deb Anderson, Bruce Mattson and Mark Borak opposed the ordinance for concerns of: the planning commission did not vote in favor of this rezoning; with this change a five story building could be built; this area could be developed without this zoning change; Mesaba Avenue is a natural and substantial barrier between two types of zoning, R-3 and R-4 below and R-2 above; allowing a zoning change for one developer impacts an entire neighborhood; property values will decrease with large scale developments and the applicant is making an excess profit at the expense of the neighborhood.

Daniel Thralow spoke in support of the ordinance, noting that he reviewed the applicant's plans and that the building will not be as high as is allowed in the proposed zoning and that there could be a contingency in the zoning that if the building is not built, the zoning does not change. He felt that the applicant is the type of person that will build a beautiful building.

- - -

Resolution 04-0030, by President Stauber, appointing _____ to fill the vacant at large city council seat, was introduced for discussion.

Councilor Stewart reviewed the appointment process as:

- (a) If, following the third balloting, more than two applicants remain, the one receiving the lowest number of votes shall be automatically eliminated from contention. If there should be a tie for the lowest number of votes, a special ballot will be cast by the full council to determine which applicant shall be eliminated;
- (b) If, following the fifth, seventh, ninth and each subsequent odd numbered balloting, more than two applicants remain, the one receiving the lowest number of votes shall be automatically eliminated from contention. If there should be a tie for the lowest number of votes, a special ballot will be cast by the full council to determine which applicant shall be eliminated;
- (c) Successive balloting will be taken until the council affirmatively determines the outcome.

Ballot Number 1 was cast as follows:

Fedora: Councilors Little and President Stauber -- 2
Nelson: Councilors Gilbert, Johnson and Stewart -- 3
Rand: Councilor Atkins -- 1
Reinert: Councilors Ness and Stover -- 2

Ballot Number 2 was cast as follows:

Fedora: Councilors Little and President Stauber -- 2
Nelson: Councilors Gilbert, Johnson and Stewart -- 3
Rand: Councilor Atkins -- 1
Reinert: Councilors Ness and Stover -- 2

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Ballot Number 3 was cast as follows:

Fedora: Councilors Little and President Stauber -- 2
Nelson: Councilors Gilbert, Johnson and Stewart -- 3
Rand: Councilor Atkins -- 1
Reinert: Councilors Ness and Stover -- 2

Ballot Number 4 was cast as follows:

Fedora: Councilors Atkins, Little and President Stauber -- 3
Nelson: Councilors Gilbert, Johnson and Stewart -- 3
Reinert: Councilors Ness and Stover -- 2

Ballot Number 5 was cast as follows:

Fedora: Councilors Atkins, Little and President Stauber -- 3
Nelson: Councilors Gilbert, Johnson and Stewart -- 3
Reinert: Councilors Ness and Stover -- 2

Ballot Number 6 was cast as follows:

Fedora: Councilors Atkins, Little, Ness and President Stauber -- 4
Nelson: Councilors Gilbert, Johnson, Stewart and Stover -- 4

Councilor Ness commented that with this tie, a councilor can move to re-introduce any applicant and then moved to re-introduce Roger Reinert for consideration, which motion was seconded and carried upon the following vote:

Yeas: Councilors Atkins, Johnson, Little, Ness, Stewart, Stover and President Stauber -- 7
Nays: Councilor Gilbert -- 1

Ballot Number 7 was cast as follows:

Fedora: President Stauber -- 1
Nelson: Councilors Gilbert, Johnson and Stewart -- 3
Reinert: Councilors Atkins, Little, Ness and Stover -- 4

Ballot Number 8 was cast as follows:

Nelson: Councilors Gilbert, Johnson and Stewart -- 3
Reinert: Councilors Atkins, Little, Ness, Stover and President Stauber -- 5

President Stauber moved to amend the resolution by inserting the name of Roger Reinert, which motion was seconded and unanimously carried.

Resolution 04-0030, as amended, was adopted as follows:

BY PRESIDENT STAUBER:

WHEREAS, At Large Councilor Herb Bergson has resigned his city council seat effective January 5, 2004; and

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

NOW, THEREFORE, BE IT RESOLVED, that the city council hereby appoints Roger Reinert to fill the vacant at large city council seat for the term expiring January 9, 2006, effective immediately.

Resolution 04-0030, as amended, was unanimously adopted.

Approved January 12, 2004

HERB W. BERGSON, Mayor

- - -

Roger Reinert was sworn in as councilor at large for the term ending January 9, 2006.

- - -

The meeting was adjourned at 8:31 p.m.

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 9642

BY COUNCILOR STOVER:

AN ORDINANCE AUTHORIZING SALE OF CERTAIN PROPERTY
IN DULUTH HEIGHTS TO THE HOUSING AND REDEVELOPMENT
AUTHORITY OF DULUTH.

The city of Duluth does ordain:

Section 1. That the proper city officials are hereby authorized to sell and convey the following described property in St. Louis County, Minnesota, by quit claim deed, to the Housing and Redevelopment Authority of Duluth for \$6,400 to be deposited in General Fund 0100-700-1448-4640, and to execute all documents necessary with regard to said conveyance:

Lots twenty-one (21) through twenty-six (26), Block Five (5), inclusive, DULUTH HEIGHTS FIFTH DIVISION, except northerly 12 feet thereof, except minerals and mineral rights, if any, vested in the state of Minnesota, and except easements, restrictions and reservations of record.

Section 2. That this ordinance shall take effect 30 days from and after its passage and publication. (Effective date: February 15, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Stewart, Stover and President Stauber -- 8

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed January 12, 2004
Approved January 12, 2004
HERB W. BERGSON, Mayor

- - -

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, January 26, 2004, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Absent: None -- 0

- - -

The minutes of the city council meetings held on November 24 and December 1, 2003, were unanimously approved.

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

04-0126-01 Duluth economic development authority, et al. (two signatures), submitting petition to vacate that portion of Kinney Street between Blocks 26 and 28; that portion of York Avenue between Blocks 26 and 43 lying southeasterly of a line being parallel with and 50 feet southeasterly of the center line of the former Duluth, Winnipeg and Pacific Railway; that portion of Traders Court between Blocks 41, 42, 43 and 44, except the southeasterly 47 feet thereof; the entire length of the alley between Blocks 43 and 44; the entire length of Commonwealth Avenue between Blocks 44 and 45; the entire length of the alley between Blocks 45 and 46 (alley behind Block 45 will retain power easement), all in Ironton Second Division. -- Assessor

04-0126-02 St. Louis County Board of Commissioners submitting certified copy of resolution appointing Commissioners Fink and Kron, with Commissioner Fay as alternate, as St. Louis County's representatives to the Northwest Airlines tax increment financing district board (Duluth) for terms expiring December 31, 2004. -- Received

04-0126-36 Dorothy Peterson submitting communication regarding the proposed ordinance relating to rental licensing (03-063-O). -- Received

04-0126-37 The PFM Group submitting presale analysis regarding \$800,000 G.O. capital improvement bonds, Series 2004A; and \$12,000,000 G.O. tax and aid anticipation certificates of indebtedness of 2004. -- Received

04-0126-38 Thom and Cindy Storm submitting communications regarding the proposed ordinances: (a) Regulating use of recreational vehicles on public land within the city (04-006-O); (b) Relating to rental licensing (03-063-O). -- Received

04-0126-39 Scott Wolff submitting communication regarding the proposed ordinance regulating use of recreational vehicles on public land within the city (04-006-O). -- Received

04-0126-35 The following submitting communications regarding the proposed resolution establishing the city's legislative priorities for the 2004 session of the Minnesota state legislature (03-0889R): (a) Arne Ion; (b) Rob Stenberg. -- received

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REPORTS OF OFFICERS

04-0126-03 Assessor submitting:

(a) For confirmation the assessment rolls levied to defray the assessable portions of sanitary sewer extension in Gilead Street, Contract 5378 (assessable - \$18,194.94), sanitary sewer extension in Petre Street, Contract 5365 (assessable - \$24,514.42) and alley construction on 57th Avenue West from 57th Avenue West to Cody Street, Contract 5361 (assessable - \$44,341.25);

(b) Letter of sufficiency to reclassify from R-3 to C-2 Lots 14 through 16, Block 98, Portland Division. -- Received

04-0126-04 Building official submitting appeal of the building appeal board's decision to deny a request to stay the condemnation for human habitation the building at 321-23 West First Street (Guthrie) -- Committee 2 (Planning and economic development)

04-0126-05 Clerk submitting application to the Minnesota gambling control board for exemption from lawful gambling license from Minnesota Senior Federation Northeast on May 19, 2004 (raffle). -- Received

04-0126-06 Engineering division submitting monthly project status report of January 1, 2004. -- Received

04-0126-07 Parks and recreation department director submitting Lake Superior zoological society minutes of: (a) November 19, 2003; (b) January 13, 2004, meetings. -- Received

- - -

REPORTS OF BOARDS AND COMMISSIONS

04-0126-08 Duluth/North Shore Sanitary District board minutes of December 2, 2003, meeting. -- Received

04-0126-09 Parking commission minutes of November 18, 2003, meeting. -- Received

04-0126-10 Parks and recreation commission minutes of December 10, 2003, meeting. -- Received

04-0126-11 Special assessment board minutes of: (a) December 1; (b) December 9, 2003, meetings. -- Received

04-0126-12 Spirit Mountain recreation area authority minutes of: (a) January 22; (b) February 26; (c) March 18; (d) May 29; (e) June 26; (f) July 23; (g) August 27; (h) September 17, 2003, meetings. -- Received

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OPPORTUNITY FOR CITIZENS TO BE HEARD

K.L. Lewis voiced concern about the Spirit Mountain Villas and urged the council to take the next steps in the development of Bayfront.

- - -

President Stauber moved to consider Resolution 04-0093, authorizing an amended and restated operating and revenue participation agreement pertaining to the Great Lakes Aquarium, by Councilor Ness, at this time, which motion was seconded and unanimously carried.

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

Senator Yvonne Prettner Solon reviewed that the funding mechanisms are already in place for the reassignment of the debt and that in order for the project to go forward and be successful, the aquarium needs to be free from the debt in order to apply for grants and set up an agreement with a management company. She continued by saying that the city needs to recognize its obligation to the project as a requirement of its agreement for the \$16 million funding the aquarium received from the state.

Councilor Ness reviewed that this proposal recognizes that the outstanding bond payments are being covered by two revenue sources, the Duluth economic development authority (DEDA) bonds are being covered by Canal Park tax increment financing (TIF) and the city bonds are being covered by the tourism tax. He continued by saying that the aquarium needs to be freed from the perception of an organization drowning in debt since that limits its effectiveness in going after grants and other support. Councilor Ness stated that it is the council's responsibility to see the aquarium break even year after year in order to limit the liability to the taxpayers.

Councilor Gilbert voiced concerns that it is premature to forgive the debt while not exploring other options. He continued by saying that the public and councilors have not had enough time to evaluate the merits of the proposal and that there is a lack of information regarding turning the

aquarium over to the management company. He emphasized that the goal of the aquarium should be increasing attendance while canceling the debt and suggested opening up the board by bringing new people to the board and going back to the original purpose of the aquarium.

Councilor Stewart stated that the city should try and negotiate with the management company to accept some of the risk by covering some of the ongoing costs if they are to receive some of the profit. He also urged the aquarium to encourage private contributors to follow through with their pledges to the aquarium.

Councilor Atkins reviewed that the city subsidizes other authorities such as the Duluth transit authority and city owned facilities such as Spirit Mountain and the zoo, and the city needs to make this facility work by allowing the aquarium to contract with Ripley's to manage this facility.

Ken Hogg, member of the Great Lakes Center authority, reviewed that the proposal that is being discussed was not generated by Ripley's, but put together by the authority at the initiative of the board in response to how to deal with the question of getting a long term contract with Ripley's so that the authority can focus its energy on building the aquarium and making it better, rather than focusing on dealing with the past.

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart and Stover -- 8

Nays: President Stauber -- 1

- - -

RESOLUTIONS TABLED

Councilor Atkins moved to remove Resolution 03-0889, establishing the city's legislative priorities for the 2004 session of the Minnesota State Legislature, 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.

Damon Anderson encouraged the council to close up the loophole in the relative homestead tax which was meant to be for cabins and not student rental housing.

Councilor Ness moved to amend subparagraph 2 of paragraph 4 of the resolution as follows:

(a) Replace the fourth priority listed as "design of the Bayfront Visitor Center" with "Taxi2000";

(b) Change the order of prioritization to read as follows:

- "- Duluth sanitary sewer overflow storage.
- Completion of the Aerial Lift Bridge rehabilitation.
- Design for the new Duluth arena at the DECC.
- Design and develop restrooms, exhibits and trail at Lake Superior Zoo.
- Taxi2000,"

which motion was seconded and unanimously carried.

Resolution 03-0889, as amended, was adopted as follows:

BY COUNCILOR NESS:

WHEREAS, the city administration and council wish to establish a clear set of priorities for legislative action during the 2004 legislative session; and

WHEREAS, there have been several meetings devoted to discussing city legislative concerns and priorities; and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

WHEREAS, the administration and council choose to express support for a number of projects which will benefit the community while indicating whether the city will assume a lead role or a supporting role or will simply express its support for a funding request.

NOW, THEREFORE, BE IT RESOLVED, that the primary legislative objectives of the city of Duluth for the year 2004 are to:

Preserve a truly needs based formula for the allocation of local government aid and maintain the highest possible funding for the local government aid program.

Secure state bonding proceeds for the following requests:

- Duluth sanitary sewer overflow storage.
- Completion of the Aerial Lift Bridge rehabilitation.
- Design for the new Duluth arena at the DECC.
- Design and develop restrooms, exhibits and trail at Lake Superior Zoo.
- Taxi 2000.

FURTHER RESOLVED, that city staff and elected officials will take the lead role in advancing these initiatives during the 2004 legislative session.

FURTHER RESOLVED, that city staff is to support the following funding requests:

Port development assistance administered by the Minnesota department of transportation.

Redevelopment account administered by the department of trade and economic development.

Wastewater infrastructure funding administered by the public facilities authority (DEED) and the Minnesota pollution control agency.

Greater Minnesota regional parks funding administered by the department of natural resources.

FURTHER RESOLVED, that the administration and council express support for the initiatives advanced by the Minnesota state colleges and universities system for construction funds for a health and wellness facility at Lake Superior College and design funds for a new business school at the University of Minnesota Duluth and by the department of recreation for the Duluth Grant School Youth and Community Center.

Resolution 03-0889, as amended, was unanimously adopted.

Approved January 26, 2004

HERB W. BERGSON, Mayor

- - -

Councilor Stover moved to remove Resolution 03-0760, authorizing a contract with ALLCO Finance Corporation for exclusive rights to finalize a lease of city owned infrastructure and expressing city's intent to do so, from the table, which motion was seconded and unanimously carried.

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

Brian Fuxa reviewed that he believes that this transaction is illegal and a waste of the council's time.

K.L. Lewis voiced concern about this project.

Mayor Bergson reviewed that the only cost to the city from now until they are through with their assessment of the system is staff time and any contract with ALLCO to proceed further would still need to come back to the council for a 7/9ths vote to pass.

Councilors Ness and Stewart stated their opposition to this project as it is a way for a large corporation to receive a huge tax break from the federal government which would shift the tax burden onto the poor.

Councilor Atkins and Reinert questioned what harm it would be to allow the administration to pursue ALLCO taking a look at our facilities and what they could offer the city, and stated it would be a benefit for the council to know the current value of the city's sewer infrastructure.

Resolution 03-0760 failed upon the following vote (Public Document No. 04-0126-13):

Yeas: Councilors Atkins, Gilbert, Reinert and Stover -- 4

Nays: Councilors Johnson, Little, Ness, Stewart and President Stauber -- 5

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

BY COUNCILOR NESS:

WHEREAS, pursuant to Minnesota Statutes Annotated, Section 410.12, Subd. 7, the Charter commission has recommended to the city council that it adopt an ordinance amending Section 8 of the City Charter; and

WHEREAS, said Section 410.12, Subd. 7, requires that before the council, upon recommendation of the Charter commission, may adopt an ordinance amending the Charter, it must first hold a public hearing on the matter upon two weeks published notice of the text of the proposed ordinance;

NOW, THEREFORE, BE IT RESOLVED, that a public hearing on the proposed amendment to the City Charter is hereby called for February 23, 2004, at 7:30 p.m. in the Council Chambers at the Duluth City Hall, and the city clerk is hereby authorized and directed to cause to be published in the Duluth News Tribune a notice of such hearing, as required by law, and the full text of the proposed ordinance, said notice of hearing to be in the following form:

NOTICE OF HEARING

Pursuant to Minnesota Statutes Annotated, Section 410.12, Subd.7, notice is hereby given by the city of Duluth that on February 23, 2004, at 7:30 p.m. in the City Council Chambers at the Duluth City Hall. The city council of the city of Duluth will conduct a public hearing on the question of the adoption of an ordinance amending Section 8 of the City Charter in the manner hereinafter set forth:

[text of proposed Ordinance No. 04-001-O]

Resolution 04-0001 was unanimously adopted.

Approved January 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR NESS:

RESOLVED, that the assessment rolls levied to defray the assessable portions of the following:

(a) Gilead sanitary sewer extension (Contract No. 5378 - assessable amount - \$18,194.94);

(b) Petre sanitary sewer extension (Contract No. 5365 - assessable amount - \$24,514.42); and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

(c) Alley construction at 57th Avenue West to Cody Street (Contract No. 5361 - assessable amount - \$44,341.25);
are hereby confirmed.

Resolution 04-0061 was unanimously adopted.

Approved January 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR NESS:

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 \$800,000 general obligation capital improvement bonds, Series 2004A (the bonds). The bonds are hereby authorized and shall be issued pursuant to Minnesota Statutes, Section 410.326 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. 04-0126-14. Each and all of the terms and provisions set forth in the official terms of offering are adopted and confirmed as the terms and conditions of the bonds and the sale thereof, and the city council shall meet at the time and place fixed herein to consider bids for the purchase of the bonds;

(c) Competitive sale of bonds. Public Financial Management, Inc., independent financial advisor to the city, is hereby authorized to provide the notice of the sale of the bonds in accordance with Minnesota Statutes, Section 475.60, subdivision 3, and in accordance with the official terms of offering;

(d) Subsequent resolution. The form, specifications and provisions for repayment of the bonds shall be set forth in a subsequent resolution of this city council.

Resolution 04-0062 was unanimously adopted.

Approved January 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR NESS:

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 \$800,000 general obligation capital improvement bonds, Series 2004A (the bonds). The bonds are hereby authorized and shall be issued pursuant to Minnesota Statutes, Section 410.326 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. 04-0126-14. Each and all of the terms and provisions set forth in the official terms of offering are adopted and confirmed as the terms and conditions of the bonds and the sale thereof, and the city council shall meet at the time and place fixed herein to consider bids for the purchase of the bonds;

(c) Competitive sale of bonds. Public Financial Management, Inc., independent financial advisor to the city, is hereby authorized to provide the notice of the sale of the bonds in

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

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 04-0062 was unanimously adopted.

Approved January 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR NESS:

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

(a) 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 \$12,000,000 general obligation tax and aid anticipation certificates of indebtedness of 2004 (the certificates). The certificates are hereby authorized and shall be issued pursuant to the authority contained in Minnesota Statutes, Sections 410.325 and 412.261, and Minnesota Statutes, Chapter 475, in anticipation of collection of taxes and state aids;

(b) The terms and conditions of the certificates and the sale thereof are set forth in the official terms of offering on file with the city clerk as Public Document No. 04-0126-15. 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 certificates and the sale thereof, and the city council shall meet at the time and place fixed therein to consider bids for the purchase of the certificates;

(c) Public Financial Management, Inc., independent financial advisor to the city, is hereby authorized to provide the notice of the sale of the certificates in accordance with Minnesota Statutes, Section 475.60, subdivision 3, and in accordance with the official terms of offering;

(d) The form, specifications and provisions for repayment of the certificates shall be set forth in a subsequent resolution of this city council.

Resolution 04-0064 was unanimously adopted.

Approved January 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

WHEREAS, pursuant to Minnesota Statutes Annotated, Section 410.12, Subd. 7, the Charter commission has recommended to the city council that it adopt an ordinance amending Section 35 of the City Charter; and

WHEREAS, said Section 410.12, Subd. 7, requires that before the council, upon recommendation of the Charter commission, may adopt an ordinance amending the Charter, it must first hold a public hearing on the matter upon two weeks published notice of the text of the proposed ordinance;

NOW, THEREFORE, BE IT RESOLVED, that a public hearing on the proposed amendment to the City Charter is hereby called for February 23, 2004, at 7:30 p.m. in the Council Chambers at the Duluth City Hall, and the city clerk is hereby authorized and directed to cause to be published in the Duluth News Tribune a notice of such hearing, as required by law, and the full text of the proposed ordinance, said notice of hearing to be in the following form:

NOTICE OF HEARING

Pursuant to Minnesota Statutes Annotated, Section 410.12, Subd.7, notice is hereby given by the city of Duluth that on February 23, 2004, at 7:30 p.m. in the City Council Chambers at the Duluth

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

City Hall. The city council of the city of Duluth will conduct a public hearing on the question of the adoption of an ordinance amending Section 35 of the City Charter in the manner hereinafter set forth:

[text of proposed Ordinance No. 04-002-O]

Resolution 04-0002 was unanimously adopted.

Approved January 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

RESOLVED, that the city is hereby authorized to execute an agreement, filed as Public Document No. 04-0126-16, with Gamblers Intervention Services for the operation of an outreach gambling program during year 2004, at a cost to the city of \$90,000, which shall be payable from General Fund 0100-700-1422 gambling administration.

Resolution 04-0052 was unanimously adopted.

Approved January 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

RESOLVED, that the city is hereby authorized to contract with the Minnesota Council on Compulsive Gambling, Inc., for operation of a compulsive gambling prevention and education program during year 2003, at a cost to the city of \$148,096, which shall be payable from General Fund 0100, Agency 700, Organization 1422, Object 5490; to be encumbered out of year 2004 budget.

Resolution 04-0054 was unanimously adopted.

Approved January 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

WHEREAS, by Duluth City Council Resolution 03-0584, the city council imposed a fine on Wizner Company in the amount of \$1,000, but stayed the imposition of the fine for one year on the condition that Wizner Company have no administrative licensing problems that brought it before the alcohol, gambling and tobacco commission during the year. If the Wizner Company had no such problems during the year, the fine did not have to be paid; and

WHEREAS, on January 7, 2004, the alcohol, gambling and tobacco commission held a hearing to consider finding that Wizner Company was in violation of the conditions established by Duluth City Council Resolution 03-0584 and to revoke the stay of imposition and impose the fine amount of \$1,000. Wizner Company received notice of the hearing and was further advised that in its absence, the commission could consider the allegations of violation of the conditions to be true and could recommend to the Duluth City Council that the fine be imposed; and

WHEREAS, on January 7, 2004, the Wizner company did not appear, but the alcohol, gambling and tobacco commission considered the matter and determined that the failure to pay the quarterly license fee for the on-sale intoxicating liquor license in a timely manner constituted an administrative licensing problem which brought Wizner Company before the alcohol, gambling and tobacco commission during the year and recommended to the Duluth City Council the revocation of the stay and imposition of the civil penalty amount of \$1,000, as established by Duluth City Council Resolution 03-0584;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

NOW, THEREFORE, BE IT RESOLVED, that the facts which constitute the violation of the conditions established by Duluth City Council Resolution 03-0584 are as follows:

(a) For the November meeting of the alcohol, gambling and tobacco commission, held on November 12, 2003, the agenda provided notice from the city clerk that the second quarter payment of the intoxicating liquor license of Wizner Company was delinquent; and

(b) Wizner Company has chosen to pay its liquor license in quarterly payments of \$693.75 per quarter. The second quarterly payment would have been due on October 15, 2003. The payment was made on November 3, 2003, with a payment in the amount of \$693.75, plus penalty in the amount of \$69.37, for a total payment made of \$763.12; and

(c) Section 8-9(b)(3) of the Duluth City Code provides that failing to pay license fees is good cause for suspension or revocation of a liquor license or for the imposition of a civil penalty.

BE IT FURTHER RESOLVED, that the city council of the city of Duluth hereby adopts the recommendation of the alcohol, gambling and tobacco commission regarding the revocation of the stay and imposition of the civil penalty in the amount of \$1,000 relating to the on sale intoxicating liquor license of Wizner Company (Norman's Bar), 113 West First Street.

Resolution 04-0060 was unanimously adopted.

Approved January 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

RESOLVED, that MacQueen Equipment, Inc., be and hereby is awarded a contract for furnishing and delivering O.E.M. parts and repairs for snow blowers as needed for year 2004 for the fleet services division in accordance with specifications at an estimated amount of \$25,000, terms net 30, FOB destination, payable out of Fleet Services Fund 0660, Department/Agency 015, Organization 1560, Object 5221.

Resolution 04-0067 was unanimously adopted.

Approved January 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

RESOLVED, that Otis-Magie-Gustafson Agency be and hereby is awarded a contract for furnishing property insurance for 47 city owned structures and 26 pieces of equipment in accordance with specifications on its specification bid of \$104,981, terms net 30, FOB destination, payable out of Self Insurance Liability Fund 0610, Department/Agency 036, Organization 1651, Object 5360.

Resolution 04-0069 was unanimously adopted.

Approved January 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that the city of Duluth does hereby authorize acceptance of reimbursement from DEDA for certain Baywalk construction expenses related to Building N in the amount of \$203,800, said funds to be deposited into Fund 0255.

FURTHER RESOLVED, that the proper city officials are hereby authorized to enter into a Baywalk easement agreement substantially in the form of that on file in the office of the city clerk

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

as Public Document No. 04-0126-17, with Building N, Inc., in the amount of \$51,600, payable from Fund 0255.

Resolution 04-0039 was unanimously adopted.

Approved January 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

WHEREAS, a sufficient petition was filed with the city clerk requesting the vacation of 20-foot wide utility easement legally described as: ten feet along the rear of Lots 12, 13, 26, 27, Block 2, Oatka Beach Addition to Duluth (Reference File No. 03148); and

WHEREAS, 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

WHEREAS, the city planning commission unanimously approved the easement vacation petition at its January 13, 2004, meeting.

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation of the easement described above and as more particularly described on Public Document No. 04-0126-18.

RESOLVED FURTHER, that the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of St. Louis County, Minnesota, a certified copy of this resolution together with a plat showing the portion of the easement to be vacated.

Resolution 04-0053 was unanimously adopted.

Approved January 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that the city of Duluth hereby declares its intent to deduct \$8,193 annually for a period of five years from the funding allocated to the Depot in order to provide for repayment of a loan made by the city to the Art Center.

Resolution 04-0056 was unanimously adopted.

Approved January 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

WHEREAS, a sufficient petition was filed with the city clerk requesting the vacation of a portion of the 16-foot wide alley legally described as: alleyway adjoining Lots 7-12 and 22-24, Block 8, and Lots 12 - 26, Block 9, Motor Line Division; and

WHEREAS, 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

WHEREAS, the city planning commission unanimously approved the alley vacation petition at its January 13, 2004, meeting.

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation of the easement described above and as more particularly described on Public Document No. 04-0126-19.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

RESOLVED FURTHER, that the city herewith retains the full vacated alley right-of-way as a utility easement.

RESOLVED FURTHER, that the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of St. Louis County, Minnesota, a certified copy of this resolution together with a plat showing the portion of the alleyway to be vacated and the utility easement being retained.

Resolution 04-0059 was unanimously adopted.

Approved January 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

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. 04-0126-20, with the Historic Union Depot, Inc. (Depot), in an amount not to exceed \$127,607, payable from Fund 0258.

Resolution 04-0074 was unanimously adopted.

Approved January 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that pursuant to the requirements of Resolution No. 02-0606, Duluth economic development authority's (DEDA) Resolution 04D-01, a copy of which is on file in the office of the city clerk as Public Document No. 04-0216-34, approved by the DEDA board at its meeting of January 20, 2004, authorizing the purchase of certain property from the state of Minnesota through St. Louis County for appraised value of \$9,400 and certain fees not to exceed \$4,774, payable from DEDA Fund 0865, is hereby approved. DEDA is assembling said parcels for the DWP housing development project.

Resolution 04-0080 was unanimously adopted.

Approved January 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that pursuant to the requirements of Resolution No. 02-0606, the Duluth economic development authority's (DEDA) amendment to agreement with Oneida Realty Company for operation of DEDA-owned and DEDA-controlled lots in Canal Park and in the Downtown area approved at its meeting of January 20, 2004, pursuant to DEDA Resolution No. 04D-02, a copy of which is on file in the office of the city clerk as Public Document No. 04-0126-21, is hereby approved.

Resolution 04-0081 was unanimously adopted.

Approved January 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that pursuant to the requirements of Resolution No. 02-0606, the Duluth economic development authority's (DEDA) amendment to agreement with LHB Riverside Development, LLC, changing the property being conveyed by DEDA to developer for the first phase of the residential development adjacent to the old Riverside School, approved at its meeting

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

of January 20, 2004, pursuant to DEDA Resolution No. 04D-03, a copy of which is on file in the office of the city clerk as Public Document No. 04-0126-22, is hereby approved.

Resolution 04-0082 was unanimously adopted.

Approved January 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that pursuant to the requirements of Resolution No. 02-0606, the Duluth economic development authority's (DEDA) amendment to agreement with Soft Center Duluth deleting the payment of certain common area maintenance (CAM) charges approved at its meeting of January 20, 2004, pursuant to DEDA Resolution No. 04D-04, a copy of which is on file in the office of the city clerk as Public Document No.04-0126-23, is hereby approved.

Resolution 04-0083 was unanimously adopted.

Approved January 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that pursuant to the requirements of Resolution No. 02-0606, the Duluth economic development authority's (DEDA) slate of officers for the year 2004, approved at its meeting of January 20, 2004, pursuant to DEDA Resolution No. 04D-06, a copy of which is on file in the office of the city clerk as Public Document No. 04-0126-24, is hereby approved.

Resolution 04-0084 was unanimously adopted.

Approved January 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that pursuant to the requirements of Resolution No. 02-0606, the Duluth economic development authority's (DEDA) approval of a project by St. James Home of Duluth, Inc., d/b/a Woodland Hills, and approving a joint power agreement pursuant to DEDA Resolution No. 04D-07, a copy of which is on file in the office of the city clerk as Public Document No. 04-0126-25, is hereby approved.

Resolution 04-0085 was unanimously adopted.

Approved January 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that pursuant to the requirements of Resolution No. 02-0606, the Duluth economic development authority's (DEDA) approval of the issuance and sale of health care facilities revenue bonds and execution of related documents for the benefit of the Benedictine Health System-St. Mary's Duluth Clinic Health System Obligated Group pursuant to DEDA Resolution No. 04D-08, a copy of which is on file in the office of the city clerk as Public Document No. 04-0126-26, is hereby approved.

Resolution 04-0086 was unanimously adopted.

Approved January 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that pursuant to the requirements of Resolution No. 02-0606, the Duluth economic development authority's (DEDA) preliminary approval to a project; referring the proposal to the Minnesota department of employment and economic development for approval; and approving a joint powers agreement for the benefit of the Benedictine Health System-St. Mary's Duluth Clinic Health System Obligated Group pursuant to DEDA Resolution No. 04D-14, a copy of which is on file in the office of the city clerk as Public Document No. 04-0126-27, is hereby approved.

Resolution 04-0087 was unanimously adopted.

Approved January 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that pursuant to the requirements of Resolution No. 02-0606, the Duluth economic development authority's (DEDA) amendment to lease agreement with Tech Village, L.L.C., to clarify the DEDA-leased space in the tech village and to provide a rebate of prepaid rent in the amount of \$56,868.77, said funds to be deposited into DEDA Fund 0865, pursuant to DEDA Resolution No. 04D-10, a copy of which is on file in the office of the city clerk as Public Document No. 04-0126-28, is hereby approved.

Resolution 04-0088 was unanimously adopted.

Approved January 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that pursuant to the requirements of Resolution Nos. 99-0239 and 02-0606, the Duluth economic development authority's (DEDA) agreement with Northspan Group, Inc., to fund the Arrowhead Business Connection regional recruitment and retention program approved at its meeting of January 20, 2004, pursuant to DEDA Resolution No. 04D-09, a copy of which is on file in the office of the city clerk as Public Document No. 04-0126-29, is hereby approved.

Resolution 04-0090 was unanimously adopted.

Approved January 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that pursuant to the requirements of Resolution Nos. 99-0239 and 02-0606, the Duluth economic development authority's (DEDA) agreement with Short Elliot Hendrickson, Inc. (SEH), for a property eligibility survey related to the use of TIF for the SMDC project approved at its meeting of January 20, 2004, pursuant to DEDA Resolution No. 04D-11, a copy of which is on file in the office of the city clerk as Public Document No. 04-0126-30, is hereby approved.

Resolution 04-0091 was unanimously adopted.

Approved January 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are authorized to pay to Lakeland Delivery Service, Inc., the amount of \$17,481.18 in full and final settlement of the claim which arose out of the relocation of Lakeland Delivery Service, Inc., which relocation occurred as part of the

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

acquisition of the Baxter Building, formerly located in Lincoln Park, by the city of Duluth; payment to be made from Self Insurance Fund 0610.

Resolution 04-0065 was unanimously adopted.

Approved January 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Vogel Paint and Wax Company, Inc., be and hereby is awarded a contract for furnishing and delivering 6,300 gallons of yellow and white traffic marking paint for the maintenance operation division in accordance with specifications on its low specification bid of \$29,671.65, terms net 30, FOB destination, payable out of General Fund 0100, Department/Agency 500, Organization 2020, Object 5226.

Resolution 04-0072 was unanimously adopted.

Approved January 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Resolution 03-0706 to Progressive Consulting Engineers for professional services relating to the development of a water rate model for the Stora Enso paper mill, be amended to increase the amount by \$2,880 for a new total of \$12,650, payable out of Water Fund 0510, Department/Agency 500, Organization 1915, Object 5310.

Resolution 04-0073 was unanimously adopted.

Approved January 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

RESOLVED, that E/S Support Services be and hereby is awarded a contract for furnishing computer hardware and software maintenance for a one year period beginning January 1, 2004, through December 31, 2004, for the police department in accordance with specifications on its proposal of \$17,000, terms net 30, FOB job site, payable out of General Fund 0100, Department/Agency 200, Organization 1610, Object 5404.

Resolution 04-0070 was unanimously adopted.

Approved January 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

RESOLVED, that the proper city officers are hereby authorized and directed to enter into an agreement with the Duluth police local and with Donald MacMillan, an employee who is a member of the Duluth police local, providing for the retirement of the employee with certain retirement benefits; said agreement to be substantially in the form of Public Document No. 04-0126-31 on file in the office of the city clerk.

Resolution 04-0075 was unanimously adopted.

Approved January 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR REINERT:

RESOLVED, that the proper city officers are hereby authorized to enter into a consultant agreement with Krech-Ojard & Associates, P.A., for the sum of not to exceed \$8,000, from Fund 100 Agency 700, Organization 2725, Object 1314, for providing certain design services to the city of Duluth in connection with alterations to and reconstruction of the main library exterior stairs, said services and payment therefore to be substantially as outlined in the agreement on file in the office of the city clerk as Public Document No. 04-0126-32.

Resolution 04-0057 was unanimously adopted.

Approved January 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR REINERT:

WHEREAS, the Superior Hiking Trail Association (the association), as part of its mission, constructs and maintains the Superior Hiking Trail, a long-distance footpath; and

WHEREAS, the association will be building the Superior Hiking Trail through the city of Duluth (the development project); and

WHEREAS, the association is applying for funds administered by the department of natural resources (DNR) for trail development, specifically the national recreation program, the regional trail grant program and the local trail connections grant program.

NOW, THEREFORE, BE IT RESOLVED, that the city of Duluth, through its finance director agrees to act as fiscal agent for the development project and that matching funds required for this project will be the responsibility of the association.

FURTHER RESOLVED, that the city of Duluth agrees, through its recreational hiking trail permit with the association, to support the construction and maintenance of the Superior Hiking Trail in the city of Duluth by the association for a period of 20 years.

Resolution 04-0063 was unanimously adopted.

Approved January 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR REINERT:

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. 04-0126-33 with the Superior Hiking Trail Association for the construction and operation of the Superior Hiking Trail as it extends through the city of Duluth.

Resolution 04-0066 was unanimously adopted.

Approved January 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR REINERT:

RESOLVED, that Central Nebraska Packing, Inc., be and hereby is awarded a contract for furnishing and delivering zoo animal foods for feline, omnivore, bird of prey and primate diets as needed for year 2004 for the Lake Superior Zoo in accordance with specifications at an estimated amount of \$25,000, terms net 30, FOB destination, payable out of General Fund 0100, Department/Agency 400, Organization 1814, Object 5245.

Resolution 04-0071 was unanimously adopted.

Approved January 26, 2004

HERB W. BERGSON, Mayor

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The following resolutions were also considered:

BY COUNCILOR NESS:

WHEREAS, the active members of Duluth's community have been internationally renowned for Duluth's programs and facilities to eliminate domestic violence; and

WHEREAS, Safe Haven shelter for battered women operates in Duluth an internationally known program and shelter facility in aid of victims of domestic violence; and

WHEREAS, the Duluth police and prosecutors work with Safe Haven shelter for battered women to achieve the same goals; and

WHEREAS, there is a need to continue and increase efforts in this area; and

WHEREAS, Safe Haven shelter for battered women will apply to the U.S. department of justice for a grant to establish a more efficient and functional, one-stop system of delivering assistance to victims of domestic violence;

NOW, THEREFORE, BE IT RESOLVED, by the Duluth City Council that it endorses and supports the efforts of Safe Haven shelter for battered women, and urges that it be awarded the grant it seeks in order to improve service delivery to victims of domestic violence.

BE IT FURTHER RESOLVED, that the council urges the city administration, our state of Minnesota officials, and our elected members of Congress to assist Safe Haven shelter for battered women in securing the needed grant for which it applies.

BE IT FURTHER RESOLVED, that the clerk shall deliver a copy of this resolution to senators Coleman and Dayton and Congressman Oberstar.

Resolution 04-0077 was unanimously adopted.

Approved January 26, 2004

HERB W. BERGSON, Mayor

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Resolution 04-0092, by councilors Ness and Stewart, opposing use of all terrain vehicles in the city of Duluth, was introduced for discussion.

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

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Resolution 04-0089, by Councilor Gilbert, approving DEDA Resolution No. 04D-12 authorizing an amended and restated operating and revenue participation agreement pertaining to the Great Lakes Aquarium, was introduced for discussion.

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

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Resolution 04-0076, by President Stauber, referring important community housing issues to the planning commission and a task force, was introduced for discussion.

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

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES
ORDINANCE TABLED

BY PRESIDENT STAUBER AND COUNCILOR GILBERT

03-063 - AN ORDINANCE AMENDING SECTION 29A-32 OF THE DULUTH CITY CODE 1959, AS AMENDED, RELATING TO RENTAL LICENSING.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

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

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

Sandy Robinson urged support of this ordinance as her neighborhood shows signs of instability, has parking issues and garbage problems and, as families move away, the houses become short term housing for students.

Dave Stinson and Susan Schumacher urged councilors to listen to the speakers as they are concerned about their property values because their neighborhoods are turning into student housing.

Councilor Gilbert moved to retable the ordinance, which motion was seconded and carried upon a unanimous vote.

- - -

The following entitled ordinances were read for the first time:

BY COUNCILOR NESS

04-001 - AN ORDINANCE AMENDING SECTION 8 OF THE DULUTH CITY CHARTER TO AUTHORIZE THE CITY COUNCIL TO DELEGATE TO ADMINISTRATIVE OFFICERS THE POWER TO APPROVE CONTRACTS.

- - -

BY COUNCILORS NESS AND STEWART

04-006 - AN ORDINANCE AMENDING DULUTH CITY CODE SECTION 35-6 AND ADDING A NEW SECTION 45-6.3; REGULATING USE OF RECREATIONAL VEHICLES ON PUBLIC LAND WITHIN THE CITY.

- - -

BY COUNCILOR STEWART

04-002 - AN ORDINANCE AMENDING SECTION 35 OF THE DULUTH CITY CHARTER TO INCREASE THE NUMBER OF MEMBERS OF THE CIVIL SERVICE BOARD TO FIVE.

- - -

BY COUNCILOR GILBERT

04-004 - AN ORDINANCE GRANTING TO DULUTH LAKEWALK OFFICES, LLC, A CONCURRENT USE PERMIT TO CONSTRUCT AND MAINTAIN PARKING SPACES FOR PRIVATE USE IN THE RIGHT-OF-WAY OF 14TH AVENUE EAST.

- - -

BY COUNCILOR GILBERT

04-005 - AN ORDINANCE AUTHORIZING DEVELOPMENT AGREEMENT WITH ROBERT D. FINNIGAN FOR SALE OF LOT IN THE CENTRAL HILLSIDE AND DEVELOPMENT OF A CONDOMINIUM DEVELOPMENT.

- - -

The following entitled ordinance was read for the second time:

BY COUNCILOR GILBERT (INTRODUCED BY COUNCILOR JOHNSON)

04-003 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NO. 29 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-2, TWO FAMILY RESIDENTIAL, TO R-3, APARTMENT RESIDENTIAL, PROPERTY LOCATED NORTHWEST OF MESABA AVENUE BETWEEN SECOND AVENUE WEST AND WEST CASCADE STREET (FINNIGAN).

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

Rita Molitor, Mark Borak, Dennis Isernhagen, Stanely Ericksen, Deborah Anderson and Dianna Hunter voiced concern on this ordinance change because: a change in zoning could

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

change the future development of the area; it could change the complexion of the neighborhood; this project is being done in a piece meal process; there is a need for more timely information and a better response to questions and the R-3 zoning change would allow any of the neighbors to change their building site also.

Rob Finnigan thanked city staff for their help in the planning process of this project and stated that he hopes to help revitalize the hillside neighborhood by eliminating an eye sore building and replacing it with a market rate, owner occupied dwelling.

Casey Knutson Carbert urged passage of the ordinance as Mr. Finnigan has been working within the required criteria that the city has required and there are people who are interested in living in this area in a townhome.

Councilor Gilbert moved to table the ordinance, which motion was seconded and carried upon a unanimous vote.

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The meeting was adjourned at 9:45 p.m.

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

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, February 2, 2004, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Absent: None -- 0

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

04-0202-01 John K. Baker, et al. (17 signatures), by Emily K. John, attorney, submitting petition to reclassify from R-1-b to C-4 the easterly 125 feet of Lot 8, Block 3, Central Acres. -- Assessor

04-0202-12 The following submitting communications regarding the Great Lakes Aquarium (04-0089R and 04-0093R): (a) Paul Laskowski; (b) Roni Seger Town; (c) Scott Wolff. -- Received

04-0202-13 The following submitting communications regarding the proposed Lakewalk Townhomes development project (03--0789R): (a) Alison Clarke; (b) Neighborhood Planning District No. 7. -- Received

04-0202-14 The following submitting communications regarding the proposed ordinance relating to rental licensing (03-063-O): (a) Duluth LISC Program; (b) Neighborhood Planning District No. 7; (c) Sandy Robinson. -- Received

04-0202-15 The following submitting communications regarding the proposed regulation of recreational vehicles on public land within the city (04-0092R and 04-006-O): (a) David Carman; (b) Connie and Phil Dentinger; (c) James Finken; (d) Patrick Huston; (e) Kevin Maki; (f) Minnesotans for Responsible Recreation; (g) Karen Moore; (h) Brady Putzke; (i) Will Rhodes; (j) Tim Velner; (k) Scott Wolff; (l) Cheryle Young. -- Received

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REPORTS OF OFFICERS

04-0202-05 Building official submitting appeal of the board of zoning appeals' decision to deny an application to construct a two-family dwelling in a single-family district on property located at 1007 West Eighth Street (Tim Collelo, by William Burns, attorney). -- Committee 2 (Planning and economic development)

04-0202-04 Clerk submitting application to the Minnesota gambling control board for exemption from lawful gambling license from Minnesota Conservation Federation on August 21, 2004 (raffle). -- Received

04-0202-02 Parks and recreation department director submitting Lake Superior zoological society submitting: (a) January, 2004, board report; (b) January 21, 2004, executive report. -- Received

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REPORTS OF BOARDS AND COMMISSIONS

04-0202-03 Planning commission minutes of November 12, 2003, meeting. -- Received

- - -

RESOLUTION TABLED

Councilor Gilbert moved to remove Resolution 03-0789, expressing support of Lakewalk Townhomes project subject to certain conditions, from the table, which motion was seconded and unanimously carried.

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

Bill Burns, attorney for the applicant, noted that with all the input and discussion that has taken place it is the applicant's intent to have all the components of this project work in a coherent and complete manner.

Jerry Kimball stated that the map that he previously presented should not have indicated that 25th Avenue East was vacated and that the main interest is to have the Lakewalk dedicated.

Resolution 03-0789 was adopted as follows:

BY COUNCILOR GILBERT:

WHEREAS, the Duluth City Council has been provided with information regarding the development of the proposed Lakewalk Townhomes project to be located between 23rd and 26th Avenues East and between Interstate Highway 35 and Lake Superior; and

WHEREAS, the council is generally supportive of the proposed development at that location, but has significant concerns for the preservation of public open spaces and public uses in the project area.

RESOLVED, that the city council of the city of Duluth hereby expresses its conceptual support for the Lakewalk Townhomes project subject to the following actions and permits being analyzed in depth, discussed and acted upon by the city council after public hearings:

(a) Passage of a resolution approving the resolution of the Duluth economic development authority which approves the project development agreement;

(b) Approval of a special use permit for the project;

(c) Approval of a resolution vacating necessary public rights-of-way in the area of the development, such vacations to be in effect only after dedication by the project's developers of an easement for the extension of the Lakewalk along Lake Superior from the westerly to the easterly most extents of the project area.

BE IT FURTHER RESOLVED, that the above actions and permits shall provide for public ownership of all property, except property currently publicly owned, lying easterly of the following described lines:

(a) The line between Lots 6 and 7, Block E, ENDION DIVISION, and as said line is extended northwesterly to the centerline of platted Water Street;

(b) The centerline of platted Water Street, ENDION DIVISION;

(c) The line between Lots 10 and 11, Block 2, ENDION DIVISION, and as said line is extended to the southeast to the centerline of platted Water Street and to the northwest to the southeasterly right-of-way line of Interstate Highway 35.

BE IT FURTHER RESOLVED, that said land shall be maintained as public open space upon which no development except the Lakewalk extension and improvement to access to Lakewalk and Endion Ledges can be constructed.

Resolution 03-0789 was unanimously adopted.

Approved February 2, 2004

HERB W. BERGSON, 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 Stauber moved passage of the consent agenda, which motion was seconded and unanimously carried.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

BY COUNCILOR STEWART:

RESOLVED, that Construction Supply Products be and hereby is awarded a contract for furnishing and delivering Class 5 gravel, crushed rock and washed sand as needed during year 2004 for the various utility operation and maintenance operation divisions in accordance with specifications at an estimated amount of \$122,475, terms net 30, FOB job sites, payable out of various funds, departments/agencies, organizations and objects.

Resolution 04-0031 was unanimously adopted.

Approved February 2, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the proposed amendments to the specifications for the civil service classification of programmer analyst, which were approved by the civil service board on January 15, 2004, and which are filed with the city clerk as Public Document No. 04-0202-06, are approved. This classification shall remain subject to the city's collective bargaining agreement with its basic unit employees and compensated at Pay Range 133, \$3,301 to \$4,471 per month.

Resolution 04-0097 was unanimously adopted.

Approved February 2, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that the proper city officials are hereby authorized to enter into an amendment, substantially in the form of that on file in the office of the city clerk as Public Document No. 04-0202-07 to city Contract No. 19302, with Duluth/North Shore Sanitary District (sanitary district) extending the term of the agreement with no change in contract amount.

Resolution 04-0094 was unanimously adopted.

Approved February 2, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Resolution 03-0616 to Ferrellgas Company for liquid propane, be amended to increase the amount by \$40,000 for a new total of \$80,122, payable out of Water Fund 0510, Department/Agency 500, Organization 1955, Object 5390.

Resolution 04-0095 was unanimously adopted.

Approved February 2, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Tech Sales Company be and hereby is awarded a contract for furnishing and delivering six ISCO flow monitors for the utility operation division in accordance with specifications on its low specification bid of \$34,911.60, terms net, FOB destination, payable out of Sewer Fund 0530, Department/Agency 500, Organization 1970, Object 5241.

Resolution 04-0096 was unanimously adopted.

Approved February 2, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

RESOLVED, that in accordance with the provisions of Section 33-88.2 of the Duluth City Code, 1959, as amended, the following handicapped parking zone is hereby established: front of 313 North Third Avenue West.

Resolution 04-0058 was unanimously adopted.

Approved February 2, 2004

HERB W. BERGSON, Mayor

- - -

The following resolutions were also considered:

Resolution 04-0099, by Councilor Ness, establishing the city's legislative priorities for the 2004 Session of the Minnesota State Legislature; complementing Resolution 03-0889, was introduced for discussion.

President Stauber expressed concern over the legislative initiatives of: ATV law enforcement and trail restoration, in that the community does not totally support this; opposition for the taxpayer bill of rights, due to the fact that there is no such legislation on this yet and support for full funding of the local government aid program just because one of our legislators felt supporting the formula was good.

Councilor Ness moved to amend the resolution by removing second to last sentence regarding the taxpayer bill of rights, which motion was seconded and unanimously carried.

Councilor Little expressed concern that he would not support the section dealing with the relative homestead credit, due to the rental housing issue before the council and that it was premature to vote on it at this time.

Resolution 04-0099, as amended, was adopted as follows:

BY COUNCILOR NESS:

WHEREAS, the city administration and council wish to establish a clear set of priorities for legislative action during the 2004 legislative session; and

WHEREAS, there have been several meetings devoted to discussing city legislative concerns and priorities and a former Resolution 03-0889 addressing the issue; and

WHEREAS, the administration and council choose to express support for a number of projects which will benefit the community while indicating whether the city will assume a lead role or a supporting role or will simply express its support for a funding request.

NOW, THEREFORE, BE IT RESOLVED, that the legislative objectives of the city of Duluth for the year 2004 include the following:

Housing legislative initiatives:

Support the modification of the 1995 Minnesota state legislation that provides "relative homestead" property tax status for homes purchased by parents to house their college children and other students. This tax break, currently claimed by up to 800 households in Duluth, has been an incentive for conversion of single-family homes to rental occupancy. A helpful language change would be to restrict this tax break to "vacation homes" such as cabins.

Maintain or expand current levels of government funding for affordable housing production, rehabilitation, and preservation currently available through the Minnesota housing finance agency.

Increase the state's bonding resources for development of affordable housing, including the state's general obligation bonds.

Support Governor Pawlenty's proposed \$20 million in state bonding for the construction and rehabilitation of supportive housing.

Support a modification of the 2003 4-d property tax law changes, which adversely affects affordable housing providers by requiring that all properties be valued at the highest possible property value. This law is a great disincentive for those seeking to ameliorate our affordable housing crises because of the severe tax increases.

FURTHER RESOLVED, that city staff and elected officials will take the lead role in advancing these initiatives during the 2004 legislative session.

FURTHER RESOLVED, that the administration and council express support for the following legislative initiative:

Other legislative positions:

The council supports legislation on ATV law enforcement and trail restoration - a bill co-sponsored by Representative Jaros.

The council supports full funding of the local government aid program.

Resolution 04-0099, as amended, was adopted upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Ness, Reinert, Stewart and Stover -- 7

Nays: Councilor Little and President Stauber -- 2

Approved February 2, 2004

HERB W. BERGSON, Mayor

- - -

At this time, 7:35 p.m., President Stauber recessed the regular meeting and announced that the public hearing regarding the proposed recreational vehicle use regulations ordinance would begin.

John Knutson, Wayne Laakso, Ryan Blazevic, Jerome Blazevic, Chuck Haselrud, Jim Walters, Greg McDonald, John Matusus and Dean Klausen opposed the ordinance, citing reasons of: there are areas that could be designated for trails; there are funds available for ATV trails; time should be taken to look at solutions before this is passed; passing these regulations will make good, responsible operators criminals; when snowmobiles were a problem, clubs were formed and 28,000 miles of trails were created; individuals have donated hours of their time to create and maintain a multi-use trail on the old Lake Superior/Mississippi Railroad tracks, and with this ordinance, access to this trail would be disallowed; responsible operators do not ride through muddied holes and tear it up; in the winter, with the frozen ground, no damage to the ground is caused, thus ATV vehicles should be allowed from November 1 to the end of March; there are laws against damage to public property already in existence and those should be enforced; the old abandoned DW&P Railroad track should be looked into for use as an ATV trail; access to the St. Louis River would be prohibited with this ordinance; many sportsmen trailer their ATV to Brighton Beach to access Lake Superior; this is loss of rights for law abiding outdoor enthusiasts; there are more ATV users than snowmobile users; the problem is created by a very small number of users and should be addressed with enforcement; this is a negative response to a problem and a task force should be created to address it; erosion problems are also caused by other forms of traffic over the ground, not just ATV's and when a trail system is set up with a grant aid established, funds can be used for enforcement and maintenance.

K.L. Lewis; Terry McCarthy; Will Munger; Brian Wark; Paul Bergstrom; Grey Doffin; John Abrahams; Jim Larson; Scott Wolff; Frank Sramek; Michael Koppy; Kristine Osbakken; Ron Deters and Tina Polty supported the ordinance, citing reasons of: there should be trails for ATVs, possibly on brownfields; emergency vehicles should be exempted; noise from ATVs is not appropriate in city parks and lands; wetlands and streams are ruined by ATVs; with this ordinance, state funding for enforcement and restoration could be provided; those that are causing the problems are noisy, do not yield to and harass other users; the city's world class parks should not

have these problems; ATV users should fund trails for their own purposes; just because it is difficult to enforce is not a reason to do what is right; parks in Duluth are close to residences and the noise from ATVs can be heard easily; ATVs do not need trails all year round, so damage can compromise all aspects of the environment; noise from ATVs affect everything within a 1/2 mile range; there is a health cost of serious injuries from reckless use of ATVs; the Minnesota department of natural resources does not have the funds to address all of the problems created by ATVs; when ATVs destroy a trail it very difficult to restore and taxpayers should not have to pay for the enforcement of ATV use.

Jeff Brown, representing Minnesotans for Responsible Recreation, supported the regulations and reviewed Public Document No. 04-0202-15(f).

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At this time, 8:45 p.m., President Stauber closed the public hearing and the regular order of business was resumed.

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Councilor Stewart moved to remove Resolution 04-0092, opposing use of all terrain vehicles in the city of Duluth, from the table, and to suspend the rules to consider Ordinance 04-006, at this time, which motion was seconded and unanimously carried.

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

BY COUNCILORS NESS AND STEWART

04-006 (9644) - AN ORDINANCE AMENDING DULUTH CITY CODE SECTION 35-6 AND ADDING A NEW SECTION 45-6.3; REGULATING USE OF RECREATIONAL VEHICLES ON PUBLIC LAND WITHIN THE CITY.

Councilor Stover moved to amend the ordinance by adding a new Paragraph 6 in Section 45-6.3(c) as follows:

(6) An all-terrain vehicle being used to remove snow from a driveway, sidewalk or boulevard; or being trailered or transported; or being used at a public access or, with the owner's permission, a private access point, for the purpose of legally using the all-terrain vehicle for fishing, hunting or trapping; or being used in a place authorized by the city council," which motion was seconded and carried upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Ness, Reinert, Stewart, Stover and President Stauber -- 8

Nays: Councilor Little -- 1

President Stauber moved to amend the ordinance by adding the following language to the last sentence in Section 45-6.3(b):

"(M.S.A. Sec. 84.90, subd. 1(a), defines "recreational vehicle" to include a motor vehicle licensed for highway operation only when such a vehicle is being used for off-road recreational purposes),"

which motion was seconded and unanimously carried.

Councilor Little and President Stauber expressed concern that: this ordinance should be tabled so issues can be resolved; the problem is an enforcement issue; passing this ordinance will not solve the problem; alternate places to ride need to be looked at; this ordinance is saying that we want the sales tax from sale of these vehicles, but they can not be ridden in Duluth and there is no way for enforcement personnel to determine what lands are state versus city property, which this ordinance affects.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Councilor Atkins felt there is a need to have a mayor's task force comprised of ATV users and supporters of the ordinance to meet and find solutions on how this ordinance will work and be enforced and report back to the council by April 1.

Councilor Atkins moved to table the ordinance for establishment of a task force, which motion was seconded and failed upon the following vote:

Yeas: Councilors Atkins, Little and President Stauber -- 3

Nays: Councilors Gilbert, Johnson, Ness, Reinert, Stewart and Stover -- 6

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

Yeas: Councilors Atkins, Gilbert, Johnson, Ness, Reinert, Stewart and Stover -- 7

Nays: Councilor Little and President Stauber -- 2

- - -

Resolution 04-0092 was adopted as follows:

BY COUNCILORS NESS AND STEWART:

BE IT RESOLVED, that the city council opposes the use of all terrain vehicles and off-road vehicles on the North Shore Trail and on undeveloped park or recreational land within the city limits which is under the jurisdiction of St. Louis County or the state of Minnesota.

BE IT FURTHER RESOLVED, that the clerk shall deliver a copy of this resolution to the commissioner of the Minnesota department of natural resources and to the St. Louis County Board.

Resolution 04-0092 was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Ness, Reinert, Stewart and Stover -- 6

Nays: Councilors Atkins, Little and President Stauber -- 3

Approved February 2, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0102, by Councilor Gilbert, vacating the west one-half of West Cascade Street Northwest of Mesaba Avenue (Finnigan), was introduced for discussion.

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

Mark Pilon, attorney for the applicant, reviewed how the development agreement puts a restricted covenant on the city property being sold to Mr. Finnigan, which addresses height and density concerns.

Casey Carbert and Daniel Thralow expressed support for this development, noting how the applicant has worked with the city and the neighborhood to make this work.

Resolution 04-0102 was adopted as follows:

BY COUNCILOR GILBERT:

WHEREAS, a sufficient petition was filed with the city clerk requesting the vacation of the west one-half of West Cascade Street northwest of Mesaba Avenue, legally described as: the west 1/2 of West Cascade Street adjoining Lots 10, 11, and 12 of Block 79, Duluth Proper Third Division, except that portion lying southeasterly of the following described line: beginning at a point on the west right-of-way line of West Cascade Street, said point being nine feet southeasterly of the northwest corner of said Lot 10, thence northeasterly to a point on the centerline of West Cascade Street, said point being 12 feet north of the intersection of the extended north lot line of said Lot 10 with said centerline of West Cascade Street, and said line there terminating (Reference File No. 04002); and

WHEREAS, 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

WHEREAS, the city planning commission approved, by a vote of 6-1, the vacation petition at its January 28, 2004, meeting.

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation of the west one-half of West Cascade Street described above and as more particularly described on Public Document No. 04-0202-08.

RESOLVED FURTHER, that the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of St. Louis County, Minnesota, a certified copy of this resolution together with a plat showing the portion of the street to be vacated.

Resolution 04-0102 was unanimously adopted.

Approved February 2, 2004

HERB W. BERGSON, Mayor

- - -

Councilor Gilbert moved to suspend the rules to consider ordinances 04-003 and 04-005 at this time, which motion was seconded and unanimously carried.

- - -

ORDINANCE TABLED

BY COUNCILOR GILBERT (INTRODUCED BY COUNCILOR JOHNSON)

04-003 (9643) - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NO. 29 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-2, TWO FAMILY RESIDENTIAL, TO R-3, APARTMENT RESIDENTIAL, PROPERTY LOCATED NORTHWEST OF MESABA AVENUE BETWEEN SECOND AVENUE WEST AND WEST CASCADE STREET (FINNIGAN).

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

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

- - -

BY COUNCILOR GILBERT

04-005 (9646) - AN ORDINANCE AUTHORIZING DEVELOPMENT AGREEMENT WITH ROBERT D. FINNIGAN FOR SALE OF LOT IN THE CENTRAL HILLSIDE AND DEVELOPMENT OF A CONDOMINIUM DEVELOPMENT.

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

- - -

Resolution 04-0078, affirming the decision of the building appeal board upholding an order condemning for habitation dwelling units located at 321-23 West First Street, Duluth, Minnesota; and Resolution 04-0079, reversing the decision of the building appeal board to deny the appeal of an order of condemnation for habitation for property located at 321-23 West First Street, by Councilor Little, were introduced for discussion.

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

Eric Simonson, fire marshal, reviewed that the issue is that the building owner is renting rooms without a license and that the reason he has no license is because some of the rooms do not have either windows or other secondary exits and that no sprinkler system exists. He stated

that given the structural limitations of the building, a sprinkler system would allow a rental license to be issued.

Blake MacDonald, attorney for the building owner, stated that the lower level has a sprinkler system and that the owner has a contract to install sprinklers in the upper levels by the end of March. He continued by saying that he is only requesting this additional time to get the job done and that the tenants, who have no place to go, have received notices to vacate.

Resolution 04-0078 was adopted as follows:

BY COUNCILOR LITTLE:

WHEREAS, on August 26, 2003, the city building official issued an order condemning for habitation the apartment units located at 321-23 West First Street, which order required the apartment units to be vacated no later than October 1, 2003, and which order was sent by certified mail to the owners of the property on August 26, 2003; and

WHEREAS, on September 2, 2003, Marne Guthrie, an owner of the property, accepted delivery of the order; and

WHEREAS, on September 10, 2003, Marne Guthrie, appealed the condemnation order to the building appeal board and requested an extension of time to vacate occupied apartment units and an extension of time to correct the housing code violations which formed the factual support for the condemnation order; and

WHEREAS, at its meeting of October 8, 2003, the building appeal board was informed that the apartment units subject to the condemnation order were not currently licensed for rental as required by Duluth City Code Section 29A-28; and

WHEREAS, at the hearing before the building appeal board, the owners did not dispute that the apartment units were not licensed for rental and were currently occupied in violation of Duluth City Code Section 29A-28; and

WHEREAS, at the hearing before the building appeal board, the owners did not dispute the existence of the housing code violations which supported the condemnation order, nor did the owners present any evidence that the apartment units were safe for human occupancy; and

WHEREAS, at its meeting of October 8, 2003, the building appeal board found that the board lacked authority to waive City Code rental licensing requirements and lacked the authority to allow the owners to continue to rent apartment units without license; and

WHEREAS, at its meeting of October 8, 2003, the building appeal board found that the request for an extension of time to correct housing code violations was moot because the condemnation order did not mandate a deadline for correction nor did the order prevent the owners from correcting the code violations; and

WHEREAS, at its meeting of October 8, 2003, the building appeal board denied the appeal on the grounds that it lacked authority to grant an extension of time to vacate the building and that the request for an extension of time to correct housing code violations was moot; and

WHEREAS, Marne Guthrie has appealed the decision of the building appeal board and seeks an extension of time to vacate the apartment units; and

WHEREAS, a hearing on the appeal was conducted on January 29, 2004, by the city council public safety committee.

NOW, THEREFORE, BE IT RESOLVED, that based on the record before it consisting of city records, evidence offered by the owner and city personnel, the public safety committee proceedings and the city council proceedings, the October 8, 2003, decision of the building appeal board is hereby affirmed on the following grounds and reasons:

(a) The apartment units which are subject to the condemnation order are dangerous to the life, health, property and safety of the public and the occupants of the units, and the owners

have been aware of the need to correct the serious violation since being advised of such violations on May 2, 2002; and

(b) The time period of May 2, 2002, to the present provided the owners with sufficient time to correct the serious housing code violations that threaten the public safety, the occupants of the building and the lives of public safety personnel if such personnel are required to suppress a fire at this building; and

(c) The city council is without authority to authorize unlicensed rental occupancy of the apartment units; and

(d) The order does not prevent the owner from correcting the housing code violations and does not mandate a deadline for completing corrections; therefore, to the extent the owner is seeking an extension of time to correct the housing code violations, such request is moot and no relief from the terms of the order is required; and

(e) By filing this appeal the owners have already received an extension of time to comply with the order in excess of 90 days.

Resolution 04-0078 was unanimously adopted.

Approved February 2, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0079 failed upon a unanimous vote (Public Document No. 04-0202-09).

- - -

**INTRODUCTION AND CONSIDERATION OF ORDINANCES
ORDINANCE TABLED**

BY PRESIDENT STAUBER AND COUNCILOR GILBERT

03-063 - AN ORDINANCE AMENDING SECTION 29A-32 OF THE DULUTH CITY CODE 1959, AS AMENDED, RELATING TO RENTAL LICENSING.

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

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

Gary Eckenberg and Sandy Robinson expressed support for the ordinance because it prohibits the converting of single family housing to rental housing.

President Stauber moved to retable the ordinance, which motion was seconded and unanimously carried.

- - -

The following entitled ordinance was read for the first time:

BY COUNCILOR GILBERT

04-007 - AN ORDINANCE AUTHORIZING THE RECONVEYANCE OF CERTAIN PROPERTIES TO THE STATE OF MINNESOTA.

- - -

The following entitled ordinances were read for the second time:

BY COUNCILOR NESS

04-001 - AN ORDINANCE AMENDING SECTION 8 OF THE DULUTH CITY CHARTER TO AUTHORIZE THE CITY COUNCIL TO DELEGATE TO ADMINISTRATIVE OFFICERS THE POWER TO APPROVE CONTRACTS.

Councilor Ness moved to table the ordinance for a public hearing to be held on February 23, 2004, which motion was seconded and unanimously carried.

- - -

BY COUNCILOR STEWART

04-002 - AN ORDINANCE AMENDING SECTION 35 OF THE DULUTH CITY CHARTER TO INCREASE THE NUMBER OF MEMBERS OF THE CIVIL SERVICE BOARD TO FIVE.

Councilor Stewart moved to table the ordinance for a public hearing to be held on February 23, 2004, which motion was seconded and unanimously carried.

- - -

BY COUNCILOR GILBERT

04-004 (9645) - AN ORDINANCE GRANTING TO DULUTH LAKEWALK OFFICES, LLC, A CONCURRENT USE PERMIT TO CONSTRUCT AND MAINTAIN PARKING SPACES FOR PRIVATE USE IN THE RIGHT-OF-WAY OF 14TH AVENUE EAST.

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

- - -

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

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 9644

BY COUNCILORS NESS AND STEWART:

AN ORDINANCE AMENDING DULUTH CITY CODE SECTION 35-6 AND ADDING A NEW SECTION 45-6.3; REGULATING USE OF RECREATIONAL VEHICLES ON PUBLIC LAND WITHIN THE CITY.

The city of Duluth does ordain:

Section 1. That Section 35-6 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 35-6. Vehicles, parking and recreational trails and paths.

(a) For the purpose of this Section, words used herein shall have the meanings respectively ascribed to them in sections 33-1 and 33-224 of this Code;

(b) No person shall operate any motor vehicle or bicycle or ride a horse in any area of any park except on the roadway portion of streets, or highways, or parking areas in such park. Notwithstanding the above, the city council may establish special trails or paths for use by snowmobiles, bicycles, hikers, horseback riders, cross-country skiers or snowshoers. As authorized by M.S.A. Sec. 85.018, or M.S.A. Sec. 84.92 - Sec. 84.929, or its successor, (where applicable), the city council may regulate traffic on these trails including, but not limited to, designating direction of traffic flow and speed limits on the trail and prohibiting certain vehicles or modes of travel on the trail. These trails or paths shall be clearly marked with signs which specify what type of vehicle is permitted and set forth other traffic restrictions. No person shall operate any nonpermitted vehicle on any specially designated path or trail or violate any of the traffic regulations (see Section 45-6.3);

(c) When any motor vehicle is found parked and unattended off of the roadways or parking areas in any park, the director of parks and recreation or his designee or any police officer may remove such vehicle by having it towed away, as authorized by M.S.A. Sec. 169.041, et. seq., or its successor;

(d) When any park is closed to the public pursuant to the provisions of this Chapter or by order of the director of parks and recreation, no person shall park a

motor vehicle or allow a motor vehicle to remain parked in such park after such closing hour except in an after-hours parking area established by the director of parks and recreation. The director of parks and recreation or any police officer may tow any vehicle found parked and unattended in such park in any area other than an after-hours parking area. No person other than a fisherman, boater or person with a special permit to use the park after-hours shall park in any after-hours parking area after the park is closed. For the purposes of this Section, the record owner of a motor vehicle shall be prima facie responsible for parking violations.

Section 2. That Duluth City Code, 1959, as amended, is amended to add a new Section 45-6.3 to read as follows:

Sec. 45-6.3. Use of recreational vehicles on public land.

(a) No person shall operate any vehicle or machine on public land under the jurisdiction of the city of Duluth, except in compliance with M.S.A. Sec. 84.92 - Sec. 84.929, or its successor, and rules referred to therein;

(b) No person shall operate a recreational vehicle, as defined in M.S.A. Sec. 84.90, or its successor, including an all-terrain vehicle as defined in M.S.A. Sec. 84.92, subd. 8, or its successor, except a snowmobile, on any public land or street under the jurisdiction of the city of Duluth (M.S.A. Sec. 84.90, subd. 1(a), defines "recreational vehicle" to include a motor vehicle licensed for highway operation only when such a vehicle is being used for off-road recreational purposes.);

(c) The prohibitions of this Section do not apply:

(1) To areas where the state of Minnesota, county of St. Louis or United States of America have authorized a use that is prohibited by this ordinance;

(2) A farm vehicle being used for farming;

(3) A vehicle being used for military, fire emergency or law enforcement purposes;

(4) A vehicle being used for construction or maintenance authorized by the city;

(5) A vehicle owned or operated by the city;

(6) An all-terrain vehicle being used to remove snow from a driveway, sidewalk or boulevard; or being trailered or transported; or being used at a public access or, with the owner's permission, a private access point, for the purpose of legally using the all-terrain vehicle for fishing, hunting or trapping; or being used in a place authorized by the city council.

Section 3. That this ordinance shall take effect and be in force 30 days after its passage and publication. (Effective date: March 14, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Ness, Reinert, Stewart and Stover -- 7

Nays: Councilor Little and President Stauber -- 2

ATTEST:
JEFFREY J. COX, City Clerk

Passed February 2, 2004
Approved February 2, 2004
HERB W. BERGSON, Mayor

- - -

ORDINANCE NO. 9643

BY COUNCILOR GILBERT (Introduced by Councilor Johnson):

AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NO. 29 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-2, TWO FAMILY RESIDENTIAL, TO R-3, APARTMENT RESIDENTIAL, PROPERTY LOCATED NORTHWEST OF MESABA AVENUE BETWEEN SECOND AVENUE WEST AND WEST CASCADE STREET (FINNIGAN).

The city of Duluth does ordain:

Section 1. That Plate No. 29 of the zoning district map as contained in the Appendix to Chapter 50 of the Duluth City Code, 1959, as amended, is amended to read as follows:

(MAP)

(See Map No. 29 at end of meeting)

(Reference File No. 03135)

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: March 14, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Nays: None -- 0

ATTEST:

JEFFREY J. COX, City Clerk

Passed February 2, 2004

Approved February 2, 2004

HERB W. BERGSON, Mayor

- - -

ORDINANCE NO. 9646

BY COUNCILOR GILBERT:

AN ORDINANCE AUTHORIZING DEVELOPMENT AGREEMENT WITH ROBERT D. FINNIGAN FOR SALE OF LOT IN THE CENTRAL HILLSIDE AND DEVELOPMENT OF A CONDOMINIUM DEVELOPMENT.

The city of Duluth does ordain:

Section 1. That the proper city officials are hereby authorized to enter into a development agreement substantially in the form of that on file in the office of the city clerk as Public Document No. 04-0202-11 with Robert D. Finnigan for the sale of the below-described property and the development thereon and adjacent thereto of a four to eight unit condominium development.

Section 2. That pursuant to said agreement, the proper city officials are hereby authorized to convey the following-described property in St. Louis County, Minnesota to Robert D. Finnigan, by quit claim deed, for the sum of \$20,000, payable to Fund 0100, Agency 700, Organization 1448: Lot 10, Block 79, DULUTH PROPER Second Division.

Section 3. This ordinance shall take effect 30 days from and after its passage and publication. (Effective date: March 14, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Nays: None -- 0

Passed February 2, 2004

Approved February 2, 2004

ATTEST:

JEFFREY J. COX, City Clerk

HERB W. BERGSON, Mayor

- - -

ORDINANCE NO. 9645

BY COUNCILOR GILBERT:

AN ORDINANCE GRANTING TO DULUTH LAKEWALK OFFICES, LLC, A CONCURRENT USE PERMIT TO CONSTRUCT AND MAINTAIN PARKING SPACES FOR PRIVATE USE IN THE RIGHT-OF-WAY OF 14TH AVENUE EAST.

The city of Duluth does ordain:

Section 1. Under the authority of Section 100 of the 1912 Home Rule Charter of the city of Duluth, as amended, and subject to the conditions, limitations and restrictions hereinafter set forth, permission is hereby granted to Duluth Lakewalk Offices, LLC, their successors and interests, referred to herein as the permittees, to occupy, construct and maintain private parking spaces in that part of 14th Avenue East right-of-way between London Road and I-35 (Reference File No. 03145) as the same was dedicated to the use of the public and the plat of Endion Division of Duluth, on file and of record in the office of the register of deeds in and for the St. Louis County, Minnesota, described as follows:

14th Avenue East right-of-way adjoining Lot 16, Block 18, and Lot 9, Block 17, Endion Division of Duluth.

Section 2. That before this ordinance shall be effective for any purpose whatsoever, the aforesaid permittees shall file with the city clerk a duly executed and acknowledged written acceptance of the terms of this ordinance; a certificate of insurance approved as to form by the city attorney evidencing that such person or organization has in force insurance in the minimum amounts of \$1,000,000 for bodily injury or property damage in any one year protecting such person or organization and the city of Duluth against liability for injuries or damages resulting from the placement of such objects or materials on or under public street, sidewalks, boulevard areas or rights-of-way. The permission granted by such ordinance shall be conditioned upon such person or organization continuing to supply the city with evidence that such insurance remains in effect and all insurance required herein shall contain a provision that no policy may be canceled until ten days after written notice is given to the city clerk. Such policy shall name the city as an additional insured; and shall agree to pay the cost of publishing this ordinance and a recording of a certified copy thereof at the registrar of titles of St. Louis County, Minnesota.

Section 3. That said permit granted under this ordinance may be terminated at any time when and if the city of Duluth determines to use the area occupied by said permittees for any purpose in accordance with the duly dedicated public easement or other lawful use. Giving the permittees six months written notice by resolution of the council of the city of Duluth to the last known address of the permittees shall be sufficient notice of termination.

Section 4. That upon the giving of the notice of termination as aforesaid, the permittees shall remove said parking spaces and all fixtures and appurtenances of every kind whatsoever attached thereto from the tract of land described above within said six months, all at the expense and cost of the permittees, and without right on the part of the permittees to claim from the city of Duluth, or any of its officers, agents or servants, any compensation, reimbursement for damages of any kind whatsoever.

Section 5. That by the acceptance of the terms of this ordinance as aforesaid, the permittees hereby agree to save harmless and defend and indemnify the city of Duluth against any claims or demand which may arise against the city of Duluth by reason of any act or omission of the permittees, and agree that such parking spaces shall be so constructed and at all times maintained so as in no way to interfere with or damage any sewer, watermains, gas mains, pipes, conduits or other public utilities now or to be hereinafter located in any part of said 14th Avenue East Road right-of-way between London Road and I-35 and agree that the city of Duluth shall not be liable for damage caused to such parking spaces while the city is engaged in making repairs to public utilities provided that the city exercises reasonable care to avoid such damage, and agree to pay to the city of Duluth all extra costs of installation of any such sewers, gas mains, water mains, pipes, conduits or other public utilities made necessary by the presence of such parking spaces in said 14th Avenue East right-of-way.

Section 6. The permittee shall, at its expense, protect, support, temporarily disconnect, relocate in the same street, alley or public place, or remove from the street, alley or public place, any property of the grantee when required by the city engineer by reason of 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 or the installation or repair of any other type of structures or improvements by governmental agencies, when action in a governmental or proprietary capacity;

Section 7. The permittee shall further observe the following conditions:

- (a) That all city codes will be observed in the construction of said parking areas;
- (b) The type and location of the improvements shall be limited to and maintained in accordance with the site plan submitted and dated 1.8.04 and on record as Public Document No. 04-0202-10;
- (c) The permittee shall maintain all parking area (surfacing, sealing, striping, plowing, etc.) being created and permitted by this ordinance;
- (d) The permittee shall provide screening, in the form of landscape planting or an enclosure for dumpsters being maintained in the public right-of-way;
- (e) The permittee shall not prohibit public use of the several spaces being created within the right-of-way;
- (f) Prior to the effective date of this ordinance, the permittee shall provide a landscape planting plan and schedule, to be approved in writing by the secretary of the planning commission.

Section 8. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: March 14, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Nays: None -- 0

ATTEST:

JEFFREY J. COX, City Clerk

Passed February 2, 2004
Approved February 2, 2004
HERB W. BERGSON, Mayor

OFFICIAL PROCEEDINGS

Special meeting of the Duluth City Council meeting held on Thursday, February 19, 2004, 5:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Johnson, Little, Ness, Reinert, Stewart and President Stauber -- 6

Absent: Councilors Atkins, Gilbert and Stover -- 3

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

04-0219-01 The PFM Group submitting: (a) Official statement regarding the sale of \$800,000 G.O. capital improvement bonds, Series 2004A, and \$12,000,000 G.O. tax and aid anticipation certificates of indebtedness of 2004; (b) Bid results. -- Received

- - -

MOTIONS AND RESOLUTIONS

Resolution 04-0123, providing for the issuance, sale and delivery of \$800,000 general obligation capital improvement bonds, Series 2004A; establishing the terms and form thereof; creating a debt service fund therefor; and awarding the sale thereof; and Resolution 04-0124, providing for the issuance, sale and delivery of \$12,000,000 general obligation tax and aid anticipation certificates of indebtedness of 2004 of the city of Duluth, Minnesota, and prescribing the terms thereof; creating a debt service fund therefor; and awarding the sale thereof, by Councilor Ness, were introduced for discussion.

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

Kathy Cardell, representing the PFM Group, reviewed the nature of the resolutions and the results of the respective bids.

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Resolutions 04-0123 and 04-0124 were adopted as follows:

BY COUNCILOR NESS:

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 410.326 (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 Minnesota Statutes, Section 410.326, the City Council has authorized preparation of a capital improvement plan for the years 2004 through 2008 (the "Plan").

B. The City Council held a public hearing on the proposed Plan and approved the Plan on December 1, 2003.

1.03 A. On January 12, 2004, the City Council held a public hearing on the issuance of bonds in an amount not to exceed \$800,000 to provide funds for design and installation of a City Hall air-conditioning system; modify customer service areas of City Hall offices to meet ADA requirements; restore the granite and brick facades of City Hall; replace fire station overhead doors; install ventilation system in firehalls; roof replacement at firehall #1; update and expand locker room at firehall #1; restore exterior masonry at firehall #10; and remodel first floor police offices in City Hall 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 12, 2004, the City Council has determined that it is necessary and expedient to issue \$800,000 General

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Obligation Capital Improvement Bonds, Series 2004A, of the City (the "Bonds") to provide funds to finance the Project and for payment of the costs of issuing the Bonds.

C. A notice of intent to issue the Bonds was published in accordance with the Act on January 15, 2004.

D. No petition calling for a vote on the proposed issuance of the Bonds, as permitted by the Act, has been filed with the city clerk.

E. 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 410.326 of the Act will not exceed \$1,823,404.12, which is an amount equal to 0.05367 percent of taxable market value of property in the City for taxes payable in 2004.

F. Public Financial Management, Inc., financial consultant to the City, has given notification by mail 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.

1.04 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 Piper Jaffray & Co. of Minneapolis, Minnesota (the "Purchaser"), to purchase the Bonds at a cash price of \$790,400, plus accrued interest on the total principal amount from March 1, 2004, to the date of delivery of the Bonds 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. 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 March 1, 2004, 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
2006	\$ 80,000	2.00%
2007	80,000	2.00%
2008	85,000	2.00%
2009	85,000	2.30%
2010	90,000	2.55%
2011	90,000	2.80%
2012	95,000	3.05%

Year	Amount	Interest Rate
2013	95,000	3.20%
2014	100,000	3.40%

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, 2004. Interest will be computed on the basis of a 360-day year of twelve 30-day months and will be rounded pursuant to the rules of the Municipal Securities Rulemaking Board. The Bond Registrar designated below shall make all interest payments with respect to the Bonds by check or draft mailed to the registered owners of the Bonds shown on the bond registration records maintained by the Bond Registrar at the close of business on the 15th day (whether or not a business day) of the month next preceding the Interest Payment Date at such owners' addresses shown on such bond registration records.

2.04 A. The Bonds shall be prepared for execution in accordance with the approved form and shall be signed by the manual or facsimile signature of the mayor and attested by the manual or facsimile signature of the city clerk. In case any officer whose signature or a facsimile of whose signature shall appear on the Bonds shall cease to be an officer before delivery of the Bonds, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, as if he or she had remained in office until delivery.

B. The city clerk is authorized and directed to obtain a copy of the proposed approving legal opinion of Fryberger, Buchanan, Smith & Frederick, P.A. of Duluth, Minnesota, which is to be complete and cause the opinion to be attached to each Bond, together with a certificate to be signed by the manual signature of the city clerk in substantially the form set forth in Section 2.11, but only if the opinion is not manually executed. The city clerk is authorized and directed to execute the certificate in the name of the City upon receipt of the opinion, if required by the preceding sentence, and to file the opinion in the City offices.

2.05 The City hereby appoints Wells Fargo Bank, National Association, in Minneapolis, Minnesota, as registrar, authenticating agent, paying agent and transfer agent for the Bonds (such bank or its successor is herein referred to as the "Bond Registrar"). To provide for the Bond Registrar services, the mayor and the clerk are authorized and directed to execute a bond registrar/paying agent agreement substantially in the form of the agreement currently on file in the office of the city clerk as Public Document No. 04-0219-02. No Bond shall be valid or obligatory for any purpose until the Bond Registrar's authentication certificate on such Bond, substantially set forth in Section 2.11 hereof, shall have been duly executed by an authorized representative of the Bond Registrar. Authentication certificates on different Bonds need not be signed by the same representative. The manual signature of one officer of the City or the executed authentication certificate on each Bond shall be conclusive evidence that it has been authenticated and delivered under this resolution.

2.06 A. In order to make the Bonds eligible for the services provided by 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. 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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

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.

C. Additional matters with respect to, among other things, notices, consents and approvals by bond holders and payments on the Bonds are set forth in the Representation Letter.

2.07 The City shall cause to be kept by the Bond Registrar a bond register in which, subject to such reasonable regulations as the Bond Registrar may prescribe, the City shall provide for the registration of the Bonds and the registration of transfers of the Bonds entitled to be registered or transferred as herein provided. In the event of the resignation or removal of the Bond Registrar or its incapability of acting as such, the bond registration records shall be maintained at the office of the successor Bond Registrar as may be appointed by the city council. Upon surrender for transfer of any Bond at the principal corporate office of the Bond Registrar, the City shall execute and the Bond Registrar shall authenticate, if required by law or this Resolution, and deliver, in the name(s) of the designated transferee or transferees, one or more new Bonds of the like aggregate principal amount, as requested by the transferor.

2.08 Each Bond delivered upon transfer of or in exchange for or in lieu of any other Bond shall carry all of the rights to interest, accrued and unpaid and to accrue, which are carried by such other Bond. Each Bond shall be dated by the Bond Registrar as of the date of its authentication. The City and the Bond Registrar shall not be required to make any transfer or exchange of any Bonds called for redemption or to make any such exchange or transfer of the Bonds during the 15 days next preceding the date of the mailing of the notice of redemption in the case of a proposed redemption of the Bonds.

2.09 The City and the Bond Registrar may treat the person in whose name any Bond is registered as the owner of such Bond for the purpose of receiving payment of principal of and interest on such Bond and for all other purposes whatsoever, whether or not such Bond be overdue, and neither the City nor the Bond Registrar shall be affected by notice to the contrary.

2.10 The principal of and interest on the Bonds shall be payable by the Bond Registrar, as paying agent, in such funds as are legal tender for the payment of debts due the United States of America. The City shall pay the reasonable and customary charges of the Bond Registrar for the disbursement of principal and interest.

2.11 The Bonds shall be printed or typewritten in substantially the following form:

UNITED STATES OF AMERICA
STATE OF MINNESOTA
COUNTY OF ST. LOUIS

CITY OF DULUTH

GENERAL OBLIGATION CAPITAL IMPROVEMENT BOND, SERIES 2004A

R-_____ \$_____

Rate	Maturity	Date of Original Issue	CUSIP
%	February 1, _____	March 1, 2004	

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

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 March 1, 2004, 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, 2004. 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 \$800,000, 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 410.326 and Chapter 475, the City's approved Capital Improvement Plan for the years 2004 through 2008 (the "Plan") and all other laws thereunto enabling, and pursuant to an authorizing resolution adopted by the governing body of the City on February 19, 2004 (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 a portion of 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.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

The Bonds of this series are issued as fully registered bonds without coupons, in the denomination of \$5,000 or any integral multiple thereof. Subject to limitations set forth in the Resolution, this Bond is transferable by the registered owner hereof upon surrender of this Bond for transfer at the principal corporate office of the Bond Registrar, duly endorsed or accompanied by a written instrument of transfer in form satisfactory to the Bond Registrar and executed by the registered owner hereof or the owner's attorney duly authorized in writing. Thereupon the City shall execute and the Bond Registrar shall authenticate, if required by law and this Resolution, and deliver, in exchange for this Bond, one or more new fully registered bonds in the name of the transferee, of an authorized denomination, in an aggregate principal amount equal to the unpaid principal amount of this Bond, of the same maturity and bearing interest at the same rate.

IT IS CERTIFIED AND RECITED that all acts and conditions required by the Charter of the City and by the laws and the Constitution of the State of Minnesota to be done, and to exist precedent to and in the issuance of this Bond in order to make it a valid and binding general obligation of the City in accordance with its terms, have been done and do exist in form, time, and manner as so required; that all taxable property within the corporate limits of the City is subject to the levy of ad valorem taxes to the extent needed to pay the principal hereof and the interest hereon when due, without limitation as to rate or amount; and that the issuance of this Bond does not cause the indebtedness of the City to exceed any constitutional, statutory or charter limitation.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Bond Registrar's Authentication Certificate hereon shall have been executed by the Bond Registrar by one of its authorized representatives.

IN WITNESS WHEREOF, the City of Duluth, by its city council, has caused this Bond to be executed in its name by the signatures of the mayor and the city clerk.

Attest:

City Clerk

Mayor

Date of Execution: _____

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 in the name of the registered owner last noted below.

<u>Date</u> 3/4/04	<u>Registered Owner</u> Cede & Co. c/o The Depository Trust Company 55 Water Street New York, NY 10041 Federal Taxpayer I.D. No.: 13-2555119	<u>Signature of Bond Registrar</u> _____
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ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns, and transfers unto

(Name and Address of Assignee)

Social Security or other
Identifying Number of
Assignee

the within Bond and all rights thereunder and does hereby irrevocably constitute and appoint _____ attorney to transfer the said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____.

NOTICE: The signature of this assignment must correspond with

the name of the registered owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

(Bank, Trust Company, member of
National Securities Exchange)

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.

(Certificate as to Legal Opinion)

I certify that attached hereto is a full, true, and correct copy of the legal opinion rendered by Bond Counsel on the issuance of the General Obligation Capital Improvement Bonds, Series 2004A, of the City of Duluth which includes the within Bond, dated as of the original date of delivery of and payment for the Bonds.

City Clerk

Section 3. Revenues, Accounts and Covenants.

3.01 The City has created a separate account designated the 2004 Capital Improvement Bonds Construction Account (the "Construction Account") within its Capital Improvement Project Fund 0450, Agency 015, 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 Project.

3.02 A separate debt service account is hereby created and designated as the "2004 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 unused discount, if any, plus the amount of accrued

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

interest paid by the Purchaser upon closing and delivery of the Bonds 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
2003	2004	*\$ 20,220
2004	2005	\$106,058
2005	2006	\$104,378
2006	2007	\$107,948
2007	2008	\$106,163
2008	2009	\$109,361
2009	2010	\$106,951
2010	2011	\$109,555
2011	2012	\$106,512
2012	2013	\$108,570

*anticipatory levy

Said levies are such that if collected in full they will produce at least 5% in excess of the amount needed to meet when due the principal and interest on the Bonds.

Such tax levies shall be irrevocable as long as any of the Bonds issued hereunder are outstanding and unpaid; provided, however, that prior to approval of its budget each year (approximately December 1) while any Bonds issued hereunder remain outstanding, the city council shall reduce or cancel the above levies to the extent of an irrevocable appropriation to the Debt Service Fund of monies actually on hand for payment of the principal and interest payable in the ensuing year and shall direct the county auditor to reduce the levy for such calendar year by that amount.

B. If the balance in the Debt Service Fund is ever insufficient to pay all principal and interest then due on the Bonds, the treasurer shall nevertheless provide sufficient money from any other funds of the City which are available for that purpose, and such other funds shall be reimbursed from the Debt Service Fund when the balance therein is sufficient.

3.04 Proceeds of the Bonds on deposit in the Construction Account and in the Debt Service Fund may, in the discretion of the city treasurer, be invested in securities permitted by Minnesota Statutes, Chapter 118A; provided, that any such investment shall mature at such time and in such amounts as will permit the payment of costs for the improvement program and/or payment of the principal and interest on the Bonds when due.

Section 4. Tax Covenants; Miscellaneous.

4.01 The city council covenants and agrees with the holders of the Bonds that the City will (i) take all action on its part necessary to cause the interest on the Bonds to be excluded from gross income for federal income taxes including, without limitation, restricting, to the extent necessary, the yield on investments made with the proceeds of the Bonds and investment earnings thereon, making required payments to the federal government, if any, and maintaining books and records in a specified manner, where appropriate, and (ii) refrain from taking any action which would cause interest on the Bonds to be subject to federal income taxes, including, without

limitation, refraining from spending the proceeds of the Bonds and investment earnings thereon on certain specified purposes.

4.02 A. No portion of the proceeds of the Bonds shall be used directly or indirectly to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments, except for a reasonable temporary period until such proceeds are needed for the purpose for which the Bonds were issued. To this effect, any proceeds of the Bonds and any sums from time to time held in the Debt Service Fund (or any other City account which will be used to pay principal and interest to become due on the Bonds) in excess of amounts which under the applicable federal arbitrage regulations may be invested without regard as to yield shall not be invested at a yield in excess of the applicable yield restrictions imposed by the arbitrage regulations on such investments after taking into account any applicable temporary periods of minor portion made available under the federal arbitrage regulations.

B. In addition, the proceeds of the Bonds and money in the Debt Service Fund shall not be invested in obligations or deposits issued by, guaranteed by or insured by the United States or any agency or instrumentality thereof if and to the extent that such investment would cause the Bonds to be federally guaranteed within the meaning of Section 149(b) of the Internal Revenue Code of 1986, as amended (the "Code").

C. The City hereby covenants not to use the proceeds of the Bonds, or to cause or permit them to be used, in such a manner as to cause the Bonds to be "private activity bonds" within the meaning of Sections 103 and 141 through 150 of the Code.

4.03 A. Pursuant to Section 1.148-7(d) of the Treasury Regulations, relating to exception from rebate, the City hereby covenants that with respect to the gross proceeds of the Bonds, the following schedule will be met: (i) at least 15% of the gross proceeds of the Bonds will be allocated to expenditures for the governmental purpose of the Bonds within six months of the date of issue of the Bonds; (ii) at least 60% of such proceeds will be allocated for such purposes within the one year period of such date; and (iii) 100% of such proceeds will be allocated for such purposes within the 18-month period beginning on such date; subject to an exception for reasonable retainage of 5% of the available proceeds of the Bonds, and that 100% of the available proceeds of the Bonds will be allocated within 30 months from the date of issue of the Bonds.

B. The City shall use its best efforts to comply with any federal procedural requirements which may apply in order to effectuate the designation made by this section.

Section 5. Continuing Disclosure. The City acknowledges that the Bonds are subject to the continuing disclosure requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (17 C.F.R. §240.15c2-12) (the "Rule"). The Rule governs the obligations of certain underwriters to require that issuers of municipal bonds enter into agreements for the benefit of the bondholders to provide continuing disclosure with respect to the Bonds. To provide for the public availability of certain information relating to the Bonds and the security therefor and to permit underwriters of the Bonds to comply with the Rule, which will enhance the marketability of the Bonds, the mayor and the clerk are hereby authorized and directed to execute a continuing disclosure certificate substantially in the form of the certificate currently on file in the office of the city clerk as Public Document No. 04-0219-02.

Section 6. Certificate of Proceedings.

6.01 The city clerk is directed to file with the county auditor a certified copy of this resolution and such other information as the county auditor may require, and to obtain from the county auditor a certificate stating that the Bonds herein authorized have been duly entered on his register.

6.02 The officers of the City are authorized and directed to prepare and furnish to the Purchaser and to bond counsel certified copies of all proceedings and records of the City relating to the authorization and issuance of the Bonds and other affidavits and certificates as may reasonably be requested to show the facts relating to the legality and marketability of the Bonds as such facts appear from the official books and records of the officers' custody or otherwise known to them. All of such certified copies, certificates and affidavits, including any heretofore furnished, constitute representations of the City as to the correctness of facts recited therein and the actions stated therein to have been taken.

6.03 The officers of the City are hereby authorized and directed to certify that they have examined the official statement prepared and circulated in connection with the sale of the Bonds and that to the best of their knowledge and belief the official statement is a complete and accurate representation of the facts and representations made therein as of the date of the official statement.

Resolution 04-0123 was unanimously adopted.

Approved February 19, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR NESS:

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 Pursuant to authority contained in Minnesota Statutes, Sections 410.325 and 412.261, and Minnesota Statutes, Chapter 475, the City is authorized to issue and sell general obligation tax and aid anticipation certificates of indebtedness in anticipation of collection of taxes and state aids. The City Council has, by Resolution No. 04-0064, adopted January 26, 2004, authorized the issuance and provided for the sale of \$12,000,000 General Obligation Tax and Aid Anticipation Certificates of Indebtedness of 2004 (the "Certificates") in anticipation of collection of taxes levied in the year 2003 for collection during the year 2004 and state aids receivable in 2004 for the general fund of the City (the "General Fund"), which is necessary for timely payment of anticipated expenditures from the General Fund.

1.02 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 Certificates at least two days (omitting Saturdays, Sundays and legal holidays) before the date set for receipt of bids on the Certificates. All actions of the mayor, the clerk and Public Financial Management, Inc. taken with regard to the sale of the Certificates are hereby ratified and approved.

Section 2. Pursuant to such solicitation for bids for the sale of the Certificates, 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 Commerce Capital Markets, Inc. of Philadelphia, Pennsylvania (the "Purchaser"), to purchase the Certificates at a cash price of \$12,093,120, plus accrued interest on the total principal amount from March 4, 2004, to the date of delivery of the Certificates and upon condition that the Certificates mature and bear interest at the times and annual rates set forth in Section 4. 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 Certificates in accordance with the Purchaser's bid. The city treasurer is directed to deposit the good faith check of the successful bidder.

Section 3. The City Council hereby declares that the full faith and credit and taxing power of the City and the receipts of General Fund Taxes and State Aids (as hereinafter defined), to the extent necessary to repay the Certificates, shall be and are hereby at all times irrevocably pledged for the payment of principal and interest on the Certificates when due.

Section 4. The Certificates to be issued hereunder shall be dated March 4, 2004, shall be issued in the denomination of \$5,000 each, or any integral multiple thereof, in fully registered form, and shall mature on December 31, 2004 (the "Maturity Date"). The Certificates shall not be subject to redemption prior to the Maturity Date. The Certificates shall bear interest at the rate of 2.00 percent per annum. Interest on the Certificates shall be payable on the Maturity Date. Interest shall 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 Rule making Board. The Bond Registrar designated below shall make the interest payment with respect to the Certificates by check or draft mailed to the registered owners of the Certificates shown on the bond registration records maintained by the Bond Registrar at the close of business on December 16, 2004, whether or not a business day, at such owners' addresses shown on such bond registration records. Principal of each Certificate shall be payable in accordance with and on presentation and surrender of the Certificate to the Bond Registrar.

Section 5. The City Council hereby appoints Wells Fargo Bank, National Association of Minneapolis, Minnesota, as registrar, authenticating agent, paying agent and transfer agent for the Certificates (such bank or its successor thereof 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. 04-0219-03. No Certificate shall be valid or obligatory for any purpose unless or until the Bond Registrar's authentication certificate on such Certificate, substantially as set forth in Section 13 hereof, shall have been duly executed by an authorized representative of the Bond Registrar. Authentication certificates on different Certificates need not be signed by the same representative. The executed authentication certificate on each Certificate shall be conclusive evidence that it has been authenticated and delivered under this resolution.

Section 6. A. In order to make the Certificates 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. All of the Certificates shall be registered in the name of Cede & Co., as nominee for DTC. Payment of interest on and principal of any Certificate 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 thereafter as possible thereafter to the account of Cede & Co. on the Maturity Date at the address indicated in or pursuant to Representation Letter.

C. Additional matters with respect to, among other things, notices, consents and approvals by Certificate holders and payments on the Certificates are set forth in the Representation Letter.

Section 7. 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 Certificates and the registration of transfers of the Certificates 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 that may be appointed by the City Council. Upon surrender for transfer of any Certificate 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 names(s) of the designated transferee(s), one or more new certificates of a like aggregate principal amount, as requested by the transferor.

Section 8. Each Certificate delivered upon transfer of or in exchange for or in lieu of any other Certificate shall carry all of the rights to interest, accrued and unpaid and to accrue, which are carried by such other Certificate. The City and the Bond Registrar shall not be required to make any transfer or exchange of any Certificates during the 15 days next preceding the Maturity Date.

Section 9. The City and the Bond Registrar may treat the person in whose name any Certificate is registered as the owner of such Certificate for the purpose of receiving payment of principal of and interest on such Certificate and for all other purposes whatsoever, whether or not such Certificate be overdue, and neither the City nor the Bond Registrar shall be affected by notice to the contrary.

Section 10. The principal of and interest on the Certificates 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.

Section 11. Delivery of the Certificates and payment of the purchase price shall be made at a place mutually satisfactory to the City and the Purchaser. Executed Certificates shall be furnished by the City without cost to the Purchaser. The Certificates, when prepared in accordance with this resolution and executed, shall be delivered by or under the direction of the city treasurer to the Purchaser thereof upon receipt of the purchase price plus accrued interest.

Section 12. The Certificates shall be prepared for execution in accordance with the form herein approved 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. If the legal opinion of Fryberger, Buchanan, Smith & Frederick, P.A. is not manually signed, the certificate as to legal opinion on each Certificate shall be executed by the manual signature of the city clerk. In case any officer whose signature shall appear on the Certificates ceases to be an officer before delivery of the Certificates, such signature shall nevertheless be valid and sufficient for all purposes, as if he or she had remained in office until delivery.

Section 13. The Certificates to be issued hereunder 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 TAX AND AID ANTICIPATION CERTIFICATE
OF INDEBTEDNESS OF 2004

R-1

\$12,000,000

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Interest Rate	Maturity Date	Date of Original Issue	CUSIP
	December 31, 2004	March 4, 2004	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: TWELVE MILLION DOLLARS

The City of Duluth, in the County of St. Louis, State of Minnesota (the "City"), acknowledges itself to be indebted and for value received hereby promises to pay to the registered owner specified above, or registered assigns, the principal amount specified above on the maturity date specified above, together with interest thereon from the date of original issue specified above until paid at the annual interest rate specified above. Interest shall be computed on the basis of a 360-day year of twelve 30-day months. Interest on this Certificate shall be payable on the maturity date set forth above. This Certificate is not subject to redemption prior to maturity. Both principal and interest are payable at Wells Fargo Bank, National Association, in 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 Council, in coin or currency of the United States of America, which on the date of payment is legal tender for payment of public and private debts. The Bond Registrar shall make the interest payment with respect to this Certificate 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 December 16, 2004, whether or not a business day, at such owner's address shown on said bond registration records. Payment of principal of the Certificates shall be made to the registered owner upon presentation and surrender of this Certificate to the Bond Registrar when due.

This Certificate is issued by the City in the aggregate amount of \$12,000,000, pursuant to the authority contained in Minnesota Statutes, Sections 410.325 and 412.261, and Minnesota Statutes, Chapter 475, and pursuant to a resolution adopted by the City Council of the City on February 19, 2004 (the "Resolution").

It is hereby certified and recited that a sum of \$32,560,600 was the amount (i) embraced in the tax levies for the general fund (the "Fund") of the City levied in the year 2003 for collection during the year 2004, and (ii) the estimated amount of state aids receivable by the City for the Fund in the year 2004; and that none of said amounts have at this time been collected and credited to the City's Fund; that heretofore no tax or aid anticipation certificates have been issued against said tax levies or state aids for such Fund; and that this Certificate is issued in anticipation of collection of said taxes and state aids.

This Certificate constitutes a general obligation of the City, and the full faith and credit and taxing powers of the City have been and are hereby irrevocably pledged to provide monies for the prompt and full payment of principal and interest

when due. This Certificate is payable from a special debt service fund of the City established for payment of the Certificates by the Resolution, to which reference is made for a full statement of rights and powers thereby conferred.

The Certificates of this series are issued as fully registered certificates without coupons, in the denomination of \$5,000 each, or any integral multiple thereof. Subject to limitations set forth in the Resolution, the City will, at the request of the registered owner, issue one or more new fully registered certificates in the name of the registered owner in the aggregate principal amount equal to the unpaid principal balance of this Certificate, and of like tenor except as to number and principal amount. Subject to the limitations set forth in the Resolution, this Certificate is transferable by the registered owner hereof upon surrender of this Certificate 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 Certificate, one or more new fully registered certificates in the name of the transferee, of an authorized denomination, in an aggregate principal amount equal to the unpaid principal amount of this Certificate.

IT IS FURTHER 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 Certificate 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; and this Certificate, together with all other debts of the City outstanding on the date hereof and the date of its actual issuance and delivery, does not exceed any constitutional or statutory limitation of indebtedness; that all taxable property within the boundaries 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.

This Certificate 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, City of Duluth, by its City Council, has caused this Certificate to be executed in its name by the facsimile signatures of the mayor and the city clerk; and the City has caused this Certificate to be dated the 4th day of March, 2004.

Attest:

City Clerk

Mayor

Date of Authentication: _____

BOND REGISTRAR'S AUTHENTICATION CERTIFICATE

The Bond Registrar confirms that the books reflect the ownership of a Certificate registered in the name of the owner named above in the principal amount stated above and this Certificate is one of the Certificates of the series issued pursuant to the Resolution hereinabove described.

WELLS FARGO BANK, NATIONAL ASSOCIATION
Minneapolis, Minnesota

By _____
Authorized Representative

REGISTRATION CERTIFICATE

This Certificate 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 Certificate 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 Certificate and the interest accruing thereon is registered on the books of Wells Fargo Bank, National Association in the name of the registered owner last noted below.

<u>Date</u>	<u>Registered Owner</u>	<u>Signature of Bond Registrar</u>
3/4/03	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 Certificate and all rights thereunder and does hereby irrevocably constitute and appoint _____ attorney to transfer the

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

said Certificate 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 Certificate in every particular, without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

(Bank, Trust Company, member of
National Securities Exchange)

Unless this Certificate 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 certificate 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.

(Certificate as to Legal Opinion)

I certify that attached hereto is a full, true, and correct copy of the legal opinion rendered by Bond Counsel on the issuance of the General Obligation Tax and Aid Anticipation Certificates of Indebtedness of 2004, of the City of Duluth which includes the within Certificate, dated as of the original date of delivery of and payment for the Certificates.

City Clerk

Section 14. A. The treasurer shall credit \$12,000,000, less amounts used to pay a part of the interest cost of the Certificates as allowed by Minnesota Statutes, Section 475.56, from the proceeds of the sale of the Certificates to the General Fund maintained under Section 54 of the City Charter. A special account is hereby created in the debt service fund of the City (the "Debt

Service Account"), to be used solely for the payment of interest on and the principal of the Certificates when due. The treasurer shall credit to the Debt Service Account all proceeds of the Certificates in excess of \$12,000,000, less amounts used to pay a part of the interest cost of the issue as allowed by Minnesota Statutes, Section 475.56, plus the amount of accrued interest paid by the Purchaser. The treasurer shall pay the costs of issuance of the Certificates from the General Fund.

B. The City Council has levied \$150,000, pursuant to Section 3 of Ordinance No. 9641 (the "Certificates Interest Levy"), to be utilized in part to pay the interest on the Certificates. The City Council covenants and agrees that it will deposit into the Debt Service Account, as received, all of the Certificates Interest Levy up to 100% of the amount necessary to pay the interest on the Certificates. The City Council hereby certifies that the General Fund Taxes are \$5,886,600, and based on notices from the Minnesota Department of Revenue, the State Aids are reasonably expected to be \$26,674,000.

C. The City Council hereby declares that the full faith and credit and taxing power of the City and the proceeds of the current tax levies for the General Fund, which is the amount levied in Section 3 of Ordinance No. 9641, adopted by the City Council on December 15, 2003 (the "General Fund Taxes"), and the amounts of state aids from Local Government Aid receivable from the state of Minnesota for the General Fund in 2004 (the "General Fund State Aids") (collectively the General Fund Taxes and the General Fund State Aids are the "General Fund Taxes and State Aids"), to the extent necessary to repay the Certificates, shall be and are hereby at all times irrevocably pledged for the payment of principal and interest on the Certificates when due. If the General Fund Taxes and State Aids are insufficient to pay all principal and interest on the Certificates when due, the treasurer shall, nevertheless, provide sufficient monies from other funds of the City which are available for that purpose, and such other funds shall be reimbursed from said accounts when the balances therein are sufficient. It is recognized that the City's liability on the Certificates is not limited to the collection of said General Fund Taxes and State Aids, and the City Council covenants and agrees that it will levy upon all taxable property within the City, and cause to be extended, assessed and collected, any additional taxes found necessary for full payment of the principal and interest, without limitation as to rate or amount.

Section 15. The City Council covenants and agrees with the holders of the Certificates that the City will (i) take all action on its part necessary to cause the interest on the Certificates 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 Certificates 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 Certificates to be subject to federal income taxes, including, without limitation, refraining from spending the proceeds of the Certificates and investment earnings thereon on certain specified purposes.

Section 16. The city clerk is directed to file with the county auditor of St. Louis county, Minnesota, 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 Certificates herein authorized have been duly entered on the county auditor's register.

Section 17. The officers of the City and the county auditor 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 Certificates and such other affidavits and certificates as may reasonably be required to show the facts relating to the legality and marketability of the Certificates 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.

Section 18. In the event of the absence or disability of the mayor, the city clerk or the treasurer, such officers or members of the City Council, as in the opinion of the City's attorney, may act in their behalf, shall without further act or authorization, execute and deliver the Certificates, and do all things and execute all instruments and documents required to be done or executed by such absent or disabled officers.

Section 19. The City acknowledges that the Certificates 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 obligations. To provide for the public availability of certain information relating to the Certificates and the security therefor and to permit underwriters of the Certificates to comply with the Rule, which will enhance the marketability of the Certificates, the mayor and the clerk are hereby authorized and directed to execute a continuing disclosure certificate substantially in the form of the certificate currently on file in the office of the city clerk as public document No. 04-0219-03.

Resolution 04-0124 was unanimously adopted.

Approved February 19, 2004

HERB W. BERGSON, Mayor

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The meeting was adjourned at 5:10 p.m.

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

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, February 23, 2004, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 8

Absent: Councilor Atkins -- 1

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The minutes of the city council meetings held on December 4 and 15, 2003, were unanimously approved.

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

04-0223-01 John K. Baker, by Emily K. John, attorney, submitting further petition (two signatures) to reclassify from R-1-b to C-4 the easterly 125 feet of Lot 8, Block 3, Central Acres. -- Assessor

04-0223-02 Michael L. Esler, et al. (13 signatures), submitting petition to reclassify from M-1 to C-2 the property located at 4122 Grand Avenue. -- Assessor

04-0223-15 The following submitting communications regarding an appeal of the board of zoning appeals' decision to deny an application to construct a two-family dwelling in a single family district on property located at 1007 West Eighth Street (Tim Collelo) (04-0125R and 04-0126R): (a) Sharon Buchanan; (b) Cheryl Muller and Floral Moebakken. -- Received

04-0223-03 The following submitting communications regarding the proposed amendment relating to rental licensing (03-063-O): (a) Mary and James Ames; (b) Mary Anderson and Kane Tewes; (c) Laurie Athmann; (d) Matt and Dan Baumgartner; (e) Mary Borsjole; (f) Patrice Bradley; (g) Aaron Bransky; (h) Todd and Karin Caine; (i) Eric Dings; (j) Duluth Area Association of Realtors; (k) Duluth LISC program; (l) East Hillside Neighborhood District No. 6; (m) Roberta and Len Edwards; (n) Glen Filipovich; (o) Steve Filipovich; (p) Mary Gallegos; (q) Alice Mae Guckin; (r) Lorri Gustafson; (s) Peter Handberg; (t) Keith Haugen and Mike Goerd; (u) Bob and Diane Huot; (v) Herb and Karen Jensen; (w) Diane Kessler; (x) Barb Koth and Glenn Kreag; (y) Virginia Larson; (z) Chris Loudon; (aa) Mike Louis; (bb) Vickie Martinson; (cc) Xavier F. Mattei; (dd) Krister Mattson; (ee) Ryan Mears; (ff) Christopher Mickendrow; (gg) Betty Monson; (hh) James and Esther Nelson; (ii) Shari Olson; (jj) John Owen; (kk) Jim Prosser; (ll) George M. Quinn; (mm) Real Estate Services of Duluth; (nn) Cheryl Reitan; (oo) Sandy Robinson; (pp) Jim and Lisabeth Ross; (qq) Julie Sathers; (rr) Ben Stauber; (ss) Rob Stenberg; (tt) Dave Stinson; (uu) Jeff and Cynthia Storlie; (vv) Ron and Lisa Stotts; (ww) University of Minnesota Duluth Student Association; (xx) Joe Walker; (yy) Karla Ward; (zz) Jeanne Wesley; (aaa) Patrick Wesley. -- Received

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REPORTS OF OFFICERS

04-0223-04 Mayor Bergson submitting order appointing City Council President James Stauber as acting mayor in his absence. -- Received

04-0223-05 Assessor submitting:

(a) Affidavit of mailing of notice of public hearing by the special assessment board on Tuesday, February 10, 2004, at 4:00 p.m. in Room 106A, City Hall, regarding the proposed improvement in Superior Street Alley from 41st Avenue East to 42nd Avenue East. -- Clerk

(b) Confirmation of assessment roll levied to defray the assessable portion of the following contracts: demolition of buildings (Contract #5389), assessable amount: \$17,364.48; Third Street Alley between 18th and 19th avenues East (Contract #5360), assessable amount: \$33,395.04;

- (c) Letters of insufficiency of petitions to reclassify from:
 - (1) M-1 to C-2 the property located at 4122 Grand Avenue;
 - (2) R-1-b to C-4 the easterly 125 feet of Lot 8, Block 3, Central Acres;
- (d) Letters of sufficiency of petitions to:
 - (1) Reclassify from R-1-b to C-4 the easterly 125 feet of Lot 8, Block 3,

Central Acres;

(2) Vacate that portion of Kinney Street between Blocks 26 and 28; that portion of York Avenue between Blocks 26 and 43 lying southeasterly of a line being parallel with and 50 feet southeasterly of the center line of the former Duluth, Winnipeg and Pacific Railway; that portion of Traders Court between Blocks 41, 42, 43 and 44, except the southeasterly 47 feet thereof; the entire length of the alley between Blocks 43 and 44; the entire length of Commonwealth Avenue between Blocks 44 and 45; the entire length of the alley between Blocks 45 and 46 (alley behind Block 45 will retain power easement), all in Ironton Second Division. -- Received

04-0223-06 Building official submitting appeal of the board of zoning appeal's decision to uphold the decision of the building inspector to deny a certificate of occupancy for the use of property for private commercial purposes at 24 East Willow Street (John K. Baker, Paul T. Larson and James V. Erlemeier, by William Burns, attorney). -- Committee 2 (Planning and economic development)

04-0223-07 Clerk submitting application to the Minnesota gambling control board for exemption from lawful gambling license from DM&IR Veteran Employee's Association on May 13, 2004 (raffle). -- Received

04-0223-08 Planning and development department acting director submitting wage report of December 31, 2003, pursuant to Section 2-139 of the Duluth City Code, 1959, as amended. -- Received

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REPORTS OF BOARDS AND COMMISSIONS

04-0223-16 Alcohol, gambling and tobacco commission minutes of January 7, 2004, meeting. -- Received

04-0223-17 Charter commission minutes of January 8, 2003, meeting. -- Received

04-0223-10 Duluth/North Shore Sanitary District board minutes of January 6, 2004, meeting. -- Received

04-0223-09 Duluth state convention center administrative board minutes of December 22, 2003, meeting. -- Received

04-0223-11 Housing and redevelopment authority of Duluth minutes of: (a) November 25; (b) December 18, 2003, meetings. -- Received

04-0223-12 Parking commission minutes of January 13, 2004, meeting. -- Received

04-0223-13 Planning commission minutes of: (a) December 9, 2003; (b) January 13; (c) January 28, 2004, meetings. -- Received

04-0223-14 Special assessment board minutes of January 13, 2004, meeting. -- Received

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MOTIONS AND RESOLUTIONS

CONSENT AGENDA

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

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

BY COUNCILOR NESS:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

RESOLVED, that the assessment rolls levied to defray the assessable portions of the following:

(a) Miscellaneous building demolitions (Contract No. 5389 - assessable amount: \$17,364.48);

(b) Third Street Alley between 18th and 19th avenues East (Contract No. 5360 - assessable amount: \$33,395.04);

are hereby confirmed.

Resolution 04-0098 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR NESS:

RESOLVED, that the proper city officials are hereby authorized to execute a major sponsorship agreement with Grandma's Marathon-Duluth, Inc., for the 2004 Grandma's Marathon, which agreement is on file in the office of the city clerk as Public Document No. 04-0223-19, at a cost to the city not to exceed \$15,000 plus in-kind services, which shall be paid from Fund 0258-030-1431-5490.

Resolution 04-0118 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

RESOLVED, that the proper city officers are hereby authorized to enter into a lease agreement between the city of Duluth and Kegler's, 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 estimated annual consideration of \$4,200 to be paid from Fund 0100-015-2500-5441, said lease agreement filed as Public Document No. 04-0223-20.

Resolution 04-0103 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

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 and on sale Sunday license for the period ending August 31, 2004, subject to departmental approvals:

Player's Grandstand, Inc. (Player's Sports Bar), 4024 Grand Avenue, transferred from William Rouleau, 50 percent owner and Paul Riesland, 50 percent owner, to Rick McArthur, 50 percent owner and Paul Riesland, 50 percent owner.

Resolution 04-0129 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

RESOLVED, that Maney International of Duluth, Inc., be and hereby is awarded a contract for furnishing and delivering O.E.M. parts and repairs for Caterpillar diesel engines as needed during year 2004 for the fleet services division in accordance with specifications at an estimated amount of \$30,000, terms net 30, FOB destination, \$27,000 payable out of Fleet Services Fund

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

0660, Department/Agency 015, Organization 1560, Object 5221 and \$3,000 payable out of Fleet Services Fund 0660, Department/Agency 015, Organization 1560, Object 5404.

Resolution 04-0131 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

RESOLVED, that Cellular One Duluth/Superior be and hereby is awarded a contract for furnishing and delivering cellular air time service and hardware as needed for year 2004 for the various departments/divisions in accordance with specifications at an estimated amount of \$78,950, terms net 30, FOB job sites, various funds, departments/agencies, organizations and objects.

Resolution 04-0133 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

RESOLVED, that Superior Ford, Inc., be and hereby is awarded a contract for furnishing and delivering ten marked patrol vehicles for the police department in accordance with specifications on its low specification bid of \$207,485, terms net 30, FOB destination, payable out of Capital Equipment Fund 0250, Department/Agency 015, Organization BD04, Object V403.

Resolution 04-0134 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

RESOLVED, that Software House International be and hereby is awarded a contract for furnishing and delivering computer software as needed during year 2004 for the M.I.S. division in accordance with specifications and referencing state of Minnesota Contract #425551, Release C-816(5) at an estimated amount of \$80,000, terms net, FOB destination, payable out of payable out of various funds, department/agencies, organizations and objects.

Resolution 04-0135 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the reappointments by Mayor Bergson to the building appeal board of Nancy Kastelic (finance), Jim D. Schwerdt (building materials supply) and Edward B. Shanblott (residential building construction), for terms expiring on February 1, 2007, are confirmed.

Resolution 04-0105 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

BY COUNCILOR JOHNSON:

RESOLVED, that the reappointments by Mayor Bergson to the commission on disabilities of Debra Anderson and Annette Port, for terms expiring on November 1, 2006, are confirmed.

Resolution 04-0106 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the reappointment by Mayor Bergson to the housing and redevelopment authority of Betsy A. Little, for a term expiring on January 5, 2009, is confirmed.

Resolution 04-0107 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the reappointments by Mayor Bergson to the parks and recreation commission of Randy Antonich (District 4) and Jean Brozic (District 10), for terms expiring on February 13, 2007, are confirmed.

Resolution 04-0108 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the reappointment by Mayor Bergson to the Spirit Mountain recreation area authority of Eric Kaiser, for a term expiring on June 30, 2006, is confirmed.

Resolution 04-0110 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the reappointment by Mayor Bergson to the joint airport zoning board of Mark D. Erickson, for a term expiring on January 2, 2007, is confirmed.

Resolution 04-0111 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the reappointment by Mayor Bergson to the Miller Creek joint powers board of William Miner, for a term expiring on January 31, 2007, is confirmed.

Resolution 04-0112 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that the proper city officials are hereby authorized to apply to the Minnesota housing finance agency for an allocation pursuant to the Minnesota city participation program in the maximum allowable amount permitted, said funds to be loaned to low- and moderate-income

first-time home buyers at below market interest rates.

FURTHER RESOLVED, that the proper city officials are hereby authorized to enter into the Minnesota city participation program application-commitment agreement with the Minnesota housing finance agency related to the allocation and sale of qualified mortgage bonds for the benefit of low- and moderate-income home buyers in the city, which agreement is substantially in the form of that on file in the office of the city clerk as Public Document No. 04-0223-21.

FURTHER RESOLVED, that said officials are authorized to issue a check to the Minnesota housing finance agency in the amount of one percent of the city's bond allocation not to exceed \$30,000, which will be refunded upon sale of the bonds and a check for a nonrefundable processing fee in the amount of \$20 per each \$100,000 in allocation not to exceed \$600, both of said amounts to be payable from General Fund 100, Agency 015, Organization 2020, Object 5441.

Resolution 04-0104 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

WHEREAS, a sufficient petition was filed with the city clerk requesting the vacation of a portion of the utility easement along the rear (east) line of property located at 1402 Vermilion Road legally described as the southerly 40 feet of the sewer easement located along the eastern property line of Lot 13, Block 1, Second Rearrangement, Congdon Park Division (Reference File No. 03151); and

WHEREAS, 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

WHEREAS, the city planning commission unanimously approved the easement vacation petition at its January 28, 2004, meeting.

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation of the utility easement described above and as more particularly described on Public Document No. 04-0223-22.

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

Resolution 04-0119 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

WHEREAS, a sufficient petition was filed with the city clerk requesting the vacation of utility easement located over the easterly 20 feet of property located at 4106 Tioga Street legally described as the northerly 150 feet of the utility easement along the easterly 20 feet except the southerly ten feet of Lot 3, Block 2, Woodridge Division of Duluth (Reference File No. 04003); and

WHEREAS, 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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

WHEREAS, the city planning commission unanimously approved the easement vacation petition at its January 28, 2004, meeting.

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation of the utility easement described above and as more particularly described on Public Document No. 04-0223-23.

RESOLVED FURTHER, that the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of St. Louis County, Minnesota, a certified copy of this resolution together with a plat showing the portion of the easement to be vacated.

Resolution 04-0120 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

WHEREAS, a sufficient petition was filed with the city clerk requesting the vacation of 200 x 30 feet of the Congdon Boulevard right-of-way and unused utility easements on property located at 9640 Congdon Boulevard, legally described as: that portion of Congdon Boulevard right-of-way lying 30 feet north of and adjoining the east 1/2 of Lot 6, all of Lot 7, and the western 40 feet of Lot 8, Seaway View Addition; and the utility easement lying south of the north line of and common to the east 1/2 of Lot 6, all of Lot 7, and the western 40 feet of Lot 8, Seaway View Addition (Reference File No. 03147); and

WHEREAS, 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

WHEREAS, the city planning commission unanimously approved the right-of-way and utility easement vacation petition at its February 10, 2004, meeting.

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation of the partial street right-of-way and utility easement described above and as more particularly described on Public Document No. 04-0223-24.

RESOLVED FURTHER, that the city retains the northerly 20 feet of the vacated portion of Congdon Boulevard as utility easement.

RESOLVED FURTHER, that the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of St. Louis County, Minnesota, a certified copy of this resolution together with a plat showing the portion of the right-of-way and utility easement to be vacated and the portion of the vacated right-of-way being retained as utility easement.

Resolution 04-0144 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that the proper city officials are hereby authorized to enter into an amendment, substantially in the form of that on file in the office of the city clerk as Public Document No. 04-0223-25, to the lease agreement (Public Document No. 03-1202-14) with Duluth Technology Center, LLC (lessee), for 49 parking spaces at the Lake Place parking lot.

Resolution 04-0148 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR ATKINS:

RESOLVED, that proper city officials are hereby authorized to execute and implement a contract, in substantially the form and containing substantially the terms of that contract on file in the office of the city clerk as Public Document No. 04-0223-26, 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, and the older American program as defined in the local workforce investment plan, for the term beginning April 1, 2004, and ending March 31, 2007. Program funds will be accepted upon receipt of notices of funds available. For Title I Workforce Investment Act and Minnesota youth program, funds will be deposited into and paid from Fund 0268; for the older American program, funds will be deposited into and paid from Fund 0271.

Resolution 04-0130 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

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BY PRESIDENT STAUBER:

RESOLVED, that the city is hereby authorized to participate in the joint property tax advisory committee during 2004, including paying for the city's share of the consultant agreement with Jeff Van Wychen at a cost to the city of \$11,500 which shall be payable from the city council's budget, Fund 100, Agency 010, Organization 1101, Object 5319.

Resolution 04-0113 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

WHEREAS, based on the recent history of actual sewer system overflows and the estimated flow of clear groundwater to the city's sanitary sewer system originating in each of its sewer basins, the availability of city resources to reduce such flows under the city's I&I program and the results anticipated from so allocating such resources, the director of public works and utilities has recommended that sewer basins 1, 2, 3, 4 and 5 be designated for inspection as provided for in Section 43-33 of the Code; and

WHEREAS, the council accepts said recommendation.

RESOLVED, that pursuant to the provisions of Section 43-33 of the Code, sanitary sewer basins 1, 2, 3, 4 and 5 are hereby designated as the districts in the city wherein the city can best utilize its available resources to reduce the amount of unpolluted water entering or infiltrating the city's wastewater collection system and said basins are therefore designated as districts within which the city shall focus its enforcement efforts under Chapter 43 of the Code.

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

Resolution 04-0115 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

WHEREAS, the water system in the Morgan Park Neighborhood has shown signs of surpassing its useful life; and

WHEREAS, based on a preliminary utility assessment study, an area-wide repair/replacement of water lines is needed; and

WHEREAS, the city has completed an evaluation of the water system, retained a consulting engineer to undertake design of the Phase II improvements and defined the second phase of the Morgan Park utility improvements.

NOW, THEREFORE, BE IT RESOLVED, by the city council of the city of Duluth, Minnesota, as follows:

(a) The city is hereby authorized to apply to the Minnesota public facilities authority for a loan from the drinking water revolving fund Morgan Park's drinking water system improvements - Phase II, as described in the loan application, the form of which is on file in the office of the city clerk as Public Document No. 04-0223-27;

(b) The city estimates the loan amount to be \$1,956,000 or the as-bid cost of the projects;

(c) The city hereby certifies that it has the legal authority to apply for the loan and the financial, technical and managerial capacity to repay the loan and ensure proper construction, operation and maintenance of the project for its design life;

(d) The city hereby expresses its official intent to use proceeds of this loan to reimburse construction expenditures made prior to the issuance of its general obligation bond to the public facilities authority.

Resolution 04-0121 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that United Piping, Inc., be and hereby is awarded a contract for construction of gas mains and services at various locations throughout the city during year 2003 for the utility operations division in accordance with specifications on its low specification bid of \$34,737.47, terms net 30, FOB job site, payable out of Gas Fund 0520, Department/Agency 500, Organization 1905, Object 5533.

Resolution 04-0137 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Hoffman and McNamara Company be and hereby is awarded a contract for construction of tree planting for year 2003 street improvement project sites for the engineering division in accordance with specifications on its low specification bid of \$98,685, terms net 30, FOB job site, payable out of Street Improvement Program Fund 0440, Department/Agency 038, Organization 0300, Object 5441.

Resolution 04-0138 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Groebner and Associates, Inc., be and hereby is awarded a contract for furnishing and delivering 1,000 gas meters for the utility operations division in accordance with specifications on its low specification bid of \$52,520.48, terms net 30, FOB destination, payable out of Gas Fund 0520, Department/Agency 500, Organization 2410, Object 5227.

Resolution 04-0139 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

WHEREAS, the city of Duluth desires to have a map update; and

WHEREAS, the city desires to hire a consulting engineer to provide the engineering services required for G.I.S. map update for stormwater collecting data, inputting data, field research; and

WHEREAS, L.H.B. Architects and Engineers has submitted a proposal for engineering services in connection with this project.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with L.H.B. Engineers and Architects to provide the city with such engineering services.

BE IT FURTHER RESOLVED, that the cost of said engineering services, estimated at \$65,000, will be payable from the Stormwater Utility Fund 0535, Department/Agency 500, Organization 1915, Object 5310.

Resolution 04-0140 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Resolution 03-0244 to Stack Brothers, Inc., for the construction of 16 inch steel high pressure gas main reroute and related work in Mike Colalillo Drive from 49th Avenue West to 125 feet easterly, be amended to increase the amount by \$7,714.25 for a new total of \$35,014.25, payable out of Gas Fund 0520, Department/Agency 500, Organization 1905, Object 5533.

Resolution 04-0141 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Hiller Brothers Construction be and hereby is awarded a contract for painting 16 traffic control signal systems throughout the city of Duluth for the engineering division in accordance with specifications on its low specification bid of \$80,000, terms net 30, FOB job site, payable out of Permanent Improvement Fund 0411, Department/Agency 035, Organization 2228, Object 5400; to be reimbursed by MSA (municipal state aid).

Resolution 04-0142 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

BY COUNCILOR STOVER:

RESOLVED, that Resolution 03-0577 to Morton Salt Division, c/o Hallett Dock Company, for furnishing road salt for year 2003/2004 winter season, be amended to increase the amount by \$152,541.44 for a new total of \$290,991.44, payable out of General Fund 0100, Department/Agency 500, Organization 2000, Object 5233.

Resolution 04-0149 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

RESOLVED, that Resolution 03-0656(a) adopting license, permit and fee charges for 2004 be amended to increase the pawnbroker transaction surcharge from \$1 to \$2.

Resolution 04-0100 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

RESOLVED, that the proper city officers are hereby authorized to enter into a software license agreement with the city of Minneapolis, county of Hennepin, state of Minnesota, providing for utilization of an automated pawn system service; said agreement to be substantially in the form of and containing substantially the conditions of Public Document No. 04-0223-28 on file in the office of the city clerk; and to make payments pursuant to said agreement, revenues to be deposited in General Fund 0100-200-1610-4343 and payments to be made from General Fund 0100-200-1610-5437.

Resolution 04-0101 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

RESOLVED, that in accordance with the provisions of Section 33-88.2 of the Duluth City Code, 1959, as amended, the following handicapped parking zone is hereby established: front of 126 West Fourth Street.

Resolution 04-0122 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

RESOLVED, that C-Pat Distribution, Inc., be and hereby is awarded a contract for furnishing firefighter training and equipment for the fire department in accordance with specifications on its low specification bid of \$21,857.81, terms net 30, FOB job site, payable out of Special Projects Fund 0210, Department/Agency 030, Organization 2169, Object 5241.

Resolution 04-0136 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR REINERT:

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. 04-0223-29 with Louis G. Campbell (contractor), the Duluth economic development authority (DEDA), the Lake Superior Center authority (LSCA) and the Duluth Sister City Commission, Inc., pursuant to which the contractor agrees to produce, promote and manage the Fourth of July festival celebration at Bayfront Festival Park for the amount of \$20,000, payable from General Fund 0100, 700, 1410, Object SP06.

Resolution 04-0114 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

- - -

The following resolutions were also considered:

Resolution 04-0116, authorizing amended and restated operating and revenue participation agreement with Lake Superior Center and Lake Superior Center authority for the Lake Superior Aquarium, subject to terms and conditions; and Resolution 04-0117, of intent to approve management agreement with Ripley's Entertainment Corporation for operation of the Lake Superior Aquarium, by Councilor Gilbert, were introduced for discussion.

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

- - -

Resolutions 04-0125 and 04-0126, affirming and reversing, respectively, a decision of the board of zoning appeals to deny the appeal of the decision of the building inspector which denied the application to construct a two-family dwelling in a single-family district on property located at 100 West Eighth Street, by Councilor Gilbert, were introduced for discussion.

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

Mark Pilon, attorney for the appellant, reviewed that the owner of the property followed the proper procedures to obtain the permits to construct a two-family townhome only to find that the city would not issue the permits due to an existing illegal duplex on the block that the city was not aware of. He urged the council to overturn the decision of board of zoning appeals.

Tom Archer and Larry Tessier, property owners of the adjacent property, stated their support of this duplex and urged councilors to support the project.

Resolution 04-0125 failed upon a unanimous vote (Public Document No. 04-0223-30).

- - -

Resolution 04-0126 was adopted as follows:

BY COUNCILOR GILBERT:

WHEREAS, Tim Collelo appealed to the board of zoning appeals the decision of the building inspector to deny an application to construct a two-family dwelling in a single-family district, on property located at 1007 West Eighth Street (proposed), and legally described as Lots 165 and 167, Block 105, Duluth Proper Third Division; and

WHEREAS, the board of zoning appeals denied the appeal to allow construction of said two-family dwelling on property which is located in a single-family residential zoning district based upon the provisions of the Section 50-47(a) as it relates to the building inspector's enforcement of Section 50-56(b)(7) (dispersion of dwellings); and

WHEREAS, Tim Collelo has appealed the aforesaid decision to the Duluth City Council;
and

WHEREAS, the city council has considered this appeal and hereby disagrees with the findings made by the board of zoning appeals pursuant to Sections 50-49 of the Code and that the allowance of a duplex in a residential single-family zoning district can be made in this case;

NOW, THEREFORE, BE IT RESOLVED, that the city council of Duluth finds the following:

(a) The character and use of other adjacent property and other property in the immediate neighborhood is _____;

(b) There exists an extraordinary or exceptional situation or condition pertaining to the piece of property in question which would render strict application of Chapter 50 of the Duluth City Code, 1959, as amended, thereto an exceptional or undue hardship upon the owner thereof, the condition being _____;

(c) This condition listed above, would result in particular and exceptional practical difficulties to the legal use of the property, those difficulties being _____, such that the granting of the requested variance is justified.

FURTHER RESOLVED, that said city council finds that the special circumstances or conditions applying to the 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 so the granting of the application is necessary for the preservation and enjoyment the owner's substantial property right of _____, and not merely to serve as a convenience to the applicant, and 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 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.

The use of the property as a two-family dwelling is an allowed use in an R-1 zone because _____.

FURTHER RESOLVED, that the city council of Duluth reverses the board of zoning appeals' decision of January 27, 2004, and the appeal is granted.

Resolution 04-0126 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0145, by Councilor Gilbert, vacating all streets and alleys within the proposed Riverside Hills Development and portions of Traders Court and Kinney Street; located northwest of Grand Avenue Place between Traders Court and Gogebic Street, was introduced for discussion.

Councilor Gilbert moved to table the resolution, which motion was seconded and carried upon a unanimous vote.

- - -

Resolution 04-0147, by Councilor Gilbert, authorizing acceptance of land donation in Duluth Heights from Robert F. and Jeanne B. Dechantal, was introduced for discussion.

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

- - -

At this time, 7:30 p.m., President Stauber announced that the public hearing regarding Ordinance 04-001, amending Section 8 of the Duluth City Charter to authorize the city council to delegate to administrative officers the power to approve contracts, would begin.

No one appeared who wished to be heard and the hearing was adjourned at 7:32 p.m.

- - -

At this time, 7:32 p.m., President Stauber announced that the public hearing regarding Ordinance 04-002, amending Section 35 of the Duluth City Charter to increase the number of members of the civil service board to five, would begin.

No one appeared who wished to be heard and the hearing was adjourned at 7:33 p.m.

- - -

At this time, 7:33 p.m., President Stauber announced that the public hearing regarding Resolution 04-0146, approving the final layout and project report for the reconstruction of a part of Trunk Highway Number 53 (Trinity Road) within the corporate limits of the city of Duluth, would begin.

John Bray and Roberta Dwyer, representing the Minnesota department of transportation (Mn/DOT), gave an overview of the project and stated that they are looking for city consent for the project from Piedmont Avenue to 1/4 mile short of Highway 53, which will include utilities, lighting, sidewalks and support walls.

Mike Metso, city engineer, reviewed that there will be some cost to the city.

Harry Munger questioned the need for sidewalks on both sides of Trinity Road and what the cost and maintenance of them would be. He voiced concern about the Anderson Road improvement, the effect both projects will have on Miller Creek and the residents and questioned that if rezoning of property is also being proposed, will this corridor be used as a business development area like Central Entrance.

Councilor Ness expressed thanks to Mn/DOT for investing in transportation in Duluth.

- - -

At this time, 7:55 p.m., President Stauber closed the public hearing and announced that the public hearing regarding rental licensing (Ordinance 03-063), would begin.

Barbar Russ, Terri Roeber, Sandy Robinson, Peter Handberg, Vicki Sanville, Toni Morse, Gary Eckenberg, Jim Prosser, Susan Schumacher, Jeanne Westley, Bobbi Edwards, Bob Cormier, Susan Frey, John Vigen, planning commission member, Myrna Matheson, George Garnett, Roger Wedin, Gilbert Harries, and Janet Simmons, urged support of the ordinance for the following reasons: parking is a real issue because of all the renters; littering exists from the rental houses that have college students; there needs to be reclamation of single-family housing in residential neighborhoods; management of the neighborhoods needs to be improved; the East Hillside Neighborhood Coalition supports the ordinance; the scenario of the neighborhoods has changed; more cars and students mean increased speed; there has been a rapid decline of the image of the neighborhoods; there is fear that the property values will decline as houses go up for sale and more renters move in; rental housing is a business and should be regulated by the city; this ordinance will encourage the building of rental units; there is a constant disrespect of the neighborhood; there is a lack of maintenance of houses owned by absentee landlords; tenants are not being held responsible; there has been an unintended impact on neighborhoods when state law changed to allow tax breaks for landlords; it is not necessary to change state legislation in order to regulate this in Duluth; the neighborhoods were not designed for the density that rental housing in the area is causing; the integrity and stability of neighborhoods is at risk; UMD has increased enrollment without providing additional student housing; the council has a duty to listen and take care of the neighborhoods; the planning commission has worked for a long time with the planning districts and neighborhoods in developing the ordinance and the neighborhood districts have given the council their input per the council's request.

Michael Fechner; Carl Cady; Tim Krohn; John Novsaine; Sarah Chambers; Julie Carlson, Duluth area realtors; Drew Sandquist, UMD Student Association; Carl Svendsen; Stan Kaifors,

Community Action Duluth; Dan Gorski, Eldon Krosch, Jr.; Mohammed Bilal; Alan Kehr; Larry Sundberg; Chris Bacigalupo; Kurt Bartell; J.D. Durward; Sean Bell, UMD legislative affairs; Bryan Fleck; Mike Plaunt; Jeff Urbaniak; Marisa Ring; George Hanson; Craig Chilcote; Gregg Schmaedeke and Brian Stewart, UMD Student Association; Melissa Bell and K.L. Lewis urged the council not to support the proposed ordinance for the following reasons: rental properties are used for income purposes and retirement monies; the ordinance punishes all landlords for the violations of a few; students should be punished for their partying through the courts; landlords should be fined; parking issues do not always mean there are renters in the house; there is a need to get the court system to implement the fines and punishments; it is an unenforceable ordinance because the city is understaffed; because UMD has not increased their housing, the students need to live somewhere; the current single-family homes on blocks with current rental housing will not be able to sell their homes if all of the rentals are grandfathered in; homeowners will lose the flexibility to do what they want with the property; affordable rental units are a necessity in the city; limiting the number of rental units will drive up the rental costs; if current rental units are grandfathered in, how will that solve the problem; and there is a bad stereotype given to renters even though they are also a part of the community.

- - -

At this time, 9:55 p.m., President Stauber closed the public hearing and the regular order of business was resumed.

- - -

RESOLUTION TABLED

President Stauber moved to remove Resolution 04-0076, referring important community housing issues to the planning commission and a task force, from the table, which motion was seconded and unanimously carried.

- - -

President Stauber moved to consider Ordinance 03-063 at this time, which motion was seconded and unanimously carried.

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

ORDINANCE TABLED

BY PRESIDENT STAUBER AND COUNCILOR GILBERT
03-063 - AN ORDINANCE AMENDING SECTION 29A-32 OF THE DULUTH CITY CODE 1959,
AS AMENDED, RELATING TO RENTAL LICENSING.

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

Councilor Stewart stated that this ordinance discriminates against renters who include college students, low income people and people of color and that it would be better to address these problems in other ways than by passing this ordinance.

Councilor Reinert stated that he does not support the proposed ordinance; however, he pledged that he will work with the community to develop a different ordinance for presentation to the council by April 1 that includes tough and quick enforcement of current ordinances, imposes stiff penalties for irresponsible landlords, creates student housing districts outside our traditional neighborhoods and changes the relative homestead exemption.

Councilor Gilbert voiced support for the ordinance as it would provide the balance in neighborhoods between rental properties and home ownership.

Councilor Ness stated that this ordinance addresses some of the real concerns and goals of the community, including opening up single-family homes to young families, but that there are

too many unknowns and negatives to pass the ordinance at this time.

President Stauber thanked the planning commission, the planning districts and the neighbors who spoke at the meeting for their work in addressing this issue. He reviewed that many of the homes that are used for rental housing have unsafe living conditions because the property owners do not want the building inspector going through their structures. He continued by saying that realtors are selling single-family homes to out-of-town landlords who are financing these homes with out-of-town banks and reaping the relative homestead credit for every renter, which is taking property tax out of local taxpayer's pockets and collecting rent payments while the property devalues every home in the neighborhood. President Stauber further stated that there is no incentive for private developers to create housing for students as they can not compete with rentals that allow six to seven students to live in one house. He said that when your rights as a property owner infringe on someone else's property rights, then you have exceeded your property rights.

President Stauber moved passage of the ordinance and the same failed upon the following vote (Public Document No. 04-0223-42):

Yeas: Councilors Gilbert, Stover and President Stauber -- 3

Nays: Councilors Johnson, Little, Ness, Reinert and Stewart -- 5

Absent: Councilor Atkins -- 1

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Resolution 04-0076 was adopted as follows:

BY PRESIDENT STAUBER:

WHEREAS, the council has before it Ordinance 03-063 pertaining to regulation of rental of houses in certain zones and under certain circumstances; and

WHEREAS, concerned citizens have reported that Ordinance 03-063 will affect student housing and the rental industry; and

WHEREAS, concerned citizens have also reported that important quality of life factors are involved; and

WHEREAS, the council wants to assure a just process and result.

NOW, THEREFORE, BE IT RESOLVED, by the city council of Duluth that the Duluth planning commission is directed to investigate, deliberate and report to the council its findings and recommendations about what geographic area of the city will be most appropriate for concentrated college student housing and what measures the council can take to establish a student housing area.

BE IT FURTHER RESOLVED, that the city council requests that the building inspection process task force chartered by Mayor Bergson, of which a councilor is a member, will investigate, deliberate and report to the council its findings and recommendations about how structure inspections necessitated by Ordinance 03-063 and other laws can be completed and whether changes in inspection fees are in order.

Resolution 04-0076 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

RESOLVED, that pursuant to the requirements of Resolution No. 02-0606, the Duluth economic development authority's (DEDA) agreement with the state auditor to perform the 2003 audit in the amount of \$13,000, payable from Fund 0860, pursuant to DEDA Resolution No.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

04D-05, adopted on February 17, 2004, a copy of which is on file in the office of the city clerk as Public Document No. 04-0223-31, is hereby approved.

Resolution 04-0153 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

RESOLVED, that pursuant to the requirements of Resolution No. 02-0606, the Duluth economic development authority's (DEDA) amended and restated development agreement with the Central Hillside Development Limited Liability Partnership for the Fifth Street redevelopment project, pursuant to DEDA Resolution No. 04D-13, adopted on February 17, 2004, a copy of which is on file in the office of the city clerk as Public Document No. 04-0223-32, is hereby approved.

Resolution 04-0154 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

RESOLVED, that pursuant to the requirements of Resolution No. 02-0606, the Duluth economic development authority's (DEDA) amendment to 2002 agreement with the state auditor increasing the amount payable by \$1,174, payable from Fund 0860, pursuant to DEDA Resolution No. 04D-17, adopted on February 17, 2004, a copy of which is on file in the office of the city clerk as Public Document No. 04-0223-33, is hereby approved.

Resolution 04-0155 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

RESOLVED, that pursuant to the requirements of Resolution No. 02-0606, the Duluth economic development authority's (DEDA) agreement with Louis G. Campbell, the city of Duluth, the Lake Superior Center authority and the Duluth Sister City Commission, Inc., to produce, promote and manage the annual fourth fest celebration at Bayfront Festival Park, at no cost to DEDA, pursuant to DEDA Resolution No. 04D-18, adopted on February 17, 2004, a copy of which is on file in the office of the city clerk as Public Document No. 04-0223-34, is hereby approved.

Resolution 04-0156 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

RESOLVED, that pursuant to the requirements of Resolution No. 02-0606, the Duluth economic development authority's (DEDA) sixth amendment to development program for Development District No. 17, tax increment financing plan for Tax Increment District No. 22 First Street medical facilities, and amendment to tax increment financing plans for Tax Increment District Nos. 2 and 4, pursuant to DEDA Resolution No. 04D-24, adopted on February 17, 2004,

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

a copy of which is on file in the office of the city clerk as Public Document No. 04-0223-35, are hereby approved.

Resolution 04-0157 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

RESOLVED, that pursuant to the requirements of Resolution No. 02-0606, the Duluth economic development authority's (DEDA) appointment of the members to the advisory board for Development District No. 22 (First Street medical facilities district), pursuant to DEDA Resolution No. 04D-21, adopted on February 17, 2004, a copy of which is on file in the office of the city clerk as Public Document No. 04-0223-36, are hereby confirmed.

Resolution 04-0158 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that pursuant to the requirements of Resolution No. 02-0606, the Duluth economic development authority's (DEDA) authorization for the acquisition of certain property from the state of Minnesota through St. Louis County at no cost except certain fees, payable from Fund 0865, pursuant to DEDA Resolution No. 04D-22, adopted on February 17, 2004, a copy of which is on file in the office of the city clerk as Public Document No. 04-0223-37, is hereby approved.

Resolution 04-0159 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that pursuant to the requirements of Resolution No. 02-0606, the Duluth economic development authority's (DEDA) approval of payment of relocation costs to Northern Access Transportation, in the amount of \$11,852, payable from Fund 0865, pursuant to DEDA Resolution No. 04D-23, adopted on February 17, 2004, a copy of which is on file in the office of the city clerk as Public Document No. 04-0223-38, is hereby approved.

Resolution 04-0160 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

RESOLVED, that pursuant to the requirements of Resolution Nos. 99-0239 and 02-0606, the Duluth economic development authority's (DEDA) purchase of certain tax-forfeit property located in Gary-New Duluth from the state of Minnesota through St. Louis County for the sum of \$61,108, plus related fees in the amount of \$2,359.89 for a total amount not to exceed \$63,467.89, payable from DEDA Fund 0860, payable from Fund 0860, approved at its meeting of February 17,

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

2004, pursuant to DEDA Resolution No. 04D-15, a copy of which is on file in the office of the city clerk as Public Document No. 04-0223-39, is hereby approved.

Resolution 04-0161 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that pursuant to the requirements of Resolution Nos. 99-0239 and 02-0606, the Duluth economic development authority's (DEDA) agreement with Women's Transitional Housing Coalition, Inc., to fund the acquisition of a triplex located at 18 West Fifth Street in Duluth at a cost of \$40,000, payable from Fund 0865, approved at its meeting of February 17, 2004, pursuant to DEDA Resolution No. 04D-20, a copy of which is on file in the office of the city clerk as Public Document No. 04-0223-40, is hereby approved.

Resolution 04-0162 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

RESOLVED, that pursuant to the requirements of Resolution Nos. 99-0239 and 02-0606, the Duluth economic development authority's (DEDA) commitment to provide local match to the city of Duluth for \$1 million greater Minnesota business development public infrastructure grant for SMDC project approved at its meeting of February 17, 2004, pursuant to DEDA Resolution No. 04D-26, a copy of which is on file in the office of the city clerk as Public Document No. 04-0223-41, is hereby approved.

Resolution 04-0163 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

WHEREAS, the commissioner of the department of transportation has prepared a final layout and project report for the reconstruction of part of Trunk Highway 53 (Trinity Road) within the corporate limits of the city of Duluth from 0.25 miles north of Skyline Parkway to Trunk Highway 194 (Miller Trunk Highway) and seeks the approval thereof; and

WHEREAS, said final layout and project report are on file in the office of the department of transportation, St. Paul, Minnesota, being marked, labeled and identified as S.P. 6915-125 T.H. 53 (T19407) Layout 1A.

NOW, THEREFORE, BE IT RESOLVED, that said final layout and project report for the improvement of said trunk highway within the corporate limits of Duluth are hereby approved.

Resolution 04-0146 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are authorized to enter into a agreement substantially in the form of that on file in the office of the city clerk as Public Document No. 04-0223-18 with the Seaway Port authority of Duluth to purchase certain property, generally depicted on the map appended to said agreement, for \$0.50 per square foot plus the cost of

environmental investigation in an amount not to exceed \$30,000 to be allocated from Fund 0522-500-5510.

Resolution 04-0151 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

BE IT RESOLVED, that the city of Duluth accepts from Microsoft Corporation its generous gift Fraudtracks computer software, useful for law enforcement, consisting of:

two Microsoft SQL servers (enterprise edition);

three Microsoft Office professional packages;

one exchange service 2003 enterprise edition (includes 25 client access licenses);

one Windows server 2003 enterprise edition (includes 25 client access licenses);

related materials and services.

BE IT FURTHER RESOLVED, that the city expresses gratitude and appreciation to Microsoft Corporation for its generous and useful gift, which will aid the city in controlling criminal behavior and battling economic crime.

Resolution 04-0165 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

BY COUNCILOR GILBERT

04-010 - 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-3, APARTMENT RESIDENTIAL, TO C-2, HIGHWAY COMMERCIAL, PROPERTY LOCATED AT THE NORTHWEST CORNER OF 13TH AVENUE EAST AND EAST FOURTH STREET (CROTTY).

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BY COUNCILOR STOVER

04-011 - AN ORDINANCE AUTHORIZING CONVEYANCE OF UTILITY EASEMENTS FOR HIGH VOLTAGE ELECTRICAL TRANSMISSION LINES TO MINNESOTA POWER AND LIGHT COMPANY NEAR GARY-NEW DULUTH.

- - -

BY COUNCILOR LITTLE

04-008 - AN ORDINANCE AMENDING ARTICLE I, SECTION 21-1 OF THE DULUTH CITY CODE, 1959, AS AMENDED; ADOPTING THE 2003 MINNESOTA STATE FIRE CODE.

- - -

BY COUNCILOR LITTLE

04-009 - AN ORDINANCE AMENDING ARTICLE I, SECTIONS 10-1 AND 10-2 OF THE DULUTH CITY CODE, 1959, AS AMENDED; ADOPTING THE 2003 MINNESOTA STATE BUILDING CODE.

The following entitled ordinance was read for the second time:

BY COUNCILOR GILBERT

04-007 (9647) - AN ORDINANCE AUTHORIZING THE RECONVEYANCE OF CERTAIN PROPERTIES TO THE STATE OF MINNESOTA.

Councilor Gilbert moved to amend the ordinance by:

- (a) Deleting the line beginning "Parcel 1," so that Section 1 of the ordinance reads as follows:

Section 1. That the proper city officials are hereby authorized to execute and deliver the quit claim deed reconveying the following described property in St. Louis County, Minnesota, to the state of Minnesota with the request that it be reconveyed to DEDA:

Parcel 1. Endion Division, Block 2, and Lot 11 except the northwesterly 25 feet (1440-00340);

- (b) Amend the statement of purpose to read as follows:

"This ordinance provides for the reconveyance of one lot which is to be incorporated into the Lakewalk Townhomes project. The reconveyance of these parcels is necessary to carry out the memorandum of understanding between the DEDA and Lakewalk Townhomes LLC and is attached to the file. In it DEDA agrees to assemble all publicly owned land in the project area. The developer (Lakewalk Townhomes LLC) agrees to convey sufficient lands for the extension of the Lakewalk through the area (see the Lakewalk Townhomes site plan) from those portions of the property it now owns and those parts that it acquires from the DEDA. The planning commission unanimously recommended approval of this ordinance at its regular meeting on September 24, 2003,"

which motion was seconded and unanimously carried.

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

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The meeting was adjourned at 10:50 p.m.

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

- - -

ORDINANCE NO. 9647

BY COUNCILOR GILBERT:

AN ORDINANCE AUTHORIZING THE RECONVEYANCE OF
CERTAIN PROPERTIES TO THE STATE OF MINNESOTA.

The city of Duluth does ordain:

Section 1. That the proper city officials are hereby authorized to execute and deliver the quit claim deed reconveying the following described property in St. Louis County, Minnesota, to the state of Minnesota with the request that it be reconveyed to DEDA:

Parcel 1. Endion Division, Block 2, and Lot 11 except the northwesterly 25 feet (1440-00340).

Section 2. That this ordinance shall take affect and be in force 30 days after its passage and publication. (Effective date: April 4, 2004)

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

Yeas: Councilors Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 8

Nays: None -- 0

Absent: Councilor Atkins -- 1

ATTEST:

JEFFREY J. COX, City Clerk

Passed February 23, 2004
Approved February 23, 2004
HERB W. BERGSON, Mayor

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, March 8, 2004, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 7

Absent: Councilors Atkins and Gilbert -- 2

- - -

The minutes of the city council meetings held on January 5 and January 12, 2004, were unanimously approved.

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

04-0308-01 James Bechthold, et al. (seven signatures), submitting petition to reclassify from residential to C-2, E1/2 of SE1/4 of SE1/4 of SW1/4 of SW1/4, Parcel No. 010-2710-07730, at 2901 Morris Thomas Road. -- Assessor

04-0308-02 Greg Benson submitting petition to vacate the westerly 17 feet of 59th Avenue West adjoining Lot 10, Block 4, West Duluth Sixth Division. -- Assessor

04-0308-03 Mark Besemann, et al. (five signatures), submitting petition to extend the sanitary sewer within Highland Street Alley beginning 180 feet west of 59th Avenue West and extending approximately 300 feet westerly. -- Assessor

04-0308-04 Michael L. Esler submitting further petition (three signatures) to reclassify from M-1 to C-2 the property located at 4122 Grand Avenue. -- Assessor

04-0308-25 Thom Holden submitting communication regarding the Great Lakes Aquarium (04-0089R, 04-0093R, 04-0116R and 04-0117R and the SMDC expansion (04-0169R). -- Received

04-0308-26 Minnesota Power, by ProSource, submitting communication regarding the proposed ordinance authorizing conveyance of utility easements for high voltage electrical transmission lines to Minnesota Power and Light Company near Gary-New Duluth (04-011-O). -- Received

04-0308-05 The following submitting communications regarding the board of zoning appeals' denial of the appeal of the decision of the building inspector which denied the certificate of occupancy for the use of property located at 24 East Willow Street for private commercial purposes (04-0127R and 04-0128R): (a) John K. Baker, Paul T. Larson, James V. Erlemeier, by William M. Burns, attorney; (b) Daniel R. Carlson (supported by three signatures). -- Received

04-0308-06 The following submitting communications regarding the proposed land use agreement with Sand Point Yacht Club, Inc. (04-0143R): (a) Brad Anderson; (b) Richard D. Bibby (2); (c) David S. Carman; (d) Ken Docteur; (e) Mary Jane Evans; (f) Marty Herman; (g) Jan Karon; (h) Kevin Owens; (i) Beryl Peyton (2); (j) St. Louis River Citizens Action Committee; (k) David and Kristi Stokes (2); (l) Robert Stokes; (m) Mary Wade (supported by 15 signatures). -- Received

04-0308-27 The following submitting communications regarding the proposed issuance of on sale intoxicating liquor licenses and on sale Sunday licenses (04-0180R): (a) Pickwick (supported by 18 signatures); (b) Dale Swapinski. -- Received

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REPORTS OF OFFICERS

04-0308-07 Assessor submitting:

(a) Affidavit of mailing of notice of public meeting to be held on Wednesday, March 10, 2004, at 5:00 p.m., and public hearing by the city council on Monday, March 22, 2004,

at 7:30 p.m., in the City Council Chambers, City Hall, regarding the proposed 2005 street improvement program which includes the following: Cody - Southwest 2; Congdon Park - West Lower 4; Duluth Heights - Southeast 3; Lincoln Park - Central East; Woodland - South 2 and Hunters Park. -- Clerk

(b) Confirmation of the assessment rolls levied to defray the assessable portions of:

(1) 2003 street improvement program - Contract No. 7063, Congdon Park (assessable amount: \$242,186.14); Contract No. 7064, Denfeld (assessable amount: \$161,272.18); Contract No. 7065, Hunters Park East (assessable amount: \$98,442.93); Contract No. 7066, Lakeside - Lower Central (assessable amount: \$241,609.76); Contract No. 7067, UMD/Lower Chester 3 (assessable amount: \$108,227.70); Contract No. 7068, Woodland - Upper Far West (assessable amount: \$271,288.06); Contract No. 7069, 28th Avenue East & 34th Avenue East (assessable amount: \$42,804);

(2) Demolition of buildings, Contract No. 5390 (assessable amount: \$46,226.25) and sanitary sewer in Waverly Avenue (assessable amount: \$40,029.67);

(c) Letter of sufficiency to reclassify from M-1 to C-2, property at 4122 Grand Avenue. -- Received

04-0308-08 Clerk submitting applications to the Minnesota gambling control board for exemption from lawful gambling license from: (a) Order of AHEPA, Duluth Chapter No. 267, on March 28 and November 21, 2004 (bingo); (b) Arrowhead Chapter of Minnesota Waterfowl Association on August 31, 2004 (raffle); (c) Duluth-Superior Area Educational Television Corporation on June 5, 2004 (raffle); (d) Lincoln Park Business Group on June 26, 2004 (raffle); (e) Rocky Mountain Elk Foundation on September 11, 2004 (raffle). -- Received

04-0308-09 Purchasing agent submitting emergency purchase order awarded to Dinehery Fence Company to install a chain link fence. -- Received

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REPORTS OF BOARDS AND COMMISSIONS

04-0308-10 Civil service board minutes of January 15, 2004, meeting. -- Received

04-0308-11 Duluth airport authority: (a) Balance sheet for November 30, 2003; (b) Minutes of December 16, 2003, meeting. -- Received

04-0308-12 Duluth transit authority minutes of January 7, 2004, meeting. -- Received

04-0308-13 Duluth state convention center administrative board minutes of January 26, 2004, meeting. -- Received

04-0308-14 Environmental advisory council minutes of January 7, 2004, meeting. -- Received

04-0308-15 Parks and recreation commission minutes of January 14, 2004, meeting. -- Received

04-0308-16 Planning commission submitting communication regarding TIF District No. 22. -- Received

04-0308-17 Spirit Mountain recreation area authority minutes of October 22, 2002, meeting. -- Received

- - -

OPPORTUNITY FOR CITIZENS TO BE HEARD

Dave Barschdorf expressed concern that: he can only gain access to his property by means of the alley; and that it is constantly blocked by parked vehicles; and on the issue of the Ten Commandments on city property, he questioned why this is an issue after all the years that it has been there.

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K.L. Lewis felt that the Ten Commandments are a list of acceptable ethical behaviors from which laws are made and they are used by the police to bring order, and that if they are removed, they should be replaced with a similar statement of acceptable ethical behavior.

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Todd Erickson, representing Hotel-Restaurant Employees Union, explained the position of their organization relative to the Duluth airport authority's operation of the food/beverage operation at the airport.

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RESOLUTIONS TABLED

Councilor Johnson moved to remove Resolution 04-0145, vacating all streets and alleys within the proposed Riverside Hills development and portions of Traders Court and Kinney Street, located northwest of Grand Avenue Place between Traders Court and Gobebic Street, from the table, which motion was seconded and unanimously carried.

Resolution 04-0145 was adopted as follows:

BY COUNCILOR JOHNSON (INTRODUCED BY COUNCILOR GILBERT):

WHEREAS, a sufficient petition was filed with the city clerk requesting the vacation of all streets and alleys within the proposed Riverside Hills Development, located northwest of Grand Avenue Place between Traders Court and Gogebic Street and portions of Traders Court and Kinney Street legally described as the following streets and alleys adjoining Blocks 26, 28 and 41-46 of Ironton Second Division:

- (a) Kinney Street adjoining Blocks 26 and 28;
- (b) York Avenue adjoining Blocks 26 and 43 lying northeasterly of a line being parallel with, and 50 feet northeasterly of the center line of the former Duluth, Winnipeg and Pacific Railway;
- (c) Traders Court adjoining Blocks, 41, 42, 43, and 44, except the southeasterly 47 feet thereof;
- (d) The alley adjoining Blocks 43 and 44;
- (e) Commonwealth Avenue adjoining Blocks 44 and 45;
- (f) The alley adjoining Blocks 45 and 46 (Reference File No. 04008);and

WHEREAS, 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

WHEREAS, the city planning commission unanimously approved the street and alley vacation petition at its February 10, 2004, meeting.

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation of the street and alley rights-of-way described above and as more particularly described on Public Document No. 04-0308-24.

RESOLVED FURTHER, that the full width of the vacated alley adjoining Blocks 45 and 46 be retained as a utility easement; that the center 20 feet (ten feet each side of the centerline) of vacated Traders Court and Kinney Street be retained as a pedestrian easement; and that portion of vacated Commonwealth Avenue adjoining Lots 1 and 2, Block 45, be retained as a grading and drainage easement.

RESOLVED FURTHER, that the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of St. Louis County, Minnesota, a certified copy of this resolution together with a plat showing the streets and alleys to be vacated and the easements

being retained.

Resolution 04-0145 was unanimously adopted.

Approved March 8, 2004

HERB W. BERGSON, Mayor

- - -

Councilor Johnson moved to remove Resolution 04-0147, authorizing acceptance of land donation in Duluth Heights from Robert F. and Jeanne B. Dechantal, from the table, which motion was seconded and unanimously carried.

Resolution 04-0147 was adopted as follows:

BY COUNCILOR JOHNSON (INTRODUCED BY COUNCILOR GILBERT):

RESOLVED, that the proper city officials are hereby authorized to accept the donation of the below-described property in St. Louis County, Minnesota, from Robert F. and Jeanne B. DeChantal and to execute all documents necessary with regard thereto:

Lot 21-24, Block 18, DULUTH HEIGHTS SIXTH DIVISION (010-0890-06420).

FURTHER RESOLVED, that the city hereby expresses its appreciation for said donation from Robert F. and Jeanne B. DeChantal.

Resolution 04-0147 was unanimously adopted.

Approved February 23, 2004

HERB W. BERGSON, 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 Stauber moved passage of the consent agenda, which motion was seconded and unanimously carried.

BY COUNCILOR NESS:

RESOLVED, that the proper city officers are hereby authorized to enter into a consultant agreement with Foster Jacobs & Johnson, Inc., for the sum of not to exceed \$7,400, from General Fund 0100, Agency 700, Organization 2725, Object 1427, for providing certain engineering services to the city of Duluth in connection with the Peterson Arena dehumidification system, 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. 04-0308-18.

Resolution 04-0164 was unanimously adopted.

Approved March 8, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR NESS:

RESOLVED, that the assessment rolls levied to defray the assessable portions of the following:

(a) Miscellaneous building demolitions (Contract No. 5390 - assessable amount: \$46,226.25);

(b) Sanitary sewer in Waverly Avenue (Contract No. 5375 - assessable amount: \$40,029.67);

(c) Street improvements for Congdon Park (Contract No. 7069 - assessable amount: \$242,186.14);

(d) Street improvements for Denfeld (Contract No. 7064 - assessable amount:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

\$161,272.18);

(e) Street Improvements for Hunters Park East (Contract No. 7065 - assessable amount: \$98,442.93);

(f) Street improvements for Lakeside - Lower Central (Contract No. 7066 - assessable amount: \$241,609.76);

(g) Street improvements for UMD/Lower Chester 3 (Contract No. 7067 - assessable amount: \$108,227.70);

(h) Street improvements for Woodland - Upper Far West (Contract No. 7068 - assessable amount: \$271,288.06);

(i) Street improvements for 28th Avenue East and 34th Avenue East (Contract No. 7070 - assessable amount: \$42,804.00); are hereby confirmed.

Resolution 04-0166 was unanimously adopted.

Approved March 8, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR NESS:

RESOLVED, that the proper city officers are hereby authorized to enter into a consultant agreement with Melander, Melander and Schilling Architects, for the sum of not to exceed \$7,800, from Fund 0100, Agency 700, Organization 2705, Object C223, for providing certain design services to the city of Duluth in connection with Downtown streetscape revitalization/Phase II, 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. 04-0308-19.

Resolution 04-0176 was unanimously adopted.

Approved March 8, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the appointments by Mayor Bergson to the Spirit Mountain recreation area authority of Nancy Nelson, for the term expiring on June 30, 2006, and Carol J. (CJ) Bird, for the term expiring on June 30, 2005, replacing John Arotta and Charles Andresen, respectively, are confirmed.

Resolution 04-0150 was unanimously adopted.

Approved March 8, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

WHEREAS, the city of Duluth established certain 2002 and 2003 CDBG accounts; and
WHEREAS, the community development committee (CD committee) for the CDBG program recommends funding projects as set forth below,

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are authorized to make the following fund transfers in the Federal Program Fund 262-2002 and 2003 HUD-funded community development accounts as set forth below:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

2002 CDBG Transfers				
Project #	Project	Budget amount	New amount	Amount of increase or decrease
6509	Grant Recreation Center expansion	\$271,160	\$303,760	\$32,600
2003 CDBG Transfers				
6607	Citywide streets	\$151,000	\$118,400	(\$32,600)

Resolution 04-0152 was unanimously adopted.
 Approved March 8, 2004
 HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that Max Gray Construction, Inc., be and hereby is awarded a contract for the expansion of Grant Recreation Center located at 901 East 11th Street for the city architect division in accordance with specifications on its low specification bid of \$372,600, terms net 30, FOB job site, \$80,000 payable out of Community Development Fund 0262, Department/Agency 624, Object 6410 and \$292,600 payable out of Community Development Fund 0262, Department/Agency 625, Object 6509.

Resolution 04-0170 was unanimously adopted.
 Approved March 8, 2004
 HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Stack Brothers Mechanical Contractors, Inc., be and hereby is awarded a contract for installing a cooling tower and chiller in the old city water and gas office building on First Street which includes the St. Louis County Courthouse and St. Louis County Government Services Center for the Duluth Steam District #1 in accordance with specifications on its low specification bid of \$676,000, terms net, FOB job site, payable out of Steam District #1 Fund 0540, Department/Agency 920, Organization 1490, Object 5530.

Resolution 04-0171 was unanimously adopted.
 Approved March 8, 2004
 HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that A.B.M. Equipment and Supply, Inc., be and hereby is awarded a contract for furnishing and installing two utility bodies with canopy on two Chevrolet 4500 chassis for the utility operation division in accordance with specifications on its low specification bid of \$64,304.70, terms net 30, FOB destination, \$48,228.52 payable out of Water Fund 0510, Department/Agency 500, Organization 1905, Object 5580 and \$16,076.18 payable out of Gas Fund 0520, Department/Agency 500, Organization 1905, Object 5580.

Resolution 04-0172 was unanimously adopted.
 Approved March 8, 2004
 HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Resolution 04-0149 to Morton Salt Division c/o Hallett Dock Company, for furnishing road salt for year 2003/2004 winter season, be amended to increase the amount by \$102,600 for a new total of \$393,591.44, payable out of General Fund 0100, Department/Agency 500, Organization 2000, Object 5233.

Resolution 04-0173 was unanimously adopted.

Approved March 8, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Nels Nelson and Sons, Inc., be and hereby is awarded a contract for construction of sanitary sewer and watermain in Roslyn Avenue from Oxford Street to 500 feet southerly for the engineering division in accordance with specifications on its low specification bid of \$109,899.59, terms net 30, FOB job site, \$59,345.78 payable out of Special Assessment Fund 0410, Department/Agency 038, Organization 5379, Object 5530 and \$50,553.81 payable out of Water Fund 0510, Department/Agency 500, Organization 1905, Object 5533.

Resolution 04-0174 was unanimously adopted.

Approved March 8, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

RESOLVED, that the proper city officers are authorized to accept a grant of up to \$35,716 from the U.S. department of justice under its local law enforcement block grant program for the period of December 30, 2003, through December 29, 2005.

RESOLVED FURTHER, that grant monies received pursuant to this grant shall be deposited in Police Grant Program Fund 0215, Agency 200, Organization 2471, Revenue Source 4210.

Resolution 04-0167 was unanimously adopted.

Approved March 8, 2004

HERB W. BERGSON, Mayor

- - -

The following resolutions were also considered:

BY COUNCILOR STEWART:

WHEREAS, the Duluth Art Institute and St. James Catholic School have applied to the Minnesota gambling control board for a lawful gambling exemption (raffle); and

WHEREAS, the Duluth City Council has received copies of said exemption applications to the Minnesota gambling control board and has 60 days in which to present a resolution to said Minnesota gambling control board objecting to the exemption applications; and

WHEREAS, the city council approves of the exemption applications and wishes to waive the 60 day waiting period.

NOW, THEREFORE, BE IT RESOLVED, that the Duluth City Council hereby approves of the Minnesota gambling control board issuing a lawful gambling exemption to the Duluth Art Institute and St. James Catholic School 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 2004

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 04-0177 was unanimously adopted.

Approved March 8, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0180, by Councilor Stewart, approving the issuance of on sale intoxicating liquor licenses and on sale Sunday licenses to Just Take Action, Inc. (Fitger's Brewhouse), 600 East Superior Street; Sir Benedict's, Inc. (Sir Benedict's Tavern), 805 East Superior Street; and Legacy Restaurant, Inc. (Duluth Athletic Club Bar and Grill), 351 Canal Park Drive, was introduced for discussion.

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

Garry Krause, Vicky Haugland, Jerry Frederickson, Mark Rutka, Brian Daugherty and Mark Mitchell expressed concern for or opposition to the resolution for reasons of:

no applicant should receive preferential treatment; there is a higher incident of alcoholism in this area of the state compared to other areas; elevated alcoholism consumption can be linked to social issues, such as abuse, and increased police costs associated with traffic violations, public disturbances and consumption by minors; there will be a higher saturation of establishments in existing areas; other retail business do not have to get city approval to sell its business; that liquor establishments have restrictions relative to the hours of operation, are required to collect additional food and beverage sales taxes, to have policing to see that it abides by the law and pay thousands of dollars of additional insurance to operate; other businesses have to pay franchise fees to operate and that is no different than what existing liquor licensees have paid; examples of what too many licenses can create is the poor image of the city of Superior which has caused the business district to disintegrate; the population in Duluth is not increasing, therefore the pie is only being cut up smaller; \$8.3 million of equity is being taken from the existing businesses owners; the state statute change states the city "may" issue, not that it has to; lower blood level regulations and the Duluth smoking ordinance have killed establishments; the alcohol, gambling and tobacco commission has recommend that no further licenses be issued; to issue a liquor license at face-value is unfair to all that have come before; the number of establishments in Duluth was maxed out long before when the population was at 100,000; more input and discussion should be held so that there can be a win-win scenario for existing and new licensees; 50 years of precedence needs to taken into account; there is no definition as to where "the line is to be drawn" and there are licenses available from existing licensees.

George Persgard expressed support for the resolution for the reasons of: state law now authorizes cities to issue these new additional licenses and the new applicants have no intention of transferring a newly acquired license.

Pete Emerson, representing the Duluth Athletic Club, supported the resolution because: demand has outstripped supply; his business plan is to have this second of three restaurants; cities now have the latitude to change the number of licenses and there is a need for clear leadership from the city that either there will be no more licenses or that any restaurant can have a liquor license.

Steve Townsend, representing Sir Benedict's, supported the resolution and stated that his establishment is known for sandwiches, primarily, and has been operating and serving beer and wine responsibly for 26 years and wishes to improve its beverage selections with this license.

Rod Ramond and Tim Nelson, representing Fitger's Brewhouse, supported the resolution and stated that: their restaurant operation is small and this type of license means a great deal to

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

add a higher quality level of fine malts and after dinner drinks and 65 percent of their business is from food sales.

Resolution 04-0180 was adopted as follows:

BY COUNCILOR STEWART:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves of the issuance of the following on sale intoxicating liquor licenses and on sale Sunday licenses for the period ending August 31, 2004, subject to departmental approvals and the payment of sales and property taxes:

Just Take Action, Inc. (Fitger's Brewhouse), 600 East Superior Street.

Sir Benedict's, Inc. (Sir Benedict's Tavern), 805 East Superior Street.

Legacy Restaurant, Inc. (Duluth Athletic Club Bar and Grill), 351 Canal Park Drive.

Resolution 04-0180 was adopted upon the following vote:

Yeas: Councilors Johnson, Little, Ness, Reinert, Stewart and President Stauber -- 6

Nays: Councilor Stover -- 1

Absent: Councilors Atkins and Gilbert -- 2

Approved March 8, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

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:

Grandma's, Inc. (Grandma's Saloon & Grill), 522 Lake Avenue South, for June 19, 2004, with the serving and dancing ceasing at 1:00 a.m.

Resolution 04-0181 was unanimously adopted.

Approved March 8, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

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 May 7, 2004, with Marlene David, manager.

Resolution 04-0182 was unanimously adopted.

Approved March 8, 2004

HERB W. BERGSON, Mayor

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Resolutions 04-0127, affirming, and Resolution 04-0128, reversing, respectively, a decision of the board of zoning appeals to deny the appeal of the decision of the building inspector which denied the certificate of occupancy for the use of property located at 24 East Willow Street for private commercial purposes, by Councilor Johnson, were introduced for discussion.

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

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Resolution 04-0143, by Councilor Johnson, authorizing land use agreement with Sand Point Yacht Club, Inc., for the seasonal use of an area of the Sand Point easement to provide winter boat storage, was introduced for discussion.

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

The following speakers expressed concern regarding the approval of the resolution: Wendy Grethen, president of Duluth Audubon Society; Beryl Peyton; David Garman; Cathy Podeszwa; Scott Wolff, president of the Park Point Community Club; and Lynell Hanson. They stated that: this area is a stop-over area for migrating birds; access to this area is important to birders and is a tourist asset; all lands designated for public use should remain open to the public at all times; no public benefit for this project was shown to the planning commission; the temporary storage shed will not be attractive or add to the beauty of the area; this organization is storing boats for non-member; this organization has continued to encroach upon public areas; three-quarters of the year should not be considered a temporary use; the Park Point Community Club supports the special use permit as it existed in December; there is concern that other public open space will be converted to private use and there is no provision for restoration of the area if it is found that there is violation of the license.

Bob Beaudin; Charles Andresen, legal counsel for the applicant; and Arne Wuorinen, president of Sand Point Yacht Club, expressed support for the resolution for reasons of: this has been back and forth to the planning commission because the city originally required them to get a vacation, then a conditional use permit and then this license; the request for a fence or storage building was not originated from the organization; boats are very seldom there past the middle of May; this resolution approves a license to use the property they own; the organization pays property taxes on this property; this area is there because of the fill from the old First National Bank excavation; the area has increased because of the wind and wave action; it is legally owned by the yacht club; except for the 40 foot seasonal strip of land, there will be no attempt to deny public access to the existing open space; the Sand Point Yacht Club has spent over \$20,000 for dredging between Sand Point and Herding Island and for erosion control; the club only intends to store from two to five boats for the winter; boating and birds are both important elements of Park Point and this area is only one of ten bird viewing areas on Park Point.

Councilor Reinert moved to amend the resolution by:

(a) Strike the words "the seasonal placement of a temporary storage shed" from the resolution;

(b) Delete "paragraph e" in the land use agreement, which motion was seconded and unanimously carried.

Resolution 04-0143, as amended, was adopted as follows:

BY COUNCILOR JOHNSON:

RESOLVED, that the proper city officers are hereby authorized to enter into a land use agreement with Sand Point Yacht Club, Inc., substantially in the form of that on file in the office of the city clerk as Public Document No. 04-0308-20, for the seasonal use of a limited area of the area of land commonly known as the sand point easement as described therein, the seasonal period to extend from September 15 of each year of the agreement to the following June 1 of each year of the agreement, the seasonal storage of up to five boats, the seasonal placement of

temporary fencing and signage, and the placement of not more than 50 yards of class five gravel.
Resolution 04-0143, as amended, was unanimously adopted.

Approved March 8, 2004

HERB W. BERGSON, Mayor

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Resolution 04-0169, by Councilor Johnson, approving amendments to development program for Development District No. 17 and tax increment financing plan for Tax Increment Financing District No. 22 in Development District No. 17 as proposed by the Duluth economic development authority, was introduced for discussion.

Councilor Johnson moved to table the resolution until the March 15, 2004, public hearing has been held, which motion was seconded and unanimously carried.

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BY COUNCILOR JOHNSON:

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. 04-0308-21 with St. Louis County for access to and use of its DAMION information management system in the amount of not to exceed \$19,488, payable from Fund 0100, Agency 015, Organization 1513, Object 5201.

Resolution 04-0183 was unanimously adopted.

Approved March 8, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are authorized to enter into a agreement substantially in the form of that on file in the office of the city clerk as Public Document No. 04-0308-22 with Superior Water, Light and Power Company to acquire an easement for installation of cathodic protection facilities for the city's natural gas transmission pipeline facilities in Wisconsin at a cost of not to exceed \$1,266, payable from Fund 0521, Agency 500, Object 5532.

Resolution 04-0178 was unanimously adopted.

Approved March 8, 2004

HERB W. BERGSON, Mayor

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Resolution 04-0175, by councilors Reinert and Ness, to oppose tax and expenditure limitation proposals (TABOR and similar proposals), was introduced for discussion.

President Stauber opposed the resolution because he felt it prevents elected officials from automatically raising your taxes without either asking the taxpayers or seeing an increase in population or the cost of living.

Resolution 04-0175 was adopted as follows:

BY COUNCILORS REINERT AND NESS:

WHEREAS, the taxpayers league and others are endorsing proposals to amend the state constitution to institute tax and expenditure limitations at the state, and potentially local, levels of government that could only be overridden by a vote of the people – an example of these proposals is the Taxpayers Bill of Rights; and

WHEREAS, such proposals would tie the hands of state and local leaders in times of crisis and other unpredictable circumstances, putting state and local governments on auto pilot and circumventing thoughtful consideration of policy decisions; and

WHEREAS, such proposals would prevent state and local officials from making the tough decisions they were elected to make, passing the responsibility for learning all aspects of often complex issues to citizens who have other jobs and responsibilities; and

WHEREAS, amending the constitution is a virtually irrevocable action and should only be undertaken when legislative remedies have proven inadequate; and

WHEREAS, such proposals are unnecessary – a solution in search of a problem – as demonstrated by lawmakers at both state and local levels of government taking action to deal with one of the worst budget crises to hit the state of Minnesota and, by result, Minnesota's cities; and

WHEREAS, this is further demonstrated by the fact that state and local spending as a percentage of personal income has actually declined in recent years, even before the 2003 deficit; and

WHEREAS, regardless of whether TaBOR/TEs are applied just to the state or to local governments as well, these proposals would bring great harm to local communities through continued reductions in state funding, increases in unfunded state mandates, and, potentially, direct tax and expenditure limitations at the local level, which would severely erode decision-making at the local level and the ability to provide the basic services residents and businesses expect and deserve; and

WHEREAS, such proposals would force the state, and potentially cities, to spend valuable time and money asking for permission from the same people who elected them before any action can be taken on important issues, and would also force taxpayers to pay twice for governance – once for elections of their state and local officials, and again for elections to make the decisions those officials should have made; and

WHEREAS, such proposals contradict the fundamental principles upon which our constitution and system of government are based – that representative, not direct, democracy is the most effective form of government as it is most likely to result in good public policy; and

WHEREAS, those states that have instituted proposals similar to the Taxpayers Bill of Rights, such as Colorado, now face severe problems in meeting the basic needs of their citizenry;

NOW, THEREFORE, BE IT RESOLVED, by the council of the city of Duluth that this council believes that state and local elected officials are elected to do a job – that job is to represent the interests of their constituents, to deal with difficult decisions, to thoughtfully debate and determine the best course of action for the state or the community they serve.

BE IT FURTHER RESOLVED, that this council opposes limits on state and/or local taxes and expenditures, whether through constitutional amendment or other means, and supports the principle of representative democracy as the best route to sound public policy.

Resolution 04-0175 was adopted upon the following vote:

Yeas: Councilors Johnson, Ness, Reinert, Stewart and Stover -- 5

Nays: Councilor Little and President Stauber -- 2

Absent: Councilors Atkins and Gilbert -- 2

Approved March 8, 2004

HERB W. BERGSON, Mayor

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INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the second time:

BY COUNCILOR JOHNSON (INTRODUCED BY COUNCILOR GILBERT)

04-010 (9648) - 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-3, APARTMENT

RESIDENTIAL, TO C-2, HIGHWAY COMMERCIAL, PROPERTY LOCATED AT THE NORTHWEST CORNER OF 13TH AVENUE EAST AND EAST FOURTH STREET (CROTTY).

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

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BY COUNCILOR STOVER

04-011 (9649) - AN ORDINANCE AUTHORIZING CONVEYANCE OF UTILITY EASEMENTS FOR HIGH VOLTAGE ELECTRICAL TRANSMISSION LINES TO MINNESOTA POWER AND LIGHT COMPANY NEAR GARY-NEW DULUTH.

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

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BY COUNCILOR LITTLE

04-008 (9650) - AN ORDINANCE AMENDING ARTICLE I, SECTION 21-1 OF THE DULUTH CITY CODE, 1959, AS AMENDED; ADOPTING THE 2003 MINNESOTA STATE FIRE CODE.

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

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BY COUNCILOR LITTLE

04-009 (9651) - AN ORDINANCE AMENDING ARTICLE I, SECTIONS 10-1 AND 10-2 OF THE DULUTH CITY CODE, 1959, AS AMENDED; ADOPTING THE 2003 MINNESOTA STATE BUILDING CODE.

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

- - -

The meeting was adjourned at 8:52 p.m.

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 9648

BY COUNCILOR JOHNSON (INTRODUCED BY COUNCILOR GILBERT):

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-3, APARTMENT RESIDENTIAL, TO C-2, HIGHWAY COMMERCIAL, PROPERTY LOCATED AT THE NORTHWEST CORNER OF 13TH AVENUE EAST AND EAST FOURTH STREET (CROTTY).

The city of Duluth does ordain:

Section 1. 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:

(MAP)

(see Map No. 35 at end of meeting)

(Reference File No. 03146)

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: April 18, 2004)

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

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

Yeas: Councilors Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 7

Nays: None -- 0

Absent: Councilors Atkins and Gilbert -- 2

Passed March 8, 2004

Approved March 8, 2004

ATTEST:

JEFFREY J. COX, City Clerk

HERB W. BERGSON, Mayor

- - -

ORDINANCE NO. 9649

BY COUNCILOR STOVER:

AN ORDINANCE AUTHORIZING CONVEYANCE OF UTILITY EASEMENTS FOR HIGH VOLTAGE ELECTRICAL TRANSMISSION LINES TO MINNESOTA POWER AND LIGHT COMPANY NEAR GARY-NEW DULUTH.

The city of Duluth does ordain:

Section 1. That the proper city officials are hereby authorized to convey an easement for high voltage electrical transmission lines substantially in the form of that on file in the office of the city clerk as Public Document No. 04-0308-23 to Minnesota Power and Light Company over and across the property in St. Louis County, Minnesota, described on said public document for the sum of \$8,940, payable to the General Fund 0100, Agency 700, Organization 1448, Revenue Source 4640.

Section 2. This ordinance shall take effect 30 days from and after its passage and publication. (Effective date: April 18, 2004)

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

Yeas: Councilors Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 7

Nays: None -- 0

Absent: Councilors Atkins and Gilbert -- 2

Passed March 8, 2004

Approved March 8, 2004

ATTEST:

JEFFREY J. COX, City Clerk

HERB W. BERGSON, Mayor

- - -

ORDINANCE NO. 9650

BY COUNCILOR LITTLE:

AN ORDINANCE AMENDING ARTICLE I, SECTION 21-1 OF THE DULUTH CITY CODE, 1959, AS AMENDED; ADOPTING THE 2003 MINNESOTA STATE FIRE CODE.

The city of Duluth does ordain:

Section 1. That Article I, Section 21-1 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Article I. Fire Code and Regulations.

Sec. 21-1. Adoption of the Minnesota State Fire Code.

The city hereby adopts by reference and incorporates into this Code the Minnesota State Fire Code set forth in Minnesota Rules, Chapter 7510, which is

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

based on the 2000 edition of the International Fire Code, and as said rules and code may be, by the state, amended from time to time, or replaced.

(a) The city adopts by reference the following appendices to said International Fire Code, their successors and amendments:

- (1) Appendix B - fire flow requirements for buildings;
- (2) Appendix C - fire hydrant location and distribution;
- (3) Appendix D - fire apparatus access roads;
- (4) Appendix H - fires or barbecues on balconies or patios (as amended by Minnesota Rules, 7510.3710, subpart 11);
- (5) Appendix I - special locking arrangement for group I occupancies (as amended by Minnesota Rules 7510.3710, subpart 12);

(b) Appendix B, Section 105.1, of the 2000 International Fire Code is not adopted and is not a part of the Duluth city ordinance.

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: April 18, 2004)

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

Yeas: Councilors Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 7

Nays: None -- 0

Absent: Councilors Atkins and Gilbert -- 2

Passed March 8, 2004

Approved March 8, 2004

HERB W. BERGSON, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 9651

BY COUNCILOR LITTLE:

AN ORDINANCE AMENDING ARTICLE I, SECTIONS 10-1 AND 10-2 OF THE DULUTH CITY CODE, 1959, AS AMENDED; ADOPTING THE 2003 MINNESOTA STATE BUILDING CODE.

The city of Duluth does ordain:

Section 1. That Article I, Section 10-1 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Article I. Building Code.

Sec. 10-1. State Building Code adopted.

The city of Duluth hereby adopts the hereinafter described 2003 Minnesota State Building Code, or its successor, as either may be amended from time to time, established pursuant to Minnesota Statutes Sec. 16B.59 to 16B.75, and such code is incorporated into this ordinance as if fully set out herein.

(a) The 2003 Minnesota State Building Code includes the following chapters of Minnesota Rules:

- (1) 1300, Administration of the Minnesota State Building Code;
- (2) 1301, Building official certification;
- (3) 1302, State building code construction approvals;
- (4) 1303, Minnesota provisions;
- (5) 1305, Adoption of the 2000 International Building Code;
- (6) 1307, Elevators and related devices;

- (7) 1309, Adoption of the 2000 International Residential Code;
- (8) 1311, Adoption of the 2000 guidelines for the rehabilitation of existing buildings;
- (9) 1315, Adoption of the 2002 National Electrical Code;
- (10) 1325, Solar energy systems;
- (11) 1330, Fallout shelters;
- (12) 1335, Floodproofing regulations;
- (13) 1341, Minnesota Accessibility Code;
- (14) 1346, Adoption of the Minnesota State Mechanical Code;
- (15) 1350, Manufactured homes;
- (16) 1360, Prefabricated structures;
- (17) 1361, Industrialized/modular buildings;
- (18) 1370, Storm shelters (manufactured home parks);
- (19) 4715, Minnesota Plumbing Code;
- (20) 7670, 7672, 7674, 7676 and 7678, Minnesota Energy Code;

(b) The following optional provisions and optional chapters of Minnesota Rules are hereby adopted by reference and incorporated as part of the building code:

- (1) Appendix Chapter K (grading) of the 2002 supplement to the 2000 International Building Code;
- (2) Chapter 1335, Floodproofing regulations, parts 1335.0600 to 1335.1200;

(c) The application, administration and enforcement of this code shall be in accordance with Minnesota Laws, Chapter 16B, and Minnesota Rules, Chapter 1300. The code enforcement agency shall be called the city of Duluth, which acts through its building safety division or its successor organizational unit of the city. The code shall be enforced by a Minnesota certified building official designated by the city to administer the code (Minnesota Statutes, Sec. 16B.65, subdivision 1).

Section 2. That Article I, Section 10-2 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 10-2. Building permit fee schedule.

(a) Building permit fees. Collection of fees for building permits and building inspections, as authorized in Minnesota Statutes, Sec. 16B.62, subdivision 1, shall be assessed for work in accordance with the fee schedule adopted in Ordinance No. 6920;

(b) Special permits and fees. Special permits shall be obtained and special fees paid in all cases for items included in the following schedule whether said items are installed in new buildings or in existing buildings, unless otherwise herein provided, but the value of such items need not be included in the valuation upon which the main building permit is estimated as before provided in Subdivision (a) herein.

All of the provisions of the State Building Code pertaining to permits shall apply to such special permits as well as to the main building permit, excepting only the schedule for original fees.

Fees for the following shall be set in accordance with Section 31-6(a) of this Code:

- (1) Moving over public property any building which has an area of

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

1,000 square feet or less on the first floor;

(2) Moving over public property any building which has an area of over 1,000 square feet on the first floor;

(3) Moving any building or structure not on public property;

(4) Razing or demolishing any building or structure;

(5) The installation of a mobile home;

(c) Special permits shall also be taken out and fees paid for the installation or alteration of electrical wiring, plumbing, heating plants, fireplaces or any other construction or accessory to a building or structure, the use of which is regulated by the provisions of the State Building Code and which for any reason is not included in the permit for general construction; and the fees for same shall be ascertained in the same manner as for the construction of new buildings;

(d) The payment of a fee as provided herein shall not relieve the applicant or holder of the permit from the necessity of obtaining additional permits and the payment of other fees that may be prescribed by law or ordinance, for the temporary occupation of public property, for inspections, certificates, sewer connections, water connections, gas connections or other privileges or requirements;

(e) When work for which a permit is required by this Code is started or proceeded with before said permit is obtained, the fee specified shall be doubled, but the payment of such double fee shall not relieve any persons from fully complying with the requirements of the State Building Code in the execution of the work, nor from any other standards or penalties prescribed by law;

(f) No permit to erect, repair or alter any building or structure shall authorize the use of any part of any public thoroughfare, or other public ground or easement.

Section 3. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: April 18, 2004)

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

Yeas: Councilors Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 7

Nays: None -- 0

Absent: Councilors Atkins and Gilbert -- 2

ATTEST:
JEFFREY J. COX, City Clerk

Passed March 8, 2004
Approved March 8, 2004
HERB W. BERGSON, Mayor

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, March 15, 2004, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Absent: None -- 0

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

04-0315-05 The following submitting communications regarding the Ten Commandments monument (04-0187R, 04-0188R and 04-0189R): (a) John R.M. Alleote; (b) Brenda Anderson; (c) John A. Appelget;(d) The Arrowhead Interfaith Council; (e) Elsie Jean M. Austin; (f) Kaye Bergman; (g) Paul C. Blake; (h) Joseph Brandstrom; (i) Vernice Brophy; (j) Tara Cave; (k) Bill Cheslak, Jr.; (l) Eric Dings; (m) Doug Fieldman; (n) First Presbyterian Church; (o) Christopher E. Gates; (p) Jeri Georges; (q) Charles Gessert; (r) Robert J. Goldfish; (s) Lorri Gustafson; (t) Douglas W. Happy; (u) Tom Heinonen; (v) Ted K. Heintzeman; (w) Phil Hoden; (x) Michael Jershe; (y) Ron Jesberg; (z) Barb Kaneski; (aa) Jan Karon; (bb) Michelle LeBeau; (cc) Kay Lewis; (dd) Dee Lunzer; (ee) Diane R. Martinek (2); (ff) Susan McNeill (2); (gg) Jean Mehrkens; (hh) R.A. Millen; (ii) Ronald A. Miller; (jj) Dennis and Rosemarie Mitchell (5); (kk) Mrs. Edward Nordmark; (ll) Susan Nygaard; (mm) Gary P. Olson; (nn) Dennis Padora; (oo) Fred W. Phelps; (pp) James Rawlyk; (qq) Linda Mae Roseen; (rr) Herbert and Jean Royer; (ss) Philemon Sevastiades; (tt) Patty Shafer; (uu) Helen Snider; (vv) John Thomas; (ww) T. Tonner; (xx) Roy S. Trousdell; (yy) Rajiv Vaidyanathan; (zz) Erin Vanderport; (aaa) Sharon van Druten; (bbb) William A. van Druten; (ccc) Mike Vespa; (ddd) Christina Wagner; (eee) Greg Wickstrom. -- Received

04-0315-06 Eric Dings submitting communication regarding the Lake Superior Aquarium (04-0089R, 04-0093R, 04-0116R and 04-0117R). -- Received

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At this time, 7:03 p.m., President Stauber announced that the public hearing on an amendment to Tax Increment Financing District No. 17 to establish Tax Increment Financing District No. 22 would begin.

Tom Coturvo, business development division manager, reviewed the scope and intended use of this new district.

K.L. Lewis felt that it is not necessary to do the two way traffic change that is being proposed and she questioned if it would be possible to save money and put the parking facility underneath the structure.

At this time, 7:16 p.m., President Stauber closed the public hearing and the regular order of business was resumed.

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RESOLUTION TABLED

Councilor Ness moved to remove from the table and suspend the rules to consider at this time, Resolution 04-0169, approving amendments to development program for Development District No. 17 and tax increment financing plan for Tax Increment Financing District No. 22 in Development District No. 17 as proposed by the Duluth economic development authority, by Councilor Gilbert, which motion was seconded and unanimously carried.

Resolution 04-0169 was adopted as follows:

BY COUNCILOR GILBERT:

RESOLVED, by the city council of the city of Duluth, as follows:

Section 1. Recitals.

1.01 The council has established the Duluth economic development authority (DEDA) to promote development and redevelopment of property located in the city of Duluth (the city).

1.02 In order to promote such development, DEDA has established Development District No. 17 (the development district) in the city and adopted a development program (the development program) therefor pursuant to Minnesota Statutes, Sections 469.090 through 469.1082 and Sections 469.124 through 469.134 (collectively, the act).

1.03 DEDA herewith proposes to amend the development program for Development District 17 to include within the permitted uses of funds the construction of medical clinic/office facilities within the development district, which amended development program is part of Public Document No. 04-0315-03, on file in the office of the city clerk.

1.04 DEDA proposes to establish Tax Increment Financing District No. 22 (the TIF district) within the development district and adopt a tax increment financing plan (the TIF plan) therefor pursuant to Minnesota Statutes, Sections 469.174 through 469.179 (the TIF act) for the purpose of financing public improvements and encouraging investment in the development district. DEDA has prepared the TIF plan in accordance with the TIF act, which TIF plan is also contained in the aforesaid public document.

1.05 Pursuant to Section 469.175, Subdivision 3 of the TIF act, the city held a public hearing on the TIF plan, which hearing was held this day, at which the views of all interested parties were heard.

1.06 DEDA has transmitted a copy of the TIF plan to the council in a document entitled Sixth Amendment to Development Program for Development District No. 17 and tax increment financing plan for Tax Increment Financing District No. 22 (First Street Medical Facilities Development District), which is now on file in the office of the city clerk in the form of the aforesaid public document.

1.07 After investigation of the facts, the council is of the opinion that:

(a) It is necessary for the sound and orderly development of the development district and of the city as a whole and for the protection and preservation of the public health, safety and general welfare, that the powers authorized by the act and the TIF act be exercised by the city to provide public financial assistance to the development district;

(b) Proper development of the development district and implementation of the development program in accordance with the city's long range plans is essential to (i) the economic viability of the development district, (ii) the economic well being of the city and its residents, (iii) the orderly development of the city, and (iv) the orderly and beneficial development of the Development District to ensure the construction of and provide moneys for the payment of the cost of certain public improvements within the development district, including site improvements, in order to provide and finance development of suitable and necessary sites for development;

(c) There is a need for new development within the development district (i) to enhance the quality of life of the city's residents by redeveloping blighted and underdeveloped areas, (ii) to improve the general economy of the city and the state, (iii) to provide employment opportunities for residents of the city, (iv) to improve the tax base of the city and the state, and (v) to provide other facilities identified in the development program and TIF plan;

(d) Creation of the development district and TIF district is in the public interest and will result in increased employment in the city and in the preservation and enhancement of the tax base of the city; and

(e) The TIF district is intended and, in the judgment of city, its effect will be to promote the public purposes and accomplish the objectives specified in the development program, which are all consistent with the efforts already made for the development of the development district.

1.09 The council has fully reviewed the contents of the TIF plan.

Section 2. Statutory findings.

2.01 There is a need for new development in the development district in order to enhance the quality of life of the city's residents by redeveloping blighted and underdeveloped areas, to improve the tax base, to provide employment opportunities, and to improve the general economy of the state.

2.02 Establishment of the TIF district will provide impetus for commercial development; increase employment; and provide off-street parking to serve employees of the development district and the TIF district.

2.03 The actions required to assist the implementation of the development program are a public purpose and the execution and financing of the development program are a public purpose.

2.04 It is the opinion of the council, based on discussions with developers of projects proposed to be constructed in the TIF district and information contained in the development program and the TIF plan that:

(a) Development and redevelopment within the TIF district would not reasonably be expected to occur solely through private investment within the reasonably foreseeable future;

(b) The increased market value of the site to be included in the TIF district that could reasonably be expected to occur without the use of tax increment financing would be less than the increase in the market value estimated to result from development in the TIF district after subtracting the present value of the projected tax increments for the maximum duration of the TIF district permitted by the TIF plan;

(c) The use of tax increment financing is necessary; and

(d) The primary purpose of the project to be financed pursuant to the TIF plan and the expenditure of funds thereunder is the benefits to the public flowing therefrom.

2.05 Based on information contained in the development program and the TIF plan, the TIF plan conforms to the general plan for the development and redevelopment of the city as a whole.

2.06 Based on information contained in the development program and the TIF plan, the TIF plan will afford maximum opportunity, consistent with the sound needs of the city as a whole, for the development and redevelopment of the development district by private enterprise.

Section 3. Approval.

3.01 The amended development district plan and the TIF plan are approved.

3.02 The geographic boundaries of the development district and TIF district are as described in the development program and TIF plan, which documents are incorporated herein by reference and which, together with this resolution contain the requirements set forth in Section 469.175 of the TIF act.

Section 4. Designation of TIF district.

4.01 The proposed TIF district is a redevelopment district as defined in Section 469.174, Subdivision 10(a)(2) of the TIF act because it consists of a portion of the development district within which the following conditions, reasonably distributed throughout the TIF district, exist:

parcels consisting of 70 percent of the area of the TIF district are occupied by buildings, streets, utilities or other improvements and more than 50 percent of the buildings, not

including outbuildings, are structurally substandard to a degree requiring substantial renovation or clearance.

4.02 The reasons and supporting facts for the determination that the TIF district meets the criteria set forth in Section 4.01 hereof will be retained and made available to the public by DEDA until the TIF district has been terminated.

4.03 At least 90 percent of the revenues derived from tax increments from the TIF district will be used to finance the cost of correcting conditions that allowed designation of the TIF district under Section 469.174 of the TIF act.

Resolution 04-0169 was unanimously adopted.

Approved March 15, 2004

HERB W. BERGSON, Mayor

- - -

**INTRODUCTION AND CONSIDERATION OF ORDINANCES
ORDINANCES TABLED**

Councilor Atkins moved to suspend the rules to consider tabled ordinances at this time, which motion was seconded and unanimously carried.

BY COUNCILOR NESS

04-001 (9652) - AN ORDINANCE AMENDING SECTION 8 OF THE DULUTH CITY CHARTER TO AUTHORIZE THE CITY COUNCIL TO DELEGATE TO ADMINISTRATIVE OFFICERS THE POWER TO APPROVE CONTRACTS.

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

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

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BY COUNCILOR STEWART

04-002 (9653) - AN ORDINANCE AMENDING SECTION 35 OF THE DULUTH CITY CHARTER TO INCREASE THE NUMBER OF MEMBERS OF THE CIVIL SERVICE BOARD TO FIVE.

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

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

- - -

RESOLUTIONS TABLED

Councilor Ness moved to remove Resolution 04-0093, authorizing an amended and restated operating and revenue participation agreement pertaining to the Great Lakes Aquarium, by Councilor Ness; and Resolution 04-0089, approving DEDA Resolution No. 04D-12 authorizing an amended and restated operating and revenue participation agreement pertaining to the Great Lakes Aquarium, by councilors Ness and Gilbert, from the table, which motion was seconded and unanimously carried.

Councilor Gilbert stated that he would abstain from voting on the resolutions because of the political culture that has been shown to him because of his viewpoints on this issue.

- - -

Councilor Gilbert moved to remove Resolution 04-0116, authorizing amended and restated operating and revenue participation agreement with Lake Superior Center and Lake Superior Center authority for the Lake Superior Aquarium, subject to terms and conditions; and Resolution 04-0117, of intent to approve management agreement with Ripley's Entertainment Corporation

for operation of the Lake Superior Aquarium, from the table, which motion was seconded and unanimously carried.

Upon the request of Councilor Gilbert and hearing no challenge, President Stauber ordered the resolutions removed from the agenda.

- - -

Resolution 04-0093 was adopted as follows:

BY COUNCILOR NESS:

RESOLVED, that the proper city officials are hereby authorized to enter into an amended and restated operating and revenue participation agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 04-0315-01, with the city of Duluth, Lake Superior Center, aka Great Lakes Aquarium, and the Lake Superior Center authority, which will amend City Contract No. C18364, dated June 1998.

FURTHER RESOLVED, that the city's approval is contingent upon the approval of the Minnesota department of administration and/or the Minnesota department of finance.

Resolution 04-0093 was adopted upon the following vote:

Yeas: Councilors Atkins, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 8

Nays: None -- 0

Abstention: Councilor Gilbert -- 1

Approved March 15, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0089 was adopted as follows:

BY COUNCILORS NESS AND GILBERT:

RESOLVED, that pursuant to the requirements of Resolution No. 02-0606, the Duluth economic development authority's (DEDA) amended and restated operating and revenue participation agreement pertaining to the operation and allocation of revenues of the Great Lakes Aquarium approved pursuant to DEDA Resolution No. 04D-12, a copy of which is on file in the office of the city clerk as Public Document No. 04-0315-02, is hereby approved, contingent upon the approval of the Minnesota department of administration and/or the Minnesota department of finance.

Resolution 04-0089 was adopted upon the following vote:

Yeas: Councilors Atkins, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 8

Nays: None -- 0

Abstention: Councilor Gilbert -- 1

Approved March 15, 2004

HERB W. BERGSON, Mayor

- - -

MOTIONS AND RESOLUTIONS

Resolution 04-0187, by Councilor Ness, directing the city attorney in its case of Minnesota Civil Liberties Union, et al., v. city of Duluth, et al., was introduced for discussion.

Councilor Ness requested that the resolution be removed from the agenda and hearing no challenge, President Stauber ordered the resolution removed from the agenda.

- - -

Councilor Stewart moved to consider Resolution 04-0189, by Councilor Stewart, directing action in the case of Minnesota Civil Liberties Union, et al., v. city of Duluth, et al., at this time,

which motion was seconded and unanimously carried.

- - -

President Stauber moved to consider Resolution 04-0188, directing defense of the city in the case of Minnesota Civil Liberties Union, et al., v. city of Duluth, et al., at this time, which motion was seconded and carried upon a unanimous vote.

- - -

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

Doug Fieldman, Jan Mansell, Ron Hanson, Allan Kehr, Christina Wilson, Ken Kasden, Joseph Brandstrom and Thomas Allnew spoke in support of Resolution 04-0188 citing reasons of: early American presidents throughout history have expressed a belief in a supreme being; generations that follow should know that we fought for this Ten Commandment monument; this property is on the national register of historical places and property can not be removed from it before it has been approved; the Ten Commandments are the foundation of all our laws and is a moral compass; the Liberty Council is willing to assist and take this case on at no charge to the city; the history of the placement of the monument should not be erased or changed; the monument shows what our heritage is based on; the city should survey the property and either sell or lease it so that it can be classified as private property; the commandments are the second oldest code of mankind; the use of the word "Lord" is used by many different secular groups and this monument does not have any official insignia, enforcement and/or legal significance of the city of Duluth.

Tom Heinonen and K.L. Lewis spoke in support of Resolution 04-0189 for reasons of: this is not about destroying or hating the Ten Commandments; prayers and oaths of allegiance are not part of the Constitution; religion on public property can not be mandated; Article VI of the Bill of Rights references "no religious test shall ever be required" and the commandments should be replaced with the "Golden Rule."

Councilor Stewart moved to amend Resolution 04-0189 by adding the following paragraph at the end of the resolution:

"(d) To propose the following resolution of the claims:

That all the claims of the plaintiffs against any defendant shall be dismissed; that neither party pay any fee, cost or expense of the other, unless the court recommends the payment of a cost not to exceed \$250; and that the city will take reasonable action to assure that the display is in compliance with law, which action shall be removal of the artifact to another location, or other action recommended by the court, or agreed to by the plaintiffs; and that further action in the court, including answering, will not be necessary if the matter can be settled without such action,"

which motion was seconded and carried upon the following vote:

Yeas: Councilors Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 8

Nays: Councilor Atkins -- 1

President Stauber moved to amend Resolution 04-0188, by adding the following paragraph between paragraphs six and seven:

"BE IT FURTHER RESOLVED, that the city council's operative to interact with the city attorney in processing the case shall be the council's president,"

which motion was seconded and carried upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Stewart, Stover and President Stauber -- 8

Nays: Councilor Reinert -- 1

Councilor Ness moved to further amend Resolution 04-0188 by adding the following

paragraph at the end of the resolution:

"BE IT FURTHER RESOLVED, that the city attorney shall request a delay pending the outcome of the full U.S. Eighth Circuit Court of Appeals decision in the case of the ACLU v. Nebraska foundation vs. the city of Plattsmouth," which motion was seconded for discussion.

Councilors opposing the amendment felt that the city should decide now if the lawsuit should be defended or not.

Councilor Ness's amendment carried upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Ness and President Stauber -- 5

Nays: Councilors Little, Reinert, Stewart and Stover -- 4

Councilor Gilbert moved to further amend Resolution 04-0188 by deleting the words "such as the American Center for Law and Justice, or lawyers specializing in constitutional law, such as John Graham," in the fifth paragraph, which motion was seconded and unanimously carried.

Councilors Gilbert, Johnson, Reinert, Stewart and Stover stated support for Resolution 04-0189, as amended, for reasons of: another city had a similar monument and a three judge panel has determined that it is unconstitutional; if the decision on that other city is upheld, the city of Duluth will be liable for approximately \$20,000 of court costs, which would be a financial situation the city should not get into; there are many more issues for the city council to address that have higher priority than to "make a statement" on the constitutionality of this issue; the city needs to be financially responsible with regard to this lawsuit; this resolution does not pass moral judgement on the Ten Commandments, just where they are located, and there is likely a better place for it where it will be more appreciated by individuals.

Councilors Atkins, Little, Ness and President Stauber supported Resolution 04-0188, as amended, for reasons of: the monument serves as an agent for Duluth, as a community, to engage its citizens in discussions as to what is moral and to express individual ideas freely; a defense fund could be organized by supporters to address the issue of the possible financial obligations the city could have; other federal courts have upheld the decision of local communities to have these sort of monuments; the Minnesota Civil Liberties Union had to solicit Duluthians to join their cause and only had about ten people responded and this is more of a historical monument, based on the circumstances of how it was given by a fraternal organization commemorating the Ten Commandments movie.

Resolution 04-0188, as amended, failed upon the following vote (Public Document No. 04-0315-04):

Yeas: Councilors Atkins, Little, Ness and President Stauber -- 4

Nays: Councilors Gilbert, Johnson, Reinert, Stewart and Stover -- 5

Resolution 04-0189, as amended, was adopted as follows:

BY COUNCILOR STEWART:

BE IT RESOLVED, that the city attorney is directed to take the following action in regard to claims brought against the city and the city council in the case of Minnesota Civil Liberties Union, et al v. City of Duluth, et al:

- (a) To answer the complaint and preserve defenses;
- (b) To seek amicable settlement of the suit within reasonable parameters, any settlement subject to council approval;
- (c) To utilize the assistance of other lawyers experienced in this type of case, but without cost to the city;
- (d) To propose the following resolution of the claims:

That all the claims of the plaintiffs against any defendant shall be dismissed;

that neither party pay any fee, cost, or expense of the other, unless the court recommends the payment of a cost not to exceed \$250; and that the city will take reasonable action to assure that the display is in compliance with law, which action shall be removal of the artifact to another location, or other action recommended by the court, or agreed to by the plaintiffs; and that further action in the court, including answering, will not be necessary if the matter can be settled without such action.

Resolution 04-0189 was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Reinert, Stewart and Stover -- 5

Nays: Councilors Atkins, Little, Ness and President Stauber -- 4

Approved March 15, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointment by Mayor Bergson of Ken Buehler to the Spirit Mountain recreation area authority for a term expiring on June 30, 2006, replacing Dale M. Johnson, is confirmed.

Resolution 04-0186 was unanimously adopted.

Approved March 15, 2004

HERB W. BERGSON, Mayor

- - -

The meeting was adjourned at 8:55 p.m.

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 9652

BY COUNCILOR NESS:

AN ORDINANCE AMENDING SECTION 8 OF THE DULUTH CITY CHARTER TO AUTHORIZE THE CITY COUNCIL TO DELEGATE TO ADMINISTRATIVE OFFICERS THE POWER TO APPROVE CONTRACTS.

The city of Duluth does ordain:

Section 1. That Section 8 of the 1912 Charter of the city of Duluth, as amended, is hereby amended to read as follows:

Sec. 8. Ordinances--required for all legislation and appropriations; recordation of votes.

Except as in this Charter otherwise provided, all legislation and appropriations of money shall be by ordinance, save that where obligations have been incurred by ordinance, payment thereof may be ordered by resolution, and save also that licenses may be granted, flow of traffic regulated, and the powers conferred by Chapter IX hereof exercised, by resolution. The council may by ordinance authorize executive and administrative officers of the city to issue licenses and permits, except when statutes require licenses to be granted by the council, and to make contracts which are not subject to the competitive bidding requirements of Section 31 of this Charter and which involve less than \$10,000, pursuant to appropriations made by ordinance. Every ordinance and resolution shall be in writing and read in full at a council meeting before a vote is taken, except (i) every ordinance or resolution, copies of which, together with a brief description of the purpose of said ordinance

or resolution, are presented to each member of the council at least 12 hours prior to the time of the introduction of such ordinance or resolution, or (ii) every resolution awarding the sale of bonds, certificates of indebtedness, capital notes, lease purchase agreements, certificates of participation, and installment purchase agreements shall not be required to be read in full at each reading before the council, but may be read by title and such description. Ordinances and resolutions may be passed upon a voice vote of the council, but if such voice vote is not unanimous, the yeas and nays shall then be called and recorded.

Except for emergency ordinances or emergency resolutions or resolutions awarding the sale of bonds, certificates of indebtedness, capital notes, lease purchase agreements, certificates of participation, and installment purchase agreements, every ordinance and resolution shall be filed with the city clerk at least 24 hours prior to the introduction of the same.

Section 2. That this ordinance shall take effect and be in force 90 days from and after its passage and publication. (Effective date: June 17, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Nays: None -- 0

Passed March 15, 2004

Approved March 15, 2004

HERB W. BERGSON, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 9653

BY COUNCILOR STEWART:

AN ORDINANCE AMENDING SECTION 35 OF THE DULUTH CITY CHARTER TO INCREASE THE NUMBER OF MEMBERS OF THE CIVIL SERVICE BOARD TO FIVE.

The city of Duluth does ordain:

Section 1. That Section 35 of the 1912 Charter of the city of Duluth, as amended, is hereby amended to read as follows:

Sec. 35. Civil service board--established; membership; term of office; vacancies.

There is hereby established a civil service board, which shall consist of five members, who shall be appointed by the council, and shall serve without compensation, and whose term of office shall be for six years, except as herein next provided. Without delay, after the size of the membership of the board is increased to a total of five members, the council shall appoint two new members, one member to serve an initial term of four years and one member to serve an initial term of six years. Any vacancies in the board shall be filled by the council for the unexpired term.

Section 2. That this ordinance shall take effect and be in force 90 days from and after its passage and publication. (Effective date: June 17, 2004)

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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and
President Stauber -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed March 15, 2004
Approved March 15, 2004
HERB W. BERGSON, Mayor

- - -

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, March 22, 2004, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Absent: None -- 0

- - -

The minutes of the city council meetings held on January 26, February 2 and 19, 2004, were unanimously approved.

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

04-0322-01 Frank J. Bennett, et al. (three signatures), submitting petition to vacate that portion of undeveloped Tromsoe Street which runs adjacent to Lots 22, 23, 24, 25 and 26 of Block 3, Home Builders Park, with a line running along Hutchinson Road west from the northwest corner of Lot 22 to the northeast corner of Lot 6, Block 2, Mont Du Vue First Addition. -- Assessor

04-0322-02 Joseph H. Kleiman, et al. submitting petitions to:

(a) Construct a permanent street in 14th Street from Central Entrance to Third Avenue East (four signatures);

(b) Vacate 48th Avenue West, 132 feet of depth and 80 feet wide located between Lots 1 and 2, Block 18, Oneota Duluth and Lots 6, 7 and 8, Block 17, Oneota Duluth (six signatures). - Assessor

04-0322-03 Patrick A. Twomey, et al. (four signatures), submitting petition to vacate a ten foot utility easement on the west side of Lot 1, Block 2, Hartley Hills Third Addition. -- Assessor

04-0322-04 Minnesota state auditor submitting Duluth/North Shore Sanitary District audit report for the years ended December 31, 2002, and 2001. -- Received

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REPORTS OF OFFICERS

04-0322-05 Assessor submitting:

(a) For confirmation the assessment roll levied to defray the assessable portion of full development for Maryland Street from Dodge to Victoria, Contract 5354 (assessable - \$405,544.56);

(b) Letters of sufficiency of petitions to:

(1) Construct a permanent street in 14th Street from Central Entrance to Third Avenue East;

(2) Extend sanitary sewer within Highland Street Alley beginning 180 feet west of 59th Avenue West and extending approximately 300 feet westerly;

(3) Reclassify from residential to C-2, commercial, E½ of SE1/4 of SE1/4 of SW1/4 of SW1/4, Section 30, Township 50, Range 14;

(4) Vacate:

(A) 48th Avenue West, 132 feet of depth and 80 feet wide located between Lots 1 and 2, Block 18, Oneota Duluth and Lots 6, 7, and 8, Block 17, Oneota Duluth.

(B) That portion of undeveloped Tromsoe Street which runs adjacent to Lots 22-26, Block 3, Home Builders Park, with a line running along Hutchinson Road west from the northwest corner of Lot 22 to the northeast corner of Lot 6, Block 2, Mont Du Vue First Addition;

(c) Letter of insufficiency of petition to vacate the westerly 17 feet of 59th Avenue West adjoining Lot 10, Block 4, West Duluth Sixth Division. -- Received

04-0322-06 Clerk submitting applications to the Minnesota gambling control board for exemptions from lawful gambling licenses from: (a) Chapter 272, Experimental Aircraft Association on August 21, 2004 (raffle); (b) Holy Family Catholic Church on September 11, 2004 (raffle); (c) Lake Superior Marine Museum Association on November 6, 2004 (raffle); (d) National Catholic Society of Foresters on March 21, 2004 (bingo). -- Received

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REPORTS OF BOARDS AND COMMISSIONS

04-0322-07 Planning commission minutes of February 25, 2004, meeting. -- Received

OPPORTUNITY FOR CITIZENS TO BE HEARD

Gary Doty and Bill King stated that the vast majority in the community believe that the Minnesota Civil Liberties Union's (MCLU) demands should be challenged because the idea that someone can come from out of town and tell the residents of Duluth what can or cannot be done in this community is wrong. Mr. Doty stated that the community was asked to step forward with money to help fund this fight and \$16,800 has been collected so far to pay the court costs. He requested that the council reconsider the resolution tonight to fight the lawsuit because if the city does not try, the city will never know. Mr. King explained that the money collected is to help facilitate a decision by the council so the city coffers are not at risk in fighting this lawsuit and a decision can be made that is not based on finances.

Christina Wilson, Steven Peterson, Joseph Brandstrom, Dr. David Sorenson, Dennis Berryhill, Steven Hennessy and Dave Barschdorf urged the council to reconsider the resolution for the following reasons: the city and the people in it are law abiding citizens; the city needs to fight to keep morality in the country; petitions being circulated show people care and want the courts to decide; the opportunity to find the true meaning of church and state; the ACLU's doctrine tells people what their rights are and what they should do with no respect for government; there are court cases that support the monument remaining on city property; the Ten Commandments are a symbol of morality, not of religion, and if the city does not want to fight, let the county take on the fight since they are willing to do so.

Marsh Stenersen, Joe Griffiths, Sharla Gardner, Ronald Miller, Iver Bogen, Bill Van Druten, Susan Van Druten, Lori Bauman, Deb Kirpach and Kristine Osbakken thanked the councilors for voting not to pursue the lawsuit as: this is a religious debate, not a morality debate; there are more important issues for the city to concentrate on; there is concern about the unkind comments made by Christians; it takes courageous actions to keep religion out of government and they believe in the separation of church and state.

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At this time, 7:55 p.m., President Stauber recessed the regular meeting and announced that the public hearing regarding the 2005 street improvement program would begin.

Mike Metso, city engineer, reviewed that this is the 12th year of the street improvement program, which will include five projects in 2005 with a cost of approximately \$4.6 million. He continued saying that normal procedures in the bidding process will be followed with the construction starting in spring of 2005 with 75 percent of the cost picked up by the city and 25 percent assessed to property owners.

Val Valentine expressed concern about the amount of her assessment and she stated that after checking with the neighbors on West Tenth Street, the majority of residents do not want the assessment or the street repaired.

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At this time, 8:00 p.m., President Stauber closed the public hearing and stated that the public hearing regarding the proposed reorganization of the Duluth economic development authority (DEDA) would begin.

Keith Hamre, acting director of planning and business development, reviewed the history of the creation of DEDA, the amendments that have been made to DEDA over the years and how the resolution would change the make up of DEDA by eliminating the private citizen commissioners with the appointment of all city councilors. He also stated that the planning director has been the director in the past, but the second resolution authorizes the mayor to appoint an executive director subject to council approval.

Garry Krause urged the council not to eliminate private citizens from DEDA because it will become a closed, noninclusive group controlling a process that needs to be open. He also stated that DEDA should be expanded to include diverse interests and fresh perspectives from businesses, parents and industry members.

John Olsen, representing the Minnesota Senior Federation, Northeast Chapter, voiced support of the resolutions as DEDA needs reform to be more accountable to the public to prevent spending Duluth's property taxes on businesses that do not need the help and operating under the public radar and railroading the council.

K.L. Lewis stated that DEDA should work with community groups to get the community involved in economic development.

At this time, 8:20 p.m., President Stauber closed the public hearing and the regular order of business was resumed.

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RESOLUTIONS TABLED

Councilor Gilbert moved to remove Resolutions 04-0127 and 04-0128, affirming and reversing, respectively, a decision of the board of zoning appeals to deny the appeal of the decision of the building inspector which denied the certificate of occupancy for the use of property located at 24 East Willow Street for private commercial purposes (John K. Baker, Paul T. Larson and James V. Erlemeier, by Hanft, Fride, P.A.), from the table, which motion was seconded and unanimously carried.

Responding to Councilor Gilbert, City Attorney Brown stated that the council does not have the authority to issue a certificate of occupancy for this property, but the issue is being heard by the council as the owners have a right to appeal the decision of the board of zoning appeals to the council.

Jim Erlemeier expressed frustration at the process in trying to make this commercial building fit into the neighborhood and noted that this building was used for a commercial use before the residential neighborhood came into existence.

Paul Larson and John Baker, owners of the business, reviewed that their business is being dislocated because of the St. Mary's/Duluth Clinic project and they have been looking for 1-1/2 years for a building to relocate to. They stated they will be good neighbors to the residents by not creating much noise and operating an 8:00 a.m. to 5:00 p.m. business Monday through Friday.

Bill Burns, representing the owners, reviewed that hearings have been conducted and the planning commission report will show that there is support for the project, and the owners have amply demonstrated the need for the building and their commitment not to expand the use. He continued saying that there is an ordinance before the council to change the zoning to allow this use, but the planning commission denied the change because the rezoning ordinance would create "spot zoning," which the city is trying to prevent.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

To councilor's questions, Mr. Brown replied that if the rezoning ordinance would pass, then the need for a certificate of occupancy would not be needed and the business would be allowed to relocate.

Councilor Atkins stated that there is no difference between a commercial use and what the county has done for the last few years in this building and voiced concern that this business may be lost to Duluth if they cannot find a place to relocate.

Resolution 04-0127 was adopted as follows:

BY COUNCILOR GILBERT:

WHEREAS, John K. Baker, Paul T. Larson and James V. Erlemeier appealed to the board of zoning appeals the decision of the building inspector to deny a certificate of occupancy for the use of property for private commercial purposes, located at 24 East Willow Street and legally described as the easterly 125 feet of Lot 8, Block 3, Central Acres; and

WHEREAS, the board of zoning appeals denied the appeal upon the following grounds and reasons:

(a) The property is located in a single-family residential zoning district based upon the provisions of the Section 50-47(a) of the Code and the proposed commercial use is not a permitted use in such zone;

(b) The property was previously owned by St. Louis County and used as a government garage pursuant to a special use permit. The proposed private commercial use is not an allowable use pursuant to such special use permit;

(c) The proposed private commercial use constitutes a request for a use variance which is prohibited by the Municipal Planning Act and the board of zoning appeals has no authority to authorize use variances under Section 50-47 of the Code or M.S.A. 462.357;

(d) The applicant failed to demonstrate the existence of a hardship which would justify the granting of a variance under Section 50-47 of the Code; and

WHEREAS, John K. Baker, Paul T. Larson and James V. Erlemeier have appealed the aforesaid decision to the Duluth City Council; and

WHEREAS, the city council has considered this appeal and hereby agrees with the decision made by the board of zoning appeals pursuant to Sections 50-47(a);

NOW, THEREFORE, BE IT RESOLVED, that the city council of Duluth finds that that the proposed use is not a use within the scope of the special use permit issued to St. Louis County and that the applicant does not have a substantial property right to use of the property for private commercial purposes on property which is located in an R-1 zone.

FURTHER RESOLVED, the council finds that it lacks the legal authority to authorize a use which is prohibited in an R-1 zone.

FURTHER RESOLVED, that the city council of Duluth affirms the board of zoning appeals' decision of January 27, 2004, and the appeal is denied.

Resolution 04-0127 was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Little, Ness, Stewart, Stover and President Stauber -- 7

Nays: Councilors Atkins and Reinert -- 2

Approved March 22, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0128 failed upon the following vote (Public Document No. 04-0322-08):

Yeas: Councilors Atkins and Reinert -- 2

Nays: Councilors Gilbert, Johnson, Little, Ness, Stewart, Stover and President Stauber -- 7

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**MOTIONS AND RESOLUTIONS
CONSENT AGENDA**

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

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

BY COUNCILOR NESS:

RESOLVED, that the city is authorized to enter into a sponsorship agreement with North Shore Inline Marathon under which the city will contribute \$15,000, plus in-kind services, to assist with promotion of the year 2004 marathon, which agreement is on file in the office of the city clerk as Public Document No. 04-0322-09, and such contribution shall be paid from Fund 0258-030-1431-5490.

Resolution 04-0190 was unanimously adopted.

Approved March 22, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR NESS:

RESOLVED, that the assessment roll levied to defray the assessable portion of full development for Maryland Street from Dodge to Victoria (Contract No. 5354 - assessable amount: \$405,544.56) is hereby confirmed.

Resolution 04-0191 was unanimously adopted.

Approved March 22, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR NESS:

RESOLVED, that, pursuant to Section 68 of the Duluth City Charter, the following rates of interest are to be charged on the unpaid portion of any assessment for any project for which an assessment role is approved by the council during the year 2004:

(a) If the rate of interest paid by the city on bonds to finance the construction of the project to which assessment is related was less than eight percent per annum, the rate of interest to be charged on the assessment then unpaid shall be equal to the rate of interest on the city's bonds plus 1.25 percent, provided that in no event shall the rate exceed eight percent;

(b) If the rate of interest paid by the city on bonds to finance the construction of the project to which assessment is related was eight percent per annum or higher, the rate of interest to be charged on the assessment then unpaid shall be equal to the rate of interest on the city's bonds.

FURTHER RESOLVED, that all previous resolutions establishing the assessment rates of interest under Section 68 of the Charter shall have no prospective application but shall continue to apply to any assessments to which they previously applied.

Resolution 04-0211 was unanimously adopted.

Approved March 22, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

WHEREAS, the following organizations have applied to the Minnesota gambling control board for a premise permit; and

WHEREAS, copies of said application were also filed with the city of Duluth as required by

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Minnesota Statutes 349.213, Subdivision 2, and were investigated by the Duluth police department and reviewed and approved by the Duluth alcohol, gambling and tobacco commission; and WHEREAS, the city council approves of the issuance of said licenses.

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

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.

<u>Licensee</u>	<u>Gambling Site</u>
Second Harvest Northern Food Bank	Reef Bar
Piedmont Heights Hockey Association	All American Club Terry's Place

Resolution 04-0194 was unanimously adopted.
Approved March 22, 2004
HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the reappointments by Mayor Bergson of Edwin Haller, Susan Stenerson and James F. Yeager to the sister city commission for terms expiring on March 30, 2007, are confirmed.

Resolution 04-0184 was unanimously adopted.
Approved March 22, 2004
HERB W. BERGSON, Mayor

- - -

BY COUNCILOR ATKINS:

RESOLVED, that the proper city officials are authorized to enter into a memorandum of understanding, a copy of which is on file in the office of the city clerk as Public Document No. 04-0322-10, with various state and local governmental authorities and related agencies to establish and implement an interagency stormwater pollution prevention initiative for the St. Louis River, the St. Louis River estuary and for southwestern Lake Superior by providing coordinated educational programs and technical assistance.

Resolution 04-0206 was unanimously adopted.
Approved March 22, 2004
HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

WHEREAS, it appears that it may be necessary to construct 300 feet of sanitary sewer in Highland Street Alley beginning 180 feet west of the intersection of 59th Avenue West and extending westerly.

NOW, THEREFORE, BE IT RESOLVED, that it is the intent of the city council to cause this improvement to be made, provided that further information demonstrated that the improvement should be made.

BE IT FURTHER RESOLVED, that to aid the council in determining whether or not to finally

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

order in said project, the mayor shall cause to be prepared plans and specifications for said project and will further direct procedures prescribed by Section 62 of the Charter.

Resolution 04-0185 was unanimously adopted.

Approved March 22, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that pursuant to Section 61(b) of the Home Rule Charter of the city of Duluth, the city council hereby orders the improvement, to city of Duluth standards, of those streets, avenues and parkways set forth in Public Document No. 04-0322-11 on file with the office of the city clerk; that the costs of said improvement estimated at \$4,608,620 shall be paid from the Street Improvement Fund 0440 and that 1/4 or less of said costs be levied against the property specifically benefitted by said improvements.

FURTHER RESOLVED, that the engineering staff shall meet and confer with interested members of each neighborhood involved in the program to gather public input and address public concerns involving various street design elements including but not limited to street width, boulevard design and width, tree removal and replacement, driveways and traffic patterns.

Resolution 04-0192 was unanimously adopted.

Approved March 22, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

BE IT RESOLVED, that the proper city officials are authorized to pay to Auto-Owners Insurance, as subrogee of Wendy and Eugene Lewis, the sum of \$20,761.44 in full settlement of all claims arising from a motor vehicle accident with a city vehicle on September 5, 2003; payment to be made from Self Insurance Fund 0610.

Resolution 04-0195 was unanimously adopted.

Approved March 22, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Levine and Son, Inc., be and hereby is awarded a contract for construction of sanitary sewer in Anderson Road and Decker Road and construction of watermain in Anderson Road for the engineering division in accordance with specifications on its low specification bid of \$531,690.50, terms net 30, FOB job site, \$111,655 payable out of Special Assessment Fund 0410, Department/Agency 038, Organization 5352, Object 5530, \$53,169.05 payable out of Special Assessment Fund 0410, Department/Agency 038, Organization 5374, Object 5530, \$116,971.91 payable out of Special Assessment Fund 0410, Department/Agency 038, Organization 5369, Object 5530 and \$249,894.54 payable out of Water Construction Bond Fund 0511, Department/Agency 500, Object 5532.

Resolution 04-0203 was unanimously adopted.

Approved March 22, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Resolution 03-0650 to Letourneau & Sons, Inc., for the construction of 5,200 feet of sanitary sewer, reconstruct sanitary sewer pumping station #20 - Part A and street

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

improvements - Part B in conjunction with the Morgan Park wastewater collection system - Phase I, be amended to increase the amount by \$395,445.05 for a new total of \$1,482,699.10, \$1,087,254.05 payable out of Sewer Fund 0530, Department/Agency 500, Organization 1905, Object 5533 and \$395,445.05 payable out of Street Improvement Program Fund 0440, Department/Agency 038, Organization 0407, Object 5530.

Resolution 04-0204 was unanimously adopted.

Approved March 22, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Northwest Outlet be and hereby is awarded a contract for furnishing and delivering uniforms as needed for year 2004 for the utility and maintenance operation divisions in accordance with specifications at an estimated amount of \$33,600, terms net 30, FOB destination, payable out of various funds, department/agencies, organizations, objects.

Resolution 04-0205 was unanimously adopted.

Approved March 22, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

RESOLVED, that in accordance with the provisions of Section 33-88.2 of the Duluth City Code, 1959, as amended, the following handicapped parking zones are hereby established:

Front of 4813 Grand Avenue;

Front of 3061 Restormel Street;

Next to 4032 West Fourth Street.

Resolution 04-0193 was unanimously adopted.

Approved March 22, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

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. 04-0322-12 with Dodaday pursuant to which Dodaday agrees to donate to the city a license for the Fraud Tracks software program that assists city law enforcement in fraud prevention activities; said program to be hosted by Dodaday.

Resolution 04-0212 was unanimously adopted.

Approved March 22, 2004

HERB W. BERGSON, Mayor

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The following resolutions were also considered:

BY COUNCILOR GILBERT:

RESOLVED, that pursuant to the requirements of Resolution No. 02-0606, the Duluth economic development authority's (DEDA) approval of the conveyance of certain tax-forfeited properties in the Duluth Heights neighborhood to Northern Communities Land Trust (NCLT) for the construction of new housing on in-fill sites, for which NCLT will pay DEDA's cost of acquisition in the amount of \$15,674.52, to be deposited into Fund 0865, pursuant to DEDA Resolution No. 04D-33, adopted on March 16, 2004, a copy of which is on file in the office of the city clerk as Public Document No. 04-0322-13, is hereby approved.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Resolution 04-0197 was unanimously adopted.

Approved March 22, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that pursuant to the requirements of Resolution No. 02-0606, the Duluth economic development authority's (DEDA) approval of a license agreement with Grandma's Marathon for use of the Old Northwest Iron Canal Park lot and the Marine Museum lot at no cost pursuant to DEDA Resolution No. 04D-31, adopted on March 16, 2004, a copy of which is on file in the office of the city clerk as Public Document No. 04-0322-14, is hereby approved.

Resolution 04-0198 was unanimously adopted.

Approved March 22, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that pursuant to the requirements of Resolution No. 02-0606, the Duluth economic development authority's (DEDA) authorization for the acquisition of certain property from the state of Minnesota through St. Louis County and to pay associated fees in the amount of \$15,674.52, payable from Fund 0865, pursuant to DEDA Resolution No. 04D-33, adopted on March 16, 2004, a copy of which is on file in the office of the city clerk as Public Document No. 04-0322-15, is hereby approved.

Resolution 04-0199 was unanimously adopted.

Approved March 22, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that pursuant to the requirements of Resolution Nos. 99-0239 and 02-0606, the Duluth economic development authority's (DEDA) agreement with Oneida Realty for parking lot management services for DEDA-owned and DEDA-controlled lots in Canal Park at a cost of \$30,000, payable from Fund 0865, approved at its meeting of March 16, 2004, pursuant to DEDA Resolution No. 04D-29, a copy of which is on file in the office of the city clerk as Public Document No. 04-0322-16, is hereby approved.

Resolution 04-0200 was unanimously adopted.

Approved March 22, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that pursuant to the requirements of Resolution Nos. 99-0239 and 02-0606, the Duluth economic development authority's (DEDA) agreement with the Greater Downtown Council (GDC) for program and administrative services in the Downtown and Waterfront districts at a cost of \$81,526, payable from Fund 0860, approved at its meeting of March 16, 2004, pursuant to DEDA Resolution No. 04D-30, a copy of which is on file in the office of the city clerk as Public Document No. 04-0322-17, is hereby approved.

Resolution 04-0201 was unanimously adopted.

Approved March 22, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that pursuant to the requirements of Resolution No. 02-0606, the Duluth economic development authority's (DEDA) removing certain properties from TIF District Nos. 2 and 4, pursuant to DEDA Resolution No. 04D-36, adopted on March 16, 2004, a copy of which is on file in the office of the city clerk as Public Document No. 04-0322-18, is hereby approved.

Resolution 04-0208 was unanimously adopted.

Approved March 22, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0209, by Councilor Gilbert, approving DEDA Resolution 04D-37, approving termination agreement with Saturn Systems, Inc., was introduced for discussion.

Councilor Gilbert stated that he will not support this resolution as DEDA should be working with the business for some arrangement that if in the future their business picks up, they can start to pay back the loan.

Resolution 04-0209 was adopted as follows:

BY COUNCILOR GILBERT:

RESOLVED, that pursuant to the requirements of Resolution No. 02-0606, the Duluth economic development authority's (DEDA) authorization to enter into the termination of development agreement with Saturn Systems, Inc., terminating of that development agreement dated March 15, 2000, upon issuance of a note in the amount of \$8,700 by Saturn Systems in favor of DEDA, authorized pursuant to DEDA Resolution No. 04D-37, adopted on March 16, 2004, a copy of which is on file in the office of the city clerk as Public Document No. 04-0322-19, is hereby approved.

Resolution 04-0209 was adopted upon the following vote:

Yeas: Councilors Atkins, Ness, Reinert, Stover and President Stauber -- 5

Nays: Councilors Gilbert, Johnson and Little -- 3

Abstention: Councilor Stewart -- 1

Approved March 22, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0210, by Councilor Gilbert, approving DEDA Resolution 04D-38, approving an agreement with Northspan Group, Inc., for professional services related to the EDA application for the First Street Medical District project, was introduced for discussion.

Councilor Gilbert stated that SMDC, not DEDA, should be paying for the agreement as they are receiving the benefit of the grant.

Resolution 04-0210 was adopted as follows:

BY COUNCILOR GILBERT:

RESOLVED, that pursuant to the requirements of Resolution No. 02-0606, the Duluth economic development authority's (DEDA) approval of a professional services agreement related to the preparation and submission of an application to the economic development administration of the United States government for a public works grant at a cost to DEDA of not to exceed \$6,000, payable from Fund 0865, District No. 22, pursuant to DEDA Resolution No. 04D-38,

adopted on March 16, 2004, a copy of which is on file in the office of the city clerk as Public Document No. 04-0322-20, is hereby approved.

Resolution 04-0210 was adopted upon the following vote:

Yeas: Councilors Atkins, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 8

Nays: Councilor Gilbert -- 1

Approved March 22, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

RESOLVED, that pursuant to the requirements of Resolution No. 99-0239, the Duluth economic development authority's (DEDA) approval of an amendment to development agreement with Garfield Business Park, LLC, modifying the time for performance, increasing the percentage of tax increment proceeds the developer is entitled to and allowing the issuance of a TIF note prior to completion of the first building, pursuant to DEDA Resolution No. 04D-39, adopted on March 16, 2004, a copy of which is on file in the office of the city clerk as Public Document No. 04-0322-21, is hereby approved.

Resolution 04-0214 was unanimously adopted.

Approved March 22, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0202, by President Stauber, amending Resolution 89-0323 establishing the Duluth economic development authority (DEDA), to increase the number of commissioners to nine, to require that all of the commissioners on DEDA be city councilors, to strike the requirement that certain DEDA actions must be approved by the city council and to strike the requirement that expenditures by DEDA in excess of \$25,000 must be approved by the city council, was introduced for discussion.

Councilor Atkins spoke against the resolution because all expenditures over \$25,000 come to the council for approval, there are already four councilors on DEDA, which helps the flow of information between DEDA and the council and DEDA needs the private citizen input.

Councilor Ness stated that there is a need to have public officials accountable for spending large amounts of money and changing DEDA would simplify the process, create efficiencies and make DEDA the most positive economic and housing development tool.

Councilor Reinert voiced concern about losing the public input and suggested the establishment of a DEDA commission appointed by the council and that would make recommendations to councilors.

Councilor Gilbert reviewed that there have been good changes to DEDA over the years and keeping DEDA in the same format would allow for outside input into the process.

Councilor Little stated that citizen involvement and their input are too important and valuable to lose and he felt that DEDA should remain as it currently is.

Councilor Johnson stated that being a city councilor does not give anyone any more knowledge to represent DEDA than those presently serving on DEDA and she stated that each DEDA resolution currently goes through a two step process which provides accountability.

Councilor Reinert moved to table the resolution, which motion failed upon the following vote:

Yeas: Councilors Reinert and Stover -- 2

Nays: Councilors Atkins, Gilbert, Johnson, Little, Ness, Stewart and President Stauber -- 7

Resolution 04-0202 was adopted as follows:

BY PRESIDENT STAUBER:

WHEREAS, the Duluth City Council adopted Resolution 89-0323, on April 24, 1989, establishing the Duluth economic development authority (DEDA); and

WHEREAS, the Duluth City Council adopted Resolution 98-0949, on December 21, 1998, amending the above-referenced resolution to require that four of the commissioners on DEDA be city councilors and to further require that a majority of the commissioners present at a meeting must be city councilors for action to be taken; and

WHEREAS, the Duluth City Council adopted Resolution 99-0239, on March 22, 1999, further amending the above-referenced resolution to require that any expenditure by DEDA in excess of \$25,000 be approved by the city council; and

WHEREAS, the Duluth City Council adopted Resolution 02-0606, on October 28, 2002, further amending the above-referenced resolution to require that if an action is taken by DEDA at a meeting in which council members do not constitute a majority of commissioners present and voting, then that action is not final and cannot be implemented unless and until it is approved by resolution of the Duluth City Council. (Resolution 89-0323, Resolution 98-0949, Resolution 99-0239 and Resolution 02-0606 are hereinafter referred to as the DEDA establishment resolution.); and

WHEREAS, the Duluth City Council desires to further amend the DEDA establishment resolution.

NOW, THEREFORE, BE IT RESOLVED, that Paragraph 4 of the DEDA establishment resolution is hereby amended as follows:

That the DEDA shall be governed by a board of commissioners (commissioners) consisting of nine members all of whom shall be members of the council. The term of commissioners' appointments shall coincide with their term of office as members of the city council. The appointment of the council commissioners shall expire with their terms of office as members of the council and a vacancy shall be created.

FURTHER RESOLVED, that Paragraph 4.a of the DEDA establishment resolution which reads:

4.a. If an action is taken by DEDA at a meeting in which council members do not constitute a majority of commissioners present and voting, then that action is not final and cannot be implemented unless and until it is approved by resolution of the Duluth City Council duly passed as set out in the City Charter, is hereby deleted in its entirety.

FURTHER RESOLVED, that Paragraph 19 of the DEDA establishment resolution which reads:

19. That DEDA shall not enter into an agreement or contract involving an expenditure by DEDA of more than \$25,000 without the prior approval of the council, is hereby deleted in its entirety.

Resolution 04-0202 was adopted upon the following vote:

Yeas: Councilors Johnson, Ness, Reinert, Stewart and Stover -- 5

Nays: Councilors Atkins, Gilbert, Little and President Stauber -- 4

Approved March 22, 2004

HERB W. BERGSON, Mayor

- - -

BY PRESIDENT STAUBER:

WHEREAS, the Duluth City Council adopted Resolution 89-0323, on April 24, 1989, establishing the Duluth economic development authority (DEDA); and

WHEREAS, the Duluth City Council adopted Resolution 98-0949, on December 21, 1998, amending the above-referenced resolution to require that four of the commissioners on DEDA be city councilors and to further require that a majority of the commissioners present at a meeting must be city councilors for action to be taken; and

WHEREAS, the Duluth City Council adopted Resolution 99-0239, on March 22, 1999, further amending the above-referenced resolution to require that any expenditure by DEDA in excess of \$25,000 be approved by the city council; and

WHEREAS, the Duluth City Council adopted Resolution 02-0606, on October 28, 2002, further amending the above-referenced resolution to require that if an action is taken by DEDA at a meeting in which council members do not constitute a majority of commissioners present and voting, then that action is not final and cannot be implemented unless and until it is approved by resolution of the Duluth City Council. (Resolution 89-0323, Resolution 98-0949, Resolution 99-0239 and Resolution 02-0606 are hereinafter referred to as the DEDA establishment resolution.); and

WHEREAS, the Duluth City Council desires to further amend the DEDA establishment resolution.

NOW, THEREFORE BE IT RESOLVED, that Paragraph 6 of the DEDA establishment resolution is hereby amended as follows:

6. The executive director of the DEDA shall be appointed by the mayor, subject to approval by the city council and the executive director shall act at the direction of the commissioners.

Resolution 04-0215 was unanimously adopted.

Approved March 22, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR REINERT:

WHEREAS, America's highways and transit systems that are owned and managed by local governments are a vital element of the nation's economy, the public's safety and quality of life; and

WHEREAS, congestion costs our nation more than \$78 billion each year due to delays and excess fuel consumption, with the average driver spending more than 62 hours a year in gridlock; and

WHEREAS, one-third of America's roads and bridges are in poor or deficient condition; and

WHEREAS, more than 64 percent of streets in Minnesota are approaching the end of their 50-year life span; and

WHEREAS, Minnesota's existing funding mechanisms, such as municipal state aid (MSA), property taxes, special assessments and bonding, have limited applications, leaving cities under-equipped to address growing needs; and

WHEREAS, the U.S. Senate passed a transportation reauthorization bill that taxes gasohol/blended fuels including ethanol at the same rate as gasoline and returns that revenue to the highway trust fund, eliminating diversions to the general fund; and

WHEREAS, the same Senate bill would provide the state of Minnesota more than \$2 billion from the highway trust fund during the next six years; and

WHEREAS, the Transportation Equity Act is an example of a strong federal-local partnership that makes an investment in critical local transportation and infrastructure needs;

NOW, THEREFORE, BE IT RESOLVED, by the council of the city of Duluth, Minnesota, that this council supports passage by the U.S. House of Representatives of a six-year reauthorization of the Transportation Equity Act that includes returning ethanol taxes to the highway trust fund.

BE IT FURTHER RESOLVED, that the clerk shall deliver a copy of this adopted resolution to Congressman Oberstar and Minnesota's senators.

Resolution 04-0213 was unanimously adopted.

Approved March 22, 2004

HERB W. BERGSON, Mayor

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INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

BY COUNCILOR GILBERT

04-012 - 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, SINGLE FAMILY RESIDENTIAL, TO C-4, BUSINESS CENTER COMMERCIAL DISTRICT, PROPERTY LOCATED AT 24 WILLOW STREET (ERLEMEIER/BAKER/LARSON).

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BY COUNCILOR GILBERT

04-013 - 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, TO C-2, HIGHWAY COMMERCIAL DISTRICT, PROPERTIES LOCATED ALONG THE LOWER SIDE OF GRAND AVENUE BETWEEN 41ST AND 42ND AVENUES WEST (ESLER, ET AL.).

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BY COUNCILOR GILBERT

14-015 - AN ORDINANCE AUTHORIZING CONVEYANCE OF LINCOLN PARK TOOLHOUSE TO DEDA FOR \$233,000.

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BY COUNCILOR REINERT

04-014 - AN ORDINANCE AMENDING DULUTH CITY CODE SECTION 43-33.3 CONCERNING PROPERTIES NOT HAVING A CERTIFICATE OF NONCONTRIBUTION.

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The meeting was adjourned at 9:45 p.m.

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

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, April 12, 2004, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Absent: None -- 0

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The minutes of city council meetings held on February 23, March 8 and 15, 2004, were unanimously approved.

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

04-0412-01 BN Leasing Corporation, by the Stabach Company, submitting petition to vacate a portion of Rice Avenue (platted as First Street and Ash Avenue), North Albert Posey Tract, as platted thereof on file in St. Louis County, Minnesota. -- Assessor

04-0412-02 Nick Downs submitting petition to extend the sanitary sewer within 87th Avenue West beginning 740 feet north of King Street and extending approximately 160 feet northerly. -- Assessor

04-0412-03 Duluth economic development authority, et al. (two signatures), submitting petition to vacate: the westerly 33 feet of Hugo Street, lying northerly of the easterly extension of the southerly line of Block 8 and southerly of the extended centerline of vacated Alder Street; the alley adjacent to Block 8, lying northerly of the westerly extension of the southerly line of said Block 8 and southerly of the extended centerline of vacated Alder Street; the alley in Block 14, lying north of Linden Street and abutting Lots 1 - 9 and Lots 24 - 34, inclusive; the 16 foot wide utility easement retained in the vacated alley which bisects Block 15, lying between the south line of Balsam Street and the north line of Banian Street; the 16 foot wide north-south utility easement across Balsam Street, said easement being the extension of the north-south alley and utility easement located in Block 15; a 16 foot wide north-south utility easement across Banian Street, said easement being the extension of the north-south alley and utility easement located in Block 15, all in the plat of Duluth Heights, Sixth Division. -- Assessor

04-0412-04 Diane Maki Grubb, et al. (three signatures), submitting petition to extend the sanitary sewer within Trinity Road beginning near 2528 Trinity Road and extending easterly approximately 2,200 feet. -- Assessor

04-0412-05 John E. Hovland, et al. (two signatures), submitting petition to reclassify from S to R-1-a part of the Outlot C, Northridge Estates: the N1/2 of SW1/4 of NE1/4 and part of NE1/4 of NE1/4, all in Section 9, Township 50 North, Range 14 West. -- Assessor

04-0412-06 Gayle McEnroe, et al. (four signatures), submitting petition to reclassify from M-1 to R-1-b and R-3, property described as: Section 26, Township 49, Range 15, that part of Lot 4 and of the northwest quarter of the southwest quarter lying north of the Spirit Lake Transportation Railway and east of 93rd Avenue West and Arbor Street. -- Assessor

04-0412-07 Joseph A. Ogston submitting petition to vacate 600 feet of Deerwood Street, west of the intersection with Oregon Avenue, including Lots 13 - 24, on D Street, Maple Grove Division. -- Assessor

04-0412-08 Daniel Williams, et al. (five signatures), submitting petition to improve West Seventh Street from approximately 150 feet east of 21st Avenue West to 20th Avenue West (project to be included in the 2005 street improvement program site - Lincoln Park Central East (City Project No. 0347TR)). -- Assessor

04-0412-09 Miller and Holmes, Inc., submitting acceptance of terms, conditions and

provisions of concurrent use permit granted by Ordinance No. 9633 on November 10, 2003. -- Received

04-0412-10 Judith A. Telega submitting communication in support of the 2005 street improvement program which includes the improvement of West Tenth Street (04-0192R) (supported by 24 signatuares). -- Received

04-0412-11 The following submitting communications regarding the proposed amendment of the citizen participation plan for the HUD-funded CDBG program to modify the community development committee's composition and incorporate the continuum of care process (04-0244R): (a) Claudia Lundquist; (b) Joe Perfetti. -- Received

04-0412-12 The following submitting communications regarding the Ten Commandments monument (04-0230R and 04-018-O): (a) Barry and Ila Anderson; (b) Heidi Anderson; (c) Nickoel Anderson; (d) Elliott Bayly; (e) Duane and Janice Berreth; (f) Ted Blohm; (g) Susan Bly; (h) Suzanne Boley; (i) Nick and Marcia Capra; (j) Laurie Craig; (k) Mark Danielson; (l) Barb DeMars; (m) Betty Dancer; (n) Duane Forbort; (o) Paul Gerlach; (p) Shelly Gustin; (q) Jennifer Heimark; (r) Dianne Helms; (s) Steve Hennessy; (t) Wlady L. and Frank T. Hoder; (u) Kenneth Hyatt; (v) Lisa Jadd; (w) Gary and Jerry Johnson; (x) Janet Karon; (y) Karen Kemi; (z) Kurt Klemm; (aa) L. Lewter; (bb) Rod Lubiani; (cc) Terry Luke; (dd) John Martin; (ee) Mark McGrady; (ff) Ronald Miller; (gg) Sarah Poppe; (hh) Jim Prosser; (ii) Wayne Pulford; (jj) Candace Rendulich; (kk) Judy Sheriff; (ll) Tim Sheriff; (mm) Alan Siepker; (nn) Joseph Stanczyk; (oo) Gary Stewart (2); (pp) Mike Teachworth; (qq) Elizabeth Tetzner; (rr) William van Druten; (ss) Janet Vittorio Corica (2); (tt) Patty Wheeler; (uu) Mark Windham (2); (vv) Rosalita Wright. -- Received

04-0412-24 The following submitting communications regarding rental housing use in the city (04-0263R): (a) Barb Beichler; (b) Campus Neighbors (supported by 37 signatures); (c) Janet Draper; (d) East Hillside Neighborhood District No. 6. -- Received

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REPORTS OF OFFICERS

04-0412-13 Assessor submitting:

(a) Affidavit of mailing of notice of public hearing by the special assessment board on Tuesday, April 13, 2004, at 4:00 p.m. in Room 106A, City Hall, regarding the proposed sanitary sewer extension in Highland Street Alley beginning 180 feet west of 59th Avenue West and extending 300 feet westerly;

(b) Letters of sufficiency of petitions to:

(1) Extend the sanitary sewer within 87th Avenue West beginning 740 feet north of King Street and extending approximately 160 feet northerly;

(2) Reclassify from S to R-1-a part of the Outlot C, Northridge Estates: the N1/2 of SW1/4 of NE1/4 and part of NE1/4 of NE1/4, all in Section 9, Township 50 North, Range 14 West;

(3) Vacate:

(A) 600 feet of Deerwood Street, west of the intersection with Oregon Avenue, including Lots 13 - 24, on D Street, Maple Grove Division, Duluth;

(B) A portion of Rice Avenue (platted First Street) and Ash Avenue, North Albert Posey Tract;

(C) A ten foot utility easement on the west side of Lot 1, Block 2, Hartley Hills Third Addition. -- Received

04-0412-14 Clerk submitting application to the Minnesota gambling control board for exemption from lawful gambling license from St. Luke's Foundation on July 7, 2004 (raffle). -- Received

04-0412-15 Engineering division submitting monthly project status reports of: (a) February 1; (b) March 1, 2004. -- Received

04-0412-16 Parks and recreation department director submitting Lake Superior zoological society minutes of: (a) January 21; (b) March 24, 2004, meetings. -- Received

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REPORTS OF BOARDS AND COMMISSIONS

04-0412-25 Alcohol, gambling and tobacco commission minutes of March 2, 2004, meeting. -- Received

04-0412-17 Duluth airport authority minutes of February 17, 2004, meeting. -- Received

04-0412-18 Duluth state convention center administrative board minutes of February 24, 2004, meeting. -- Received

04-0412-19 Duluth transit authority: (a) Income statement for January, 2004; (b) Minutes of January 28, 2004, meeting. -- Received

04-0412-20 Environmental advisory council minutes of: (a) December 3, 2003; (b) February 4, 2004, meetings. -- Received

04-0412-21 Heritage preservation commission minutes of: (a) December 9, 2003; (b) January 27, 2004, meetings. -- Received

04-0412-40 Planning commission minutes of March 9, 2004, meeting. -- Received

04-0412-22 Seaway Port authority of Duluth minutes of: (a) November 20, 2003; (b) January 12, 2004, meetings. -- Received

04-0412-23 Spirit Mountain recreation area authority minutes of February 18, 2004, meeting. -- Received

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OPPORTUNITY FOR CITIZENS TO BE HEARD

Dr. David Sorenson commented on youth and that the Ten Commandments are needed more than ever today to teach the correct morality.

- - -

Michael Saxton, developer for the Miller Hill 47 Limited Partnership housing project, expressed concern about the difficulty that he has had in completing a tax increment financing plan, which was included in the project's financing plan. He noted that the city council previously approved a financing plan package; however, recently the administration has informed him that tax increment financing included in the package would no longer be available and that staff has been directed not to work further on this project.

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Dave Barschdorf expressed concern that with the construction on Piedmont Avenue, there is more congestion and higher than posted speeds on Central Entrance. He felt that there should be more police radar enforcement.

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

BY COUNCILOR STEWART:

RESOLVED, that Kraemer Construction, Inc., be and hereby is awarded a contract for construction of three exterior concrete planters on existing concrete stairs and installation of

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

matching ornamental railings at Duluth main public library for the city architect division in accordance with specifications on its low specification bid of \$70,862, terms net 30, FOB job site, payable out of General Fund 0100, Department/Agency 700, Organization 2725, Object I314.

Resolution 04-0238 was unanimously adopted.

Approved April 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

RESOLVED, that Waste Management of Northern Minnesota be and hereby is awarded a contract for garbage/refuse removal at various city of Duluth buildings and locations as needed for year 2004 for the various departments and divisions in accordance with specifications at an estimated amount of \$98,000, terms net 30, FOB jobsite, payable out of various funds, departments/agencies, organizations, objects.

Resolution 04-0242 was unanimously adopted.

Approved April 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

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

Hermantown Volunteer Fire Department, 4015 Airpark Boulevard, for April 24, 2004, with Melissa Pagnac, manager.

Grandma's Marathon - Duluth, Inc., Canal Park Drive, for June 18-20, 2004, with Linda Hanson, manager.

College of St. Scholastica, 1200 Kenwood Avenue, for April 23 and 24, 2004, with Luke Moravec, manager.

Resolution 04-0246 was unanimously adopted.

Approved April 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

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 and on sale Sunday license for the period ending August 31, 2004, subject to departmental approvals:

PDL of Duluth, Inc. (Club Saratoga), 331 Canal Park Drive, transferred from Philip Fish, 100 stockholder, to Philip Fish, 75 percent stockholder and Dan Lowe, 25 percent stockholder.

Resolution 04-0247 was unanimously adopted.

Approved April 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the 2:00 a.m. closing license for the following alcoholic beverage license for the period ending August 31, 2004, subject to departmental approvals:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Grandma's Angies Mall, LLC. (Great American Bar/Grill), 1600 Miller Trunk Highway.
Resolution 04-0248 was unanimously adopted.

Approved April 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

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:

Grandma's Angie's, Inc. (Little Angie's), 11 East Buchanan Street, for June 20, 2004, with the serving ceasing at 12:30 a.m.

Resolution 04-0249 was unanimously adopted.

Approved April 12, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

RESOLVED, that Lens Auto Body be and hereby is awarded a contract for furnishing auto body repairs as needed for year 2004 for all city cars, vans, pickup trucks, etc. for the fleet division in accordance with specifications at an estimated amount of \$48,000, terms 30, FOB destination, \$20,000 payable out of Fleet Fund 0660, Department/Agency 015, Organization 1560, Object 5221 and \$28,000 payable out of Fleet Fund 0660, Department/Agency 015, Organization 1560, Object 5404.

Resolution 04-0250 was unanimously adopted.

Approved April 12, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

WHEREAS, the following organization has applied to the Minnesota gambling control board for a premise permit; and

WHEREAS, a copy of said application was also filed with the city of Duluth as required by Minnesota Statutes 349.213, Subdivision 2, and was investigated by the Duluth police department and reviewed and approved by the Duluth alcohol, gambling and tobacco commission; and

WHEREAS, the city council approves of the issuance of said license.

NOW, THEREFORE, 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

Duluth Softball Players Association

Gambling Site

Bedrock Bar

Charlies Club

Resolution 04-0259 was unanimously adopted.

Approved April 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

WHEREAS, the YWCA of Duluth and the Ruffed Grouse Society have applied to the Minnesota gambling control board for a lawful gambling exemption (raffle); and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

WHEREAS, the Duluth City Council has received copies of said exemption applications to the Minnesota gambling control board and has 60 days in which to present a resolution to said Minnesota gambling control board objecting to the exemption applications; and

WHEREAS, the city council approves of the exemption applications and wishes to waive the 60 day waiting period.

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

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

Resolution 04-0260 was unanimously adopted.

Approved April 12, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the appointment by Mayor Bergson of Pauline Olsen to the Spirit Mountain recreation area authority for a term expiring on June 30, 2006, replacing Mary Schlosser, is confirmed.

Resolution 04-0220 was unanimously adopted.

Approved April 12, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that the proper city officials are hereby authorized to enter into an amendment substantially in the form on file in the office of the city clerk as Public Document No. 04-0412-26 to City Contract No. 19311 with HRA increasing the amount payable thereunder by \$82,000 and extending the term to December 31, 2004, for CDBG Project No. 6520.

Resolution 04-0226 was unanimously adopted.

Approved April 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

RESOLVED, that the proper city officials are hereby authorized to enter into a joint powers agreement substantially in the form of the copy on file in the office of the city clerk as Public Document No. 04-0412-27 with the Minnesota housing finance agency relating to the performance of certain low-income housing tax credit allocation and compliance monitoring functions, as set forth in the agreement.

Resolution 04-0243 was unanimously adopted.

Approved April 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

WHEREAS, the community development committee (CD committee) for the CDBG program passed a resolution recommending funding changes as set forth below.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are authorized to make the following fund increase in the Federal Fund 0262, Agency 020, 2002 and 2003 HUD-

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

funded community development accounts as set forth below:

2002 CDBG Transfers Account Revised - 2002 and 2003				
Project #	Project	Budget amount	New amount	Amount of increase or decrease
6520	Acquisition/ demolition	\$210,779.96	\$275,965.00	\$65,185.04
Project #	Project	Budget amount	New amount	Amount of increase or decrease
4706	Revenue source	\$48,052.04	-0-	(\$48,052.04)
2003 CDBG Transfers Account Revised - 2003				
6615	NSCDC	\$128,400.00	\$111,267.00	(\$17,133.00)

Resolution 04-0245 was unanimously adopted.

Approved April 12, 2004

HERB W. BERGSON, Mayor

BY PRESIDENT STAUBER:

WHEREAS, the department of health and human services, administration on developmental disabilities (ADD), administration for children and families (ACF), election assistance for individuals with disabilities (EAID) has allocated to the office of secretary of state funds to pay for actual polling place improvements to assist individuals with disabilities to vote privately and independently, election official training and information about the accessibility of polling places; and

WHEREAS, the city of Duluth has reviewed that the accessibility at the Duluth Heights Community Club, 33 West Mulberry Street, which had recently been redone, needs improved signage, railings, threshold and an automatic door.

NOW THEREFORE, BE IT RESOLVED, that the proper city officials are hereby authorized to prepare and submit a grant application for \$4,400 to the Minnesota secretary of state for said polling site accessibility improvement.

BE IT FURTHER RESOLVED, that the proper city officials are hereby authorized to accept said grant if tendered by the Minnesota secretary of state and that all revenues are to be deposited into Fund 0100, Agency 700, Organization 2725, Object I304.

Resolution 04-0264 was unanimously adopted.

Approved April 12, 2004

HERB W. BERGSON, Mayor

BY COUNCILOR STOVER:

RESOLVED, that the proper city officers are hereby authorized to enter into a consultant agreement with Architectural Resources, Inc., for the sum of not to exceed \$6,611, from Water Fund 0510, Agency 500, Organization 1955, Object 5401, for providing certain architectural

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

services to the city of Duluth in connection with Lakewood pump station improvements (2004), 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. 04-0412-28.

Resolution 04-0216 was unanimously adopted.

Approved April 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are authorized to enter into a lease agreement substantially in the form of that on file in the office of the city clerk as Public Document No. 04-0412-29 with Amendola Construction Company for the leasing of the Lincoln Park Toolhouse property at no cost as part of the SMDC project.

Resolution 04-0223 was unanimously adopted.

Approved April 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are authorized to acquire a utility easement, in the form of that on file in the office of the city clerk as Public Document No. 04-0412-30, from Andrew J. and Julie M. Ernst for the sum of \$700; payable from Fund 0530, Agency 500, Organization 1915, Object 5441.

Resolution 04-0232 was unanimously adopted.

Approved April 12, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Resolution 04-0173 to Morton Salt Division c/o Hallett Dock Company, for furnishing road salt for year 2003/2004 winter season, be amended to increase the amount by \$136,175 for a new total of \$529,766.44, payable out of General Fund 0100, Department/Agency 500, Organization 2000, Object 5233.

Resolution 04-0237 was unanimously adopted.

Approved April 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Midwest Energy Resources Company be and hereby is awarded a contract for furnishing and delivering 2,597.09 tons of coal at \$22.67 per ton for a two-week test burn at the Duluth Steam Cooperative District 1, in accordance with specifications for a total cost of \$58,876.03, terms net, FOB destination, payable out of Steam District #1 Fund 0540, Department/Agency 920, Organization 1440, Object 5387.

Resolution 04-0239 was unanimously adopted.

Approved April 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Redstone Construction Company, Inc., be and hereby is awarded a contract for replacement of Bridge No. L8504 and construction of Bridge No. 69654 over Amity

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Creek at Seven Bridges Road for the engineering division in accordance with specifications on its low specification bid of \$565,118.37, terms net 30, FOB job site, payable out of Permanent Improvement Fund 0411, Department/Agency 035, Organization 2174, Object 5530.

Resolution 04-0240 was unanimously adopted.

Approved April 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Nels Nelson and Sons, Inc., be and hereby is awarded a contract for water distribution system improvements at Morgan Park - Phase II for the engineering division in accordance with specifications on its low specification bid of \$1,969,703.29, terms net 30, FOB job site, payable out of Water Fund 0510, Department/Agency 500, Organization 1905, Object 5533.

Resolution 04-0241 was unanimously adopted.

Approved April 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

WHEREAS, the city of Duluth desires to design a sanitary sewer overflow storage facility; and

WHEREAS, the city desires to hire a consulting engineer to provide the engineering services required for the design and construction of the sanitary sewer overflow storage facility at W.L.S.S.D.'s Lakeside pumping station; and

WHEREAS, M.S.A. Professional Service has submitted a proposal for engineering services in connection with this project.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with M.S.A. Professional Service to provide the city with such engineering services.

BE IT FURTHER RESOLVED, that the cost of said engineering services, estimated at \$429,236, payable from the Sewer Construction Bond Fund 0531, Dept./Agency 500, Object 5532.

Resolution 04-0253 was unanimously adopted.

Approved April 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Quality Underground Services, Inc., be and hereby is awarded a contract for construction of gas mains and services at various locations throughout the city for the utility operations division in accordance with specifications on its low specification bid of \$138,400, terms net 30, FOB job site, payable out of Gas Fund 0520, Dept./Agency 500, Organization 1905, Object 5533.

Resolution 04-0254 was unanimously adopted.

Approved April 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

BE IT RESOLVED, that in accordance with the provisions of Section 33-97.8 of the Duluth City Code, 1959, as amended, that alternate side parking shall apply only from 1:00 a.m. to 7:00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

a.m. each day at the following location: Seventh Street between Fifth Avenue East and Sixth Avenue East.

Resolution 04-0224 was unanimously adopted.

Approved April 12, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

BE IT RESOLVED, that in accordance with the provisions of Section 33-84 of the Duluth City Code, 1959, as amended, the following two hour parking, 8:00 a.m. through 5:30 p.m., Monday through Friday zone is hereby established:

north side of Fourth Street in the parking bay in front of Jarvi-Dowd Funeral and Cremation Services at 925 East Fourth Street.

Resolution 04-0225 was unanimously adopted.

Approved April 12, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

RESOLVED, that the proper city officials are hereby authorized to enter into a professional services agreement substantially in the form of that on file in the office of the city clerk as Public Document No. 04-0412-31, with CAPSR to conduct a problem-based learning train the trainer course in an amount not to exceed \$22,000, \$11,000 payable from 2002 Local Law Enforcement Block Grant Fund 215, Agency 200, Organization 2467 and \$11,000 payable from Training Fund 100, Agency 200, Organization 2435.

Resolution 04-0234 was unanimously adopted.

Approved April 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

BE IT RESOLVED, that the proper city officials are authorized to execute and implement a license agreement containing substantially the terms of that license on file with the clerk as Public Document No. 04-0412-32, which grants permission to Fond du Lac Trial and Community College to use the police department firearms range for supervised training which is part of the college's law enforcement curriculum.

Resolution 04-0262 was unanimously adopted.

Approved April 12, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR REINERT:

RESOLVED, that the city of Duluth hereby accepts a gift of \$1,050 from Windsong PCS in connection with the Windsong PCS 5on5 soccer challenge to help promote and facilitate soccer programs in Duluth; said gift to be deposited in the Special League Fund 0210, Agency 030, Organization 2190, Revenue Source 4702.

RESOLVED FURTHER, that the city administration and city council hereby express their gratitude to Windsong PCS for their generous gift.

Resolution 04-0219 was unanimously adopted.

Approved April 12, 2004

HERB W. BERGSON, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

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BY COUNCILOR REINERT:

RESOLVED, that the proper city officers are authorized to execute an agreement, filed as Public Document No. 04-0412-33, with the Over the Hill Night Riders Snowmobile Club for the grooming and maintenance of the western portion of the cross-city snowmobile trail for an amount not to exceed \$5,000; payable from General Fund 0100-500-2010-5441.

Resolution 04-0228 was unanimously adopted.

Approved April 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR REINERT:

RESOLVED, that the proper city officers are authorized to execute an agreement, filed as Public Document No. 04-0412-34, with the Drift Toppers Snowmobile Club for the grooming and maintenance of the eastern portion of the cross-city snowmobile trail for an amount not to exceed \$15,000; payable from Fund 0100-500-2010-5441.

Resolution 04-0229 was unanimously adopted.

Approved April 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR REINERT:

RESOLVED, that pursuant to the provisions of Section 35-11(e) of the Duluth City Code, 1959, as amended, the following rates are hereby set for admission at the Lake Superior Zoological Gardens located in Fairmont Park:

Rates:	13 years or older	3 through 12 years old	0 through 2 years old
Regular	\$7.00	\$3.00	free
Group	\$6.00	\$2.50	free

(a) Group rates are available only to groups of 10 or more people who have made prior arrangements and where one payment is made for the entire group;

(b) Groups of school children on school sponsored zoo tours shall be admitted at a rate of \$6.00 per student for grades 9 and up; \$2.50 per student through grade 8; and \$6.00 per person per chaperone;

(c) Groups of people with bona fide special needs or disabilities shall be admitted at the rate of \$2.50 per person and \$6.00 per person per chaperone;

(d) Special rates for zoo staff training and education and service projects provided to the zoo, may be granted by the director of the zoo after approval by the zoo management team;

(e) Special rates for community celebrations as set forth below:

Easter Egg Hunt

0-12 years - free

13 or older - \$7.00

Bubba and Berlin's Birthday Bash

0-12 years - free

13 or older - \$7.00

Zoo Year's Eve

Everyone free

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

RESOLVED FURTHER, all previous rate resolutions inconsistent with this resolution are hereby rescinded.

Resolution 04-0235 was unanimously adopted.

Approved April 12, 2004

HERB W. BERGSON, Mayor

- - -

The following resolutions were also considered:

BY COUNCILOR STEWART:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves of the issuance of the following on sale intoxicating liquor licenses and on sale Sunday licenses for the period ending August 31, 2004, subject to departmental approvals and the payment of sales and property taxes:

Grandma's Sports Bar & Grill, Inc. (Bellisio's Italian Restaurant), 405 Lake Avenue South.

Bayfront BBQ, Inc. (Famous Dave's), 355 Lake Avenue South.

Nutty Megs, Inc. (Nutty Megs Café), 11 East Superior Street.

Lake Avenue Café, Inc. (Lake Avenue Café), 394 Lake Avenue South.

Columba Ramos (Maya Family Mexican Restaurant), 1725 Miller Trunk Highway.

Resolution 04-0251 was unanimously adopted.

Approved April 12, 2004

HERB W. BERGSON, Mayor

- - -

At this time, 7:31 p.m., President Stauber announced that the public hearing regarding the 2005 low-income housing tax credit qualified allocation plan would begin.

Keith Hamre, acting director of planning and business development reviewed the plan background and process and highlighted the proposed changes as it relates to this hearing.

At this time, 7:40 p.m., President Stauber closed the public hearing and the regular order of business was resumed.

- - -

Councilor Gilbert move to suspend the rules to consider Resolution 04-0227, approving 2005 low-income housing tax credit qualified allocation plan, at this time, which motion was seconded and unanimously carried.

Resolution 04-0227 was adopted as follows:

BY COUNCILOR GILBERT:

WHEREAS, pursuant to Minnesota Statutes, Chapter 462.A221, et seq., the city of Duluth, Minnesota, is a suballocator of low-income housing tax credits (LIHTCs); and

WHEREAS, the city of Duluth as a suballocator is authorized to administer 2005 LIHTCs in an amount to be announced by the Minnesota housing finance agency in early 2005; and

WHEREAS, in accordance with Section 42 of the Internal Revenue Code of 1986, as amended, a qualified allocation plan for 2005 (the plan) setting forth criteria governing the award of the city's LIHTCs has been prepared; and

WHEREAS, the plan was available for review and written comments by the general public and a public hearing was held on April 12, 2004; and

WHEREAS, the Duluth housing commission met on March 11, 2004, and recommended approval of the plan to the city council.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

NOW, THEREFORE, BE IT RESOLVED, that the 2005 city of Duluth low-income housing tax credit qualified allocation plan, on file in the office of the city clerk as Public Document No. 04-0412-36, is hereby approved.

Resolution 04-0227 was unanimously adopted.

Approved April 12, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0217, by Councilor Gilbert, accepting the needs assessment for homeless and precariously housed American Indians in Duluth entitled "Anishinabe abi in Duluth" and adopting recommendations of the American Indian commission based on said needs assessment, was introduced for discussion.

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

Dr. Robert Powless and C.J. Bird voiced support for the resolution, citing the needs, especially in the area of housing, of the Native American community and the assets that they bring to all Duluthians.

Resolution 04-0217 was adopted as follows:

BY COUNCILOR GILBERT:

RESOLVED, that the city of Duluth hereby accepts the needs assessment for homeless and precariously housed American Indians in Duluth entitled "Anishinabe abi in Duluth," dated December 2003, on file with the city clerk as Public Document No. 04-0412-35.

FURTHER RESOLVED, that the city of Duluth hereby adopts the recommendations promulgated by the American Indian commission at its March 15, 2004, commission meeting, as set forth below and on file with the city clerk as Public Document No. 04-0412-35:

(a) The mayor and city council support the establishment of a housing work group by the American Indian commission to begin to deal with the problems as noted in the report;

(b) The mayor and city council begin to explore the acquisition and the setting aside of specific funds for American Indian housing and related issues in Duluth;

(c) The mayor and city council support the American Indian commission in its efforts to bring American Indian tribes/reservations into the process of improving American Indian housing in Duluth.

Resolution 04-0217 was unanimously adopted.

Approved April 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

WHEREAS, the day of April 16, 2004, has been designated as Community Development Day, Duluth, MN, in which Duluth is a participant in the community development block grant program which funds a myriad of public facility improvements, public social services, economic development and housing programs in this community; and

WHEREAS, in the city of Duluth and in communities throughout the nation the community development block grant program funding has developed a strong network of relationships between local government, residents and the many nonprofit agencies that provide services and help make possible our commitment to those neighborhoods; and

WHEREAS, the city of Duluth recognizes that the community development block grant program is a partnership of federal, state and local government, business, non-profit and community efforts, and that the services funded by the federal CDBG program, administered by

the local government and often delivered by local non-profit organizations, relies heavily on the dedication of and good will of our combined efforts.

NOW, THEREFORE, BE IT RESOLVED, that on Community Development Day 2004, the city of Duluth will give special thanks and recognition to all participants whose hard work and devotion to the neighborhood and their low- and moderate-income residents that help insure the quality and effectiveness of the community development block grant program.

BE IT FURTHER RESOLVED, that the city of Duluth, along with the service providers and others whose names are appended to this resolution, hereby petition the U.S. Congress and administration to recognize the outstanding work being done locally and nationally by the community development block grant program, and of its vital importance to the community and to the people who live in its lower income neighborhoods.

BE IT FURTHER RESOLVED, that copies of this resolution be conveyed to the appropriate elected and appointed officials of the federal government and that the city of Duluth, and all of its non-profit service providers, be added to the roll of those committed to the preservation and full funding of the community development block grant program and maintenance of its essential features over the course of the next session of Congress.

Resolution 04-0233 was unanimously adopted.

Approved April 12, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0236, by Councilor Gilbert, city of Duluth JOBZ sub-zone resolution of approval to authorize tax exemptions, was introduced for discussion.

Councilor Gilbert expressed concern that there will be another resolution setting the criteria for selecting businesses to locate in this zone, and that before he could support this resolution, he felt it was important for the other resolution to be reviewed. He moved to table the resolution, which motion was seconded and carried upon the following vote:

Yeas: Councilors Gilbert, Johnson, Stewart, Stover and President Stauber -- 5

Nays: Councilors Atkins, Little, Ness and Reinert -- 4

- - -

Resolution 04-0244, by Councilor Gilbert, amending the citizen participation plan for the HUD-funded community development program to modify the community development committee's composition and incorporate the continuum of care process, was introduced for discussion.

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

Bevan Schraw expressed concern that the change in the participation plan will make the committee a rubber stamp for administrative proposals or that the committee will be burdened with dividing up a smaller portion because the administration will take a larger share. He further felt that these changes will discourage any citizen participation.

Councilor Ness felt that the changes streamline and simplify the process and brings it in line with the neighborhood planning districts.

Councilor Atkins moved table the resolution for more information and discussion, which motion was seconded and carried upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Reinert, Stover and President Stauber -- 7

Nays: Councilors Ness and Stewart -- 2

- - -

Resolution 04-0230, by Councilor Stewart, authorizing settlement of a lawsuit against the city by the Minnesota Civil Liberties Union, was introduced for discussion.

- - -

President Stauber moved to suspend the rules to hear the first reading of Ordinance 04-018, at this time, which motion was seconded and unanimously carried.

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinance was read for the first time:

BY PRESIDENT STAUBER

04-018 - AN ORDINANCE AUTHORIZING AGREEMENT WITH ST. LOUIS COUNTY FOR SALE OF TEN COMMANDMENTS MONUMENT AND PROPERTY ON WHICH IT IS LOCATED.

- - -

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

Dr. Ralph Loomis, Pam Sorenson, Steve Pederson, Tom Schaer, Christina Wilson, Kevin Melin, Dave Dyjak, Charles Gilbert, Mark Wagenschutz, Joseph Brandstrom, Ben McKnight, Rosemarie Mitchell, Susan Roper, T.H. Wright, Dick Turnbull, Matt Holte, Jayne Conley, Mego Harraha, Roseann Shoberg, Joan Anderson, Eleanor Rynda, Dennis Berryhill, Curtis Kristensen, Sandi Berryhill, Dave Barsdorf, Michael Saxton and Cory Default spoke in opposition to the resolution, citing reasons of: the monument is a symbol that the citizens want their government to be accountable to a higher authority; this is not an issue of individual rights; the commandments do not represent one particular religion, which is what is referred to in the first amendment to the Constitution; government is not to regulate religion; the idea of the separation of church and state is not in the Constitution; this monument has been in its present location for over 45 years and just recently a few have decided that it is offensive; this monument was originally given to the Jews, not the Christians; if this is taken down, then is there going to be the trend to remove the Minora in the Holiday Center mall or the Christmas tree at Minnesota Power; for the sake of our youth, this needs to remain; a referendum on this should be held; a quick settlement deprives the citizens a time to react and betrays the trust of the people; the penalty clause, date of removal and the restriction that it cannot be sold to another governmental body can be rejected; many decisions from the court could affect the decision in Duluth; for 228 years, the laws of scripture have influenced government; these commandments are the foundation of our national law and have ruled thousands of years prior to the conception of the United States; assuming the city council had the right to receive and display the commandments years ago, what has changed that liberty; the monument is a symbol of morality in the community; these are standards and good examples to live by; the principles of the monument have the right reasons to be there; this is not an isolated issue and if this is not fought, it will be hard to limit what will be next; this has come about from just a vocal minority; this needs to be fought; there is a right of the majority that is not being recognized; based on the trend of court decision, the first amendment to the Constitution is being violated by default; the founding fathers did not envision a Godless society or government free from the acknowledgment of God; America has been the world's voice of morality and human rights because of the influence of God; the American Civil Liberties Union (ACLU) doctrine of there being no absolutes has adversely affected youth today; the county commissioners voted 6 to 0 to fight this; references to God appear on currency, on many public buildings and in the Pledge of Allegiance; a federal appeals court has tossed out a decision from a lower court that stated a Ten Commandments monument has to be removed; this does not squelch the voice of righteousness, we must assert our own authority as a self-governing entity; by letting the ALCU force the city to remove the commandments, they are now God; it appears that the ACLU is the governing body in Duluth; deception, twisting of the minds and manipulation is being done to convince that there must be a wall of separation between church and state; the majority of people

want a fair process, let the petition process decide the issue; the monument in the context of where it is located acknowledges the jurisprudence of our laws; the ALCU is also in the process of removing the references to God from our currency and Pledge of Allegiance, so where does this stop and as stated on our currency, "in God we trust" should be followed here.

Tom Borgran, Hal Moore, Marshall Stenersen, C.J. Bird, Sue Dailey and Doug Happy spoke in support of the resolution, citing reasons of: there needs to be room for other religious icons; the commandments are not the foundation of moral law in the United States; the commandments are about property law and the establishment of Hebrew identity during the captivity; traditional Christian values are being expressed in secular terms and are not needed; references to God are meaningless in the public sphere; the sacred text of one particular religion can not be used in public decision making; St. Louis County cannot afford to fight this cause at the expense of many who need county resources; the personal attacks from the moral majority will show the council how personal daily attacks on minorities feel; it is important to assure that the doors of City Hall are seen as open to all, not just those supporting the commandments; the heart and soul of the city will not be removed when the commandments are removed; this decision represents the responsible use of taxpayers' money and resources and if the commandments are allowed to remain, other items such as the golden calf should be on display there.

K.L. Lewis felt that there should be in front of the government buildings a listing of ethical behaviors in the form of the "Golden Rule."

Ronald Miller felt that the ACLU is a corporation, not a natural person, and should not have the protections and rights listed in the Bill of Rights.

Councilors Stewart, Stover, Gilbert, Johnson and Reinert supported the resolution, citing reasons of: government should not take any position on religion or one religion over another; the first four commandments reflect a religious belief; state and federal courts have made legal determinations on this; tactics similar to the selling of this property to the county have previously failed in the courts; the circuit court has stated that only if the commandments are displayed in a "secular" fashion are they permissible.

Councilors Atkins, Little, Ness and President Stauber opposed the resolution for reasons of: the federal district courts have had different opinions on this issue; the Ten Commandments are displayed on the door to the U.S. Supreme Court; the city should keep the commandments until a higher court decides the issue and the citizens want the courts to decide, not the city council.

President Stauber moved to table the resolution until the ordinance has a second reading and for more public input at the next council meeting, which motion was seconded and failed upon the following vote:

Yeas: Councilors Atkins, Little and President Stauber -- 3

Nays: Councilors Gilbert, Johnson, Ness, Reinert, Stewart and Stover -- 6

Councilor Ness opposed the intent of the ordinance and felt that the final decision is the city council's.

Councilor Gilbert moved to amend the resolution by replacing the second to last paragraph of the agreement to read as follows:

"NOW, THEREFORE, IT IS AGREED by and between the parties as follows:

"1. Defendants, their agents, employees, and all persons acting in concert with the defendants shall remove the Ten Commandments monument from the Duluth City Hall premises.

2. No party shall pay any cost, fee, damages or award to any other party," which motion was seconded and discussed.

To concerns addressed, Councilor Gilbert and the seconder to the motion, agreed to add to number one, after the word "premises" the phrase "at a date to be negotiated by the attorneys."

The amendment carried upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert and President Stauber -- 7

Nays: Councilors Stewart and Stover -- 2

Councilor Stewart stated that he would now not be able to support the resolution because of the amendment and that the resolution does nothing.

Resolution 04-0230, as amended, was adopted as follows:

BY COUNCILOR STEWART:

BE IT RESOLVED, that the city attorney is authorized to execute and implement any document needed to settle and resolve the pending lawsuit in federal district court, Civil File No. 04-1079, by agreeing to substantially those terms and conditions set out in the proposed settlement agreement on file with the clerk as Public Document No. 04-0412-37.

Resolution 04-0230, as amended, was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Reinert, Stover and President Stauber -- 5

Nays: Councilors Atkins, Little, Ness and Stewart -- 4

Approved April 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

BE IT RESOLVED, that the proper city officials are authorized to execute and implement a contract, containing substantially the same terms as that contract on file with the city clerk as Public Document No. 04-0412-38, with the Minnesota financial crimes task force, its participants, or the state of Minnesota in order to participate in the task force; any reimbursement received from the task force to be deposited in General Fund 0100, Police Department Agency 200.

Resolution 04-0218 was unanimously adopted.

Approved April 12, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0263, by Councilor Reinert, recommending various actions to improve rental housing use in the city, was introduced for discussion.

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

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Resolution 04-0265, by Councilor Reinert, amending Resolution 89-0323 establishing the Duluth economic development authority (DEDA) to provide for a citizen advisory body, was introduced for discussion.

Councilor Reinert 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:

BY COUNCILOR NESS

04-022 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED; ADDING A NEW SECTION 50-37 TO PROVIDE FOR REGULATORY CONTROLS FOR DESIGNATED AREA DEVELOPMENTS.

- - -

BY COUNCILOR GILBERT

04-016 - AN ORDINANCE AMENDING ORDINANCE 9586 AMENDING TRADITIONAL NEIGHBORHOOD DISTRICT NO. 2, PROPERTY BOUNDED ON THE NORTH BY 13TH STREET, ON THE EAST BY CENTRAL ENTRANCE, ON THE SOUTH BY 11TH STREET AND ON THE WEST BY SECOND AVENUE WEST (HOUSING AND REDEVELOPMENT AUTHORITY).

- - -

BY COUNCILOR GILBERT

04-020 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED; ADDING A NEW SECTION 50-37 TO PROVIDE FOR THE REGULATORY CONTROLS FOR PLANNED UNIT DEVELOPMENTS.

- - -

BY COUNCILOR ATKINS

04-017 - AN ORDINANCE AMENDING SECTION 29C-5 AND ADDING NEW ARTICLE II TO CHAPTER 29C OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO HUMAN RIGHTS; ESTABLISHING A HUMAN RIGHTS ORDINANCE WHICH IS HUD COMPLIANT, AS AUTHORIZED BY LAWS OF MINNESOTA, 2000, CHAPTER 402.

- - -

The following entitled ordinances are to be read for the second time:

BY COUNCILOR GILBERT

04-012 - 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, SINGLE FAMILY RESIDENTIAL, TO C-4, BUSINESS CENTER COMMERCIAL DISTRICT, PROPERTY LOCATED AT 24 WILLOW STREET (ERLEMEIER/BAKER/LARSON).

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

Paul Larson and John Baker, requested support for the ordinance and stated that they have been in business in Duluth since 1968 and have been looking for a year and a half for a suitable building in Duluth because their businesses are being dislocated because of the St. Mary's expansion project.

Jim Erlemeier expressed support for this rezoning, noting that: the county approved the purchase of this building; the majority of the residents support a small business and that there is no other place to relocate to because there are so many negatives that the city puts in the way of small business owners.

Mark Overland, neighbor of the area affected, noted that: the other neighbors and himself oppose the rezoning because this is a family area; there are no sidewalks, kids walk up and down the streets and having flatbed trucks with big equipment traveling up and down this street is inappropriate for this neighborhood and property. He felt that this property should be zoned residential as is all the surrounding area.

William Burns, attorney for the applicants, noted that: this zoning classification is the only zoning classification in that neighborhood that would allow this sort of business; the county has no intention to convert this property to residential use and that the applicants have no intent to sell this property in the future.

Councilors Stewart, Ness and Reinert expressed concern that any rezoning done here would be forever and that any future business operator for this location, while legally allowed, would be extremely offensive and have a high impact on the neighborhood.

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

At this time, 11:00, p.m., Councilor Atkins moved to suspend the rules to extend the meeting until 11:15 p.m., which motion was seconded and unanimously carried.

- - -

Councilor Atkins and Stover noted that the city has supported \$90 million for the St. Mary's/Duluth Clinic (SMDC) expansion and that someone has not followed through with the commitments of the successful relocation of businesses being displaced.

Councilor Gilbert moved the passage of the ordinance and the same failed upon the following vote (Public Document No. 04-0412-39):

Yeas: Councilors Atkins and Stover -- 2

Nays: Councilors Gilbert, Johnson, Little, Ness, Reinert, Stewart and President Stauber -- 7

- - -

BY COUNCILOR GILBERT

04-013 (9654) - 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, TO C-2, HIGHWAY COMMERCIAL DISTRICT, PROPERTIES LOCATED ALONG THE LOWER SIDE OF GRAND AVENUE BETWEEN 41ST AND 42ND AVENUES WEST (ESLER, ET AL.).

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

- - -

BY COUNCILOR GILBERT

04-015 (9655) - AN ORDINANCE AUTHORIZING CONVEYANCE OF LINCOLN PARK TOOLHOUSE TO DEDA FOR \$233,000.

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

- - -

BY COUNCILOR REINERT

04-014 (9656) - AN ORDINANCE AMENDING DULUTH CITY CODE SECTION 43-33.3 CONCERNING PROPERTIES NOT HAVING A CERTIFICATE OF NONCONTRIBUTION.

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

- - -

The meeting was adjourned at 11:07 p.m.

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 9654

BY COUNCILOR GILBERT:

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, TO C-2, HIGHWAY COMMERCIAL DISTRICT, PROPERTIES LOCATED ALONG THE LOWER SIDE OF GRAND AVENUE BETWEEN 41ST AND 42ND AVENUES WEST (ESLER, ET AL.).

The city of Duluth does ordain:

Section 1. That Plate No. 17 of the zoning district map as contained in the Appendix to

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Chapter 50 of the Duluth City Code, 1959, is amended to read as follows:

(MAP)

(see Map No. 17 at end of meeting)

(Reference File No. 04011)

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: May 23, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Nays: None -- 0

Passed April 12, 2004

Approved April 12, 2004

ATTEST:

JEFFREY J. COX, City Clerk

HERB W. BERGSON, Mayor

- - -

ORDINANCE NO. 9655

BY COUNCILOR GILBERT:

AN ORDINANCE AUTHORIZING CONVEYANCE OF LINCOLN
PARK TOOLHOUSE TO DEDA FOR \$233,000.

The city of Duluth does ordain:

Section 1. That the proper city officials are hereby authorized to convey the below-described property in St. Louis County, Minnesota, to the Duluth economic development authority for the sum of \$233,000, payable to the Fund 0530 (sanitary sewer fund), Agency 500, Revenue Source 4853:

Lots 385, 387, 389, 391, 393 and 395, Block 77, DULUTH PROPER Second Division.

Section 2. This ordinance shall take effect 30 days from and after its passage and publication. (Effective date: May 23, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Nays: None -- 0

Passed April 12, 2004

Approved April 12, 2004

ATTEST:

JEFFREY J. COX, City Clerk

HERB W. BERGSON, Mayor

- - -

ORDINANCE NO. 9656

BY COUNCILOR REINERT:

AN ORDINANCE AMENDING DULUTH CITY CODE SECTION 43-
33.3 CONCERNING PROPERTIES NOT HAVING A CERTIFICATE
OF NONCONTRIBUTION.

The city of Duluth does ordain:

Section 1. That Section 43-33.3 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 43-33.3. Notification to buyers and mortgagees.

(a) This Section 43-33.3 applies to the transfer or encumbrance of interests in property, which is required to be served by the city sewer, as set out in Section 43-16, or its successor, for which property no valid certificate of noncontribution has been issued and is in force;

(b) Within 30 days before, or at the time of, a transfer of title, or a transfer of an interest in, or the entering into of a contract for deed for, or contract for sale of, or a real estate transaction closing set by provisions of a previous purchase agreement of a property described in (a) above a written notice must be given;

(c) The notice referred to in (b) above must be given by the owner or seller and it must be given to each buyer, each mortgagee, each recipient of an interest in the property, and the building official of the city of Duluth or the building official's designee;

(d) The notice referred to in (b) and (c) above shall be written, in a form acceptable for recording by the St. Louis County recorder of deeds and in the form of a sworn affidavit. It shall contain the following information:

(1) Identify the property;

(2) The fact that there may be no valid certificate of noncontribution, issued under this ordinance, in force for the property;

(3) The fact that the property may not be in compliance with this Chapter 43;

(4) That under this ordinance the city has the authority to require inspection of the property by the city and remediation actions by the owner, which can include disconnection and repair of drains, so that the property comes into compliance;

(5) That, in addition to costs of remediation, and the monthly surcharge for noncompliance, as set in accordance with Section 31-6(a) of this Code, the maximum penalty for noncompliance is that set out in D.C.C. 1-7, currently \$1,000 each day of noncompliance.

Section 2. That this ordinance shall take effect and be in force 30 days after its passage and publication. (Effective date: May 23, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed April 12, 2004
Approved April 12, 2004
HERB W. BERGSON, Mayor

- - -

OFFICIAL PROCEEDINGS

Special meeting of the Duluth City Council held on Monday, April 19, 2004, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Atkins, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 8

Absent: Councilor Gilbert -- 1

- - -

MOTIONS AND RESOLUTIONS

The following entitled resolution was read for the first time:

BY COUNCILOR NESS

04-0288 - RESOLUTION AMENDING STANDING RULE 7 OF STANDING RULES OF THE DULUTH CITY COUNCIL.

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinance was read for the second time:

BY COUNCILOR JOHNSON (INTRODUCED BY COUNCILOR GILBERT)

04-016 (9657) - AN ORDINANCE AMENDING ORDINANCE 9586 AMENDING TRADITIONAL NEIGHBORHOOD DISTRICT NO. 2, PROPERTY BOUNDED ON THE NORTH BY 13TH STREET, ON THE EAST BY CENTRAL ENTRANCE, ON THE SOUTH BY 11TH STREET AND ON THE WEST BY SECOND AVENUE WEST (HOUSING AND REDEVELOPMENT AUTHORITY).

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

- - -

The meeting was adjourned at 7:04 p.m.

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 9657

BY COUNCILOR JOHNSON (introduced by Councilor Gilbert):

AN ORDINANCE AMENDING ORDINANCE 9586 AMENDING TRADITIONAL NEIGHBORHOOD DISTRICT NO. 2, PROPERTY BOUNDED ON THE NORTH BY 13TH STREET, ON THE EAST BY CENTRAL ENTRANCE, ON THE SOUTH BY 11TH STREET AND ON THE WEST BY SECOND AVENUE WEST (HOUSING AND REDEVELOPMENT AUTHORITY).

The city of Duluth does ordain:

Section 1. Development within the boundaries of Traditional Neighborhood District No. 2 shall be governed by and regulated in accordance with Public Document No. 04-0419-01 entitled "Harbor View /Central Hillside Revitalization, Traditional Neighborhood Development Code, dated November 15, 2002, amended December 20, 2002, amended March 17, 2004."

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: May 23, 2004)

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

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

Yeas: Councilors Atkins, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 8

Nays: None -- 0

Absent: Councilor Gilbert -- 1

ATTEST:

JEFFREY J. COX, City Clerk

Passed April 19, 2004

Approved April 19, 2004

HERB W. BERGSON, Mayor

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, April 26, 2004, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Absent: None -- 0

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

04-0426-01 City of Hermantown submitting notice terminating the Miller Creek joint powers board. -- Received

04-0426-02 Andrew Baertsch submitting acceptance of terms, conditions and provisions of concurrent use permit granted by Ordinance No. 9645 on February 2, 2004. -- Received

04-0426-24 The following submitting communications regarding the Ten Commandments monument (04-0307R and 04-018-O): (a) Mary Gallegos; (b) David A. Listiak; (c) Roger A. Mattson; (d) Roger Parsons. -- Received

- - -

REPORTS OF OFFICERS

04-0426-03 Assessor submitting letters of sufficiency of petitions to:

(a) Construct West Seventh Street from approximately 150 feet east of 21st Avenue West to 20th Avenue West to be included in 2005 street improvement program site - Lincoln Park Central East;

(b) Reclassify from M-1 to R-1-b and R-3, property described as Section 26, Township 49, Range 15, that part of Lot 4 and the northwest quarter of the southwest quarter lying north of the Spirit Lake Transportation Railway and east of 93rd Avenue West and Arbor Street;

(c) Vacate properties within the Phase II final plat for the Billman/Habitat Housing Development project located in Duluth Heights Sixth Division. -- Received

- - -

REPORTS OF BOARDS AND COMMISSIONS

04-0426-04 Commission on disabilities minutes of April 7, 2004, meeting. -- Received

04-0426-05 Duluth human rights commission minutes of April 14, 2004, meeting. -- Received

04-0426-06 Parking commission minutes of March 9, 2004, meeting. -- Received

- - -

RESOLUTIONS TABLED

Councilor Gilbert moved to remove Resolution 04-0244, amending the citizen participation plan for the HUD-funded community development program to modify the community development committee's composition and incorporate the continuum of care process, from the table, which motion was seconded and unanimously carried.

Resolution 04-0244 was adopted as follows:

BY COUNCILOR GILBERT:

WHEREAS, the city of Duluth is a recipient of grant funds pursuant to the Housing and Community Development Act of 1974 and the Cranston-Gonzalez Act of 1992, as amended, for the community development block grant (CDBG) program, HOME investment partnerships program and emergency shelter grant program; and

WHEREAS, the Duluth City Council passed Resolution 84-0731, which adopted a citizen participation plan for the aforesaid program; and

WHEREAS, on July 10, 2000, the Duluth City Council passed Resolution 00-0469, which amended the citizen participation plan to change the name of the advisory committee and modify the yearly funding calendar and to work with neighborhood districts;

NOW, THEREFORE, BE IT RESOLVED, that the city Duluth community development program citizen participation plan, dated February 2004, on file with the city clerk as Public Document No. 04-0426-07 be hereby adopted.

Resolution 04-0244 was unanimously adopted.

Approved April 26, 2004

HERB W. BERGSON, Mayor

- - -

Councilor Reinert moved to remove Resolution 04-0263, recommending various actions to improve rental housing use in the city, from the table, which motion was seconded and unanimously carried.

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

Alan Kehr voiced concern on the resolution because it is flawed and punishes all rental unit owners for the bad behavior of a few which is in turn bad for the city.

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

- - -

Councilor Reinert moved to remove Resolution 04-0265, amending Resolution 89-0323 establishing the Duluth economic development authority (DEDA) to provide for a citizen advisory body, from the table, which motion was seconded and unanimously carried.

Councilor Reinert stated that the councilors need a more diverse perspective and would get that from an advisory committee.

Councilor Atkins questioned when the council would meet with this advisory committee to receive their information before a DEDA meeting and suggested that the advisory committee actually meet with DEDA when deliberations are done to prevent a delay for DEDA in making decisions.

Several councilors stated that the idea is good but all the details need to be worked out before the issue is voted on.

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

- - -

MOTIONS AND RESOLUTIONS

The following entitled resolution was read for the second time:

BY COUNCILOR NESS

04-0288 - RESOLUTION AMENDING STANDING RULE 7 OF STANDING RULES OF THE DULUTH CITY COUNCIL.

Councilor Ness introduced the resolution.

Councilor Stover explained that he would not support this resolution as several groups want to be represented at the council meeting and may have only one person willing to speak before the council.

Resolution 04-0288 was adopted as follows:

BY COUNCILOR NESS:

BE IT RESOLVED, that Rule 7 of the Standing Rules of the Duluth City Council, adopted May 13, 2002, is amended by deleting the last paragraph thereof, so that Rule 7 reads 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 of mayor, administrative assistant and other officers;
6. Reports of boards and commissions;
7. Reports of council committees;
8. Reports of council open issues;
9. Opportunity for citizens to be heard;
10. Unfinished business;
11. New business, motions, resolutions;
12. Introduction and consideration of ordinances;
13. Councilor questions and comments.

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 04-0288 was adopted upon the following vote:

Yeas: Councilors Atkins, Johnson, Little, Ness, Reinert, Stewart and President Stauber -- 7

Nays: Councilors Gilbert and Stover -- 2

Approved April 26, 2004

HERB W. BERGSON, Mayor

- - -

CONSENT AGENDA

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

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

BY COUNCILOR NESS:

BE IT RESOLVED, that the proper city officials are authorized to execute and implement a collective bargaining agreement with the city of Duluth Supervisory Association, containing the same terms and conditions, and being in the same form (except for typographical or insubstantial corrections) as the contract on file with the city clerk as Public Document No. 04-0426-08, covering the year 2003.

Resolution 04-0291 was unanimously adopted.

Approved April 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR NESS:

BE IT RESOLVED, that the proper city officials are authorized to execute and implement a collective bargaining agreement with the city of Duluth Supervisory Association, containing the

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

same terms and conditions, and being in the same form (except for typographical or insubstantial corrections) as the contract on file with the city clerk as Public Document No. 04-0426-09, covering the years 2004-2006.

Resolution 04-0292 was unanimously adopted.
Approved April 26, 2004
HERB W. BERGSON, Mayor

- - -

BY COUNCILOR NESS:

BE IT RESOLVED, that the proper city officials are authorized to execute and implement a collective bargaining agreement with the Duluth police local, containing the same terms and conditions, and being in the same form (except for typographical or insubstantial corrections) as the contract on file with the city clerk as Public Document No. 04-0426-10, covering the year 2003.

Resolution 04-0293 was unanimously adopted.
Approved April 26, 2004
HERB W. BERGSON, Mayor

- - -

BY COUNCILOR NESS:

BE IT RESOLVED, that the proper city officials are authorized to execute and implement a collective bargaining agreement with the Duluth police local, containing the same terms and conditions, and being in the same form (except for typographical or insubstantial corrections) as the contract on file with the city clerk as Public Document No. 04-0426-11, covering the years 2004-2006.

Resolution 04-0294 was unanimously adopted.
Approved April 26, 2004
HERB W. BERGSON, Mayor

- - -

BY COUNCILOR NESS:

BE IT RESOLVED, that the proper city officials are authorized to execute and implement a collective bargaining agreement with the Local 101 International Association of Firefighters, containing the same terms and conditions, and being in the same form (except for typographical or insubstantial corrections) as the contract on file with the city clerk as Public Document No. 04-0426-12, covering the year 2003.

Resolution 04-0295 was unanimously adopted.
Approved April 26, 2004
HERB W. BERGSON, Mayor

- - -

BY COUNCILOR NESS:

BE IT RESOLVED, that the proper city officials are authorized to execute and implement a collective bargaining agreement with the Local 101 International Association of Firefighters, containing the same terms and conditions, and being in the same form (except for typographical or insubstantial corrections) as the contract on file with the city clerk as Public Document No. 04-0426-23, covering the years 2004-2006.

Resolution 04-0296 was unanimously adopted.
Approved April 26, 2004
HERB W. BERGSON, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

BY COUNCILOR STEWART:

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, 2004, and ending April 30, 2005, 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. 02-0426-13.

Resolution 04-0256 was unanimously adopted.

Approved April 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

RESOLVED, that the city council of the city of Duluth hereby issues off sale 3.2 percent malt liquor license renewals for the period beginning May 1, 2004, and ending April 30, 2005, 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. 04-0426-14.

Resolution 04-0257 was unanimously adopted.

Approved April 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves issuance of the following bottle club license by the liquor control commissioner for the period beginning April 1, 2004, and ending March 31, 2005, subject to departmental approvals and the payment of sales and property taxes:

Order of Owls, Nest #1200, 118 East Second Street.

Resolution 04-0258 was unanimously adopted.

Approved April 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

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 Commerce Street, the Lakeshore, Canal Park Drive and Lake Avenue during the marathon on June 19, 2004, and confined to the fenced in parking lot at night on June 18-20, 2004, in conjunction with Grandma's Marathon, 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 04-0267 was unanimously adopted.

Approved April 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

RESOLVED, that Environmental Systems Research Institute (ESRI) be and hereby is awarded a contract for furnishing G.I.S. software and license for the M.I.S. division in accordance with specifications on its low specification bid of \$10,497.26, terms net 30, FOB destination,

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

payable out of various funds, departments/agencies, organizations, objects.

Resolution 04-0273 was unanimously adopted.

Approved April 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

RESOLVED, that Aspen Equipment Company be and hereby is awarded a contract for furnishing and delivering a cross country trail groomer for the maintenance operations division in accordance with specifications on its low specification bid of \$159,360, terms net 30, FOB destination, payable out of Capital Equipment Fund 0250, Department/Agency 015, Organization BD04, Object V404.

Resolution 04-0274 was unanimously adopted.

Approved April 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves issuance of the 2:00 a.m. closing license renewals for the following 3.2 percent malt liquor licenses for the period beginning May 1, 2004, and ending April 31, 2005, 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. 04-0426-15.

Resolution 04-0301 was unanimously adopted.

Approved April 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the proposed amendments to the specifications for the civil service classification of library technician, which were approved by the civil service board on April 6, 2004, and which are filed with the city clerk as Public Document No. 04-0426-16, are approved. This classification shall remain subject to the city's collective bargaining agreement with its basic unit employees and compensated at Pay Range 119A-123E, \$1,873 to \$2,574 per month.

Resolution 04-0283 was unanimously adopted.

Approved April 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the proposed amendments to the specifications for the civil service classification of senior library technician, which were approved by the civil service board on April 6, 2004, and which are filed with the city clerk as Public Document No. 04-0426-17, are approved. This classification shall remain subject to the city's collective bargaining agreement with its basic unit employees and compensated at Pay Range 125, \$2,377 to \$2,785 per month.

Resolution 04-0284 was unanimously adopted.

Approved April 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the reappointments by Mayor Bergson of Lynn Nell Begay, Michelle M.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Gordon, Anthony F. LaDeaux and Warner B. Wirta to the American Indian commission for terms expiring on May 12, 2007, are confirmed.

Resolution 04-0297 was unanimously adopted.

Approved April 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointment by Mayor Bergson of Steve O'Neil (low income housing) to the Duluth housing commission for a term expiring on November 8, 2004, replacing Pam Johnson, who resigned, is confirmed.

Resolution 04-0298 was unanimously adopted.

Approved April 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointments by Mayor Bergson of Pat Castellano, for a term expiring on October 31, 2005, and Marcia Opie, for a term expiring on October 31, 2006, to the animal humane board, replacing Cherie Franzen and Gerald Abelsen, who resigned, are confirmed.

Resolution 04-0299 was unanimously adopted.

Approved April 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointments by Mayor Bergson of Albert M. Katz and Eileen Zeitz Hudelson to the sister city commission for terms expiring on March 30, 2006, replacing Leonore Baeumler and Shirley Graham, are confirmed.

Resolution 04-0300 was unanimously adopted.

Approved April 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointments by Mayor Bergson of Jonathan J. Lee, for a term expiring on September 30, 2006, Sue Matuszak, for a term expiring on September 30, 2007, and Tomasz Majewski, for a term expiring on September 30, 2005, to the Duluth public arts commission, replacing David S. Boe, Amy Feddema and Daniel Sepion, respectively, who resigned, are confirmed.

Resolution 04-0302 was unanimously adopted.

Approved April 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointments by Mayor Bergson of Rachel Scott, for a term expiring on November 1, 2005, and Jessica L. Durbin and Billy T. Wirta, for terms expiring on November 1,

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

2006, to the commission on disabilities, replacing D.D. Davison, Hollis M. Caldwell and Sherri Lombardi, who resigned, are confirmed.

Resolution 04-0304 was unanimously adopted.

Approved April 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointment by Mayor Bergson of Terry Johnson to the alcohol, gambling and tobacco commission for a term expiring on March 20, 2007, replacing Edwin S. Levey, is confirmed.

Resolution 04-0305 was unanimously adopted.

Approved April 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

WHEREAS, a sufficient petition was filed with the city clerk requesting the vacation of a ten foot utility easement on the west side of property located at 318 Marshall Street legally described as: the northerly 140.3 feet of the westerly ten feet of Lot 1, Block 2, Hartley Hills, Third Addition; and

WHEREAS, 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

WHEREAS, the city planning commission approved, unanimously, the easement vacation petition at its April 13, 2004, meeting.

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation of the utility easement described above and as more particularly described on Public Document No. 04-0426-18.

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

Resolution 04-0280 was unanimously adopted.

Approved April 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

WHEREAS, a sufficient petition was filed with the city clerk requesting the vacation of 131 feet of undeveloped Tromsoe Street legally described as: that portion of Tromsoe Street, adjoining Lots 22-26, Block 3, Homebuilders Park, including that portion lying southeasterly of a line from the southwest corner of said Lot 22 to the northwest corner of Lot 6, Block 2, Mont Du Vue; and

WHEREAS, 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

WHEREAS, the city planning commission approved, unanimously, the street vacation petition at its April 13, 2004, meeting.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation of the street described above and as more particularly described on Public Document No. 04-0426-19.

RESOLVED FURTHER, that the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of St. Louis County, Minnesota, a certified copy of this resolution together with a plat showing the portion of the street to be vacated.

Resolution 04-0281 was unanimously adopted.

Approved April 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

WHEREAS, a sufficient petition was filed with the city clerk requesting the vacation of portions of unimproved Rice and Ash avenues rights-of-way, approximately 200 feet northwest of Garfield Avenue legally described as: all of Rice Avenue lying north of the south line of Ash Avenue, and that portion of Ash Avenue adjoining Lots 40 and 42, Rice Avenue, North Albert Posey Tract according to the recorded plat thereof on file in St. Louis County, Minnesota; and

WHEREAS, 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

WHEREAS, the city planning commission approved, unanimously, the street vacation petition at its April 13, 2004, meeting.

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation of the streets described above and as more particularly described on Public Document No. 04-0426-20.

RESOLVED FURTHER, that the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of St. Louis County, Minnesota, a certified copy of this resolution together with a plat showing the portion of the streets to be vacated.

Resolution 04-0282 was unanimously adopted.

Approved April 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that the proper city officials are hereby authorized to accept the free conveyance of the following-described property in St. Louis County, Minnesota, from the Duluth economic development authority (DEDA) subject to the conditions of DEDA Resolution No. 04D-40 adopted April 19, 2004, filed as Public Document No. 04-0426-24:

Lots 5 through 8, Block 16, Oneota Duluth, and

Lots 1 through 5, Block C, West Duluth Seventh Division.

Resolution 04-0285 was unanimously adopted.

Approved April 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that the proper city officials are hereby authorized to accept DEDA's reimbursement in an amount not to exceed \$21,000, to be deposited into City Fund 0510, Agency 500, Organization 1905, Object 5535, for costs incurred by the city in design work, construction

monitoring and inspection work related to the extension of a water line and extension of an alley for the Gary-New Duluth infill housing development, said reimbursement authorized pursuant to DEDA Resolution 04D-44.

Resolution 04-0286 was unanimously adopted.

Approved April 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that the proper city officials are hereby authorized to accept the conveyance of an easement substantially in the form of that on file in the office of the city clerk as Public Document No. 04-0426-21 from the Duluth economic development authority for alley purposes:

Property located in St. Louis County, Minnesota described as follows:

That part of Lot 6, Block 51, GARY First Division lying north of the following described line: commencing at a point on the west line of said Lot 6 being ten feet south of the northwesterly corner of said Lot 6; thence proceeding in a easterly direction along a line ten feet south of and parallel to the north line of said Lot 6 to a point ten feet to the west of the east line of said Lot 6; thence deflecting in a southeasterly direction to a point on the east line of said Lot 6 lying 20 feet south of the northeasterly corner of said Lot 6 and there terminating.

That part of Lot 7, Block 51, GARY First Division lying south of the following described line: commencing at a point on the west line of said Lot 7 being ten feet north of the southwesterly corner of said Lot 7; thence proceeding in a easterly direction along a line ten feet north of and parallel to the south line of said Lot 7 to a point ten feet to the west of the east line of said Lot 7; thence deflecting in a northeasterly direction to a point on the east line of said Lot 7 lying 20 feet north of the southeasterly corner of said Lot 7 and there terminating.

Resolution 04-0287 was unanimously adopted.

Approved April 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR ATKINS:

RESOLVED, that the proper city officers are hereby authorized to enter into a lease agreement with St. Louis and Lake counties Regional Railroad authority for the exclusive use of Municipal Lot D located under the Interstate 35 freeway between Fourth and Fifth avenues West for parking for the patrons and customers of its excursion trains operating from the St. Louis County Heritage and Arts Center for the period June 1, 2004, through September 30, 2004, at no cost to the authority.

Resolution 04-0268 was unanimously adopted.

Approved April 26, 2004

HERB W. BERGSON, Mayor

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BY PRESIDENT STAUBER:

NOW, THEREFORE, BE IT RESOLVED, as follows:

(a) That the city of Duluth act as legal sponsor for the project contained in the remediation fund grant program application to be submitted by March 31, 2004, and that the director of administrative services is hereby authorized to apply to the department of natural resources for funding for this project on behalf to the city of Duluth;

(b) That the city of Duluth has the legal authority to apply for financial assistance and ensure adequate management and protection;

(c) That the city of Duluth has not incurred any costs and has not entered into a written purchase agreement for the property;

(d) That upon approval of its application by the state, the city of Duluth after city council approval and acceptance of the grant agreement document may enter into an agreement with the state of Minnesota for the above referenced project, and that once approved by the Duluth City Council, the city of Duluth will then certify that it will comply with all applicable laws and regulations as stated in the grant agreement including dedicating the project property for natural resource conservation and protection uses in perpetuity;

(e) That in the event of title discrepancies or encumbrances that the department of natural resources deems interfere with the purpose for which these funds were granted, or if department of natural resources determine that the project or property is no longer used and maintained for its original purpose, the city of Duluth shall reimburse DNR for the state funds received for the project;

(f) That the director of administrative services is hereby authorized to execute and file an application and related documents as are necessary to complete the project application on behalf of the city.

Resolution 04-0221 was unanimously adopted.

Approved April 26, 2004

HERB W. BERGSON, Mayor

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BY PRESIDENT STAUBER:

BE IT RESOLVED, that the proper city officers are hereby authorised to purchase Lots 1-9, Block 1, Lincoln Park Terrace (010-2920-00010 and 00060) from the state of Minnesota for the amount of \$10,894.65, payable from Fund 0521, Agency 500, Object 5532.

Resolution 04-0222 was unanimously adopted.

Approved April 26, 2004

HERB W. BERGSON, Mayor

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BY PRESIDENT STAUBER:

RESOLVED, that the proper city officers are hereby authorized to accept the transfer of a limited fee title to the below-described property from St. Louis County for inclusion in the Duluth natural areas program for a property transfer administration fee of \$500 payable from Fund 0100, Agency 015, Organization 2500, Object 5441 and to execute all documents necessary with regard thereto:

Government Lot 3, Section 10, Township 48 North, Range 15, West (010-2730-01200).

Resolution 04-0266 was unanimously adopted.

Approved April 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

WHEREAS, it appears that it may be necessary to construct 160 feet of sanitary sewer in 87th Avenue West beginning 740 feet north of King Street and extending northerly.

NOW, THEREFORE, BE IT RESOLVED, that it is the intent of the city council to cause this improvement to be made, provided that further information demonstrated that the improvement should be made.

BE IT FURTHER RESOLVED, that to aid the council in determining whether or not to finally

order in said project, the mayor shall cause to be prepared plans and specifications for said project and will further direct procedures prescribed by Section 62 of the Charter.

Resolution 04-0252 was unanimously adopted.

Approved April 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

WHEREAS, by Resolution of Intent numbered 04-0185 the council did request the administration to prepare plans and specifications for the construction of approximately 260 feet of sanitary sewer in Highland Street Alley beginning 180 feet west of 59th Avenue West and extending westerly (City Job No. 0375SN) at an estimated cost of \$51,400; and

WHEREAS, said plans and specifications have been prepared and filed with the secretary of the special assessment board; proper notice has been sent to the benefitting property owners; the public hearing has been held that allowed property owners to voice their opinion; the special assessment board has submitted its report to this council pursuant to Section 45-79, Duluth City Code of 1959, and the said board, at the direction of the mayor, has furnished this council with information as required by Section 45-80 of the Duluth City Code of 1959.

NOW, THEREFORE, BE IT RESOLVED, that said improvement as described above be made; that the estimated total cost of said improvement as estimated by the city engineer is \$51,400, payable from Special Assessment Fund 0410, Agency 038, Organization 5392, Object 5530 and that all of the cost of said improvement be defrayed by special assessment against the land and premises specially benefitted; that those assessed be permitted to pay said assessment in installments over a 15 year period, subject to Section 68 of the City Charter; that said assessment satisfy all the requirements of Section 60 of the Charter.

BE IT FURTHER RESOLVED, that the council order in subject project in accordance with the provisions of Section 62 of the City Charter and that said improvement is hereby ordered.

Resolution 04-0269 was unanimously adopted.

Approved April 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

WHEREAS, by Resolution of Intent numbered 04-0252 the council did request the administration to prepare plans and specifications for the construction of 160 feet of sanitary sewer in 87th Avenue West beginning 740 feet north of King Street and extending northerly (City Job No. 0405SN) at an estimated cost of \$23,000; and

WHEREAS, said plans and specifications have been prepared and filed with the secretary of the special assessment board; proper notice has been sent to the benefitting property owners; the special assessment board has submitted its report to this council pursuant to Section 45-79, Duluth City Code of 1959, and the said board, at the direction of the mayor, has furnished this council with information as required by Section 45-80 of the Duluth City Code of 1959.

NOW, THEREFORE, BE IT RESOLVED, that said improvement as described above be made; that the estimated total cost of said improvement as estimated by the city engineer is \$23,000, payable from Special Assessment Fund 0410, Agency 038, Organization 5391, Object 5530 and that all of the cost of said improvement be defrayed by special assessment against the land and premises specially benefitted; that those assessed be permitted to pay said assessment in installments over a 15 year period, subject to Section 68 of the City Charter; that said assessment satisfy all the requirements of Section 60 of the Charter.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

BE IT FURTHER RESOLVED, that the council order in subject project in accordance with the provisions of Section 62 of the City Charter and that said improvement is hereby ordered.

Resolution 04-0270 was unanimously adopted.

Approved April 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

WHEREAS, the city of Duluth established the initial municipal state aid systems of streets by resolution approved October 28, 1957, under provisions of Minnesota Laws 1957, Chapter 943; and

WHEREAS, it now appears that revisions in the municipal state aid system are necessary;

NOW, THEREFORE, BE IT RESOLVED, by the city council of the city of Duluth, that portions of the streets described as follows be and hereby are designated as a municipal state aid streets of said city of Duluth, subject to the approval of the commissioner of transportation of the state of Minnesota: West Tenth Street from Piedmont Avenue to 27th Avenue West (+) 0.36 miles; Joshua Avenue from TH53 to Maple Grove Road (+) 0.23 miles; Maple Grove Road from Joshua Avenue to Burning Tree Road (+) 0.41 miles; Burning Tree Road north of TH53 from Maple Grove Road to TH53 (+) 0.48 miles.

Resolution 04-0272 was unanimously adopted.

Approved April 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Hydro Metering Technology be and hereby is awarded a contract for furnishing and delivering water meter repair parts as needed during year 2004 for the utility operations division in accordance with specifications on its low specification bid at an estimated amount of \$37,300, terms net 30, FOB destination, payable out of Water Fund 0510, Department/Agency 500, Organization 2410, Object 5220.

Resolution 04-0275 was unanimously adopted.

Approved April 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Hinckley Chevrolet be and hereby is awarded a contract for furnishing and delivering two cargo vans for the utility operation division in accordance with specifications on its low specification bid of \$39,094.22, terms net 30, FOB destination, \$3,909.42 payable out of Water Fund 0510, Department/Agency 500, Organization 1905, Object 5580 and \$35,184.80 payable out of Gas Fund 0520, Department/Agency 500, Organization 1905, Object 5580.

Resolution 04-0276 was unanimously adopted.

Approved April 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Northland Materials, LLC, dba Northland Bituminous, be and hereby is awarded a contract for the year 2004 fine mix paving program for the engineering division in accordance with specifications on its low specification bid of \$66,877, terms net 30, FOB job site,

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

payable out of Permanent Improvement Fund 0411, Department/Agency 035, Organization 2104, Object 5403.

Resolution 04-0277 was unanimously adopted.

Approved April 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Harbor City Masonry, Inc., be and hereby is awarded a contract for reconstruction of Bridge No. L8506 over Amity Creek at Seven Bridges Road for the engineering division in accordance with specifications on its low specification bid of \$768,949, terms net 30, FOB job site, payable out of Permanent Improvement Fund 0411, Department/Agency 035, Organization 2175, Object 5530.

Resolution 04-0278 was unanimously adopted.

Approved April 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Northland Constructors of Duluth, LLC, be and hereby is awarded a contract for construction year 2004 street improvement of Lakeside Lower Southwest 1 for the engineering division in accordance with specifications on its low specification bid of \$756,270.30, terms net 30, FOB job site, payable out of Street Improvement Program Fund 0440, Department/Agency 038, Organization 0404, Object 5530.

Resolution 04-0279 was unanimously adopted.

Approved April 26, 2004

HERB W. BERGSON, Mayor

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The following resolutions were also considered:

Resolution 04-0290, by Councilor Johnson, confirming the appointment of Thomas Cotruvo as the executive director of the Duluth economic development authority (DEDA), was introduced for discussion.

Councilor Johnson moved to amend the resolution by replacing the number "04-0251" with "04-0215," which motion was seconded and unanimously carried.

Resolution 04-0290, as amended, was adopted as follows:

BY COUNCILOR JOHNSON:

RESOLVED, that the appointment by Mayor Bergson of Thomas Cotruvo as the executive director of the Duluth economic development authority in accordance with Resolution 04-0215, is confirmed.

Resolution 04-0290, as amended, was unanimously adopted.

Approved April 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the reappointments by Mayor Bergson of Jane Maddy and Teresa Munoz-Sierra and the appointments of Tamara Jones and Keely Marrs, replacing Gary Gordon,

whose term has expired, and Robert Jansen, who resigned, to the Duluth human rights commission, for terms expiring on April 20, 2007, are confirmed.

Resolution 04-0303 was unanimously adopted.

Approved April 26, 2004

HERB W. BERGSON, Mayor

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Resolution 04-0307, by Councilor Gilbert, authorizing disposition of lawsuit, was introduced for discussion.

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Councilor Gilbert moved to consider Ordinance 04-018 at this time, which motion was seconded and carried upon a unanimous vote.

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INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinance was read for the second time:

BY PRESIDENT STAUBER

04-018 - AN ORDINANCE AUTHORIZING AGREEMENT WITH ST. LOUIS COUNTY FOR SALE OF TEN COMMANDMENTS MONUMENT AND PROPERTY ON WHICH IT IS LOCATED.

- - -

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

Dr. David Sorenson, Mark Wagerschutz, Steven Hennessy, Rebecca Blake, Rosemarie Mitchell, Dave Barschdorf, Chuck Gilbert, Rich Holmstrom, Jack Kuriger, Edward Heikkila, Greg Price, Steven F. Peterson, Ralph Loomis, Jim Hammarlund, June Conley, Josie Gilbert, Jennifer Wilson, Chuck Cox, Christina Wilson, John Rathe, Gina Michaelson, John Purin and Kevin Melin urged the council to fight the Minnesota Civil Liberties Union (MCLU) lawsuit for the following reasons: the (American Civil Liberties Union (ACLU) is destroying our society; the Eighth Circuit Court of Appeals ruled that there are secular purposes for displaying the Ten Commandments which gives us solid ground to take it court; removing the Ten Commandments is an attack on our moral society; put the issue to the vote for the people; this is part of a large agenda by the ACLU to remove all monuments and references to God; this case is defensible based on where it is located on City Hall property and history of its donation to the city; give the land to the county so they can defend the lawsuit if the city will not; listen to the citizens of Duluth and fight the lawsuit; there is donated money for the lawsuit and lawyers who will donate their services to fight the lawsuit; let this issue be decided at the national level and the majority of the council is representing the minority of the citizens who want the monument removed.

K.L. Lewis suggested that the monument be stored in a secured location until this issue has been settled and moved back, if so desired, at a later date.

Jim Fetzer, Chuck Morrison and Marsh Stenerson urged the councilors to remove the monument and reviewed the following: that the founding fathers were running from religion when starting the country; just because the majority wants the monument does not mean that it is right and they stated that religion should be kept in the churches and not endorsed by the government by monuments on its property.

Councilor Stewart stated that this monument does not represent all the religions and the government should not allow a religious document on its property.

President Stauber moved to amend the resolution by adding the words "with concurrence of the council," between the words "attorney" and "is authorized" in the last paragraph, which motion was seconded and carried upon the following vote:

Yeas: Councilors Atkins, Little, Ness, Reinert and President Stauber -- 5

Nays: Councilors Gilbert, Johnson, Stewart and Stover -- 4

President Stauber stated that if government finds something within religion that is good for the social welfare of the city of Duluth, government should have the right to use that.

Resolution 04-0307, as amended, was adopted as follows:

BY COUNCILOR GILBERT:

BE IT RESOLVED, that the city of Duluth shall promptly dispose of the lawsuit of MCLU, et al v. City of Duluth, et al, Civil File No. 04-1079, without trial, by appropriate means, which include settlement, consent decree, Rule 68 notice, or other manner approved by the court, the terms of which disposition may include the permanent removal of the artifact and a permanent injunction against it being publicly displayed on property owned or controlled by the city or any other government and the relief requested in plaintiff's complaint.

BE IT FURTHER RESOLVED, that the city attorney, with concurrence of the council, is authorized to do any act and execute any document necessary to implement this resolution.

Resolution 04-0307, as amended, was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Reinert, Stewart and Stover -- 5

Nays: Councilors Atkins, Little, Ness and President Stauber -- 4

Approved April 26, 2004

HERB W. BERGSON, Mayor

- - -

Councilor Stewart moved to withdraw Ordinance 04-018 from the agenda, which motion carried upon the following vote:

Yeas: Councilors Gilbert, Johnson, Ness, Stewart and Stover -- 5

Nays: Councilors Atkins, Little, Reinert and President Stauber -- 4

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INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

BY COUNCILOR NESS

04-019 - AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF \$2,486,000 GENERAL OBLIGATION REVENUE BONDS OF THE CITY OF DULUTH FOR THE IMPROVEMENT OF THE MUNICIPAL WATER UTILITY UPON TERMS AND CONDITIONS TO BE PROVIDED BY RESOLUTION OF THE CITY COUNCIL AND PLEDGING REVENUES FOR THE PAYMENT THEREOF.

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BY COUNCILOR NESS

04-023 - AN ORDINANCE TO AMEND THE BUDGET OF THE CITY OF DULUTH FOR THE YEAR 2004 TRANSFERRING THE BUSINESS DEVELOPMENT UNIT FROM THE DEPARTMENT OF PLANNING AND DEVELOPMENT INTO THE LEGISLATIVE AND EXECUTIVE DEPARTMENT.

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BY COUNCILOR GILBERT

04-024 - AN ORDINANCE AUTHORIZING CONVEYANCE OF PROPERTY IN CENTRAL HILLSIDE TO DONALD M. SAMUELS AND ODIE POWELL FOR \$15,000.

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The following entitled ordinances were read for the second time:

BY COUNCILOR NESS

04-022 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED; ADDING A NEW SECTION 50-37 TO PROVIDE FOR REGULATORY CONTROLS FOR DESIGNATED AREA DEVELOPMENTS.

Councilor Ness moved to table the ordinance until June 7, 2004, for a committee meeting, which motion was seconded and unanimously carried.

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BY COUNCILOR GILBERT

04-020 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED; ADDING A NEW SECTION 50-37 TO PROVIDE FOR THE REGULATORY CONTROLS FOR PLANNED UNIT DEVELOPMENTS.

Councilor Gilbert moved to table the ordinance until June 7, 2004, for a committee meeting, which motion was seconded and unanimously carried.

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BY COUNCILOR ATKINS

04-017 (9658) - AN ORDINANCE AMENDING SECTION 29C-5 AND ADDING NEW ARTICLE II TO CHAPTER 29C OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO HUMAN RIGHTS; ESTABLISHING A HUMAN RIGHTS ORDINANCE WHICH IS HUD COMPLIANT, AS AUTHORIZED BY LAWS OF MINNESOTA, 2000, CHAPTER 402.

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

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The meeting was adjourned at 10:00 p.m.

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

- - -

ORDINANCE NO. 9658

BY COUNCILOR ATKINS:

AN ORDINANCE AMENDING SECTION 29C-5 AND ADDING NEW ARTICLE II TO CHAPTER 29C OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO HUMAN RIGHTS; ESTABLISHING A HUMAN RIGHTS ORDINANCE WHICH IS HUD COMPLIANT, AS AUTHORIZED BY LAWS OF MINNESOTA, 2000, CHAPTER 402.

The city of Duluth does ordain:

Section 1. That Section 29C-5 of the Duluth City Code, 1959, as amended, be amended by adding language to provide as follows:

Sec. 29C-5. Same--Powers and duties generally.

The commission shall have the following powers and duties:

(a) To receive any complaint of a violation of this Chapter within one year after the occurrence of the alleged violation;

(1) Complaint. The commission may accept complaints for action consistent with this Chapter. All complaints must be verified and made in writing on forms provided by the commission and signed by a complainant (the complainant). When any complaint is accepted by the commission, the commission shall serve notice to the complainant, as required by Section 363.116 of Minnesota Statutes, as to the complainant's options and rights relative to the Minnesota Human Rights Act and any time limitations for exercising those rights;

(2) Priority case. The commission shall give priority to investigating and processing those complaints in which there is evidence of irreparable harm if immediate action is not taken. If, at any time after the acceptance of a complaint, the human rights officer has reason to believe that a respondent has engaged in any unfair discriminatory practice, the human rights officer may file a petition in the district court seeking appropriate temporary relief against the respondent, pending final determination of proceedings under this Chapter, including an order or decree restraining the respondent from doing or procuring an act tending to render ineffectual any order the commission may enter with respect to the complaint. The court shall have the power to grant temporary relief or a restraining order as it deems just and proper. No relief or order extending beyond the time required to properly investigate the complaint and allow the commission to determine whether there is probable cause to believe a violation occurred shall be granted except by consent of the respondent or after hearing upon notice to the respondent and a finding by the court that there is reasonable cause to believe that the respondent has engaged in a discriminatory practice;

(3) Notice to respondent and answer. When a complaint is accepted, the commission shall within ten days serve a copy of the complaint on the party alleged to be making the discriminatory practice (the respondent) personally or by mail and shall include a statement of the respondent's procedural rights and obligations under this Chapter and a form for the filing of an answer to the complaint. An answer shall be filed by the respondent within 20 days of service of the complaint on the respondent. Failure to file an answer by a respondent may be considered an admission of the allegations in the complaint;

(4) Transfer to state. The commission may transfer any complaint to the state commissioner of human rights for further proceedings. Unless or until such complaint is so transferred, the commission may investigate such complaint and may determine whether there is probable cause to believe that a violation has occurred. The filing of a complaint with the commission shall preclude the option of filing the same charge with the state and the filing of a charge with the state shall preclude the option of filing the same complaint with the commission;

(5) Delegation to authorized community organization. The commission may delegate to an authorized community organization the authority to investigate a complaint consistent with the requirements of this Chapter;

(6) Investigation. The human rights officer, or any agency or person designated by the commission, shall utilize the office of the city attorney to subpoena persons and documents in its investigation. The human rights officer, or any agency or person designated by the commission, shall commence its investigation upon accepting the complaint and shall complete its investigation within 60 days following the acceptance of the complaint;

(7) Mediation. At any time, including prior to the acceptance of a complaint, either party may request that mediation be undertaken or the human rights officer or commission may direct the parties to undertake mediation. Mediation may be conducted by any appropriate neutral third party and may include any form of alternative dispute resolution, including binding or non binding arbitration. The commission may establish rules for the conduct of mediation and the formation of conciliation agreements;

(8) Probable cause. Within 30 days following completion of the investigation, the commission or such members of the commission as may be designated, but not fewer than five commissioners, shall meet and determine whether there is probable cause to believe a violation has occurred. The human rights officer shall present the evidence obtained during the investigation. The commission shall adopt rules to govern the conduct of hearings held to review evidence and make a finding of probable cause. Any determination that there is probable cause to believe that a violation of this Chapter has occurred can be achieved only by a concurrence of not less than a majority of the members of the commission as have been designated to make such determination;

If the probable cause determination is not made within 100 days following the acceptance of the complaint, the complainant shall be informed in writing of the reasons why the determination has not been made;

(9) Conciliation agreement. If probable cause is found, the commission shall attempt to obtain voluntary compliance with the applicable provisions of this Chapter. Any conciliation agreement shall be signed by both parties and approved by the commission. Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the commission determines that disclosure is not required to further the purposes of this Chapter;

(10) Action by commission. Any determination that there is probable cause to believe that a violation of this Chapter has occurred may be prosecuted by the commission. If the commission determines that it cannot obtain voluntary compliance or if the respondent refuses to participate in alternative dispute resolution procedures within 30 days after a finding of probable cause, the human rights officer may prosecute the complaint and seek civil remedies pursuant to this Chapter. The city attorney or a qualified attorney-at-law designated by the commission shall serve as legal counsel to assist the human rights officer in fulfilling the duties of this Chapter. Any final action taken by the commission under this Chapter is subject to judicial review upon application of an aggrieved party;

(11) Staff. The city shall provide administrative and investigative personnel, through the city's general budgetary process, to undertake the requirements of this Chapter;

(b) To promote cooperation among all persons and groups for the purpose of effectuating the purposes and policies of this Chapter;

(c) To confer with and advise the city's equal opportunity representative;

(d) To recommend legislation to the mayor and the city council which will further equal opportunity in the city;

(e) To make an annual written report of its activities to the city council and the mayor, which report shall also be released directly to the community and local news media;

(f) To establish rules and procedures for the conduct of its business;

(g) The Duluth human rights commission shall have any of the powers and duties of a local commission, as defined in Chapter 363 of Minnesota Statutes.

Section 2. That Chapter 29C of the Duluth City Code, 1959, as amended, be amended by adding a new Article II to provide as follows:

Article II.

Sec. 29C-11. Fair Housing Act adopted.

The law on file with the clerk as Public Document No. 04-0426-22, the fair housing supplement, which document is a copy of the Fair Housing Act of 1968 (42 USC §3601 et seq), in force on January 1, 2003, with certain modifications, is hereby adopted by reference in this Section and made a part of the Duluth City Code, as authorized by Laws of Minnesota 2000, Chapter 402, accepted by the city by Resolution 00-0605. The aforementioned shall serve as the substantive rights, procedures, remedies and judicial review provisions available for implementation of the Fair Housing Act in the city of Duluth.

Sec. 29C-12. Choice of rights and remedies.

A person claiming discriminatory housing practices may elect to proceed under either the terms of sections 29C-1 through 29C-10, or under the terms of sections 29C-11 through 29C-12, but may not proceed under both.

Section 3. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: June 6, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Nays: None -- 0

ATTEST:

JEFFREY J. COX, City Clerk

Passed April 26, 2004

Approved April 26, 2004

HERB W. BERGSON, Mayor

OFFICIAL PROCEEDINGS

Special meeting of the Duluth City Council held on Thursday, May 6, 2004, 5:30 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Gilbert, Johnson, Little, Ness, Reinert, Stover and President Stauber -- 7

Absent: Councilor Atkins and Stewart -- 2

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinance was read for the first time:

BY COUNCILOR GILBERT

04-025 - 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 meeting was adjourned at 5:32 p.m.

JEFFREY J. COX, City Clerk

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, May 10, 2004, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Absent: None -- 0

- - -

The minutes of the city council meeting held on March 22, 2004, were unanimously approved.

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

04-0510-01 Dan and Theodore J. Stocke submitting petition to extend the sanitary sewer within Trinity Road beginning near 2528 Trinity Road and extending easterly approximately 2,200 feet. -- Assessor

04-0510-02 Minnesota state auditor submitting Duluth transit authority audit report for the years ended December 31, 2003 and 2002. -- Received

04-0510-03 Louise Curnow submitting communication regarding criteria for proposed JOBZ business subsidy 04-0339R. -- Received

04-0510-04 St. Mary's/Duluth Clinic, by Timothy J. Eschweiler, attorney, submitting acceptance of terms, conditions and provisions of concurrent use permit granted by Ordinance No. 9639 on December 1, 2003. -- Received

04-0510-05 The following submitting communications regarding the Ten Commandments monument (04-0319R): (a) Joanne Anderson; (b) Mark Berg Bovey; (c) Rosemarie May; (d) Rosemarie and Dennis Mitchell; (e) Joel L. Oster, representing Liberty Counsel, (f) Roni Seger Town; (g) Chuck West. -- Received

- - -

REPORTS OF OFFICERS

04-0510-06 Assessor submitting:

(a) Affidavit of mailing of notice of public hearing by the special assessment board on Tuesday, May 11, 2004, at 3:30 p.m. in Room 106A, City Hall, regarding the reassessment of costs for demolition of buildings (Contract Nos. 5393, 5294 and 5306). -- Clerk

(b) Letters of sufficiency of petitions to:

(1) Extend the sanitary sewer within Trinity Road beginning near 2528 Trinity Road and extending easterly approximately 2,200 feet;

(2) Vacate the westerly 17 feet of 59th Avenue West adjoining Lot 10, Block 4, West Duluth Sixth Division. -- Received

04-0510-07 Engineering division submitting monthly status report of April 1, 2004. -- Received

- - -

REPORTS OF BOARDS AND COMMISSIONS

04-0510-10 Alcohol, gambling and tobacco commission minutes of: (a) April 7; (b) April 8, 2004, meetings. -- Received

04-0510-08 Duluth airport authority: (a) Minutes of March 16, 2004, meeting; (b) Unaudited operating income report of February 29, 2004. -- Received

04-0510-12 Duluth/North Shore Sanitary District board minutes of: (a) February 3; (b) March 2; (c) April 6, 2004, meetings. -- Received

04-0510-11 Duluth state convention center administrative board minutes of March 30,

2004, meeting. -- Received

04-0510-09 Duluth transit authority: (a) Income statement of February 2004; (b) Minutes of February 25, 2004, meeting. -- Received

04-0510-13 Housing and redevelopment authority of Duluth minutes of January 27, 2004, meeting. -- Received

04-0510-14 Spirit Mountain recreation area authority minutes of: (a) March 24; (b) April 22, 2004, meetings. -- Received

- - -

OPPORTUNITY FOR CITIZENS TO BE HEARD

Dave Barstorf commented on the need for radar ticketing with the excessive traffic on Central Entrance, with the closure of Piedmont Avenue; the rubbish that is being dumped in the creek in Duluth Heights and that no one is taking care of it.

- - -

RESOLUTIONS TABLED

Councilor Gilbert moved to remove Resolution 04-0236, city of Duluth JOBZ sub-zone resolution of approval to authorize tax exemptions, from the table, which motion was seconded and unanimously carried.

Resolution 04-0236 was adopted as follows:

BY COUNCILOR GILBERT:

WHEREAS, job creation, business development and individual wealth growth in the city of Duluth, Minnesota, have been less than the national and state averages; and

WHEREAS, the resulting effects of such lagging job creation, business development and individual wealth growth have harmed and are forecasted to continue to harm the economy of the city of Duluth; and

WHEREAS, the job opportunity building zone (JOBZ) program created in Minnesota Session Laws 2003, First Special Session, Chapter 21, Article 1, allows for the formation of tax free zones; and

WHEREAS, an application for tax free zone designation in the city of Duluth was being prepared for submission to the Minnesota department of employment and economic development via the Arrowhead Regional Development Commission zone administrator (ARDC).

NOW, THEREFORE, BE IT RESOLVED, that the Duluth City Council, at its meeting held on the tenth day of May, 2004, upon careful consideration and review, approves the specific areas as set forth below for tax free zones, approves of the use of tax exemptions and tax credits within the designated zones (subject to proper review and approval by the other appropriate taxing authorities within the zones) and encourages the Minnesota department of employment and economic development to approve the tax free zone application being submitted by the ARDC:

Subzone Number	Subzone Name	Acres per Zone
96	Duluth Airport Authority	9.14
97	Airpark	95.78
98	StoraEnso	13.9
98.1	Box Factory	2.2
98.2	Polaris Wilbert Vault	4.1

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Subzone Number	Subzone Name	Acres per Zone
99	Atlas Cement Plant	62.0
100	DMIR Railway Co.	40.0
101	Clyde-Oneota	18.7
102	Rice's Point	26.5
103	Union Pacific Railyard	8.0
104	Duluth Harbor	70.8

BE IT FURTHER RESOLVED, that city of Duluth agrees to provide all of the local tax exemptions and credits required and provided for under the job opportunity building zones (JOBZ) legislation and agrees to forego the tax benefits resulting from the local and state tax exemptions and credits provided under the job opportunity building zones (JOBZ) legislation.

Resolution 04-0236 was unanimously adopted.

Approved May 10, 2004

HERB W. BERGSON, 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 Stauber moved passage of the consent agenda, which motion was seconded and unanimously carried.

BY COUNCILOR STEWART:

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

Grandma's Marathon Duluth, Inc., Morse Street and Canal Park Drive, for June 18, 19 and 20, 2004, with Scott Keenan, manager, with the music and serving ceasing at 12:30 a.m.

Resolution 04-0312 was unanimously adopted.

Approved May 10, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

RESOLVED, that the proper city officers are hereby authorized to enter into a consultant agreement with Darryl Booker, A.I.A., for the sum of not to exceed \$6,000, from General Fund 0100, Agency 700, Organization 2725, Object I423, for providing certain design services to the city of Duluth in connection with replacement of Fire Station #5 (Park Point), 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. 04-0510-15.

Resolution 04-0318 was unanimously adopted.

Approved May 10, 2004

HERB W. BERGSON, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

BY COUNCILOR STEWART:

RESOLVED, that New World Systems be and hereby is awarded a contract for furnishing and delivering governmental e-management software system for the M.I.S. division in accordance with specifications on its low specification proposal of \$580,000, terms net, FOB destination, \$430,000 payable out of Capital Equipment Bond Fund 0250 and \$150,000 payable out of various utility funds.

Resolution 04-0324 was unanimously adopted.

Approved May 10, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

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. 04-0510-16 in the amount of \$30,000 with Moss and Barnett related to the cable franchise renewal process, payable from Fund 0100, Agency 700, Organization 1428, Object 5441.

Resolution 04-0329 was unanimously adopted.

Approved May 10, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

RESOLVED, that A. W. Kuettel & Sons be and hereby is awarded a contract for roof restoration at Fire Station #1, located at 602 West Second Street, in accordance with specifications on its low specification bid of \$91,715, terms net 30, FOB job site, payable out of Capital Improvement Fund 0450, Department/Agency 030, Organization C406, Object 5535.

Resolution 04-0333 was unanimously adopted.

Approved May 10, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR ATKINS:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the transfer of the following on sale intoxicating liquor license, on sale Sunday license, dancing license and 2:00 a.m. alcohol beverage license for the period ending August 31, 2004, subject to departmental approvals and the payment of sales and property taxes:

North Shore Brew Pub, LLC (Canal Park Inn), 250 Canal Park Drive, with Theodore Kavajecz, 50 percent stockholder, and Diane Kavajecz, 50 percent stockholder, transferred from Holiday Inn of Tucumcari (Canal Park Inn), same address.

Resolution 04-0338 was unanimously adopted.

Approved May 10, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointments by Mayor Bergson to the parks and recreation commission of Francis M. (Frank) Nash (District 7) for a term expiring on February 13, 2005, Wendy Grethen (District 9) and Barbara Stark (land management) for terms expiring on February 13, 2006, and Joanne Carroll (District 2) for a term expiring on February 13, 2007,

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

replacing Nicole Eld, Harvey Winthrop, B. Kevin Daw and Gregory Meagher, who resigned, are confirmed.

Resolution 04-0306 was unanimously adopted.

Approved May 10, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointments by Mayor Bergson of Julie McDonnell (at large) and Rosie Loeffler-Kemp (environmental) for terms expiring on January 5, 2007, to the environmental advisory council, replacing Glenn L. Evavold, who resigned, and Brian L. Fredrickson, are confirmed.

Resolution 04-0309 was unanimously adopted.

Approved May 10, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointments by Mayor Bergson to the tree commission of Wendy A. Sjoblom, replacing Margaret Scheibe, for a term expiring on August 31, 2006, and George C. Kirk and Christine A. Penney, replacing Timothy Grover and Barbara Koth, who resigned, for terms expiring on August 31, 2007, are confirmed.

Resolution 04-0311 was unanimously adopted.

Approved May 10, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the proposed specifications for the new civil service classification of network administrator, which were approved by the civil service board on March 2, 2004, and which are filed with the city clerk as Public Document No. 04-0510-17, are approved; that said classification shall be subject to the city's collective bargaining unit with its basic unit employees; and that pay range for said classification shall be Range 137, \$3,924 to \$4,677 per month. 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 04-0313 was unanimously adopted.

Approved May 10, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointment by Mayor Bergson of John Simpson (District 4) to the parking commission for a term expiring on July 1, 2006, replacing Neill Atkins, is confirmed.

Resolution 04-0317 was unanimously adopted.

Approved May 10, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the proposed amendments to the specifications for the civil service classification of senior ramp worker, which were approved by the civil service board on April 6, 2004, and which are filed with the city clerk as Public Document No. 04-0510-18, are approved;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

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 17, Pay Rate of \$1,803 to \$2,178 per month to Pay Range 24, Pay Rate of \$2,459 to \$2,903. 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 04-0321 was unanimously adopted.

Approved May 10, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR ATKINS:

RESOLVED, that the proper city officials are authorized to enter into a affiliation agreement substantially in the form of that on file in the office of the city clerk as Public Document No. 04-0510-19 with the University of Wisconsin-Superior pertaining to partnering with said institution in its legal studies internship program.

Resolution 04-0331 was unanimously adopted.

Approved May 10, 2004

HERB W. BERGSON, Mayor

- - -

BY PRESIDENT STAUBER:

WHEREAS, the administrative assistant has appointed Robert Bruce as department head of planning effective May 28, 2004, and the mayor has approved such appointment; and

WHEREAS, such appointment is subject to city council approval.

NOW, THEREFORE, BE IT RESOLVED, that the city council hereby approves the appointment of Robert Bruce as department head of planning.

Resolution 04-0330 was unanimously adopted.

Approved May 10, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

WHEREAS, the city of Duluth has applied to the commissioner of transportation for a grant from the Minnesota state transportation fund for the rehabilitation of Bridge No. 69654 (old Bridge No. L8504) over Amity Creek on Seven Bridges Road, S.P. 118-080-25; and

WHEREAS, the grant has been approved and the amount of the grant has been determined to be \$515,747.51.

NOW, THEREFORE, BE IT RESOLVED, that the city of Duluth does hereby accept said grant and affirms that any rehabilitation costs that qualify for Minnesota state transportation funds in excess of the grant will be appropriated from funds available to the city of Duluth, and that any grant monies appropriated for the rehabilitation costs but not required, based on the final audit, shall be returned to the Minnesota state transportation fund.

RESOLVED FURTHER, that grant monies received hereunder shall be deposited into the Permanent Improvement Fund 0411, Agency 035, Organization 2174, Object 5530.

Resolution 04-0314 was unanimously adopted.

Approved May 10, 2004

HERB W. BERGSON, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

- - -

BY COUNCILOR STOVER:

WHEREAS, the city of Duluth has reviewed the pertinent data on Bridge No. L8479; and
 WHEREAS, the city of Duluth has identified that this bridge is a high priority and has previously established a list of those bridges that require replacement, rehabilitation or removal; and

and
 WHEREAS, the following additional bridge has since been identified as also requiring replacement.

NOW, THEREFORE, BE IT RESOLVED, that the following deficient bridge is added to the list of high priority bridges and the city of Duluth intends to replace this bridge as soon as possible when funds are available.

Old Bridge Number	Road or Street	Total Project Cost	State Bridge Funds	Federal Funds	Local or State Aid Funds	Proposed Construction Year
L8479	Anderson Road & Miller Creek	\$400,000	\$175,000	0	\$225,000	2005-2006

Resolution 04-0315 was unanimously adopted.

Approved May 10, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Resolution 02-0325 to L.H.B. Architects and Engineers for the engineering services required for preliminary and final design for the rehabilitation of Bridge No. L6123 over Chester Creek at East First Street be amended to increase the amount by \$11,970 for a new total of \$19,741, payable out of Permanent Improvement Fund 0411, Department/Agency 035, Organization 2181, Object 5530.

Resolution 04-0325 was unanimously adopted.

Approved May 10, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Resolution 02-0303 to L.H.B. Architects and Engineers for the engineering services required for preliminary and final design for the rehabilitation of Bridge No. L6122 over Chester Creek at East Superior Street be amended to increase the amount by \$42,711 for a new total of \$73,922, payable out of Permanent Improvement Fund 0411, Department/Agency 035, Organization 2180, Object 5530.

Resolution 04-0326 was unanimously adopted.

Approved May 10, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Groebner and Associates, Inc., be and hereby is awarded a contract for furnishing and delivering approximately 8,000 various pipe fittings for the utility operations division in accordance with specifications on its low specification bid of \$30,093.39, terms net 30, FOB

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

destination, payable out of Gas Fund 0520, Department/Agency 500, Organization 1945, Object 5227.

Resolution 04-0327 was unanimously adopted.

Approved May 10, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Nels Nelson and Sons, Inc., be and hereby is awarded a contract for construction year 2004 street improvement of Duluth Heights Southeast 2 for the engineering division in accordance with specifications on its low specification bid of \$936,954.74, terms net 30, FOB job site, payable out of Street Improvement Program Fund 0440, Department/Agency 038, Organization 0402, Object 5530.

Resolution 04-0328 was unanimously adopted.

Approved May 10, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

WHEREAS, it appears that it may be necessary to construct 2,200 feet of sanitary sewer in Trinity Road beginning 280 feet east of Keystone Bluffs Assisted Living Residence and extended northwesterly.

NOW, THEREFORE, BE IT RESOLVED, that it is the intent of the city council to cause this improvement to be made, provided that further information demonstrates that the improvement should be made.

BE IT FURTHER RESOLVED, that to aid the council in determining whether or not to finally order in said project, the mayor shall cause to be prepared plans and specifications for said project and will further direct procedures prescribed by Section 62 of the Charter.

Resolution 04-0332 was unanimously adopted.

Approved May 10, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

WHEREAS, the city of Duluth desires field and laboratory testing; and

WHEREAS, the city desires to hire consulting firms to provide the services required for support of construction, operation and maintenance of city system; and

WHEREAS, American Engineering Testings, Inc. (\$15,000), Twin Ports Testing, Inc., (\$15,000), G.M.E. Consultants, Inc. (\$10,000), and Service Engineering Group (\$10,000) have submitted a proposal for field and laboratory testing services in connection with this project.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with American Engineering Testing, Inc., Twin Ports Testing, Inc., G.M.E. Consultants, Inc., and Service Engineering Group to provide the city with such field and laboratory testing services.

BE IT FURTHER RESOLVED, that the cost of said field and laboratory testing services, total estimated at \$50,000, will be payable from the various funds, departments/agencies, organizations, objects.

Resolution 04-0335 was unanimously adopted.

Approved May 10, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

RESOLVED, that the proper city officers are hereby authorized to enter into agreements, substantially in the form of the one filed as Public Document No. 04-0510-20, and accept grant monies from the Minnesota department of public safety, nightcap program, to reimburse the Duluth police department for costs incurred in performing saturation patrols for alcohol impaired drivers in an amount not to exceed \$3,500 during the grant period ending December 31, 2004.

BE IT FURTHER RESOLVED, that all revenue received under this agreement shall be deposited in General Fund 0100, Agency 200, Organization 1640.

Resolution 04-0261 was unanimously adopted.

Approved May 10, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

RESOLVED, that in accordance with the provisions of Section 33-88.2 of the Duluth City Code, 1959, as amended, the following handicapped parking zone is hereby established: front of 414 East Sixth Street.

Resolution 04-0271 was unanimously adopted.

Approved May 10, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

RESOLVED, that the proper city officials are hereby authorized to enter into a grant agreement substantially in the form of that on file in the office of the city clerk as Public Document No. 04-510-21 and accept grant monies from the Minnesota department of public safety for seat belt enforcement to reimburse the Duluth police department for costs incurred performing seat belt enforcement in an amount not to exceed \$3,000, said monies to be deposited into General Fund 0100, Agency 200, Organization 1640.

Resolution 04-0316 was unanimously adopted.

Approved May 10, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR REINERT:

RESOLVED, that the proper city officials are hereby authorized to accept a grant in the amount of \$7,800 from the Morgan Park - Smithville Community Club pursuant to a Northland Foundation grant to assist in providing an after school recreational program and safe haven for children attending Stowe Elementary and/or living in the Gary-New Duluth area, said amount to be deposited into Fund 0100, Agency 400, Organization 1812, Activity MPCC, Revenue Source 4654.

BE IT FURTHER RESOLVED, that the proper city officials are hereby authorized to execute any agreements necessary to implement the project on behalf of the parks department.

Resolution 04-0320 was unanimously adopted.

Approved May 10, 2004

HERB W. BERGSON, Mayor

- - -

The following resolutions were also considered:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

BY COUNCILOR NESS:

RESOLVED, that the budget for the fiscal year May 1, 2004, to April 30, 2005, in the amount of \$3,829,562, including the 2005 repair and replacement budget in the amount of \$250,500, as set out in the budget on file with the city clerk as Public Document No. 04-0510-22, for the Spirit Mountain recreation area authority is hereby approved.

Resolution 04-0323 was unanimously adopted.

Approved May 10, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointment by Mayor Bergson of Tari Rayala (District 5) to the Duluth transit authority for a term expiring on June 30, 2005, replacing Bradley Beckman, is confirmed.

Resolution 04-0308 was unanimously adopted.

Approved May 10, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0310, by Councilor Johnson, confirming the appointments of Mike Akervik, Henry L. Banks and Allan Beaulier to the planning commission, replacing Ronald D. Degrio, Jeffrey Jackson and Karl C. Wasson, was introduced for discussion.

Councilor Johnson moved to amend the resolution to strike the names "Henry L. Banks," and "Jeffrey Jackson" from the resolution to set a new date for and interview of a new appointee, which motion was seconded and unanimously carried.

Resolution 04-0310, as amended, was adopted as follows:

BY COUNCILOR JOHNSON:

RESOLVED, that the appointments by Mayor Bergson of Mike Akervik and Allan Beaulier, for terms expiring on December 31, 2007, to the planning commission, replacing Ronald D. DeGrio and Karl C. Wasson, are confirmed.

Resolution 04-0310, as amended, was unanimously adopted.

Approved May 10, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0339, by Councilor Gilbert, of the city of Duluth to amend its business subsidy resolution, Resolution 00-0333(a) adopted May 22, 2000, as amended, to add criteria and business subsidy requirements related to job opportunity building zones, was introduced for discussion.

- - -

At this time, 7:30 p.m., President Stauber announced that the public hearing regarding the business subsidy criteria amendment (JOBZ) would begin.

Eric Lehto, Marsh Stenersen, Sharla Gardner and Alan Netland expressed the concerns: that the criteria contain a worker retention requirement, a local hire requirement, higher wage standard than proposed with benefits and that there be a project labor agreement; make thoughtful and reasoned decisions regarding the criteria; that the cost of living is increasing and that there should be a standard for local hires.

David Ross, representing the Duluth Chamber of Commerce, noted that the goal of the effort is to attract high paying manufacturing jobs to these sites that normally would be dormant; to not initiate requirements that would be a detriment to using these sites and allow the program

to move forward with as little limitation as possible.

K.L. Lewis voiced support that there should be more attention for assisting local businesses so the existing work force could stay here.

At this time, 7:52 p.m., President Stauber closed the public hearing and the regular order of business was resumed.

- - -

Councilor Atkins and President Stauber expressed concern that there are local companies waiting for this program in order to expand, that the council has had staff briefings, a committee meeting and a public hearing on this already and that there is the need get this program going in order to compete with other cities.

Councilor Gilbert moved to table the resolution to receive more information and input, which motion was seconded and carried upon the following vote:

Yeas: Councilors Gilbert, Johnson, Ness, Reinert, Stewart and Stover -- 6

Nays: Councilors Atkins, Little and President Stauber -- 3

- - -

BY COUNCILOR GILBERT:

WHEREAS, the city recognizes that vending of appropriate products or services adds color and liveliness to the Canal Park area by attracting additional visitors; and

WHEREAS, such vending of products and services can provide a Duluth ambassadorship function as vendors are able to offer information about the Canal Park area; and

WHEREAS, such vending operations will not detract from the image that is unique to the Canal Park area.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officers are authorized and directed to execute a vending agreement filed as Public Document No. 04-0510-23 between the city of Duluth and Crabby Bill's Lake Superior Fishing Company for the continued operation of a stationary vending unit within the Canal Park area near the Lakewalk in close proximity to the Site A north of Canal Park parking lot for a term of five years. The vendor shall pay a percentage of gross receipts for all items sold pursuant to the agreement. Revenues received shall be deposited into administrative services department, facilities management division, General Fund 0100, Agency 015, Organization 1515, Revenue Source 4623.

Resolution 04-0340 was unanimously adopted.

Approved May 10, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0319, by councilors Gilbert and Stewart, authorizing consent decree in settlement of lawsuit - MCLU v. city of Duluth, was introduced for discussion.

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

Dave Barsdorf, Dr. Richard Sorenson, Richard Holmstrom, Jayne Conley, Richard Miller, Ron Hanson, Rosenn Shoberg, John Graham, Dr. Steven Peterson, Sandra Berryhill, Rebecca Blake, Joseph Brandstrom, Jennifer Wilson, Chuck Cox, Kay L. Lewis and Patt Carlson opposed the resolution for reasons of: the American Civil Liberties Union (ACLU) is a God hater; the legal rights of the citizens should be allowed, under the Charter, to vote on this issue as the result of the current petition drive; corporations, such as the ACLU, should not have the legal rights that were intended for individuals; an outside organization, such as the ACLU, should not be allowed to come into our city and tell us what to do; the Ten Commandments are a moral standard for adults and especially youth; there are more judicial decisions supporting monuments than over ruling them; the American Center for Law and Justice would defend the city for no charge; the

case law and constitutional principal are in the favor of the city and the case can be won; the council is fighting against the citizens and should be fighting against the ACLU; the majority determines who gets elected into office and councilors should represent that majority; the ACLU is using the court system, which is a non elected body, to dictate their agenda; the county is willing to deal with this issue; if the council feels that another highly emotional issue, like smoking should be decided by the people, then the people should be allowed to vote on this issue, also; the ACLU doctrine of there being no absolutes, has adversely affected youth today; precious freedoms are being taken away; the ACLU argument of the separation of church and state is a myth and a misconception of the First Amendment to the Constitution and the Ten Commandments are a good thing, why be against something that is good. Reference was also made regarding Public Document No. 04-0510-05(e) from Liberty Counsel supporting the council honoring the initiative petition rights.

Marsh Stenersen spoke in support of the resolution for reasons that: it takes courage, irregardless of political fallout, for councilors to do the right thing to act in the interest of all Duluthians; there are more important issues facing Duluth; a congregation has publicly stated that they support this resolution and Christianity is not defined by this stone symbol, but by Christ's direction to serve our neighbors.

Councilors Atkin and President Stauber felt that the initiative petition process should be allowed to continue so the people could vote on this and that this will be viewed as a historical moment in Duluth's history.

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

Yeas: Councilors Atkins, Little, Ness and President Stauber -- 4

Nays: Councilors Gilbert, Johnson, Reinert, Stewart and Stover -- 5

President Stauber moved to amend the first covenant of the Consent Decree by changing the date "May 16, 2004" to read "July 16, 2004," which motion was seconded and failed upon the following vote:

Yeas: Councilors Atkins, Little and President Stauber -- 3

Nays: Councilors Gilbert, Johnson, Ness, Reinert, Stewart and Stover -- 6

President Stauber moved to amend the first covenant of the Consent Decree by inserting the word "may" in the third sentence after the words " May 16, 2004, and," which motion was seconded and failed upon the following vote:

Yeas: Councilors Atkins, Little, Ness and President Stauber -- 4

Nays: Councilors Gilbert, Johnson, Reinert, Stewart and Stover -- 5

Councilor Stewart moved to call the question on the resolution, which motion was seconded and carried upon the following vote:

Yeas: Councilors Gilbert, Johnson, Ness, Reinert, Stewart and Stover -- 6

Nays: Councilors Atkins, Little and President Stauber -- 3

Resolution 04-0319 was adopted as follows:

BY COUNCILORS GILBERT AND STEWART:

BE IT RESOLVED, that the city attorney is authorized to obtain court approval, execute and implement a consent decree in substantially the form, and containing the terms and conditions, of that document on file with the clerk as Public Document No. 04-0510-24, which will settle and resolve the lawsuit of MCLU, et al. v. City of Duluth, et al., Case No. 04-1079JMR/RLE, and carry out the directive of Resolution No. 04-0307.

Resolution 04-0319 was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Reinert, Stewart and Stover -- 5

Nays: Councilors Atkins, Little, Ness and President Stauber -- 4
Approved May 10, 2004
HERB W. BERGSON, Mayor

- - -

Resolution 04-0334, by Councilor Stover, awarding contract to Premier Companies for painting of 2,620 gas meter piping throughout the city of Duluth in the amount of \$36,175.29, was introduced for discussion.

Councilors Gilbert and Ness expressed their concerns that there was only one bidder, that the bid was over 30 percent higher than the previous year and 19 percent higher than engineering estimates.

City Attorney Brown outlined the options for the council relative to acceptance or rejection of this bid.

Resolution 04-0334 failed upon the following vote (Public Document No. 04-0510-25):

Yeas: Councilor Little -- 1

Nays: Councilors Atkins, Gilbert, Johnson, Ness, Reinert, Stewart, Stover and President Stauber -- 8

- - -

BY COUNCILOR STOVER:

WHEREAS, the environmental protection agency has issued Administrative Order Docket No. V-W-040-AO-02, to city of Duluth and Western Lake Superior Sanitary District as joint permittees of NPDES/SDS Permit No. MN0066206; and

WHEREAS, the administrative order requires the joint permittees file with the environmental protection agency a plan of action to eliminate sanitary sewer overflows; and

WHEREAS, the city staff, in conjunction with the staff of the Western Lake Superior Sanitary District, has prepared a plan of action to eliminate sanitary sewer overflows within a 12 year period utilizing predictive maintenance, roof drain disconnection, foundation drain disconnection, sanitary sewer lateral repair and storage.

NOW, THEREFORE, BE IT RESOLVED, the city council approves the submission of the plan of action prepared by city staff jointly with the Western Lake Superior Sanitary District to the environmental protection agency as required by EPA Administration Order Docket No. V-W-040-AO-02.

Resolution 04-0342 was unanimously adopted.

Approved May 10, 2004

HERB W. BERGSON, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

BY COUNCILOR NESS

04-028 - AN ORDINANCE PERTAINING TO RENTAL OF MOTOR BICYCLES OR MOTOR SCOOTERS; AMENDING DULUTH CITY CODE SECTION 47-43 AND ADDING SECTION 47-47.

- - -

BY COUNCILOR GILBERT

04-026 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NOS. 36 AND 37 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM S, SUBURBAN, TO R-1-A, SINGLE FAMILY RESIDENTIAL, PROPERTY LOCATED AT THE WEST END OF MIDDLE ROAD (J. HOVLAND).

- - -

BY COUNCILOR GILBERT

04-027 - AN ORDINANCE AUTHORIZING CONVEYANCE OF PROPERTY IN WEST DULUTH TO PETER OPACK AND TRICIA REESE FOR \$25,800.

- - -

BY COUNCILOR STOVER

04-021 - AN ORDINANCE RELATING TO BUILDING SAFETY, AMENDING CHAPTER 10 OF THE DULUTH CITY CODE BY ADDING AN ARTICLE X, CONVENIENCE STORES SECURITY SYSTEMS.

The rules were suspend upon a unanimous vote to hear a speaker on the ordinance.

Phil Berkheimer, member of the Katie Poirier Abduction Task Force expressed the need for this kind of ordinance so employees in these establishments would be better protected.

- - -

The following entitled ordinances were read for the second time:

BY COUNCILOR NESS

04-019 (9659) - AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF \$2,486,000 GENERAL OBLIGATION REVENUE BONDS OF THE CITY OF DULUTH FOR THE IMPROVEMENT OF THE MUNICIPAL WATER UTILITY UPON TERMS AND CONDITIONS TO BE PROVIDED BY RESOLUTION OF THE CITY COUNCIL AND PLEDGING REVENUES FOR THE PAYMENT THEREOF.

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

- - -

BY COUNCILOR NESS

04-023 (9660) - AN ORDINANCE TO AMEND THE BUDGET OF THE CITY OF DULUTH FOR THE YEAR 2004 TRANSFERRING THE BUSINESS DEVELOPMENT UNIT FROM THE DEPARTMENT OF PLANNING AND DEVELOPMENT INTO THE LEGISLATIVE AND EXECUTIVE DEPARTMENT.

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

- - -

BY COUNCILOR GILBERT

04-024 (9661) - AN ORDINANCE AUTHORIZING CONVEYANCE OF PROPERTY IN CENTRAL HILLSIDE TO DONALD M. SAMUELS AND ODIE POWELL FOR \$15,000.

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

- - -

BY COUNCILOR GILBERT

04-025 (9662) - 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 Gilbert, expressed concern on how long this authority would be in place and moved to amend the ordinance, by inserting in Section 2, after the words "and after its passage and publication" the words "until January 1, 2010," which motion was seconded and unanimously carried.

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

The meeting was adjourned at 9:40 p.m.

JEFFREY J. COX, City Clerk

ORDINANCE NO. 9659

BY COUNCILOR NESS:

AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF \$2,486,000 GENERAL OBLIGATION REVENUE BONDS OF THE CITY OF DULUTH FOR THE IMPROVEMENT OF THE MUNICIPAL WATER UTILITY UPON TERMS AND CONDITIONS TO BE PROVIDED BY RESOLUTION OF THE CITY COUNCIL AND PLEDGING REVENUES FOR THE PAYMENT THEREOF.

The city of Duluth does ordain:

Section 1. BOND PURPOSE AND AUTHORIZATION.

1.01 Under and pursuant to the provisions of Section 55 of the City Charter, Section 444.075 and Chapter 475 of Minnesota Statutes and other pertinent provisions of said Charter and Statutes, the city is authorized to issue its general obligation bonds to provide funds for the improvement of the municipal water utility plant, which bonds shall be a specific lien upon such plant and are payable primarily from net revenues, as hereinafter defined, to be derived from operation of the municipal water utility pledged for their payment. The city has applied for and received a commitment from the Minnesota public facilities authority (the authority) for a loan to install water mains in portions of the Morgan Park neighborhood (the project) as identified in the city's application to the authority.

1.02 The city council hereby determines that it is in the best interest of the city and it is necessary to improve the municipal water utility for the project, and determines that it is necessary to issue general obligation water utility revenue bonds or a note in the amount of \$2,486,000 for the purpose of paying costs of the project.

1.03 The city has heretofore issued and sold the following: general obligation water utility refunding bonds dated September 1, 1997, now outstanding in the amount of \$1,100,000; general obligation water and sewer refunding bonds dated May 1, 1998, the water utility portion of such bonds now outstanding in the amount of \$1,025,000; general obligation water and sewer utilities revenue bonds dated December 1, 2000, the water utility portion of such bonds now outstanding in the amount of \$1,315,000; general obligation utilities facility bonds dated September 1, 2002, the water utility portion of such bonds now outstanding in the amount of \$1,603,000; general obligation utilities revenue bonds dated December 1, 2002, the water utility portion of such bonds now outstanding in the amount of \$1,320,000; and general obligation water and sewer utilities revenue bonds dated March 1, 2003, the water utility portion of such bonds now outstanding in the amount of \$540,000. Under the provisions of the ordinances authorizing said bonds, the city reserved the privilege of issuing additional bonds payable from said net revenues on a parity with the bonds dated September 1, 1997, May 1, 1998, December 1, 2000, September 1, 2002, December 1, 2002, and March 1, 2003.

1.04 Pursuant to the authority herein recited, the city council hereby authorizes and directs the issuance and sale of general obligation water utility revenue bonds or a note of the city of Duluth in the amount of \$2,486,000, and pledges the full faith and credit and taxing powers of the city irrevocably for the payment of the principal and interest when due on such bonds, and also

pledges and appropriates irrevocably, to the amounts required for the payment of the principal and interest on the bonds and the maintenance of a reserve, any and all net revenues to be derived from time to time from the operation of the municipal water utility. Net revenues are defined as sums from time to time within the water utility operating account within the water utility fund maintained under Section 54 of the City Charter, in excess of sums required to pay claims duly approved and allowed for payment of expenses which, under generally accepted accounting principles, constitute normal, reasonable and current expenses of operating and maintaining the municipal water utility and to maintain such reasonable reserves for such expenses as the director of public works and utilities shall determine to be necessary from time to time in accordance with the policies established by the city council.

1.05 The city reserves the right and privilege of issuing additional bonds and of pledging and appropriating the net revenues of the municipal water utility for the payment thereof, when authorized in accordance with law and the City Charter and determined by the city council to be necessary for the improvement of the municipal water utility or for the refunding of indebtedness payable from said net revenues, provided that no such pledge shall 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.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

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: June 20, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed May 10, 2004
Approved May 10, 2004
HERB W. BERGSON, Mayor

- - -

ORDINANCE NO. 9660

BY COUNCILOR NESS:

AN ORDINANCE TO AMEND THE BUDGET OF THE CITY OF DULUTH FOR THE YEAR 2004 TRANSFERRING THE BUSINESS DEVELOPMENT UNIT FROM THE DEPARTMENT OF PLANNING AND DEVELOPMENT INTO THE LEGISLATIVE AND EXECUTIVE DEPARTMENT.

The city of Duluth does ordain:

Section 1. That Ordinance 9640 passed and approved December 15, 2003, is hereby amended by transferring the business development unit of the department of planning and development into the legislative and executive department as follows:

Department 020-planning and development
Division 1202-urban planning.....\$113,000 reduction
Department 010-legislative and executive
Division 1103-administrative assistant.....\$113,000 increase

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage. (Effective date: June 20, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed May 10, 2004
Approved May 10, 2004
HERB W. BERGSON, Mayor

- - -

ORDINANCE NO. 9661

BY COUNCILOR GILBERT:

AN ORDINANCE AUTHORIZING CONVEYANCE OF PROPERTY IN CENTRAL HILLSIDE TO DONALD M. SAMUELS AND ODIE POWELL FOR \$15,000.

The city of Duluth does ordain:

Section 1. That the proper city officials are hereby authorized to convey the below-

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

described property in St. Louis County, Minnesota, by quit claim deed to Donald M. Samuels and Odie Powell, as joint tenants, for the sum of \$15,000; payable to the General Fund 0100, Agency 700, Object 1448, Revenue Source 4640:

Lot 11, East Fifth Street, DULUTH PROPER First Division.

Section 2. This ordinance shall take effect 30 days from and after its passage and publication. (Effective date: June 20, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Nays: None -- 0

Passed May 10, 2004

Approved May 10, 2004

ATTEST:

JEFFREY J. COX, City Clerk

HERB W. BERGSON, Mayor

- - -

ORDINANCE NO. 9662

BY COUNCILOR GILBERT:

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. The city of Duluth hereby authorizes the housing and redevelopment authority of Duluth to exercise, on behalf of the city, those powers conferred by Minnesota Statutes, Chapter 462C (municipal housing programs), to develop and administer programs of:

(a) Making or purchasing mortgage or rehabilitation loans to finance the acquisition or rehabilitation of single family housing by low and moderate income persons and families; or

(b) Making or purchasing loans to finance multi-family housing developments or the rehabilitation of multifamily housing developments.

Section 2. This ordinance shall take effect and be in force 30 days from and after its passage and publication until January 1, 2010. (Effective date: June 20, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Nays: None -- 0

Passed May 10, 2004

Approved May 10, 2004

ATTEST:

JEFFREY J. COX, City Clerk

HERB W. BERGSON, Mayor

- - -

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, May 24, 2004, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stover and President Stauber -- 8

Absent: Councilor Stewart -- 1

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

04-0524-01 Minnesota state auditor submitting Duluth state convention center administrative board (DECC board) audit report for the years ended December 31, 2003, and 2002. -- Received

04-0524-11 Minnesota Citizens Federation-Northeast submitting communication regarding criteria for the proposed JOBZ business subsidy amendment (04-0339R). -- Received

04-0524-12 Jim Prosser submitting communication regarding the proposed resolution recommending various actions to improve rental housing (04-0263R). -- Received

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REPORTS OF OFFICERS

04-0524-02 Assessor submitting:

(a) For confirmation the assessment roll levied to defray the assessable portion of full development for Northridge Estates, Contract 5362 (assessable - \$1,062,828.39). -- Received

(b) Affidavits of mailing of notices of public hearings by the:

(1) City council on Monday, May 24, 2004, at 7:30 p.m. in the City Council Chambers, City Hall, regarding the proposed street improvement in Lake Avenue from Second Street Alley to Seventh Street;

(2) Special assessment board on Thursday, May 27, 2004, at 3:30 p.m. in Room 106A, City Hall, regarding the Trinity Road sanitary sewer extension from 280 feet east of Keystone Bluff to 220 feet northwesterly. -- Clerk

04-0524-03 Clerk submitting letter of insufficiency of petition to keep the Ten Commandments monument at the present location by deeding the property to St. Louis County. -- Received

04-0524-05 Engineering division submitting monthly status report of May 1, 2004. -- Received

04-0524-13 Parks and recreation department director submitting memo authorizing the 10:00 p.m. to 6 a.m closing of Point of Rocks Park located at 14th Avenue West and First Street, pursuant to Duluth City Code Section 35-9.3. -- Received

- - -

REPORTS OF BOARDS AND COMMISSIONS

04-0524-04 Commission on disabilities minutes of May 5, 2004, meeting. -- Received

- - -

RESOLUTION TABLED

Councilor Gilbert moved to remove Resolution 04-0339, of the city of Duluth to amend its business subsidy resolution, Resolution No. 00-0333(a) adopted May 22, 2000, as amended, to add criteria and business subsidy requirements related to job opportunity building zones, 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. Eric Lehto, Marsh Stenerson, Irene Holcomb, representing the Minnesota Senior

Federation, Al Netland, Chuck Morrison, KL Lewis, Sharla Gardner and Brian Fuxa voiced concern on the lax criteria in the resolution for the following reasons: the adverse effect it will have on the city because businesses will not have to pay any state or city taxes for 12 years; this will affect the budget of the city, county and school district; it does not require companies to pay employees high wages, so the public would have to subsidize them through public assistance and benefits; since a business is not paying taxes, it should be able to pay employees higher wages; JOBZ criteria will determine the direction our city is going and whether our young people will stay in the city and does not require businesses to hire local people.

David Ross, representing the Duluth Area Chamber of Commerce, and Todd Fedora stated that the common goal of all parties is high paying jobs but they differ on how to get there. He urged the council to leave this process in the hands of the mayor and administration to ensure that the businesses that locate in these sites will be productive providers to the community by creating an atmosphere to encourage employers to pay a higher wage versus having to mandate it.

Gary Krause stated that random acts of development do not lead to a productive future and the administration would need to select an industry that would grow in this area, pay high wages and use the skills of the people in the area.

Councilor Gilbert stated that the community is polarized between businesses and unions on this issue and urged the two parties to work together. He continued by saying that if a business is getting subsidies and not paying sales and property taxes, they should be paying high wages to satisfy the public. Councilor Gilbert also agreed that preference should be given to hiring local people whenever possible.

Councilor Gilbert moved to amend the business subsidy policy criteria attached to the resolution as follows:

- (1) In Section IV B, change the phrase "The city of Duluth" to "The city council";
- (2) In Section IV C(3), under target industries, change "\$9.00 per hour" to "\$11.00 per hour" and under eligible businesses, change "\$10.00 per hour" to "\$12.00 per hour";
- (3) In paragraph IV C(4)(a), delete the last word "and" and add "Whenever possible, preference shall be given to hiring local employees that live in the area. There shall be worker retention of existing jobs in firms who are relocating from Carlton, St. Louis or Lake counties in Minnesota, or Douglas County in Wisconsin";
- (4) Delete the last sentence and add to Section IV C(4)(c), "Relocating JOBZ businesses shall agree to pay a minimum of \$11.00 per hour plus benefits including health insurance for new jobs created if the relocating JOBZ business is one of the target industries, or \$12.00 per hour plus benefits including health insurance for new jobs created for all other relocating JOBZ businesses. For any new construction, the business shall enter into a JOBZ construction agreement negotiated by the administration and approved by the city council where preference would be given to hiring local contractors and tradespeople for construction";
- (5) Add to the end of Section IV D(2)(a), "The forms, report and JOBZ construction agreement shall provide for public verification and disclosure that employees are hired locally, which will include a list of names of employees, city of residence and job titles. The businesses' reports shall be public documents";
- (6) In Section IV D(2)(b), add the words, "If the business fails to submit its report to the city, the city will have the right to revoke and rescind JOBZ status," which motion was seconded for discussion.

Mayor Bergson reviewed that putting more stringent criteria in place will cause a business to look to other zones that do not have criteria and will end up pitting one community against another. He urged the council to trust the administration in selecting companies that are deserving

of the tax credits with standards that pay their employees well. Mayor Bergson added that each company needs to come back to the council for final approval.

Councilor Johnson stated that the rules should be the same for all companies that the city is trying to attract so that they know what the criteria are and that the rules should be writing.

Councilor Ness reviewed that the mayor and Tom Cotruvo, business development division manager, have talked to each councilor and listened to their concerns and believes that the values and priorities of the administration are similar to that of the council on this issue.

Councilor Gilbert withdrew his amendment.

Several councilors stated that they need more education on this issue and felt they needed to wait until the next meeting to vote on this issue.

President Stauber reviewed that Duluth's population has declined because there were no jobs for people and now there is an opportunity for Duluth to create incentives for employers to come into Duluth and create jobs.

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

Yeas: Councilors Gilbert, Johnson, Ness, Reinert and Stover -- 5

Nays: Councilors Atkins, Little and President Stauber -- 3

Absent: Councilor Stewart -- 1

- - -

At this time, 8:25 p.m., the public hearing regarding the Lake Avenue municipal state aid project was called to order.

Mike Metso, city engineer, reviewed the project.

There being no speakers on the issue, President Stauber adjourned the public hearing at 8:30 p.m. and the regular order of business was resumed.

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

BY COUNCILOR NESS:

RESOLVED, that the assessment roll levied to defray the assessable portion of full development for Northridge Estates (Contract No. 5362 - assessable amount: \$1,062,828.39) is hereby confirmed.

Resolution 04-0363 was unanimously adopted.

Approved May 24, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

RESOLVED, that the proper city officers are hereby authorized to enter into a consultant agreement with LHB Engineers & Architects for the sum of not to exceed \$13,244, from Fund 0450, Object 5520, Organization C401, for providing certain engineering services to the city of Duluth in connection with city heating and cooling study, said services and payment therefore to

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

be substantially as outlined in the agreement on file in the office of the city clerk as Public Document No. 04-0524-06.

Resolution 04-0351 was unanimously adopted.

Approved May 24, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the 2:00 a.m. closing license for the following alcoholic beverage license for the period ending August 31, 2004, subject to departmental approvals:

Grandma's Angie's, Inc. (Little Angie's Cantina), 11 East Buchanan Street.

Resolution 04-0358 was unanimously adopted.

Approved May 24, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the reappointments by Mayor Bergson of Gordon Fon and Robert Hewitt to the heritage preservation commission for terms expiring on May 31, 2007, are confirmed.

Resolution 04-0345 was unanimously adopted.

Approved May 24, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the reappointment by Mayor Bergson of Dean Casperson to the library board for a term expiring on June 1, 2009, is confirmed.

RESOLVED FURTHER, that the appointment by Mayor Bergson of Mary E. Lynch to the library board for a term expiring on June 1, 2008, replacing Carol Kelley, is confirmed.

RESOLVED FURTHER, that the appointment by Mayor Bergson of Andrew Slade to the library board for a term expiring on June 1, 2009, replacing Harriet J. Halli, is confirmed.

Resolution 04-0346 was unanimously adopted.

Approved May 24, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointment by Mayor Bergson of Timothy L. Meyer (area) to the technical design advisory committee for the Downtown Waterfront Mixed Use-Design Review District (DWMX-D) for a term expiring on May 31, 2007, replacing Jan Sivertson, is confirmed.

Resolution 04-0348 was unanimously adopted.

Approved May 24, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the reappointment by Mayor Bergson of Carl Crawford to the Duluth human rights commission for a term expiring on April 20, 2007, is confirmed.

Resolution 04-0353 was unanimously adopted.

Approved May 24, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

WHEREAS, the city council adopted Resolution 04-0244, which approved the community development citizen participation plan; and

WHEREAS, that plan requires the council to designate community development target areas; and

WHEREAS, the city's community development target areas are census tracts or census block groups that have geographically defined boundaries where it is determined that 51 percent or greater of the people who live there have low to moderate incomes, as defined by the department of housing and urban development; and

WHEREAS, all residents located within the city of Duluth's community development target areas are eligible for specified targeted neighborhood improvements through community development block grant (CDBG) funds, which may include improvements such as street improvements, water and sewer improvements and neighborhood facilities.

THEREFORE, BE IT RESOLVED, that based on the latest census data and information from the department of housing and urban development, the areas specified on the following census tracts are hereby designated as community development target areas: tracts 12, 13, 14, 16, 17, 18, 19, 20, 24, 25, 26, 27, 28, 32, 33 and 37.

BE IT FURTHER RESOLVED, that the following census block groups are also designated as community development target areas: block groups 2-4, 3-4, 9-4, 29-2, 30-1, 31-4, 34-1, 38-3, 39-1 and 103-4.

Resolution 04-0354 was unanimously adopted.

Approved May 24, 2004

HERB W. BERGSON, Mayor

- - -

BY PRESIDENT STAUBER:

RESOLVED, that the proper city officials are hereby authorized to accept the donation of the below-described property in St. Louis County, Minnesota, from Gerald T. and Evelyn Moscatelli and to execute all documents necessary with regard thereto:

Lot 1, Block 1, SPIRIT LAKE Addition to Duluth (010-4060-00010).

FURTHER RESOLVED, that the city hereby expresses its appreciation for said donation from Gerald T. and Evelyn Moscatelli.

Resolution 04-0365 was unanimously adopted.

Approved May 24, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

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. 04-0524-08, with the state of Minnesota, department of natural resources, authorizing the city to perform certain maintenance at the Clyde Avenue (Munger Access) and Rice's Point boat launch sites, in consideration of \$1,500 to be paid by the department of natural resources to the city. Reimbursements received shall be deposited into public works and utilities department, street and park maintenance division, General Fund 100, Department 500, Division 1920, Revenue Source 4230.

Resolution 04-0336 was unanimously adopted.

Approved May 24, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

WHEREAS, the city of Duluth has applied to the commissioner of transportation for a grant from the Minnesota state transportation fund for the rehabilitation of Bridge No. L8506 over Amity Creek on Seven Bridges Road, S.P. 118-080-30; and

WHEREAS, the grant has been approved and the amount of the grant has been determined to be \$721,478.

NOW, THEREFORE, BE IT RESOLVED, that the city of Duluth does hereby accept said grant and affirms that any rehabilitation costs qualifying for Minnesota state transportation funds in excess of the grant will be appropriated from funds available to the city of Duluth, and that any grant monies appropriated for the rehabilitation costs but not required, based on the final audit, shall be returned to the Minnesota state transportation fund.

RESOLVED FURTHER, that grant monies received hereunder shall be deposited into the Permanent Improvement Fund 0411, Agency 035, Organization 2175, Revenue Source 4230.

Resolution 04-0337 was unanimously adopted.

Approved May 24, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

WHEREAS, based on the recent history of actual sewer system overflows and the estimated flow of clear groundwater to the city's sanitary sewer system originating in each of its sewer basins, the availability of city resources to reduce such flows under the city's I&I program and the results anticipated from so allocating such resources, the director of public works and utilities has recommended that Sewer Basin 6 be added to sewer basins 1, 2, 3, 4 and 5 as basins designated for inspection as provided for in Section 43-33 of the Code; and

WHEREAS, the council accepts said recommendation.

RESOLVED, that pursuant to the provisions of Section 43-33 of the Code, Sanitary Sewer Basin 6 is hereby designated as one of the districts in the city wherein the city can best utilize its available resources to reduce the amount of unpolluted water entering or infiltrating the city's wastewater collection system and said basins are therefore designated as districts within which the city shall focus its enforcement efforts under Chapter 43 of the Code.

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

Resolution 04-0350 was unanimously adopted.

Approved May 24, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Northwoods Sand and Gravel be and hereby is awarded a contract for construction year 2004 street improvement of Lakeside Lower Southwest 2 for the engineering division in accordance with specifications on its low specification bid of \$544,491.43, terms net 30,

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

FOB job site, payable out of Street Improvement Program Fund 0440, Department/Agency 038, Organization 0405, Object 5530.

Resolution 04-0356 was unanimously adopted.

Approved May 24, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Ulland Brothers, Inc., be and hereby is awarded a contract for furnishing and delivering 5,000 cubic yards of washed sand for the maintenance operation division in accordance with specifications on its low specification bid of \$52,344.75, terms net 30, FOB destination, payable out of General Fund 0100, Department/Agency 500, Organization 2000, Object 5233.

Resolution 04-0357 was unanimously adopted.

Approved May 24, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Utility Systems of America, Inc., be and hereby is awarded a contract for construction of year 2004 street improvement of Hillside Upper West 2 for the engineering division in accordance with specifications on its low specification bid of \$457,429.25, terms net 30, FOB job site, payable out of Street Improvement Program Fund 0440, Department/Agency 038, Organization 0403, Object 5530.

Resolution 04-0360 was unanimously adopted.

Approved May 24, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Rinker Materials, c/o Groebner and Associates, Inc., be and hereby is awarded a contract for furnishing and delivering 110,000 feet of polyethylene pipe for the utility operation division in accordance with specifications on its low specification bid of \$33,852.09, terms net 30, FOB destination, payable out of Gas Fund 0520, Department/Agency 500, Organization 1945, Object 5227.

Resolution 04-0361 was unanimously adopted.

Approved May 24, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

WHEREAS, it is deemed necessary for the public convenience and safety that Anderson Road from Trinity Road (TH 53) to Chambersburg Avenue (City Project No. 0351TR) be reconstructed; and

WHEREAS, this project will not be eligible for municipal state aid funds unless it is constructed to urban state aid standards for an urban street, 30 mph design speed or unless a variance is granted; and

WHEREAS, practical limitations require that the vertical alignment through a segment of the project be constructed utilizing a shorter vertical curve length than dictated by standards, resulting in a 20 mph design speed in lieu of a 30 mph design speed, which requires a variance from the commissioner of transportation in accordance with Minnesota Rules Chapter 8820.3300.

NOW, THEREFORE, BE IT RESOLVED, that the city of Duluth requests the commissioner of transportation for a variance from Minnesota Rules Chapter 8820, whereby the urban state aid standards be reduced for this project allowing for a sag vertical curve length (190 feet) less than that required for a 30 mph design speed, and further provides that if the commissioner grants the variance that the city of Duluth hereby agrees to indemnify, save and hold harmless the state of Minnesota and its agents and employees of and from any and all claims, demands, actions or cause of action arising out of or by reason of the reconstruction of Anderson Road in the city of Duluth in any manner than in accordance with Minnesota Rule 8820.9936 and further agrees to defend at its sole cost and expense any action or proceeding commenced for the purpose of asserting any claim of whatsoever character arising as a result of granting of this variance.

Resolution 04-0367 was unanimously adopted.

Approved May 24, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

WHEREAS, it is deemed necessary for the public convenience and safety that Arthur Avenue between Garfield Avenue and Port Terminal Road (City Project No. 0103TR) be constructed; and

WHEREAS, this project will not be eligible for municipal state aid funds unless it is constructed to rural/suburban state aid standards for a suburban street, 30 to 60 mph design speed, or unless a variance is granted; and

WHEREAS, practical limitations require that:

(a) The horizontal alignment through segments of the project be constructed utilizing a shorter horizontal curve radius than dictated by standards resulting in a 20 mph design speed in lieu of a 30 mph design speed and utilizing normal street crown rather than required rates of super-elevation; and

(b) The vertical alignment through segments of the project be constructed utilizing shorter vertical curve radius than dictated by standards, each of which requires a variance from the commissioner of transportation in accordance with Minnesota Rules Chapter 8820.3300.

NOW, THEREFORE, BE IT RESOLVED, that the city of Duluth requests the commissioner of transportation for a variance from Minnesota Rules Chapter 8820, whereby the urban state aid standards be reduced for this project allowing for a 120 foot horizontal curve radius in lieu of the required 300 foot radius, normal crown in lieu of required rates of super-elevation, and two 60 foot vertical curve radii in lieu of the required 90 foot radii, and further provides that if the commissioner grants the variance that the city of Duluth hereby agrees to indemnify, save, and hold harmless the state of Minnesota and its agents and employees of and from any and all claims, demands, actions or cause of action arising out of or by reason of the construction of Arthur Avenue in the city of Duluth in any manner than in accordance with Minnesota Rule 8820.9920 and further agrees to defend at its sole cost and expense any action or proceeding commenced for the purpose of asserting any claim of whatsoever character arising as a result of granting of this variance.

Resolution 04-0368 was unanimously adopted.

Approved May 24, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

WHEREAS, it was deemed necessary for the public convenience and safety that Airport

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Road and Stebner Road (City Project No. 9042MC98) be constructed; and

WHEREAS, this project will not be eligible for municipal state aid funds unless it is constructed to state aid rules, or unless a variance is granted; and

WHEREAS, project development and construction engineering costs are eligible for reimbursement from state aid funds and are limited to 25 percent of the eligible construction costs; and

WHEREAS, the sum of the project development and construction engineering costs exceeded the 25 percent limit which requires a variance from the commissioner of transportation in accordance with the Minnesota Rules Chapter 8820.3300.

NOW, THEREFORE, BE IT RESOLVED, that the city of Duluth requests the commissioner of transportation for a variance from Minnesota Rules Chapter 8820, whereby the urban state aid standards be reduced for this project allowing for reimbursement of project development and construction engineering costs in excess of the 25 percent limitation and further provides that if the commissioner of transportation grants the variance that the city of Duluth hereby agrees to indemnify, save and hold harmless the state of Minnesota and its agents and employees of and from any and all claims, demands, actions or cause of action arising out of or by reason of the construction of Airport Road and Stebner Road in the city of Duluth in any manner than in accordance with the Minnesota Rule 8820.1500 and further agrees to defend at its sole cost and expense any action of proceeding commenced for the purpose of asserting any claim of whatsoever character arising as a result of granting of the variance.

Resolution 04-0369 was unanimously adopted.

Approved May 24, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

RESOLVED, that in accordance with the provisions of Section 33-88.2 of the Duluth City Code, 1959, as amended, the following handicapped parking zones are hereby established:

front of 413 East Fifth Street;

front of 15 England Avenue.

Resolution 04-0343 was unanimously adopted.

Approved May 24, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

RESOLVED, that the proper city officials are authorized to enter into an amendment to the existing lease agreement, a copy of which amendment is on file in the office of the city clerk as Public Document No. 04-0524-09; St. Louis County to add to said lease the leasing of the parking spaces between the Government Services Center and Second Alley in the amount of \$130 per month, payable from General Fund 0100-200-1610-5412 and Fleet Services Fund 0660-015-1560-5412.

Resolution 04-0349 was unanimously adopted.

Approved May 24, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

RESOLVED, that the proper city officials are hereby authorized to accept a homeland security grant from the Minnesota department of public safety in the amount of \$100,170, said

monies to be deposited into Fund 215.

FURTHER RESOLVED, that the proper city officials are hereby authorized to execute any and all documents or agreements necessary to effectuate said grant.

Resolution 04-0352 was unanimously adopted.

Approved May 24, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR REINERT:

RESOLVED, that the proper city officials are hereby authorized to execute a memorandum of understanding with DEDA, substantially in the form of that on file in the office of the city clerk as Public Document No. 04-0524-10, which allows DEDA to participate during 2004 in the city's self insurance fund program; DEDA funds in the amount of \$6,500 to be deposited in 0610-036-1656-4904.

Resolution 04-0341 was unanimously adopted.

Approved May 24, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR REINERT:

RESOLVED, that resolutions 04-0228 and 04-0229 are amended as follows:

(a) In Resolution 04-0228, wherever the amount \$5,000 appears, it is changed to read \$15,000, so that the amount of the authorized expenditure is an amount not to exceed \$15,000;

(b) In Resolution 04-0229, wherever the amount \$15,000 appears, it is changed to read \$5,000, so that the amount of the authorized expenditure is an amount not to exceed \$5,000.

Resolution 04-0370 was unanimously adopted.

Approved May 24, 2004

HERB W. BERGSON, Mayor

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The following resolutions were also considered:

Resolution 04-0371, by Councilor Ness, of intent to include \$200,000 in the 2005 general fund budget as a voluntary payment to the proposed business improvement district, was introduced for discussion.

To questions from the council, Administrative Assistant Winson replied that the proposed funding for this payment will be from the revenue generated from the new slot machines at the Fond-du-Luth Casino.

Councilor Ness urged the council to take the lead for the business owners Downtown, make a sacrifice and show the council's excitement of helping with the business improvement district.

Resolution 04-0371 was adopted as follows:

BY COUNCILOR NESS:

WHEREAS, the Greater Downtown Council (GDC) was incorporated as a private, nonprofit corporation in the state of Minnesota in 1984; and

WHEREAS, the mission statement of the GDC states that it is "dedicated to the development and promotion of a strong, healthy and exciting Downtown. The GDC is a catalyst and coordinator for enhancing the Downtown business climate through the public and private sectors. The GDC plays a unique role in bringing together business, community and government leaders to focus on Downtown issues"; and

WHEREAS, the city of Duluth and the Duluth economic development authority (DEDA) have both relied upon the GDC as a partner in addressing such Downtown issues; and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

WHEREAS, the city and DEDA are represented on the GDC's board of directors; and
WHEREAS, the combined financial support to the GDC by the city and the DEDA for 2004 is \$168,526; and

WHEREAS, from the GDC membership as well as from initiatives including the Economic Summit, the mayor's downtown task force and the National Trust for Historic Preservation's preservation development initiative project, there is a call for heightened efforts to have a strong, healthy Downtown that includes residential, professional services, education, retail and entertainment; and

WHEREAS, the GDC is therefore seeking a long-term, proactive means of generating funds necessary to enhancing its services to the Downtown; and

WHEREAS, under Minnesota Statutes Chapter 428A, cities are authorized to adopt an ordinance establishing what is referred to as a special service district; and

WHEREAS, on January 28, 2003, the GDC board of directors voted to create a steering committee to review the feasibility of creating a special services district for Downtown Duluth; and

WHEREAS, an advisory panel through the International Downtown Association conducted an assessment of our community and provided recommendation that a special service district campaign be launched; and

WHEREAS, the GDC board of directors approved the report and recommendation; and

WHEREAS, the GDC board of directors has developed a special service district budget that will focus upon clean & safe issues, marketing/promotions/special events, and physical enhancements for a total special service district budget of \$500,000; and

WHEREAS, the GDC will begin its public petition drive in early June 2004; and

WHEREAS, an estimated \$262,000 will be generated from mandatory assessments within the district and an estimated \$238,000 will be generated from voluntary payments made in lieu of assessments from those district property owners that are governmental and/or nonprofit; and

WHEREAS, this administration has expressed its continued support of the GDC and the desired outcomes of the proposed district; and

WHEREAS, it is the understanding that a voluntary payment by the city to the district would thereby eliminate, effective 2005, the funding that the city and DEDA have historically made to GDC.

NOW, THEREFORE, BE IT RESOLVED, that the Duluth City Council hereby states its intention to include in its 2005 annual budget an appropriation of \$200,000 for its voluntary payment to the special service district.

Resolution 04-0371 was unanimously adopted.

Approved May 24, 2004

HERB W. BERGSON, Mayor

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Resolution 04-0347, by Councilor Johnson, confirming the appointment of Henry L. Banks to the planning commission, replacing Jeffrey Jackson, was introduced for discussion.

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

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Resolution 04-0322, by Councilor Gilbert, granting an obstruction of sidewalk permit to Pizza Lucé III, Inc. - A&L Development, Inc., for property located at 11 East Superior Street, was introduced for discussion.

Councilor Ness requested that Pizza Lucé use a more permanent looking barrier on the sidewalk that will not be easily moved.

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

Michael Kollman, representing Pizza Lucé, replied that they can follow through with that request.

Resolution 04-0322 was adopted as follows:

BY COUNCILOR GILBERT:

WHEREAS, 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

WHEREAS, Pizza Luce' III, Inc., and A&L Development, Inc., have requested permission to place tables and chairs on the sidewalk of the Superior Street right-of-way of property located at 11 East Superior Street, described as Superior Street right-of-way adjoining Lots 1 and 3, East Superior Street, Duluth Proper First Division; and

WHEREAS, per Section 45-4.1, the city planning commission has 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 (Reference File No. 04034).

NOW, THEREFORE, BE IT RESOLVED, by the city council of the city of Duluth, that Pizza Luce' III, Inc., and A&L Development, Inc., are hereby permitted to place up to 11 tables and 40 chairs in accordance with the drawing identified as city council Public Document No 04-0524-07 on or within the sidewalk area of the right-of-way of East Superior Street of the city of Duluth, subject to the following conditions:

(a) That the applicant be on notice that this permit is not exclusive, and that the city may require the permittee to remove the tables and chairs for specific events conducted in the East Superior Street 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;

(b) That the applicant shall be responsible for policing refuse in the immediate area;

(c) That the placement of the tables and chairs shall be located within the approved sidewalk area during the hours of operation of Pizza Luce' III, Inc., and shall be removed from the sidewalk when the business is closed;

(d) The maximum number of tables and chairs permitted in the Superior Street sidewalk in front of the building, shall be located only in the area illustrated in the city council public document;

(e) The area shall be delineated by posts and ropes placed in accordance with the city council public document. These posts and ropes shall be removed during all times the restaurant is not open for business;

(f) The term of the permit shall be until October 15, 2005, at which time renewal may be requested;

(g) This permit is subject to revocation by a resolution of the city council and notice to the permittee for failure to maintain the terms and conditions of this permit.

RESOLVED FURTHER, that before this resolution shall be effective for any purpose whatsoever, the aforesaid permittees shall file with the city clerk: a duly executed and acknowledged written acceptance of the terms of this resolution; a certificate of insurance approved as to form by the city attorney evidencing that such person or organization has in force insurance in the minimum amounts of \$300,000 for bodily injuries resulting in any year and

\$50,000 property damage in any one year protecting such person or organization and the city of Duluth against liability for injuries or damages resulting from the placement of such objects or materials on public sidewalks or boulevard areas. The permission granted by such resolution shall be conditioned upon such person or organization continuing to supply the city with evidence that such insurance remains in effect and all insurance required herein shall contain a provision that no policy may be canceled until ten days after written notice is given to the city clerk. Such policy shall name the city as an additional insured.

RESOLVED FURTHER, the approval was made because of the city planning commission's findings that appropriate safeguards will exist to protect the comprehensive plan and to conserve and to protect property values in the neighborhood if conditions are observed.

Resolution 04-0322 was unanimously adopted.

Approved May 24, 2004

HERB W. BERGSON, Mayor

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Resolution 04-0355, by Councilor Gilbert, granting a special use permit to Duluth Central High School and Minnesota Power for a wind energy conversion system on property located at 800 East Central Entrance (Central High School/Minnesota Power), was introduced for discussion.

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

Kevin Michalicek, physics teacher at Central High School, reviewed that Central High School and Minnesota Power are working together to put a windmill at the school and that the special use permit process has gone through the planning commission, which is requiring a ten foot fence around the windmill. He continued by saying that this fence would cost \$5,000-\$6,000 and is cost prohibitive for the school district as the windmill is being donated by Minnesota Power with no money coming from the school district. Mr. Michalicek requested the council to consider removing the restriction of the fence.

City Attorney Brown reminded councilors that the liability lies with the school district and not with the city.

President Stauber stated that the council should wait for the planning commission and staff to review this amendment before the council votes on it.

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

Yeas: Councilors Atkins, Gilbert, Johnson and President Stauber -- 4

Nays: Councilors Little, Ness, Reinert and Stover -- 4

Absent: Councilor Stewart -- 1

Councilor Reinert moved to amend the last paragraph of the resolution to delete condition (b) requiring a fence, which motion was seconded and carried upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert and Stover -- 7

Nays: President Stauber -- 1

Absent: Councilor Stewart -- 1

Resolution 04-0355, as amended, was adopted as follows:

BY COUNCILOR GILBERT:

WHEREAS, Duluth Central High School and Minnesota Power have submitted to the city council a request for a special use permit for a wind energy conversion system on property described as in the NE1/4, SE1/4, Section 21, T50N, R14W, lying south of Central Entrance and located at 800 East Central Entrance and said permit application was duly referred to the city planning commission for a study, report and public hearing and the city planning commission has

subsequently reported its approval to the city council; and

WHEREAS, the approval was made because of the city planning commission's findings that appropriate safeguards will exist to protect the comprehensive plan and to conserve and to protect property values in the neighborhood if conditions are observed (Reference File No. 04033).

NOW, THEREFORE, BE IT RESOLVED, that a special use permit is hereby granted to Duluth Central High School and Minnesota Power to allow for the operation of a wind energy conversion system at 800 East Central Entrance, subject to the following conditions:

- (a) The tower is to be installed within one year of approval of the special use permit;
- (b) The school is to provide a contact position should complaints arise in the future;
- (c) The development is to follow the plans provided. Minor amendments or changes are subject to review by planning and development department staff. Major amendments or changes are subject to review by the planning commission.

Resolution 04-0355, as amended, was adopted upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert and Stover -- 7

Nays: President Stauber -- 1

Absent: Councilor Stewart -- 1

Approved May 24, 2004

HERB W. BERGSON, Mayor

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Resolution 04-0362, by Councilor Gilbert, of intent for the conceptual approval of an apartment housing project and natural area on tax forfeited land along Rice Lake Road near Blackman Avenue and Pecan Avenue, was introduced for discussion.

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

Sue Stephenson, Rod Gunderson, Diane Edwards, Jeff Hendrickson, Fred Vos and Dave Johnson voiced concern on the proposed housing project as traffic is already bad on Rice Lake Road; it is a single family housing area and want to keep it that way; the land is unique with all of the green space; it would take away the growth of the single family neighborhood; this is a natural area that should be retained for the neighborhood; there would probably be an increased pressure on city services such as water and sewer usage and the wetlands have been used for students to study the ecosystem.

Garry Krause stated that the parents of Lowell School students are concerned about traffic as this is the major corridor for the school.

Resolution 04-0362 was adopted as follows:

BY COUNCILOR GILBERT:

WHEREAS, there exists a strong demand for apartment housing in the community as evidenced by the 2003 state of housing study conducted by the St. Louis County planning department; and

WHEREAS, there also exists an extremely small amount of undeveloped land (only 95 acres citywide) zoned for apartment housing as pointed out in the "Analysis of Housing Sites" produced by the city planning department in October of 2002; and

WHEREAS, there exist approximately 60 acres of tax forfeited land on the south side of Rice Lake Road, east of Blackman Avenue and west of Pecan Avenue; and

WHEREAS, Mark Lambert of Summit Management, LLC, is the owner of approximately 2.5 acres of land on the north edge of the above mentioned tax forfeited land and he is the owner and operator of the Campus Park Townhomes and Villas, a student apartment and townhome development on Rice Lake Road about 1/2 mile north of the subject tax forfeited land; and

WHEREAS, David Johnson of 602 Pecan Avenue, Duluth, Minnesota, has begun

researching the possibility of entering the southern 1/2 of the 60 acre tax forfeited tract described above into the status of permanent green space through the Duluth natural areas program.

NOW, THEREFORE, BE IT RESOLVED, that the Duluth City Council hereby supports in concept the joint proposal for the development of apartment housing by Mark Lambert of Summit Management, LLC, on the northerly 30 acres of the subject tax forfeited land and the designation of a natural area on the southerly 30 acres of the subject tax forfeited tract, subject to approval of plans submitted through the normal permitting processes.

Resolution 04-0362 was unanimously adopted.

Approved May 24, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that it is deemed necessary for public convenience and safety and it is hereby ordered that Lake Avenue from Second Street Alley to Seventh Street (City Project No. 0087TR) be improved; and

FURTHER RESOLVED, that said work be done by contract and that the estimated cost of said project as estimated by the city engineer is \$1,540,000; \$1,329,400 from municipal state aid funds, \$40,000 from Water Fund 0510, \$40,000 from Stormwater Utility Fund 0535, \$50,000 from Sanitary Sewer Fund 0530, \$20,000 from Gas Utility Fund 0520 and \$60,600 assessable to abutting property.

BE IT 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 04-0372 was unanimously adopted.

Approved May 24, 2004

HERB W. BERGSON, Mayor

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INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

BY COUNCILOR NESS

04-031 - AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF GENERAL OBLIGATION AIRPARK IMPROVEMENT BONDS OF THE CITY OF DULUTH IN AN AMOUNT NOT TO EXCEED \$1,000,000 UPON TERMS AND CONDITIONS TO BE PROVIDED BY RESOLUTIONS OF THE CITY COUNCIL AND LEVYING TAXES FOR THE PAYMENT THEREOF.

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BY COUNCILOR GILBERT

04-030 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NO. 19 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-B, ONE FAMILY RESIDENTIAL DISTRICT, TO C-2, HIGHWAY COMMERCIAL DISTRICT, PROPERTY LOCATED AT 2901 MORRIS THOMAS ROAD (BECHTHOLD).

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

Jerry Wiita urged the councilors to approve the rezoning of this structure as this commercial use will help clean up the building and will be a good addition to the neighborhood.

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BY COUNCILOR ATKINS

04-029 - AN ORDINANCE AUTHORIZING A LONG TERM LEASE OF A HISTORIC PROPERTY TO THE FOND DU LAC BAND OF CHIPPEWA.

- - -

BY PRESIDENT STAUBER

04-032 - AN ORDINANCE PERTAINING TO CABLE TELEVISION FRANCHISE.

- - -

The following entitled ordinances were read for the second time:

BY COUNCILOR NESS

04-028 (9663) - AN ORDINANCE PERTAINING TO RENTAL OF MOTOR BICYCLES OR MOTOR SCOOTERS; AMENDING DULUTH CITY CODE SECTION 47-43 AND ADDING SECTION 47-47.

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

KL Lewis voiced concern on the customers being qualified to drive the motor bicycles.

Councilor Ness moved to amend Section 47-47 of the ordinance as follows:

(a) In paragraph (c), delete the last sentence;

(b) In paragraph (e), delete the last sentence;

(c) In paragraph (h), delete "council" and insert "administrative assistant" twice,

which motion was seconded and unanimously carried.

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

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BY COUNCILOR GILBERT

04-026 (9664) - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NOS. 36 AND 37 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM S, SUBURBAN, TO R-1-A, SINGLE FAMILY RESIDENTIAL, PROPERTY LOCATED AT THE WEST END OF MIDDLE ROAD (J. HOVLAND).

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

Yeas: Councilors Atkins, Gilbert, Johnson, Ness, Reinert, Stover and President Stauber -- 7

Nays: None -- 0

Abstention: Councilor Little -- 1

Absent: Councilor Stewart -- 1

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BY COUNCILOR GILBERT

04-027 (9665) - AN ORDINANCE AUTHORIZING CONVEYANCE OF PROPERTY IN WEST DULUTH TO PETER OPACK AND TRICIA REESE FOR \$25,800.

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

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BY COUNCILOR STOVER

04-021 - AN ORDINANCE RELATING TO BUILDING SAFETY, AMENDING CHAPTER 10 OF THE DULUTH CITY CODE BY ADDING AN ARTICLE X, CONVENIENCE STORES SECURITY SYSTEMS.

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

Phil Berkheimer stated that this is an important issue for the store employees and there needs to be some discussion on this issue.

Councilor Ness stated the council is waiting for information from the administration and moved to table the ordinance for a committee meeting on June 7, which motion was seconded and unanimously carried.

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The meeting was adjourned at 9:50 p.m.

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

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ORDINANCE NO. 9663

BY COUNCILOR NESS:

AN ORDINANCE PERTAINING TO RENTAL OF MOTOR BICYCLES
OR MOTOR SCOOTERS; AMENDING DULUTH CITY CODE
SECTION 47-43 AND ADDING SECTION 47-47.

The city of Duluth does ordain:

Section 1. That Section 47-43 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 47-43. Insurance required.

No license pursuant to this Article shall be issued until the applicant obtains and files with the city clerk a policy of liability insurance by an insurance company authorized to do business under the laws of the state of Minnesota, to be kept in force during the term of the license. The policy shall insure the applicant, his renters and lessees, and persons operating such rental vehicles against liability for loss in the sum of ~~\$25,000~~ \$100,000 for injury or death of any one person in any one accident, ~~\$50,000~~ \$150,000 for injury to or death of more than one person in any one accident, and ~~\$5,000~~ \$25,000 because of damage to or destruction of property in any one accident resulting from the negligent operation, use, or defective condition of any rental vehicle belonging to or under the control of the applicant, or such greater amount of coverage required by any other law. The policy shall contain a provision continuing liability thereunder for the full term of the license to the full amount thereof, notwithstanding any recovery thereon. The policy also shall contain an endorsement to the effect that the liability under the policy is not affected by reason of any rental vehicle having been furnished to, or rented or leased to a minor, and further that the city shall be notified in writing at least ten days before the cancellation of the insurance policy. Cancellation of the insurance required by this Article shall void and render inoperable any license issued pursuant to this Article unless another approved insurance policy is filed in lieu of the cancelled one.

Section 2. That Duluth City Code 1959, as amended, be amended to add a new Section 47-47 to read as follows:

Sec. 47-47. Motor bicycle/motor scooter rentals.

The provisions of Chapter 47 apply to the business of motorcycle, motor bicycle/motor scooter rental. This section is authorized by Minnesota Statutes Sec. 168.836.

(a) Motor bicycle/scooter. A motor bicycle/scooter is a motorcycle as defined in Minnesota Statutes Sec. 169.01, subd. 4 and 4(a), and Sec. 168.831, or the amended or successor statute of either;

(b) License required. No person shall engage in the motor bicycle or motor scooter rental business within the city without first obtaining any required state license therefore, and a license issued under this Code;

(c) Applications; forms; approval by council. Applications for motor bicycle/scooter rental license shall be made to the city clerk on forms furnished by the city.

(d) Listing of rental vehicles. Each person applying for such a license shall accompany the application with a list of the vehicles which applicant proposes to use for rental or lease, which list shall describe such vehicles by make, year, and serial number. Any replacement of such equipment made by any licensee in the course of the license year shall be reported to the city clerk within five days of such replacement;

(e) Inspection. Each vehicle shall be kept in good operating condition by the licensee. City employees may make periodic inspections of any rental vehicles.

(f) Instruction. Prior to the time when a customer is first given control of a rental vehicle, the licensee, his agents or employees, shall explain the operation of the motor bicycle or motor scooter, including the controls, pedals, gears and brakes of the particular vehicle to be used by each person leasing or using it. The licensee shall call the attention of the lessee or bailee to the high degree of maneuverability of a motor bicycle or motor scooter and the lack of protection to the driver thereof if the vehicle is upset;

(g) Hours. No rental of motor scooters and motor bicycles shall be permitted by any licensee between the hours of 9:00 o'clock p.m. and 8:00 o'clock a.m. on any day;

(h) Investigation of business location. Before a license application is considered by the administrative assistant, the chief of police shall cause an investigation to be made of the traffic conditions prevailing in the immediate vicinity of applicant's proposed place of business, and make a report thereof to the administrative assistant. Particular attention shall be given to such traffic conditions on weekends and holidays;

(i) Regulation of the operation of motor scooters and motor bicycles;

(1) Operation. Any person operating a rented motor bicycle/scooter within the city shall not:

(A) Allow any passenger to ride on such rented vehicle;

(B) Operate any such vehicle while standing on same, or perform any trick riding, or operate in any unsafe manner, or violate any law or ordinance;

(C) Operate any such vehicle upon any sidewalk, pedestrian path, pedestrian trail, place where motorcycles are not allowed, the Duluth Lakewalk;

(D) Operate any such vehicle upon any public street or public highway within the city abreast of any other person riding or propelling a bicycle, motor bicycle or motor scooter;

(2) Traffic rules. Each person operating a motor scooter or motor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

bicycle within the city shall observe all traffic rules and regulations applicable thereto, shall not make U-turns, shall signal for all turns, ride at the extreme right hand side of the street or highway, and shall pass to the left when overtaking other vehicles and pedestrians that are slower moving.

Section 3. That this ordinance shall take effect 30 days after its passage and publication.
(Effective date: June 28, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stover and President Stauber -- 8

Nays: None -- 0

Absent: Councilor Stewart -- 1

ATTEST:
JEFFREY J. COX, City Clerk

Passed May 24, 2004
Approved May 24, 2004
HERB W. BERGSON, Mayor

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ORDINANCE NO. 9664

BY COUNCILOR GILBERT:

AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NOS. 36 AND 37 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM S, SUBURBAN, TO R-1-A, SINGLE FAMILY RESIDENTIAL, PROPERTY LOCATED AT THE WEST END OF MIDDLE ROAD (J. HOVLAND).

The city of Duluth does ordain:

Section 1. That Plate Nos. 36 and 37 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:

(MAPS)

(see Map Nos. 36 and 37 at end of meeting)

(Reference File No. 04025)

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: July 4, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Ness, Reinert, Stover and President Stauber -- 7

Nays: None -- 0

Abstention: Councilor Little -- 1

Absent: Councilor Stewart -- 1

ATTEST:
JEFFREY J. COX, City Clerk

Passed May 24, 2004
Approved May 24, 2004
HERB W. BERGSON, Mayor

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ORDINANCE NO. 9665

BY COUNCILOR GILBERT:

AN ORDINANCE AUTHORIZING CONVEYANCE OF PROPERTY IN WEST DULUTH TO PETER OPACK AND TRICIA REESE FOR \$25,800.

The city of Duluth does ordain:

Section 1. That the proper city officials are hereby authorized to convey the below-described property in St. Louis County, Minnesota, by quit claim deed to Peter Opack and Tricia Reese, as joint tenants, for the sum of \$25,800; payable to the General Fund 0100, Agency 700, Object 1448, Revenue Source 4640:

the northerly 50 feet of the southerly 95 feet of Lots 1 through 4, inclusive, Block 14, DODGES ADDITION TO DULUTH; and

those portions of Lots 5 through 12, inclusive, Block 14, DODGES ADDITION TO DULUTH lying southerly of the following-described line:

beginning at a point on the east line of said Lot 5 being 95 feet north of the southeasterly corner of said Lot 5; then running in a southwesterly direction to a point on the west line of said Lot 12 being 60 feet north of the southwesterly corner of said Lot 12 and there terminating.

Section 2. This ordinance shall take effect 30 days from and after its passage and publication. (Effective date: June 27, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stover and President Stauber -- 8

Nays: None -- 0

Absent: Councilor Stewart -- 1

ATTEST:
JEFFREY J. COX, City Clerk

Passed May 24, 2004
Approved May 24, 2004
HERB W. BERGSON, Mayor

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OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, June 14, 2004, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 8

Absent: Councilor Atkins -- 1

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The minutes of the city council meeting held on April 12 and 19, 2004, were unanimously approved.

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

04-0614-01 Larry and Zlata Bushey submitting petition to vacate the easterly 20 feet of Lot 10, Rearrangement of Block 4, Central Baptist Division. -- Assessor

04-0614-02 Dale A. Hedtke and Amy F. Brooks submitting petition to vacate the easement on the westerly ten feet and northerly five feet of Lot 3, Block 1, Hartley Hills Third Division. -- Assessor

04-0614-04 Lakeshore Lutheran Home submitting petition to vacate all that part of 40th Avenue East, formerly known as West Avenue; all that part of London Addition to Duluth and East Duluth Rearrangement lying easterly of Lot 5 and westerly of the east line of said plat; the platted public drive easement in Lot 5; the ten foot electric easement across the easterly ten feet of Lot 5; that part of a 12 foot wide easement for sanitary sewer purposes; that part of an existing 20 foot wide sanitary sewer easement; a 20 foot wide permanent easement for sanitary sewer purposes under and across part of Lots 4 and 5, all in London Addition to Duluth and East Duluth Rearrangement. -- Assessor

04-0614-19 Steve Lindberg, et al. (three signatures), submitting petition to vacate the alley adjacent to Lots 1-8, Block 64, Bayview Heights Addition No. 2. -- Assessor

04-0614-05 Piedmont Heights Dental Associates II, by G.W. Harries, attorney, submitting concurrent use permit application to construct 11 additional parking spaces adjacent to the Piedmont Heights Dental Associates II building located on Ensign Street and adjoining lots 2, 3 and 4, Block 3, Grant Park Division. -- Planning commission

04-0614-06 William Rogers, et al. (four signatures), submitting petition to reclassify from R-1 to R-3 Parcel 010-3904-00010, Lot/Block 0000 000 Tract A and 010-3904-00020, Lot/Block 0000 000 Tract B, Registered Land Survey Number 38 Duluth; 010-1960-00340, Grant Park Division of Duluth, Lot/Block 0000 004, part of lots 3 and 4, beginning at southeast corner of Lot 3, thence 100 feet, thence left 90°, 89 feet, thence Left 90°; 010-3904-00040, Lot/Block 0000 000 Tract D and 010-3940-00030, Lot/Block 0000 000 Tract C, Registered Land Survey No. 38 Duluth. -- Assessor

04-0614-44 University of Minnesota, Duluth, submitting concurrent use permit application to satisfy obligations contained in an agreement which includes construction of an eight foot sidewalk/bike path, retaining wall, back slopes and street lighting along Junction Avenue and Niagara, Buffalo and St. Marie Streets along the northwest perimeter of the UMD campus. -- Planning commission

04-0614-03 WKK, Inc., by Michael Koski, Jr., submitting petitions to:

(a) Reclassify from R-2 to R-3 Block 8, Hunters Grassy Point Addition to Duluth, Third Division;

(b) Vacate the paper alleyway between Block 8 and Lots 1-15, Block 7, Hunters Grassy Point Addition to Duluth, Third Division. -- Assessor

04-0614-07 APEX submitting communication regarding proposed amendment of business subsidy resolution to add criteria and business subsidy requirements related to JOBZ (04-0339R). -- Received

04-0614-08 The following submitting communications regarding rental housing use (04-0263R): (a) Mrs. Russell W. Barber; (b) Nancy Barber Dalaska; (c) Sandy Robinson (3). -- Received

04-0614-41 The following submitting communications regarding the rezoning of property at 2901 Morris Thomas Road (04-030-O): (a) Justin and Julie Goebel; (b) Greg Goldman; (c) Todd Johnson; (d) Jerry J. and Margaret Wiita. -- Received

04-0614-42 The following submitting communications regarding the use of eminent domain by the housing and redevelopment authority of Duluth in its Hawk Ridge Estates project (04-0415R): (a) CHUM affordable housing task force; (b) Nick Ericson. -- Received

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REPORTS OF OFFICERS

04-0614-09 Assessor submitting:

(a) Affidavit of mailing of notice of public hearing by the Duluth City Council at 7:30 p.m., Monday, June 14, 2004, on the ordering of proposed local improvement of sidewalk construction on Allendale Avenue. -- Clerk

(b) For confirmation the assessment rolls levied to defray the assessable portion of permanent design street to 19th Avenue East from Eighth to College streets, Contract 5371 (assessable - \$74,000),

(c) Letter of sufficiency of petition to vacate the easement on the westerly ten feet and northerly five feet of Lot 3, Block 1, Hartley Hills Third Division. -- Received

04-0614-10 Clerk submitting letter of sufficiency of amended petition to keep the Ten Commandments monument at the present location by deeding the property to St. Louis County. -- Received

04-0614-11 Parks and recreation department director submitting Lake Superior zoological society minutes of May 19, 2004, meeting. -- Received

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REPORTS OF BOARDS AND COMMISSIONS

04-0614-43 Alcohol, gambling and tobacco commission minutes of May 5, 2004, meeting. -- Received

04-0614-12 Duluth airport authority: (a) Minutes of April 20, 2004, meeting; (b) Unaudited balance sheet for April 30, 2004. -- Received

04-0614-13 Duluth human rights commission minutes of May 12, 2004, meeting. -- Received

04-0614-14 Duluth transit authority: (a) Minutes of: (1) March 10; (2) March 31, 2004, meetings; (b) Monthly expense analysis for March, 2004. -- Received

04-0614-15 Parking commission minutes of April 13, 2004, meeting. -- Received

04-0614-16 Special board of review minutes of May 19, 2004, meeting. -- Received

04-0614-17 Special assessment board minutes of May 11, 2004, meeting. -- Received

04-0614-18 Spirit Mountain recreation area authority minutes of April 28, 2004, meeting. -- Received

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At this time, 7:05 p.m., Councilor Atkins took his seat.

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OPPORTUNITY FOR CITIZENS TO BE HEARD

K.L. Lewis voiced concern that eminent domain is being used too often in development projects.

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Roberta Whitehall stated that Duluth's budget is stringent and people need to make unselfish decisions to help solve problems with no finger pointing.

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Garry Krause stated that although planning districts do not have a voting voice in housing projects, his district does not approve of the Sunby road housing project because it does not match any other housing project in the area and creates high density housing tracts.

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Wes Keene, representing the Eagles Club in Superior, questioned where the Ten Commandments monument is being stored and explained that the Eagles would like to have them back since they are the organization that gave them to the city.

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RESOLUTIONS TABLED

Councilor Gilbert moved to remove Resolution 04-0339, of the city of Duluth to amend its business subsidy resolution, Resolution No. 00-0333(a) adopted May 22, 2000, as amended, to add criteria and business subsidy requirements related to job opportunity building zones (JOBZ), from the table, which motion was seconded and unanimously carried.

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

Marsh Stenerson, Eric Lehto, Sharla Gardner, Barb Olsen, Iver Bogen and Lyman Brooks urged the council to support Councilor Gilbert's amendments for the following reasons: members of the Democratic Farm Labor Party endorse the amendments and they have reporting safeguards with teeth; the council would have the authority to approve waivers if needed; they would provide living wages to employees. They also questioned what return can be expected by the public for forgoing tax dollars by subsidizing businesses coming to Duluth and stated that it is the responsibility of the council to put actual requirements on paper instead of relying on trust and hope that things will continue in the same way.

David Ross, representing the Chamber of Commerce, urged the council to support the initiative taken by the state legislature to bring opportunity investment and employment to rural Minnesota that includes criteria that would ensure high paying jobs and allow the mayor to go forward with his plan to attract good companies that will offer high paying jobs to their employees.

Brad Clifford stated that the initial benefit of the JOBZ is for the property owner, who may not be the business owner; that business wages and benefits are subjective to particular business and unique to the market; that special work force interest groups feel they have an entitlement to higher wages and that wages are not the only reason workers are attracted to a job.

Councilors Stewart and Stover reviewed that changes are needed to the wages as the city regulations are below the state average, the city needs to live up to the promises it makes and there is a need for a local enforcement plan to make companies operating in default of their agreement get back into compliance. They also stated that there needs to be fairness to the current businesses in Duluth to prevent pitting long existing businesses against those moving in who do not have to pay taxes for 12 years.

Councilor Stewart expressed concern that the JOBZ is not a fair system because it subsidizes some business who will not be paying taxes but will still get the same services as the citizens of Duluth who do pay them.

Councilor Gilbert reviewed that the same arguments against higher wages were presented

when the living wage ordinance was introduced in 1997, emphasizing that it would drive businesses away, but instead businesses have come and are very profitable with huge developments and expansion showing the criteria have made no difference at all. He added that councilors need to be strong and not fall to threats and conjectures to scare the city into the wrong action.

Councilor Ness reviewed that the mayor has talked to each councilor explaining that economic development is a high priority for this administration and he questioned if the amendments would hamper the city's efforts and become a deterrent for companies wanting to locate in the city. He continued saying that the council needs to form a partnership with the mayor and the JOBZ plan as it can help develop the underutilized space in the inner city caused by the most recent developments occurring on the edge of city.

Councilor Johnson stated that the city needs to have a thriving community to prevent the young people from leaving the city to find better jobs and that the rules need to be clearly written for businesses so there is no question about what their obligations are. She stated the right thing to do is to have equal play for equal pay.

Councilor Reinert stated the mayor needs some ability to maneuver in his administration and will give the benefit of the doubt to the mayor in bringing companies into Duluth and awarding tax credits.

Mayor Bergson stated that the city will be working to get responsible companies to relocate to Duluth and will encourage the companies to hire local employees and construction workers.

Councilor Gilbert introduced a six part amendment for discussion.

Councilor Stewart moved to divide the amendments into six separate amendments for voting purposes, which motion was seconded and carried upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Stewart and Stover -- 7

Nays: Councilor Reinert and President Stauber -- 2

Councilor Gilbert moved to amend Section IV B of the business subsidy policy and criteria (Public Document No. 04-0614-40) by changing the phrase "The city of Duluth" to "The city council," which motion was seconded and carried upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Ness, Reinert, Stewart and Stover -- 7

Nays: Councilor Little and President Stauber -- 2

Councilor Gilbert moved to amend Section IV C(3) of the business subsidy policy and criteria (Public Document No. 04-0614-40) under target industries, by changing "\$9 per hour" to "\$11 per hour" and, under eligible business, by changing "\$10 per hour" to "\$12 per hour," which motion was seconded and failed upon the following vote:

Yeas: Councilors Gilbert, Johnson, Stewart and Stover -- 4

Nays: Councilors Atkins, Little, Ness, Reinert and President Stauber -- 5

Councilor Gilbert moved to amend Paragraph IV C(4)(a) of the business subsidy policy and criteria (Public Document No. 04-0614-40) by deleting the last word "and" and adding "Whenever possible, preference shall be given in hiring local employees that live in the area. There shall be worker retention of existing jobs in firms who are relocating from Carlton, St. Louis or Lake counties in Minnesota, or Douglas County in Wisconsin, and," which motion was seconded and carried upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Stewart and Stover -- 5

Nays: Councilors Little, Ness, Reinert and President Stauber -- 4

Councilor Gilbert moved to amend Section IV C(4)(c) of the business subsidy policy and criteria (Public Document No. 04-0614-40) by deleting the last sentence and adding the sentence "Relocating JOBZ business shall agree to pay a minimum of \$11 per hour plus benefits including

health insurance for new jobs created if the relocating JOBZ business is one of the target industries, or \$12 per hour plus benefits including health insurance for new jobs created for all other relocating JOBZ businesses. For any new construction, the business shall enter into a JOBZ construction agreement negotiated by the administration and approved by the city council where preference would be given to hiring local contractors and tradespeople for construction," which motion was seconded and failed upon the following vote:

Yeas: Councilors Gilbert, Johnson, Stewart and Stover -- 4

Nays: Councilors Atkins, Little, Ness, Reinert and President Stauber -- 5

Councilor Gilbert moved to amend Section IV D(2)(a) of the business subsidy policy and criteria (Public Document No. 04-0614-40) by adding to the end of the sentence "The forms, report and JOBZ construction agreement shall provide for public verification and disclosure that employees are hired locally, which will include a list of names of employees, city of residence and job titles. The businesses' reports shall be public documents", which motion was seconded and failed upon the following vote:

Yeas: Councilors Gilbert, Johnson, Stewart and Stover -- 4

Nays: Councilors Atkins, Little, Ness, Reinert and President Stauber -- 5

Councilor Gilbert moved to amend Section IV D(2)(b) of the business subsidy policy and criteria (Public Document No. 04-0614-40) by adding the sentence "If the business fails to submit its report to the city, the city will have the right to revoke and rescind JOBZ status," which motion was seconded and carried upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Ness, Reinert, Stewart and Stover -- 7

Nays: Councilor Little and President Stauber -- 2

Resolution 04-0339, as amended, was adopted as follows:

BY COUNCILOR GILBERT:

RESOLVED, by the city council of the city of Duluth that it hereby amends its business subsidy resolution, Resolution 00-0333(a) adopted May 22, 2000, Resolution 00-0522 adopted on July 31, 2000, Resolution 00-0731 adopted on October 23, 2000, Resolution 01-0241 adopted on March 19, 2001; Resolution 01-0860 adopted on December 3, 2001, and Resolution 03-0735 adopted on October 27, 2003, to add criteria and business subsidy requirements related to job opportunity building zones, said business subsidy policy and criteria are on file in the office of the city clerk as Public Document No. 04-0614-40.

Resolution 04-0339, as amended, was adopted upon the following vote:

Yeas: Councilors Atkins, Gilbert, Little, Ness, Reinert, Stover and President Stauber -- 7

Nays: Councilors Johnson and Stewart -- 2

Approved June 14, 2004

HERB W. BERGSON, Mayor

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At this time, 8:50 p.m., President Stauber recessed the regular or of business and announced that the public hearing regarding the Allendale sidewalk construction would begin.

City Engineer Metso reviewed the street improvement program and explained that the project does not include the construction of new sidewalks, but that the results of an informal survey conducted by the neighborhood showed support for sidewalks, which will be included in the project but assessed to the homeowners.

Joy Wicks urged support for the sidewalks as the community center is the heart of the neighborhood with various activities with children and adults constantly coming and going all year long.

At this time, 9:10 p.m., President Stauber closed the public hearing and the regular order of business was resumed.

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Councilor Reinert moved to remove Resolution 04-0263, recommending various actions to improve rental housing use in the city, from the table, which motion was seconded and unanimously carried.

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

Susan Schumacher, member of the citizens' advisory committee, urged the councilors to support the resolution as the committee has worked hard to come up with a compromise.

Vicki Sanville, representing the Affordable Housing Coalition, voiced concern about establishing a ratio between renting and homeowner/rental in a neighborhood and encouraged enforcement as the issue that should be focused on.

Sean Bell, representing the University of Minnesota, Duluth, Student Association, stated that the terms are ambiguous in this resolution which would make it difficult to understand and enforce.

Councilor Reinert reviewed that this advisory committee was made up from various groups that have interests in the housing problem, and they proceeded to identify the main problems and solutions for these various issues. He continued saying that not all solutions are presented in this resolution and hopefully these six issues will be a start to solving the rental problems in the neighborhoods.

Councilor Stewart reviewed that Section (a) of the resolution seems to require an ordinance change, but there does not seem to be a clear answer from the planning department on what a healthy ratio would be for a homeowner/rental neighborhood.

Councilor Stewart moved to amend Section (a) by replacing the words "establish what constitutes a health ratio of homeowner/rental use in neighborhoods throughout the city and develop such language suitable for the City Code" with "develop and implement policies that encourage home ownership throughout the city and particularly in neighborhoods with less than 60 percent home ownership," which motion was seconded and carried upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Ness, Stewart, Stover and President Stauber -- 7

Nays: Councilors Little and Reinert -- 2

Councilor Stewart explained that before a new nuisance ordinance is passed by the council, there is a need for information on what the proposal will be before it is presented to the council.

Councilor Stewart moved to amend Section (c) by striking the word(s) "division" and "a nuisance ordinance and," add the word "strict" before the word "enforcement," add the words "for current ordinances" after the word "policies" and replace the words "enforcement of neighborhood quality of life standards" with the words "the quality of life in Duluth's neighborhoods," which motion was seconded and carried upon a unanimous vote.

Councilor Ness explained that the city needs to establish a market rate multi-unit housing district and open it up to whomever wants to be there, which would be more acceptable in the community instead of a student housing district. He moved to amend Section (d) of the resolution to replace the word "student" in the third line with the words "market rate multi-unit," which motion was seconded and carried upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Stewart, Stover and President Stauber -- 8

Nays: Councilor Reinert requested the administration to develop a plan to use other city departments to help take the load off of the police department.

Resolution 04-0263, as amended, was adopted as follows:

BY COUNCILOR REINERT:

WHEREAS, citizens have expressed concern about the growth of unlicensed and noninspected rental housing in recent years; and

WHEREAS, Councilor Reinert convened a citizens' advisory committee to address the issue; and

WHEREAS, that committee as met, investigated, deliberated and reported; and

WHEREAS, the committee has produced several recommendations.

NOW, THEREFORE, BE IT RESOLVED, that the city council requests of the administration and recommends that the following actions be undertaken and implemented:

(a) That the planning department and its community development division develop and implement policies that encourage home ownership throughout the city and particularly in neighborhoods with less than 60 percent home ownership;

(b) That the planning department, its community development division and the planning commission proactively identify and rezone appropriate new parcels and areas for multifamily use, and bring this to the council for enactment as a change in the zoning ordinance;

(c) That the city council in consultation with the police department develop strict enforcement policies for current ordinances that will improve the quality of life in Duluth's neighborhoods;

(d) That the Duluth housing commission, UMD, Lake Superior College and College of St. Scholastica identify one or more areas to be established as a market rate multi-unit housing district, which could include the downtown district, and then bring the plan to the planning department and planning commission for action to provide for such areas in the zoning ordinance;

(e) That the mayor and fire chief assure that there is adequate staff and resources to enforce the zoning ordinance, the housing code, and all life safety codes in all parts of the city, and procedures and policies in effect to effectuate compliance with these laws;

(f) That the parking commission and police department develop new policies and enforce existing parking regulations to reduce parking congestion on city streets.

Resolution 04-0263, as amended, was adopted upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Ness, Reinert, Stewart, Stover and President Stauber -- 8

Nays: Councilor Little -- 1

Approved June 14, 2004

HERB W. BERGSON, 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 Stauber moved passage of the consent agenda, which motion was seconded and unanimously carried.

BY COUNCILOR NESS:

RESOLVED, that the assessment roll levied to defray the assessable portion of the permanent design street to 19th Avenue East from Eighth Street to College Street (Contract No. 5371 - assessable amount - \$74,000) is hereby confirmed.

Resolution 04-0373 was unanimously adopted.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Approved June 14, 2004
HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves of the permanent expansion of the designated serving area of the following on sale intoxicating liquor license for the period ending August 31, 2004, subject to departmental approvals, with any specific restrictions:

Pizza Luc'e III, Inc. (Pizza Luc'e), 11 East Superior Street.
Resolution 04-0390 was unanimously adopted.
Approved June 14, 2004
HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

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:

Lemon's Reef, Inc. (Reef Bar), 2002 London Road, for June 19, 2004, with the music and serving ceasing at 6:00 p.m.
Resolution 04-0391 was unanimously adopted.
Approved June 14, 2004
HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the transfer of the following on sale intoxicating liquor license, on sale Sunday license and 2:00 a.m. beverage license for the period ending August 31, 2004, subject to departmental approvals and the payment of sales and property taxes:

Stadium Club, Inc. (Stadium Lanes/Clubhouse Sports Bar), 132 North 34th Avenue West, with Randall V. Hill, 75 percent stockholder and Bradley Emanuel, 25 percent stockholder, transferred from Stadium Lanes, Inc. (Stadium Lanes), same address.
Resolution 04-0392 was unanimously adopted.
Approved June 14, 2004
HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves of the issuance of the following on sale intoxicating liquor license and on sale Sunday license for the period ending August 31, 2004, subject to departmental approvals and the payment of sales and property taxes:

Torke Corporation (Intermizzo Café), 37 East Superior Street, with Wayne Torke, president and 50 percent stockholder, and John Elliott, secretary and 50 percent stockholder.
Resolution 04-0393 was unanimously adopted.
Approved June 14, 2004
HERB W. BERGSON, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

BY COUNCILOR STEWART:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the transfer of stock of the following off sale intoxicating liquor license for the period ending August 31, 2004, subject to departmental approvals and further subject to approval of the liquor control commissioner:

Loiselle's, Inc. (Loiselle Liquor Store), 413 East Fourth Street, with Christopher Loiselle, Senior, president and 50 percent stockholder, and Annette Loiselle, vice president and 50 percent stockholder, transferred from Christopher Loiselle, 100 percent stockholder.

Resolution 04-0394 was unanimously adopted.

Approved June 14, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

WHEREAS, the YWCA of Duluth has applied to the Minnesota gambling control board for a lawful gambling exemption (raffle); and

WHEREAS, the Duluth City Council has received a copy of said exemption application to the Minnesota gambling control board and has 60 days in which to present a resolution to said Minnesota gambling control board objecting to the exemption application; and

WHEREAS, the city council approves of the exemption application and wishes to waive the 60 day waiting period.

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

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

Resolution 04-0395 was unanimously adopted.

Approved June 14, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the late hour entertainment license of the following on sale 3.2 percent malt liquor license for the period ending April 30, 2005, subject to departmental approvals:

Michael Maxim, Jr/Sr. (Sharks), 327 West Superior Street.

Resolution 04-0397 was unanimously adopted.

Approved June 14, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the proposed amendments to the specifications for the civil service classification of paralegal, which were approved by the civil service board on June 1, 2004, and which are filed with the city clerk as Public Document No. 04-0614-20, are approved. This

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

classification shall remain subject to the city's collective bargaining agreement with its basic unit employees and compensated at Pay Range 31, \$3,036 to \$3,589 per month.

Resolution 04-0383 was unanimously adopted.

Approved June 14, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the proposed amendments to the specifications for the civil service classification of operations manager for water and gas supply, including a title change to operations manager for gas and water supply, which were approved by the civil service board on June 1, 2004, and which are filed with the city clerk as Public Document No. 04-0614-21, are approved. This classification remains represented by the supervisory unit and compensated at Pay Range 1115-1130, \$4,830 to \$6,233 per month. 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 04-0386 was unanimously adopted.

Approved June 14, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

WHEREAS, a sufficient petition was filed with the city clerk requesting the vacation of a portion of 59th Avenue West legally described as the westerly 17 feet of 59th Avenue West lying north of the DM&IR Railroad right-of-way adjoining Lot 10, Block 4, West Duluth Sixth Division; and

WHEREAS, 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

WHEREAS, the city planning commission approved unanimously the partial street vacation petition at its May 26, 2004, meeting.

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation of the portion of street described above and as more particularly described on Public Document No. 04-0614-22.

RESOLVED FURTHER, that the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of St. Louis County, Minnesota, a certified copy of this resolution together with a plat showing the portion of the street to be vacated.

Resolution 04-0374 was unanimously adopted.

Approved June 14, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that the proper city officers are hereby authorized to enter into a consultant agreement with SJA Architects for the sum of \$671,311, from Fund 0435, Organization 4351 (parking ramp), for providing certain architectural and engineering services to the city of Duluth in connection with construction of the SMDC parking structure and related skywalks, 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. 04-0614-23.

Resolution 04-0375 was unanimously adopted.

Approved June 14, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that the proper city officers are hereby authorized to enter into a consultant agreement with Salo Engineering for the sum of not to exceed \$3,310 from Fund 0435, Organization 4351 (parking ramp), for providing certain surveying services to the city of Duluth in connection with SMDC parking structure and related skywalks, 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. 04-0614-24.

Resolution 04-0376 was unanimously adopted.

Approved June 14, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that the proper city officers are hereby authorized to enter into a consultant agreement with American Engineering Testing, Inc. (AET), for the sum of \$5,695.40 from Fund 0435, Organization 4351 (parking ramp) for providing certain geotechnical services to the city of Duluth in connection with SMDC parking structure and related skywalks, 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. 04-0614-25.

Resolution 04-0377 was unanimously adopted.

Approved June 14, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that the proper city officers are hereby authorized to enter into a consultant agreement with Northland Consulting Engineers, L.L.P., for the sum of \$15,000, from Capital Improvement Fund 0450, Organization C403, Object 5520, for providing certain professional services to the city of Duluth in connection with City Hall exterior restoration (Phase I), 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. 04-0614-26.

Resolution 04-0378 was unanimously adopted.

Approved June 14, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

WHEREAS, a sufficient petition was filed with the city clerk requesting the vacation of 48th Avenue West between Oneota Street and the alley southeasterly, a segment of street right-of-way 132 feet long, except for utility easement, legally described as:

48th Avenue West adjoining Lot 1 of Block 18, Oneota Division, and Lot 8, Block 17, Oneota Division, retaining a utility easement described as that portion adjoining the southeasterly 20 feet of Lot 8, Block 17, adjoining the southwesterly 20 feet of Lot 1, Block 18; and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

WHEREAS, 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

WHEREAS, the city planning commission approved by a unanimous vote the vacation petition at its April 13, 2004, meeting.

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation of 48th Avenue West between Oneota Street and the alley southeasterly, except for utility easement, and as more particularly described on Public Document No. 04-0614-27.

RESOLVED FURTHER, that the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of St. Louis County, Minnesota, a certified copy of this resolution together with a plat showing the portion of the street to be vacated.

Resolution 04-0387 was unanimously adopted.

Approved June 14, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

WHEREAS, a sufficient petition was filed with the city clerk requesting the vacation of Deerwood Street legally described as:

Deerwood Street adjoining Lots 15-24 and adjoining the westerly 25 feet of Lots 13 and 14, D Street, Maple Grove; and

WHEREAS, 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

WHEREAS, the city planning commission approved by a unanimous vote the vacation petition at its April 13, 2004, meeting.

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation of Deerwood Street adjoining Lots 15-24 and adjoining the westerly 25 feet of Lots 13 and 14, D Street, Maple Grove, and as more particularly described on Public Document No. 04-0614-28.

RESOLVED FURTHER, that the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of St. Louis County, Minnesota, a certified copy of this resolution together with a plat showing the portion of the street to be vacated.

Resolution 04-0388 was unanimously adopted.

Approved June 14, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

WHEREAS, a sufficient petition was filed with the city clerk requesting the vacation of streets, alleys and utility easements in Duluth Heights, Sixth Division legally described as:

(a) The westerly 33.0 feet of Hugo Avenue (formerly Oak Street), lying northerly of the northeasterly extension of the southerly line of Block 8 and southerly of the extended centerline of vacated Alder Street, all in the plat of Duluth Heights, Sixth Division;

(b) The alley adjacent to Block 8, Duluth Heights, Sixth Division lying northerly of the southwesterly extension of the southerly line of said Block 8 and southerly of the extended centerline of vacated Alder Street;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

(c) The alley located in Block 14, Duluth Heights, Sixth Division lying north of Linden Street and abutting Lots 1 through 10 inclusive and Lots 24 through 34, inclusive, in said Block 14;

(d) The 16 foot wide utility easement retained in the vacated alley which bisects Block 15, Duluth Heights, Sixth Division, lying between the south line of Balsam Street and the north line of Banian Street;

(e) A 16 foot wide north-south utility easement across Balsam Street, said easement being the extension of the north-south alley and utility easement located in Block 15, Duluth Heights, Sixth Division;

(f) A 16 foot wide north-south utility easement across Banian Street, said easement being the extension of the north-south alley and utility easement located in Block 15, Duluth Heights, Sixth Division; and

WHEREAS, 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

WHEREAS, the city planning commission approved unanimously the street alley and utility easement vacation petition at its May 26, 2004, meeting.

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation of streets, alleys and utility easements described above and as more particularly described on Public Document No. 04-0614-29.

BE IT FURTHER RESOLVED, that the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of St. Louis County, Minnesota, a certified copy of this resolution together with a plat showing the streets, alleys and utility easements to be vacated.

Resolution 04-0389 was unanimously adopted.

Approved June 14, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that Duluth Superior Erection, Inc., be and hereby is awarded a contract for site improvement of Harrison Recreation Center, 3002 West Third Street, Phase I, for the architect division in accordance with specifications on its low specification bid of \$126,000, terms net 30, FOB job site, \$45,496 payable out of Community Development Fund 0262, Dept./Agency 624, Object 6414 and \$80,504 payable out of Community Development Fund 0262, Dept./Agency 625, Object 6539.

Resolution 04-0403 was unanimously adopted.

Approved June 14, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

WHEREAS, the city of Duluth established certain 2004 CDBG accounts; and

WHEREAS, the community development committee (CDC) for the CDBG program passed a resolution recommending funding changes as set forth below.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are authorized to make the following fund increase in the Federal Program Fund 0262, Agency 020, 2004 HUD-funded community development accounts as set forth below.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

BE IT FURTHER RESOLVED, that this resolution also authorizes the sub-contract agreement (Public Document No. 04-0614-30) for neighborhood planning services with Neighborhood Housing Services from Account 6738.

2004 CDBG
Account Revised - 2004

Project #	Project	Original amount	New grant	Difference
6739	Contingency	\$26,657	\$28,657	+\$2,000

Transfers - 2004

Project #	Project	Original amount	New grant	Difference
6701	Affordable homeownership services - NHS	\$170,000	\$151,000	-\$19,000
6738	Neighborhood planning	\$170,000	\$189,000	+\$19,000

Resolution 04-0405 was unanimously adopted.
Approved June 14, 2004
HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

WHEREAS, the city of Duluth established certain 2004 HOME accounts; and
WHEREAS, the community development committee (CDC) for the community development program passed a resolution recommending funding changes as set forth below.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are authorized to make the following fund increases in the Federal Program Fund 0260, Agency 020, 2004 HUD-funded community development accounts as set forth below.

BE IT FURTHER RESOLVED, that the proper city officials are hereby authorized to make contract amendments (Public Document No. 04-0614-31) to reflect these increases.

2004 HOME
Accounts Revised - 2004

Project #	Project	Original amount	New grant	Difference
2641 h008	Program administration	\$ 82,800	\$83,632	+\$ 832
2642 h001	City Homes - NCLT	\$270,000	\$275,000	+\$5,000
2642 h002	Scattered site housing - WTHC	\$ 71,000	\$ 73,488	+\$2,488
Total				\$8,320

Resolution 04-0406 was unanimously adopted.
Approved June 14, 2004
HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that the proper city officials are hereby authorized to enter into a grant agreement substantially in the form of that on file in the office of the city clerk as Public Document No. 04-0614-32(a), with The Nature Conservancy pursuant to which The Nature Conservancy agrees to grant the city \$23,000 to be used to conduct the second phase of a stream assessment, said funds to be deposited into Fund 0210.

FURTHER RESOLVED, that the proper city officials are hereby authorized to enter into an agreement substantially in the form of that on file in the office of the city clerk as Public Document No. 04-0614-32(b), in the amount of \$23,000, with the United States geological survey (USGS) pursuant to which USGS will conduct the second phase of the stream assessment and will match the \$23,000 being funded under this agreement, said city funding to be payable from Fund 0210.

Resolution 04-0407 was unanimously adopted.

Approved June 14, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR ATKINS:

WHEREAS, the city of Duluth (the city) has been designated as a workforce service area by the state of Minnesota; and

WHEREAS, the city is required by the Workforce Investment Act to have an oversight body which in Duluth is the Duluth Workforce Council, Inc. (workforce council); and

WHEREAS, the workforce council desires to engage in additional activities, particularly with regard to establishing linkages with employers and economic development entities; and

WHEREAS, funding for these additional activities may be provided by grants to the workforce council; and

WHEREAS, the workforce council has been awarded a grant in the amount of \$15,000 from the state of Minnesota acting through the governor's workforce development council/department of employment and economic development in order to provide a community awareness initiative entitled "the Northland Works"; and

WHEREAS, the workforce council desires the city to act as fiscal agent for grants which it receives including the Northland Works initiative.

NOW, THEREFORE, BE IT RESOLVED, that the city of Duluth, through its finance director, agrees to act as fiscal agent for the Northland Works initiative grant to the workforce council from the state of Minnesota in the amount of \$15,000 to be deposited into and expenditures to be paid out of Fund 0210.

BE IT FURTHER RESOLVED, that the city of Duluth, through its finance director, agrees to act as fiscal agent for additional grants which may be awarded to the workforce council, such grant funds to be deposited into and paid out of Fund 0210.

Resolution 04-0381 was unanimously adopted.

Approved June 14, 2004

HERB W. BERGSON, Mayor

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BY PRESIDENT STAUBER:

RESOLVED, that the proper city officers are hereby authorized and directed to execute a one year lease with the Clayton, Jackson, McGhie Memorial, Inc., and Peoples Institute North for the lease of 750 square feet of office space identified as Room 116 located in Washington Center,

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

for a consideration of \$500 per month to be deposited in General Fund 0100-015-1515-4612; said lease filed as Public Document No. 04-0614-33.

Resolution 04-0396 was unanimously adopted.

Approved June 14, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are authorized to pay to Auto Owners Insurance Company, as subrogee of the Buena Vista Motel, the amount of \$29,089.95 in full and final settlement of all claims for damage to their insured's property at 1144 Mesaba Avenue resulting from a watermain break which occurred on March 6, 2003; payment to be made from the Self Insurance Fund 0610.

Resolution 04-0379 was unanimously adopted.

Approved June 14, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are authorized to pay to State Farm Insurance, as subrogee of Adam and David Templin, the amount of \$10,649.39 in full and final settlement of all claims for damage to their insureds' vehicle when struck by snow plow/sanding truck near Woodland Avenue and Elizabeth Street on January 26, 2004; payment to be made from the Self-Insurance Fund 0610.

Resolution 04-0380 was unanimously adopted.

Approved June 14, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

WHEREAS, by Resolution of Intent numbered 04-0332 the council did request the administration to prepare plans and specifications for the construction of approximately 2,200 feet of sanitary sewer in Trinity Road beginning 280 feet east of Keystone Bluffs Assisted Living Residence and extending northwesterly (City Job No. 0419SN) at an estimated cost of \$202,402.20; and

WHEREAS, said plans and specifications have been prepared and filed with the secretary of the special assessment board; proper notice has been sent to the benefitting property owners; the public hearing has been held that allowed property owners to voice their opinion; the special assessment board has submitted its report to this council pursuant to Section 45-79, Duluth City Code of 1959, and the said board, at the direction of the mayor, has furnished this council with information as required by Section 45-80 of the Duluth City Code of 1959.

NOW, THEREFORE, BE IT RESOLVED, that said improvement as described above be made; that the estimated total cost of said improvement as estimated by the city engineer is \$202,402.20, payable from Special Assessment Fund 0410, Agency 038, Organization 5394, Object 5530 and that all of the cost of said improvement be defrayed by special assessment against the land and premises specially benefitted; that those assessed be permitted to pay said assessment in installments over a 15 year period, subject to Section 68 of the City Charter; that said assessment satisfy all the requirements of Section 60 of the Charter.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

BE IT FURTHER RESOLVED, that the council order in subject project in accordance with the provisions of Section 62 of the City Charter and that said improvement is hereby ordered.

Resolution 04-0382 was unanimously adopted.

Approved June 14, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Northland Constructors of Duluth, LLC, be and hereby is awarded a contract for rehabilitation of Bridge Number L6123 over Chester Creek at First Street for the engineering division in accordance with specifications on its low specification bid of \$101,935, terms net 30, FOB job site, payable out of Permanent Improvement Fund 0411, Dept./Agency 035, Organization 2181 Object 5530.

Resolution 04-0398 was unanimously adopted.

Approved June 14, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Duluth Superior Erection, Inc., be and hereby is awarded a contract for construction of year 2004 citywide street patch and sidewalk repairs program for the engineering division in accordance with specifications on its low specification bid of \$372,800, terms net 30, FOB job sites, payable out of Permanent Improvement Fund 0411, Dept./Agency 035, Organization 2106, Object 5403.

Resolution 04-0399 was unanimously adopted.

Approved June 14, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Duluth Superior Erection, Inc., be and hereby is awarded a contract for the construction of 102nd Avenue West Alley between McGonagle Street and 101st Avenue West for the engineering division in accordance with specifications on its low specification bid of \$28,418.25, terms net 30, FOB job site, payable out of Special Assessment Fund 0410, Dept./Agency 038, Organization 5387, Object 5530.

Resolution 04-0400 was unanimously adopted.

Approved June 14, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Mueller Pipeliners, Inc., be and hereby is awarded a contract for construction of ten inch steel high pressure gas main and related work in Trinity Road from Piedmont Avenue to Arlington Avenue for the utility operations division in accordance with specifications on its low specification bid of \$263,729, terms net 30, FOB job site, payable out of Gas Fund 0520, Dept./Agency 500, Organization 1905, Object 5533.

Resolution 04-0401 was unanimously adopted.

Approved June 14, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Letourneau and Sons, Inc., be and hereby is awarded a contract for construction of Lake Avenue from Second Street Alley to Seventh Street for the engineering division in accordance with specifications on its low specification bid of \$1,454,428.55, terms net 30, FOB job site, payable out of Special Assessment Fund 0410, Department/Agency 038, Organization 5381, Object 5530.

Resolution 04-0402 was unanimously adopted.

Approved June 14, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

WHEREAS, the city of Duluth is required by the U.S. EPA to develop a water infrastructure security emergency response plan; and

WHEREAS, the city desires to hire a consulting engineer to provide the engineering services required for the development of this plan as it relates to the city's municipal water system; and

WHEREAS, Barr Engineering Company has submitted a proposal for engineering services in connection with this project.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with Barr Engineering Company, a copy of which is on file with the city clerk's office as Public Document No. 04-0614-34, to provide the city with such engineering services.

BE IT FURTHER RESOLVED, that the cost of said engineering services, estimated at \$20,000, payable from the Water Fund 0510, Dept./Agency 500, Organization 1955, Object 5303.

Resolution 04-0411 was unanimously adopted.

Approved June 14, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

BE IT RESOLVED, that the proper city officials are authorized to execute and implement the agreement on file with the clerk as Public Document No. 04-0614-35, which agreement allows the Duluth police to do forensic training at 315-315-1/2 West Third Street, and the city promises to indemnify the county for any claims brought by third parties.

Resolution 04-0404 was unanimously adopted.

Approved June 14, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

RESOLVED, that the city council hereby authorizes city staff to submit an application for a grant for terrorism prevention, detection and mitigation in the amount of \$750,000 to the Minnesota department of public safety, homeland security emergency management division (department of public safety).

FURTHER RESOLVED, that upon award of said grant, the proper city officials are hereby authorized to accept the grant from the department of public safety in an amount up to \$750,000, said monies to be deposited into Fund 0215.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

FURTHER RESOLVED, that the proper city official are hereby authorized to execute any and all documents or agreements necessary to effectuate said grant.

Resolution 04-0408 was unanimously adopted.

Approved June 14, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

RESOLVED, that the city council hereby authorizes city staff to submit an application a grant for a terrorism prevention program grant for an interoperable radio system in the amount of \$305,485 to the Minnesota department of public safety, homeland security emergency management division (department of public safety).

FURTHER RESOLVED, that upon award of said grant, the proper city officials are hereby authorized to accept the grant from the department of public safety in an amount up to \$305,485, said monies to be deposited into Fund 0215.

FURTHER RESOLVED, that the proper city officials are hereby authorized to execute any and all documents or agreements necessary to effectuate said grant.

Resolution 04-0409 was unanimously adopted.

Approved June 14, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

RESOLVED, that the city council hereby authorizes city staff to submit an application for a terrorism prevention program grant for exercise and training in the amount of \$100,170 to the Minnesota department of public safety, homeland security emergency management division (department of public safety).

FURTHER RESOLVED, that upon award of said grant, the proper city officials are hereby authorized to accept the grant from the department of public safety in an amount up to \$100,170, said monies to be deposited into Fund 0215.

FURTHER RESOLVED, that the proper city officials are hereby authorized to execute any and all documents or agreements necessary to effectuate said grant.

Resolution 04-0410 was unanimously adopted.

Approved June 14, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR REINERT:

RESOLVED, that the proper city officials are hereby authorized to execute and implement a golf course scoreboard and tee markers vendor and license agreement for the Lester Park and Enger Park golf courses substantially in the form of that on file in the office of the city clerk as Public Document No. 04-0614-36, with Northwoods Scoreboards, Inc. (vendor). All monies received from under the agreement shall be deposited into the Golf Enterprise Fund, Fund 0503, Agency 400, Revenue Source 4840.

Resolution 04-0364 was unanimously adopted.

Approved June 14, 2004

HERB W. BERGSON, Mayor

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The following resolutions were also considered:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

BY COUNCILOR NESS:

BE IT RESOLVED, that the proper city officials are authorized to execute and implement a collective bargaining agreement with Local 66 of A.F.S.C.M.E. containing the same terms and conditions and being in the same form (except for typographical or insubstantial corrections) at the contract on file with the city clerk as Public Document No. 04-0614-37, covering the year 2003.

Resolution 04-0412 was adopted upon the following vote:

Yeas: Councilors Atkins, Gilbert, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 8

Nays: None -- 0

Abstention: Councilor Johnson -- 1

Approved June 14, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR NESS:

BE IT RESOLVED, that the proper city officials are authorized to execute and implement a collective bargaining agreement with Local 66 of A.F.S.C.M.E. containing the same terms and conditions and being in the same form (except for typographical or insubstantial corrections) at the contract on file with the city clerk as Public Document No. 04-0614-38, covering the years 2004-2006.

Resolution 04-0413 was adopted upon the following vote:

Yeas: Councilors Atkins, Gilbert, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 8

Nays: None -- 0

Abstention: Councilor Johnson -- 1

Approved June 14, 2004

HERB W. BERGSON, Mayor

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Resolution 04-0415, by Councilor Gilbert, approving the use of eminent domain in redevelopment project No. 1 as proposed by the housing and redevelopment authority of Duluth, Minnesota (HRA), regarding its Hawk Ridge Estates project, was introduced for discussion.

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

Nancy McGann, representing the land owner, stated that the owner has been trying to work with the HRA regarding his property and has made counteroffers to the HRA director. She continued saying that the owner objects to the taking of his property by means of eminent domain and the pressure to accept an offer for the property that is lower than fair market value.

Daniel Maddy, representing HRA, reviewed that the HRA has recently received an offer from the owner and will continue to negotiate with the owner to resolve the price. He continued saying that the eminent domain process is used when the two parties do not agree on the price and go to a third party to determine fair market value.

President Stauber stated that eminent domain should be used very sparingly and for public purpose and although it is for public purpose, in reality it is taking away private property from private property owners.

Resolution 04-0415 was adopted as follows:

BY COUNCILOR GILBERT:

WHEREAS, when the city council approved the redevelopment plan for its Redevelopment Project No. 1, representatives of housing and redevelopment authority of Duluth orally committed

to the council that it would seek approval of the council prior to exercising the right of eminent domain authorized pursuant to said plan.

RESOLVED, that the city council of the city of Duluth hereby approves of the use by the housing and redevelopment authority of Duluth, Minnesota, of the power of eminent domain to acquire the below-described property in St. Louis County, Minnesota, for its Hawk Ridge Estates project in conformance with its redevelopment plan for its Redevelopment Project No. 1:

Lots 12 through 20, inclusive, and Lot 66, Auditor's Plat of LESTER PARK GARDEN TRACTS.

Resolution 04-0415 was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Ness, Stewart and Stover -- 5

Nays: Councilors Atkins, Little, Reinert and President Stauber -- 4

Approved June 14, 2004

HERB W. BERGSON, Mayor

- - -

**INTRODUCTION AND CONSIDERATION OF ORDINANCES
ORDINANCES TABLED**

BY COUNCILOR NESS

04-022 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED; ADDING A NEW SECTION 50-37 TO PROVIDE FOR REGULATORY CONTROLS FOR DESIGNATED AREA DEVELOPMENTS.

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

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

- - -

BY COUNCILOR GILBERT

04-020 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED; ADDING A NEW SECTION 50-37 TO PROVIDE FOR THE REGULATORY CONTROLS FOR PLANNED UNIT DEVELOPMENTS.

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

Councilor Gilbert moved to send the ordinance back to the administration, which motion was seconded and unanimously carried.

- - -

BY COUNCILOR STOVER

04-021 - AN ORDINANCE RELATING TO BUILDING SAFETY, AMENDING CHAPTER 10 OF THE DULUTH CITY CODE BY ADDING AN ARTICLE X, CONVENIENCE STORES SECURITY SYSTEMS.

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

Councilor Stover moved to send the ordinance back to the administration for the police chief to review, which motion was seconded and unanimously carried.

- - -

The following entitled ordinances were read for the first time:

BY COUNCILOR GILBERT

04-034 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NOS. 7 AND 10 AS CONTAINED IN THE APPENDIX TO

CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM M-1, MANUFACTURING, TO R-1-B, ONE-FAMILY RESIDENTIAL, 20.18 ACRES OF PROPERTY LYING NORTH OF ARBOR AVENUE, EAST OF GRAND AVENUE AND 93RD AVENUE WEST, SOUTH OF HULETT AVENUE AND WEST OF THE ST. LOUIS RIVER (FREEDOM DEVELOPMENT AND CONSULTING).

- - -

BY COUNCILOR STOVER

04-033 - AN ORDINANCE AUTHORIZING THE TRANSFER OF CERTAIN PROPERTY IN THE EAST HILLSIDE AREA TO THE HOUSING AND REDEVELOPMENT AUTHORITY OF DULUTH.

- - -

The following entitled ordinances were read for the second time:

BY COUNCILOR NESS

04-031 (9666) - AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF GENERAL OBLIGATION AIRPARK IMPROVEMENT BONDS OF THE CITY OF DULUTH IN AN AMOUNT NOT TO EXCEED \$1,000,000 UPON TERMS AND CONDITIONS TO BE PROVIDED BY RESOLUTIONS OF THE CITY COUNCIL AND LEVYING TAXES FOR THE PAYMENT THEREOF.

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

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At this time, 10:45 p.m., Councilor Reinert moved to extend the meeting until 11:05 p.m., which motion was seconded and unanimously carried.

- - -

BY COUNCILOR GILBERT

04-030 (9667) - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NO. 19 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-B, ONE FAMILY RESIDENTIAL, TO C-2, HIGHWAY COMMERCIAL DISTRICT, PROPERTY LOCATED AT 2901 MORRIS THOMAS ROAD (BECHTHOLD).

Councilor Gilbert introduced the resolution for discussion.

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

Norman Rick, Jim Pappas, Barry Sinex, James Bechthold, Stan Melling, Stan Stephenson, Emily John, Michael Pederson and Luke Sydow urged the councilors to support the ordinance for the following reasons: it is good to recycle the current building instead of building a multi-unit facility that would have commotion 24 hours seven days a week year round; Morris Thomas Road is a heavily traveled highway; the applicant is a good businessman for Duluth; Planning District No. 4 gave 100 percent approval to this project; there is neighborhood support because it is not detrimental to the neighborhood and Mr. Bechthold will be paying his employees \$14 to \$30 an hour.

Councilor Gilbert moved passage of the ordinance and the same was passed upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart and Stover -- 8

Nays: None -- 0

Abstention: President Stauber -- 1

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At this time, 10:55 p.m., Councilor Gilbert left his seat.

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BY COUNCILOR ATKINS

04-029 (9668) - AN ORDINANCE AUTHORIZING A LONG TERM LEASE OF A HISTORIC PROPERTY TO THE FOND DU LAC BAND OF CHIPPEWA.

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

- - -

BY PRESIDENT STAUBER

04-032 (9669) - AN ORDINANCE PERTAINING TO CABLE TELEVISION FRANCHISE.

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

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The meeting was adjourned at 11:05 p.m.

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

- - -

ORDINANCE NO. 9666

BY COUNCILOR NESS:

AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF GENERAL OBLIGATION AIRPARK IMPROVEMENT BONDS OF THE CITY OF DULUTH IN AN AMOUNT NOT TO EXCEED \$1,000,000 UPON TERMS AND CONDITIONS TO BE PROVIDED BY RESOLUTIONS OF THE CITY COUNCIL AND LEVYING TAXES FOR THE PAYMENT THEREOF.

The city of Duluth does ordain:

Section 1. BOND PURPOSE AND AUTHORIZATION.

1.01. The city and the Seaway Port authority of Duluth (SPAD) have undertaken the construction of streets and utilities in the Airpark Phase II development (the project). SPAD and the city have received a grant from the economic development administration for approximately 60 percent of the anticipated cost of the project, and SPAD has requested that the city provide the remaining funds needed to construct the project.

1.02. Under the provisions of Minnesota Laws 1974, Chapter 130, the city council may by ordinance provide for the issuance of general obligation bonds to provide the funds necessary to match state, private or federal grant funds for projects within the city's boundaries, which bonds are to be supported by the full faith and credit of the city and are to be issued subject to the provisions of Minnesota Statutes, Chapter 475, except that they may exceed the limitations in Minnesota Statutes, Section 475.53, by an amount not to exceed \$2,000,000, and they may not be issued if the city's contribution to the project, including the proceeds of the bonds, exceeds 60 percent of the total project cost where such contribution is used to match state or federal grants, or 70 percent where it is used to match government and private grants or 80 percent where it is used to match private grants alone. The project is of the nature contemplated by said law. The city has received a grant agreement for a private donation in aid of the project, and it is estimated that such funds, together with funds contributed by the city and the proceeds of bonds issued by the city in an amount not to exceed \$1,000,000, will be sufficient to pay the project costs, and that the amount of the city's contribution, from the proceeds of the bonds or otherwise, will not exceed the limitations set forth in said law.

1.03. Pursuant to the authority herein recited, the city council authorizes and directs the issuance and sale of general obligation Airpark improvement bonds of the city in an amount not to exceed \$1,000,000, 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.

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 sell such bonds, in such a manner and at such time or times as shall be deemed in the public interest, all in accordance with the provisions of Minnesota Statutes, Chapter 475 and of Laws 1974, Chapter 130, and of other applicable laws.

Section 3. REVENUES AND ACCOUNTS.

3.01. The city has created a separate construction account titled "Airpark improvement construction account" within the capital improvements fund to which there shall be credited all or a portion of the proceeds of the bonds, as provided by council resolution, together with the proceeds of such grant received by the city for the project, and any additional funds which may be available and are appropriated for the project or which may be advanced to such account on condition that such amounts be reimbursed from bond proceeds.

3.02. The city council shall, by resolution or resolutions, establish such further accounts and credit monies from the proceeds of the bonds herein authorized to accounts, all in accordance with Section 54 of the City Charter and Chapter 475 of Minnesota Statutes.

Section 4. TAX LEVY.

4.01. There shall be and is hereby levied a direct, annual, ad valorem tax upon all taxable property within the city of Duluth, which shall be extended upon the tax rolls for the years and in amounts sufficient to produce sums not less than five percent in excess of the amounts of principal and interest on such bonds as such principal and interest respectively become due. Until the bonds to be issued hereunder are fully paid or duly called for redemption, the city will also maintain a separate account in the debt service fund created by Section 54 of the City Charter, to be used solely for the payment of the interest and the principal as such principal and interest become due and payable, on the bonds issued hereunder and on any other bonds which have been or may be issued and made payable from said funds. If the balance in such separate account of the debt service fund is ever insufficient to pay all principal and interest then due on the bonds issued hereunder, the treasurer shall nevertheless provide sufficient money from any other funds of the city which are available for that purpose, and such other funds shall be reimbursed from the debt service fund when the balance therein is sufficient. All proceeds of said taxes are hereby appropriated and shall be paid when collected into such accounts. Said taxes shall be irrevocable until the bonds and interest are fully paid, except that if the city council in any year shall make an irrevocable appropriation to said accounts of monies actually on hand, the city clerk shall certify to the county auditor of St. Louis County the fact and amount thereof, and the county auditor shall reduce by the amount so certified the amount otherwise to be included in the rolls next thereafter prepared. After this ordinance has been published and becomes effective, the city council shall by resolution fix the precise amounts of such tax levies to be placed upon the tax rolls for each of the respective years required to comply with the provisions of this ordinance.

Section 5. CERTIFICATE OF PROCEEDINGS.

5.01. The city clerk is directed to file with the county auditor of St. Louis County, a certified copy of this ordinance, and such other information as the county may require, and to obtain from

the county auditor a certificate stating that the bonds herein authorized have been duly entered on his register.

5.02. The office of the city clerk is 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 acts appear from the official books and records in the officer's custody or are otherwise known to him. All such certified copies, certificates and affidavits, including any heretofore furnished, constitute representations of the city as to the correctness of the facts recited therein and the action stated therein to have been taken.

Section 6. EFFECTIVE DATE.

6.01. This ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: July 25, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed June 14, 2004
Approved June 14, 2004
HERB W. BERGSON, Mayor

- - -

ORDINANCE NO. 9667

BY COUNCILOR GILBERT:

AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NO. 19 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-B, ONE FAMILY RESIDENTIAL DISTRICT, TO C-2, HIGHWAY COMMERCIAL DISTRICT, PROPERTY LOCATED AT 2901 MORRIS THOMAS ROAD (BECHTHOLD).

The city of Duluth does ordain:

Section 1. That Plate No. 19 of the zoning district map as contained in the Appendix to Chapter 50 of the Duluth City Code, 1959, as amended, is amended to read as follows:

(MAP)

(See Map No. 19 at end of meeting)

(Reference File No. 04019)

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: July 25, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart and Stover -- 8

Nays: None -- 0

Abstention: President Stauber -- 1

ATTEST:
JEFFREY J. COX, City Clerk

Passed June 14, 2004
Approved June 14, 2004
HERB W. BERGSON, Mayor

- - -

ORDINANCE NO. 9668

BY COUNCILOR ATKINS:

AN ORDINANCE AUTHORIZING A LONG TERM LEASE OF A HISTORIC PROPERTY TO THE FOND DU LAC BAND OF CHIPPEWA.

The city of Duluth does ordain:

Section 1. That the city officials are authorized to execute and implement a lease between the city and the Fond du Lac Band of Lake Superior Chippewa whereby the land described as a square shaped parcel 300 feet on each side located within the N½ of NW¼ Section 6, Township 48 North, Range 15 West, described as follows:

beginning at the northwest corner of said Section 6; thence easterly along the township line separating townships 48 North and 49 North a distance of 977 feet to a point; thence deflecting 90° to the south at distance of 600 feet to the point of beginning; from the point of beginning continuing on same said line a distance of 300 feet to a point; thence deflecting 90° to the east a distance of 300 feet; thence deflecting 90° to the north a distance of 300 feet; thence deflecting 90° to the west a distance of 300 feet to the point of beginning; shall be leased to said tribal government for a term of 99 years. The terms of the lease shall be as contained in the document on file with the clerk as Public Document No. 04-0614-39.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: July 25, 2004)

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

Yeas: Councilors Atkins, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 8

Nays: None -- 0

Absent: Councilor Gilbert – 1

Passed June 14, 2004

Approved June 14, 2004

HERB W. BERGSON, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 9669

BY PRESIDENT STAUBER:

AN ORDINANCE PERTAINING TO CABLE TELEVISION FRANCHISE.

The city of Duluth does ordain:

Section 1. The franchise granting Charter the right and privilege to operate a cable television system is hereby extended to November 30, 2004, or until a new franchise agreement is executed, whichever shall first occur.

Section 2. In granting this extension neither the city nor Charter waives any rights under the franchise or applicable law and both the city and Charter agree to comply with all terms and obligations of the franchise.

Section 3. This ordinance shall become effective upon the occurrence of both of the following conditions:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

(a) Pursuant to Section 82 of the City Charter, this ordinance shall be published verbatim in the official paper of the city of Duluth once a week for four successive weeks after its passage, and shall take effect 30 days from and after its last publication; and

(b) Charter's acceptance of this ordinance and the franchise for the term specified in paragraph (1) above, provided Charter accepts and agrees to each and every term of this ordinance and the franchise within 14 days from the date this ordinance is adopted by the city council. (Effective date: August 15, 2004)

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

Yeas: Councilors Atkins, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 8

Nays: None -- 0

Absent: Councilor Gilbert == 1

ATTEST:
JEFFREY J. COX, City Clerk

Passed June 14, 2004
Approved June 14, 2004
HERB W. BERGSON, Mayor

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, June 28, 2004, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Absent: None -- 0

- - -

The minutes of the city council meetings held on April 26, May 6, 10 and 24, 2004, were unanimously approved.

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

04-0628-01 Minnesota state auditor submitting Duluth economic development authority management and compliance report for the year ended December 31, 2003. -- Received

04-0628-14 Kay and Bill Slack submitting communication regarding the proposed ordinance regarding the parking of camper trailers and recreation vehicles (04-042-O). -- Received

04-0628-11 The following submitting communications regarding an HRA tax increment financing plan for Hawk Ridge Estates (04-0450R): (a) Eric Dings; (b) Joanne Faye; (c) HRA. -- Received

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REPORTS OF OFFICERS

04-0628-02 Assessor submitting:

(a) Letters for confirmation of assessment rolls levied to defray the:

(1) Assessable portions of demolition of buildings: Contract 5306 (assessable amount - \$4,774); Contract 5293 (assessable amount - \$2,500); Contract 5294 (assessable amount - \$800);

(2) Assessment roll to be levied in full the expense of solid waste collection during the period March 1, 2003, to June 1, 2004, for which the collector has not been reimbursed;

(b) Letters of sufficiency to:

(1) Reclassify from:

(A) R-2 to R-3 all of Block 8, Hunters Grassy Point Addition to Duluth, Third Division;

(B) R-1 to R-3 registered Land Survey Number 38, Tract A, B, C, D and Grant Park Division of Duluth, Block 4, part of Lots 3 and 4 beginning at southeast corner of Lot 3, thence northeasterly 100 feet, thence left 90 degrees 89 feet, thence left 90 degrees to Nanticoke Street, thence east to point of beginning;

(2) Vacate:

(A) The alley between Blocks 58 and 64, Bay View Addition Number 2;

(B) All that part of 40th Avenue East, formerly known as West Avenue; all that part of London Addition to Duluth and East Duluth Rearrangement lying easterly of Lot 5 and westerly of the east line of said plat; the platted public drive easement in Lot 5; the ten foot electric easement across the easterly ten feet of Lot 5; that part of a 12 foot wide easement for sanitary sewer purposes; that part of an existing 20 foot wide sanitary sewer easement; a 20 foot wide permanent easement for sanitary sewer purposes under and across part of Lots 4 and 5, all in London Addition to Duluth and East Duluth Rearrangement;

(C) The easterly 20 feet of Lot 10, Rearrangement of Block 4, Central Baptist Division;

(D) The paper alleyway located between Blocks 7 and 8, Hunters Grassy Point Addition to Duluth, Third Division. -- Received

04-0628-03 Clerk submitting applications to the Minnesota gambling control board for exemption from lawful gambling license from: (a) St. Margaret Mary Church on September 26, 2004 (bingo and raffle); (b) St. Michael's Church on November 14, 2004 (bingo and raffle). -- Received

04-0628-04 Engineering division submitting monthly project status report of June 1, 2004. -- Received

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REPORTS OF BOARDS AND COMMISSIONS

04-0628-05 Duluth airport authority: (a) Balance sheet for April 30, 2004; (b) Minutes of May 18, 2004, meeting -- Received

04-0628-06 Duluth/North Shore Sanitary District board minutes of May 4, 2004, meeting. -- Received

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OPPORTUNITY FOR CITIZENS TO BE HEARD

K.L. Lewis expressed concern about the locations of future skywalks and the safety of individuals, especially in the evenings.

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Dave Barsdorf expressed concern on the need for parking signage on South Hugo Avenue and the alley.

- - -

Greg Price commented on his concern for the radioactive barrels in Lake Superior that were dumped at seven sites by Honeywell. He stated that it is important that all the barrels are removed, not just isolated ones.

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At this time, 7:16 p.m., President Stauber announced that the public hearing regarding the Housing and Redevelopment Authority Tax Increment Financing (TIF) District (Hawk Ridge Estates) would begin.

Rick Ball, executive director of the housing and redevelopment authority (HRA), reviewed the contents of the TIF plan (Public Document No. 04-0628-13) attached to the resolution which covers the financial summary of the project, financial affects of the TIF district and mortgage affordability by income/job class.

Mark Ruff, Ehlers and Associates Financial Advisers, reviewed the details of the TIF, noting that it will be used to finance only the work force units, not the market rate units. He further noted that there will only be HRA revenue bonds and that no city of Duluth general obligation bonds would be issued.

Jeff Cory expressed support for the TIF district because there is a need for affordable housing, the project uses sound environmental development, contributes to halting urban sprawl and provides housing for mixed incomes.

Steve O'Neil, representing Churches United in Ministry Housing Task Force and the Affordable Housing Coalition, stated that both organizations fully support this project.

St. Louis County Commissioner Joanne Fay reviewed at length her concerns (Public Document 04-0628-11(b)) related to the "but/for qualifications" in the creation of the TIF district. She felt that the abatement process is a much better tool to use, the HRA should look at putting houses on existing vacant lots, existing houses should be utilized or fixed up and the use of TIF affects all citizens throughout the city in a negative fashion.

At this time, 7:48 p.m., President Stauber closed the public hearing and the regular order of business was resumed.

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Councilor Gilbert moved to suspend the rules to consider Resolution 04-0450, approving a tax increment financing plan for the Hawk Ridge Estates Tax Increment Financing District in Project Area No. 1 as proposed by the housing and redevelopment authority of Duluth, Minnesota, at this time, which motion was seconded and unanimously carried.

Resolution 04-0450 was adopted as follows:

BY COUNCILOR GILBERT:

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

Section 1. Recitals; findings.

1.01 The council has been informed that the housing and redevelopment authority of Duluth (the authority) desires to promote development and redevelopment of property located in the city.

1.02 In order to promote such development, the authority has established Project Area No. 1 (the project) in the city and adopted a redevelopment plan/housing development plan (the plan) therefor pursuant to Minnesota Statutes, Sections 469.001 through 469.047 (the act).

1.03 The authority is additionally considering establishment of the Hawk Ridge Estates Tax Increment Financing District (the district) within the project and adoption of a tax increment financing plan (the TIF plan) therefor pursuant to Minnesota Statutes, Sections 469.174 through 469.179 (the TIF act), for the purpose of financing public improvements and encouraging investment in the project. The authority has prepared the TIF plan in accordance with the TIF act.

1.04 Pursuant to Section 469.175, Subdivision 3, of the TIF act, the authority has requested that the city hold a public hearing on the TIF plan and approve the TIF plan, which hearing was held this day, at which the views of all interested parties were heard.

1.05 The authority has transmitted a copy of the TIF plan to the council in a document entitled "the tax increment financing plan for the establishment of the Hawk Ridge Estates Tax Increment Financing District," which is now on file in the office of the city clerk.

1.06 The council has been provided with a copy of the TIF plan.

Section 2. Statutory findings.

2.01 The land in the project would not be made available for redevelopment without the financial aid to be sought by establishing the district.

2.02 It is the opinion of the council, based on discussions with representatives of the authority regarding projects proposed to be constructed in the district and information contained in the plan and the TIF plan, that development and redevelopment within the district would not reasonably be expected to occur solely through private investment within the reasonably foreseeable future; that the increased market value of the site to be included in the district that could reasonably be expected to occur without the use of tax increment financing would be less than the increase in the market value estimated to result from development in the district after subtracting the present value of the projected tax increments for the maximum duration of the district permitted by the TIF plan; and that the use of tax increment financing is necessary. Appendix F to the TIF plan sets out the following:

(a) An estimate of the amount by which the market value of the district will increase without the use of tax increment financing;

(b) An estimate of the increase in the market value that will result from the development or redevelopment to be assisted with the tax increment financing described herein; and

(c) The present value of the projected tax increments for the maximum duration of the district permitted by the TIF plan.

2.03 Based on information contained in the plan and the TIF plan, the TIF plan conforms to the general plan for the development and redevelopment of the city as a whole.

2.04 Based on information contained in the plan and the TIF plan, the TIF plan will afford maximum opportunity, consistent with the sound needs of the city as a whole, for the development and redevelopment of the project by private enterprise.

Section 3. Approval.

3.01 The TIF plan is approved.

3.02 The geographic boundaries of the project and district are described in the plan and the TIF plan, which documents are incorporated herein by reference and which, together with this resolution, contain the requirements set forth in Section 469.028, Subdivision 2, of the act and Section 469.175, Subdivision 3, of the TIF act.

Section 4. Designation of district.

4.01 The proposed district is a "housing district" as defined in Section 469.174, Subdivision 11, of the TIF act because of the following: it consists of a portion of the project intended for occupancy, in part, by persons or families of low and moderate income, as defined in Minnesota Statutes, Chapter 462A, Title II of the National Housing Act of 1934, the National Housing Act of 1959, the United States Housing Act of 1937, as Amended, Title V of the Housing Act of 1949, as amended, any other similar present or future federal, state or municipal legislation or the regulations promulgated under any of those acts; not more than 20 percent of the total fair market value of the planned improvements in the plan and TIF plan will be constructed for commercial uses or uses other than low and moderate income housing; tax increment generated from the district will be used solely in accordance with Section 469.176, Subdivision 4d, of the TIF act; and the income limitations set forth in Section 469.1761 of the TIF act will be satisfied.

Resolution 04-0450 was unanimously adopted.

Approved June 28, 2004

HERB W. BERGSON, 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 Stauber moved passage of the consent agenda, which motion was seconded and unanimously carried.

BY COUNCILOR NESS:

WHEREAS, the Duluth City Council has confirmed assessments for the properties and amounts and dates listed on Public Document No. 04-0628-02(a)(1); and

WHEREAS, the property referred to in said resolutions was forfeited to the state of Minnesota for non-payment of real estate taxes but has since been returned to private ownership; and

WHEREAS, the city has held a hearing regarding the reassessment of said sums against said properties after notice to all necessary parties, said hearing and notice thereof complying with the requirements of Section 62 of the Duluth City Charter and Section 45-79 and any other applicable sections of the Duluth City Code, 1959, as amended; and

WHEREAS, the city council has determined that the work for which the assessments were originally levied have benefitted the respective properties by amounts at least equal to or in excess

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

of amounts originally assessed against each such property, including the amounts of the canceled assessments.

RESOLVED, that pursuant to the authorization of Laws of Minnesota, 1997, Chapter 231, Article 2, Section 53, the following previously-canceled assessments are hereby reassessed in the amounts set forth in the table below:

- (a) Demolition of buildings, Contract No. 5306, assessable amount - \$4,774;
- (b) Demolition of buildings, Contract No. 5293, assessable amount - \$2,500
- (c) Demolition of buildings, Contract No. 5294, assessable amount - \$800;

and that this reassessment role is hereby confirmed.

Resolution 04-0414 was unanimously adopted.

Approved June 28, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR NESS:

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. 9659 adopted May 10, 2004, ordered the issuance, sale and delivery of a general obligation water utility revenue note in the amount of \$2,485,231 of the city, for the payment of the costs of improvements to the municipal water utility through the installation of watermains in portions of the Morgan Park neighborhood (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 (the note).

1.03 The city hereby authorizes the issuance and sale of the note, in substantially the form set forth in Section 2.06 hereof, for the project to the PFA pursuant to a Minnesota public facilities authority project loan and bond purchase agreement dated May 26, 2004, 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. 04-0628-07 which is hereby authorized 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, shall be issued in the principal amount of \$2,485,231, or so much thereof as shall be disbursed pursuant to the loan agreement, in fully registered form and lettered and numbered R-1. The note shall bear interest on the outstanding principal balance at the rate of 2.53 percent per annum (calculated on the basis of a 360-day year of 12 30-day months), payable semiannually on each February 20 and August 20 commencing on August 20, 2004. Principal payments shall be made on August 20 of each year commencing on August 20, 2004, in the amounts set forth in the note.

2.02 The note and the loan agreement shall be prepared for execution in accordance with the approved forms 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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

2010	\$169,000	2018	\$207,000
2011	\$174,000		

pursuant to the Minnesota Public Facilities Authority Project Loan and Bond Purchase Agreement between the City and the Lender dated May 26, 2004 (the "Loan Agreement").

From and after the date hereof until the unpaid principal balance of this Note is paid, such unpaid balance shall bear interest at the rate per annum set forth above, as calculated on the basis of a 360-day year of 30-day months.

Interest on this Note shall be payable each February 20 and August 20, commencing on August 20, 2004. Principal on this Note shall be payable in installments as set forth above on each August 20, commencing on August 20, 2004. Principal and interest payments shall be subject to adjustment as provided for in the Loan Agreement. Both principal hereof and interest hereon are payable in lawful money of the United States of America by check or draft directly to the registered owner hereof shown on this Note registration records maintained by the City, without, except for the final payment of principal on this 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. The final principal payment shall be made upon presentation and surrender of this Note when due. For the prompt and full payment of such principal and interest as they become due, the full faith and credit and taxing power of the City are irrevocably pledged.

This Note, issued for improvements to the municipal water utility, is issued pursuant to the authority contained in Minnesota Statutes, Chapter 475, and Section 444.075 and Section 55 of the Home Rule Charter of the City, and all other laws and charter provisions thereto enabling and pursuant to Ordinance No. 9659 adopted May 10, 2004, for the purpose of providing funds for improvements to such municipal water utility in the Morgan Park neighborhood. The Note and interest thereon 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 dated June 28, 2004, to which reference is made for a full statement of rights and powers thereby conferred. In the Resolution, the City has pledged and appropriated the net revenues to be derived from the operation of the municipal water utility in excess of normal, reasonable and current costs of the operation and maintenance of the utility, for the payment of the principal and interest when due on the portion of the Bonds issued for the water utility, and has covenanted and agreed that it will impose and collect just and equitable charges for all use and for the availability of all facilities of the municipal water utility at the times and in the amounts required to pay the normal, reasonable and current expenses of operating and maintaining such facilities, and also to produce net revenues at least adequate at all times to pay the principal and interest due on the portion of the Bonds issued for the water utility.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

This Note is subject to redemption at the option of the City, in whole or in part on such dates and at such prices and upon such other terms as are specified in the Loan Agreement.

This Note is transferable by the registered owner hereof upon surrender of this Note for transfer at the office of the City duly endorsed and accompanied by a written instrument of transfer in form satisfactory to the City and executed by the registered owner hereof or the owner's attorney duly authorized in writing. The City may deem and treat the person in whose name this Note is last registered upon the books of the City, with such registration noted on this Note, as the absolute owner hereof for the purpose of receiving payment of or on account of the principal balance, redemption price or interest and for all other purposes; all such payments so made to the registered holder or upon the order thereof shall be valid and effectual to satisfy and discharge the liability upon this Note to the extent of the sum or sums so paid, and the City shall not be affected by any notice to the contrary.

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 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 matter 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 Note does not cause the indebtedness of the City to exceed any constitutional or statutory limitation.

Additional provisions of this Note are contained in the Loan Agreement and such provisions shall for all purposes have the same effect as though fully set forth at this place.

IN WITNESS WHEREOF, the City has caused this Note to be executed in its name by the manual signatures of its Mayor and Clerk as of the date of Note set forth above.

Mayor

Attest:

Clerk

PROVISIONS AS TO REGISTRATION

The ownership of the unpaid principal balance of this Note and the interest accruing thereon is registered on the books of the City of Duluth, Minnesota, in the names of the holders last noted below.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Date of Registration	Name and Address of Registered Owner	Signature of Clerk
_____, 2004	State of Minnesota Public Facilities Authority 500 Metro Square 121 Seventh Place East St. Paul, Minnesota 55101 Federal Tax I.D. No.: 41-6007162	_____

ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto _____ the within Note and all rights thereunder, and does hereby irrevocably constitute and appoint _____ attorney to transfer the said Note on the books kept for registration of the within Note, with full power of substitution in the premises.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Note in every particular, without alteration or enlargement or any change whatever.

The Treasurer will not effect transfer of this Note unless the information concerning the assignee requested below is provided.

Name and Address: _____

Taxpayer Identification No.: _____

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 heretofore or hereafter issued and made payable from said net revenues, and will operate the utility and segregate and account for the revenues thereof as provided in this section.

The city will place all such charges, when collected, and all money received from the sale of any facilities or equipment of the municipal water utility in a separate water utility operating account within the public utility water fund maintained under Section 54 of the City Charter. Except as provided in this section, this account shall be used only to pay claims duly approved and allowed for payment of expenses which, under generally accepted accounting principles, constitute normal, reasonable and current expenses of operating and maintaining the municipal water utility, and to maintain such reasonable reserves for such expenses as the director of finance shall determine to be necessary from time to time in accordance with policies established by the city council. Sums from time to time on hand in this account, in excess of sums required to make such payments and maintain such reserves, constitute the net revenues which are herein pledged and appropriated first to pay the principal of and interest on all water utility bonds or notes when due.

3.02 The city hereby creates a separate construction account within the public utility water fund to which there shall be credited the proceeds of the note as received, together with 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. The treasurer shall transfer from the water utility operating account to the water debt service fund amounts of the net revenues sufficient for the payment of all interest and principal then due on the note. Such transfers shall be made at the times and in the amounts determined by the treasurer, in accordance with policies established by resolutions of the city council.

3.04 Surplus utility revenues from time to time received in the water utility operating account, in excess of payments due from and reserves required to be maintained in the water utility operating account and in the water debt service fund, may be used for necessary capital expenditures for the improvement of the municipal water utility, for the prepayment and redemption of bonds constituting a lien on the municipal water utility, and for any other proper municipal purpose consistent with policies established by resolutions of the city council.

3.05 A. In the event the monies and payments appropriated to the water debt service fund are insufficient to pay principal of and interest on the note and the bonds and notes payable from such fund as the same become due, the city is required by law and by contract with the holders of the note and such bonds and hereby obligates itself to levy and cause to be extended, assessed and collected any additional taxes found necessary for full payment of the principal of and interest on the note.

B. The full faith and credit and taxing powers of the city are irrevocably pledged for the prompt and full payment of the principal of and interest on the note, as such principal and interest respectively become due. However, the net revenues of the water utility appropriated to the water debt service fund are estimated to be not less than five percent in excess of the principal

of and interest on the note and the other bonds and notes payable from such fund, and accordingly, no tax is levied at this time.

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 for a reasonable temporary period until such proceeds are needed for the purpose for which the note were issued. To this effect, any proceeds of the note and any sums from time to time held in such debt service account (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 of minor portion made available under the federal arbitrage regulations.

B. In addition, the proceeds of the note and money in such debt service account 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 covenants 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 2004

5.02 The officers of the city are authorized and directed to prepare and furnish to the purchaser and to bond counsel certified copies of all proceedings and records of the city relating to the authorization and issuance of the note and other affidavits and certificates as may reasonably be requested to show the facts relating to the legality and marketability of the note as such facts appear from the official books and records of the officers' custody or otherwise known to them. All of such certified copies, certificates and affidavits, including any heretofore furnished, constitute representations of the city as to the correctness of facts recited therein and the actions stated therein to have been taken.

5.03 The officers of the city are hereby authorized and directed to certify that they have examined the official statement prepared and circulated in connection with the sale of the note and that to the best of their knowledge and belief the official statement is a complete and accurate representation of the facts and representations made therein as of the date of the official statement.

Resolution 04-0428 was unanimously adopted.

Approved June 28, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

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

Northland Country Club, 3901 East Superior Street, for August 11, 2004, with Gary Schneider, manager.

Ridgeview Country Club, 700 West Redwing Street, for July 29, 30, 31 and August 1, 2004, with Phil Gaudino, manager.

Northland Vietnam Veterans Association, Bayfront Park, for July 2, 3 and 4, 2004, with Sandra Fjeld, manager.

Northland Vietnam Veterans Association, Bayfront Park, for August 12, 13, 14 and 15, 2004, with Sandra Fjeld, manager.

Marshall School, 1215 Rice Lake Road, for July 15, 16, 17 and 18, 2004, with Marlene David, manager.

Resolution 04-0419 was unanimously adopted.

Approved June 28, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

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 Police Softball Team (Police Softball Tournament), Wheeler Field, for July 31 and August 1, 2004, with Matt McShane, manager.

Resolution 04-0420 was unanimously adopted.

Approved June 28, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

WHEREAS, the following organizations have applied to the Minnesota gambling control board for premise permits; and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

WHEREAS, copies of said applications were also filed with the city of Duluth as required by Minnesota Statutes 349.213, Subdivision 2, and were investigated by the Duluth police department and reviewed and approved by the Duluth alcohol, gambling, and tobacco commission; and

WHEREAS, the city council approves of the issuance of said licenses;

NOW, THEREFORE, BY IT RESOLVED, that the Duluth City Council approves of the Minnesota gambling control board issuing premise permits to the following organizations.

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

Licensee	Gambling site
Duluth Amateur Basketball	Sneakers Sports Bar
Denfeld Organ Project	32 West First Street

Resolution 04-0421 was unanimously adopted.

Approved June 28, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the transfer of the following temporary on sale wine license and on sale 3.2 percent malt liquor license, for the period ending August 31, 2004, and April 30, 2005, respectively, subject to departmental approvals, the payment of sales and property taxes, and further subject to approval of the liquor control commissioner:

Duluth India Palace, Inc. (India Palace), 319 West Superior Street, with Satnam Singh, 100 percent stockholder, transferred from Mayur, Inc. (India Palace), same address.

Resolution 04-0423 was unanimously adopted.

Approved June 28, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

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 May 4, 2004, and which are filed with the city clerk as Public Document No. 04-0628-08, are approved. This classification shall remain subject to the city's collective bargaining agreement with its basic unit employees and compensated at Pay Range 131.

Resolution 04-0417 was unanimously adopted.

Approved June 28, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the reappointment by Mayor Bergson of William C. Majewski to the sanitary sewer board of the Western Lake Superior Sanitary District for a term expiring on July 1, 2007, is confirmed.

Resolution 04-0430 was unanimously adopted.

Approved June 28, 2004

HERB W. BERGSON, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

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BY COUNCILOR JOHNSON:

RESOLVED, that the Duluth City Council hereby appoints Portia Johnson to the civil service board for a term expiring on May 1, 2008.

RESOLVED FURTHER, that the Duluth City Council hereby appoints Patti R. Katoski to the civil service board for a term expiring on May 1, 2010.

Resolution 04-0431 was unanimously adopted.

Approved June 28, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the appointment by Mayor Bergson of Jim Booth to the Housing and Redevelopment Authority of Duluth for a term expiring on January 5, 2009, replacing Thomas J. Conrad, is confirmed.

Resolution 04-0449 was unanimously adopted.

Approved June 28, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the appointments by Mayor Bergson of Melinda M. Appold and David K. Sarvela to the planning commission, for terms expiring on December 31, 2007, replacing John Hinzmann and Jeffrey Jackson, are confirmed.

Resolution 04-0451 was unanimously adopted.

Approved June 28, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the reappointments by Mayor Bergson of John M. Eagleton and James Laumeyer to the Duluth airport authority, for terms expiring on July 1, 2007, are confirmed.

Resolution 04-0452 was unanimously adopted.

Approved June 28, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the appointment by Mayor Bergson of Peter Handberg (District 1) to the parking commission, for a term expiring on July 1, 2007, replacing John Cummings, is confirmed.

Resolution 04-0453 was unanimously adopted.

Approved June 28, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointments by Mayor Bergson of James M. Anderson and Marcus Karki to the alcohol, gambling and tobacco commission, for terms expiring on March 20, 2007, replacing David A. Nyquist and Allen Willman, are confirmed.

Resolution 04-0454 was unanimously adopted.

Approved June 28, 2004

HERB W. BERGSON, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

- - -

BY COUNCILOR GILBERT:

WHEREAS, the city of Duluth established certain 2004 ESGP accounts pursuant to Resolution 03-0875; and

WHEREAS, the city received an increased award of ESGP funding over the original program estimate; and

WHEREAS, the community development committee (CD committee) for the CDBG program held a public hearing regarding funding changes as set forth below.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are authorized to make the following fund increases in the Federal Program Fund 0262, Agency 020, 2004 HUD-funded community development accounts as set forth below:

2004 ESGP Account Revised - 2004			
Project	Original amount	New grant	Difference
AICHO-Dabinoo'Igan	-0-	\$5,000	\$5,000
Program administration	\$6,050	\$6,249	\$ 199

BE IT FURTHER RESOLVED, that the proper city officials are hereby authorized to execute an ESGP agreement substantially in the form of that on file in the office of the city clerk as Public Document No. 04-0628-09 with American Indian Community Housing Organization (AICHO) to provide emergency shelter to American Indian women who are victims of domestic assault in an amount not to exceed \$5,000, payable from 2004 Federal Program Fund 0262, community development - Agency 627 - Project Account No. 5434.

Resolution 04-0432 was unanimously adopted.

Approved June 28, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that pursuant to Section 61(b) of the Home Rule Charter of the city of Duluth, the city council hereby orders the construction of a concrete sidewalk on the west side of Allendale Avenue from Wadena Street to Osakis Street, in conjunction with the 2004 street improvement program, Woodland South 1, city of Duluth Project No. 0092TR, to city of Duluth standards of those streets, avenues and parkways set forth in Public Document No. 04-0628-10 on file with the office of the city clerk; that the cost of said improvement is estimated to increase the 2004 SIP assessments by \$1 per front foot and said costs be levied against all properties to be assessed with the 2004 Woodland South 1 SIP project area.

Resolution 04-0424 was unanimously adopted.

Approved June 28, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, pursuant to Sections 43-5 and 43-11 of the Duluth City Code, 1959, as amended, for the purpose of increasing the revenue of the sewer utility, there is established and shall be collected beginning with the meter readings made on August 1, 2004, and thereafter, a customer charge and user charges, based upon the volume of waste water discharged to the city's wastewater facilities system and determined as in Section 43-7 of the Duluth City Code, as

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

follows:

	effective August 1, 2004	effective August 1, 2003
Customer charge	\$ 5.89 per month	\$ 5.89 per month
User charge - Class I	\$ 3.45/ccf	\$ 3.35/ccf
User charge - Class II	\$ 4.81/ccf	\$ 4.67/ccf
User charge - Class III	\$ 5.93/ccf	\$ 5.82/ccf
Tate and Lyle	\$10.76/ccf	\$10.62/ccf
Ikonics/Chromaline	\$ 6.42/ccf	\$ 6.40/ccf

RESOLVED FURTHER, that the revenues derived from the rate increase increment be expended exclusively for the replacement and rehabilitation of sanitary sewer infrastructure.

BE IT FURTHER RESOLVED, that any prior rate regulations inconsistent or conflicting with this resolution are hereby rescinded.

Resolution 04-0426 was unanimously adopted.

Approved June 28, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, effective with the water meter readings after August 1, 2004, all customers of the water utility of the city of Duluth, whose water supply is measured by meter, shall be charged for such water in accordance with the schedule of rates established by this resolution as follows:

MONTHLY METERED VOLUME		
	effective August 1, 2004 rate \$/CCF	effective August 1, 2003 rate \$/CCF
first 4,000 cubic feet, per 100 cubic feet	\$1.91	\$1.82
next 96,000 cubic feet, per 100 cubic feet	\$1.25	\$1.19
next 900,000 cubic feet, per 100 cubic feet	\$1.04	\$0.99
over 1,000,000 cubic feet, per 100 cubic feet	\$0.86	\$0.82

For consumers requiring water at an elevation in excess of 290 feet above Lake Superior, the rate for all water in excess of 100,000 cubic feet per month shall be effective August 1, 2004, \$1.25 per 100 cubic feet.

FIXED CHARGES ARE AS FOLLOWS		
Meter size	effective August 1, 2004	
1 inch & under	\$ 3.50	(no change)
1 1/2 inch	\$ 6.13	(no change)
2 inch	\$ 10.50	(no change)
3 inch	\$ 38.50	(no change)
4 inch	\$ 49.00	(no change)
6 inch	\$ 73.50	(no change)
8 inch	\$101.50	(no change)
10 inch	\$133.00	(no change)

Water metered at or beyond the city limits, for use by individual customers located outside the corporate limits of the city of Duluth:

All water, per 100 cubic feet - \$2.89, effective August 1, 2004.

Rates charged for water furnished to political subdivisions or state or federal government installments located outside the corporate limits of the city will be by individual contract, using the following schedule of rates:

effective August 1, 2004	Hermantown		Proctor		Rice Lake	
first 100,000 cubic feet, per 100 cubic feet	\$2.41	\$2.30	\$2.69	\$2.56	\$2.14	\$2.04
next 200,000 cubic feet, per 100 cubic feet	\$2.15	\$2.05	\$2.38	\$2.27	\$1.90	\$1.81
over 300,000 cubic feet, per 100 cubic feet	\$1.93	\$1.84	\$2.15	\$2.05	\$1.71	\$1.63
(Proctor 300,001-500,000 cubic feet) over 500,000 cubic feet, per 100 cubic feet	n/a		\$2.15	\$2.05	n/a	

RESOLVED FURTHER, that the revenues derived from the rate increase increment be expended exclusively for the replacement and rehabilitation of water system infrastructure.

RESOLVED FURTHER, any prior rate resolutions inconsistent or conflicting with this resolution are hereby rescinded.

Resolution 04-0427 was unanimously adopted.

Approved June 28, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

WHEREAS, the city of Duluth desires to provide the year 2005 street improvement program for Duluth Heights Southeast 3; and

WHEREAS, the city desires to hire a consulting engineer to provide the engineering services required for design and construction phases; and

WHEREAS, Salo Engineering has submitted a proposal for engineering services in connection with this project.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with Salo Engineering to provide the city with such engineering services.

BE IT FURTHER RESOLVED, that the cost of said engineering services, estimated at \$103,521.59, will be payable from the Street Improvement Program Fund 0440, Department/Agency 038, Organization 0501, Object 5530.

Resolution 04-0436 was unanimously adopted.

Approved June 28, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

WHEREAS, the city of Duluth desires to provide the year 2005 street improvement program for Lincoln Park Central East; and

WHEREAS, the city desires to hire a consulting engineer to provide the engineering services required for design and construction phases; and

WHEREAS, Ayres Associates has submitted a proposal for engineering services in connection with this project.

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.

BE IT FURTHER RESOLVED, that the cost of said engineering services, estimated at \$166,938, will be payable from the Street Improvement Program Fund 0440, Department/Agency 038, Organization 0503, Object 5530.

Resolution 04-0437 was unanimously adopted.

Approved June 28, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

WHEREAS, the city of Duluth desires to provide the year 2005 street improvement program for Hunters Park; and

WHEREAS, the city desires to hire a consulting engineer to provide the engineering services required for design and construction phases; and

WHEREAS, Short Elliot Hendrickson, Inc., has submitted a proposal for engineering services in connection with this project.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with Short Elliot Hendrickson, Inc., to provide the city with such engineering services.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

BE IT FURTHER RESOLVED, that the cost of said engineering services, estimated at \$119,442, will be payable from the Street Improvement Program Fund 0440, Department/Agency 038, Organization 0502, Object 5530.

Resolution 04-0438 was unanimously adopted.

Approved June 28, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

WHEREAS, the city of Duluth desires to provide the year 2005 street improvement program for Woodland South 2; and

WHEREAS, the city desires to hire a consulting engineer to provide the engineering services required for design and construction phases; and

WHEREAS, L.H.B. Architects and Engineers has submitted a proposal for engineering services in connection with this project.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with L.H.B. Engineers and Architects to provide the city with such engineering services.

BE IT FURTHER RESOLVED, that the cost of said engineering services, estimated at \$190,239, will be payable from the Street Improvement Program Fund 0440, Department/Agency 038, Organization 0505, Object 5530.

Resolution 04-0439 was unanimously adopted.

Approved June 28, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Arrowhead Painting be and hereby is awarded a contract for painting of 2,620 gas meter piping throughout the city of Duluth for the utility operations division in accordance with specifications on its low specification bid of \$29,842.86, terms net 30, FOB job site, payable out of Gas Fund 0520, Department/Agency 500, Organization 1905, Object 5535.

Resolution 04-0440 was unanimously adopted.

Approved June 28, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Utility Systems of America, Inc., be and hereby is awarded a contract for construction year 2004 street improvement of Woodland South 1 for the engineering division in accordance with specifications on its low specification bid of \$1,347,236.20, terms net 30, FOB job site, payable out of Street Improvement Program Fund 0440, Department/Agency 038, Organization 0406, Object 5530.

Resolution 04-0441 was unanimously adopted.

Approved June 28, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Daffinson, Inc., be and hereby is awarded a contract for year 2004 street crack sealing program for the maintenance operation division in accordance with specifications

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

on its low specification bid of \$45,560, terms net 30, FOB job site, payable out of General Fund 0100, Department/Agency 500, Organization 2000, Object 5403.

Resolution 04-0443 was unanimously adopted.

Approved June 28, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that the proper city officers are hereby authorized to acquire from the state of Minnesota, through St. Louis County, the tax forfeit real property described as follows:

Lots 104 through 112, except the westerly 20 feet of Lot 112, Morris Park Division of Lakeside.

The above-described property will be used only for the public use of a site for a sanitary sewer overflow storage facility operated by the city of Duluth as part of its sanitary sewer system. The proper city officials are authorized to request a free conveyance of the property and to do acts required to secure a free conveyance.

Resolution 04-0444 was unanimously adopted.

Approved June 28, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are hereby authorized to accept a grant from the Great Lakes Commission under the Great Lakes basin program for soil erosion and sediment control for a sediment collection demonstration project, in the amount of \$27,450, said sum to be deposited into Fund 0210, Agency 030, Organization 2144, Revenue Source 4210.

FURTHER RESOLVED, that the city shall provide matching funds in the amount of \$1,000 from Fund 0535, Organization 1915, Object 5439.

Resolution 04-0445 was unanimously adopted.

Approved June 28, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are authorized to enter into an amendment, a copy of which is on file in the office of the city clerk as Public Document No. 04-0628-15, with the University of Minnesota's Natural Resources and Research Institute for services related to the Duluth streams project, extending the term thereof through October 31, 2004, and increasing the amount payable thereunder by \$15,000, payable from Fund No. 0535, Department 500, Organization 1915, Object 5441.

Resolution 04-0447 was unanimously adopted.

Approved June 28, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that St. Joseph Equipment be and hereby is awarded a contract for furnishing and delivering one Case tractor loader backhoe for the utility operations division in accordance with specifications on its low specification bid of \$91,422.12, terms net 30, FOB destination, \$54,853.27 payable out of Water Fund 0510, Department/Agency 500, Organization 1905, Object

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

5580 and \$36,568.85 payable out of Gas Fund 0520, Department/Agency 500, Organization 1905, Object 5580.

Resolution 04-0448 was unanimously adopted.

Approved June 28, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

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

Helberg Drive between Garfield Avenue and the railroad tracks (400 feet north of Garfield Avenue).

Resolution 04-0422 was unanimously adopted.

Approved June 28, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

BE IT RESOLVED, that the proper city officials are authorized to execute and implement contracts, in substantially the same form and containing substantially the same terms as that contract on file with the city clerk as Public Document No. 04-0628-12, with SMDC and first responder agencies that receive Duluth's surplus defibrillators for the possession and use of defibrillators and proper city officials are authorized to allow SMDC to recondition the city's surplus defibrillators and give them to government agencies that need them.

Resolution 04-0425 was unanimously adopted.

Approved June 28, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

RESOLVED, that Zones, Inc., be and hereby is awarded a contract for furnishing and delivering eight Panasonic toughbook laptop computers for the police department in accordance with specifications on its low specification bid of \$27,067.14, terms net, FOB destination, payable out of Duluth Police Grant Programs Fund 0215, Department/Agency 200, Organization 2467, Object 5580.

Resolution 04-0435 was unanimously adopted.

Approved June 28, 2004

HERB W. BERGSON, Mayor

- - -

The following resolutions were also considered:

Resolution 04-0429, by Councilor Ness, approving form of tax base impact worksheet, was introduced for discussion.

Councilor Ness moved to table the resolution until the accompanying ordinance is considered, which motion was seconded and unanimously carried.

- - -

Resolution 04-0433, by Councilor Gilbert, approving a cooperation agreement with the housing and redevelopment authority of Duluth, Minnesota, exempting public housing units in mixed finance developments from taxation and providing for pilot payments, was introduced for discussion.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

The rules were suspended upon a unanimous vote to hear a speaker on the resolution. Dan Maddy, attorney representing the HRA, explained how the pilot payments plan works. Resolution 04-0433 was adopted as follows:

BY COUNCILOR GILBERT:

WHEREAS, the housing and redevelopment authority of Duluth, Minnesota, (authority) is in the process of redeveloping the Harbor View Homes neighborhood pursuant to a fiscal year 2002 HOPE VI implementation grant in the amount of \$20,000,000 (the HOPE VI grant) awarded by the United States department of housing and urban development (HUD); and

WHEREAS, the redevelopment will include the construction of new public housing units (PHA units) in phases at Harbor View and at scattered sites throughout Duluth (each a project); and

WHEREAS, the authority intends to develop the projects in accordance with the mixed finance method of public housing development in which the projects will be owned by private developers but will include scattered, floating PHA units which will be made available to authority's public housing tenants and which will replace existing PHA units; and

WHEREAS, HUD requires, as a condition to the authority's receipt of federal funds for the redevelopment, that the authority enter into a cooperation agreement providing that projects including PHA units will not pay more in taxes or payment in lieu of taxes than a specified amount based upon a percentage of PHA unit shelter rents; and

WHEREAS, the authority has submitted and the city council has reviewed a HOPE VI cooperation agreement.

BE IT RESOLVED, that the council hereby approves and authorizes the entering into and execution of the HOPE VI cooperation agreement by the city of Duluth.

Resolution 04-0433 was unanimously adopted.

Approved June 28, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0434, by Councilor Gilbert, approving the city of Duluth tax abatement financing policy for housing developments, was introduced for discussion.

Councilor Gilbert moved to table the resolution for an August 2, 2004, committee meeting, which motion was seconded and unanimously carried.

- - -

Resolution 04-0442, by Councilor Stover, awarding contract to Northland Constructors of Duluth, LLC, for construction year 2003 street improvement program of UMD/Chester 3 (granitoid) in the amount of \$703,931.75, was introduced for discussion.

Councilor Stover moved to table the resolution, as per the request of the administration, which motion was seconded and unanimously carried.

- - -

Resolution 04-0446, by Councilor Stover, adopting amended guidelines for the I&I program, was introduced for discussion.

Councilor Stover moved to table the resolution for a July 8, 2004, committee meeting, which motion was seconded and unanimously carried.

- - -

Resolution 04-0418, by Councilor Little, requesting the mayor to establish a task force to review fire department operations, was introduced for discussion.

Councilor Little requested that the resolution be withdrawn from the agenda, which was done without objection.

- - -

BY COUNCILOR REINERT:

BE IT RESOLVED, that the city of Duluth accepts from Manley Goldfine and Manley Management Company a gift of ten copies of the book "The Will and The Way" by Manley Goldfine and Donn Larson (a history of achievements in community and economic development in Duluth over the last 30 years); said books to be first delivered to the mayor and council for their use and then retained by the city for public use.

BE IT FURTHER RESOLVED, that the city expresses gratitude to the donors for the gift of the helpful book as a resource to the city and for the many contributions to improvement of the city and region.

Resolution 04-0455 was unanimously adopted.

Approved June 28, 2004

HERB W. BERGSON, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

BY COUNCILOR NESS

04-038 - AN ORDINANCE ADDING A NEW ARTICLE XXXI TO CHAPTER 2 OF THE DULUTH CITY CODE PERTAINING TO TAX BASE IMPACT STATEMENT.

- - -

BY COUNCILOR NESS

04-040 - AN ORDINANCE AMENDING SECTION 41-32 OF THE CITY CODE RELATING TO THE AWARD OF CONTRACTS NOT SUBJECT TO THE COMPETITIVE BIDDING PROCESS, INCREASING THE LIMITATION AMOUNT.

- - -

BY COUNCILOR JOHNSON

04-042 - AN ORDINANCE AMENDING ORDINANCE 6627 AND DULUTH CITY CODE PERTAINING TO PARKING CAMPER TRAILERS AND RECREATION VEHICLES.

- - -

BY COUNCILOR GILBERT

04-035 - AN ORDINANCE AUTHORIZING RECONVEYANCE OF PROPERTY IN HARBORVIEW TO THE STATE OF MINNESOTA.

- - -

BY COUNCILORS ATKINS AND STEWART

04-043 - AN ORDINANCE INCREASING TAXI FARES, AMENDING SECTION 47-33 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

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

Kay Mathias expressed support for the ordinance, noting how the cost for gasoline has increased significantly over the years.

- - -

BY PRESIDENT STAUBER

04-036 - AN ORDINANCE PERTAINING TO THE LICENSING OF RENTAL PROPERTIES; AMENDING CITY CODE SECTION 29A-32.

- - -

BY COUNCILOR LITTLE

04-037 - AN ORDINANCE AMENDING CHAPTER 33, ARTICLE XVII, OF THE DULUTH CITY CODE, 1959, AS AMENDED, REGULATING WRECKER SERVICES.

- - -

BY COUNCILOR LITTLE

04-039 - AN ORDINANCE AMENDING THE REGULATIONS FOR THE DEMOLITION OF HAZARDOUS BUILDINGS; AMENDING SECTIONS 10-3 AND 10-5 AND REPEALING IN ITS ENTIRETY SECTION 10-7 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

- - -

BY COUNCILOR LITTLE

04-041 - AN ORDINANCE AUTHORIZING THE CHARGING OF FEES FOR PARTICIPATION IN DULUTH JUSTICE AND DEFERRAL PROGRAM.

- - -

The following entitled ordinances are to be read for the second time:

BY COUNCILOR GILBERT

04-034 (9670) - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NOS. 7 AND 10 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM M-1, MANUFACTURING, TO R-1-B, ONE-FAMILY RESIDENTIAL, 20.18 ACRES OF PROPERTY LYING NORTH OF ARBOR AVENUE, EAST OF GRAND AVENUE AND 93RD AVENUE WEST, SOUTH OF HULETT AVENUE AND WEST OF THE ST. LOUIS RIVER (FREEDOM DEVELOPMENT AND CONSULTING).

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

- - -

BY COUNCILOR STOVER

04-033 (9671) - AN ORDINANCE AUTHORIZING THE TRANSFER OF CERTAIN PROPERTY IN THE EAST HILLSIDE AREA TO THE HOUSING AND REDEVELOPMENT AUTHORITY OF DULUTH.

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

- - -

The meeting was adjourned at 8:23 p.m.

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 9670

BY COUNCILOR GILBERT:

AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NOS. 7 AND 10 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM M-1, MANUFACTURING, TO R-1-B, ONE-FAMILY RESIDENTIAL, 20.18 ACRES OF PROPERTY LYING NORTH OF ARBOR AVENUE, EAST OF GRAND AVENUE AND 93RD AVENUE WEST, SOUTH OF HULETT AVENUE, AND WEST OF THE ST. LOUIS RIVER (FREEDOM DEVELOPMENT & CONSULTING).

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

The city of Duluth does ordain:

Section 1. That Plate Nos. 7 and 10 of the zoning district map as contained in the Appendix to Chapter 50 of the Duluth City Code, 1959, as amended, is amended to read as follows:

(MAPS)

(See Map Nos. 7 and 10 at end of meeting)

(Reference File No. 04032)

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: August 8, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Nays: None -- 0

Passed June 28, 2004

Approved June 28, 2004

ATTEST:

JEFFREY J. COX, City Clerk

HERB W. BERGSON, Mayor

- - -

ORDINANCE NO. 9671

BY COUNCILOR STOVER:

AN ORDINANCE AUTHORIZING THE TRANSFER OF CERTAIN PROPERTY IN THE EAST HILLSIDE AREA TO THE HOUSING AND REDEVELOPMENT AUTHORITY OF DULUTH.

The city of Duluth does ordain:

Section 1. That the proper city officials are hereby authorized to convey the following described property in St. Louis County, Minnesota, by quit claim deed, to the housing and redevelopment authority of Duluth, and to execute all documents necessary with regard to said conveyance:

Lot Six (6), Block One Hundred Twenty-six (126), PORTLAND DIVISION OF DULUTH, and the adjoining land lying between said lot and the center line of Sixth Street, extended and between the East and West lines of said Lot, extended to the center of Sixth Street, being a part of the NW1/4 of SE1/4, Section Twenty-two (22), Township Fifty (50), Range Fourteen (14).

Section 2. That this ordinance shall take effect 30 days from and after its passage and publication. (Effective date: August 8, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Nays: None -- 0

Passed June 28, 2004

Approved June 28, 2004

ATTEST:

JEFFREY J. COX, City Clerk

HERB W. BERGSON, Mayor

- - -

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, July 12, 2004, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Absent: None -- 0

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

04-0712-01 John and Lizette Lawien, et al. (eight signatures), submitting petition to vacate the T-shaped alley located in Block 4, Superior View Addition, except that portion adjoining Lots 1 - 8 of said Block 4, the same being the alley between Missouri Avenue and Mississippi Avenue and the alley connecting the foregoing alley to Lyons Street. -- Assessor

04-0712-02 Gary Peterson submitting concurrent use permit application to construct an awning at 1334 Commonwealth Avenue. -- Planning Commission

04-0712-03 Minnesota state auditor submitting Duluth airport authority audit report for the years ended December 31, 2003 and 2002. -- Received

04-0712-04 Sixth Judicial District Chief Judge Gary J. Pagliaccetti submitting order reappointing Andy Peterson, Daniel Maddy, Robert Hartl, Joseph Ferguson and Thomas Bennett; and appointing Timothy Bearheart, Todd Fedora and Jim Booth, replacing Patricia Edwards, Allan Kehr and William Sample, to the Charter commission for terms expiring June 1, 2008. -- Received

04-0712-06 Piedmont Heights Dental Associates submitting communication regarding amendment of existing special use permit to allow for additional off street parking spaces (04-0468R, 04-0469R, 04-0478R). -- Received

04-0712-11 The following submitting communications regarding rental property licensing (04-036-O): (a) Arrowhead Multi Housing Association; (b) Sumlee S. Beede; (c) Anne Krafthefer; (d) Peter and Patricia Lilliberg; (e) Jim and Helen Prosser; (f) Tab Baumgartner and Susan Schumacher. -- Received

- - -

REPORTS OF OFFICERS

04-0712-12 Auditor submitting comprehensive annual financial report for the city of Duluth for the fiscal year ended December 31, 2003. -- Received

04-0712-23 Clerk submitting application to the Minnesota gambling control board for exemption from lawful gambling license from Duluth Playhouse on July 25, 2004 (raffle). -- Received

04-0712-05 Parks and recreation department director submitting the following agreements for vending at Lake Place Park, pursuant to Section 2-35 of the Duluth City Code: (a) Speedie Weenie; (b) Water Boy Enterprise. -- Mayor for execution

- - -

REPORTS OF BOARDS AND COMMISSIONS

04-0712-07 Commission on disabilities minutes of June 9, 2004, meeting. -- Received

04-0712-08 Duluth human rights commission minutes of June 9, 2004, meeting. -- Received

04-0712-09 Duluth transit authority: (a) Income statement for April, 2004; (b) Minutes of April 28, 2004, meeting. -- Received

04-0712-10 Housing and redevelopment authority of Duluth annual audit report for the year ended September 30, 2003. -- Received

- - -

OPPORTUNITY FOR CITIZENS TO BE HEARD

Dave Barschdorf voiced concern on traffic speed on Central Entrance and neighborhood safety issues.

- - -

Peggy Marrin questioned why not everyone was allowed tickets for President's Bush's rally at the DECC.

- - -

K.L. Lewis reviewed that making money from vintage buildings in Duluth has finally received recognition.

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

Councilor Ness moved to consider Ordinance 04-038, at this time, which motion was seconded and unanimously carried.

BY COUNCILOR NESS

04-038 (9672) - AN ORDINANCE ADDING A NEW ARTICLE XXXI TO CHAPTER 2 OF THE DULUTH CITY CODE PERTAINING TO TAX BASE IMPACT STATEMENT.

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

- - -

RESOLUTIONS TABLED

Councilor Ness moved to remove Resolution 04-0429, approving the city of Duluth tax base impact worksheet, from the table, which motion was seconded and unanimously carried.

Resolution 04-0429 was adopted as follows:

BY COUNCILOR NESS:

BE IT RESOLVED, that the city of Duluth, pursuant to Duluth City Code Section 2-162, approves for use in the course of the city's business a form of document, on file with the city clerk as Public Document No. 04-0712-13, known as the tax base impact worksheet.

Resolution 04-0429 was unanimously adopted.

Approved July 12, 2004

HERB W. BERGSON, Mayor

- - -

Councilor Stover moved to remove Resolution 04-0442, awarding contract to Northland Constructors of Duluth, LLC, for construction year 2003 street improvement program of UMD/Chester 3 (granitoid) in the amount of \$703,931.75, from the table, which motion was seconded and unanimously carried.

Resolution 04-0442 was adopted as follows:

BY COUNCILOR STOVER:

RESOLVED, that Northland Constructors of Duluth, LLC, be and hereby is awarded a contract for the construction of year 2003 street improvement program of UMD/Chester 3 (granitoid) for the engineering division in accordance with specifications on its low specification bid of \$703,931.75, terms net 30, FOB job site, payable out of Street Improvement Program Fund 0440, Department/Agency 038, Organization 0306, Object 5530.

Resolution 04-0442 was unanimously adopted.

Approved July 12, 2004

HERB W. BERGSON, Mayor

- - -

Councilor Stover moved to remove Resolution 04-0446, adopting amended guidelines for the I&I program, from the table, which motion was seconded and unanimously carried.

Resolution 04-0446 was adopted as follows:

BY COUNCILOR STOVER:

WHEREAS, pursuant to Minnesota Statutes Section 471.342, the city is authorized to establish an inflow and infiltration (I&I) program to reduce inflow and infiltration of unpolluted waters into its sanitary sewer system; and

WHEREAS, pursuant to Subdivision 4 of said statute, the city is required to adopt program guidelines to establish program eligibility and program standards for compliance; and

WHEREAS, on October 27, 2003, the city council approved Resolution 03-0728 approving those revised I&I grant program guidelines on file in the office of the city clerk as Public Document No. 03-1027-11 (the 2003 guidelines); and

WHEREAS, it is necessary and appropriate to amend the 2003 guidelines to reflect adjustments in the program, the need for which have become apparent in implementing the 2003 guidelines.

RESOLVED, that the revised I&I grant program guidelines on file in the office of the city clerk as Public Document No. 03-1027-11 are hereby rescinded and the amended I&I grant and loan program guidelines, 5th edition, dated May 28, 2004 (Public Document No. 04-0712-14), are hereby adopted pursuant to the requirements of Minnesota Statutes Section 471.342, subd. 4.

Resolution 04-0446 was unanimously adopted.

Approved July 12, 2004

HERB W. BERGSON, Mayor

- - -

Councilor Reinert moved to remove Resolution 04-0265, amending Resolution 89-0323 establishing the Duluth economic development authority (DEDA) to provide for a citizen advisory body, which motion was seconded and unanimously carried.

Councilor Reinert moved to consider Resolution 04-0501, returning DEDA to its structure as it was July 1, 2002; repealing various resolutions and restating other, by President Stauber, at this time, which motion was seconded and unanimously carried.

Councilor Reinert reviewed that there are three options for the councilors to consider regarding how DEDA should be run. He continued by saying that Resolution 04-0265 would allow each councilor to appoint one person to a committee who would act as advisors to the council; Resolution 04-0501 would return DEDA's makeup back to councilors and citizens; and the last option would be to do nothing and continue operating DEDA as it is now.

Councilors Stewart and Ness stated that Resolution 04-0265 would create a duplication of work by staff and developers appreciate the process now where they only have to present their projects to the councilors once. They also stated that the current process keeps the council responsible for the decisions.

Councilor Atkins reviewed that there are several boards and commissions that are recommending bodies that support the council, that an advisory staff would be good support for the councilors and added that DEDA should not have been changed in the first place.

Resolution 04-0501 failed upon the following vote (Public Document No. 04-0712-22):

Yeas: Councilors Atkins, Gilbert, Little and President Stauber -- 4

Nays: Councilors Johnson, Ness, Reinert, Stewart and Stover -- 5

- - -

Resolution 04-0265 failed upon the following vote (Public Document No. 04-0712-15):

Yeas: Councilors Atkins, Reinert and President Stauber -- 3

Nays: Councilors Gilbert, Johnson, Little, Ness, Stewart and Stover -- 6

- - -

At this time, 7:35 p.m., President Stauber recessed the regular order of business and announced that the public hearing regarding the Suites of Miller Hill project would begin.

Keith Hamre, community development and housing division manager, explained that the purpose of the public hearing is twofold, one is for the creation of a tax increment financing (TIF) district which would be a qualified housing district for affordable housing and the second item would modify the housing development project area to include two additional parcels that have been proposed for the Suites of Miller Hill development. He stated that the Duluth economic development authority (DEDA) had a public hearing earlier in the evening regarding this TIF district, and having heard concerns raised about the record of the developer with regard to compliance on other projects, DEDA will be continuing their public hearing for one week. Mr. Hamre requested that the council recess this public hearing until they are ready to vote on the TIF district to meet the statutory requirements.

Bill Gravelle, president of Miller Creek Condominium Association, urged the councilors to delay their vote on this issue until after the next DEDA meeting. He explained that his association has had significant issues with the developer over a long period of time trying to complete the development of their housing project.

Garry Krause, representing the fourth comprehensive planning district, stated that affordable market rate housing is important to Duluth, but not to put this plan of high density housing in a very small footprint of land when it does not match the existing neighborhood.

Kim Mathias cautioned the council about putting high density housing projects into single family neighborhoods where problems can manifest.

Mike Saxton, developer for Suites of Miller Hill, stated that he has spent hundreds of thousands of dollars outside of his legal obligations to address the issues of the Miller Creek project, but from now on will only complete his required legal obligations. He explained that the builder and developer do not have a legal obligation to go back and fix problems once the warranty period is over and the project has been turned over to a homeowners association, which is responsible to use its maintenance reserves to address the issues. Mr. Saxton expressed frustration that a letter from May of 2003 would stop a new project that he has been working on for two and a half years.

At this time, 7:55 p.m., President Stauber recessed the public hearing until Monday, July 19, 2004, and the regular order of business was resumed.

- - -

At this time, 7:56 p.m., councilors Atkins, Little and Stover left their seats.

- - -

MOTIONS AND RESOLUTIONS
CONSENT AGENDA

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

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

BY COUNCILOR STEWART:

RESOLVED, that GovDocs be and hereby is awarded a contract for furnishing online

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

subscription management and document delivery system for the M.I.S. division in accordance with specifications on its low specification bid of \$15,500, terms net, FOB destination, payable out of General Fund 0100, Department/Agency 015, Organization 1513, Object 5201.

Resolution 04-0465 was unanimously adopted.

Approved July 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

RESOLVED, that Max Gray Construction, Inc., be and hereby is awarded a contract for construction of replacement of City Hall ADA handrails for the architect division in accordance with specifications on its low specification bid of \$27,100, terms net 30, FOB job site, payable out of General Fund 0100, Department/Agency 700, Organization 2725, Object I304.

Resolution 04-0471 was unanimously adopted.

Approved July 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

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:

Scanlon River Inn, Inc. (Pioneer Bar), 323 West First Street, for July 16, 2004, with the music and the serving ceasing at 12:00 a.m.

Wizner Company, 113 West First Street, for July 16, 2004, with the music and the serving ceasing at 12:00 a.m.

Legacy Restaurant, Inc. (Duluth Athletic Club Bar and Grill), 21 North Fourth Avenue West, for July 16, 2004, with the music and serving ceasing at 12:00 a.m.

Resolution 04-0480 was unanimously adopted.

Approved July 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the Duluth City Council hereby approves of the abolishing of the six obsolete and inactive job classifications set forth in Exhibit A (Public Document No. 04-0712-16), said action abolishing said classifications having been approved by the civil service board on July 6, 2004.

Resolution 04-0416 was unanimously adopted.

Approved July 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the reappointment by Mayor Bergson of John Morrison to the board of zoning appeals for a term expiring on July 31, 2008, is confirmed.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

RESOLVED FURTHER, that the appointment by Mayor Bergson of Donna Scorse to the board of zoning appeals for a term expiring on July 31, 2008, replacing Larry Sundberg, who resigned, is confirmed.

Resolution 04-0458 was unanimously adopted.

Approved July 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointment by Mayor Bergson of Laurie Daiken to the Duluth public arts commission, for a term expiring on September 30, 2006, replacing Mark Haugen, who resigned, is confirmed.

Resolution 04-0459 was unanimously adopted.

Approved July 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointment by Mayor Bergson of Glenn D. Peterson to the sister city commission, for a term expiring on March 30, 2005, replacing Lois Maine, who resigned, is confirmed.

Resolution 04-0461 was unanimously adopted.

Approved July 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

WHEREAS, the city of Duluth established certain 2000 and 2003 CDBG accounts; and
WHEREAS, the community development committee (CD committee) for the CDBG program established the following CDBG programs;

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are authorized to make the following fund transfers in the Federal Program Fund 262 - 2000 and 2003 HUD-funded community development accounts as set forth below:

2000 CDBG Transfers				
Project #	Project	Budget amount	New amount	Amount of increase or decrease
6309	Lincoln Park Phase I	\$173,322	\$188,322	\$15,000
2003 CDBG Transfers				
Project #	Project	Budget amount	New amount	Amount of increase or decrease
6613	Sidewalk safety - Lincoln Park	\$59,200	\$44,200	(\$15,000)

Resolution 04-0472 was unanimously adopted.

Approved July 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

WHEREAS, Buell Consulting, on behalf of Verizon Wireless, has submitted to the city council a request for a special use permit for a personal cell phone monopole antenna and accessory building to be located at 825 Partridge Avenue, the Tropicana Apartments, Ltd., described as Lots 4 and 5, Block 1, Villa Village (Reference File No. 04056) and said permit application was duly referred to the city planning commission for a study, report and public hearing, and the city planning commission has subsequently reported its approval to the city council; and

WHEREAS, the approval was made because of the city planning commission's findings that appropriate safeguards will exist to protect the comprehensive plan and to conserve and to protect property values in the neighborhood if conditions are observed.

NOW, THEREFORE, BE IT RESOLVED, that a special use permit is hereby granted to Verizon Wireless to allow for the installation and operation of a cellular phone antenna and associated equipment at 825 Partridge Avenue, subject to the following conditions:

- (a) The tower is to be installed within one year of approval of the special use permit;
- (b) Development is to follow the plans provided. Minor amendments or changes are subject to review by planning department staff. Major amendments or changes are subject to review by the planning commission;
- (c) The tower is limited to 70 feet.

Resolution 04-0479 was unanimously adopted.

Approved July 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR ATKINS:

RESOLVED, that proper city officials are hereby authorized to execute and implement a contract, pursuant to the Laws of Minnesota, 1967, Chapter 374, a Senior Service America, Inc. (or SSAI), grant in the amount of \$243,233 for the period of July 1, 2004, through June 30, 2005. Program funds will be accepted upon receipt of notices of funds available. A copy of this agreement and budget shall be on file in the city clerk's office as Public Document No. 04-0712-17. Monies received shall be deposited in Fund 270, Budget Item 6338.

Resolution 04-0457 was unanimously adopted.

Approved July 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR ATKINS:

RESOLVED, that the city of Duluth is hereby authorized to execute the grant agreement filed as Public Document No. 04-0712-18 for the state fiscal year 2005 with the Minnesota department of public safety, office of justice programs, crime victim services, for a \$3,000 grant for a program entitled Emergency Fund for Crime Victims.

RESOLVED FURTHER, that funds received by the city under such grant agreement shall be deposited in the General Fund 0100, Agency 700, Organization 1428.

Resolution 04-0482 was unanimously adopted.

Approved July 12, 2004

HERB W. BERGSON, Mayor

- - -

BY PRESIDENT STAUBER:

RESOLVED, that the city of Duluth does hereby accept a public right-of-way easement substantially in the form of that on file in the office of the city clerk as Public Document No. 04-0712-19 from Lake Superior Center authority (LSCA), said easement being for the extension of pathways on property in St. Louis County legally described in Exhibit A.

Resolution 04-0456 was unanimously adopted.

Approved July 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

BE IT RESOLVED, that the proper city officials are authorized to execute and implement a contract with S.R.F. Consulting Group, Inc., the contract amount being increased by \$152,690, for a new total of \$171,390, for roadway and utility design of the city's component of the Trinity Road (TH53) project, payment to be made from the Permanent Improvement Fund 0411, 035 2103 5530 (City Project No. 0351TR).

Resolution 04-0463 was unanimously adopted.

Approved July 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

WHEREAS, the city of Duluth desires to provide the reconditioning of Grand Avenue from Carlton Street to I-35; and

WHEREAS, the city desires to hire a consulting engineer to provide the engineering services required for design and construction phases; and

WHEREAS, R.L.K.-Kuusisto, Ltd., has submitted a proposal for engineering services in connection with this project.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with R.L.K.-Kuusisto, Ltd., to provide the city with such engineering services.

BE IT FURTHER RESOLVED, that the cost of said engineering services, estimated at \$389,870, will be payable from the Permanent Improvement Fund 0411, Department/Agency 035, Organization 2105, Object 5530.

Resolution 04-0464 was unanimously adopted.

Approved July 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

WHEREAS, the city of Duluth desires to provide the reconstruction of West Third Street from 21st Avenue West to Carlton Street; and

WHEREAS, the city desires to hire a consulting engineer to provide the engineering services required for design and construction phases; and

WHEREAS, Krech, Ojard and Associates has submitted a proposal for engineering services in connection with this project.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with Krech, Ojard and Associates to provide the city with such engineering services.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

BE IT FURTHER RESOLVED, that the cost of said engineering services, estimated at \$218,993, will be payable from the Special Assessment Fund 0410, Department/Agency 038, Organization 5393, Object 5530.

Resolution 04-0466 was unanimously adopted.

Approved July 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Monroe Truck Equipment be and hereby is awarded a contract for furnishing and delivering one dump spreader for the fleet services division in accordance with specifications on its low specification bid of \$42,493.50, terms net 30, FOB destination, payable out of General Fund 0100, Department/Agency 500, Organization 2000, Object 5580.

Resolution 04-0467 was unanimously adopted.

Approved July 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

WHEREAS, the city of Duluth has applied to the commissioner of transportation for a grant from the Minnesota state transportation fund for the rehabilitation of Bridge No. L6123 over Chester Creek on First Street, S.P. 118-129-018; and

WHEREAS, the grant has been approved and the amount of the grant has been determined to be \$50,567.50.

NOW, THEREFORE, BE IT RESOLVED, that the city of Duluth does hereby accept said grant and affirms that any rehabilitation costs that qualify for Minnesota state transportation funds in access of the grant will be appropriated from funds available to the city of Duluth, and that any grant monies appropriated for the rehabilitation costs but not required, based on the final audit, shall be returned to the Minnesota state transportation fund.

RESOLVED FURTHER, grant monies received hereunder shall be deposited into the Permanent Improvement Fund 0411, Agency 035, Organization 2181, Object 5530.

Resolution 04-0470 was unanimously adopted.

Approved July 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Service Electric of Superior be and hereby is awarded a contract to install electrical components at the new town border station (TBS) and rewire the compressed natural gas station (CNG) for the utility operation division in accordance with specifications on its bid of \$50,308.18, terms net 30, FOB job site, \$\$35,800.23 payable out of Gas Construction Bond Fund 0521, Department/Agency 500, Object 5532 and \$14,507.95 payable out of Gas Fund 0520, Department/Agency 500, Organization 1905, Object 5535.

Resolution 04-0473 was unanimously adopted.

Approved July 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are authorized to pay to Robert Drannen the sum of \$12,084.34 in full and final settlement of all claims for damage to property at 617 North 20th

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Avenue East resulting from a blockage in the municipal sanitary sewer which occurred on April 1, 2004; payment to be made from Self Insurance Fund 0610.

Resolution 04-0474 was unanimously adopted.

Approved July 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Glacier Paving, Inc., be and hereby is awarded a contract for the bituminous surfacing on 59th Avenue West, Central Avenue, Highland Street and Kenwood Avenue for the engineering division in accordance with specifications on its low specification bid of \$121,993.70, terms net 30, FOB job site, payable out of Permanent Improvement Fund 0411, Department/Agency 035, Organization 2121, Object 5530.

Resolution 04-0475 was unanimously adopted.

Approved July 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that National Waterworks, Inc., be and hereby is awarded a contract for rental of a stopping equipment for the utility operations division in accordance with specifications on its low specification bid of \$11,620.95, terms net 30, FOB destination, payable out of Gas Fund 0520, Department/Agency 500, Organization 1945, Object 5415.

Resolution 04-0476 was unanimously adopted.

Approved July 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that National Waterworks, Inc., be and hereby is awarded a contract for furnishing and delivering 34 Waterous Pacer hydrants for the utility operations division in accordance with specifications on its low specification bid of \$45,690.63, terms net 30, FOB destination, payable out of Water Fund 0510, Department/Agency 500, Organization 1945, Object 5227.

Resolution 04-0477 was unanimously adopted.

Approved July 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

BE IT RESOLVED, that the proper city officials are authorized to execute and implement a contract containing substantially the terms of that contract on file with the city clerk as Public Document No. 04-0712-20, allowing XIK Corporation to have access to city property for purposes of environmental remediation in the Stryker Bay area.

Resolution 04-0483 was unanimously adopted.

Approved July 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

RESOLVED, that in accordance with the provisions of Section 33-88.2 of the Duluth City Code, 1959, as amended, the following handicapped parking zone is hereby established: front

of 2414 West Second Street.

Resolution 04-0462 was unanimously adopted.

Approved July 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

BE IT RESOLVED, that pursuant to Section 8-22(b) of the Duluth City Code, the Duluth City Council hereby authorizes consumption of alcoholic beverages in public places on First Street between Third and Fourth avenues West and First and Second avenues West, and Fourth Avenue West from the Superior Street Alley to First Street on July 16, 2004, in conjunction with the Downtown Sidewalk Days, provided that all alcoholic beverages consumed outside of designated serving areas of licensed establishments be consumed only from paper or plastic cups.

BE IT FURTHER RESOLVED, that the dates of this authority may be amended, in the case of inclement weather, if requested in writing by the licensee and approved by the administration.

Resolution 04-0481 was unanimously adopted.

Approved July 12, 2004

HERB W. BERGSON, Mayor

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At this time, 8:06 p.m., councilors Atkins, Little and Stover took their seats.

- - -

The following resolutions were also considered:

BY COUNCILOR NESS:

BE IT RESOLVED, that the proper city officials are authorized to execute and implement the contract on file with the city clerk as Public Document No. 04-0712-21 (or a similar one with insubstantial corrections of form or clerical error), which contract creates an endowment fund which will distribute its earnings to the city to help fund projects with a public purpose.

Resolution 04-0484 was unanimously adopted.

Approved July 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR NESS:

WHEREAS, the state of Minnesota administers a solar energy rebate program that can leverage investment in the city's local solar resource; and

WHEREAS, the city has supported pilot and demonstration projects for solar energy in private and public areas in the city; and

WHEREAS, solar energy technology promises to continue to decline in cost; and

WHEREAS, the city supports the goals of diversifying the fuel sources and fuel types used to meet energy needs in the city, limiting public and private exposure to environmental risk or regulation, increasing the security of the city's energy system through diversification and encouraging self-sufficiency; and

WHEREAS, encouraging solar energy installations in the city is consistent with the city's energy plan and cities for climate protection program; and

WHEREAS, the city supports the high performance building standards, known as the Minnesota sustainable building guidelines, which must be used for all new state buildings starting in 2004.

BE IT RESOLVED BY THE CITY COUNCIL, that it supports the goals of the Minnesota solar roof partnership and agrees to be a partner.

BE IT FURTHER RESOLVED, that the city will continue to support its existing solar technology investments and will consider additional investments when warranted by cost, location and other considerations identified by the city.

BE IT FURTHER RESOLVED, that the city supports private investment in solar roofs and similar solar technology that conform to building and land use regulations and related city policies. Resolution 04-0487 was unanimously adopted.

Approved July 12, 2004

HERB W. BERGSON, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

Councilor Gilbert moved to consider Ordinance 04-044, at this time, which motion was seconded and unanimously carried.

The following entitled ordinance was read for the first time:

BY COUNCILOR GILBERT

04-044 - AN ORDINANCE GRANTING TO PIEDMONT HEIGHTS DENTAL ASSOCIATES II A CONCURRENT USE PERMIT TO CONSTRUCT AND MAINTAIN PARKING SPACES FOR PRIVATE USE IN THE ENSIGN STREET PUBLIC RIGHT-OF-WAY (PIEDMONT HEIGHTS DENTAL ASSOCIATES II, C/O GW HARRIS).

- - -

Resolution 04-0468, amending Resolution No. 77-217 and the special use permit granted Piedmont Heights Dental Associates II, eliminating the 40 year expiration date; Resolution 04-0469, denying a concurrent use permit request from Piedmont Heights Dental Associates II to construct and maintain parking spaces for private use in the Ensign Street public right-of-way; and Resolution 04-0478, amending Resolution No. 77-217 and the special use permit granted Piedmont Heights Dental Association, by Councilor Gilbert, were introduced for discussion.

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

Gil Harries, representing the applicant, and Mary Johnson, administrator for the dental association, reviewed that by requesting a concurrent use permit to construct an additional ten diagonal parking spaces, the association is addressing safety issues for their patients who presently must park on Piedmont Avenue and Ensign Street, which have no sidewalks and is a safety hazard.

Councilor Gilbert moved to table resolutions until the next meeting when Ordinance 04-044 is read for the second time, which motion was seconded and unanimously carried.

- - -

BY PRESIDENT STAUBER:

WHEREAS, Lake Superior is the world's largest freshwater lake and is essential to the quality of life and economic vitality of the cities, villages, townships and counties along its shores in the surrounding watershed; and

WHEREAS, water is life and the quality of water determines the quality of life; and

WHEREAS, Lake Superior supports recreational, commercial, tourism, tribal and cultural activities for its residents and visitors; and

WHEREAS, the responsibility for protecting and restoring the quality of Lake Superior's waters, land and wildlife lies with all residents, municipalities, businesses, tribes and visitors; and

WHEREAS, mayors and other municipal and tribal officials throughout the Lake Superior basin desire to protect the water and habitat quality on which all life in the basin depends; and

WHEREAS, the cities of Superior, Thunder Bay, Two Harbors and other communities in the Lake Superior area have accepted this proclamation to celebrate Lake Superior Day; and

WHEREAS, the city of Duluth environmental advisory council has unanimously voted to support the proclamation of Lake Superior Day, which originated from the Lake Superior Bi-National Forum; and

WHEREAS, the Duluth City Council wishes to express its support for the proclamation of Lake Superior Day.

NOW, THEREFORE, BE IT RESOLVED, that the third Sunday in July (July 18, 2004) and annually thereafter be established as Lake Superior Day in the city of Duluth as a day to acknowledge and celebrate Lake Superior's importance in the quality of the lives of its residents.

Resolution 04-0488 was unanimously adopted.

Approved July 12, 2004

HERB W. BERGSON, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the second time:

BY COUNCILOR NESS

04-040 (9673) - AN ORDINANCE AMENDING SECTION 41-32 OF THE CITY CODE RELATING TO THE AWARD OF CONTRACTS NOT SUBJECT TO THE COMPETITIVE BIDDING PROCESS, INCREASING THE LIMITATION AMOUNT.

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

- - -

BY COUNCILOR JOHNSON

04-042 (9674) - AN ORDINANCE AMENDING ORDINANCE 6627 AND DULUTH CITY CODE PERTAINING TO PARKING CAMPER TRAILERS AND RECREATION VEHICLES.

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

Sara Leischke urged support of this ordinance to allow snowbirds to come back to Duluth during the summer and park their campers in their families' yards for a reasonable period of time.

Councilor Ness stated that in some neighborhoods houses are too close together and a camper parked in a driveway for such long periods of time could have a significant impact on the neighbors.

Councilor Stover suggested that the planning commission look at changing the ordinance to fit into different zoning areas of the city.

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

Yeas: Councilors Atkins, Gilbert, Johnson, Stewart and President Stauber -- 5

Nays: Councilors Little, Ness, Reinert and Stover -- 4

- - -

BY COUNCILOR GILBERT

04-035 (9675) - AN ORDINANCE AUTHORIZING RECONVEYANCE OF PROPERTY IN HARBORVIEW TO THE STATE OF MINNESOTA.

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

- - -

BY COUNCILORS ATKINS AND STEWART

04-043 (9676) - AN ORDINANCE INCREASING TAXI FARES, AMENDING SECTION 47-33 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

Councilor Gilbert stated that the market should determine the taxi rates so that the competition would help the people on fixed incomes who use cabs for their mode of transportation.

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

Yeas: Councilors Atkins, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 8

Nays: Councilor Gilbert --1

- - -

BY PRESIDENT STAUBER

04-036 (9677) - AN ORDINANCE PERTAINING TO THE LICENSING OF RENTAL PROPERTIES; AMENDING CITY CODE SECTION 29A-32.

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

Sumlee Beede stated that this proposed ordinance imposes on the landlord by having this information posted outside the rental unit and voiced concern for the landlord's safety by making the address open to the public. She continued by saying that the city inspectors are doing their best now and this would be an added burden for them.

Alan Kehr stated this posting would be an eyesore, it could cause the rent to go up to help pay for the posting and this ordinance does not address any of the problems.

K.L. Lewis stated she has a hard time contacting her landlord, but that he does fix the problems once he is aware of them.

Peggy Marin stated that some landlords are responsible and hold the tenants accountable for their actions.

Vicki Sanville stated that if a landlord is doing a good job he will not be concerned about this posting requirement.

Councilor Atkins voiced concern that these notices would be discriminatory to renters and would downgrade the look of property. He continued by saying that a better solution would be to equip the police squadcars with computers that could be networked with the assessor's office for immediate access to the files showing who the property owner is.

Councilor Gilbert reminded councilors that the neighborhoods are asking for help, so this is an issue that the council needs to support. He continued by saying that the landlords will understand that the council is serious about this issue by the passage of this ordinance and that a water-downed ordinance will do nothing.

President Stauber explained that this is also a public safety issue when the police need to get into an apartment building when help has been requested and there is no way to identify the building owner because most of the calls occur at night and on weekends.

Councilor Reinert moved to amend subparagraph (a) of Section 29A-32 of the ordinance by striking the words "so that it can be seen and read by a person outside the building and"; inserting the words "near the main" before the words "entrance of the dwelling"; inserting a comma after the word "name"; striking the word "and" before the word "address"; striking the words "of the owner and the identity" before the words "and telephone number" and replace the word "person" with the word "owner" before the words "managing agency," which motion was seconded and unanimously carried.

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

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BY COUNCILOR LITTLE

04-037 (9678) - AN ORDINANCE AMENDING CHAPTER 33, ARTICLE XVII, OF THE DULUTH CITY CODE, 1959, AS AMENDED, REGULATING WRECKER SERVICES.

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

- - -

BY COUNCILOR LITTLE

04-041 (9679) - AN ORDINANCE AUTHORIZING THE CHARGING OF FEES FOR PARTICIPATION IN DULUTH JUSTICE AND DEFERRAL PROGRAM.

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

- - -

BY COUNCILORS LITTLE AND STEWART

04-039 (9680) - AN ORDINANCE AMENDING THE REGULATIONS FOR THE DEMOLITION OF HAZARDOUS BUILDINGS; AMENDING SECTIONS 10-3 AND 10-5 AND REPEALING IN ITS ENTIRETY SECTION 10-7 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

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

- - -

The meeting was adjourned at 9:15 p.m.

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

- - -

ORDINANCE NO. 9672

BY COUNCILOR NESS:

AN ORDINANCE ADDING A NEW ARTICLE XXXI TO CHAPTER 2 OF THE DULUTH CITY CODE PERTAINING TO TAX BASE IMPACT STATEMENT.

The city of Duluth does ordain:

Section 1. That Duluth City Code 1959, as amended, be amended to add a new Article XXXI to read as follows:

Article XXXI. Tax Base Impact Statement.

Sec. 2-161. Policy and purpose.

It is the policy of the city of Duluth that protecting and expanding the property tax base are important factors to be considered when the city enters into any transaction, or makes a policy decision. Both the public and the elected officials should be informed of the effect a transaction or decision has on the property tax base. Therefore, this article is enacted for the purpose of providing a process by which the public and the elected officials are informed of the effect their decisions may have on the tax base of Duluth, and on the property tax revenues of Duluth.

Sec. 2-162. Definitions.

For purposes of this Article:

(a) Tax base means the property, and the valuation of it, that is subject, under the law, to ad valorem taxes, any part of which tax, when collected, may be part of the city of Duluth's revenues;

(b) Tax base impact worksheet means the form document, developed by the finance department and approved by resolution of the council, which records the relevant values and factors of a proposal;

(c) Tax base impact summary means a short statement approved by the mayor or city attorney that appears at the beginning of the statement of purpose of any proposal to which this Article applies;

(d) Tax base impact statement is a report that analyzes the information on the tax base impact worksheet, includes different and more detailed information, and states a conclusion as to the proposal's expected impact on the property tax base during each of the first 25 years following adoption or approval of the proposal;

(e) Proposal means any ordinance or resolution, filed with the city clerk, or communicated to the city council, Duluth planning commission or DEDA, or any report or other written communication from the mayor, administrative assistant or other officer of the executive branch of city government, or of any city board or commission, which ordinance, resolution or written communication would allow, require, or recommend any of the following:

(1) A transfer of any interest in real property, except an easement;

(2) A change in the tax classification of any property;

(3) The erection or demolition of any building covering an area of land greater than 1,100 square feet;

(4) A change or objection to change in the classification of tax forfeit land;

(5) The granting or recommendation of a loan, grant, business subsidy as defined in Minnesota Statutes Section 116J.993, et. seq., or its successor, tax abatement, tax assessment agreement;

(6) A lease or land use license for a period longer than one year;

(7) A special use permit or variance from zoning;

(8) The acceptance by the city of a gift or other conveyance of real property or any interest therein;

(9) The vacation of any easement;

(10) Any other action or transaction that will affect the property tax base. The term "proposal" does not include a transfer of property from one unit of government to another, nor an improvement completely paid for by one or more government units, located upon land owned by a government unit, and intended for public use or exclusively use for government operations.

Sec. 2-163. Tax base impact worksheet required.

Before any proposal is filed with the city clerk or presented to the city council, Duluth planning commission or DEDA, the proposer must cause to be accurately completed a tax base impact worksheet pertaining to the proposal. The completed worksheet shall be filed with the clerk as a public document, and shall be presented with any proposal that is not an ordinance or resolution, or with any proposal that requires a tax base impact statement.

Sec. 2-164. Tax base impact summary required.

Any proposal which is a resolution or ordinance that is presented to the city council, Duluth planning commission or DEDA must include a tax base impact summary in its statement of purpose.

Sec. 2-165. Tax base impact statement required.

The proposer of the following proposals shall prepare a complete and accurate tax base impact statement, file it with the clerk as a public document and present it to the city council, Duluth planning commission or DEDA at the same time the proposal is presented:

- (a) A proposal that involves more than 15 acres;
- (b) A proposal that involves real property of fair market value, as shown on the records of the city assessor, in excess of \$850,000, or that will involve construction, financed in any part with public money or business subsidy, of improvements, which construction will cost at least \$1 million;
- (c) A proposal that involves rezoning an area greater than 10,000 square feet;
- (d) A proposal for which a tax base impact statement is requested by the mayor, city council or Duluth planning commission.

Sec. 2-166. Planning commission report required.

If the Duluth planning commission takes any action on a proposal, it shall include in its written report, or record of proceedings, or action, a tax base impact summary and a description of what information formed the basis of the summary. The summary does not require approval by the mayor or city attorney.

Section 2. That this ordinance takes effect 30 days after its passage and publication.

(Effective date: August 22, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed July 12, 2004
Approved July 12, 2004
HERB W. BERGSON, Mayor

- - -

ORDINANCE NO. 9673

BY COUNCILOR NESS:

AN ORDINANCE AMENDING SECTION 41-32 OF THE CITY CODE RELATING TO THE AWARD OF CONTRACTS NOT SUBJECT TO THE COMPETITIVE BIDDING PROCESS, INCREASING THE LIMITATION AMOUNT.

The city of Duluth does ordain:

Section 1. That Section 41-32 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 41-32. Contracts not subject to competitive bidding process.

The purchasing agent, with the approval of the administrative assistant, is authorized to award contracts not subject to the competitive bidding process that involve an expenditure of \$10,000 or less.

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: August 22, 2004)

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed July 12, 2004
Approved July 12, 2004
HERB W. BERGSON, Mayor

- - -

ORDINANCE NO. 9674

BY COUNCILOR JOHNSON:

AN ORDINANCE AMENDING ORDINANCE 6627 AND DULUTH CITY CODE PERTAINING TO PARKING CAMPER TRAILERS AND RECREATION VEHICLES.

The city of Duluth does ordain:

Section 1. That Ordinance 6627, passed in 1943, at Section 2(c) shall be amended to read as follows:

(c) No person shall park, store or occupy any trailer or recreational vehicle in, on or upon any place or premises situated outside an approved and duly licensed trailer camp; but nothing contained in this ordinance shall prohibit the parking or storing of only one unoccupied trailer in a private garage, driveway or in a rear yard located anywhere within the city of Duluth, provided that no living quarters shall be maintained, for a period in excess of 35 consecutive days and 60 total days in any calendar year, nor any business carried on, or profession practiced in such trailer, during all of the time such trailer is so parked or stored.

Section 2. That Duluth City Code, 1959, as amended, be amended by adding a new Section 33-97.11 to read as follows:

Sec. 33-97.11. Parking camping trailers or recreational vehicles.

Parking of camping trailers and recreational vehicles on private property is regulated, in part, by Ordinance 6627, passed 1943, as amended by Ordinance 9674, passed 2004.

Section 3. That this ordinance shall take effect and be in force 30 days after its passage and publication. (Effective date: August 22, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Stewart and President Stauber -- 5

Nays: Councilors Little, Ness, Reinert and Stover -- 4

ATTEST:
JEFFREY J. COX, City Clerk

Passed July 12, 2004
Approved July 12, 2004
HERB W. BERGSON, Mayor

- - -

ORDINANCE NO. 9675

BY COUNCILOR GILBERT:

AN ORDINANCE AUTHORIZING RECONVEYANCE OF PROPERTY
IN HARBORVIEW TO THE STATE OF MINNESOTA.

The city of Duluth does ordain:

Section 1. That the proper city officials are hereby authorized to reconvey the below-described property in St. Louis County, Minnesota, previously free-conveyed to the city, to the state of Minnesota:

Lots 2 through 12, even numbered lots, and the westerly 1/2 of Lot 14, Block 153, DULUTH PROPER Third Division.

Section 2. That this ordinance shall take effect 30 days from and after its passage and publication. (Effective date: August 22, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Nays: None -- 0

Passed July 12, 2004

Approved July 12, 2004

ATTEST:

JEFFREY J. COX, City Clerk

HERB W. BERGSON, Mayor

- - -

ORDINANCE NO. 9676

BY COUNCILORS ATKINS AND STEWART:

AN ORDINANCE INCREASING TAXI FARES, AMENDING SECTION
47-33 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

The city of Duluth does ordain:

Section 1. That Section 47-33 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 47-33. Rates.

Every person operating a taxicab shall charge, and every person holding a taxicab license shall permit the charging only of the following rates for taxicab service in the city of Duluth and such rates shall not be reduced by issuance of coupon books, premiums or any other device whatsoever:

(a) For the first 1/10 mile or fraction thereof, \$2.00, for each succeeding 1/10 mile or fraction thereof, \$.20, for each three minutes of waiting time or fraction thereof resulting from the special instance and request of a passenger or patron \$1.50, provided, however, that such rates shall go into effect only if and when permitted under U. S. government price guidelines, and until such time as such rates go into effect the rates previously established by this Section shall remain in effect. No charge for any waiting time shall be made when the same results from traffic delays or circumstances beyond the control of such patron or passenger;

(b) No taxicab driver shall carry any person other than the person first employing his vehicle without the consent of such person. Group riding is permissible for passengers going in the same general direction, with the consent of all passengers involved, providing there is no other cab available at the point of loading and no delay is caused to any waiting passenger. Each member of such a

group of passengers shall be required to pay only that amount which the taximeter would have registered if such person had been taken directly from the point of loading to his destination point.

No extra fare shall be charged by the driver of a taxicab for additional passengers when such passengers are of one party or one family group. If the members of such a party or group do not have a common destination the driver shall collect the recorded fare at the final destination point;

(c) When a taxicab is engaged by the hour, the following rates shall be charged: \$30 for the first hour or fraction thereof and \$7.50 for each succeeding 15 minutes or fraction thereof. While a taxicab is so engaged, the driver shall place a hood or covering over the taximeter in such vehicle;

(d) For trips originating or ending outside of an area bounded by the following described line, \$4 or the rate prescribed by Subsection (a), whichever is greater, except that all trips originating at the Duluth International Airport shall have a minimum fee of \$6:

Commencing at the foot of 40th Avenue West; thence northwesterly along 40th Avenue West to Haines Road; thence northwesterly along Haines Road to Skyline Parkway; thence northerly along Skyline Parkway to Trinity Road; thence northerly along Trinity Road to Arlington Avenue; thence northerly along Arlington Avenue to Arrowhead Road; thence easterly along Arrowhead Road to 34th Avenue East; thence southeasterly along 34th Avenue East and its extension to Lake Superior; thence beginning in a southwesterly direction, along the Duluth city limits to the intersection of such limits with 40th Avenue West extended; thence westerly to the point of beginning;

(e) For trips originating or ending within an area bounded by Kingsbury Creek on the east and the southwesterly entrance to Morgan Park extended westerly to the city limits, on the west, \$5 or the rate prescribed by subsection (a), whichever is greater, and \$6 or the rate prescribed by subsection (a), whichever is greater, for trips originating or ending south or west of the area described above;

(f) For trips originating or ending northeast of a line bounded by the Lester River north to Occidental Boulevard; Occidental Boulevard north to the Skyline Parkway; the Skyline Parkway north to the Maxwell Road; and the Maxwell Road north to the city limits line, \$5 or the rate prescribed by subsection (a), whichever is greater;

(g) For any trip that includes the cartage of an unusual amount of goods, a charge of \$.50 shall be made over and above the rate prescribed in Subsection (a). The driver shall only be required to deliver the goods to a place which is under cover. For the purpose of this Subsection the term, unusual amount, means that amount which requires more than one loading or unloading trip for the passengers and driver.

There shall be prominently displayed in all taxicabs a card supplied by the city clerk for a fee of \$1 setting out in large size print, the taxi fare contained in this Section. This card shall contain a sentence informing passengers that it is illegal for the driver to charge for waiting time while delayed in traffic. This card shall also contain a sentence informing passengers that the driver has printed copies of the entire text of this Section which will be supplied to them upon request. Printed copies of the complete text of this Section shall be supplied to each taxicab driver

by the city clerk without charge and such drivers shall give a printed copy of such text to any passenger who requests one.

The driver of any taxicab shall upon demand give any passenger a receipt for the fare charged, which receipt shall include the name of the driver, the identification of the vehicle, the amount charged and the date of the transaction.

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: August 22, 2004)

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

Yeas: Councilors Atkins, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 8

Nays: Councilor Gilbert -- 1

ATTEST:
JEFFREY J. COX, City Clerk

Passed July 12, 2004
Approved July 12, 2004
HERB W. BERGSON, Mayor

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ORDINANCE NO. 9677

BY PRESIDENT STAUBER:

AN ORDINANCE PERTAINING TO THE LICENSING OF RENTAL PROPERTIES; AMENDING CITY CODE SECTION 29A-32.

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 shall be displayed in a conspicuous place within the common way or near the main entrance of the dwelling and shall state the name, address and telephone number of the owner or managing agency which is managing the dwelling. 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.

Section 2. That this ordinance shall take effect 30 days from and after its passage and publication. (Effective date: August 22, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed July 12, 2004
Approved July 12, 2004
HERB W. BERGSON, Mayor

- - -

ORDINANCE NO. 9678

BY COUNCILOR LITTLE:

AN ORDINANCE AMENDING CHAPTER 33, ARTICLE XVII, OF THE DULUTH CITY CODE, 1959, AS AMENDED, REGULATING WRECKER SERVICES.

The city of Duluth does ordain:

Section 1. That Article XVII of Chapter 33 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Article XVII. Wrecker Service.

Sec. 33-245. Definitions.

Except as is hereinafter provided, words and phrases shall have the meaning as ascribed to them by Article I of this Chapter:

Chief of police. The chief of police of the city of Duluth or such person or persons as he shall designate.

Accident. Any occurrence causing any damage to any motor vehicle which results from the motion of one or more vehicles.

Disabled vehicle. Any vehicle involved in an accident, any vehicle illegally standing or stopping when the owner or person in control of vehicle is not present and any vehicle when the owner or person in control of it is not able or is not permitted to drive, if peace officers at the scene determine that there is an apparent need to move such vehicle by wrecker.

Emergency wrecker service. The business of offering service to disabled vehicles and other vehicles by means of a motor vehicle at the request of the chief of police.

Wrecker rotation list. Any list of licensed wrecker services maintained by the chief of police as provided for in this Article.

Heavy duty wrecker. A wrecker for towing heavier vehicles which is constructed on a 2-1/2 ton or heavier chassis and which has a boom capacity of 32,000 pounds or greater, single or double line capacity.

Flat bed wrecker. A wrecker that tows vehicles on a flat bed carrier contained on the chassis of the wrecker.

Summoned or summoned by the chief of police. An act or acts of communication initiated by the chief of police or any member or employee of the Duluth police department for the purpose of obtaining emergency wrecker service for the benefit of the city, or for the benefit of any other person or legal entity.

Secured indoor storage. A vehicle storage area that is indoors, heated, segregated, and capable of being locked and secured so that a single vehicle stored therein can only be accessed, touched, or affected by a person controlled and authorized by the chief of police, and so an accurate record can be kept of each access to the vehicle, and so that evidence in or on the vehicle is not disturbed, tainted, or destroyed during storage.

Sec. 33-246. License required.

No person shall provide or offer to provide emergency wrecker service within the city without being licensed in accordance with this Article, except that persons

summoned by the owner or operator of a disabled vehicle or his agent need not be licensed.

Sec. 33-247. License application; renewal; insurance.

(a) Any applicant desiring to engage in the business of an emergency wrecker service in the city shall file with the city clerk a written application upon a form provided by the city clerk. Such application shall contain the name and address of the principal place of business, the telephone number of the wrecker service, the number and types of wreckers to be operated, the license numbers of all vehicles to be used to provide emergency wrecker service, the name, address and telephone number of the true owner of the company concerned, the address of the storage lot where towed vehicles will be stored, the towing zone in which the business will be operating, and any other information the city clerk or chief of police may require;

(b) Each applicant shall submit with the application proof of insurance coverage consisting of a public liability insurance policy and garage keeper's liability policy issued by an insurance company authorized to do business in the state of Minnesota naming the city as an additional insured and insuring the public from any loss or damage which may arise to any person or property by reason of the operation of a wrecker service or vehicle of such service and providing that the amount of recovery on each vehicle used in a wrecker service shall be limited to no less than the following sums:

(1) For damages arising out of bodily injuries to or death of one person in any one accident - \$300,000;

(2) For damages arising out of bodily injuries to or death of two or more persons in any one accident - \$750,000;

(3) For injury to or destruction of property in any one accident - \$750,000;

(4) Garage keeper's legal liability insurance - \$50,000;

(c) Every policy referred to in Subdivision (b) above shall contain an endorsement providing for 30 days' notice to the city clerk of the city of Duluth in the event of any material change or cancellation of such policy.

Sec. 33-248. Fees; issuance; investigation; lien waiver.

(a) Each application shall be referred by the city clerk to the chief of police for investigation of the applicant, the applicant's equipment, and the applicant's garage and storage facilities. After completion of the investigation, the chief of police shall report to the city clerk whether the applicant and the applicant's equipment and storage facilities are appropriate for the conduct of an emergency wrecker service business;

(b) The city clerk shall issue a license to all qualified applicants which shall expire on June 30 of each year. No license shall be assignable or transferable. No license shall be issued unless the requirements of this Article are met;

(c) The annual fee for emergency wrecker service license shall be set in accordance with Section 31-6(a) of this Code for each business;

(d) Each applicant shall accompany its application with current inspection certificates required by the state of Minnesota certifying that all wreckers to be used are in good operating condition;

(e) The fees specified are payable at the time of application and no refund of fees shall be made except that the annual license fee for the wrecker service shall be refunded if a license application or renewal application is rejected. No proration of fees shall be made;

(f) As a condition of the license, and a requirement of this ordinance, each licensee agrees that it shall not impose or exercise any right of possession or lien, including any right under MSA § 514.18, or its successor, on any property that is not owned by the owner or possessor of the vehicle and its contents not attached to the vehicle when the licensee comes into possession of that property as a result of being summoned by the chief of police.

Secs. 33-249 to 33-250. Repealed by Ordinance No. 9031, 6-17-1991, § 9.

Sec. 33-251. License--revocation, suspension and disapproval of application.

(a) The following shall be grounds for the chief of police to revoke, suspend or disapprove of the application for any license issued under the provisions of this Article:

- (1) Filing false information on an application;
- (2) Failing to inform the city clerk of changes in required information within ten days of such change;
- (3) Failure to have an insurance policy as required in this Article in force;
- (4) Charging more than the rates allowed under this Article or having done so in the past;
- (5) Evading or attempting to evade the wrecker service fee limitations of this Article by providing services or performing acts not reasonably necessary under the circumstances;
- (6) Violation by the licensee applicant or by any employee thereof of any provision of this Article;
- (7) Use by the licensee of any trade name for his wrecker service other than the one registered with the city clerk or operating any wrecker service vehicle without the name of the proper wrecker service posted in the directed manner on such vehicle or with the name of another wrecker service appearing in place of the proper name;
- (8) Two or more violations by a licensee or his employees of traffic laws of the city of Duluth or the state of Minnesota while furnishing wrecker services within one year;
- (9) Soliciting business at the scene of an accident;
- (10) Providing service which manifests a substantial lack of care or competence, or both, in the provision of wrecker service;
- (11) Failure to respond to the scene of an accident at the request of the chief of police or failure to respond to the scene of an accident within 20 minutes of being summoned by the chief of police;
- (12) Failure or refusal, when requested or summoned by the chief of police, to tow a disabled vehicle from a zone where the service is on the rotation list;
- (13) Failure to clean up debris left at the scene of an accident when responding to the chief of police's request to tow a disabled vehicle at such scene;

(14) Failure to allow a rightful claimant of a towed vehicle to regain control of it within one hour of receipt of a request therefor, whether in person, in writing or by telephone, providing that appropriate payments are tendered;

(15) Failure to have or properly maintain any equipment or storage facilities, including secured indoor storage, required by this Article.

Sec. 33-252. Repealed by Ordinance No. 9031, 6-17-1991, § 9.

Sec. 33-253. License--appeal.

(a) The owner or operator of an emergency wrecker service may appeal the denial of a license or the suspension or revocation of his license by filing notice with the city clerk within ten days of receipt of his notice of refusal in issue, suspension or revocation. The filing of such appeal shall stay a revocation or suspension until a hearing is held by the chief of police. The chief of police shall thereupon hold a hearing as soon as is reasonably possible and shall make a written determination of the propriety of such refusal, suspension or revocation, a copy of which shall be filed with the city clerk and a copy of which shall be sent to such owner or operator at the last address appearing on his license application;

(b) Within ten days of notice of an adverse decision by the chief of police, the owner or operator of such service may file a written appeal to the city council with the city clerk, which appeal shall state specific grounds for such appeal. The filing of such appeal shall stay a suspension or revocation until the council renders a decision on such appeal. The city council shall, within 30 days, grant a hearing to consider the action taken by the chief of police. As a result of such hearing the city council, by resolution, may sustain, reverse or modify the action appealed. Such decision of the city council shall be final.

Sec. 33-254. License--display.

Any license issued pursuant to this Article shall be posted and kept in a conspicuous place in the licensee's principal place of business.

Sec. 33-255. Repealed by Ordinance No. 9031, 6-17-1991, § 9.

Sec. 33-256. Vehicle storage facilities, vehicle retention.

Each wrecker service shall provide sufficient off street parking in a secure fenced lot with secure, locked access to accommodate all vehicles to which they render and intend to render service. Each wrecker service shall have a facility that can provide secured indoor storage suitable for use by the police department for storage and processing of evidence of a crime so that it can be used in a court of law. No wrecker service shall permit vehicles to which they render or intend to render service to be parked on any street. Each wrecker service shall store vehicles at one storage lot or facility only and that storage lot or facility shall be located in the state of Minnesota within 15 miles from Duluth City Hall. Each storage lot shall provide reasonable security for vehicles, shall be maintained in an orderly manner and kept free of unnecessary debris, and shall be designed and surfaced for proper drainage so that the storage area is reasonably free of mud. If requested by the police, a vehicle shall be stored in a secured indoor storage facility in an enclosed building with heat, electricity and a concrete or paved floor.

Sec. 33-257. Wrecker vehicle equipment.

Any vehicle intended to be used for the offering of wrecker service shall be submitted to persons inspecting on behalf of the city to determine compliance with the following standards:

(a) Any vehicle intended to be used for providing emergency wrecker service, other than a flat bed wrecker or a heavy duty wrecker, shall comply with the following minimum requirements:

(1) Every such vehicle shall have a manufacturer-rated capacity of not less than one ton and be equipped with booster brakes;

(2) Each such vehicle shall be equipped with a power operated winch, 100 feet of winchline and boom with a factory-rated lifting capacity or tested capacity of not less than 8,000 pounds, single-line capacity;

(3) Each such vehicle shall carry as standard equipment a tow bar, towing dollies or a roll-back car hauler, safety chains, a fire extinguisher, a "state of the art" car door opener, a wrecking bar, a broom, a shovel, flares and a trash container;

(4) Each such vehicle and all of its equipment shall be in safe and good working condition;

(b) Any vehicle intended to be used as a heavy duty wrecker for providing emergency wrecker service shall be equipped as in Subdivision (a) above except:

(1) Each such vehicle shall have a manufacturer-rated capacity of not less than 2-1/2 tons;

(2) Each such vehicle shall be equipped with a power operated winch, winchline and boom with a factory-rated lifting capacity or tested capacity of not less than 32,000 pounds, single or double line capacity;

(3) No towing dollies need be carried;

(c) Any flat bed wrecker used for providing emergency wrecker service as in Subdivision (a) above except:

(1) The vehicle need not be equipped with a boom but shall be equipped with a snatchblock to facilitate the winching of vehicles;

(2) No towing dollies need be carried;

(d) Every vehicle proposed for use in offering wrecker services shall have the name and telephone number of the company owning such vehicle displayed in large, contrasting letters so as to be clearly visible upon both outside doors of such vehicle;

(e) Any vehicle proposed for use in offering wrecker services shall have emergency lights complying with standards of the state of Minnesota.

Sec. 33-258. Repealed by Ordinance No. 9031, 6-17-1991, § 9.

Sec. 33-259. Emergency wrecker service.

An emergency wrecker service shall provide the following minimum services:

(a) Such service shall provide services with a wrecker or wreckers which meet the requirements of sections 33-257(a) and (c) and, where relevant, Section 33-257(b) of this Article;

(b) Such service shall provide 24 hour a day, seven day a week service;

(c) Such service shall come at all times when summoned by the chief of police to remove a disabled vehicle and, when summoned, shall remove such vehicle on all occasions;

(d) Such service's vehicles shall arrive at the scene of a disabled vehicle when summoned by the chief of police within a reasonable time after being summoned, such time not to exceed 20 minutes;

(e) Such services shall, upon the request of any peace officer, store any vehicle in a secured indoor storage facility which is inside a building which is reasonably weatherproof and secure for as long as is necessary to complete any police investigation of such vehicle;

(f) If the chief of police directs that any vehicle be towed to any location other than a storage location normally used by the wrecker service providing such service, such wrecker service shall deposit such vehicle as directed; provided that if services provided pursuant to such direction would justify additional charges under this Article, the chief of police shall pay such charges;

(g) When summoned by the chief of police, the maximum fee for services rendered shall be as follows:

(1) \$90 for all towing of disabled vehicles from one location in the city to another, or to a lot maintained outside the city by the service; when the vehicle requires dollying or a flat bed wrecker or when a flat bed wrecker is required by the police;

(2) \$60 per hour for towing a vehicle which requires heavy duty wrecker equipment from one location in the city to another, or to the service's lot maintained outside of the city, unless a higher rate is authorized by the chief because of special circumstances;

(3) \$20 per each 24 hours for storage of towed vehicles, up to a maximum of 25 days;

(4) If the vehicle to be towed is off of the roadway and requires more than 20 feet of winching, \$20 for each 15 minutes that the wrecker's winch is in operation;

(h) Licensee shall, if requested, release towed vehicles to their rightful claimants 24 hours per day, seven days per week on at least an on-call basis;

(i) No fees shall be charged if a licensee tows a vehicle from one location to another for its own purposes;

(j) In the event that the chief of police deems it reasonably necessary in his sole discretion to use more than one wrecker vehicle to safely provide required emergency wrecker service to a disabled vehicle, he may authorize said use in which case the effected service may charge up to the maximum rates set forth above for each authorized wrecker vehicle used.

(k) When an emergency wrecker service is summoned by the chief of police and, as a result, performs services for a fee, the emergency wrecker service shall pay a fee, set by resolution, to the city of Duluth.

Sec. 33-260. Providing of fee schedule required.

Before requesting or receiving payment for services rendered, the licensee shall provide the person charged with a complete written schedule of maximum fees allowed to be charged under this Chapter. The chief of police must approve such schedule before it can be used.

Sec. 33-261. Wrecker rotation list.

(a) The chief of police shall call only emergency wrecker services as provided herein when the police department requires wrecker service in the course of duty;

(b) The chief of police is hereby empowered to partition the city into zones for the furnishing of emergency wrecker service and to establish a wrecker service rotation list for each such zone. Any licensed emergency wrecker service may have its name placed in the rotation list for each and any zone it desires. When emergency wrecker service is to be provided, the chief of police shall call the first service on the rotation list for the zone involved. When a service has been called, its name shall be placed last on the rotation list involved;

(c) The chief of police is further empowered to divide the city into zones for the provision of emergency wrecker service in those cases requiring the use of a heavy duty wrecker, and to establish a wrecker service rotation list for each such zone for use in such cases. Any licensed emergency wrecker service having a heavy duty wrecker may have its name placed on such rotation list for each and any zone it desires. When emergency wrecker service is to be provided by a heavy duty wrecker, the chief of police shall call the first service on the appropriate rotation list for the zone involved. When a service has been called its name shall be placed last on the rotation list involved;

(d) The chief of police shall keep records of all calls made for emergency wrecker services under the provisions of this Article which shall be public records;

(e) In case of emergency when the chief of police shall determine that the public convenience and necessity requires it, the chief of police may depart from the strict rotation of emergency wrecker lists for the duration of such emergency and call any licensed wrecker service or, in the case of a need for secured indoor storage, call the next wrecker service on the list which has a sufficient facility, at his discretion. A record of such departure together with the reason therefor shall be maintained with the record referred to in subparagraph (d) above.

Sec. 33-262. Exception to fees.

No emergency wrecker service summoned by the chief of police shall charge or receive any fee from any person or from the city where service is not actually provided. Any emergency wrecker service affected by this provision shall be placed first again on the appropriate wrecker call list.

Sec. 33-263. Driving wrecker to the scene of accident.

No person shall drive a wrecker, licensed or unlicensed, to the scene of an accident or collision on the streets of the city unless such person has been summoned to the scene by the chief of police or has been requested by the owner or operator of a disabled vehicle or his agent.

Sec. 33-264. Soliciting wrecker business at the scene of accident prohibited; presence at scene is evidence of violation.

No person shall solicit in any manner, directly or indirectly, on the streets of the city the business of towing any vehicle which is a disabled vehicle on the street regardless of whether the solicitation is for the purpose of soliciting the business of towing, removing, repairing, wrecking, storing, trading or purchasing such vehicle. Proof of the presence of any person engaged in providing wrecker service or the presence of any wrecker or motor vehicle owned or operated by any person

engaged in providing wrecker service business, either as owner, operator, employee or agent, on any street in the city at or near the scene of an accident which has not been called to the scene by the chief of police within one hour after the happening of an accident, shall be prima facie evidence of a solicitation in violation of this Section.

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: August 22, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Nays: None -- 0

ATTEST:

JEFFREY J. COX, City Clerk

Passed July 12, 2004

Approved July 12, 2004

HERB W. BERGSON, Mayor

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ORDINANCE NO. 9679

BY COUNCILOR LITTLE:

AN ORDINANCE AUTHORIZING THE CHARGING OF FEES FOR PARTICIPATION IN DULUTH JUSTICE AND DEFERRAL PROGRAM.

The city of Duluth does ordain:

Section 1. That Duluth City Code, 1959, as amended, is amended to add a new Section 2-18 to Chapter 2, Article III, to read as follows:

Sec. 2-18.1. Findings and purpose of pre-charge deferral.

The city council finds that the goal of law enforcement is to attain voluntary compliance with the laws, rules, and regulations to which each member of the community is subject; that city agents have used various methods and procedures to attain this goal, including meetings, notices, conciliation, mediation, community education, civil penalties, criminal prosecution, probation, stays of adjudication, diversion, pre-charge deferral and others; that procedures other than criminal prosecution have historically been used in all of the city's enforcement activities, and that these procedures have been successful; that the practice of community policing relies upon enforcement procedures other than criminal prosecution; that many individuals who violate laws or regulations can be educated and motivated to comply by a procedure that is more contractual, faster, efficient, and less cumbersome than the criminal justice system; that in every case of enforcement of a law or regulation, the enforcement officer must exercise discretion to decide what procedure is the most likely to achieve justice and compliance; that the city has had decades of successful use of pre-charge deferral of many types of offenses, including traffic offenses; that the purpose of this section is to formalize procedures for pre-charge deferral, to authorize fees to be charged to participants in the Duluth justice and deferral program, a pre-charge deferral procedure, and to efficiently secure justice and voluntary compliance with law, which will improve the quality of the community.

Sec. 2-18.2. Deferral authorized; fees.

Subject to management and supervision, and applicable laws and standards, city officials and agents who enforce laws and regulations are authorized to utilize

a procedure of pre-charge deferral, but only in compliance with state and federal civil rights laws and the city's anti-discrimination policy, in instances where the circumstances indicate that justice and compliance can better be attained by deferral than by issuing a criminal charge. The administration is authorized to set standards and procedures for the use of pre-charge deferral. Any pre-charge deferral program must be voluntary. The city is authorized to charge each participant a reasonable fee for participation, the amount of the fee to be set by resolution of the city council. The city's human rights officer shall monitor the program for compliance with civil rights standards.

Section 2. That this ordinance shall take effect and be in force 30 days after its passage and publication. (Effective date: August 22, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Nays: None -- 0

ATTEST:

JEFFREY J. COX, City Clerk

Passed July 12, 2004

Approved July 12, 2004

HERB W. BERGSON, Mayor

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ORDINANCE NO. 9680

BY COUNCILORS LITTLE AND STEWART:

AN ORDINANCE AMENDING THE REGULATIONS FOR THE DEMOLITION OF HAZARDOUS BUILDINGS; AMENDING SECTIONS 10-3 AND 10-5 AND REPEALING IN ITS ENTIRETY SECTION 10-7 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

The city of Duluth does ordain:

Section 1. That Section 10-3 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 10-3. Demolition procedure.

(a) General. Whenever it comes to the notice of the building official that any building or structure is in a damaged, dilapidated or dangerous condition, it shall be his duty to make an inspection of such building or structure. It shall be unlawful to repair or alter any building or structure located in the city if, in the opinion of the building official based upon information documented in the official file and records, such building or structure has been damaged or deteriorated from any cause to the extent that the building official's good faith, reasonable estimate of the cost of repairing and restoring the building is more than 60 percent of the current fair market value of the building, as shown in the records of the city assessor or as adjusted by the assessor for accuracy, and all such buildings or structures so damaged or deteriorated shall be torn down and removed when so ordered by the building official; provided, however, that the building official, or the building appeal board in cases appealed to it, may allow such a damaged or deteriorated building to be repaired, for good cause shown related to the use, location or unique characteristics of the building, when the owner shows that he or she has dedicated sufficient funds to pay for the repair, have entered into a valid contract to have the repair completed,

and will complete all the repair and restoration work within a reasonable time, not to exceed 18 months;

(b) Orders for demolition and assessment of costs. All orders for the demolition of a dangerous, defective or deteriorated building, or for repairs to the same, shall be in writing, signed by the building official, and shall allow not less than 30 days in which to comply with said order. Each order shall identify the structure, state the legal basis of the order, the date of the order, the fair market value of the building, the building official's good faith, reasonable estimate of the cost of repairs, the calculation that forms the basis for the opinion that the damage requires that the building be demolished, the time and procedure for appeal, and other information deemed relevant by the building official. Should any such order not be complied with within the time allowed therefor or, should the structure constitute an immediate threat of bodily harm to the public, or the appeal provided for in Section 10-5 of this Chapter not be taken, the building official shall, in writing, communicate such information to the city council. The city council may direct the building official to proceed with the work ordered, or to contract to have the work done. In case of the demolition of a building, should the sale of the salvage from such building 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. A statement of the cost of such work shall be transmitted to the city council which may cause the same to be charged against the land on which the building existed as a municipal lien, which lien shall be recorded with the register of deeds or registrar of titles as a lien against such land, or to be recovered in a suit at law against the owner, or to cause any or all of such costs to be assessed against the property from which such removal takes place. If the city council decides to assess the cost of demolition against the affected property, such assessment shall be made by resolution of the council, and such resolution shall state a time by which such assessment shall be payable, which time shall be not less than 30 days after publication of such resolution and service of notice of the assessment upon the property owner. Notice of such assessment and the time within which it shall be paid, shall be served on the owner of such property in the manner provided in Subsection (c) of this Section below, except that it shall not be necessary to post such notice on the affected property or to publish such notice other than to publish in the regular manner the resolution by which such assessment is made. Delinquent assessments shall be certified to the county auditor of St. Louis County for collection in the same manner as other assessments, pursuant to Section 70 of the Duluth City Charter;

(c) Notice to owner. Except as otherwise provided for in Subsection (b) above, service of all orders provided for in this Section shall be made as follows:

(1) Upon an individual owner, residing within the city of Duluth, by delivering a copy to him personally or by leaving a copy at his usual place of abode with some person of suitable age and discretion then residing therein. If the owner does not reside within the city of Duluth, by sending a copy of such order by registered mail to his last known address, and in addition a copy of such order shall be posted in a conspicuous place in the building to which it relates. Such mailing and posting shall be deemed adequate service. If it should come to the attention of the building official that the owner, as shown by the land records of the register of

deeds or the registrar of titles of the county of St. Louis, Minnesota, is deceased, such order shall be sent by registered mail to the known heirs of the deceased owner if the building official is reasonably able to ascertain such heirs. In addition, a copy of the said order shall be posted in a conspicuous place on the building to which it relates, and said order shall be published in the official newspaper of the city of Duluth for one day in each of two consecutive weeks during the period to which the order relates. Such mailing, posting and publication shall be deemed adequate service;

(2) If the owner is confined to a state institution, by serving also the chief executive officer of the institution;

(3) If the owner be an infant under the age of 14 years, by serving a resident guardian, and if he has none, then by serving the person having control of such infant or with whom he resides;

(4) If the owner be a partnership or association, by delivering the order to a member or the managing agent of the partnership or association;

(5) If the owner be a domestic or foreign corporation, by delivering the order to an officer or managing agent. If such corporation be a foreign corporation and has no such agent in the city of Duluth, then service may be made upon any such agent of the corporation within the state.

Section 2. That Section 10-5 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 10-5. Building appeal board.

(a) There is hereby established a building appeal board, which shall hear and determine appeals under the state building and fire codes and Duluth Housing Code. Such board shall consist of 12 members who shall be appointed by the mayor, subject to the approval of the city council and who shall serve without compensation. The Duluth fire chief and building official shall be appointed as ex officio members of the board. The building official shall act as secretary of the board. One member of the board shall work in the area of finance; one member shall be a registered architect; one member shall be a registered engineer working in the area of building construction design; one member shall be engaged in the business of residential building construction; one member shall be engaged in the business of commercial building construction; one member shall work in the area of building materials supply; one member shall be a member of a building trade union; one member shall be a realtor or real estate manager; and two members shall be appointed from the general citizenry of the city of Duluth. Of the first persons appointed for membership on the board, four shall be appointed for three years, four shall be appointed for two years, and three shall be appointed for one year. Thereafter, all appointments shall be for a term of three years, except that vacancies caused by death, resignation or otherwise may be filled for the remaining unexpired term;

(b) Within 30 days after the initial appointments, the board shall meet and elect a chairman and vice chairman. Thereafter, the board shall meet at stated intervals fixed by resolution of the board, or at the call of the chairman or of any three members of the board. The board may adopt reasonable rules and regulations for conducting its investigations and hearings;

(c) The board shall have jurisdiction to perform the following functions:

(1) To hear appeals from decisions made by the building official interpreting the State Building Code where such interpretation involves points not clearly covered by said Code, the appropriateness of alternate methods of construction, or the appropriateness of the use of alternate materials;

(2) To hear appeals from decisions made by the building official in enforcing or interpreting the Duluth Housing Code, Chapter 29A, of the Duluth City Code;

(3) To hear appeals from decisions of the fire chief which arise under Chapter 21 of the Duluth City Code;

(4) To hear appeals from an order of the building official which applies Article II or III of Chapter 10 of Duluth City Code, as amended, or its successor, which includes orders for demolition or other decisions under Article II or III of Chapter 10, Duluth City Code;

(d) Any person who wishes to appeal a decision of the building official or fire marshal shall serve written notice of appeal upon the building official within 15 days after receiving notice of such decision, which appeal shall be accompanied by a fee of \$120. The notice of appeal shall contain a complete statement of the matter in controversy and relief requested. If the appeal is from a refusal to grant a permit authorizing the use of an alternate material or method of construction, the notice of appeal shall contain a guarantee of payment of all expenses of any tests made or ordered by the board. If the appeal is from a decision of the fire chief, the building official shall forward a copy of the notice of appeal to the fire chief. The building official shall notify the appellant of the time and place of the hearing. If the appellant withdraws his or her appeal in writing prior to the date and time set therefore, the building official shall refund the aforesaid fee. At the hearing, the board shall hear all relevant evidence and arguments. After due deliberation, the board shall render its decision in writing and notify the appellant of its decision by certified mail or personal service. Decisions involving the State Building Code shall be mailed to the state building inspector within 15 days after they are rendered. The building official shall keep an indexed record of decisions of the board. If the board grants an appellant an extension of time to do an act, then, at the next meeting after expiration of that period of time, the matter shall be set on the meeting agenda for the board's review and action;

(e) In making its decisions, the board shall use the following criteria:

(1) Building code appeals. The board shall approve alternate materials or methods of construction only if reasonable proof is presented that such material or method is at least equivalent to State Building Code standards in quality, strength, effectiveness, durability, fire resistance and safety;

(2) Housing code appeals and appeals of demolition or other orders. The board may remedy any error it has found the building official has made in the interpretation of the housing code or of Article II or III of Chapter 10, Duluth City Code, or their successors. The board may also grant such relief as it deems reasonable from strict compliance with each provision of these parts of Duluth City Code, but no relief shall be granted unless it is found that:

(A) There is substantial compliance with the provisions of the Code;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

(B) No detriment to public health or safety will result from granting such relief;

(C) The intent of the Code is not compromised;

(D) The relief granted will not result in increased cost expense to the city;

(3) Variances from the minimum requirements of the fire code may be recommended to the state fire marshal only if:

(A) There is substantial compliance with the provisions of the fire code;

(B) The safety of the building occupants and general public will not be jeopardized;

(C) Undue hardship will result to the applicant if relief is not granted;

(f) Any person aggrieved by a decision of the board which involves a housing code matter, except a demolition matter under Section 10-3 of this Code, or its successor, may appeal such decision to the city council by filing a notice of appeal with the building official within 15 days after receiving notice of the board's decision. Such notice of appeal shall be addressed to the city council and shall state the grounds upon which the appeal is taken. The filing of a notice of appeal shall stay all proceedings in furtherance of the decision appealed from. The building official shall file all appeal notices with the city council. The city council shall hear the appeal within 30 days after the notice of appeal is filed and shall affirm, modify or reverse the decision of the board. The board's decision on demolition orders or any matter arising under Section 10-3 of this Code, or its successor, shall be appealed to the courts in the manner set out in law and the rules of civil procedure.

Section 3. That Section 10-7 of the Duluth City Code, 1959, as amended, be repealed in its entirety.

Section 4. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: August 22, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed July 12, 2004
Approved July 12, 2004
HERB W. BERGSON, Mayor

OFFICIAL PROCEEDINGS

Special meeting of the Duluth City Council held on Monday, July 19, 2004, 6:52 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Atkins, Gilbert, Little, Ness, Reinert, Stewart and President Stauber -- 7

Absent: Councilors Johnson and Stover -- 2

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At this time, 6:55 p.m., President Stauber announced that the public hearing held on Monday, July 12, 2004, regarding creation of a tax increment financing (TIF) district for the Miller Hill Suites project would continue.

Ken Zwak and Garry Krause spoke in opposition to the project in general, stating that the surrounding neighborhood consists of single family homes and that this mixed income project does not fit the character that presently exists. They encouraged the council to vote this district down, require the developer to address the defects that are presently in noncompliance because of poor workmanship in his Cottage Homesteads project by hiring reputable contractors and allow this area to be developed as single family residential homes as the majority of the neighborhood wishes.

Michael Saxton, developer, noted that a resolution of intent to establish a TIF district for the financing of public improvements was previously passed and has been utilized to leverage the selling of bonds for other components of this project. He stated that if this TIF district is not established as was promised by the previous council, he will lose his financing and will not be able to pay for what has already been accomplished for this project. Mr. Saxton spoke at length about his discussions and meetings with Mayor Bergson, comments made by other councilors and about his desire and efforts to work in neighborhood meetings with residents. Regarding the Cottage Homesteads project, he stated that any issues that were in noncompliance have been addressed and that the building safety division requirements have been met satisfactorily. Mr. Saxton further stated that the issues and complaints about drainage and foundation problems brought up at the earlier Duluth economic development authority (DEDA) meeting by Cottage Homesteads residents are of their own doing because they have failed to keep the drainage facilities clear of debris which causes water to drain and stand around the foundation. He continued by saying that he has already had problems with the electrical utilities fixed several times and that he can no longer require the contractor to repair them because he is no longer in business. Mr. Saxton stated that he will no longer allow himself to be held financially responsible for new complaints because it is time for the residents to take care of their own structure. He stated that the only recourse he has if the council does not approve this TIF district is to take legal action against the city.

At this time, 7:30 p.m., President Stauber closed the public hearing and regular order of business was resumed.

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MOTIONS AND RESOLUTIONS

Resolution 04-0502, by Councilor Gilbert, approving a modification to the housing development project/municipal development district and a tax increment financing plan for Tax

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Increment Financing District No. 24, as proposed the Duluth economic development authority, was introduced for discussion.

Resolution 04-0502 failed upon the following vote (Public Document No. 04-0719-02):

Yeas: Councilor Stewart and President Stauber -- 2

Nays: Councilors Atkins, Gilbert, Little, Ness and Reinert -- 5

Absent: Councilors Johnson and Stover -- 2

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BY COUNCILOR GILBERT:

WHEREAS, a sufficient petition was filed with the city clerk requesting the vacation of 40th Avenue East, formerly West Avenue, south of London Road, legally described as 40th Avenue East, formerly known as West Avenue, south of London Road, and all that part of London Addition to Duluth and East Duluth Rearrangement lying easterly of Lot 5 and westerly of the east line of said plat, and the platted public drive easement in Lot 5 and the ten foot wide electric easement across the easterly ten feet of Lot 5, London Addition to Duluth and East Duluth Rearrangement, per Exhibit A; vacation of an existing 12 foot public utility easement per Exhibit B and dedication of a new 20 foot public utility easement per Exhibit C; and

WHEREAS, 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

WHEREAS, the city planning commission unanimously approved the street, pedestrian and utility vacations and new easement dedication petition at its June 23, 2004, meeting.

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation of 40th Avenue East south of London Road formerly known as West Avenue and adjacent easements as described above and per Exhibit A, and as more particularly described in Public Document No. 04-0719-01(a).

RESOLVED FURTHER, that the city council of the city of Duluth approves the vacation of a 12 foot public utility easement per Exhibit B, as described in Public Document No. 04-0719-01(b).

RESOLVED FURTHER, that the city council of the city of Duluth approves the dedication of a 20 foot replacement public utility easement per Exhibit C, as described in Public Document No. 04-0719-01(c).

RESOLVED FURTHER, that the city clerk is hereby directed to record with the register of deeds and/or the registrar of titles of St. Louis County, Minnesota, a certified copy of this resolution together with a plat showing the portion of the street to be vacated, the utility easement to be vacated and the replacement public utility easement to be dedicated.

Resolution 04-0503 was unanimously adopted.

Approved July 19, 2004

HERB W. BERGSON, Mayor

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The meeting was adjourned at 7:35 p.m.

JEFFREY J. COX, City Clerk

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, July 26, 2004, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Absent: None -- 0

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

04-0726-01 Duluth Seaway port authority submitting petition to vacate a portion of Venture Circle in Rearrangement of Part of Airpark Division. -- Assessor

04-0726-03 Paul and Cheryl Fleckenstein, et al. (five signatures), submitting petition to vacate the 16 feet wide alley adjoining Blocks 27, 28 and 29, Bay View Addition to Duluth No. 1. -- Assessor

04-0726-02 Greater Downtown Council, by Daniel D. Maddy, attorney, et al. (57 signatures), submitting petition to establish the Downtown Waterfront Special Service District which boundaries include Mesaba Avenue and Bayfront Park to the west, Second Street to the north, Tenth Avenue East to the east and Lake Superior and the Duluth-Superior Harbor to the south. -- Assessor

04-0726-04 Alex and Brenda Kramer, by William M. Burns, attorney, et al. (four signatures), submitting petition to vacate that portion of 27th Avenue South between Minnesota Avenue and St. Louis Harbor adjacent to 2635 and 2701 Minnesota Avenue. -- Assessor

04-0726-05 William Marceau submitting:

(a) Petition to improve Butternut Avenue from Hickory Street to cul-de-sac and utility extension on Butternut Avenue from Como Avenue northerly to cul-de-sac and two inch P.E. high pressure gas mains serving Butternut Avenue. -- Assessor

(b) Waiver agreement regarding assessments for the improvement of Butternut Avenue from Hickory Street to cul-de-sac and utility extension on Butternut Avenue from Como Avenue northerly to cul-de-sac and two inch P.E. high pressure gas mains serving Butternut Avenue. -- Engineering

04-0726-06 Sherry Stewart, et al. (four signatures), submitting petition to extend the sanitary sewer within Trinity Road beginning 1,050 feet south of Mall Drive and extending 400 feet easterly and southerly. -- Assessor

04-0726-07 Welsh Properties, by John Johannson, et al. (three signatures), submitting petition to reclassify from R-1-b with community unit plan overlay to C-5, planned commercial district, property described as Lot 1, Block 1 and Lot 1, Block 2, Home Depot Duluth Addition. -- Assessor

04-0726-11 Robert J. Melander submitting communication regarding the proposed special use permit to Piedmont Heights Dental Association (supported by five signatures) (04-0468R, 04-0478R and 04-044-O). -- Received

04-0726-27 The PFM Group submitting presale analysis regarding \$4,785,000 G.O. street improvement bonds, Series 2004B; and \$945,000, G.O. airpark improvement bonds, Series 2004C. -- Received

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REPORTS OF OFFICERS

04-0726-08 Assessor submitting:

(a) For confirmation the assessment roll levied to defray the assessable portion of full development for Hartley Estates III, Contract 5356 (assessable - \$528,563.47);

(b) Letters of sufficiency of petitions to:

(1) Extend the sanitary sewer within Trinity Road beginning 1,050 feet south of Mall Drive and extending 400 feet easterly and southerly;

(2) Reclassify from R-1-b with community unit plan overlay to C-5, planned commercial district, property described as Lot 1, Block 1 and Lot 1, Block 2, Home Depot Duluth Addition;

(3) Vacate the T-shaped alley located in Block 4, Superior View Addition, except that portion adjoining Lots 1 through 8. -- Received

04-0726-09 Clerk submitting application to the Minnesota gambling control board for exemption from lawful gambling license from Animal Allies Humane Society on October 23, 2004. -- Received

04-0726-10 Engineering division submitting monthly status report of July 1, 2004, -- Received

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REPORTS OF BOARDS AND COMMISSIONS

04-0726-11 Duluth human rights commission minutes of June 9, 2004, meeting. -- Received

04-0726-12 Duluth/North Shore Sanitary District board minutes of June 8, 2004, meeting. -- Received

04-0726-13 Duluth state convention center administrative board minutes of May 25, 2004, meeting. -- Received

04-0726-14 Parks and recreation commission minutes of June 9, 2004, meeting. -- Received

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OPPORTUNITY FOR CITIZENS TO BE HEARD

K.L. Lewis expressed her concern relative to any possible relocation of the Duluth Transit Authority Bus Center, noting that people shop in the immediate area and that more time and effort is needed to directly address any problems that any group of individuals are causing.

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Joel Sipress noted that the police department is to be complimented for their assistance and cooperation to allow citizens to assemble and exercise their right to speak during the recent presidential visit.

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RESOLUTIONS TABLED

Councilor Gilbert moved to remove Resolution 04-0468, amending Resolution No. 77-217 and the special use permit granted Piedmont Heights Dental Associates II, eliminating the 40-year expiration date; Resolution 04-0469, denying a concurrent use permit request from Piedmont Heights Dental Associates II to construct and maintain parking spaces for private use in the Ensign Street public right-of-way; and Resolution 04-0478, amending Resolution No. 77-217 and the special use permit granted Piedmont Heights Dental Association, from the table, which motion was seconded and unanimously carried.

Councilor Gilbert moved to consider Ordinance 04-044 at this time, which motion was seconded and unanimously carried.

BY COUNCILOR GILBERT

04-044 (9681) - AN ORDINANCE GRANTING TO PIEDMONT HEIGHTS DENTAL ASSOCIATES II A CONCURRENT USE PERMIT TO CONSTRUCT AND MAINTAIN PARKING SPACES FOR PRIVATE USE IN THE ENSIGN STREET PUBLIC RIGHT-OF-WAY (PIEDMONT HEIGHTS DENTAL ASSOCIATES II, C/O GW HARRIS).

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

Gil Harries, attorney for the applicant, requested support for Resolution 04-0478 and the ordinance. He reviewed the scope of the plan, noting that this is to authorize construction of ten parking spaces on the south side of Ensign Street, utilizing 11 feet of the public right-of-way.

John Gisler, representing DSGW Architects, reviewed the analysis of the building and the need for increased parking. He noted that there is a significant amount of tree growth on the Ensign Street side that is contributing to the deterioration of the building masonry and the building is taking on water. Mr. Gisler further described how the changes would look with a sidewalk, retaining wall and landscaping.

Laura Melander, neighbor, addressed the concerns of neighbors to support: the planning commission recommendations to deny this request, the 1977 special use permit which provides for the berm as a separation barrier from the business and residents should not be removed, the safety concern for cars backing up from the parking spaces directly into a busy street and that this applicant and the Piedmont Plaza should negotiate the issue of leasing parking spaces at the Piedmont Plaza.

James Melander, representing his parents who live on Ensign Street, noted that the problem is that this applicant and Piedmont Plaza, which is adjacent and has over two acres of available parking, have been working together nearly 27 years and now are at an impasse. He noted that it appears that the primary issue is the length of a lease and not money. Mr. Melander felt an arbitrator should be brought in to help negotiate the issue and the neighbors should be left alone. He continued that there is already an agreement with the city, the agreement is reasonable and that safety associated with the limited visibility is the most important issue.

Patrick and Diana Jeanetta expressed concerns about: the safety of increased traffic from this proposed parking addition, snow/water runoff and that both parties could find a suitable solution.

Resolution 04-0468 was adopted as follows:

BY COUNCILOR GILBERT:

WHEREAS, Piedmont Heights Dental Associates II has submitted to the city council a request to amend special use permit Resolution No. 77-217, which allowed construction and maintenance of a dental clinic on property described as Lots 2, 3 and 4, Block 3, Grant Park Division, to eliminate the 40 year expiration date (Reference File No. 04054); and said application was duly referred to the city planning commission for a study, report and public hearing and the city planning commission has subsequently reported its approval to the city council; and

WHEREAS, the approval was made because of the city planning commission's findings that appropriate safeguards will exist to protect the comprehensive plan and to conserve and to protect property values in the neighborhood if conditions are observed.

NOW, THEREFORE, BE IT RESOLVED, that the special use permit granted by Resolution No. 77-217 to allow the operation and maintenance of the dental clinic be amended to eliminate the 40 year expiration date.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

RESOLVED FURTHER, that all other terms and conditions of Resolution No. 77-217 shall remain unchanged.

Resolution 04-0468 was adopted upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Stewart, Stover and President Stauber -- 7

Nays: Councilors Ness and Reinert -- 2

Approved July 26, 2004

HERB W. BERGSON, Mayor

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Resolution 04-0469 failed upon the following vote (Public Document No. 04-0726-15):

Yeas: Councilors Ness and Reinert -- 2

Nays: Councilors Atkins, Gilbert, Johnson, Little, Stewart, Stover and President Stauber -- 7

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Resolution 04-0478 was adopted as follows:

BY COUNCILOR GILBERT:

WHEREAS, Piedmont Heights Dental Associates II has submitted to the city council a request to amend special use permit Resolution No. 77-217, which allowed construction and maintenance of a dental clinic on property described as Lots 2, 3 and 4, Block 3, Grant Park Division (Reference File No. 04054); and said application was duly referred to the city planning commission for a study, report and public hearing; and the city planning commission has subsequently reported its partial approval to the city council in which it recommends the elimination of the 40 year term, but otherwise recommends denial of all other requested changes; and

WHEREAS, 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.

NOW, THEREFORE, BE IT RESOLVED, that the special use permit granted by Resolution No. 77-217 to allow the operation and maintenance of the dental clinic be amended as follows:

(a) To substitute the parking areas described on the drawing by Salo Engineering, Inc., entitled "Proposed Parking Layout for Piedmont Heights Dental," dated March 25, 2004, in place of the parking shown in Public Document No. 66289.

(b) To authorize the construction of a parking area, a low retaining wall and a sidewalk on the Ensign Street side of the applicant's dental building, as also shown on said drawing by DSGW Engineering, Inc.; and

(c) To delete from said existing special use permit the requirement for 20 additional off street parking spaces; and

(d) To delete from said existing special use permit the provision for expiration thereof 40 years from the date of approval by the city council.

RESOLVED FURTHER, that all other terms and conditions of Resolution No. 77-217 shall remain unchanged.

Resolution 04-0478 was adopted upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Stewart, Stover and President Stauber -- 7

Nays: Councilors Ness and Reinert -- 2

Approved July 26, 2004

HERB W. BERGSON, Mayor

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

Yeas: Councilors Ness and Reinert -- 2

Nays: Councilors Atkins, Gilbert, Johnson, Little, Stewart, Stover and President Stauber -- 7

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

BY COUNCILOR NESS:

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 general obligation bonds for the following purposes:

(1) \$4,785,000 general obligation street improvement bonds, Series 2004B, are hereby authorized and shall be issued for the purpose of financing the 2004 street improvement program, including payment of part of the interest cost of such bond issue and expenses incurred in the issuance of the bonds, pursuant to Minnesota Statutes, Chapter 475, and the City Charter; and

(2) \$945,000 general obligation Airpark improvement bonds, Series 2004C, are hereby authorized and shall be issued pursuant to Ordinance No. 9666, adopted June 25, 2004, Minnesota Statutes, Chapter 475, Minnesota Laws 1974, Chapter 130 and the Home Rule Charter of the city for the payment of the construction of streets and utilities in the Airpark Phase II development.

The \$4,785,000 general obligation street improvement bonds, Series 2004B, and the \$945,000 general obligation Airpark improvement bonds, Series 2004C, are hereinafter referred to as the bonds.

(b) Issuance and sale of bonds. The terms and conditions of the bonds and the sales thereof are set forth in the official terms of offerings on file with the city clerk as Public Document No. 04-0726-16. Each and all of the terms and provisions set forth in the official terms of offerings are adopted and confirmed as the terms and conditions of the bonds and the sales thereof, and the city council shall meet at the time and place fixed herein to consider bids for the purchase of the bonds.

(c) Competitive sale of bonds. Public Financial Management, Inc., independent financial advisor to the city, is hereby authorized to provide the notice of the sales 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 subsequent resolutions of this city council.

Resolution 04-0505 was unanimously adopted.

Approved July 26, 2004

HERB W. BERGSON, Mayor

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

BY COUNCILOR NESS:

RESOLVED, that the assessment roll levied to defray the assessable portion of the full development for Hartley Estates III (Contract No. 5356; assessable amount: \$528,563.47) is hereby confirmed.

Resolution 04-0512 was unanimously adopted.

Approved July 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR NESS:

BE IT RESOLVED, that the proper city officials are authorized to execute and implement a collective bargaining agreement between the city of Duluth and Union of Needle Trades, Industrial and Textile Employees Local 150, representing the confidential bargaining unit, containing the same terms and conditions, and being in the same form (except for typographical or insubstantial corrections) as the contract on file with the city clerk as Public Document No. 04-0726-17 covering the year 2003.

Resolution 04-0519 was unanimously adopted.

Approved July 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR NESS:

BE IT RESOLVED, that the proper city officials are authorized to execute and implement a collective bargaining agreement between the city of Duluth and Union of Needle Trades, Industrial and Textile Employees Local 150, representing the confidential bargaining unit, containing the same terms and conditions, and being in the same form (except for typographical or insubstantial corrections) as the contract on file with the city clerk as Public Document No. 04-0726-18, covering the years 2004, 2005 and 2006.

Resolution 04-0520 was unanimously adopted.

Approved July 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR NESS:

BE IT RESOLVED, that the proper city officials are authorized to execute and implement an employment contract with Mark Winson for the position of administrative assistant, which contract is on file with the city clerk as Public Document No. 04-0726-19.

Resolution 04-0522 was unanimously adopted.

Approved July 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR NESS:

RESOLVED, that the monthly salary schedule for assistant city attorneys is hereby established as follows:

Effective January 1, 2004:

<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>
\$3,824	\$4,019	\$4,213	\$4,410	\$4,604
<u>Step 6</u>	<u>Step 7</u>	<u>Step 8</u>	<u>Step 9</u>	<u>Step 10</u>

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

\$4,822	\$5,069	\$5,316	\$5,561	\$5,808
<u>Step 11</u>	<u>Step 12</u>	<u>Step 13</u>	<u>Step 14</u>	<u>Step 15</u>
\$6,084	\$6,398	\$6,712	\$7,028	\$7,340

Effective January 1, 2005:

<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>
\$3,976	\$4,179	\$4,381	\$4,586	\$4,788
<u>Step 6</u>	<u>Step 7</u>	<u>Step 8</u>	<u>Step 9</u>	<u>Step 10</u>
\$5,014	\$5,271	\$5,528	\$5,783	\$6,040
<u>Step 11</u>	<u>Step 12</u>	<u>Step 13</u>	<u>Step 14</u>	<u>Step 15</u>
\$6,327	\$6,6531	\$7,188	\$7,309	\$7,633

Effective January 1, 2006:

<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>
\$4,135	\$4,346	\$4,556	\$4,769	\$4,979
<u>Step 6</u>	<u>Step 7</u>	<u>Step 8</u>	<u>Step 9</u>	<u>Step 10</u>
\$5,214	\$5,481	\$5,749	\$6,014	\$6,281
<u>Step 11</u>	<u>Step 12</u>	<u>Step 13</u>	<u>Step 14</u>	<u>Step 15</u>
\$6,580	\$6,919	\$7,475	\$7,601	\$7,938

An assistant city attorney shall, at the time of his or her initial appointment, be placed at Step 1 of such scale, unless a higher step is recommended by the city attorney. During his or her first two years of service, the attorney shall advance one step in the pay scale every six months until reaching Step 5. Upon written approval of the city attorney, the assistant city attorney shall advance to Step 6, and thereafter shall advance one step in the pay scale upon completion of each additional year of service, up to Step 10. The assistant city attorney shall remain at Step 10 until written approval of the city attorney allows for advancement to Step 11, and thereafter, the assistant city attorney shall advance one step in the pay scale upon completion of each additional year of service, up to Step 15. At any time, the city attorney, with approval of the administrative assistant, may advance an assistant city attorney one step in the pay plan.

RESOLVED FURTHER, that effective January 1, 2004, the monthly salary for the city attorney shall be \$7,868. Effective January 1, 2005, the monthly salary for the city attorney shall be \$8,183. Effective January 1, 2006, the monthly salary for the city attorney shall be \$8,510. Should the city attorney appoint a deputy city attorney or chief prosecutor to carry out administrative duties, that person or person shall receive an additional .5 percent of compensation during each month of such service.

RESOLVED FURTHER, that effective January 1, 2000, the monthly salary for the deputy city attorney shall be Step 15.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

RESOLVED FURTHER, that the city attorney and assistant city attorneys shall be entitled to the same fringe benefits, including, but not limited to, health, deferred compensation, retiree and severance, as the supervisory employees of the city, excluding longevity awards.

RESOLVED FURTHER, that the city shall reimburse the license fee paid by each lawyer in the office of city attorney which is necessary to maintain the lawyer's license.

RESOLVED FURTHER, that the monthly salary schedule for the position of equal opportunity representative is established as follows:

Effective January 1, 2004:

<u>Step A</u>	<u>Step B</u>	<u>Step C</u>	<u>Step D</u>	<u>Step E</u>
\$3,788	\$3,976	\$4,174	\$4,385	\$4,603

Effective January 1, 2005:

<u>Step A</u>	<u>Step B</u>	<u>Step C</u>	<u>Step D</u>	<u>Step E</u>
\$3,940	\$4,135	\$4,341	\$4,560	\$4,787

Effective January 1, 2006:

<u>Step A</u>	<u>Step B</u>	<u>Step C</u>	<u>Step D</u>	<u>Step E</u>
\$4,097	\$4,300	\$4,514	\$4,743	\$4,978

The person employed in this position shall initially be placed at Step A of such schedule, unless placement at a higher step is approved by the mayor, and shall advance one step in the schedule at the beginning of the next pay period after completion of six months service in the position; and shall advance one further step in the schedule at the beginning of the next pay period after completion of each additional 12 months of service in such position.

The equal opportunity representative shall be entitled to the same longevity award and fringe benefits as the supervisory employees of the city.

Resolution 04-0526 was unanimously adopted.

Approved July 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

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

Woodland Fast Pitch Association (Jimmy Herald Memorial Tournament), for July 31 and August 1, 2004, with Brett Klosowski, manager.

Beerhunters Softball Team, Wheeler Field, for August 7 and 8, 2004, with Ron Herung, manager.

Copasetic Softball Team, Wheeler Field, for July 24 and 25, 2004, with Paul King, manager.

Resolution 04-0495 was unanimously adopted.

Approved July 26, 2004

HERB W. BERGSON, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

BY COUNCILOR STEWART:

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 6, 2004, with the music ceasing at midnight and outside serving ceasing at 12:30 a.m.

Rustic Bar, Inc. (Rustic Bar), 401 North Central Avenue, for August 6, 2004, with the music ceasing at midnight and the outside serving ceasing at 12:30 a.m.

Dwayne and Kimberly, Inc. (Kom on Inn), 332 North 57th Avenue West, for August 6, 2004, with the music ceasing at midnight and outside serving ceasing at 12:30 a.m.

Darrell Fredrickson (Horseshoe Billiards), 2415 West Superior Street, for August 21, 2004, with the music and serving ceasing at 11:00 p.m.

Resolution 04-0496 was unanimously adopted.

Approved July 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

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 licenses for the period ending August 31, 2004, subject to departmental approvals, with any specific restrictions:

Legacy Restaurant, Inc. (Duluth Athletic Club Bar & Grill), 21 North Fourth Avenue West.

Just Take Action, Inc. (Fitzgers Brewhouse), 600 East Superior Street, with the restriction that no service or consumption be allowed in the corridor.

Resolution 04-0497 was unanimously adopted.

Approved July 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

WHEREAS, the National Multiple Sclerosis Society - Minnesota Chapter has applied to the Minnesota gambling control board for an off site premise permit; and

WHEREAS, a copy of said application was also filed with the city of Duluth as required by Minnesota Statutes 349.213, Subdivision 2, and was investigated by the Duluth police department and reviewed and approved by the Duluth alcohol, gambling and tobacco commission; and

WHEREAS, the city council approves of the issuance of said license;

NOW, THEREFORE, BY IT RESOLVED, that the Duluth City Council approves of the Minnesota gambling control board issuing an off site premise permit to the National Multiple Sclerosis Society - Minnesota Chapter.

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

Resolution 04-0498 was unanimously adopted.

Approved July 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

BE IT RESOLVED, that the city council of the city of Duluth hereby makes the finding of facts as set forth in Public Document No. 04-0726-20 regarding any suspension, revocation and/or

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

civil penalty relating to the on sale intoxicating liquor license of Wizner Company (Norman's), 113 West First Street.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the Duluth City Council not impose any penalty on Wizner Company (Norman's), 113 West First Street, as a result of failure to pay the third quarter license fee in a timely manner imposed for administrative licensing problems.

Resolution 04-0513 was unanimously adopted.

Approved July 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the proposed amendments to the specifications for the civil service classification of utility service journeyman, which were approved by the civil service board on July 6, 2004, and which are filed with the city clerk as Public Document No. 04-0726-21, are approved. This classification shall remain subject to the city's collective bargaining agreement with its basic unit employees and compensated at Pay Range 28**, \$2,947 to \$3,487 per month.

** The salary for any person so employed shall be determined in accordance with Clause 8, Paragraph 8.7.

Resolution 04-0485 was unanimously adopted.

Approved July 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the proposed amendments to the specifications for the civil service classification of utility serviceperson, which were approved by the civil service board on July 6, 2004, and which are filed with the city clerk as Public Document No. 04-0726-22, are approved. This classification shall remain subject to the city's collective bargaining agreement with its basic unit employees and compensated at Pay Range 25**, \$2,600 to \$3,067 per month.

** The salary for any person so employed shall be determined in accordance with Clause 8, Paragraph 8.7.

Resolution 04-0486 was unanimously adopted.

Approved July 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointments by Mayor Bergson of William Flannagan and Stephanie Leanza-Welch to the commission on disabilities for terms expiring on November 1, 2006, replacing Debra Anderson and Annette Port who resigned, are confirmed.

Resolution 04-0489 was unanimously adopted.

Approved July 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the reappointments by Mayor Bergson of Charles Thompson (at large)

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

and Anthony Yung (at large) to the community development committee for terms expiring on March 1, 2007, are confirmed.

Resolution 04-0490 was unanimously adopted.

Approved July 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointments by Mayor Bergson of John Beyer (supervisory group) and Robin Roeser (police) to the deferred compensation plan commission for terms expiring on December 31, 2006 and 2007, and replacing John Hall and John Beyer, respectively, are confirmed.

Resolution 04-0491 was unanimously adopted.

Approved July 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the reappointments by Mayor Bergson of John Bray and Marsha Signorelli to the Duluth state convention center administrative board, for terms expiring on June 30, 2007, are confirmed.

FURTHER RESOLVED, that the appointment by Mayor Bergson of Mark J. Emmel to the Duluth state convention center administrative board for a term expiring on June 30, 2006, replacing Gary Kelleher, is confirmed.

Resolution 04-0492 was unanimously adopted.

Approved July 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the reappointment by Mayor Bergson of Richard W. Towey (District 3) to the Duluth transit authority for a term expiring on June 30, 2007, is confirmed.

RESOLVED FURTHER, that the appointment by Mayor Bergson of Aaron R. Bransky (District 2) to the Duluth transit authority for a term expiring on June 30, 2007, replacing Frank Messina, is confirmed.

Resolution 04-0493 was unanimously adopted.

Approved July 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointment by Mayor Bergson of Rebecca Pittner (at large) to the environmental advisory council for a term expiring on January 5, 2006, replacing Stanley D. McPeck who resigned, is confirmed.

Resolution 04-0494 was unanimously adopted.

Approved July 26, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the proposed specifications for the new civil service classification of criminal intelligence analyst, which were approved by the civil service board on June 1, 2004, and which are filed with the city clerk as Public Document No. 04-0726-23, are approved; that said

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

classification shall be subject to the city's collective bargaining unit with its basic unit employees; and that pay range for said classification shall be Range 131. The proper city officials are authorized to execute and implement an agreement with the union to provide for employing one or more unit members consistent with this resolution.

Resolution 04-0504 was unanimously adopted.

Approved July 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointment by Mayor Bergson of Virgil Swing (planning commission representative) to the board of zoning appeals for a term expiring on July 31, 2006, replacing John Hinzmann, Jr., is confirmed.

Resolution 04-0506 was unanimously adopted.

Approved July, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointment by Mayor Bergson of Joan J. Morrison (planning commission representative) to the technical design advisory committee for the Downtown Waterfront Mixed Use-Design Review District for a term expiring on May 31, 2007, replacing Karl Wasson, is confirmed.

Resolution 04-0507 was unanimously adopted.

Approved July 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

WHEREAS, a sufficient petition was filed with the city clerk requesting the vacation of an alley between Irwin Avenue and Simonds Avenue, south of Ash Street and north of Godolphin Street in Bay View Heights, Duluth, legally described as the alley between Lots 1-8, Block 58 and Lots 1-13, Block 64, Bay View Addition No. 2; and

WHEREAS, 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

WHEREAS, the city planning commission unanimously approved the alley vacation at its July 13, 2004, meeting (Reference No. 04066).

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation of the alley between Lots 1-8, Block 58 and Lots 1-13, Block 64, Bay View Heights Addition No. 2, and as more particularly described on Public Document No. 04-0726-24.

RESOLVED FURTHER, that the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of St. Louis County, Minnesota, a certified copy of this resolution together with a plat showing the portion of the alley to be vacated.

Resolution 04-0508 was unanimously adopted.

Approved July 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

WHEREAS, David Bell of Freedom Development and Consulting, Inc., has submitted to the

city council a request for a special use permit for a low density planned development on property described as Section 26, Township 49, Range 15, that part of Lot 4 and of NW1/4 of SW1/4 lying north of the Spirit Lake Transfer Railway and east of 93rd Avenue West and Arbor Street, and located at 9320 Grand Avenue (Reference File Nos. 04047 and 04048); and said permit application was duly referred to the city planning commission for a study, report and public hearing and the city planning commission has subsequently reported its recommendation of conditional approval to the city council; and

WHEREAS, the city council finds that the conditions contained in this resolution address the shortcomings identified by the city planning commission's findings of inadequacies in the submitted documents and that with the conditions contained herein, appropriate safeguards will exist to protect the comprehensive plan and to conserve and protect property values in the neighborhood if said conditions are observed.

NOW, THEREFORE, BE IT RESOLVED, that a special use permit is hereby granted to David Bell of Freedom Development and Consulting, Inc., to allow the operation of a low density planned development, consisting of 45 residential units on 20.4 acres of property located at 9320 Grand Avenue, lying south of Hulett Avenue, east of Grand Avenue and 93rd Avenue West, north of Arbor Street and west of the St. Louis River, on the condition that the project be developed consistent with the plans entitled Westwood Heights, as submitted by RHA Architects, Inc., and as identified as Public Document No. 04-0726-25 and subject to the following terms and conditions:

(a) That prior to the issuance of any construction permits the following must be approved in writing by the secretary of the planning commission:

(1) A landscaping and planting schedule;

(2) A complete delineation of wetlands submitted to the department of planning and development for review and recommendation with the final result being compliance with Chapter 51 of the City Code and the Wetland Conservation Act;

(b) That prior to the issuance of any construction permits the following must be approved in writing by the city engineer:

(1) A stormwater management plan;

(2) Street design plans;

(c) That prior to the issuance of any construction permits the following must be approved in writing by the city fire marshal:

(1) Placement of fire hydrants;

(2) Fire lane/firefighting access to all structures;

(d) That prior to the issuance of any construction permits the necessary Minnesota pollution control agency permits must be secured.

Resolution 04-0511 was unanimously adopted.

Approved July 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

WHEREAS, the city of Duluth established certain 2001 and 2003 CDBG accounts; and

WHEREAS, the community development committee(CD committee) for the CDBG program established the following CDBG programs;

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are authorized to make the following fund transfers in the Federal Program Fund 262 - 2001 and 2003 HUD-funded community development accounts as set forth below.

BE IT FURTHER RESOLVED, that the DTA (Duluth transit authority) will reimburse the city

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

for \$2,500 that will be receipted to the following revenue source: Fund 0262, Agency 020, Organization 2600, Revenue Source 4702.

2001 CDBG Transfers

Project #	Project	Budget amount	New amount	Amount of increase or decrease
6414	Harrison Community Center	\$67,000	\$81,518	\$14,518

2003 CDBG Transfers

Project #	Project	Budget amount	New amount	Amount of increase or decrease
6603	AEOA weatherization	\$153,000	\$152,956	(\$ 44)
6610	88th Avenue West lighting	\$176,800	\$168,311	(\$8,489)
6611	Morgan Park sidewalk safety	\$ 9,500	\$ 7,906	(\$1,594)
6612	Ramsey street improvements	\$110,600	\$108,709	(\$1,891)
4702	Revenue source	\$ 2,500	-0-	(\$2,500)

Resolution 04-0516 was unanimously adopted.
 Approved July 26, 2004
 HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

WHEREAS, it appears that it may be necessary to construct 400 feet of sanitary sewer in Trinity Road beginning 1,050 feet east of Mall Drive and extending southerly and easterly.

NOW, THEREFORE, BE IT RESOLVED, that it is the intent of the city council to cause this improvement to be made, provided that further information demonstrated that the improvement should be made.

BE IT FURTHER RESOLVED, that to aid the council in determining whether or not to finally order in said project, the mayor shall cause to be prepared plans and specifications for said project and will further direct procedures prescribed by Section 62 of the Charter.

Resolution 04-0500 was unanimously adopted.
 Approved July 26, 2004
 HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

WHEREAS, Menard, Inc., previously undertook and completed a project to redevelop the existing Menard's retail store in West Duluth; and

WHEREAS, a portion of the redevelopment involved various improvements or modifications to existing public infrastructure - including the reconstruction of and improvements to a segment

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

of Elinor Street, the construction of a drainage ditch benefitting city-owned property and the relocation of an existing gas main; and

WHEREAS, city staff and Menards agreed that the most efficient method of accomplishing the necessary public street and drainage improvements would be for Menards to include this work as part of their project and for the city to agree to reimburse Menard's for the public share of the cost of this work; and

WHEREAS, city staff and Menard's also agreed that the most efficient method of accomplishing the necessary public gas system improvements would be for the city to complete this work and for Menard's to agree to reimburse the city for the cost of this work;

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are hereby authorized to pay Menard, Inc., the sum of \$17,500 for the balance of the city's share of public infrastructure improvement costs, to be paid from the Stormwater Fund 0535, Department/Agency 500, Organization 1905, Object 5535.

Resolution 04-0518 was unanimously adopted.

Approved July 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Northland Constructors of Duluth, LLC, be and hereby is awarded a contract for the street construction of Superior Street from Michigan Street to Piedmont Avenue and Piedmont Avenue from Superior Street to First Street for the engineering division in accordance with specifications on its low specification bid of \$502,613.68, terms net 30, FOB job site, payable out of Permanent Improvement Fund 0411, Department/Agency 035, Organization 2198, Object 5530.

Resolution 04-0521 was unanimously adopted.

Approved July 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Shel/Don Reproduction Center, be and hereby is awarded a contract for one copier/scanner/printer system for the engineering division in accordance with specifications on its low specification bid of \$34,490.03, terms net 30, FOB destination, \$8,622.51 payable out of Water Fund 0510, Department/Agency 500, Organization 1905, Object 5580; \$8,622.51 payable out of Gas Fund 0520, Department/Agency 500, Organization 1905, Object 5580; \$8,622.51 payable out of Sewer Fund 0530, Department/Agency 500, Organization 1905, Object 5580 and \$8,622.50 payable out of Stormwater Utility Fund 0535, Department/Agency 500, Organization 1905, Object 5580.

Resolution 04-0525 was unanimously adopted.

Approved July 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

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 and 57th Avenue West between Grand Avenue and Central Avenue on August 6, 2004, 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.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

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 04-0499 was unanimously adopted.

Approved July 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

RESOLVED, that in accordance with the provisions of Section 33-88.2 of the Duluth City Code, 1959, as amended, the following handicapped parking zone is hereby established: 2959 Devonshire Street.

Resolution 04-0517 was unanimously adopted.

Approved July 26, 2004

HERB W. BERGSON, Mayor

- - -

The following resolutions were also considered:

Resolution 04-0532, by Councilor Ness, in support of the immediate release of Mamun Al-Humsi, was introduced for discussion.

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

Dave Stamps, representing Amnesty International, reviewed the background, history and mission of the organization.

Auburn Powell, representing the local chapter of Amnesty International, reviewed the history and background of the particular case that the resolution addresses.

Councilors Atkins, Little and President Stauber expressed concerns relative to the resolution as: this resolution requests a release of a prisoner and is only one side of the issue; this issue is beyond what the city council should be involved in; it would be diplomatically better to pass a resolution supporting the efforts of Amnesty International to release this prisoner and send it to our congressional delegation; this issue is not included in the mission of the Duluth City Council and foreign diplomats should be handling this.

Councilor Stewart moved to amend the resolution to add the following paragraph at the end of the resolution:

"RESOLVED FURTHER, that the clerk shall provide a copy of this resolution to Congressman Oberstar, Minnesota's two senators, the president, minister of health, prime minister and minister of justice of the Syrian Arab Republic,"

which motion was seconded and unanimously carried.

Resolution 04-0532, as amended, was adopted as follows:

BY COUNCILOR NESS:

WHEREAS, Mamun al-Humsi was a member of the People's Assembly, Syria's legislative body, during which he called for an independent parliamentary human rights committee to be set up at the People's Assembly; and

WHEREAS, Mamun al-Humsi was arrested by a large force of armed police in his legislative office in August of 2001; and

WHEREAS, Mamun al-Humsi was arrested in response to the high visibility of his peaceful public activities; and

WHEREAS, Mamun al-Humsi's legislative immunity was lifted without following procedures required by Syrian law; and

WHEREAS, Mamun al-Humsi was charged with offenses including illegally attempting to change the Constitution and disrupting national unity; and

WHEREAS, Mamun al-Humsi's trial was reportedly rife with irregularities including no

access to his lawyers and failure of the court to provide a statement of charges; and

WHEREAS, prison conditions in Syria are notoriously harsh and hard labor is the norm; and

WHEREAS, Mamun al-Humsi has diabetes and has been denied the special medical attention he needs; and

WHEREAS, Amnesty International considers Mamun al-Humsi to be a prisoner of conscience.

NOW, THEREFORE, BE IT RESOLVED, that the Duluth City Council:

(a) Expresses solidarity and support for Mr. Mamun al-Humsi;

(b) Strongly condemns the Syrian government for the imprisonment of Mr. Mamun al-Humsi;

(c) Requests the Syrian government to allow Mr. Mamun al-Humsi access to humanitarian assistance, including medical and legal assistance;

(d) Requests the Syrian government immediately release Mr. Mamun al-Humsi.

RESOLVED FURTHER, that the clerk shall provide a copy of this resolution to Congressman Oberstar, Minnesota's two senators, the president, minister of health, prime minister and minister of justice of the Syrian Arab Republic.

Resolution 04-0532, as amended, was adopted upon the following vote:

Yeas: Councilors Johnson, Ness, Reinert, Stewart and Stover -- 5

Nays: Councilors Atkins, Gilbert, Little and President Stauber -- 4

Approved July 26, 2004

HERB W. BERGSON, Mayor

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Resolution 04-0510, by Councilor Gilbert, vacating the alley between Blocks 7 and 8 of Hunters Grassy Point Addition, Third Division (Koski/WKK, Inc.), was introduced for discussion.

Councilor Reinert moved to table the resolution until the next meeting when a companion ordinance is considered, which motion was seconded and unanimously carried.

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Resolution 04-0514, by Councilor Gilbert, denying a rezoning petition to provide for reclassification from R-1-b, one-family residential district, to R-3, apartment residential district, property located at 2839 and 2843 Piedmont Avenue, 2531 and 2535 Nanticoke Street and 15 Rindahl Lane, was introduced for discussion.

Councilor Gilbert moved to suspend the rules to consider Ordinance 04-046 at this time, which motion was seconded and unanimously carried.

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INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinance was read for the first time:

BY COUNCILOR GILBERT

04-046 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NO. 19 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-B, ONE FAMILY RESIDENTIAL DISTRICT, TO R-3, APARTMENT RESIDENTIAL DISTRICT, PROPERTY LOCATED AT 2839 AND 2843 PIEDMONT AVENUE, 2531 AND 2535 NANTICOKE STREET AND 15 RINDAHL LANE (KALL AND ROGERS).

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

K.L. Lewis suggested that only small multiple units, such as duplexes and four-plexes, with off street parking be allowed so the neighborhood would be maintained.

Walter Zeleznikar, Randy Cook, Deb LaFave, John Miltakis, Dan Nelson and Darrel Nelson opposed the rezoning on Nanticoke Street for reasons of: families built their homes there because

it is zoned for single family dwellings; the purpose of zoning is to protect residents; over 60 residents oppose this rezoning; the sewer system is old and there have been numerous sewer backups; Lake Superior College is over a mile away and there is plenty of room there for this kind of development; the planning commission determined that this is inappropriate for the neighborhood; there are a lot of children in this area and with this development the traffic will only get worse; this will disturb the entire dynamics of the neighborhood with a new road being put in and this parcel is located between Piedmont Avenue and Decker Road, so all the traffic will end up on Nanticoke Street, which has no sidewalks and is residential.

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

Yeas: Councilors Atkins, Gilbert, Johnson, Ness, Reinert, Stewart, Stover and President Stauber -- 8

Nays: Councilor Little -- 1

- - -

Resolution 04-0515, by Councilor Gilbert, denying a rezoning petition to reclassify from R-2, two-family residential district, to R-3, apartment residential district, property located at the southeast corner of 69th Avenue West and Sherburne Street, was introduced for discussion.

Councilor Reinert moved to table the resolution until the next meeting when a companion ordinance is considered, which motion was seconded and unanimously carried.

- - -

BY PRESIDENT STAUBER:

BE IT RESOLVED, that revenue realized by the city from the sale of the Ten Commandments artifact that formerly resided on city property shall be deposited in the "600 for Kids" fund (Special Project Fund 0210, Organization 2111) and used to enhance current activities financed by that fund, which is in the parks and recreation department, or continue them for a longer period of time.

Resolution 04-0531 was unanimously adopted.

Approved July 26, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

WHEREAS, communities across the United States have designated August 3, 2004, as a *National Night Out* to celebrate community and neighborhood awareness and unity; and

WHEREAS, 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; and

WHEREAS, the Duluth City Council wishes to express its support for the *National Night Out* and the goals and purposes behind it;

NOW, THEREFORE, BE IT RESOLVED, that the Duluth City Council hereby expresses its support for a *National Night Out* on August 3, 2004, 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 04-0524 was unanimously adopted.

Approved July 26, 2004

HERB W. BERGSON, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinance was read for the first time:

BY COUNCILOR GILBERT

04-045 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NO. 12 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO RECLASSIFY FROM R-2, TWO-FAMILY RESIDENTIAL DISTRICT, TO R-3, APARTMENT RESIDENTIAL DISTRICT, PROPERTY LOCATED AT THE SOUTHEAST CORNER OF 69TH AVENUE WEST AND SHERBURNE STREET (KOSKI/WKK, INC.).

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The meeting was adjourned at 8:45 p.m.

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 9681

BY COUNCILOR GILBERT:

AN ORDINANCE GRANTING TO PIEDMONT HEIGHTS DENTAL ASSOCIATES II A CONCURRENT USE PERMIT TO CONSTRUCT AND MAINTAIN PARKING SPACES FOR PRIVATE USE IN THE ENSIGN STREET PUBLIC RIGHT-OF-WAY (PIEDMONT HEIGHTS DENTAL ASSOCIATES II, C/O GW HARRIS).

The city of Duluth does ordain:

Section 1. Under the authority of Section 100 of the 1912 Home Rule Charter of the city of Duluth, as amended, and subject to the conditions, limitations and restrictions hereinafter set forth, permission is hereby granted to Piedmont Heights Dental Associates II, their successors and interests, referred to herein as the permittees, to occupy, construct and maintain ten private diagonal parking spaces in the south 11 feet of the Ensign Street right-of-way as the same was dedicated to the use of the public and the plat of Grant Park Division, Duluth, Minnesota, on file and of record in the office of the register of deeds in and for St. Louis County, Minnesota, described as follows:

that part of Ensign Street adjoining Lots 2, 3 and 4, Block 3, Grant Park Division, described as follows: beginning at the northeast corner of said Lot 2, thence west along the south line of Ensign Street 30 feet to the point of beginning; thence continuing west along the south line of Ensign Street 130 feet, thence north on a line perpendicular to said south line of Ensign Street 11 feet; thence east on a line parallel to the south line of Ensign 130 feet; thence south on a line perpendicular to the south line of Ensign Street 11 feet to the point of beginning (Reference File No. 04053).

Section 2. That before this ordinance shall be effective for any purpose whatsoever, the aforesaid permittees shall file with the city clerk: a duly executed and acknowledged written acceptance of the terms of this ordinance; a certificate of insurance approved as to form by the city attorney evidencing that such person or organization has in force insurance in the minimum amounts of \$1,000,000 for bodily injury or property damage in any one year protecting such person or organization and the city of Duluth against liability for injuries or damages resulting from the placement of such objects or materials on or under public street, sidewalks, boulevard areas or rights-of-way. The permission granted by such ordinance shall be conditioned upon such person or organization continuing to supply the city with evidence that such insurance remains in effect and all insurance required herein shall contain a provision that no policy may be canceled until ten days after written notice is given to the city clerk. Such policy shall name the city as an additional insured; and shall agree to pay the cost of publishing this ordinance and a recording of

a certified copy thereof at the registrar of titles of St. Louis County, Minnesota.

Section 3. That said permit granted under this ordinance may be terminated at any time when and if the city of Duluth determines to use the area occupied by said permittees for any purpose in accordance with the duly dedicated public easement or other lawful use. Giving the permittees six months written notice by resolution of the council of the city of Duluth to the last known address of the permittees shall be sufficient notice of termination.

Section 4. That upon the giving of the notice of termination as aforesaid, the permittees shall remove said parking spaces and all fixtures and appurtenances of every kind whatsoever attached thereto from the tract of land described above within said six months, all at the expense and cost of the permittees and without right on the part of the permittees to claim from the city of Duluth, or any of its officers, agents or servants, any compensation, reimbursement for damages of any kind whatsoever.

Section 5. That by the acceptance of the terms of this ordinance as aforesaid, the permittees hereby agree to save harmless and defend and indemnify the city of Duluth against any claims or demand which may arise against the city of Duluth by reason of any act or omission of the permittees, and agree that such parking spaces shall be so constructed and at all times maintained so as in no way to interfere with or damage any sewer, water mains, gas mains, pipes, conduits or other public utilities now or to be hereinafter located in any part of said Ensign Street right-of-way and agree that the city of Duluth shall not be liable for damage caused to such parking spaces while the city is engaged in making repairs to public utilities provided that the city exercises reasonable care to avoid such damage, and agree to pay to the city of Duluth all extra costs of installation of any such sewers, gas mains, water mains, pipes, conduits or other public utilities made necessary by the presence of such parking spaces in said Ensign Street right-of-way.

Section 6. The permittee shall, at its expense, protect, support, temporarily disconnect, relocate in the same street, alley or public place, or remove from the street, alley or public place, any property of the grantee when required by the city engineer by reason of 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 or the installation or repair of any other type of structures or improvements by governmental agencies, when action in a governmental or proprietary capacity;

Section 7. The permittee shall further observe the following conditions:

- (a) That all city codes will be observed in the construction of said parking areas;
 - (b) The type and location of the improvements shall be limited to and maintained in accordance with the site plan submitted and dated 03/25/04 and on record as Public Document No. 04-0726-26;
 - (c) The permittee shall maintain all parking area (surfacing, sealing, striping, plowing, etc.) being created and permitted by this ordinance;
 - (d) The permittee shall provide screening in the form of landscape planting or an enclosure for dumpsters being maintained in the public right-of-way;
 - (e) The permittee shall not prohibit "public" use of the spaces being created within the right-of-way;
 - (f) Prior to the effective date of this ordinance, the permittee shall provide a landscape planting plan and schedule, to be approved in writing by the secretary of the planning commission.
- Section 8. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: August 29, 2004)

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Stewart, Stover and President Stauber -- 7

Nays: Councilors Ness and Reinert -- 2

ATTEST:
JEFFREY J. COX, City Clerk

Passed July 26, 2004
Approved July 26, 2004
HERB W. BERGSON, Mayor

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, August 9, 2004, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Atkins, Gilbert, Johnson, Little, Reinert, Stewart, Stover and President Stauber -- 8

Absent: Councilor Ness -- 1

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The minutes of the city council meetings held on June 14 and 28, 2004, were unanimously approved.

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

04-0809-01 Duluth Teachers Credit Union, et al., submitting petitions to:

(a) Reclassify (13 signatures) from R-1-c to C-1 Lots 1 through 7 and northerly 11 feet of Lot 8, Block 1 and Lots 1 through 6, Block 2, Myers and Whipples Addition to Duluth;

(b) Vacate (three signatures) the alley way approximately 16 feet wide by 125 feet long running between Lots 1 through 4 and northerly 20 feet of Lot 5, Block 1, and Lot 1, Block 2, Myers and Whipples Addition to Duluth. -- Assessor

04-0809-02 Housing and redevelopment authority of Duluth, by Daniel D. Maddy, attorney, submitting petition to vacate streets, avenues and alleys in Crosley Park Addition to Duluth for Hawk Ridge Estates plat. -- Assessor

04-0809-03 Overman Company Realtors, Inc., et al. (five signatures) submitting petition to reclassify from R-3 to R-4, property described as Lots 9 through 16, Block 77, Endion Division of Duluth. -- Assessor

04-0809-12 Eric Dings submitting communication regarding the termination of the Duluth economic development authority (04-0558R); and the extension of a contract for Sinex Aviation Technologies (04-0541R). -- Received

04-0809-04 The following submitting communications regarding a request to reclassify from R-2 to R-3 properties located at 2839 and 2843 Piedmont Avenue, 2531 and 2535 Nanticoke Street and 15 Rindahl Lane (04-0514R and 04-046-O): (a) Amanda Burcar; (b) Robert and Margaret Hann and John and Lorraine Wisniewski; (c) Lois Hanson; (d) Deb LaFave; (e) Carmelle La Tour; (f) Mary Jo Sebok. -- Received

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REPORTS OF OFFICERS

04-0809-05 Assessor submitting letters of sufficiency of petitions to:

(a) Establish the Downtown Waterfront Special Service District which boundaries include Mesaba Avenue and Bayfront Park to the west, Second Street to the north, Tenth Avenue East to the east and Lake Superior and the Duluth-Superior Harbor to the south;

(b) Improve Butternut Avenue from Hickory Street to cul-de-sac and utility extension on Butternut Avenue from Como Avenue northerly to cul-de-sac and two inch P.E. high pressure gas mains serving Butternut Avenue;

(c) Reclassify from R-1-c to C-1 Lots 1 through 7 and northerly 11 feet of Lot 8, Block 1 and Lots 1 through 6, Block 2, Myers and Whipples Addition to Duluth;

(d) Vacate the:

(1) Alley way approximately 16 feet wide by 125 feet long running between Lots 1 through 4 and northerly 20 feet of Lot 5, Block 1, and Lot 1, Block 2, Myers and Whipples Addition to Duluth;

(2) Portion of 27th Avenue South between Minnesota Avenue and St. Louis Harbor adjacent to 2635 and 2701 Minnesota Avenue;

(3) Portion of Venture Circle in Rearrangement of part of Airpark Division;

(4) 16 feet wide alley adjoining Blocks 27, 28 and 29, Bay View Addition to Duluth No. 1. -- Received

04-0809-06 Parks and recreation department director submitting Lake Superior zoological society minutes of July 21, 2004, meeting. -- Received

04-0809-13 Public works and utilities department director submitting public works and utilities department 2003 annual report. -- Received

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REPORTS OF BOARDS AND COMMISSIONS

04-0809-07 Duluth airport authority: (a) Minutes of: (1) June 15; (2) June 29, 2004, meetings; (b) Unaudited balance sheet for month ended May 31, 2004. -- Received

04-0809-08 Duluth/North Shore Sanitary District board minutes of July 13, 2004, meeting. -- Received

04-0809-09 Duluth state convention center administrative board minutes of June 29, 2004, meeting. -- Received

04-0809-10 Seaway Port authority of Duluth submitting tax increment financing district report for Rice's Point for year ending December 31, 2003. -- Received

04-0809-11 Special assessment board minutes of June 8, 2004, meeting. -- Received

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OPPORTUNITY FOR CITIZENS TO BE HEARD

Garry Krause spoke regarding the lack of notification to the neighborhood planning districts of issues being presented to the planning commission that will directly impact the specific neighborhoods.

- - -

Peggy Marrin stated that an adolescent recovery group, which has been meeting every night for the past several years, has been told by the city that its meeting place will no longer be furnished at no cost. She requested that the charging of this fee for this group be waived as the people in the group and the community as a whole benefits from the provision of this group.

Ms. Marrin questioned what expenses of the sister city commission are paid for by the city of Duluth and criticized the funding of trips by the commission made by elected officials.

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KL Lewis spoke regarding the problems incurred by others when new construction is allowed on property designated as wetlands. She encouraged the council to prohibit such construction until all problems related to sewer backup, flooding and erosion caused by the construction no longer exist.

- - -

RESOLUTIONS TABLED

Councilor Gilbert moved to remove Resolution 04-0434, approving the city of Duluth tax abatement financing policy for housing developments, from the table, which motion was seconded and unanimously carried.

Councilor Stewart stated that he will not support this resolution because this is another tax give away program which the city, with all its financial problems, cannot afford. He suggested that the best incentive the city can do is to promote housing and economic development and provide good police and fire services and basic services such as road maintenance, etc., at an efficient cost. Councilor Stewart noted existing business subsidy agreements the city has with companies which now say they are unable to honor their agreements to repay the city, which causes Duluth

taxpayers to be the losers. He also stated that the county does not participate in these subsidies, it is not right that Duluth taxpayers carry a disproportionate share of the county's budget problem and it is bad policy for the city to tell taxpayers that property taxes are going up and then telling developers that they do not have to pay theirs.

Councilor Atkins stated that he does not like tax give away programs such as tax increment financing districts and tax abatement programs and challenged the administration to come up with alternative ways to stimulate economic and housing developments within the city without their use.

Councilor Johnson reminded the council of its nonsupport to elevate the wages for the workers of companies in the JOBZ program so that they could qualify for the affordable housing that this program proposes. She noted financial problems the city has in providing basic services and stated she will not support the resolution.

President Stauber stated he will support the resolution because it will be one more option the council will have when developers come to the council with proposals.

Resolution 04-0434 failed upon the following vote (Public Document No. 04-0809-15):

Yeas: Councilors Atkins, Gilbert, Little and President Stauber -- 4

Nays: Councilors Johnson, Reinert, Stewart and Stover -- 4

Absent: Councilor Ness -- 1

- - -

Councilor Gilbert moved to remove Resolution 04-0510, vacating the alley between Blocks 7 and 8 of Hunters Grassy Point Addition, Third Division (Koski/WKK, Inc.); and Resolution 04-0515, denying a rezoning petition to reclassify from R-2, two-family residential district, to R-3, apartment residential district, property located at the southeast corner of 69th Avenue West and Sherburne Street (Koski/WKK, Inc.), from the table, which motion was seconded and unanimously carried.

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinance was read for the second time:

BY COUNCILOR GILBERT

04-045 (9682) - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NO. 12, AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO RECLASSIFY FROM R-2, TWO-FAMILY RESIDENTIAL DISTRICT, TO R-3, APARTMENT RESIDENTIAL DISTRICT, PROPERTY LOCATED AT THE SOUTHEAST CORNER OF 69TH AVENUE WEST AND SHERBURNE STREET (KOSKI/WKK, INC.).

- - -

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

- - -

Councilor Stewart noted that he will support this proposal because the planning commission was not unanimous when it turned this request down and the property adjacent to the proposed property to be reclassified is already zoned for a higher density housing. He stated that even though no one knows exactly what is being proposed for the property, it will have to be some kind of housing because it will have to conform to the zoning in the area, which is housing.

Councilor Gilbert noted that he cannot support any of the resolutions or the ordinance because there is uncertainty as to what the developer is going to do with the property once it is reclassified.

Responding to councilors, Jim Mohn, planning and economic development department staff, stated that he did not know why the planning commission turned this request down other than the fact that Mr. Koski did not appear at the commission hearing when it came up. He further

stated that it is his understanding that Mr. Koski has purchased all of the property that is contained in the triangular block in order to unify the property for development purposes in accordance with an R-3 district, which allows apartments. Mr. Mohn continued by saying that Mr. Koski is also seeking to vacate the alley, which will increase the buildable area of the combined properties and reclassifying the property across the alley unifies the block.

Councilor Reinert stated that previous proposals for this property have not gone forward because of various zoning issues and that uniformly rezoning this property will assist in getting some kind of development started.

Resolution 04-0510 was adopted as follows:

BY COUNCILOR GILBERT:

WHEREAS, a sufficient petition was filed with the city clerk requesting the vacation of the alley described as the alley between Blocks 7 and 8, Hunters Grassy Point Addition, Third Division; and

WHEREAS, 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

WHEREAS, the city planning commission approved by a unanimous vote the vacation petition at its July 13, 2004, meeting (Reference File No. 04060).

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation of the alley between Blocks 7 and 8 of Hunters Grassy Point Addition, Third Division, and as more particularly described on Public Document No. 04-0809-16.

RESOLVED FURTHER, that the city clerk is hereby directed to record, with the register of deeds and/or registrar of titles of St. Louis County, Minnesota, a certified copy of this resolution together with a plat showing the portion of the alley to be vacated.

Resolution 04-0510 was adopted upon the following vote:

Yeas: Councilors Atkins, Johnson, Little, Reinert, Stewart, Stover and President Stauber -- 7

Nays: Councilor Gilbert -- 1

Absent: Councilor Ness -- 1

Approved August 9, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0515 failed upon the following vote (Public Document No. 04-0809-30):

Yeas: Councilors Gilbert and Little -- 2

Nays: Councilors Atkins, Johnson, Reinert, Stewart, Stover and President Stauber -- 6

Absent: Councilor Ness -- 1

- - -

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

Yeas: Councilors Atkins, Johnson, Reinert, Stewart, Stover and President Stauber -- 6

Nays: Councilors Gilbert and Little -- 2

Absent: Councilor Ness -- 1

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At this time, 7:30 p.m., President Stauber recessed the council meeting and announced that the public hearing regarding amendment of a Minnesota investment fund agreement for Northstar Aerospace (04-0537R) would begin.

Heidi Timm-Bujold, planning and economic development department staff, reviewed the

original agreement with Northstar Aerospace and added that the company is requesting a one year extension of the agreement in order to create four more positions which then will total 30 new positions and pay more wages than what the agreement requires to fulfill the terms of the agreement. She stated that the state of Minnesota has agreed to extend for one year the city's repayment of the grant agreement with regard to this project to allow Northstar a one year extension to repay it's grant to the city with the council's approval

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At this time, 7:35 p.m., President Stauber closed the public hearing and announced that the public hearing regarding amendment of a development agreement with Sinex Aviation Technologies (04-0541R) would begin.

- - -

Ms. Timm-Bujold reviewed the history of the grant/loan agreement with Sinex Aviation Technologies which was extended for one year a year ago by the city council. She stated that on March 1, 2004, Sinex Aviation Technologies had a total employment of 50, which is a net gain of 22, with an average wage of those hires being more than what the agreement requires per hour. Ms. Timm-Bujold stated that the company is still committed to the original number of jobs at the same wage level, but feels more time is needed and the proposal they have submitted is reflected in the amendment included in Resolution 04-0541, and by June 30, 2006, they will have successfully created the 75 positions. She noted that the terms of the proposal are that the payback clause as of June 30, 2006, remains, so if they fall short, they would pay back a partial amount and the job retention period would remain in place.

David Steininger, chief financial officer of Sinex Aviation Technologies, reviewed the status of the company, the reasons for the slow start up and why the company feels confident that it can fulfill the goal that it is proposing to the council for approval.

Responding to Councilor Reinert, Mr. Steininger stated that because of strong economic signs in the airline industry, the company feels it is on the path to recovery from its losses since 9/11, and because Sinex is responding with strategic and tactical shifts in how it approaches the market place, the company is confident it will reach it's goal of 75 new positions by the new deadline being established and will not have to ask for another extension in time next year.

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At this time, 7:50 p.m., President Stauber closed the public hearing and the regular order of business was resumed.

- - -

Councilor Stewart moved to consider Resolution 04-0537 and 04-0541 at this time, which motion was seconded and unanimously carried.

Resolution 04-0537, amending the Minnesota investment fund (MIF) agreement with the state of Minnesota and amending the MIF subagreement with Northstar Machine and Tool, Inc., d.b.a. Northstar Aerospace (Northstar) increasing the time for job creation and maintenance; and Resolution 04-0541 authorizing an amendment to the development agreement with Sinex Aviation Technologies, by Councilor Gilbert, were introduced for discussion.

Resolution 04-0537 was adopted as follows:

BY COUNCILOR GILBERT:

RESOLVED, that the proper city officials are hereby authorized to enter into an amendment to the MIF agreement with the state of Minnesota increasing by one year the time within which Northstar must create 30 jobs and maintain said jobs.

FURTHER RESOLVED, that the proper city officials are hereby authorized to enter into an amendment substantially in the form of that on file in the office of the city clerk as Public Document No. 04-0809-27 to the MIF agreement with Northstar increasing by one year the time within which

Northstar must create 30 jobs and maintain said jobs.

Resolution 04-0537 was unanimously adopted.

Approved August 9, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0541 was adopted as follows:

BY COUNCILOR GILBERT:

RESOLVED, that the proper city officials are hereby authorized to enter into an amendment substantially in the form of that on file in the office of the city clerk as Public Document No. 04-0809-28 to the development agreement with Sinex Aviation Technologies (Sinex) increasing the time for job creation and maintenance.

Resolution 04-0541 was unanimously adopted.

Approved August 9, 2004

HERB W. BERGSON, Mayor

- - -

Councilor Gilbert moved to remove Resolution 04-0514, denying a rezoning petition to provide for the reclassification from R-1-b, one family residential district, to R-3, apartment residential district, property located at 2839 and 2843 Piedmont Avenue, 2531 and 2535 Nanticoke Street and 15 Rindahl Lane (Kall and Rogers), from the table, which motion was seconded and unanimously carried.

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinance was read for the second time:

BY COUNCILOR GILBERT

04-046 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NO. 19 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-B, ONE FAMILY RESIDENTIAL DISTRICT, TO R-3, APARTMENT RESIDENTIAL DISTRICT, PROPERTY LOCATED AT 2839 AND 2843 PIEDMONT AVENUE, 2531 AND 2535 NANTICOKE STREET AND 15 RINDAHL LANE (KALL AND ROGERS).

- - -

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

- - -

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

The following supported resolution and opposed the ordinance: Randy Cooke, Kelly Lapcinski, Kerry Lapcinski, Walter Zeleznikar, Deb LaFave, Mary Jo Sebok, Bill Dunleavy, Darrel Nelson and Dan Nelson. Reasons stated in opposition of the rezoning were as follows: this is a quiet one-family residential neighborhood and residents are entitled to the protection of the rezoning laws under which their homes were purchased; the current zoning prohibits this kind of development; Nanticoke Street is narrow with no sidewalks close to a school used by young children and additional traffic due to potential multi-housing units would be unsafe; the planning commission unanimously rejected the request to reclassify to R-3; reclassification of this property was rejected a number of years ago on the basis of an inadequate sewer system which has not changed; the property to be reclassified is low land and there are environmental and water runoff issues; Mr. Kall, who is one of the petitioners, knowingly purchased a building illegally constructed as a triplex in the first place and agreed to the stipulation at the time of purchase to use it only as a duplex, does not have the right to change the neighborhood to make the triplex legal over the

unanimous objections of the residents; the city may need more affordable housing, but not at the expense of an already existing quiet, affordable neighborhood; there is value to the city in keeping this neighborhood zoned as it is; any large multi-unit facility would create financial and safety issues for neighborhood day care facilities; property values will decrease; green space will be lost and elderly homeowners are concerned about the value of their homes because for many that is all that they have for their future financial stability.

Councilor Gilbert stated he would not support this reclassification because it is similar to the previous request that the council just acted on in that it is a small, random, arbitrary zoning of certain districts; the council needs to get back to the comprehensive plan to determine if this is the type of housing that is desired for this particular area; if the council is going to reclassify small areas, then it needs to have some control over the project and, other than speculating that the developer will make a lot of money by selling the property to another developer, Mr. Kall has not stated to the council what he plans to do with the land once it is reclassified.

Councilors Reinert, Stover, Atkins and Stewart supported denial of this rezoning and agreed that the city needs to go forward with its comprehensive plan to update the zoning so that neighborhoods and homeowners and buyers can feel comfortable with what the future zoning holds for their specific neighborhoods; this property is different than the previous issue considered by the council in that there is no R-2 or R-3 zoning or a busy thoroughfare adjacent to it; by reclassifying this property, the council is rewarding someone who ignored the zoning law and went ahead and converted this structure into a triplex without following the proper process and this is an old single family zoned area and zoning it to potentially allow multi-unit housing is out of character with the neighborhood and does not fit.

Resolution 04-0514 was adopted as follows:

BY COUNCILOR GILBERT:

WHEREAS, Joseph Kall and others have submitted to the city council a petition to rezone property located south of Piedmont Avenue and northwest of Nanticoke Street, 400-650 feet west of the intersection of Piedmont Avenue and Nanticoke Street; and said petition was duly referred to the city planning commission for a study, report and public hearing and the city planning commission has subsequently reported its recommendation of denial to the city council; and

WHEREAS, the recommendation of denial was made because of the city planning commission's findings that the requested rezoning classification is inappropriate to protect the comprehensive plan and to conserve and to protect property values in the neighborhood.

NOW, THEREFORE, BE IT RESOLVED, that the petition to rezone the subject property to allow for a change from R-1-b, one family residential, to R-3, apartment residential, zoning is denied based on the following finding:

this is an inappropriate intrusion of high density multi family zoning in an established single family neighborhood.

Resolution 04-0514 was unanimously adopted.

Approved August 9, 2004

HERB W. BERGSON, Mayor

- - -

Councilor Gilbert moved passage of the ordinance and the same failed upon the following vote (Public Document No. 04-0809-14):

Yeas: None -- 0

Nays: Councilors Atkins, Gilbert, Johnson, Little, Reinert, Stewart, Stover and President Stauber -- 8

Absent: Councilor Ness -- 1

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

BY COUNCILOR STEWART:

BE IT RESOLVED, that the city council of the city of Duluth hereby makes the finding of facts as set forth in Public Document No. 04-0809-17 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of Wizner Company (Norman's), 113 West First Street.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the Duluth City Council not impose any penalty on Wizner Company (Norman's), 113 West First Street, as a result of a selling alcohol after hours violation.

Resolution 04-0540 was unanimously adopted.

Approved August 9, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

RESOLVED, that Mar Computer Service be and hereby is awarded a contract for computer programming and mainframe maintenance for the M.I.S. division in accordance with specifications for a total not to exceed \$9,000, terms net 30, FOB destination, payable out of General Fund 0100, Dept./Agency 015, Organization 1513, Object 5319.

Resolution 04-0545 was unanimously adopted.

Approved August 9, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

RESOLVED, that Resolution 04-0067 to MacQueen Equipment, Inc., for O.E.M. parts and repairs for snow blowers as needed for year 2004, be amended to increase the amount by \$10,000 for a new total of \$35,000, payable out of Fleet Services Fund 0660, Dept./Agency 015, Organization 1560, Object 5221.

Resolution 04-0546 was unanimously adopted.

Approved August 9, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

RESOLVED, that Larson Chevrolet-Olds be and hereby is awarded a contract for General Motors O.E.M. Chevrolet parts and service as needed for year 2004 for the fleet services division in accordance with specifications on its low specification bid of \$25,000, terms net 30, FOB destination, \$18,000 payable out of Fleet Fund 0660, Dept./Agency 015, Organization 1560, Object 5221 and \$7,000 payable out of Fleet Fund 0660, Dept./Agency 015, Organization 1560, Object 5404.

Resolution 04-0547 was unanimously adopted.

Approved August 9, 2004

HERB W. BERGSON, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

BY COUNCILOR STEWART:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves of the following temporary expansion of the designated serving area of their on sale intoxicating liquor license, subject to departmental approvals with any specific restrictions:

Historic Union Depot, Inc. (The Depot), 506 West Michigan Street, for August 11, 2004.

Resolution 04-0559 was unanimously adopted.

Approved August 9, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointment by Mayor Bergson of Marti Buscaglia to the Duluth state convention center administrative board for a term expiring on June 30, 2007, replacing James W. Brown, is confirmed.

Resolution 04-0523 was unanimously adopted.

Approved August 9, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the reappointment by Mayor Bergson of William A. Spang (appraiser) to the special board of review for a term expiring on July 31, 2008, is confirmed.

Resolution 04-0528 was unanimously adopted.

Approved August 9, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointments by Mayor Bergson of Carole Newkumet (District 1) and Josh Schomberg (District 4) to the parks and recreation commission for terms expiring on February 13, 2007, replacing Bradley Beckman and Randy Antonich who resigned, are confirmed.

Resolution 04-0529 was unanimously adopted.

Approved August 9, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

BE IT RESOLVED, that the proper city officials are authorized to employ an interim assistant city attorney under conditions in the statement of employment on file with the city clerk as Public Document No. 04-0809-18, for a term beginning on or after August 9, 2004.

Resolution 04-0557 was unanimously adopted.

Approved August 9, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

BE IT RESOLVED, that the Duluth City Council hereby declares it's intent to purchase the following tax forfeit property described below in St. Louis County within the Edgebrook Division of Duluth:

Block Two

Lot 2 (1390-00050)

Lot 4 (1390-00070)

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Lot 11 (1390-00140)
Lot 12 (1390-00150)
Lot 16 (1390-00190)
Lot 21 south 25 feet (1390-00250)
Lot 28 west ½ (1390-00340)
Lot 29 (1390-00350)
Block Three
Lot 7 (1390-00440)
Block Four
Lot 11 (1390-00760)
Block Five
Lot 1 (1390-00760)
Lot 19 (1390-00940)

RESOLVED FURTHER, that the Duluth City Council hereby requests the sale of said property by the St. Louis County Board of Commissioners to the city of Duluth for the purpose of land assemblage with city owned property for future housing development.

Resolution 04-0509 was unanimously adopted.

Approved August 9, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

WHEREAS, a sufficient petition was filed with the city clerk requesting the vacation of a 20 foot wide pedestrian and utility easement legally described as the easterly 20 feet of the northerly 145 feet of Lot 10, REARR Block 4, Central Baptist Division; and

WHEREAS, 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

WHEREAS, the city planning commission unanimously approved the vacation petition at its June 23, 2004, meeting (Reference No. 04064).

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation of the pedestrian and utility easement at 2428 Peace Drive and as more particularly described on Public Document No. 04-0809-19.

RESOLVED FURTHER, that the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of St. Louis County, Minnesota, a certified copy of this resolution together with a plat showing the portion of the easement to be vacated.

Resolution 04-0553 was unanimously adopted.

Approved August 9, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

WHEREAS, a sufficient petition was filed with the city clerk requesting the vacation of a ten foot utility easement located at 317 Marshall Street and legally described as the ten foot wide utility easement along the west side of Lot 3, Block 1, Hartley Hills Third Addition to Duluth, except the northerly five feet of said utility easement (Reference File No. 04058); and

WHEREAS, 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

WHEREAS, the city planning commission unanimously approved the vacation of this easement at its June 23, 2004, meeting.

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation of the utility easement described above and as more particularly described on Public Document No. 04-0809-20.

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

Resolution 04-0554 was unanimously adopted.

Approved August 9, 2004

HERB W. BERGSON, Mayor

- - -

BY PRESIDENT STAUBER:

WHEREAS, the office of the state auditor leases office space within City Hall for the daily conduct of its assigned duties; and

WHEREAS, the office of the state auditor desires to continue leasing office space and further to increase the amount of office square footage leased; and

WHEREAS, the city desires to lease additional office space to the office of the state auditor.

NOW, THEREFORE, BE IT RESOLVED, that the city shall extend the existing lease for the existing space for two months at the present rate, then provide relocated leased premises in the approximate amount of 890 square feet in Room 206 to the office of the state auditor within City Hall and as shown on Exhibit A for a three year period from October 1, 2004, through September 30, 2007.

RESOLVED FURTHER, that the present office space lease rate of \$14 per square foot per year be increased to \$14.50 per square foot per year effective October 1, 2004, and further that the office space lease rate be increased to \$15 per square foot per year effective October 1, 2006.

RESOLVED FURTHER, that the proper city officers are authorized and directed to execute the agreement filed as Public Document No. 04-0809-21 between the city of Duluth and the state of Minnesota, office of the state auditor. All funds payable thereunder to the city to be deposited in the General Fund 100-015-1515-4612.

Resolution 04-0535 was unanimously adopted.

Approved August 9, 2004

HERB W. BERGSON, Mayor

- - -

BY PRESIDENT STAUBER:

BE IT RESOLVED, that pursuant to Minnesota Statutes 204B.16, the following locations are designated as polling places for the September 14, 2004, state primary election and November 2, 2004, 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

POLLING PLACE LIST

POLLING PLACE	ADDRESS
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. First Lutheran Church (London Road entrance)	1100 East Superior 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	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. Piedmont Elementary School (gym - rear entrance)	2827 Chambersburg Avenue

POLLING PLACE LIST

	POLLING PLACE	ADDRESS
27.	St. Lawrence Church	2410 Morris Thomas Road
28.	Holy Family Catholic Church	2430 West Third Street
29.	Harrison Community Club	3002 West Third Street
30.	City Center West	5830 Grand Avenue
31.	Faith Haven (recreation room)	4901 Grand Avenue
32.	Elim Lutheran Church (social hall)	6101 Cody Street
33.	Bayview Heights School (gym)	8702 Vinland Street
34.	Bethany Baptist Church (social hall)	6700 Grand Avenue
35.	Goodfellowship Community Center (warming area)	1242-88th Avenue West
36.	Stowe School (gym)	715-101st Avenue West

BE IT FURTHER RESOLVED, that under the authority of Ordinance 8728, that an absentee ballot board shall be in effect and utilized as allowed for under Minnesota Statutes, for the September 14, 2004, and November 2, 2004, elections.

BE IT FURTHER RESOLVED, that the proper city officials are hereby authorized to establish and post temporary handicapped parking zones for the September 14, 2004, and November 2, 2004, 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 04-0538 was unanimously adopted.

Approved August 9, 2004

HERB W. BERGSON, Mayor

- - -

BY PRESIDENT STAUBER:

RESOLVED, that pursuant to Minnesota Statutes 204B.21, the following persons are hereby appointed as election judges in the respective precincts for the September 14, 2004, state primary election and the November 2, 2004, state general election, as listed in Public Document No. 04-0809-22.

RESOLVED FURTHER, that pursuant to Minnesota Statute, 204B.31(d), election judges shall be compensated at the rate of \$7 per hour and chairman election judges shall be also compensated \$15 for election day hours. In addition, election judges carrying supply returns shall be compensated for mileage at the rate of \$.37 per mile; payable from General Fund 015-1512-5441.

RESOLVED FURTHER, if any person who is named on the list as a judge is unable to

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

serve, the clerk is empowered to substitute the name of a qualified legal voter for the one who is unable to serve.

Resolution 04-0539 was unanimously adopted.

Approved August 9, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

WHEREAS, it appears that it may be necessary to construct a permanent street in Butternut Avenue from Hickory Street to cul-de-sac approximately 1,120 feet in length, including a permanent residential design street with concrete curb and gutter, bituminous surface, storm sewer and gas main to serve Blocks 1 through 11 of the proposed Third Rearrangement of Maple Ridge First Addition; as well as sanitary sewer and water main extensions to serve Blocks 5 through 9 of the proposed Third Rearrangement of Maple Ridge First Addition.

NOW, THEREFORE, BE IT RESOLVED, that it is the intent of this council to cause this improvement to be made, provided that further information demonstrates that the improvement should be made.

BE IT FURTHER RESOLVED, that to aid the council in determining whether or not to finally order in said project, the mayor shall cause to be prepared plans and specifications for said project and will direct further procedures prescribed by Section 62 of the Charter.

Resolution 04-0530 was unanimously adopted.

Approved August 9, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are authorized to enter into an agreement in substantially the form of that on file in the office of the city clerk as Public Document No. 04-0809-23 with Terry T. Miller for the lease of approximately 1,800 square feet of warehouse space in a building located at 1617 South Street for a term of six months per year for not to exceed five years at a cost of not to exceed \$2,400 per year; payable from General Fund 0100-500-2010-5419.

Resolution 04-0533 was unanimously adopted.

Approved August 9, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Performance Pipelining, Inc., be and hereby is awarded a contract for construction of cured-in-place-pipe (CIPP) rehabilitation of sanitary sewer for Juniata Street laterals for the engineering division in accordance with specifications on its low specification bid of \$240,361, terms net 30, FOB job site, payable out of Sewer Fund 0530, Dept./Agency 500, Organization 1970, Object 5535.

Resolution 04-0548 was unanimously adopted.

Approved August 9, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Morton Salt Division c/o Hallett Dock Company be and hereby is awarded a contract for furnishing road salt for year 2004/2005 winter season for the maintenance operations division in accordance with specifications on its low specification bid of \$314,505.68,

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

terms net, FOB destination, payable out of General Fund 0100, Dept./Agency 500, Organization 2000, Object 5233.

Resolution 04-0549 was unanimously adopted.

Approved August 9, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

WHEREAS, the Minnesota department of transportation (Mn/DOT), St. Louis County and the city of Duluth have previously adopted the Miller Trunk Highway implementation plan for needed improvements to T.H. 53 (Miller Trunk Highway); and

WHEREAS, Mn/DOT intends to proceed with the reconstruction of TH. 53 (Miller Trunk Highway) from approximately Trinity Road to approximately Haines Road in 2007-2008 as outlined in the Miller Trunk Highway implementation plan; and

WHEREAS, St. Louis County and the city of Duluth have previously agreed to participate in this project through the reconstruction of adjacent county roads and city streets as appropriate; and

WHEREAS, Mn/DOT, St. Louis County and the city of Duluth desire to hire a consulting engineer to provide the engineering services required for design and construction phases of this project; and

WHEREAS, Short Elliot Hendrickson, Inc. (SEH), has been selected by Mn/DOT in cooperation with St. Louis County and the city of Duluth as the consultant to provide these engineering services in connection with this project.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are hereby authorized to enter into joint contract in substantially the form of that on file in the office of the city clerk as Public Document No. 04-0809-24 with the Minnesota department of transportation, St. Louis County and Short Elliot Hendrickson, Inc., to provide such engineering services.

BE IT FURTHER RESOLVED, that the cost of said engineering services, estimated at \$336,982.15, will be payable from the Permanent Improvement Fund 0411, Department/Agency 035, Organization 2105, Object 5530, and would be reimbursed from the city's municipal state aid construction account.

Resolution 04-0542 was unanimously adopted.

Approved August 9, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Visu-Sewer Clean and Seal, Inc., be and hereby is awarded a contract for construction of cured-in-place-pipe (CIPP) rehabilitation of sanitary sewer in various locations for the engineering division in accordance with specifications on its low specification bid of \$179,951.45, terms net 30, FOB job site, payable out of Sewer Fund 0530, Dept./Agency 500, Organization 1905, Object 5536.

Resolution 04-0550 was unanimously adopted.

Approved August 9, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that National Waterworks, Inc., be and hereby is awarded a contract for a stopping machine system for the utility operations division in accordance with specifications on its low specification bid of \$100,040.08, terms net 30, FOB destination, payable out of Gas Fund

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

0520, Dept./Agency 500, Organization 1905, Object 5580.

Resolution 04-0551 was unanimously adopted.

Approved August 9, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Utility Systems of America be and hereby is awarded a contract for construction of wastewater collection system in Morgan Park - Phase II for the engineering division in accordance with specifications on its low specification bid of \$428,958.50 terms net 30, FOB job site, payable out of Sewer Fund 0530, Dept./Agency 500, Organization 1905, Object 5533.

Resolution 04-0552 was unanimously adopted.

Approved August 9, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

RESOLVED, that the city is hereby authorized to accept from the division of homeland security and emergency management, Minnesota department of public safety, a 2004 state homeland security equipment/exercise grant in the amount of \$150,000.

BE IT FURTHER RESOLVED, that the proper city officials are authorized to execute any agreements (Public Document No. 04-0809-25) necessary to implement the project on behalf of the fire department. All monies from this grant will be deposited into Special Projects Fund 0210, Agency 030, Organization 2164, Revenue Source 4230.

Resolution 04-0536 was unanimously adopted.

Approved August 9, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement (Public Document No. 04-0809-26) with F.I. Salter for the management of the parking lot located at the old Lincoln Hotel site for a fee of six percent of the gross monthly rental collections. Net proceeds to be deposited into Community Development Fund 0260, Balance Sheet 2200.

Resolution 04-0543 was unanimously adopted.

Approved August 9, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

RESOLVED, that Kari Toyota Company be and hereby is awarded a contract for lease of five year 2005 Toyota Matrix vehicles for a three year period at a yearly rate of \$15,875 during the years 2004/2005, 2005/2006 and 2006/2007 for the building inspection division in accordance with specifications on its low specification bid of \$47,625 over a three year period, terms net 30, FOB destination, payable out of General Fund 0100, Dept./Agency 100, Organization 1504, Object 5418.

Resolution 04-0555 was unanimously adopted.

Approved August 9, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

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 August 11, 2004, in conjunction with the St. Louis County Historical Society Classic Car Show, 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 04-0560 was unanimously adopted.

Approved August 9, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR REINERT:

RESOLVED, that St. Germain Countertop, Corian and Casework Company be and hereby is awarded a contract for furnishing and installing six backlight images for the Duluth main library in accordance with specifications for a total of \$10,390, terms net 30, FOB destination, payable out of Library Special Gift Fund 0240, Dept./Agency 300, Organization SG80, Object 5580.

Resolution 04-0544 was unanimously adopted.

Approved August 9, 2004

HERB W. BERGSON, Mayor

- - -

The following resolutions were also considered:

Resolution 04-0527, awarding contract to Nortrax Equipment Company for lease of seven motor graders for a six month period in the amount of \$210,231; and Resolution 04-0556, awarding contract to Ziegler, Inc., for rental of seven motor graders for a six month period in the amount of \$210,901.95, by Councilor Stover, were introduced for discussion.

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

Eric Lehto, representing A.F.S.C.M.E., stated that one of his concerns is that the initial bid specifications for the Nortrax equipment called for a lease of the machines and that one of the components of the lease includes a service maintenance contract, which equates to the contracting out to a private entity of maintenance and fleet maintenance work that is done by the members of A.F.S.C.M.E., Local 66, and that such actions as that are forbidden by an injunction that is against the city of Duluth and would be in violation of the court order that has been issued against the city of Duluth in the injunction. He continued that it is his understanding that this contract is actually a rental, but there is a typo in the statement of purpose that says it is a lease. Mr. Lehto stated that his second concern about these two contracts is that they are the result of bids being done with very little or no specifications and that Duluth purchases have been developed over the year with the health and safety of its operators in mind. He requested the council to deny both bids and require that the bids be put out under the city's stricter specifications.

City Attorney Brown stated the city is well aware of the permanent injunction mentioned and is very careful not to violate it in the letting of contracts of various types; however, sometimes there is a disagreement on its application to a particular situation.

Jeff Nadeau and Dave Walter, representing Ziegler, Inc., in Duluth, addressed irregularities experienced in not only the specifications but also in the process in which the contract was awarded and requested that the full motor grader rental be awarded to Ziegler, Inc.

Joe Meierhoff, representing Nortrax, urged the council to award the bids as presented so that those issues can be put to rest. He agreed that bidding irregularities have taken place and that the bidding process needs to be changed.

Administrative Assistant Winson stated he must rely on the expertise, experience and

knowledge of the purchasing agent in doing purchasing to get the best possible price in this difficult financial period. He noted that the timing of this bid is now critical in order to receive these units on time and will have the city attorney research whether it is in violation of the injunction against the city. Mr. Winson suggested that the council table the resolutions for further investigation and that the city may have to go without the graders this year.

President Stauber expressed his disappointment that these contracts have been presented in this manner and stated that this is clearly the wrong place to be doing negotiations on purchasing.

Councilor Stover moved to return both resolutions back to the administration, which motion was seconded and unanimously carried.

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Resolution 04-0558, by Councilor Stover, terminating Duluth economic development authority (DEDA); repealing resolutions 89-323, 99-0239, 02-0606, 04-0202 and 04-0215, was introduced for discussion.

Councilor Stover stated that his intent is to try to eliminate half of the paperwork, staff time and meeting times for councilors. He continued that the financial advisors for the administration do not believe this termination is a good idea because of the legal work that would be required to turn over DEDA bids and contracts that are in place to the city.

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

Peggy Marrin reviewed the history of DEDA and urged the council to dissolve it.

KL Lewis stated that she believes that DEDA has not fulfilled its purpose but that it still does have a purpose and should not be dissolved.

Garry Krause stated that successful communities have economic development authorities but also have specialists in that area who understand industry and other aspects of development. He urged the council not to disband DEDA and suggested that the council get people that are economic specialists without personal vested interests or links to the city to investigate what successful communities are doing and teaching and to bring models and recommendations to advise the city on how to best move forward.

Responding to Councilor Stover's statement regarding his intent to place DEDA business under the department of planning and economic development, Mr. Winson stated that is not an option because if the council does that, the authority will not have the same powers that an economic development authority has vested in it through state statute.

Councilors Atkins and Reinert stated that they believe changes need to be made to DEDA but dissolving it is the wrong solution.

Councilor Stewart stated that he will support this resolution because he believes the city council is capable of doing what an economic development authority does, and if the city wants to do economic development, it should have low taxes, zoning that makes sense and a skilled, educated labor force.

Resolution 04-0558 failed upon the following vote (Public Document No. 04-0809-29):

Yeas: Councilors Gilbert, Stewart and Stover -- 3

Nays: Councilors Atkins, Johnson, Little, Reinert and President Stauber -- 5

Absent: Councilor Ness -- 1

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INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinance was read for the first time:

BY COUNCILOR STOVER

04-048 - AN ORDINANCE AUTHORIZING LANDFILL CLEANUP AGREEMENT WITH WLSSD, DAA AND MPCA AND GRANT OF EASEMENT AND DECLARATION OF RESTRICTIONS AND

COVENANTS IN FAVOR OF MPCA RELATED TO DUMP SITE 2.

- - -

COUNCILOR QUESTIONS AND COMMENTS

Councilor Gilbert requested Mr. Winson to add the issue of increasing rental fees to the list of options for the budget for the council to consider priorities for 2005 so that the council can consider the policy implications of that change.

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The meeting was adjourned at 9:00 p.m.

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

- - -

ORDINANCE NO. 9682

BY COUNCILOR GILBERT:

AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NO. 12, AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO RECLASSIFY FROM R-2, TWO-FAMILY RESIDENTIAL DISTRICT, TO R-3, APARTMENT RESIDENTIAL DISTRICT, PROPERTY LOCATED AT THE SOUTHEAST CORNER OF 69TH AVENUE WEST AND SHERBURNE STREET (KOSKI/WKK, INC.).

The city of Duluth does ordain:

Section 1. That Plate No. 12 of the zoning district map as contained in the Appendix to Chapter 50 of the Duluth City Code, 1959, as amended, is amended to read as follows:

(Map)

(see Map No. 12 at end of meeting)

(Reference File No. 04059)

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: September 19, 2004)

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

Yeas: Councilors Atkins, Johnson, Reinert, Stewart, Stover and President Stauber -- 6

Nays: Councilors Gilbert and Little -- 2

Absent: Councilor Ness -- 1

ATTEST:

JEFFREY J. COX, City Clerk

Passed August 9, 2004
Approved August 9, 2004
HERB W. BERGSON, Mayor

OFFICIAL PROCEEDINGS

Special meeting of the Duluth City Council held on Thursday, August 19, 2004, 5:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Atkins, Johnson, Little, Ness, Stewart, Stover and President Stauber -- 7

Absent: Councilors Gilbert and Reinert -- 2

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MOTIONS AND RESOLUTIONS

Resolution 04-0562, providing for the issuance, sale and delivery of \$945,000 general obligation airpark improvement bonds, Series 2004C, of the city of Duluth, Minnesota; establishing the terms and form thereof; creating a debt service fund therefor; and awarding the sale thereof; and Resolution 04-0563, providing for the issuance, sale and delivery of \$4,785,000 general obligation street improvement bonds, Series 2004B, of the city of Duluth, Minnesota; establishing the terms and form thereof; creating a bond fund therefor; and awarding the sale thereof, by Councilor Ness, were introduced for discussion.

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

Kathy Cardell, representing the PFM Group, reviewed the nature of the resolutions and results of the respective bids (Public Document No. 04-0819-01).

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Resolution 04-0562 was adopted as follows:

BY COUNCILOR NESS:

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

Section 1. Bond purpose and authorization.

1.01 A. Under and pursuant to the provisions of Minnesota Laws 1974, Chapter 130, Minnesota Statutes, Chapter 475 and all other enabling statutes, the city is authorized to issue its general obligation bonds to provide the funds necessary to match state, private and federal grants for projects within the city's boundaries, which bonds are to be payable from annual ad valorem taxes or other revenues of the city.

B. The city council has, by Ordinance No. 9666 adopted on June 14, 2004, authorized the issuance and sale of general obligation airpark improvement bonds in an amount not to exceed \$1,000,000 for the purpose of providing the local match of grant funds from the economic development administration (the grant) to pay part of the costs associated with the construction of streets and utilities in the Airpark Phase II development (the project).

C. Pursuant to the authority herein recited, the city authorizes and directs the issuance and sale of \$945,000 general obligation airpark improvement bonds, Series 2004C, to be dated September 1, 2004, as the date of original issue (the bonds) to provide the city's match for the grant for construction of the project.

D. Public Financial Management, Inc., financial consultant to the city, has given notification by mail 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.

1.02 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 RBC Dain Rauscher, Inc., of Minneapolis, Minnesota (the purchaser), to purchase the bonds at a cash price of \$933,874.80, plus accrued

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interest on the total principal amount from September 1, 2004, to the date of delivery of the bonds 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. 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 September 1, 2004, 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
2006	\$45,000	2.000%
2007	50,000	2.750%
2008	50,000	3.000%
2009	50,000	3.000%
2010	55,000	3.375%
2011	55,000	3.375%
2012	60,000	3.500%
2013	60,000	3.550%
2014	65,000	3.650%
2015	65,000	3.750%
2016	70,000	3.900%
2017	75,000	4.000%
2018	80,000	4.100%
2019	80,000	4.150%
2020	85,000	4.200%

2.02 A. The bonds maturing in the years 2006 through 2013 shall not be subject to optional redemption and prepayment before maturity, but those maturing in the year 2014 and in subsequent years shall each be subject to redemption and prepayment at the option of the city on February 1, 2013, and on any date thereafter, in whole or in part, and if in part, in such order of maturities as selected by the city and by lot as to the bonds maturing in the same year, at a price equal to the principal amount thereof plus accrued interest to the redemption date.

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

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

2.03 Interest on the bonds shall be payable semiannually on February 1 and August 1 in each year (each referred to herein as an interest payment date), commencing February 1, 2005. Interest will be computed on the basis of a 360-day year of twelve 30-day months and will be rounded pursuant to the rules of the municipal securities rulemaking board. The bond registrar designated below shall make all interest payments with respect to the bonds by check or draft mailed to the registered owners of the bonds shown on the bond registration records maintained by the bond registrar at the close of business on the 15th day (whether or not a business day) of the month next preceding the interest payment date at such owners' addresses shown on such bond registration records.

2.04 A. The bonds shall be prepared for execution in accordance with the approved form and shall be signed by the manual or facsimile signature of the mayor and attested by the manual or facsimile signature of the city clerk. In case any officer whose signature or a facsimile of whose signature shall appear on the bonds shall cease to be an officer before delivery of the bonds, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, as if he or she had remained in office until delivery.

B. The city clerk is authorized and directed to obtain a copy of the proposed approving legal opinion of Fryberger, Buchanan, Smith & Frederick, P.A., of Duluth, Minnesota, which is to be complete and cause the opinion to be attached to each bond, together with a certificate to be signed by the manual signature of the city clerk in substantially the form set forth in Section 2.11, but only if the opinion is not manually executed. The city clerk is authorized and directed to execute the certificate in the name of the city upon receipt of the opinion, if required by the preceding sentence, and to file the opinion in the city offices.

2.05 The city hereby appoints Wells Fargo Bank, National Association, in Minneapolis, Minnesota, as registrar, authenticating agent, paying agent and transfer agent for the bonds (such bank or its successor is herein referred to as the bond registrar). To provide for the bond registrar services, the mayor and the clerk are authorized and directed to execute a bond registrar/paying agent agreement substantially in the form of the agreement currently on file in the office of the city clerk as public document No. 04-0219-02. No Bond shall be valid or obligatory for any purpose until the bond registrar's authentication certificate on such bond, substantially set forth in Section 2.11 hereof, shall have been duly executed by an authorized representative of the bond registrar. authentication certificates on different bonds need not be signed by the same representative. The manual signature of one officer of the city or the executed authentication certificate on each Bond shall be conclusive evidence that it has been authenticated and delivered under this resolution.

2.06 A In order to make the bonds eligible for the services provided by The Depository Trust Company, New York, New York (DTC), the city has previously agreed to the applicable provisions set forth in the blanket issuer letter of representations which has been executed by the city and DTC (the representation letter).

B. 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.

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 September 1, 2004, 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 February 1, 2005. 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 \$945,000, all of like date and tenor, except for number, denomination, maturity date and interest rate, and is issued pursuant to Minnesota Laws 1974, Chapter 130, Minnesota Statutes, Chapter 475, the City Charter and other pertinent provisions of said statutes, Ordinance No. 9666, and a resolution adopted by the governing body of the City on August 19, 2004 (the "Resolution"), for the purpose of providing funds necessary to provide the local match for a federal grant for the construction of streets and utilities in the Airpark Phase II development located in the City, which obligations and interest thereon are payable from ad valorem taxes as described in the Resolution.

The Bonds of this series maturing in the years 2006 through 2013 are not subject to redemption before maturity, but those maturing in the year 2014 and in subsequent years are each subject to redemption and prepayment at the option of the City on February 1, 2013, and on any date thereafter, in whole or in part, and if in part, in such order of maturities as selected by the City, and by lot as to Bonds maturing in the same year, at a price equal to the principal amount plus accrued interest to the redemption date.

Not less than 30 nor more than 60 days prior to the date fixed for

redemption and prepayment of any Bonds, notice of redemption shall be mailed to each registered owner of a Bond to be redeemed; however, that so long as the Bonds are registered in the name of Cede & Co., as nominee for The Depository Trust Company, New York, New York ("DTC"), notice of redemption shall be given in accordance with the terms of the Blanket Issuer Letter of Representations executed by the City and DTC.

If less than all the Bonds of a maturity are called for redemption while the Bonds are registered in the name of Cede & Co., the City or the Bond Registrar designated below will notify DTC of the particular amount of such maturity to be prepaid. DTC will determine by lot the amount of each participant's interest in such maturity to be redeemed and each participant will then select by lot the beneficial ownership interest in such maturity to be redeemed. If less than all the Bonds of a maturity are called for redemption and the Bonds are not registered in the name of Cede & Co., the Bond Registrar will determine by lot or other manner deemed fair, the amount of each maturity to be redeemed. All prepayments shall be at a price equal to the principal amount thereof plus accrued interest. If any Bond is redeemed in part, upon surrender of the Bond being redeemed, the City shall deliver or cause to be delivered to the registered owner of such Bond, a Bond in like form in the principal amount equal to that portion of the Bond so surrendered not being redeemed.

The Bonds of this series are issued as fully registered bonds without coupons, in the denomination of \$5,000 or any integral multiple thereof. Subject to limitations set forth in the Resolution, this Bond is transferable by the registered owner hereof upon surrender of this Bond for transfer at the principal corporate office of the Bond Registrar, duly endorsed or accompanied by a written instrument of transfer in form satisfactory to the Bond Registrar and executed by the registered owner hereof or the owner's attorney duly authorized in writing. Thereupon the City shall execute and the Bond Registrar shall authenticate, if required by law and this Resolution, and deliver, in exchange for this Bond, one or more new fully registered bonds in the name of the transferee, of an authorized denomination, in an aggregate principal amount equal to the unpaid principal amount of this Bond, of the same maturity and bearing interest at the same rate.

IT IS CERTIFIED AND RECITED that all acts and conditions required by the Charter of the City and by the laws and the Constitution of the State of Minnesota to be done, and to exist precedent to and in the issuance of this Bond in order to make it a valid and binding general obligation of the City in accordance with its terms, have been done and do exist in form, time, and manner as so required; that all taxable property within the corporate limits of the City is subject to the levy of ad valorem taxes to the extent needed to pay the principal hereof and the interest hereon when due, without limitation as to rate or amount; and that the issuance of this Bond does not cause the indebtedness of the City to exceed any constitutional, statutory or charter limitation.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Bond Registrar's Authentication Certificate hereon shall have been executed by the

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Bond Registrar by one of its authorized representatives.

IN WITNESS WHEREOF, the city of Duluth, by its city council, has caused this Bond to be executed in its name by the signatures of the mayor and the city clerk.

Attest:

City Clerk

Mayor

Date of Authentication: _____

BOND REGISTRAR'S AUTHENTICATION CERTIFICATE

The Bond Registrar confirms that the books reflect the ownership of a Bond registered in the name of the owner named above, in the principal amount stated above, and this Bond is one of the Bonds of the series issued pursuant to the Resolution hereinabove described.

WELLS FARGO BANK, NATIONAL ASSOCIATION
Bond Registrar

By _____
Authorized Representative

REGISTRATION CERTIFICATE

This Bond must be registered as to both principal and interest in the name of the owner on the books to be kept by Wells Fargo Bank, National Association, of Minneapolis, Minnesota, as Bond Registrar. No transfer of this Bond shall be valid unless made on said books by the registered owner or the owner's attorney thereunto duly authorized and similarly noted on the registration books. The ownership of the unpaid principal balance of this Bond and the interest accruing thereon is registered on the books of Wells Fargo Bank, National Association, as Bond Registrar, in the name of the registered owner last noted below.

<u>Date</u>	<u>Registered Owner</u>	<u>Signature of Bond Registrar</u>
9/___/04	Cede & Co. c/o The Depository Trust Company 55 Water Street New York, NY 10041 Federal Taxpayer I.D. No.: 13- 2555119	_____

BOND COUNSEL OPINION

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

City Clerk

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns, and transfers unto _____

(Name and Address of Assignee)

_____ Social Security or Other
_____ Identifying Number of Assignee

the within Bond and all rights thereunder and does hereby irrevocably constitute and appoint _____ attorney to transfer the said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____.

NOTICE: The signature of this assignment must correspond with the name of the registered owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

(Bank, Trust Company, member of
National Securities Exchange)

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City or its agent for registration of transfer, exchange, or payment, and any bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL, inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

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Section 3. Revenues, accounts and covenants.

3.01 The city has created a separate construction account titled "airpark improvement construction account" within the Special Assessment Fund 0410, Agency 038, Org. 5396, to which there shall be credited the proceeds of the bonds, less discount, together with any additional funds, including monies from the grant 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 project.

3.02 A separate debt service account is hereby created and designated as the 2004 Airpark 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 unused discount, if any, plus capitalized interest in the amount of \$0.00, plus the amount of accrued interest paid by the purchaser upon closing and delivery of the bonds, 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	Gross Tax Levy
2004	2005	\$ 82,874
2005	2006	87,179
2006	2007	85,736
2007	2008	84,161
2008	2009	87,836
2009	2010	85,887
2010	2011	89,187
2011	2012	86,982
2012	2013	89,996
2013	2014	87,505
2014	2015	90,195
2015	2016	92,579
2016	2017	94,679
2017	2018	91,235
2018	2019	92,999

There is hereby appropriated \$14,843.28 from the general fund to the debt service fund for payment of the interest due on the bonds on February 1, 2005. Said levies, together with such

appropriation, are such that if collected in full they will produce at least 5 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 in each year 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 said debt service account 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. Such taxes are hereby appropriated and shall be paid when collected into the debt service fund. 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 special assessment fund 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 such debt service account (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 such debt service account shall not be invested in obligations or deposits issued by, guaranteed by or insured by the United States or any agency or instrumentality thereof if and to the extent that such investment would cause the Bonds to be federally guaranteed within the meaning of Section 149(b) of the Internal Revenue Code of 1986, as amended (the code).

C. The city hereby covenants not to use the proceeds of the bonds, or to cause or permit them to be used, in such a manner as to cause the bonds to be private activity bonds within the meaning of Sections 103 and 141 through 150 of the code.

4.03 A. Pursuant to Section 1.148-7(d) of the treasury regulations, relating to exception from rebate, the city hereby covenants that with respect to the gross proceeds of the

bonds, the following schedule will be met: (i) at least 15 percent 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 percent 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 percent of the available proceeds of the bonds, and that 100 percent 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 comply with all federal rebate requirements which may apply if such spending test is not met.

Section 5. Continuing disclosure. The city acknowledges that the bonds are subject to the continuing disclosure requirements of Rule 15c2-12 promulgated by the securities and exchange commission under the Securities Exchange Act of 1934 (17 C.F.R. §240.15c2-12) (the rule). The rule governs the obligations of certain underwriters to require that issuers of municipal bonds enter into agreements for the benefit of the bondholders to provide continuing disclosure with respect to the bonds. To provide for the public availability of certain information relating to the bonds and the security therefor and to permit underwriters of the bonds to comply with the rule, which will enhance the marketability of the bonds, the mayor and the clerk are hereby authorized and directed to execute a continuing disclosure certificate substantially in the form of the certificate currently on file in the office of the city clerk as public document No. 04-0219-02.

Section 6. Certificate of proceedings.

6.01 The city clerk is directed to file with the county auditor a certified copy of this resolution and such other information as the county auditor may require, and to obtain from the county auditor a certificate stating that the bonds herein authorized have been duly entered on his register.

6.02 The officers of the city are authorized and directed to prepare and furnish to the purchaser and to bond counsel certified copies of all proceedings and records of the city relating to the authorization and issuance of the bonds and other affidavits and certificates as may reasonably be requested to show the facts relating to the legality and marketability of the bonds as such facts appear from the official books and records of the officers' custody or otherwise known to them. All of such certified copies, certificates and affidavits, including any heretofore furnished, constitute representations of the city as to the correctness of facts recited therein and the actions stated therein to have been taken.

6.03 The officers of the city are hereby authorized and directed to certify that they have examined the official statement prepared and circulated in connection with the sale of the bonds and that to the best of their knowledge and belief the official statement is a complete and accurate representation of the facts and representations made therein as of the date of the official statement.

Resolution 04-0562 was unanimously adopted.

Approved August 19, 2004

HERB W. BERGSON, Mayor

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Resolution 04-0563 was adopted as follows:

BY COUNCILOR NESS:

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

Section 1. Bond purpose and authorization.

1.01 A. Under and pursuant to the provisions of Chapter 475 of Minnesota Statutes and other pertinent provisions of Minnesota Statutes and the home rule charter of the city, the city

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is authorized to issue its general obligation street improvement bonds to finance the cost of local public improvements, and the city council may pledge the full faith and credit and taxing powers of the city for the payment of the principal and interest on such indebtedness.

B. The city council has, by resolutions adopted on the following dates, ordered street improvements to certain streets, avenues and parkways set forth below (the 2004 street improvement program”), as more fully described in reports filed with the city clerk by the special assessment board pursuant to and in accordance with Section 61(b) of the City Charter, and the council has determined to defray one-fourth or less of the cost of the improvements set forth below to be assessed against benefitted property:

Order in Resolution No.	Date Resolution Passed	Assessable Cost/CDBG Funds	Project Description
04-0328	5/10/04	\$263,610	Duluth Heights SE 2
04-0360	5/24/04	95,525	East Hillside-Upper West 2
04-0279	4/26/04	177,080	Lakeside-Lower SW 1
04-0356	5/24/04	133,230	Lakeside-Lower SW 2
04-0441	6/28/04	328,627	Woodland-South 1
04-0204	3/22/04	150,000	Morgan Park 1
03-0468	6/23/03	41,880	East Superior Street Area (2003 SIP)
04-0442	6/28/04	84,010	UMD/Chester 3 (Granitoid)

C. The city council hereby determines to finance \$4,785,000, through the issuance of general obligation street improvement bonds, for payment of costs of the 2004 street improvement program.

1.02 Pursuant to the authority herein recited, the city authorizes and directs the issuance and sale of \$4,785,000 general obligation street improvement bonds, Series 2004B, to be dated September 1, 2004, as the date of original issue (the bonds) for financing the 2004 street improvement program.

1.03 Public Financial Management, Inc., financial consultant to the city, has given notification to at least five firms determined by Public Financial Management, Inc., to be prospective bidders on the bonds at least two days (omitting Saturdays, Sundays and legal holidays) before the date set for receipt of bids on the bonds, pursuant to and in accordance with Minnesota Statutes, Section 475.60, Subd. 3. All actions of the mayor, the clerk and Public Financial Management, Inc., taken with regard to the sale of the bonds are hereby ratified and approved.

1.04 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 Chicago, Illinois(the purchaser), to purchase the bonds at a cash price of \$4,776,945.45, plus accrued interest on the total principal amount from September 1, 2004, to the date of delivery of the bonds 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. 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.

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Section 2. Terms of bonds.

2.01 The bonds to be issued hereunder shall be dated September 1, 2004, as the date of original issue, shall be issued in the denomination of \$5,000 each, or any integral multiple thereof, in fully registered form and lettered and numbered R-1 and upward. The bonds shall mature on February 1 in the respective years and amounts stated and shall bear interest as follows:

Year	Amount	Interest Rate
2006	\$280,000	2.000%
2007	240,000	2.250%
2008	250,000	3.000%
2009	260,000	3.000%
2010	270,000	3.000%
2011	285,000	3.100%
2012	295,000	3.250%
2013	305,000	4.000%
2014	320,000	4.000%
2015	335,000	4.000%
2016	350,000	4.000%
2017	370,000	4.000%
2018	390,000	4.000%
2019	405,000	4.500%
2020	430,000	4.625%

2.02 A. The bonds maturing in the years 2006 through 2013 shall not be subject to optional redemption and prepayment before maturity, but those maturing or subject to mandatory redemption pursuant to Section 2.01B, in the year 2014 and in subsequent years shall each be subject to redemption and prepayment at the option of the city on February 1, 2013, and on any date thereafter, in whole or in part, and if in part, in such order of maturities as selected by the city and by lot as to the bonds maturing in the same year, at a price equal to the principal amount thereof plus accrued interest to the redemption date.

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

C. If less than all the bonds of a maturity are called for redemption while the bonds are registered in the name of Cede & Co., the city or the bond registrar designated below will notify DTC of the particular amount of such maturity to be prepaid. DTC will determine by lot the amount of each participant's interest in such maturity to be redeemed and each participant will then select by lot the beneficial ownership interest in such maturity to be redeemed. If less than

all the bonds of a maturity are called for redemption and the bonds are not registered in the name of Cede & Co., the bond registrar will determine by lot or other manner deemed fair, the amount of each maturity to be redeemed. All prepayments shall be at a price equal to the principal amount thereof plus accrued interest.

2.03 Interest on the bonds shall be payable semiannually on February 1 and August 1 in each year (each referred to herein as an interest payment date), commencing February 1, 2005. Interest will be computed on the basis of a 360-day year of twelve 30-day months and will be rounded pursuant to the rules of the municipal securities rulemaking board. The bond registrar designated below shall make all interest payments with respect to the bonds by check or draft mailed to the registered owners of the bonds shown on the bond registration records maintained by the bond registrar at the close of business on the 15th day (whether or not a business day) of the month next preceding the interest payment date at such owners' addresses shown on such bond registration records.

2.04 A. The bonds shall be prepared for execution in accordance with the approved form and shall be signed by the manual or facsimile signature of the mayor and attested by the manual or facsimile signature of the city clerk. In case any officer whose signature or a facsimile of whose signature shall appear on the bonds shall cease to be an officer before delivery of the bonds, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, as if he or she had remained in office until delivery.

B. The city clerk is authorized and directed to obtain a copy of the proposed approving legal opinion of Fryberger, Buchanan, Smith & Frederick, P.A., of Duluth, Minnesota, which is to be complete and cause the opinion to be attached to each Bond, together with a certificate to be signed by the manual signature of the city clerk in substantially the form set forth in Section 2.11, but only if the opinion is not manually executed. The city clerk is authorized and directed to execute the certificate in the name of the City upon receipt of the opinion, if required by the preceding sentence, and to file the opinion in the city offices.

2.05 The city hereby appoints Wells Fargo Bank, National Association, in Minneapolis, Minnesota, as registrar, authenticating agent, paying agent and transfer agent for the bonds (such bank or its successor is herein referred to as the bond registrar). To provide for the bond registrar services, the mayor and the clerk are authorized and directed to execute a bond registrar/paying agent agreement substantially in the form of the agreement currently on file in the office of the city clerk as public document No. 04-0219-02. No bond shall be valid or obligatory for any purpose until the bond registrar's authentication certificate on such bond, substantially set forth in Section 2.11 hereof, shall have been duly executed by an authorized representative of the bond registrar. Authentication certificates on different bonds need not be signed by the same representative. The manual signature of one officer of the city or the executed authentication certificate on each bond shall be conclusive evidence that it has been authenticated and delivered under this resolution.

2.06 A. In order to make the bonds eligible for the services provided by The Depository Trust Company, New York, New York (DTC), the city has previously agreed to the applicable provisions set forth in the blanket issuer letter of representations which has been executed by the city and DTC (the representation letter).

B. 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.

C. Additional matters with respect to, among other things, notices, consents and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

approvals by bond holders and payments on the bonds are set forth in the representation letter.

2.07 The city shall cause to be kept by the bond registrar a bond register in which, subject to such reasonable regulations as the bond registrar may prescribe, the city shall provide for the registration of the bonds and the registration of transfers of the bonds entitled to be registered or transferred as herein provided. In the event of the resignation or removal of the bond registrar or its incapability of acting as such, the bond registration records shall be maintained at the office of the successor bond registrar as may be appointed by the city council. Upon surrender for transfer of any bond at the principal corporate office of the bond registrar, the city shall execute and the bond registrar shall authenticate, if required by law or this resolution, and deliver, in the name(s) of the designated transferee or transferees, one or more new bonds of the like aggregate principal amount, as requested by the transferor.

2.08 Each bond delivered upon transfer of or in exchange for or in lieu of any other bond shall carry all of the rights to interest, accrued and unpaid and to accrue, which are carried by such other bond. Each bond shall be dated by the bond registrar as of the date of its authentication. The city and the bond registrar shall not be required to make any transfer or exchange of any bonds called for redemption or to make any such exchange or transfer of the bonds during the 15 days next preceding the date of the first publication or the mailing (if there is no publication) of the notice of redemption in the case of a proposed redemption of the bonds.

2.09 The city and the bond registrar may treat the person in whose name any bond is registered as the owner of such bond for the purpose of receiving payment of principal of and interest on such bond and for all other purposes whatsoever, whether or not such bond be overdue, and neither the city nor the bond registrar shall be affected by notice to the contrary.

2.10 The principal of and interest on the bonds shall be payable by the bond registrar, as paying agent, in such funds as are legal tender for the payment of debts due the United States of America. The city shall pay the reasonable and customary charges of the bond registrar for the disbursement of principal and interest.

2.11 The bonds shall be printed or typewritten in substantially the following form:

UNITED STATES OF AMERICA
STATE OF MINNESOTA
COUNTY OF ST. LOUIS
CITY OF DULUTH
GENERAL OBLIGATION STREET IMPROVEMENT BOND, SERIES 2004B

R-__				\$_____
Interest			Date of	
Rate	Maturity Date		Original Issue	CUSIP
	February 1, ____		September 1, 2004	

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

September 1, 2004, 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 February 1, 2005. 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 \$4,785,000, all of like date and tenor, except for number, denomination, maturity date and interest rate, pursuant to a resolution adopted by the governing body of the City on August 19, 2004 (the "Resolution"). The Bonds are issued for the purposes of financing a portion of the cost of local public improvements and are issued pursuant to Minnesota Statutes, Chapter 475, the City Charter and other pertinent provisions of Minnesota statutes, which obligations and interest thereon will be payable in part from special assessments levied or to be levied against property specially benefitted by local improvements and in part from ad valorem taxes, as described in the Resolution.

The Bonds of this series maturing in the years 2006 through 2013 are not subject to redemption before maturity, but those maturing in the year 2014 and in subsequent years are each subject to redemption and prepayment at the option of the City on February 1, 2013, and on any date thereafter, in whole or in part, and if in part, in such order of maturities as selected by the City, and by lot as to Bonds maturing in the same year, at a price equal to the principal amount plus accrued interest to the redemption date.

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

If less than all the Bonds of a maturity are called for redemption while the Bonds are registered in the name of Cede & Co., the City or the Bond Registrar designated below will notify DTC of the particular amount of such maturity to be prepaid. DTC will determine by lot the amount of each participant's interest in such

maturity to be redeemed and each participant will then select by lot the beneficial ownership interest in such maturity to be redeemed. If less than all the Bonds of a maturity are called for redemption and the Bonds are not registered in the name of Cede & Co., the Bond Registrar will determine by lot or other manner deemed fair, the amount of each maturity to be redeemed. All prepayments shall be at a price equal to the principal amount thereof plus accrued interest. If any Bond is redeemed in part, upon surrender of the Bond being redeemed, the City shall deliver or cause to be delivered to the registered owner of such Bond, a Bond in like form in the principal amount equal to that portion of the Bond so surrendered not being redeemed.

The Bonds of this series are issued as fully registered bonds without coupons, in the denomination of \$5,000 or any integral multiple thereof. Subject to limitations set forth in the Resolution, this Bond is transferable by the registered owner hereof upon surrender of this Bond for transfer at the principal corporate office of the Bond Registrar, duly endorsed or accompanied by a written instrument of transfer in form satisfactory to the Bond Registrar and executed by the registered owner hereof or the owner's attorney duly authorized in writing. Thereupon the City shall execute and the Bond Registrar shall authenticate, if required by law and this Resolution, and deliver, in exchange for this Bond, one or more new fully registered bonds in the name of the transferee, of an authorized denomination, in an aggregate principal amount equal to the unpaid principal amount of this Bond, of the same maturity and bearing interest at the same rate.

IT IS CERTIFIED AND RECITED that all acts and conditions required by the Charter of the City and by the laws and the Constitution of the State of Minnesota to be done, and to exist precedent to and in the issuance of this Bond in order to make it a valid and binding general obligation of the City in accordance with its terms, have been done and do exist in form, time, and manner as so required; that all taxable property within the corporate limits of the City is subject to the levy of ad valorem taxes to the extent needed to pay the principal hereof and the interest hereon when due, without limitation as to rate or amount; and that the issuance of this Bond does not cause the indebtedness of the City to exceed any constitutional, statutory or charter limitation.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Bond Registrar's Authentication Certificate hereon shall have been executed by the Bond Registrar by one of its authorized representatives.

IN WITNESS WHEREOF, the city of Duluth, by its city council, has caused this Bond to be executed in its name by the manual or facsimile signatures of the mayor and the city clerk.

Attest:

City Clerk

Mayor

Date of Authentication: _____

BOND REGISTRAR'S AUTHENTICATION CERTIFICATE

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

The Bond Registrar confirms that the books reflect the ownership of a Bond registered in the name of the owner named above, in the principal amount stated above, and this Bond is one of the Bonds of the series issued pursuant to the Resolution hereinabove described.

WELLS FARGO BANK, NATIONAL ASSOCIATION
Bond Registrar

By _____
Authorized Representative

REGISTRATION CERTIFICATE

This Bond must be registered as to both principal and interest in the name of the owner on the books to be kept by Wells Fargo Bank, National Association, as Bond Registrar. No transfer of this Bond shall be valid unless made on said books by the registered owner or the owner's attorney thereunto duly authorized and similarly noted on the registration books. The ownership of the unpaid principal balance of this Bond and the interest accruing thereon is registered on the books of the City in the name of the registered owner last noted below.

Date	Registered Owner	Signature of Bond Registrar
9/___/04	Cede & Co. c/o The Depository Trust Company 55 Water Street New York, NY 10041 Federal Taxpayer I.D. No.: 13- 2555119	_____

BOND COUNSEL OPINION

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

City Clerk

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns, and transfers unto

(Name and Address of Assignee)

Social Security or Other
Identifying Number of Assignee

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

the within Bond and all rights thereunder and does hereby irrevocably constitute and appoint _____ attorney to transfer the said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____.

NOTICE: The signature of this assignment must correspond with the name of the registered owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

(Bank, Trust Company, member of
National Securities Exchange)

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City or its agent for registration of transfer, exchange, or payment, and any bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL, inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

Section 3. Revenues, accounts and covenants.

3.01 Upon payment of the purchase price of the bonds, the city shall credit the proceeds from the sale of the bonds in the amount of \$4,776,945.45 into the 2004 street improvement account (the 2004 street account) within the street improvement fund in the capital projects fund. The proper city officers are authorized and directed to pay out of the 2004 street account from time to time as required, upon presentation of properly verified vouchers or statements of account, such amount or amounts as may be required to pay the cost of the improvements. The costs of issuance for the bonds shall be paid from the 2004 street account.

3.02 The city council covenants and agrees with the holders of the bonds and with its taxpayers that it will assess against benefitted property the cost of the improvements to the city for the 2004 street improvement program in an amount which, together with the proceeds of federal grants to the city for such improvement projects, is not less than 20 percent of the costs of such projects financed by the proceeds of the bonds. The city council further covenants and agrees that, with due diligence, it will complete the special assessment process, including any and all supplemental assessments or reassessments that may be required to lawfully assess the benefitted property.

3.03 A separate account within the special assessment debt service fund maintained by the city is hereby created and is designated the 2004 improvement bond account. The money in such account shall be used for no purpose other than the payment of principal and interest on the

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

bonds; provided, however, that if any payment of principal or interest shall become due when there is not sufficient money in said account, the treasurer shall pay the same from any other fund of the city and said fund shall be reimbursed out of said account. Into the 2004 improvement bond account shall be paid from the proceeds of the bonds capitalized interest in the amount of \$-0-, plus the amount of accrued interest on the bonds, all special assessments levied for the projects listed in Section 1.01 hereof and the ad valorem taxes levied pursuant to Section 3.04 hereof.

3.04 A. The full faith and credit and taxing power of the city are hereby irrevocably pledged for the prompt and full payment of the principal of and interest on the bonds, as such principal and interest respectively become due. 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	Gross Tax Levy	Estimated Special Assessment Revenue	Net Tax Levy
2004	2005	\$ 476,422	\$ 317,130	\$ 159,292
2005	2006	428,542	76,530	352,012
2006	2007	433,372	75,517	357,855
2007	2008	435,997	79,167	356,830
2008	2009	438,307	77,667	360,640
2009	2010	445,552	81,167	364,385
2010	2011	446,775	79,462	367,313
2011	2012	447,209	77,675	369,534
2012	2013	450,149	80,475	369,674
2013	2014	452,459	83,075	369,384
2014	2015	454,139	80,475	373,664
2015	2016	460,439	82,875	377,564
2016	2017	465,899	85,075	380,824
2017	2018	465,269	82,075	383,194
2018	2019	472,382	83,700	388,682

There is hereby appropriated \$76,010 from the general fund to the debt service fund for payment of the interest due on the bonds on February 1, 2005. Said levies, together with such appropriation, are such that if collected in full they, together with the estimated receipts of special assessments pledged for payment of principal and interest on the bonds, will produce at least 5 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 in each year 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 said debt service account 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. All proceeds of the special assessments from the properties described in Section 1.01 hereof and said taxes are hereby appropriated and shall be paid when collected into the 2004 improvement bond account within the special assessment debt service fund. If the

balance in the 2004 improvement bond account 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 2004 improvement bond account when the balance therein is sufficient.

3.05 Proceeds of the bonds on deposit in the 2004 street account and 2004 Improvement bond account 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 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.

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 such debt service account (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 such debt service account 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 1996, as amended (the code).

C. The city hereby covenants not to use the proceeds of the bonds, or to cause or permit them to be used, in such a manner as to cause the bonds to be private activity bonds within the meaning of Sections 103 and 141 through 150 of the code.

4.03 A. Pursuant to Section 1.148-7(d) of the treasury regulations, relating to exception from rebate, the city hereby covenants that with respect to the gross proceeds of the bonds, the following schedule will be met: (i) at least 15 percent 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 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 5 percent of the available proceeds of the bonds, and that 100 percent of the available proceeds of the bonds will be allocated within 30 months from the date of issue of the bonds.

B. The city shall use its best efforts to comply with any federal procedural

requirements which may apply in order to effectuate the designation made by this section.

Section 5. Continuing disclosure. The city acknowledges that the bonds are subject to the continuing disclosure requirements of Rule 15c2-12 promulgated by the securities and exchange commission under the Securities Exchange Act of 1934 (17 C.F.R. § 240.15c2-12) (the rule). The rule governs the obligations of certain underwriters to require that issuers of municipal bonds enter into agreements for the benefit of the bondholders to provide continuing disclosure with respect to the bonds. To provide for the public availability of certain information relating to the bonds and the security therefor and to permit underwriters of the bonds to comply with the rule, which will enhance the marketability of the bonds, the mayor and the clerk are hereby authorized and directed to execute a continuing disclosure certificate substantially in the form of the certificate currently on file in the office of the city clerk as Public Document No. 04-0219-02.

Section 6. Certificate of proceedings.

6.01 The city clerk is directed to file with the county auditor a certified copy of this resolution and such other information as the county auditor may require, and to obtain from the county auditor a certificate stating that the bonds herein authorized have been duly entered on his register.

6.02 The officers of the city are authorized and directed to prepare and furnish to the purchaser and to bond counsel certified copies of all proceedings and records of the city relating to the authorization and issuance of the bonds and other affidavits and certificates as may reasonably be requested to show the facts relating to the legality and marketability of the bonds as such facts appear from the official books and records of the officers' custody or otherwise known to them. All of such certified copies, certificates and affidavits, including any heretofore furnished, constitute representations of the city as to the correctness of facts recited therein and the actions stated therein to have been taken.

6.03 The officers of the city are hereby authorized and directed to certify that they have examined the official statement prepared and circulated in connection with the sale of the bonds and that to the best of their knowledge and belief the official statement is a complete and accurate representation of the facts and representations made therein as of the date of the official statement.

Resolution 04-0563 was unanimously adopted.

Approved August 19, 2004

HERB W. BERGSON, Mayor

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INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinance was read for the first time:

BY COUNCILOR NESS

04-049 - AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF GENERAL OBLIGATION STEAM UTILITY REVENUE BONDS OF THE CITY OF DULUTH IN AN AMOUNT NOT TO EXCEED \$1,250,000 FOR THE IMPROVEMENT OF THE DULUTH STEAM PLANT UPON TERMS AND CONDITIONS TO BE PROVIDED BY RESOLUTION OF THE CITY COUNCIL AND PLEDGING REVENUES FOR THE PAYMENT THEREOF.

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The meeting was adjourned at 5:10 p.m.

JEFFREY J. COX, City Clerk

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, August 23, 2004, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Absent: None -- 0

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

04-0823-01 College of St. Scholastica, by William Burns, attorney, submitting petition to reclassify from R-1 to R-3 all of Lots 5-12, Block 17, Lots 5-12, inclusive, Block 18, Lots 4-13, inclusive, Block 19, Lot 9, Block 20, Lots 9 -16, inclusive, Block 29, Blocks 30 and 31, Lots 9-16, inclusive, Block 36 and all those parts of Blocks 32 through 35, Grays Addition. -- Assessor

04-0823-02 Joseph S. Kleiman, et al. (four signatures), submitting petition to construct an eight inch watermain in Ethel Avenue from Springvale Road to 365 feet northerly. -- Assessor

04-0823-03 Nysten, Magie and Strum Properties, by Greg Gilbert, attorney, submitting petition to reclassify from R-1-c and R-1-b to S-4, property described as Lots 49, except that part of Lot 49 lying within ten feet of the east line of Mesaba Avenue (formerly Piedmont Avenue East) 51, 53, 55, 57, 59, 61, 62, 63 and 64, Block 165, and Lots 45 and 47, Block 166-½, all except that part within ten feet of east line of Piedmont Avenue, Duluth Proper, Third Division. -- Assessor

04-0823-23 Eric Dings submitting communication regarding the improvement of the Duluth steam plant (04-049-O). -- Received

04-0823-24 The following submitting communications regarding the proposed conveyance of certain property in the Cook Home area from St. Louis County (04-0579R): (a) Animal Allies Humane Society (2); (b) Jody Berquist; (c) Bruce Carlson; (d) Pat Castellano; (e) Cheryl Dennison; (f) Cherie Franzen; (g) Ron Franzen; (h) Linda and Norm Herron; (i) Yolande Jenny; (j) Arlene Johnson; (k) Lake Superior Humane Society; (l) Jim Makitalo; (m) Karen L. Moore; (n) Marcia L. Opie; (o) Shirley Rose; (p) Mark and Sheryl Sandahl; (q) Kathleen Thiede; (r) Sandi Thoreson. -- Received

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REPORTS OF OFFICERS

04-0823-04 Assessor submitting:

(a) Affidavit of mailing of notice of public hearing by the Duluth City Council on Monday, August 23, 2004, at 7:00 p.m. in the City Council Chambers, City Hall, regarding the proposed construction of West Seventh Street from 150 feet east of 21st Avenue West to 20th Avenue West.-- Clerk

(b) For confirmation the assessment roll levied to defray the assessable portion of sanitary sewer extension in 91st Avenue West, Contract 5370 (assessable - \$22,314.62);

(c) Letters of sufficiency of petitions to:

(1) Construct an eight inch watermain in Ethel Avenue from Springvale Road to 365 feet northerly;

(2) Reclassify from R-3 to R-4 Lots 1 through 16, Block 77, Endion Division of Duluth;

(3) Vacate streets, avenues and alleys in Auditor's Plat of Lester Park Garden Tracts and Crosley Park Addition to Duluth. -- Received

04-0823-05 Clerk submitting applications to the Minnesota gambling control board for exemptions from lawful gambling licenses from: (a) Duluth Art Institute on November 5 and 6, 2004 (raffle); (b) St. Mary's Medical Center on November 4, 2004 (raffle). -- Received

04-0823-06 Engineering division submitting monthly status report of August 1, 2004. -- Received

04-0823-07 Treasurer submitting annual report of all gifts received by the city for \$5,000 or less during the period of August 1, 2003, through July 31, 2004, pursuant to Resolution 97-0954. -- Received

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REPORTS OF BOARDS AND COMMISSIONS

04-0823-25 Alcohol, gambling and tobacco commission minutes of: (a) June 2; (b) June 23; (c) July 7, 2004, meetings. -- Received

04-0823-08 Commission on disabilities minutes of July 7, 2004, meeting. -- Received

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OPPORTUNITY FOR CITIZENS TO BE HEARD

Peggy Marrin, Marvella Davis, Richard Roback, Dan Strecker and Dale Swapinski expressed support for the necessity for a recovery group to meet and their concern for the high rental cost for a city facility. They noted that this recovery group has been meeting at the location for approximately five years and that the group's ability to meet to help individuals return to school, get employed and work effectively in a continuing recovery program is the best investment the city can do for the community.

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CJ Bird expressed support for the need for a Native American cultural resource inventory.

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Tom Wright expressed his displeasure with the some city councilors' lack of respect with regard to a recent resolution relative to the president's visit and that Duluth has an antibusiness climate.

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At this time, 7:24 p.m., President Stauber recessed the council meeting and announced that the public hearing regarding the 2005 street improvement program addition of Lincoln Park Central East would begin.

City Engineer Metso reviewed the scope of the project. He noted that for 2005 there has been a change in the funding for community development block grant (CDBG) areas, in that the CDBG funding will only pay for assessments for income eligible residents and not for all residents in CDBG neighborhoods. Mr. Metso noted that two property owners who originally supported the project have withdrawn their names due to the new policy, but have submitted work sheets to determine if they are eligible for CDBG funding and it appears that they will qualify, at least partially, for assistance with their assessments.

Wallace Ruce and Donald Larson expressed concern that originally they were told that they would not be assessed because the area was in a CDBG neighborhood and then the rules were changed.

Dan Williams stated that he favors the project with or without the assessments being covered by CDBG funding, even though he felt that the policy should not have been changed when residents were originally told that it would be covered with the funding.

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At this time, 7:38 p.m., President Stauber closed the public hearing and the regular order of business was resumed.

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Councilor Ness moved to suspend the rules to consider Resolution 04-0578, by Councilor Stover, ordering the construction of West Seventh Street from approximately 150 feet east of 21st Avenue West as part of the 2005 street improvement program project - Lincoln Park Central East,

City Project No. 0347TR, at an estimated cost of \$72,500, at this time, which motion was seconded and unanimously carried.

Resolution 04-0578 was adopted as follows:

BY COUNCILOR STOVER:

WHEREAS, that pursuant to Section 61(b) of the Home Rule Charter of the city of Duluth, the city council previously ordered the improvement of those streets, avenues and parkways set forth in the 2005 street improvement program; with the costs of said improvement estimated at \$5,817,960 to be paid from the Street Improvement Fund 0440 and 1/4 or less of said costs be levied against the property specifically benefitted by said improvements; and

WHEREAS, the city has received a petition from abutting property owners for the construction of West Seventh Street from 150 feet east of 21st Avenue West to 20th Avenue West, with the project to be included in the 2005 street improvement program project - Lincoln Park Central East (City Job No. 0347TR) in the amount of \$72,500; and

WHEREAS, proper notice has been sent to the benefitting property owners; and the public hearing has been held that allowed property owners to voice their opinion.

NOW, THEREFORE, BE IT RESOLVED, that said improvement as described above be included as an amendment to the 2005 street improvement program; that the estimated total cost of said improvement as estimated by the city engineer is \$72,500, \$55,100 payable from the Street Improvement Fund 0440 and \$17,400 payable from Special Assessment Fund 0410, Agency 038, Organization 5398, Object 5530, against the land and premises specially benefitted.

BE IT FURTHER RESOLVED, that the council order in subject project in accordance with the provisions of Section 62 of the City Charter and that said improvement is hereby ordered.

Resolution 04-0578 was unanimously adopted.

Approved August 23, 2004

HERB W. BERGSON, 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 Stauber moved passage of the consent agenda, which motion was seconded and unanimously carried.

BY COUNCILOR NESS:

RESOLVED, that the assessment roll levied to defray the assessable portion of the 91st Avenue West sanitary sewer extension (Contract No. 5370; assessable amount - \$22,314.62) is hereby confirmed.

Resolution 04-0584 was unanimously adopted.

Approved August 23, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

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:

Tessier-Waltman Memorial Fund (Tessier-Waltman Memorial Softball Tournament), Wheeler Field, for August 28 and 29, 2004, with Larry Tessier, manager.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Duluth-Superior GLBT Pride, Inc. (Duluth-Superior GLBT Pride Festival), Park Point, for September 4, 2004, with Sherry Berhow, manager.

Resolution 04-0566 was unanimously adopted.

Approved August 23, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

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:

Grandma's, Inc. (Grandma's Saloon & Deli), 522 Lake Avenue South, for September 24 and 25, 2004, with the serving and music ceasing at 1:00 a.m.

Resolution 04-0567 was unanimously adopted.

Approved August 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

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

Northland Vietnam Veterans Association, Bayfront Park, for September 18, 2004, with Paul Larson, manager.

Resolution 04-0568 was unanimously adopted.

Approved August 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the transfer of the following off sale 3.2 percent malt liquor licenses and application for the 2:00 a.m. beverage license for the period ending April 30, 2005, subject to departmental approvals:

Holiday Stationstores, Inc. (Holiday Station Store #354), 3301 West Arrowhead Road, transferred from Speedway/SuperAmerica, LLC (Super America #4360), same address.

Holiday Stationstores, Inc. (Holiday Station Store #353), 2432 London Road, transferred from Speedway/SuperAmerica, LLC (Super America #4095), same address.

Resolution 04-0569 was unanimously adopted.

Approved August 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the renewal and issuance of 81 on sale intoxicating liquor, 84 on sale Sunday intoxicating liquor, six additional bar, 17 on sale dancing, one late hour entertainment license, and 30 2:00 a.m. beverage licenses, for the period beginning September 1, 2004, and ending August 31, 2005, 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. 04-0823-09.

Resolution 04-0570 was unanimously adopted.

Approved August 23, 2004

HERB W. BERGSON, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

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BY COUNCILOR STEWART:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves renewal of 18 on sale wine licenses for the period beginning September 1, 2004, and ending August 31, 2005, 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. 04-0823-10.

Resolution 04-0571 was unanimously adopted.

Approved August 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

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, 2004, and ending August 31, 2005, 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. 04-0823-11.

Resolution 04-0572 was unanimously adopted.

Approved August 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves renewal of eight on sale club liquor licenses for the period beginning September 1, 2004, and ending August 31, 2005, 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. 04-0823-12.

Resolution 04-0573 was unanimously adopted.

Approved August 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves renewal of one brewery malt liquor off sale intoxicating liquor license for the period beginning September 1, 2004, and ending August 31, 2005, 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. 04-0823-13.

Resolution 04-0574 was unanimously adopted.

Approved August 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the appointment by Mayor Bergson of Tadd M. Johnson to the Duluth human rights commission for a term expiring on April 20, 2005, replacing James Prest who resigned, is confirmed.

Resolution 04-0564 was unanimously adopted.

Approved August 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the appointment by Mayor Bergson of Ethan Perry (professional) to the tree commission for a term expiring on August 31, 2007, replacing Gregg Lillejord, is confirmed.

Resolution 04-0565 was unanimously adopted.

Approved August 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

WHEREAS, a sufficient petition was filed with the city clerk requesting the vacation of an alley between Clay Street and Prince Street, east of Skyline Parkway and west of 69th Avenue West in Bay View Heights, legally described as the alley between Lots 1-14, Block 27, and Lots 1-11, Block 28, and Lots 1-10, Block 29, Bay View Addition #1, retaining the full vacated portion abutting Lots 5-7, Block 28, as utility easement; and

WHEREAS, 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

WHEREAS, the city planning commission unanimously approved the alley vacation at its August 10, 2004, meeting (Reference No. 04078).

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation of the alley between Clay Street and Prince Street, east of Skyline Parkway and west of 69th Avenue West in Bay View Heights, legally described as the alley between Lots 1 through 14, Block 27, and Lots 1-11, Block 28, and Lots 1-10, Block 29, Bay View Addition #1, retaining the full vacated portion abutting Lots 5-7, Block 28, as utility easement, and as more particularly described on Public Document No. 04-0823-14.

RESOLVED FURTHER, that the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of St. Louis County, Minnesota, a certified copy of this resolution together with a plat showing the portion of the alley to be vacated.

Resolution 04-0582 was unanimously adopted.

Approved August 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

WHEREAS, a sufficient petition was filed with the city clerk requesting the vacation of an alley which connects Missouri Avenue and Mississippi Avenue and an alley between the foregoing alley and Lyons Street, except for the northern portion, in Superior View Addition, Duluth, legally described as that portion of the alley which is adjacent to Lots 9 through 28, Block 4, Superior View Addition, Duluth, retaining the full vacated portion as utility easement; and

WHEREAS, 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

WHEREAS, the city planning commission unanimously approved the alley vacation at its August 10, 2004, meeting (Reference No. 04073).

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation of that portion of the alley which is adjacent to Lots 9 through 28, Block 4, Superior View Addition, Duluth, retaining the full vacated portion as utility easement, and as more

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

particularly described on Public Document No. 04-0823-15.

RESOLVED FURTHER, that the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of St. Louis County, Minnesota, a certified copy of this resolution together with a plat showing the portion of the alley to be vacated.

Resolution 04-0583 was unanimously adopted.

Approved August 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

WHEREAS, the city of Duluth established the following CDBG programs and funding changes as set forth below.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are authorized to make the following transfer of funds between the Federal Fund 0262, Agency 020, 2002 and 2004 HUD-funded community development accounts as set forth below:

2002 CDBG Transfers
Account Revised - 2002

Project #	Project	Budget amount	New amount	Amount of increase or decrease
6509	Grant Recreation Center improvement	\$303,760	\$394,811	\$91,051

2004 CDBG Transfers
Account Revised - 2002

6717	Citywide street improvement	\$161,000	\$ 69,949	(\$91,051)
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Resolution 04-0585 was unanimously adopted.

Approved August 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

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:

Legal Description	Parcel No.	Location	Reason
RIVERSIDE DIVISION, OUTLOTS 2 & 3	3970-2070	Riverside	future public trail (Western Waterfront Trail)

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Legal Description	Parcel No.	Location	Reason
THAT PART OF SW1/4 OF SW 1/4 OF SECTION 13, TOWNSHIP 49 NORTH, RANGE 15 WEST, LYING WITHIN A PARCEL BEG ON W LINE OF SEC. 24 1177.03 FT S OF NW COR THENCE NELY ALONG A LINE PARALLEL WITH AND 44.5 FET SELY AT RIGHT ANGLES FROM CENTERLINE OF FOND DU LAC BRANCH MAIN TRACK TO A PT ON S LINE OF PULASKY ST THENCE E ALONG S LINE 90 FT TO E LINE OF SW 1/4 OF SW 1/4 SEC 13 THENCE SWLY TO A PT ON S LINE OF SW 1/4 OF SW 1/4 383.2 FT W OF SE 1/16TH COR OF FORTY THENCE W ALONG S LINE OF FORTY 29.80 FT THENCE SWLY ALONG A LINE PARALLEL WITH AND DISTANT 194.5 FEET ELY AT RIGHT ANGLES TO TRACK CENTERLINE TO W LINE OF SEC 24 THENCE N ALONG W LINE TO PT OF BEG	2744-50	Norton Park	water, sewer, gas and road infrastructure traverse the land
CLIFTON HEIGHTS, FIRST DIV, BLOCK 17, LOTS 20-27	560-200 through 560-270	Kenwood	stormwater management (drainage) area

Resolution 04-0592 was unanimously adopted.
 Approved August 23, 2004
 HERB W. BERGSON, Mayor

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BY COUNCILOR ATKINS:

RESOLVED, that proper city officials are hereby authorized to amend an agreement, substantially in the form of that on file with the office of the city clerk as Public Document No. 04-0823-16, with and accept funds from Hennepin County for the provision of dislocated worker services to laid off airline industry workers pursuant to the Workforce Investment Act for the period of April 7, 2003, through March 31, 2005, in the amount of \$54,490. Funds will be accepted upon execution of the agreement and shall be deposited into Fund 0268.

Resolution 04-0534 was unanimously adopted.
 Approved August 23, 2004
 HERB W. BERGSON, Mayor

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BY COUNCILOR ATKINS:

RESOLVED, that proper city officials are hereby authorized to enter into an agreement,

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

substantially in the form of that on file with the office of the city clerk as Public Document No. 04-0823-17, with Job Service for the provision of dislocated worker services pursuant to the Workforce Investment Act and Minnesota Status, Chapter 268 for the period of July 1, 2004, through June 30, 2005, at costs not to exceed \$73,339 for the federal program and \$185,387 for the state program which shall be payable from Fund 0268.

Resolution 04-0561 was unanimously adopted.

Approved August 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

WHEREAS, by resolution of intent numbered 04-0500 the council did request the administration to prepare plans and specifications for the construction of approximately 400 feet of sanitary sewer in Trinity Road beginning 1,050 feet south of Mall Drive and extending southerly and easterly (City Job No. 0466SN) at an estimated cost of \$45,000; and

WHEREAS, said plans and specifications have been prepared and filed with the secretary of the special assessment board; proper notice has been sent to the benefitting property owners; the public hearing has been held that allowed property owners to voice their opinion; the special assessment board has submitted its report to this council pursuant to Section 45-79, Duluth City Code of 1959, and the said board, at the direction of the mayor, has furnished this council with information as required by Section 45-80 of the Duluth City Code of 1959.

NOW, THEREFORE, BE IT RESOLVED, that said improvement as described above be made; that the estimated total cost of said improvement as estimated by the city engineer is \$45,000, payable from Special Assessment Fund 0410, Agency 038, Organization 5397, Object 5530 and that all of the cost of said improvement be defrayed by special assessment against the land and premises specially benefitted; that those assessed be permitted to pay said assessment in installments over a 15 year period, subject to Section 68 of the City Charter; that said assessment satisfy all the requirements of Section 60 of the Charter.

BE IT FURTHER RESOLVED, that the council order in subject project in accordance with the provisions of Section 62 of the City Charter and that said improvement is hereby ordered.

Resolution 04-0575 was unanimously adopted.

Approved August 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Duluth Superior Erection, Inc., be and hereby is awarded a contract for the sanitary and storm manhole adjustment program for the engineering division in accordance with specifications on its low specification bid of \$89,500, terms net 30, FOB job site, \$49,225 payable out of Sewer Fund 0530, Department/Agency 500, Organization 1905, Object 5535 and \$40,275 payable out of Stormwater Utility Fund 0535, Department/Agency 500, Organization 1905, Object 5535.

Resolution 04-0587 was unanimously adopted.

Approved August 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Letourneau and Sons, Inc., be and hereby is awarded a contract for construction of storm sewer replacement (72 inch storm culvert) at 63rd Avenue West between Sherburne Street and Waseca Street for the engineering division in accordance with specifications

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

on its low specification bid of \$129,460, terms net 30, FOB job site, payable out of Stormwater Utility Fund 0535, Department/Agency 500, Organization 1905, Object 5533.

Resolution 04-0588 was unanimously adopted.

Approved August 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Traffic Control Corporation be and hereby is awarded a contract for furnishing and delivering ten new traffic signal controller for the engineering division in accordance with specifications on its low specification bid of \$25,027.50, terms net 30, FOB destination, payable out of General Fund 0100, Department/Agency 700, Organization 2724, Object E407.

Resolution 04-0589 was unanimously adopted.

Approved August 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Duluth Superior Blacktop be and hereby is awarded a contract for furnishing and delivering bituminous materials as needed for year 2004 for the maintenance and utility operations division in accordance with specifications on its low specification bid for a total of \$190,650, terms net 30, FOB picked up, payable out of various funds, department/agencies, organizations, objects.

Resolution 04-0590 was unanimously adopted.

Approved August 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Mueller Pipeliners, Inc., be and hereby is awarded a contract for construction of six inch PE high pressure gas main and eight inch HDPE watermain in Glenwood Street from 43rd Avenue East to 48th Avenue East for the utility operations division in accordance with specifications on its low specification bid of \$219,387.21, terms net 30, FOB job site, \$65,816.16 payable out of Gas Fund 0520, Department/Agency 500, Organization 1905, Object 5533 and \$153,571.05 payable out of Water Fund 0510, Department/Agency 500, Organization 1905, Object 5536.

Resolution 04-0591 was unanimously adopted.

Approved August 23, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

BE IT RESOLVED, that the program participation fee for each person's participation in the Duluth justice and deferral program shall be set by the administering department in conformance with the schedule of fees on file with the city clerk as Public Document No. 04-0823-18.

Resolution 04-0580 was unanimously adopted.

Approved August 23, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

RESOLVED, that in accordance with the provisions of Section 33-88.2 of the Duluth City Code, 1959, as amended, the following handicapped parking zones are hereby established:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Front of 1711 East Sixth Street;
Front of 2804 East Second Street;
Next to 201 South 18th Avenue East on Jefferson Street.
Resolution 04-0581 was unanimously adopted.
Approved August 23, 2004
HERB W. BERGSON, Mayor

- - -

BY COUNCILOR REINERT:

RESOLVED, that the proper city officials are hereby authorized to execute an agreement with the Duluth airport authority which allows the authority to participate during 2004 in the city's self insurance fund in the amount of \$52,462 for purposes of workers' compensation and employee honesty bond coverage, which agreement shall be substantially in the form of Public Document No. 04-0823-19, on file in the office of the city clerk. Payments received will be deposited in Self Insurance Fund 0605-036-1659 and 0160-036-1659.

Resolution 04-0576 was unanimously adopted.
Approved August 23, 2004
HERB W. BERGSON, Mayor

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BY COUNCILOR REINERT:

RESOLVED, that the proper city officials are hereby authorized to execute an agreement with the Spirit Mountain recreation area authority which allows the authority to participate during 2004 in the city's self insurance fund in the amount of \$76,984 for purposes of general liability, workers' compensation and employee honesty bond coverage, which agreement shall be substantially in the form of Public Document No. 04-0823-20, on file in the office of the city clerk. Payments received will be deposited in Self Insurance Fund 0605-036-1658 and 0610-036-1658.

Resolution 04-0577 was unanimously adopted.
Approved August 23, 2004
HERB W. BERGSON, Mayor

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The following resolutions were also considered:

Resolution 04-0600, by Councilor Stewart, regarding the treatment of Duluth citizens by the secret service of the United States, was introduced for discussion.

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

Joel Sipress noted that his photo was one that was displayed by the secret service and that there is no way that he is a physical threat to the president of the United States. He felt that it is appropriate to discuss this action, but not necessarily on a personal basis, because this is not a political partisan issue.

Eric Lehto voiced support for the resolution because he felt that the actions of the secret service were contrary to the freedoms of speech, expression and the press. He stated that he has never been a security risk or threat to the president.

George Hanson and Tom Wright expressed concern that the city council should spend time on economic issues for Duluth and let the secret service do their job and stated that because this was a private event, the sponsors can regulate who is allowed to attend and that this resolution is a way of going against the Patriot Act.

Peggy Marrin felt that anyone who behaves aggressively or inappropriately should be dealt with in a nonpartisan manner. She felt that there was some inappropriate action by those controlling access to the event because if you said that you were not going to vote for the president, you were not given a ticket.

KL Lewis felt that if admission was going to be limited to supporters of the president, that it should have been noted that way to begin with.

Councilors Atkins, Little and President Stauber noted: that many people were not asked who they were voting for; that it is the job of the secret service to do what they feel is necessary to protect the president; this is something that the city council should not be addressing and that, apparently, the background of the individuals mentioned has indicated some incidents that would be of concern to the secret service in the performance of its duties.

Councilors Stewart and Johnson felt that this is an issue of free speech not of one party or the other.

Resolution 04-0600 was adopted as follows:

BY COUNCILOR STEWART:

WHEREAS, it is the mission of the United States Secret Service to provide for the physical security of the President and not to engage in political investigations of individuals who are not a physical threat to the President; and

WHEREAS, during President George W. Bush's July 13, 2004, visit to Duluth, flyers containing photographs of two well respected members of the Duluth community who pose no physical threat to the President were taped to tables at Secret Service security checkpoints at the President's rally; and

WHEREAS, such posting of photos of politically active community members who pose no physical threat to the President can have a chilling effect on political speech and activity in our community.

NOW, THEREFORE, BE IT RESOLVED, that the Duluth City Council expresses its deep concern regarding the posting of photos of Duluth residents Joel Sipress and Joel Kilgour at Secret Service security checkpoints at the President's recent Duluth rally.

BE IT FURTHER RESOLVED, that the Duluth City Council requests that the United States Secret Service provide the Duluth City Council with an explanation of the reasons for the posting of these photographs.

BE IT FURTHER RESOLVED, that the Duluth City Clerk is hereby directed to send copies of this resolution to the United States Secret Service Director W. Ralph Basham, U.S. Secret Service, Office of Government Liaison and Public Affairs, 245 Murray Drive, Building 410, Washington, D.C., 20223, and to senators Mark Dayton and Norm Coleman and Representative James Oberstar.

Resolution 04-0600 was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Ness, Reinert, Stewart and Stover -- 6

Nays: Councilors Atkins, Little and President Stauber -- 3

Approved August 23, 2004

HERB W. BERGSON, Mayor

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Resolution 04-0579, by Councilor Gilbert, of intent and support to authorize conveyance of certain property in the Cook Home area from St. Louis County, was introduced for discussion.

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

Robert Berquist; Jody Berquist; Jan Slattery; Dana Bedford, president of Animal Allies; Pat Castellano; Sheryl Sandahl; Beverly Patronas, executive director of Animal Allies; Pauline Olsen and Karen Moore expressed support for the resolution for reasons of: this site is ideally suited for animals; a public dog park/walking trail could be included; about 70 percent of the site is a flood plain and is not buildable for housing; with the county donating the land, more funds can be spent on the actual building; Animal Allies will raise the funds to build the building at no cost to the city; the sooner the structure is built, the fewer number of animals will have to be euthanized

due to the lack of space and disease control; these animals come from the community and the community needs to come forth and support this project; the existing location is small and inadequate; there is a need for trained volunteers who put in thousands of hours; Duluth can do much better than what there is now; if this resolution is not approved, the county will not convey the land; this gift of land is a gift of hope to the outcast animals; with budget shortfalls for the city, Animal Allies will take over operations of the facility for the city; it is necessary to have a wetlands delineation done this fall before any building plans can proceed; this location is easily accessible from both ends of the city and the townships and the current conditions are that animal discharges run into other cages and the walkway.

Pat Wheeler, animal humane board president, opposed this resolution for reasons of: there has been no input from anyone other than Animal Allies, city employees should have been the first ones approached; other animal groups, who are working hard, should have been consulted; the city of Duluth animal humane board has not been contacted; partnering with the county should have been considered; creation of an authority should be considered; more time should be taken in considering all the options and issues and with Animal Allies being in charge, there is no oversight or accountability.

Marcia Hales expressed support for a new shelter, but raised concern that there is no contract with Animal Allies and there are many unanswered questions such as, what other locations have been considered relative to the comprehensive plan; has staff input been taken into consideration; has the business plan from Animal Allies been reviewed and what other groups will have access to services or space at this location. She felt that this should be tabled until these issues/questions have been discussed.

Councilors extensively discussed issues raised and stated that if this is approved, there needs to be more information and details need to be resolved.

Resolution 04-0579 was adopted as follows:

BY COUNCILOR GILBERT:

BE IT RESOLVED, the Duluth City Council hereby declares it's intent and support to accept conveyance of the following St. Louis County owned property near the intersection of Rice Lake and Arrowhead Roads and as described below.

Part of the Northeast Quarter of the Northwest Quarter and part of the Southeast Quarter of the Northwest Quarter, Section 16, Township 50 North, Range 14 West, City of Duluth, St. Louis County, Minnesota and bounded by a line described as follows:

Commencing at the north one-quarter of said Section 16; thence S00°07'24"E, along the north-south one-quarter line of said section, 570.80 feet to the point of beginning;

Thence S00W°07'24"E, continuing along said one-quarter line, 739.70 feet to the southwest corner of the said northeast quarter of the northwest quarter, being the northeasterly corner of Campus Park;

Thence S43°35'19"W along the north line of said park, 1122.63 feet to the easterly right-of-way line of Rice Lake Road;

Thence N19°48'42"W, along said right-of-way line, 321.78 feet to the south line of the Rice Lake Road Cemetery;

Thence N70°20'49"E, along the southerly line of said cemetery, 178.50 feet to the southeasterly corner of said cemetery;

Thence N19°39'11"W, 350.00 feet to the northeasterly corner of said cemetery;

Thence N70°20'49"W, along the northerly line of said cemetery, 179.47 feet to the easterly right-of-way line of Rice Lake Road;

Thence N19°48'42"W, along said right-of-way line, 511.81 feet;

Thence N70°11'18"E, along said right-of-way line, 15.00 feet;
Thence N19°48'42"W, along said right-of-way line 15.09 feet;
Thence S90°00'00"E, 61.40 feet;
Thence N00°00'00"E, 420.02 feet;
Thence S90°00'00"E, 1103.19 feet to the point of beginning.

Parcel contains 1,193,811 square feet or 27.406 acres, more or less, and is subject to easements of record.

RESOLVED FURTHER, the Duluth City Council hereby requests the conveyance of said property by the St. Louis County Board of Commissioners to the city of Duluth for the purpose of operating the city's animal control program in partnership with the Animal Allies Humane Society's programs and services.

Resolution 04-0579 was unanimously adopted.

Approved August 23, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0594, by Councilor Gilbert, committing to city involvement in the Duluth-Kroc Community Center to be established with Salvation Army and the gift of Joan Kroc, was introduced for discussion.

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

CJ Bird noted how the initial proceeds from the casino revenues were spent for many varied projects and have since been used annually for the street improvement program. She then commented that since these funds have originated from the casino owned by the Indian community, the city should acknowledge that and further create scholarships for youth who cannot afford it, with a percentage dedicated for Indian youth.

John Vaydich, business manager of the Duluth-Superior Softball Players Association, expressed support for the resolution and felt that this an appropriate expenditure of funds under the terms of the trust that was established.

Garry Krause noted that if this project is approved, the areas of keeping up the infrastructure of necessary road maintenance and costs for the long term maintenance for this proposed structure need to be looked at and that it might be better to spread the components of this project throughout the city.

Resolution 04-0594 was adopted as follows:

BY COUNCILOR GILBERT:

WHEREAS, the city officials have worked with citizens for years to develop suitable facilities for a city wide youth center and public recreation facility; and

WHEREAS, the city of Duluth facilities task force, a large and diverse organization representing over 22 local community groups, has worked for over two years in planning for such a facility; and

WHEREAS, the task force found a profound public need, one that the city has not had the resources to fully meet, for programs and facilities to build the community and help disadvantaged youth; and

WHEREAS, the provision of such a community building facility and the planned programs to utilize it are, and are declared to be, a public purpose; and

WHEREAS, Joan Kroc has made a significant gift in her estate for creating the type of facility needed in Duluth, and that gift and her instructions are administered by the Salvation Army; and

WHEREAS, the central territory of the Salvation Army, which includes Duluth, has issued a request for proposals for programs and facilities of the type needed in Duluth to be funded in

part by the gift of Joan Kroc, which gift will include funds for building and funds for an endowment to pay for programming; and

WHEREAS, grants will be given based on several criteria, including local funding match, need, proposed uses, new construction, site donation, programming for disadvantaged youth, and substantial local partnerships; and

WHEREAS, the task force and city officials have identified a project to fulfill the public need and the grant criteria in approximately the following amounts:

Building fund - \$28 million - Kroc grant

Endowment fund - \$14 million - Kroc grant

Endowment fund - \$14 million - Local share, including \$6 million from city of Duluth; and

WHEREAS, the Salvation Army Northern Division is making a request for letters of interest.

NOW, THEREFORE, BE IT RESOLVED, by the city of Duluth:

(a) The need, as found by the task force, is a public need and fulfilling it is a public purpose;

(b) The proper city officials are requested to complete any necessary letter of interest or grant application;

(c) The program funding authorized for grant application purposes is approximately that described above, all city contributions to be used for the public purpose;

(d) The city intends to contribute up to the amount stated above, to the extent reasonably and legally possible, including \$1.2 million per year over five years from city revenues from Fond du Luth Casino operations, if such commitment is contained in a grant contract with the Salvation Army or others, for the Kroc grant described above.

Resolution 04-0594 was unanimously adopted.

Approved August 23, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0527, by Councilor Stover, awarding the contract to Nortrax Equipment Company for rental/lease of 14 motor graders in the amount of \$420,462, including tax, was introduced for discussion.

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

Joe Meirhoff, Moe Nesbitt, Dale Gessell and Tim Murphy spoke in support of the resolution for reasons of: Nortrax can supply all the equipment by the time that it is needed; John Deere equipment is used in six out of ten cities; fuel consumption is effected by many variable issues; Nortrax is a company that has been in Duluth for over 30 years, but has just had some name changes; Nortrax was the low bidder at both bid openings and Nortrax's bid has met all bid specifications.

Jeff Nadeau, Dave Walter and Eric Lehto spoke in opposition to the resolution, noting that: Caterpillar has been recommended by the city's fleet services, street maintenance department and loss control officer; in taking total costs into consideration Caterpillar (Ziegler) is the lower bid; the Caterpillar cab is quieter and it is fueled from the ground; Ziegler would guarantee in writing they are the cheapest to operate, or credit back to the city the difference; St. Louis County purchased one machine from each business last year and it was shown that Caterpillar was more efficient to operate than the John Deere; the John Deere bid did not meet all the specifications; Caterpillar has a proven nine year track record with the city; Caterpillar was recommended from the safety officer because of sound and ground level fueling; the bid specifications developed by the department using the equipment and safety officer would give the bid to Caterpillar and the cab size is more spacious in the Caterpillar.

Claudie Washington, purchasing agent, reviewed: the process used in developing the

specifications; satisfaction of past purchasing of both the John Deere and Caterpillar graders; the need to keep the process open and competitive; the sound levels of both brands meet the minimum standards; there has been no accident with either company's graders and that he supports this resolution.

- - -

At this time, 10:54 p.m., Councilor Stewart moved to suspend the rules to extend the meeting until 11:15 p.m., which motion was seconded and unanimously carried.

- - -

Councilors Johnson and Gilbert opposed the resolution for reasons of: the council should not have to resolve an issue that the vendors are trying to sell; this should be sent back and rebid and that specifications should be drafted in the best interests of the city and those who operate the equipment.

Resolution 04-0527 was adopted as follows:

BY COUNCILOR STOVER:

RESOLVED, that Nortrax Equipment Company be and hereby is awarded a contract for rental/lease of 14 John Deere Model 772CHII motor graders for six months period during the year 2004/2005 winter seasons for the maintenance operation division in accordance with specifications on its low specification bid of \$420,462 including tax, terms net 30, FOB destination, payable out of General Fund 0100, Department/Agency 500, Organization 2000, Object 5415.

Resolution 04-0527 was adopted upon the following vote:

Yeas: Councilors Atkins, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 7

Nays: Councilors Gilbert and Johnson -- 2

Approved August 23, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Northland Constructors of Duluth, LLC, be and hereby is awarded a contract for construction of pump station and storage facility at Dodge Street and 52nd Avenue East in accordance with specifications on its low specification bid of \$3,779,560, terms net 30, FOB job site, payable out of Sewer Construction Bond Fund 0531, Department/Agency 500, Object 5532.

Resolution 04-0597 was unanimously adopted.

Approved August 23, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0593, by Councilor Little, regarding payment procedures, was introduced for discussion.

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

Edwin Haller and Eilein Zeitz reviewed the history and operations of the the Sister City Program program. They spoke of how the community is more enriched by this program and that sister city program activities bring in tourism dollars and that because of existing procedures in place, they felt that there is not a need for this resolution.

Peggy Marrin felt that this issue needs attention and supported the resolution.

- - -

At this time, 11:12 p.m., Councilor Reinert moved to suspend the rules to extend the meeting time until 11:30 p.m., which motion was seconded and unanimously carried.

- - -

Councilor Stewart moved to call the question, which motion was seconded and unanimously carried.

Resolution 04-0593 failed upon the following vote (Public Document No. 04-0823-21):

Yeas: Councilors Atkins, Little and President Stauber -- 3

Nays: Councilors Gilbert, Johnson, Reinert, Stewart and Stover -- 5

Abstention: Councilor Ness -- 1

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

BY COUNCILOR JOHNSON

04-050 - AN ORDINANCE AMENDING CHAPTER 13, SECTION 9, OF THE DULUTH CITY CODE, 1959, AS AMENDED; TO INCREASE THE NUMBER OF MEMBERS OF THE CIVIL SERVICE BOARD NECESSARY TO CONSTITUTE A QUORUM.

- - -

BY COUNCILOR GILBERT

04-051 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAPS NOS. 22, 23 AND 28 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-A, ONE FAMILY RESIDENTIAL, TO C-5, PLANNED COMMERCIAL, PROPERTY LOCATED ALONG MALL DRIVE, SOUTH OF CENTRAL ENTRANCE AND EAST OF TRINITY ROAD (WELSH COMPANIES, LLC).

- - -

BY COUNCILOR GILBERT

04-052 - AN ORDINANCE GRANTING A CONCURRENT USE PERMIT TO THE CONGRESS BAR AND GRILL FOR AN AWNING IN THE RIGHT-OF-WAY ADJACENT TO 1334 COMMONWEALTH AVENUE (GARY PETERSON/CONGRESS BAR AND GRILL).

- - -

BY PRESIDENT STAUBER

04-053 - AN ORDINANCE ESTABLISHING THE DOWNTOWN WATERFRONT SPECIAL SERVICE DISTRICT.

- - -

The following entitled ordinances were read for the second time:

BY COUNCILOR NESS

04-049 (9683) - AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF GENERAL OBLIGATION STEAM UTILITY REVENUE BONDS OF THE CITY OF DULUTH IN AN AMOUNT NOT TO EXCEED \$1,250,000 FOR THE IMPROVEMENT OF THE DULUTH STEAM PLANT UPON TERMS AND CONDITIONS TO BE PROVIDED BY RESOLUTION OF THE CITY COUNCIL AND PLEDGING REVENUES FOR THE PAYMENT THEREOF.

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

- - -

BY COUNCILOR STOVER

04-048 (9684) - AN ORDINANCE AUTHORIZING LANDFILL CLEANUP AGREEMENT WITH WLSSD, DAA AND MPCA AND GRANT OF EASEMENT AND DECLARATION OF RESTRICTIONS AND COVENANTS IN FAVOR OF MPCA RELATED TO DUMP SITE 2.

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

- - -

The meeting was adjourned at 11:29 p.m.

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 9683

BY COUNCILOR NESS:

AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF GENERAL OBLIGATION STEAM UTILITY REVENUE BONDS OF THE CITY OF DULUTH IN AN AMOUNT NOT TO EXCEED \$1,250,000 FOR THE IMPROVEMENT OF THE DULUTH STEAM PLANT 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, Minnesota Laws, 1979, Chapter 113 and Chapter 475 of Minnesota Statutes and other pertinent provisions of said Charter and statutes, the city is authorized to issue its general obligation revenue bonds to provide funds for the improvement of the municipal steam plant, which bonds shall be a specific lien upon such plant and may be payable primarily from net revenues to be derived from service charges pledged for their payment.

1.02 The city council determines that it is necessary and desirable to make improvements to the central steam utility located in the Downtown area of Duluth (the Duluth Steam Plant), including the construction and equipping of facilities to transport heated and chilled water and related improvements to the Duluth Entertainment Convention Center for use in heating and air conditioning the DECC, and determines that it is necessary to issue general obligation revenue bonds in an amount not exceeding \$1,250,000 for the purpose of paying for the improvements, and paying for a portion of the interest cost of the issue, as allowed by Minnesota Statutes, Section 475.56.

1.03 The city heretofore issued and sold general obligation steam revenue bonds dated December 1, 1998, now outstanding in the amount of \$170,000; dated December 1, 2000, now outstanding in the amount of \$245,000; dated February 1, 2002, now outstanding in the amount of \$290,000; and dated September 1, 2003, now outstanding in the amount of \$2,250,000. Under the provisions of the ordinances authorizing said bonds, the city reserved the privilege of issuing additional bonds payable from said net revenues on a parity with the bonds dated December 1, 1998, December 1, 2000, February 1, 2002, and September 1, 2003.

1.04 Pursuant to the authority herein recited, the city council authorizes and directs the sale of general obligation steam utility revenue bonds of the city of Duluth in an amount not exceeding \$2,250,000 for the purposes stated in Section 1.02 hereof and pledges the full faith and credit and taxing powers of the city irrevocably to the extent required, for the payment of the principal and interest when due on such bonds and the maintenance of a reserve securing such payment, and also pledges and appropriates irrevocably for such payments the net revenues to be derived from time to time from the operation of the Duluth Steam Plant in excess of the normal reasonable and current costs of the operating and maintenance thereof.

1.05 The city reserves the right and privilege of issuing additional bonds and of pledging and appropriating the net revenues of the Duluth Steam Plant for the payment thereof, when authorized in accordance with the law and the City Charter and determined by the city council to be necessary for the improvement of the 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. Term 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 covenants securing their payment, and prescribe the form thereof, and offer to sell such bonds in such manner and at such time or times as shall be deemed in the public interest, all in accordance with the provisions of Minnesota Statutes, Chapter 475, and other applicable laws.

Section 3. Revenues and accounts.

3.01 The city council shall, by resolution or resolutions, provide for the method of imposing and collecting just and equitable charges for all use and for the availability of facilities of the Duluth Steam Plant at the times and amounts required to pay the normal, reasonable, and current operating expenses and to maintain the Duluth Steam Plant and also to produce net revenues at least adequate at all times to pay the principal and interest due on the bonds issued hereunder and on all other bonds 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. Certifications of proceedings.

4.01 The city clerk is directed to file with the county auditor of St. Louis County, Minnesota, a certified copy of this ordinance, 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.

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 of the officer's custody or are otherwise known. All such certified copies, certificates, and affidavits, including any heretofore furnished, constitute representations to the city as to the correctness of the facts recited therein and the actions stated therein to have been taken.

Section 5. Effective date.

5.01 That this ordinance shall take effect and be in force 30 days from and after its date of passage and publication. (Effective date: October 3, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Nays: None -- 0

ATTEST:

JEFFREY J. COX, City Clerk

Passed August 23, 2004
Approved August 23, 2004
HERB W. BERGSON, Mayor

- - -

ORDINANCE NO. 9684

BY COUNCILOR STOVER:

AN ORDINANCE AUTHORIZING LANDFILL CLEANUP AGREEMENT WITH WLSSD, DAA AND MPCA AND GRANT OF EASEMENT AND DECLARATION OF RESTRICTIONS AND COVENANTS IN FAVOR OF MPCA RELATED TO DUMP SITE 2.

The city of Duluth does ordain:

Section 1. That the proper city officials are hereby authorized to enter into a landfill cleanup agreement in the form of that on file in the office of the city clerk as Public Document No. 04-0823-22 with the Western Lake Superior sanitary district, the Duluth airport authority and the Minnesota pollution control agency for the cleanup of Duluth Dump Site No. 2.

Section 2. That the proper city officials are hereby authorized to execute and deliver an easement and a declaration of restrictions and covenants in the form of those on file in the office of the city clerk as Public Document Nos. 04-0823-22 and 04-0823-22 respectively granting the MPCA a temporary easement for an indeterminate term over lands described therein and imposing covenants and restrictions on said land in conjunction with the cleanup of said Dump Site No. 2.

Section 3. This ordinance shall take effect 30 days from and after its passage and publication. (Effective date: October 3, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Nays: None -- 0

ATTEST:

JEFFREY J. COX, City Clerk

Passed August 23, 2004
Approved August 23, 2004
HERB W. BERGSON, Mayor

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, September 13, 2004, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Absent: None -- 0

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

04-0913-01 A&L Properties submitting petition to vacate part of 42nd Avenue West from Grand Avenue south 280 feet to Second Street, including all of the 80 feet right-of-way. -- Assessor

04-0913-02 Edwyna Bergh, et al. (19 signatures), submitting petition to reclassify from M-1 to R-3 property described as Lot 399, Block 77, Duluth Proper, Second Division. -- Assessor

04-0913-03 City of Duluth, et al. (two signatures), submitting petition to vacate streets and alleys in that portion of 99th Avenue West abutting Lot 8, Block 2, and Lot 1, Block 3; those portions of alleys in Block 3 lying southeast of State Highway 23; that portion of 98th Avenue West abutting Blocks 3 and 4 lying between the north line of Commonwealth Avenue and the north line of Lot 19, Block 3, extended easterly to the north line of Lot 36, Block 4; all alleys in Blocks 4 and 5; and that portion of 97th Avenue West abutting Blocks 4 and 5 and lying between the north line of Commonwealth Avenue and the north line of Lot 27, Block 4, extended easterly to the north line of Lot 32, Block 5, all in Morgan Park First Addition. -- Assessor

04-0913-04 College of St. Scholastica, by William Burns, attorney, submitting petition to vacate all of the utility easements, streets and alleys located in all of Lots 5 through 12, inclusive, Block 17, Lots 5 through 12, inclusive, Blocks 30 and 31, Lots 9 through 16, inclusive, Block 36, and all those parts of Blocks 32, 33, 34 and 35, Gray's Addition, according to the recorded plat thereof, located in the NE1/4, Section 16, T50N, R14W, of the Fourth Principal Meridian. -- Assessor

04-0913-36 Duluth Teachers Credit Union submitting further petition (four signatures) to reclassify from R-1-c to C-1 Lots 1 through 7 and northerly 11 feet of Lot 8, Block 1 and Lots 1 through 6, Block 2, Myers and Whipples Addition to Duluth. -- Assessor

04-0913-05 John E. Hovland submitting:

(a) Petition to construct road, sewer, water, gas and storm sewer in part of Lot C, Northridge Estates. -- Assessor

(b) Waiver agreement regarding special assessment board hearing for the construction of road, sewer, water, gas and storm sewer in part of Lot C, Northridge Estates. -- Engineering

04-0913-06 Terry Nelson, et al. (four signatures), submitting petition to reclassify from S to R-1-a property located at 4710 and 4722 Woodland Avenue. -- Assessor

04-0913-07 Northstar Baptist Church, by David Sorenson, pastor, submitting petition to extend the sanitary sewer 150 feet across Trinity Road beginning approximately 710 feet north of South Arlington Avenue intersection to serve Northstar Baptist Church at 1315 South Arlington Avenue. -- Assessor

04-0913-37 Carl S. Pearson, et al. (65 signatures), submitting petition requesting that their names be removed from petition to reclassify from R-1-c to C-1 Lots 1 through 7 and northerly 11 feet of Lot 8, Block 1 and Lots 1 through 6, Block 2, Myers and Whipples Addition to Duluth. -- Assessor

04-0913-08 Minnesota state auditor submitting:

(a) Comprehensive annual financial report for the year ended December 31, 2003, for Western Lake Superior Sanitary District;

(b) Management and compliance report for the year ended December 31, 2003, for Western Lake Superior Sanitary District. -- Received

04-0913-41 Kristi Stokes submitting communication regarding amending the Duluth City Code, Section 8-22, prohibiting open containers of alcoholic beverages in public places (04-056-O). -- Received

04-0913-09 The following submitting communications regarding establishment of a Downtown Special Services District (04-0595R, 04-0596R, 04-0614R and 04-053-O): (a) Eric Dings; (b) Greater Downtown Council. -- Received

04-0913-38 The following submitting communications regarding prioritization of projects to receive 2005 low income housing tax credits (04-0605R): (a) TCG Development, LLC; (b) VP Development. -- Received

04-0913-40 The following submitting communications regarding resolution authorizing referendum and setting the time therefore on the matter of smoking in public places (04-0634R): (a) Duluth Hospitality League; (b) Pat McKone. -- Received

04-0913-10 The following submitting communications regarding the request for vacation and reclassification of property by the Duluth Teachers' Credit Union (04-0602R, 04-0603R, 04-054-O): (a) Bretmin Corporation; (b) Barbara Brooks; (c) Duluth Teachers' Credit Union; (d) Marlene and Lawrence Zwak. -- Received

04-0319-39 The following submitting communications regarding the 2005 city of Duluth budget and proposed tax levy (04-0607R, 04-0608R): (a) John Bartikoski; (b) Timothy A. Bearheart; (c) Jim Booth; (d) Shelley Gibson; (e) Dave Goldberg; (f) Christopher James; (g) Melissa Janzen; (h) Marnie Kasinskas; (i) Diane and Dwight Khoury; (j) Myrna Matheson; (k) Dave Pederson; (l) Aaron Peterson; (m) Katie Peterson; (n) Amanda Weaver. -- Received

04-0913-34 The following submitting letters of objection to the establishment of a Downtown Waterfront Special Service District (04-0595R and 04-053-O): (a) Rick Dunbar; (b) Herbert Jensen; (c) Donald Pasek; (d) Richard A. Peterson; (e) Wayne C. and Eleanor L. Polla; (f) Lance Shively; (g) Linwood A. Skafta; (h) Richard Sturm; (i) DeWayne D. Torfin. -- Assessor

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REPORTS OF OFFICERS

04-0913-35 Mayor Bergson submitting 2005 budget. -- Received

04-0913-11 Assessor submitting:

(a) Affidavits of notice of public hearings by the special assessment board to be held Tuesday, September 14, 2004, at 3:30 p.m. in Room 106A, City Hall, regarding:

(1) Proposed construction of a watermain in Ethel Avenue (estimated project cost - \$101,267.28);

(2) Reassessment of canceled sidewalk assessment for Plat 4430, Parcel 1060, Contract No. 4990. -- Clerk

(b) Letter for confirmation of assessment roll levied to defray the assessable portion of Contract No. 5388, Swenson Avenue sanitary sewer low pressure force main (assessable amount: \$29,144.63);

(c) Letters of sufficiency of petitions to:

(1) Reclassify:

(A) From R-1 to R-3, all Lots 5-12, Block 17, Lots 5-12, inclusive, Block 18, Lots 4-13, inclusive, Block 19, Lot 9, Block 20, Lots 9 -16, inclusive, Block 29, Blocks

30 and 31, Lots 9-16, inclusive, Block 36 and all those parts of Blocks 32, 33, 34 and 35, Grays Addition;

(B) From S to R-1-a property located at 4710 and 4722 Woodland Avenue;

(C) From R-1-c and R-1-b to R-4 property described as Lots 49, except that part of Lot 49 lying within ten feet of the east line of Mesaba Avenue (formerly Piedmont Avenue East,) 51, 53, 55, 57, 59, 61, 62, 63 and 64, all in Block 165, and Lots 45 and 47, Block 166½, all except that part within the ten feet of east line of Piedmont Avenue, Duluth Proper, Third Division;

(2) Vacate:

(A) All of the utility easements, streets and alleys located in all of Lots 5 through 12, inclusive, Block 17, Lots 5 through 12, inclusive, Blocks 30 and 31, Lots 9 through 16, inclusive, Block 36, and all those parts of Blocks 32, 33, 34 and 35, Gray's Addition, according to the recorded plat thereof, located in the NE1/4, Sec. 16, T50N, R14W, of the Fourth Principal Meridian;

(B) Streets and alleys in that portion of 99th Avenue West abutting Lot 8, Block 2, and Lot 1, Block 3; those portions of alleys in Block 3 lying southeast of State Highway 23; that portion of 98th Avenue West abutting Blocks 3 and 4 lying between the north line of Commonwealth Avenue and the north line of Lot 19, Block 3, extended easterly to the north line of Lot 36, Block 4; all alleys in Blocks 4 and 5; and that portion of 97th Avenue West abutting Blocks 4 and 5 and lying between the north line of Commonwealth Avenue and the north line of Lot 27, Block 4, extended easterly to the north line of Lot 32, Block 5, all in Morgan Park First Addition. -- Received

04-0913-12 Building official submitting appeals of the board of zoning appeals denials as follows:

(a) Alex and Brenda Kramer, by William Burns, attorney, request to relax the front yard setback from 25 feet to 19 feet for the construction of a 24 foot by 48 foot garage addition at 2635 Minnesota Avenue and Lots 158-160, Lower Duluth, St. Louis Avenue;

(b) Menard's, Inc., request to exceed the 25 foot height limitation for the installation of a 100 foot high ground sign on property located at 503 North 50th Avenue West;

(c) Richard Weme request to allow the placement of a 14 foot by 24 foot accessory storage shed on property without a main building on property located southeast of his dwelling at 422 North 19th Avenue West. -- Committee 2 (Planning and development)

04-0913-14 Clerk submitting letter regarding insufficiency/sufficiency of initiative petition entitled "Proposed Ordinance Creating Smoke-Free Public Places and Workplaces." -- Received

04-0913-13 Purchasing agent submitting emergency purchase order awarded to St. Joseph Equipment for repair of a 2001 Model SH41M Schaeff walking excavator. -- Received

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REPORTS OF BOARDS AND COMMISSIONS

04-0913-42 Alcohol, gambling and tobacco commission minutes of August 4, 2004, meeting. -- Received

04-0913-15 Commission on disabilities minutes of August 4, 2004, meeting. -- Received

04-0913-16 Duluth airport authority: (a) Minutes of July 20, 2004, meeting; (b) Operating income and expense reports for month ended June 30, 2004. -- Received

04-0913-17 Duluth state convention center administrative board minutes of July 27, 2004, meeting. -- Received

04-0913-18 Duluth transit authority: (a) Balance sheet for May 2004; (b) Minutes of May 26, 2004, meeting. -- Received

04-0913-19 Housing and redevelopment authority of Duluth minutes of May 25, 2004, meeting. -- Received

04-0913-20 Planning commission minutes of: (a) May 26; (b) June 8; (c) June 23, 2004, meetings. -- Received

04-0913-21 Technical design advisory committee for the Downtown Waterfront Mixed Use-Design Review District minutes of: (a) April 20; (b) May 18, 2004, meetings. -- Received

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OPPORTUNITY FOR CITIZENS TO BE HEARD

Jason Lyons expressed his concerns about the extent of patching that is done on road work and how long a road will last when it is resurfaced. He also expressed concern that all the glass is not picked up off of a road in a timely manner after an accident.

- - -

Claire Kursh expressed her concerns about comments made by a councilor at a previous council meeting relative to her husband, Joel Sipress, being a threat to the president, based on information that was allegedly on the Internet.

- - -

KL Lewis commented about the planning process and how neighborhood input would better suit city planning and future developers.

- - -

Peggy Marrin expressed her concern about how there were some individuals who were initially denied tickets to see the president when they stated that they were not going to vote for him and that political parties should be billed for the extra costs accrued by the city for a candidate's visit.

- - -

At this time, 7:17 p.m., President Stauber announced that the public hearing regarding the Downtown Waterfront Special Service District would begin.

Kristi Stokes, executive director of the Greater Downtown Council, reviewed what a special service district is and how it would work.

Dwayne Torfin, Ray Sande, Dave Pueringes, Paul King, Lance Reasor, Chad Scott, Dale Tower, KL Lewis and Tom Alnew either opposed or expressed concern over the creation of the district, citing reasons of: it is a self-serving proposal for the large Downtown businesses; it does nothing for the small business person; the activities are mostly for the Downtown and Canal Park businesses and includes a restaurant guide; the percentages are the same for all with a cap for the larger businesses; the phrase "clean and safe" is mentioned in over 50 percent of the proposal and the city should be providing that already; there is a lot of duplication of the services proposed in this district, with what should already be a responsibility of each business; questioned if those doing the marketing and promotions are qualified; the contribution from the city of \$200,000 annually, is not adequate; the cap for larger properties penalizes the smaller businesses and it should just be based on property value, without a cap; private advertising by each business is more effective than what is proposed; homeowners should be required to support the Downtown; cleaning ambassadors and safety and escort services are not the business of government; more parking is what is needed, not this; filling vacant building space needs to be a primary concern; the sunset provision of this will never happen; those who are not immediately Downtown or in Canal Park need to see that they are benefitting from this; it should be known in three years if this is successful, not five years; business owners have a responsibility now to clean up garbage and snow in front of their establishment and this will drive existing business out of Duluth.

Roger Wedin and Dan Maddy, special services district steering committee, expressed support, noting that: 70 percent of the taxing capacity of property owners support the creation of

the district; there are between 700-800 other cities with special service districts that have seen the value to this; the property owners who support this have imposed this upon themselves because they could see the value which would come from it; the cap is not per owner, but per property, so that some owners with multiple properties will be paying in the tens of thousands of dollars; the money not collected from the cap is not redistributed to others to pay; the boundaries are what is considered the core of the Downtown area; five years was supported because of professional advice as to an adequate time to assess the success and then there would have to be another hearing, with notices, to continue the district; small business were part of the committee looking at this; everyone in the district benefits if there is a stronger and greater Downtown; there will be an advisory committee to advise the Greater Downtown Council (GDC) as to how well they are carrying out their obligations and every year the budget for this will come to the council for their approval.

At the time, 8:01 p.m., President Stauber declared the public hearing closed and the regular order of business resumed.

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Councilor Ness moved to suspend the rules to consider resolutions 04-0595, 04-0596, and 04-0614 and ordinance 04-053, at this time, which motion was seconded and unanimously carried.

Resolution 04-0595, providing for the imposition of service charges within the Downtown Waterfront Special Service District; Resolution 04-0596, authorizing entering into a service contract with the Greater Downtown Council to provide services to implement the Downtown Waterfront Special Service District; and Resolution 04-0614, authorizing entering into a memorandum of understanding with the Greater Downtown Council setting forth the established level of services for the Downtown Waterfront Special Service District, by President Stauber, were introduced for discussion.

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INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinance was read for the second time:

BY PRESIDENT STAUBER

04-053 (9688) - AN ORDINANCE ESTABLISHING THE DOWNTOWN WATERFRONT SPECIAL SERVICE DISTRICT.

- - -

Councilor Stover felt that businesses should take care of their own areas and not have an additional tax imposed on them.

Resolutions 04-0595, 04-0596 and 04-0614 were adopted as follows:

BY PRESIDENT STAUBER:

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

Section 1. PURPOSE AND AUTHORIZATION.

1.01. A. Under and pursuant to the provisions of Minn. Stat. §§ 428A.01 - 428A.101 (the act), the city is authorized to establish a special service district.

B. The city council has, by Ordinance No. 9688 adopted on September 13, 2004, established the Duluth Downtown Waterfront Special Service District (the district).

1.02. The act provides that service charges may be imposed by the city, within the special service district, at a rate or amount sufficient to produce the revenues required to provide the special services in the district.

1.03. Property owners in the Downtown Waterfront who want to improve the safety, cleanliness and economic vitality of the Downtown Waterfront area by establishing the district pursuant to the act have petitioned the city to establish the Downtown Waterfront Special Service District and to establish service charges, all as more particularly set forth in an operating plan for

Duluth's Downtown Waterfront Special Service District dated May, 2004 (the operating plan), developed by a steering committee composed of a broad range of people representing property owners, business leaders, the city and others with a direct stake in enhanced business and economic development conditions in the Downtown Waterfront. The operating plan, which has been incorporated into the ordinance establishing the district by reference, sets forth the special services to be provided, the particular area of the city to be included within the district's boundaries, the amount and manner of imposing service charges and the manner in which special services will be implemented. A copy of the operating plan is available for public inspection in the city clerk's office, 411 West First Street, Duluth, Minnesota.

Section 2. SERVICE CHARGE IMPOSED.

2.01. Subject to Ordinance No. 9688 becoming effective, a service charge is hereby imposed upon all property that is classified under Minn. Stat. § 273.13 and used for commercial, industrial or public utility purposes, or is vacant land zoned or designated on a land use plan for commercial or industrial use and located within the boundaries of the district. The service charge is imposed on the basis of net tax capacity. As used in this ordinance, the term "net tax capacity" has the meaning set forth in the act. Service charges not paid on or before the applicable due date for ad valorem taxes shall be subject to the same penalty and interest as in the case of ad valorem tax amounts not paid by the respective due date. The due date for service charges payable in the same manner as ad valorem taxes is the due date given in law for the real or personal property tax for the property on which the service charge is imposed. Service charges will be collected in the same manner as ad valorem taxes. The assessment for service charges will be based upon a target total assessment of \$300,000 in the year 2005, and will increase by 3 percent each year to \$309,000 in the year 2006, \$318,270 in the year 2007, \$327,818.10 in the year 2008 and \$337,652.64 in the year 2009. The actual assessments for service charges will not exceed these amounts. The maximum service charge that will be imposed on any single property will be capped at \$7,000 in 2005. The cap increases to \$7,210 in 2006, \$7,426.30 in 2007, \$7,649.09 in 2008 and \$7,878.56 in 2009. For purposes of applying these caps, a "single property" is a single principal building or a physically integrated set of principal buildings which commonly functions as one property, together with accessory improvements and parcels serving the principal building or buildings. Accessory improvements or parcels may include, without limitation, skywalk bridges, parking ramps, parking lots, vacant lots, open spaces and plazas. Examples of single properties which could be subject to a cap include the Tech Village, Lake Superior Place, the Minnesota Power Building, the Sellwood Building and Annex and the Radisson Hotel. An otherwise qualifying property with multiple owners remains a "single property." An otherwise qualifying property that has been divided into separate ownership parcels through the use of a subdivision plat, condominium or similar regime and in which the parcels are separately taxed is not a "single property."

Section 3. ANNUAL CERTIFICATION.

3.01. Service charges imposed on net tax capacity which are to become payable in the following year, must be certified to the county auditor by the date provided in Section 429.061,

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

subd. 3, for the annual certification of special assessment installments. The city assessor is directed to provide this certification annually and on a timely basis.

Resolution 04-0595 was adopted upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Ness, Reinert, Stewart and President Stauber -- 7

Nays: Councilor Stover -- 1

Abstention: Councilor Little -- 1

Approved September 13, 2004

HERB W. BERGSON, Mayor

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BY PRESIDENT STAUBER:

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

Section 1. PURPOSE AND AUTHORIZATION.

1.01. Under and pursuant to the provisions of Minn. Stat. §§ 428A.01 - 428A.101 (the act), the city is authorized to adopt an ordinance establishing a special service district and a resolution establishing service charges within the district. The council has, by Ordinance No. 9688 established the Downtown Waterfront Special Service District and by Resolution No. 04-0595, has imposed service charges to fund special services to be rendered within the district.

1.02. The ordinance and resolution incorporate, by reference, an operating plan for Duluth's Downtown Waterfront district dated May, 2004 (operating plan) developed by a steering committee composed of a broad range of people representing property owners, business leaders, the city and others with a direct stake in enhanced business and economic development conditions in the Downtown Waterfront. The operating plan sets forth the special services to be provided, the particular area of the city to be included within the district's boundaries, the amount and manner of imposing service charges and the manner in which the special services will be implemented. The operating plan specifically anticipates that the special services will be implemented pursuant to a service contract between the city and the Greater Downtown Council (GDC).

A service contract has been prepared for this purpose.

Section 2. APPROVAL AND AUTHORIZATION.

2.01. Subject to Ordinance No. 9688 becoming effective and further subject to approval of funding for this service contract in the city of Duluth 2005 budget, the council hereby approves and authorizes the entering into and the execution of the service contract with GDC by the proper city officials in the form of that on file in the office of the city clerk as Public Document No. 04-0913-32 in an amount not to exceed \$200,000 in 2005, payable from Fund 0100-700-1410 together with all collected service charges.

Resolution 04-0596 was adopted upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Ness, Reinert, Stewart and President Stauber -- 7

Nays: Councilor Stover -- 1

Abstention: Councilor Little -- 1

Approved September 13, 2004

HERB W. BERGSON, Mayor

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BY PRESIDENT STAUBER:

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

Section 1. PURPOSE AND AUTHORIZATION.

1.01. Under and pursuant to the provisions of Minnesota Statutes §§ 428A.01 - 428A.101

(the act), the city is authorized to adopt an ordinance establishing a special service district and a resolution establishing service charges within the district. The council has, by Ordinance No. 9688 established the Downtown Waterfront Special Service District and by Resolution No. 04-0595, has imposed service charges to fund special services to be rendered within the district.

1.02. The ordinance and resolution incorporate, by reference, an operating plan for Duluth's Downtown Waterfront district dated May, 2004 (operating plan) developed by a steering committee composed of a broad range of people representing property owners, business leaders, the city and others with a direct stake in enhanced business and economic development conditions in the Downtown Waterfront. The operating plan sets forth the special services to be provided, the particular area of the city to be included within the district's boundaries, the amount and manner of imposing service charges and the manner in which the special services will be implemented.

1.03. Minnesota Statutes § 428A.01, subd. 4, provides that special services may not include a service that is ordinarily provided throughout the city from general fund revenues of the city unless an increased level of the service is provided in the special service district. In addition, Minnesota Statutes § 428A.03, subd. 1, provides that service charges may not be imposed to finance a special service if the service is ordinarily provided by the city from its general fund revenues unless the service is provided in the district at an increased level.

1.04. A memorandum of understanding (Public Document No. 04-0913-33) has been prepared to establish the existing level of city services being provided within the district and to obtain city's agreement not to decrease the level of services being provided in the district except to the extent that a similar decrease in services is being imposed throughout the city.

Section 2. APPROVAL AND AUTHORIZATION.

2.01. Subject to Ordinance No. 9688 becoming effective, the city council hereby approves and authorizes the entering into and execution of the memorandum of understanding between the Greater Downtown Council and the city of Duluth.

Resolution 04-0614 was adopted upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Ness, Reinert, Stewart and President Stauber -- 7

Nays: Councilor Stover -- 1

Abstention: Councilor Little -- 1

Approved September 13, 2004

HERB W. BERGSON, Mayor

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President Stauber moved to amend the ordinance to insert a new Section 8 to read as follows:

"Section 8. OBJECTIONS.

As authorized by Minnesota Statutes. §428A.02, subd. 4, the council adopts this ordinance with the reservation that the following landowners' property may be excluded from the district or the district service charges when the determination is made whether to accept or reject the objection thereto:

(a) Any affected landowner who, on or before the date this ordinance is adopted, files a written objection with the city clerk, which objection asserts that the affected property should not be included in the district or the subject to service charge because of the

grounds set out in Minnesota Statutes §428A.02, subd. 4(1)-(3),” which motion was seconded and carried upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Ness, Reinert, Stewart, Stover and President Stauber -- 8

Nays: None -- 0

Abstention: Councilor Little -- 1

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

Yeas: Councilors Atkins, Gilbert, Johnson, Ness, Reinert, Stewart and President Stauber -- 7

Nays: Councilor Stover -- 1

Abstention: Councilor Little -- 1

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At this time, 8:40 p.m., the public hearing on TIF District No. 23 (Fifth Street redevelopment project) began.

Karen Olesen, community development and housing division, reviewed the background and purpose of the hearing.

At this time, 8:42 p.m., the public hearing was declared closed and the regular order of business was resumed.

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Councilor Gilbert moved to suspend the rules to consider Resolution 04-0613 at this time, which motion was seconded and unanimously carried.

Resolution 04-0613, by Councilor Gilbert, approving tax increment financing plan for Tax Increment Financing District No. 23 in DEDA’s housing development district as proposed by the Duluth economic development authority, was introduced for discussion.

Resolution 04-0613 was adopted as follows:

BY COUNCILOR GILBERT:

RESOLVED, by the city council of the city of Duluth, as follows:

Section 1. Recitals.

1.01 The council has established the Duluth economic development authority (DEDA) to promote development and redevelopment of property located in the city of Duluth (the city), including the development of housing and especially housing for persons of low and moderate income.

1.02 In order to promote such development, DEDA has established its Housing Development District (the development program) therefor pursuant to Minnesota Statutes, Sections 469.090 through 469.1082, Sections 469.001 through 469.049 and Sections 469.124 through 469.134 (collectively, the act).

1.03 DEDA proposes to establish Tax Increment Financing District No. 23 (the TIF district) within the development district and adopt a tax increment financing plan (the TIF plan) therefor pursuant to Minnesota Statutes, Sections 469.174 through 469.179 (the TIF act) for the purpose of financing public improvements and encouraging investment in the development district. DEDA has prepared the TIF plan in accordance with the TIF act, which TIF plan is contained in Public Document No. 04-0913-28 on file in the office of the city clerk.

1.04 Pursuant to Section 469.175, Subdivision 3 of the TIF act, the city held a public hearing on the TIF plan, which hearing was held this day, at which the views of all interested parties were heard.

1.06 DEDA has transmitted a copy of the TIF plan to the council in a document entitled “Tax Increment Financing Plan for Tax Increment Financing District No. 23 (Fifth Street

redevelopment project)", which is now on file in the office of the city clerk in the form of the aforesaid public document.

1.07 After investigation of the facts, the council is of the opinion that:

(a) It is necessary for the sound and orderly development of the development district and of the city as a whole and for the protection and preservation of the public health, safety and general welfare, that the powers authorized by the act and the TIF act be exercised by DEDA to provide public financial assistance to the development district;

(b) Proper development of the development district and implementation of the development program in accordance with the city's long range plans is essential to (i) the economic viability of the development district, (ii) the economic well being of the city and its residents, (iii) the orderly development of the city and (iv) the orderly and beneficial development of the development district to ensure the construction of and provide moneys for the payment of the cost of certain public improvements within the development district, including site improvements, in order to provide and finance development of suitable and necessary sites for development;

(c) There is a need for new development within the development district (i) to enhance the quality of life of the city's residents by redeveloping blighted, (ii) to improve the general economy of the city and the state, (iii) to provide additional housing opportunities to residents of the area and of the city, especially housing for persons of low and moderate income, (iv) to improve the tax base of the city and the state and (v) to provide other facilities identified in the development program and TIF plan;

(d) Creation of the development district and TIF district is in the public interest and will result in increased housing opportunities in the city, especially for persons of low and moderate income and in the preservation and enhancement of the tax base of the city; and

(e) The TIF district is intended and, in the judgement of the city, its effect will be to promote the public purposes and accomplish the objectives specified in the development program, which are all consistent with the efforts already made for the development of the development district.

1.09 The council has fully reviewed the contents of the TIF plan.

Section 2. Statutory findings.

2.01 There is a need for new development in the development district in order to enhance the quality of life of the city's residents by redeveloping blighted and underdeveloped areas to improve the tax base, to provide additional housing opportunities to residents of the area and of the city, especially housing for persons of low and moderate income, and to improve the general economy of the state.

2.02 Establishment of the TIF district will provide additional housing opportunities to persons living and working in the neighborhood, especially persons of low and moderate income, thereby strengthening the neighborhood and the economic base of the area and of the development district and the TIF district.

2.03 The actions required to assist the implementation of the development program are public purposes and the execution and financing of the development program are public purposes.

2.04 It is the opinion of the council, based on discussions with developers of projects proposed to be constructed in the TIF district and information contained in the development program and the TIF plan that:

(a) Development and redevelopment within the TIF district would not reasonably be expected to occur solely through private investment within the reasonably foreseeable future;

(b) The increased market value of the site to be included in the TIF district that could reasonably be expected to occur without the use of tax increment financing would be less than the

increase in the market value estimated to result from development in the TIF district after subtracting the present value of the projected tax increments for the maximum duration of the TIF district permitted by the TIF plan; and

(c) The use of tax increment financing is necessary;

(d) The primary purpose of the project to be financed pursuant to the TIF plan and the expenditure of funds thereunder is the benefits to the public flowing therefrom.

2.05 Based on information contained in the development program and the TIF plan, the TIF plan conforms to the general plan for the development and redevelopment of the city as a whole.

2.06 Based on information contained in the development program and the TIF plan, the TIF plan will afford maximum opportunity, consistent with the sound needs of the city as a whole, for the development and redevelopment of the development district by private enterprise.

2.07 Based on the information contained in the development program and the TIF plan, the project proposed to be developed in the TIF district will qualify it as a "housing district" as defined in Minnesota Statutes Section 469.174, Subdivision 11, and 469.1761 and a qualified housing district within the meaning of Minnesota Statutes 469.174, Subdivision 29, because it will meet the rental restriction requirements and income limitation requirements of those provisions.

Section 3. Approval.

3.01 The geographic boundaries of the TIF district are as described in the TIF plan, which document is incorporated herein by reference and which, together with this resolution, contain the requirements set forth in Section 469.175 of the TIF act.

3.02 The TIF plan, a copy of which is on file in the office of the city clerk as Public Document No. 04-0913-28, is hereby approved.

Section 4. Designation of TIF district.

4.01 The proposed TIF district is a "housing district" within the meaning of Minnesota Statutes Sections 469.174, Subd. 11, and 469.1761 and a qualified housing district within the meaning of Minnesota Statutes Section 469.174, Subd. 29, because it will meet the rental restriction requirements and income limitation requirements of those provisions.

4.02 The reasons and supporting facts for the determination that the TIF district meets the criteria set forth in Section 4.01 hereof will be retained and made available to the public by DEDA until the TIF district has been terminated.

Resolution 04-0613 was adopted upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Stewart, Stover and President Stauber -- 8

Nays: Councilor Reinert -- 1

Approved September 13, 2004

HERB W. BERGSON, 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 Stauber moved passage of the consent agenda, which motion was seconded and unanimously carried.

BY COUNCILOR NESS:

RESOLVED, that the assessment roll levied to defray the assessable portion of the sanitary sewer low pressure force main at Swenson Avenue (Contract No. 5388 - assessable amount -

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\$29,144.63) is hereby confirmed.

Resolution 04-0625 was unanimously adopted.

Approved September 13, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

WHEREAS, Memorial Blood Center and Animal Allies have applied to the Minnesota gambling control board for a lawful gambling exemption (raffle); and

WHEREAS, the Duluth City Council has received copies of said exemption applications to the Minnesota gambling control board and has 60 days in which to present a resolution to said Minnesota gambling control board objecting to the exemption applications; and

WHEREAS, the city council approves of the exemption applications and wishes to waive the 60 day waiting period.

NOW, THEREFORE, BE IT RESOLVED, that the Duluth City Council hereby approves of the Minnesota gambling control board issuing a lawful gambling exemption to Memorial Blood Center and Animal Allies 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 04-0618 was unanimously adopted.

Approved September 13, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

RESOLVED, that The Jamar Company be and hereby is awarded a contract for construction of City Hall exterior restoration - Phase I for the architect division in accordance with specifications on its low specification bid of \$147,500, terms net 30, FOB job site, payable out of Capital Improvements Fund 0450, Dept./Agency 030, Organization C403, Object 5520.

Resolution 04-0620 was unanimously adopted.

Approved September 13, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

RESOLVED, that Ziegler, Inc., be and hereby is awarded a contract for one Caterpillar Model 257B multi-terrain skidsteer loader for the maintenance operations division in accordance with specifications on its low specification bid of \$36,315.85, terms net 30, FOB destination, payable out of Capital Equipment Fund 0250, Dept./Agency 015, Organization BD04, Object V405.

Resolution 04-0629 was unanimously adopted.

Approved September 13, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

WHEREAS, a sufficient petition was filed with the city clerk requesting the vacation of the following legally described as: 53rd Avenue East lying between the north line of Woodlawn Alley and the south line of Lester Street (abutting Lot 2081, Block 147; Lot 2082, Block 148; Lot 2119, Block 149; Lot 2120, Block 150; Lot 2263, Block 159; and Lot 2264, Block 160, Crosley Park Addition to Duluth); that part of Woodlawn Street lying between the east line of 52nd Avenue East and the west line of 54th Avenue East (abutting Lots 2066 through 2081, Block 147; Lots 2082

through 2100, Block 148; Lots 2101 through 2119, Block 149; and Lots 2120 through 2135, Block 150, Crosley Park Addition to Duluth); that part of Lester Alley lying between the east line of 52nd Avenue East and the west line of 54th Avenue East (abutting Lots 2101 through 2119, Block 149; Lots 2120 through 2135, Block 150; Lots 2248 through 2263, Block 159; and Lots 2264 through 2282, Block 160, Crosley Park Addition to Duluth); and that part of Lester Street lying between the east line of 52nd Avenue East and the west line of 54th Avenue East (abutting Lots 2248 through 2263, Block 159; and Lots 2264 through 2282 Block 160, Crosley Park Addition to Duluth, and Lots 32, 33 and 66, Auditor's Plat of Lester Park Garden Tracts), all in Crosley Park Addition to Duluth and Lester Park Garden Tracts; and

WHEREAS, 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

WHEREAS, the city planning commission unanimously approved the avenue, streets and alley vacation at its August 25, 2004, meeting (Reference No. 04083).

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation of 53rd Avenue East between Woodlawn Alley and Lester Street, Crosley Park Addition, and Woodlawn Street between 52nd Avenue East and 54th Avenue East, Lester Alley between 52nd Avenue East and 54th Avenue East and Lester Street between 52nd Avenue East and 54th Avenue East, retaining the full vacated portion of utility, pedestrian, snowmobile easement along Lester Street, all in Auditor's Plat of Lester Park Garden Tracts, and as more particularly described above and on Public Document No. 04-0913-22.

RESOLVED FURTHER, that the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of St. Louis County, Minnesota, a certified copy of this resolution together with a plat showing the portion of the streets, avenue and alley to be vacated.

Resolution 04-0612 was unanimously adopted.

Approved September 13, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

WHEREAS, a sufficient petition was filed with the city clerk requesting the vacation of the street legally described as:

That part of Venture Circle dedicated as a public street in the recorded plat of the Rearrangement of Part of Airpark Division described as follows:

Beginning at the southeast corner of Lot 6, Block 4, of said Rearrangement of Part of Airpark Division, thence north 90°-00'-00" west along said southerly line of said Lot 6 a distance of 202.95 feet; thence westerly along said southerly line being a tangential curve concave to the north, having a radius of 70.00 feet and a central angle of 24°-26'-43" a distance of 29.87 and the chord of said curve bears north 77°-46'-39" west; thence southwesterly along a curve concave to the northwest, having a radius of 86.00 feet and a central angle of 48°-44'-12" a distance of 73.15 feet and the chord of said curve bears south 54°-57'-26" west; thence southeasterly along the northerly line of Lot 12 of said Block 4 being a curve concave to the northeast, having a radius of 136.00 feet and a central angle of 39°-48'-30", a distance of 94.49 feet and the chord of said curve bears South 70°-05'-45" east; thence north 90°-00'-00" east along the northerly line of Lots 13 and 14 of said Block 4 a distance of 405.90 feet; thence north 00°-00'-00" a distance of 66.00 feet; thence north 90°-00'-00" west along the southerly line of Lot 7 of said block 4 a distance of 202.95 feet to the point of beginning;

subject to the retention of a 20.00 foot wide utility easement thereon, said easement lying 10.00 feet either side of a line described as follows:

Beginning at said southeast corner of Lot 6, Block 4, thence South 00°-00'-00" east a distance of 66.00 feet to the northeast corner of Lot 13, Block 4, and said line there terminating; and

WHEREAS, the Duluth Seaway Port authority has proposed to dedicate additional rights-of-way for the construction of cul-de-sacs at either end of the right-of-way proposed to be vacated and as described in the public documents; and

WHEREAS, the city council has the authority to vacate public rights-of-way when it determines that there is no public need or necessity therefore; and

WHEREAS, 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

WHEREAS, the city planning commission determined that upon the dedications of the additional rights-of-way referred to above, there would be no public need or necessity to retain as public right-of-way the portion of Venture Circle to be vacated and, therefore approved, by a unanimous vote, the vacation petition, subject to the proposed new dedications at its August 10, 2004, meeting;

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth finds that upon the dedications of the additional rights-of-way referred to above, there would be no public need or necessity to retain as public right-of-way the portion of Venture Circle to be vacated.

RESOLVED FURTHER, that said city council approves the vacation of the portion of Venture Circle more particularly described on Public Document No. 04-0913-31, subject to the dedication by the Duluth Seaway Port Authority of those rights-of-way described on Public Document No. 04-0913-31.

RESOLVED FURTHER, that said city council accepts the dedication of rights-of-way described on said Public Document No. 04-0913-31 upon recording thereof by the Duluth Seaway Port Authority in the office of the County Recorder for St. Louis County, Minnesota.

RESOLVED FURTHER, that the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of St. Louis County, Minnesota, a certified copy of this resolution together with a plat showing the portion of the street to be vacated and the above rights-of-way dedications.

Resolution 04-0631 was unanimously adopted.

Approved September 13, 2004

HERB W. BERGSON, Mayor

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BY PRESIDENT STAUBER:

WHEREAS, the state of Minnesota, through the Minnesota department of natural resources, division of waters, administers financial assistance for coastal management purposes through Minnesota's Lake Superior coastal program; and

WHEREAS, the city of Duluth desires financial assistance from the coastal management assistance program for the Chester Creek and Miller Creek ownership mapping project.

RESOLVED, that the proper city officials are hereby authorized to accept a grant (Contract No. 306-26-06) in the amount of \$99,000 to assist in funding the Chester Creek and Miller Creek ownership mapping project. Said funds to be deposited into Fund 0210-030-2154.

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FURTHER RESOLVED, that the proper city officers are authorized to execute all documents necessary for the implementation of said grant and to provide local matching funds in the form of in-kind services in the amount of \$101,107.

Resolution 04-0628 was unanimously adopted.

Approved September 13, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are authorized to accept the donation of a utility easement in the form of that on file in the office of the city clerk as Public Document No. 04-0913-23 from Ronald Hill and Tina Hill at no cost to the city.

Resolution 04-0598 was unanimously adopted.

Approved September 13, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are authorized to enter into an agreement, a copy of which is on file in the office of the city clerk as Public Document No. 04-0913-24 with A&A Development, Inc., for the construction of an eight inch watermain adjacent to Trinity Road and Adrain Street from Anderson Road and Central Entrance to Adrain Street and Trinity Road and to reimburse said corporation for the city's share of the cost thereof in the amount of \$31,398.68, payable from the Water Fund 510.

Resolution 04-0599 was unanimously adopted.

Approved September 13, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Viking Electric Supply, Inc., be and hereby is awarded a contract for furnishing and delivering the street light replacement parts for the Canal Park area ornamental street lighting system for the traffic operations division in accordance with specifications on its low specification bid of \$12,780, terms net 30, FOB destination, payable out of General Fund 0100, Dept./Agency 700, Organization 2724, Object E406.

Resolution 04-0621 was unanimously adopted.

Approved September 13, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Como Oil and Propane Company be and hereby is awarded a contract for furnishing and delivering 60,000 gallons of liquid propane for the utility operation division in accordance with specifications on its low specification bid of \$60,000, terms net, FOB destination, payable out of Water Fund 0510, Department/Agency 500, Organization 1955, Object 5390.

Resolution 04-0622 was unanimously adopted.

Approved September 13, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Northland Bituminous Inc., be and hereby is awarded a contract for furnishing and delivering bituminous materials as needed for year 2004 for the maintenance operations division in accordance with specifications on its low specification bid for a total of \$78,011.25, terms net 30, FOB picked up, payable out of General Fund 0100, Department/Agency 500, Organization 2000, Object 5232.

Resolution 04-0623 was unanimously adopted.

Approved September 13, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that National Waterworks, Inc., be and hereby is awarded a contract for two hydraulic squeeze off tools for the utility operations division in accordance with specifications on its low specification bid of \$17,960.16, terms net 30, FOB destination, \$14,368.13 payable out of Water Fund 0510, Dept./Agency 500, Organization 1905, Object 5580 and \$3,592.03 payable out of Gas Fund 0520, Dept./Agency 500, Organization 1905, Object 5580.

Resolution 04-0624 was unanimously adopted.

Approved September 13, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Viele Contracting, Inc., be and hereby is awarded a contract for construction of sanitary sewer extension at Highland Street alley beginning 180 feet west of 59th Avenue West and extending 230 feet westerly for the engineering division in accordance with specifications on its low specification bid of \$36,704, terms net 30, FOB job site, payable out of Special Assessment Fund 0410, Department/Agency 038, Organization 5392, Object 5530.

Resolution 04-0626 was unanimously adopted.

Approved September 13, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

WHEREAS, it appears that it may be necessary to construct an eight inch watermain in Ethel Avenue from Springvale Road to 365 feet northerly.

NOW, THEREFORE, BE IT RESOLVED, that it is the intent of the city council to cause this improvement to be made, provided that further information demonstrates that the improvement should be made.

BE IT FURTHER RESOLVED, that to aid the council in determining whether or not to finally order in said project, the mayor shall cause to be prepared plans and specifications for said project and will further direct procedures prescribed by Section 62 of the Charter.

Resolution 04-0630 was unanimously adopted.

Approved September 13, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are hereby authorized to enter into a permit agreement substantially in the form of that on file in the office of the city clerk as Public Document

No. 04-0913-25 with the Adventure Duluth LLC for the Adventure Duluth Racing Adventure to be held on September 25, 2004.

Resolution 04-0636 was unanimously adopted.

Approved September 13, 2004

HERB W. BERGSON, Mayor

- - -

The following resolutions were also considered:

BY COUNCILOR NESS:

RESOLVED, that pursuant to the requirements of Minnesota Statutes, Sec. 275.065, Subd. 6, the city council hereby sets the following date and time for the public hearing to review the city's final budget of 2005 and final city property tax levy for taxes payable in 2005: December 6, 2004, at 7:00 p.m. in the Duluth City Council Chamber.

Resolution 04-0606 was unanimously adopted.

Approved September 13, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0607, setting a proposed budget for the fiscal year 2005; Resolution 04-0608, proposing the sum to be raised by taxation for general purposes for the year 2005; by Councilor Ness; and Resolution 04-0633, proposing the sum to be raised by taxation for general purposes for the year 2005, by councilors Stewart and Reinert, were introduced for discussion.

Mayor Bergson presented his 2005 budget message, noting that his proposed tax levy increase of 20 percent is the maximum that he would consider. He added that this does not mean a property tax increase of 20 percent, but instead it would be about a four percent increase, because only 21.9 percent of a homeowner's tax bill and 15 percent of a commercial tax bill are associated to the city of Duluth.

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

David Ross, executive director of the Duluth Area Chamber of Commerce, noted that any property tax increase to a business is a concern and that other cities, plus St. Louis County, have been able to function without a tax levy increase.

Eric Lehto noted that this is a small increase to get the services that would be lost, such as library, police and fire. He emphasized that this is just setting the maximum - a review and analysis of where possible savings could be made would be possible in the upcoming budget meetings.

Ken Loeffler-Kemp noted how the state local government aid has been reduced over the past years and that the city has already reduced staff from 686 in 2003 to 649 in 2004, with a reduction of 12 more in 2005. He noted that all departments have had staff and material reductions.

Tim Bearheart noted possible revenue sources and cost savings (Public Document No. 04-0913-39(b)).

George Hanson expressed his concerns that: there is discouragement for private developments; this is not a growth city; attention should be given to looking at issues that would help the city grow and that other cities have gone to privatizing services that the city provides.

Peggy Marrin expressed concern that, in the past, major issues such as retirees' health care have not received the priority that they should have.

Eric Simonson, representing fire department employees, expressed concern that even now national standards and OSHA compliant laws regarding staffing on fire runs are not being met.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Councilors Ness, Gilbert, Stover and Johnson supported Resolution 04-0608 for the reasons of: continuing services such as library, park, police, fire and street plowing; local governmental aid has been cut \$4.8 million in the last 20 months; 42 positions have been cut in the past two years; over 40 more positions will be cut if the 5.7 percent levy limit is passed; the resolution only sets a maximum and allows the council time to explore further efficiencies and/or cuts; with a projected \$5 million deficit in early summer, \$2 million have been saved through other types of cost/fee increases and \$1 million have been saved through not filling vacant positions; services that citizens want and expect cannot be taken away; with this proposed levy level, specific services and their specific costs can be identified before a decision is made to keep it or eliminate the service and reduce the levy; the list of suggestions from the council will assist in making cuts and increasing revenue and those with the lowest income have areas where assistance is available.

Councilors Stewart, Reinert, Atkins, Little and President Stauber supported Resolution 04-0633, for the reasons of: this levy allows for capturing new growth and a three percent inflation increase; there are ways to stop giving money away and find new revenue; services can be retained; the amount proposed in Resolution 04-0608, while a small increase to some, is a monthly grocery bill to others; the discipline must be set now to establish a budget within the 5.7 percent levy limit; necessities, such as food, clothing, heat, lights, etc. are going up so having an increase in property taxes is a real hardship; if the 20 percent levy is set, there is no incentive for the council to strive to make cuts or find additional revenue and this levy level should be lower, but this is better than the 20 percent level.

Resolution 04-0607 was adopted as follows:

BY COUNCILOR NESS:

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, 2005.

GENERAL		
010	Total legislative and executive	2,202,200
015	Total administrative services	7,250,800
020	Total planning and development	557,800
030	Total finance	2,722,900
100	Total fire	12,351,300
200	Total police	13,312,000
300	Total library	3,937,800
400	Total parks and recreation	2,645,100
500	Total public works	9,391,400
700	Total transfers	17,744,000
100	General fund total	72,115,300
PUBLIC ENTERPRISE		
503	Golf fund - total	2,018,500
510	Water fund - total	12,387,400
520	Gas fund - total	48,988,100

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

530	Sewer fund - total	21,159,700
535	Stormwater fund - total	4,415,700
540	Steam fund - total	4,001,700

Resolution 04-0607 was unanimously adopted.

Approved September 13, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0608 failed upon the following vote (Public Document No. 04-0913-26) as follows:

Yeas: Councilors Gilbert, Johnson, Ness and Stover -- 4

Nays: Councilors Atkins, Little, Reinert, Stewart and President Stauber -- 5

- - -

Resolution 04-0633 was adopted as follows:

BY COUNCILORS STEWART AND REINERT:

RESOLVED, that pursuant to Minnesota Statutes, Sec. 275.065, the city council adopts the following proposed property tax levy.

Section 1. The sum to be raised by taxation for the year 2005 for general operations is hereby determined to be the sum of \$10,730,400 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 \$6,334,000.

Section 3. For the pay of debt, there will be levied for the general obligation debt fund the sum of \$3,841,400.

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 \$555,000.

Resolution 04-0633 was unanimously adopted.

Approved September 13, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR NESS:

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 2005 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. 458A.31, Subd. 1, there will be levied for transit operations the sum of \$1,316,900.

Resolution 04-0609 was unanimously adopted.

Approved September 13, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR NESS:

RESOLVED, that pursuant to Minnesota Statutes, Sec. 469.053, the city council adopts the following proposed property tax levy.

Section 1. The sum to be raised by taxation for the year 2005 for Seaway Port authority taxing district's operations is hereby determined to be the sum of \$775,400 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 485.15, there will be levied for the purpose of providing for the Seaway Port authority special taxing district the sum of \$775,400.

Resolution 04-0610 was unanimously adopted.

Approved September 13, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR NESS:

RESOLVED, that pursuant to Minnesota Statutes, Sec. 469.033, Subd. 6, the city council adopts the following proposed property tax levy.

Section 1. The sum to be raised by taxation for the year 2005 for the housing and redevelopment authority taxing district's operations is hereby determined to be the sum of \$615,900 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 Statute 469.033, Subd. 6, there will be levied for the purpose of providing for the housing and redevelopment authority special taxing district the sum of \$615,900.

Resolution 04-0611 was unanimously adopted.

Approved September 13, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0637, by Councilor Ness, setting fee for commercial use permit, was introduced for discussion.

Councilor Ness moved to table the resolution so that it could be considered at the time the accompanied ordinance is voted on, which motion are seconded and unanimously carried.

- - -

Resolution 04-0601, denying a rezoning petition to Duluth Teachers Credit Union for property located on the southwest corner of Arrowhead Road and Kenwood Avenue (Duluth Teachers Credit Union - John Westlund); Resolution 04-0602, denying a vacation of an unimproved alley easement west of Kenwood Avenue and south of Arrowhead Road (Duluth Teachers Credit Union); and Resolution 04-0603, vacating an unimproved alley easement west of Kenwood Avenue and south of Arrowhead Road (Duluth Teachers Credit Union), by Councilor Gilbert, were introduced for discussion.

Councilor Gilbert moved to suspend the rules to consider Ordinance 04-054 at this time, which motion was seconded and unanimously carried.

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INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinance was read for the first time:

BY COUNCILOR GILBERT

04-054 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NO. 37 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-C, ONE FAMILY RESIDENTIAL, TO C-1, COMMERCIAL, PROPERTY LOCATED ON THE SOUTHWEST CORNER OF ARROWHEAD ROAD AND KENWOOD AVENUE (DULUTH TEACHERS CREDIT UNION).

- - -

The rules were suspended upon a unanimous vote to hear from speakers on this issue.

Barbara Brooks (Public Document No. 04-0913-10(b)) and Chauncy Riggs spoke in opposition to the resolutions and ordinance for reasons of: the close proximity of homes to the development; safety concerns of already high traffic volumes that would be increased; one home will have a road on three sides of it; there will be more illumination of those residents' houses with this development; 85 percent of the residents within 300 feet oppose this and this is spot zoning.

John Westlund, representing the Duluth Teachers Credit Union, noted that: they have met with the neighbors and have agreed to meet with them more that half-way with their concerns by addressing lighting and privacy issues, building fences and berms and allowing access to their property from this lot; some neighbors opposing this have now changed their minds and support the development and the credit union versus other possible options that could be built there.

Councilor Gilbert moved to table the resolutions so they can be considered at the same meeting the ordinance can be considered at, which motion was seconded and unanimously carried.

- - -

Resolution 04-0605, by Councilor Gilbert, approving the prioritization of projects to receive 2005 low income housing tax credits, was introduced for discussion.

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

Tom Hystead explained the process of state tax credit allocations, the importance of the second and third place listings and encouraged the council to have further meetings and discussion on this.

Scott Vesterstein and Bruce Wyman encouraged support for Village Place.

Rick Ball, executive director of the Housing and Redevelopment Authority, and Pam Kramer, LISC executive director, spoke of the need to work to expand the resources for affordable housing and in support of the priority order of the resolution.

Councilor Stewart moved to amend the resolution by putting "Village Place" in second place and "Harbor View" in third place, which motion was seconded and carried upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Stewart, Stover and President Stauber -- 7

Nays: Councilors Ness and Reinert -- 2

Resolution 04-0605, as amended, was adopted as follows:

BY COUNCILOR GILBERT:

WHEREAS, pursuant to Minnesota Statutes, Sections 462A.221 through 462A.225 (the act), the city of Duluth, Minnesota (the city) is a suballocator of low income housing tax credits (LIHTCs); and

WHEREAS, the city's 2005 allocation of LIHTCs is estimated at \$236,953; and

WHEREAS, in accordance with Section 42 of the Internal Revenue Code of 1986, as amended (the code) the city has adopted a qualified allocation plan (the plan) for 2005 setting forth criteria governing the award of the city's LIHTCs; and

WHEREAS, the city received four applications for projects requesting allocation of 2005 LIHTCs (the projects); and

WHEREAS, the applications for the projects have been scored in accordance with the plan.

NOW, THEREFORE, BE IT RESOLVED, by the city council of the city of Duluth, that the city hereby approves prioritization of projects to receive 2005 low income housing tax credits as set forth below:

First Priority	New San Marco Apartments
Second Priority	Village Place
Third Priority	Harbor View Phase II

Fourth Priority The Village at Matterhorn
Resolution 04-0605, as amended, was unanimously adopted.
Approved September 13, 2004
HERB W. BERGSON, Mayor

- - -

At this time, 10:57 p.m., a motion was made, seconded and unanimously carried to suspend the rules to extend the meeting until 11:30 p.m.

- - -

Resolution 04-0634, by Councilor Gilbert, authorizing referendum on Duluth's public smoking ordinance, stating the referendum question for the ballot and setting the time therefore as the general election on November 2, 2004, was introduced for discussion.

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

Gary Eckenberg, Jill Rogers, Nate Weiler, Eric Viken and Terry Clark supported the resolution, citing reasons of: a petition to put the question of smoke-free work places on the ballot has been certified; this resolution just moves up the date to this year, so the issue can be settled sooner; this does not affect outdoor smoking; if adopted, the council cannot change it again; workers need to have a healthy work environment; clean air has been proven to be good for business; second-hand smoke has proven to be a health problem by the U. S. surgeon general, National Cancer Institute, center for disease control and other cities in Minnesota have made changes that are stronger than Duluth's.

Councilor Stewart moved to amend the ballot question in the resolution to read as follows:

“Question

Should Duluth's existing smoking ordinance be changed to prohibit smoking in all bars, bar/restaurants, private clubs, indoor public places and most places of work where two or more people work (Article VII, Chapter 28, Duluth City Code)?

A YES vote means Duluth's smoking ordinance will prohibit smoking indoors in public places, including all bars, bar/restaurants, private clubs and most places where two or more people work.

A NO vote means Duluth's smoking ordinance will continue to allow smoking indoors in some public places, including bars, bar/restaurants and private clubs and some places where two or more people work,”

which motion was seconded and discussed.

Councilors Ness and Gilbert opposed the amendment for reasons of: the original version was not confusing; those who signed the petition supported this specific language to have it on the ballot in November 2005 and it is a disservice to go into more detail.

Councilors Atkins, Little and Stewart supported the amendment, stating that the council needs to be as specific as possible so that there is no confusion.

The amendment failed upon the following vote:

Yeas: Councilors Atkins, Little, Stewart and Stover -- 4

Nays: Councilors Gilbert, Johnson, Ness, Reinert and President Stauber -- 5

Councilors Atkins and Stover felt that an exception to putting the issue on the next municipal general election ballot should not be made.

Resolution 04-0634 was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Ness, Reinert and President Stauber -- 5

Nays: Councilors Atkins, Little, Stewart and Stover -- 4

[Editor's note: Resolution 04-0634 was vetoed by Mayor Bergson on September 15, 2004 (Public Document No. 04-0916-01).]

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Resolution 04-0640, by Councilor Gilbert, establishing a disabled parking space, was introduced for discussion.

Councilor Gilbert, who requested this resolution, asked that it be removed and, hearing no objection, it was so ordered.

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Resolution 04-0615, by Councilor Atkins, requesting reduction in salary of heads of city departments, was introduced for discussion.

Councilor Atkins, who requested this resolution, asked that it be removed and, hearing no objection, it was so ordered.

- - -

BY COUNCILOR ATKINS:

RESOLVED, that the proper city officials are authorized to execute and implement a rental agreement, in substantially the form of and containing substantially the terms of that agreement on file with the clerk as Public Document No. 04-0913-27, between the city and Narcotics Anonymous for rental of a meeting room for \$50 per month, with rental payments deposited in Fund 0100, Agency 400, Org. 1812, Obj. 5419.

Resolution 04-0616 was unanimously adopted.

Approved September 13, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0617, reducing the budget of the city council by 20 percent and requesting the Charter commission to reduce pay of city councilors, was introduced for discussion; and Resolution 04-0619, amending Resolution 01-0077 and Resolution 04-0522, reducing the salary of the mayor and the administrative assistant by 20 percent, by Councilor Atkins, were introduced for discussion.

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

Peggy Marrin and George Hanson voiced support for both resolutions noting: it will bring all parties into solving the problem; even freezing or taking smaller increases would be helpful and it would show a positive and sincere message.

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At this time, 11:27 p.m., a motion was made, seconded and unanimously carried to suspend the rules to extend the meeting until 11:45 p.m.

- - -

Councilor Little moved to amend Resolution 04-0617 by splitting it into two, with (a) addressing the reduction of the council budget by 20 percent and with (b) addressing the reduction to the council pay by 20 percent, which motion was seconded and unanimously carried.

Councilors Little, Johnson and Stover stated that they would not support Resolution 04-0617(b), because: no one else is going to be reducing their pay; this pay amount is very insignificant and minimal; good, valuable individuals would not run for office because they would also need to have another full time job; the council should be more conscientious on other cost decisions and seeing that this would be such a lengthy process, it would be easier for the council to just cut the DEDA stipend.

Councilor Atkins supported Resolution 04-0617(b) because the city council is a part-time job and even though the amount saved would be small, it shows the support of the council to make cuts.

Resolution 04-0617(a), reducing the council's budget by 20 percent, was adopted as follows:

BY COUNCILOR ATKINS:

RESOLVED, that the budget of the city council for years 2004 and 2005, identified as City Account 0100-010-1101, be reduced by 20 percent, so that the budgeted amount for each year is the amount budgeted for year 2004, less 20 percent.

Resolution 04-0617(a) was unanimously adopted.

Approved September 13, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0617(b), reducing the pay of city councilors, failed upon the following vote (Public Document No. 04-0913-29):

Yeas: Councilors Atkins, Ness and President Stauber -- 3

Nays: Councilors Gilbert, Johnson, Little, Reinert, Stewart and Stover -- 6

- - -

Councilor Atkins moved to the amend Resolution 04-0619 by deleting all references to the administrative assistant, which motion was carried and unanimously carried.

Resolution 04-0619, as amended, failed upon the following vote (Public Document No. 04-0913-30):

Yeas: Councilors Atkins and President Stauber -- 2

Nays: Councilors Gilbert, Johnson, Little, Ness, Reinert, Stewart and Stover -- 7

- - -

At this time, 11:44 p.m., a motion was made, seconded and unanimously carried to suspend the rules to extend the meeting until 11:55 p.m.

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INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

BY COUNCILOR NESS

04-056 - AN ORDINANCE AMENDING DULUTH CITY CODE SECTION 8-22, PROHIBITING OPEN CONTAINERS OF ALCOHOLIC BEVERAGES IN PUBLIC PLACES.

- - -

BY COUNCILOR NESS

04-059 - AN ORDINANCE AMENDING SECTION 21-6 OF THE DULUTH CITY CODE, 1959, AS AMENDED, AUTHORIZING COLLECTION OF FEES.

- - -

BY COUNCILOR GILBERT

04-055 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAPS NO. 35 AND NO. 38 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-3 APARTMENT RESIDENTIAL TO R-4, APARTMENT RESIDENTIAL, PROPERTY BOUNDED BY EAST THIRD STREET, EAST FOURTH STREET, 17TH AVENUE EAST AND 18TH AVENUE EAST (DANIEL KING, ET AL.).

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BY COUNCILOR GILBERT

04-057 - AN ORDINANCE AUTHORIZING RECONVEYANCE OF PROPERTY IN ENDION DIVISION TO STATE OF MINNESOTA FOR LAKEWALK TOWNHOMES PROJECT.

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

Alison Clarke, representing Planning District No. 7, stated that while they support the development and the preservation of the public land, they are requesting that before this ordinance

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

is approved the council receive an update on the status of the project and an explanation of how this particular ordinance affects the entire project.

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The following entitled ordinances were read for the second time:

BY COUNCILOR JOHNSON

04-050 (9685) - AN ORDINANCE AMENDING CHAPTER 13, SECTION 9 OF THE DULUTH CITY CODE, 1959, AS AMENDED; TO INCREASE THE NUMBER OF MEMBERS OF THE CIVIL SERVICE BOARD NECESSARY TO CONSTITUTE A QUORUM.

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

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BY COUNCILOR GILBERT

04-051 (9686) - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAPS NOS. 22, 23 AND 28 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-A, ONE FAMILY RESIDENTIAL, TO C-5, PLANNED COMMERCIAL, PROPERTY LOCATED ALONG MALL DRIVE, SOUTH OF CENTRAL ENTRANCE AND EAST OF TRINITY ROAD (WELSH COMPANIES, LLC).

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

Peggy Marrin expressed concern that this not be passed until the comprehensive plan is adopted.

William Burns, attorney for the applicant, spoke in support of the ordinance, adding that it was unanimously passed by the planning commission and that this ordinance has nothing to do with the public lands.

Councilor Stewart moved to table the ordinance because there are some outstanding issues, which motion was seconded and failed upon the following vote:

Yeas: Councilors Johnson, Stewart and Stover -- 3

Nays: Councilors Atkins, Gilbert, Little, Ness, Reinert and President Stauber -- 6

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert and President Stauber -- 7

Nays: Councilors Stewart and Stover -- 2

- - -

BY COUNCILOR GILBERT

04-052 (9687) - AN ORDINANCE GRANTING A CONCURRENT USE PERMIT TO THE CONGRESS BAR AND GRILL FOR AN AWNING IN THE RIGHT-OF-WAY ADJACENT TO 1334 COMMONWEALTH AVENUE (GARY PETERSON/ CONGRESS BAR AND GRILL).

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

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The meeting was adjourned at 11:55 p.m.

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 9688

BY PRESIDENT STAUBER:

AN ORDINANCE ESTABLISHING THE DOWNTOWN WATERFRONT SPECIAL SERVICE DISTRICT.

The city of Duluth does ordain:

Section 1. PURPOSE AND AUTHORIZATION.

1.01. The city has received a petition (the petition) from property owners in the Downtown Waterfront who want to improve the safety, cleanliness and economic vitality of the Downtown Waterfront area by establishing a special service district (district) pursuant to Minnesota Statutes §§ 428A.01-428A.101 (the act). The petition has been signed by owners of more than 60 percent of the net tax capacity of property that will be subject to service charges and by owners of more than 25 percent of the land area of property that will be subject to service charges.

1.02. Under the provisions of the act, the city council may adopt an ordinance establishing a special service district. Only property that is classified under Section 273.13 and used for commercial, industrial or public utility purposes, or is vacant land zoned or designated on a land use plan for commercial or industrial use and located in the special service district, may be subject to the charges imposed by the city on the special service district. The ordinance must describe, with particularity, the area within the city to be included within the district and the special services to be furnished in the district. Special services may not include a service that is ordinarily provided throughout the city from general fund revenues of the city unless an increased level of the service is provided in the special service district.

1.03. An operating plan for Duluth's Downtown Waterfront District dated May, 2004 (operating plan), has been developed by a steering committee composed of a broad range of people representing property owners, business leaders, the city and others with a direct stake in enhanced business and economic development conditions in the Downtown Waterfront. A copy of the operating plan is available for public inspection in the city clerk's office, 411 West First Street, Duluth, Minnesota. The operating plan sets forth the special services to be provided within the district, the particular area of the city to be included within the district's boundaries, the amount and manner of imposing service charges and the manner in which the special services will be implemented. The operating plan is hereby incorporated into this ordinance. A copy of the operating plan is available for public inspection in the city clerk's office, 411 West First Street, Duluth, Minnesota.

1.04. Pursuant to the authority herein recited, and as requested in the petition, the city council hereby establishes the Downtown Waterfront Special Service District to provide the special services described below.

Section 2. DESCRIPTION OF THE AREA WITHIN THE CITY TO BE INCLUDED IN THE SPECIAL SERVICE DISTRICT.

2.01. The area within the city of Duluth to be included within the district is bounded by the following:

Beginning at the intersection of the east line of Mesaba Avenue and the centerline of Third Street Alley (the point of beginning); thence northeast along said centerline and the continuation of said centerline to the northeast line of Tenth Avenue East; thence southeast along the northeast line of Tenth Avenue East to the southeast line of Superior Street (the district includes those properties that abut upon the northeast side of Tenth Avenue East); thence southwest along the southeast line of Superior Street to the southwest line of Eighth Avenue East; thence deflect left at an angle of 45 degrees to the shoreline of Lake Superior; thence continue

south and west along the shore of Lake Superior to the northwest line of the Duluth Shipping Canal; thence south and west along said canal to Superior Bay; thence along the Duluth Superior Harbor line to the southwest line of Bayfront Park; thence north and west along the southwest line of Bayfront Park and its extension to the southeast right-of-way of U.S. Interstate Highway 35; thence south and west along said right-of-way line to the northeast line of Eighth Avenue West; thence northwest along said northeast line to the east line of Mesaba Avenue; thence north and east along the east Line of Mesaba Avenue to the point of beginning.

All as more particularly depicted in Appendix B to the operating plan.

Section 3. DESCRIPTION OF SPECIAL SERVICES.

3.01. The special services to be furnished in the district are described with particularity in the operating plan and will include, without limitation, services relating to (i) clean and safe programs, (ii) marketing/promotion/special events and (iii) physical enhancements.

Section 4. TERM OF THE SPECIAL SERVICE DISTRICT.

4.01. The district will begin on January 1, 2005, and will end on December 31, 2009.

Section 5. SERVICE CHARGES.

5.01. Service charges to be imposed within the district will be established by a separate resolution. The resolution must meet the requirements of Minnesota Statutes § 428A.03 and may, in addition, meet the requirements of Minnesota Statutes § 428A.10.

Section 6. NOTICE TO COMMISSIONER OF REVENUE.

6.01. The city clerk is directed to send a copy of this ordinance to the commissioner of revenue within 30 days after its adoption.

Section 7. NOTICE OF VETO POWER.

7.01. The city clerk is directed, within five days after adoption of this ordinance, to mail a summary of this ordinance to the owner of each parcel included in the special service district and any individual or business organization subject to a service charge. The notice must meet the requirements of Minnesota Statutes § 428A.09.

Section 8. OBJECTIONS.

As authorized by Minnesota Statutes. §428A.02, subd. 4, the council adopts this ordinance with the reservation that the following landowners' property may be excluded from the district or the district service charges when the determination is made whether to accept or reject the objection thereto:

(a) Any affected landowner who, on or before the date this ordinance is adopted, files a written objection with the city clerk, which objection asserts that the affected property should not be included in the district or the subject to service charge because of the grounds set out in Minnesota Statutes §428A.02, subd. 4(1)-(3).

Section 9. EFFECTIVE DATE.

9.01. This ordinance shall take affect and be in force 45 days from and after the date upon which it is adopted.(Effective date: October 30, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Ness, Reinert, Stewart and President Stauber -- 7

Nays: Councilor Stover -- 1

Abstention: Councilor Little -- 1

ATTEST:

JEFFREY J. COX, City Clerk

Passed September 13, 2004
Approved September 13, 2004
HERB W. BERGSON, Mayor

- - -

ORDINANCE NO. 9685

BY COUNCILOR JOHNSON:

AN ORDINANCE AMENDING CHAPTER 13, SECTION 9, OF THE DULUTH CITY CODE, 1959, AS AMENDED; TO INCREASE THE NUMBER OF MEMBERS OF THE CIVIL SERVICE BOARD NECESSARY TO CONSTITUTE A QUORUM.

The city of Duluth does ordain:

Section 1. That Chapter 13, Section 9, of the Duluth City Code, as amended, is amended to read as follows:

Sec. 13-9. Same--Quorum.

Three members of the board shall constitute a quorum. Any meeting shall be adjourned in the absence of a quorum.

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, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Nays: None -- 0

Passed September 13, 2004

Approved September 13, 2004

HERB W. BERGSON, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 9686

BY COUNCILOR GILBERT:

AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAPS NOS. 22, 23 AND 28 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-A, ONE FAMILY RESIDENTIAL, TO C-5, PLANNED COMMERCIAL, PROPERTY LOCATED ALONG MALL DRIVE, SOUTH OF CENTRAL ENTRANCE AND EAST OF TRINITY ROAD (WELSH COMPANIES, LLC).

The city of Duluth does ordain:

Section 1. That Plate Nos. 22, 23 and 28 of the zoning district maps as contained in the Appendix to Chapter 50 of the Duluth City Code, 1959, as amended, is amended to read as follows:

(MAPS)

[see Map Nos. 22, 23 and 28 at end of meeting]

(Reference File No. 04075)

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, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert and President Stauber -- 7

Nays: Councilors Stewart and Stover -- 2

ATTEST:

JEFFREY J. COX, City Clerk

Passed September 13, 2004

Approved September 13, 2004

HERB W. BERGSON, Mayor

- - -

ORDINANCE NO. 9687

BY COUNCILOR GILBERT:

AN ORDINANCE GRANTING A CONCURRENT USE PERMIT TO THE CONGRESS BAR AND GRILL FOR AN AWNING IN THE RIGHT-OF-WAY ADJACENT TO 1334 COMMONWEALTH AVENUE (GARY PETERSON/ CONGRESS BAR AND GRILL).

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 hereafter set forth, permission is hereby granted to the Congress Bar and Grill, their successors and interests, referred to herein as the permittees, to occupy, erect and maintain a non-illuminated awning in that part of Commonwealth Avenue (Reference File No. 04074) as the same was dedicated to the use of the public and the plat of Gary First Division, Duluth, on file and of record in the office of the registrar of deeds in and for the St. Louis County, described as follows: Lot 17, Block 7, Gary First Division, Duluth.

Section 2. That before this ordinance shall be effective for any purpose whatsoever, the aforesaid permittees shall file with the city clerk a duly executed and acknowledged written acceptance of the terms of this ordinance; a certificate of insurance approved as to form by the city attorney evidencing that such person or organization has in force insurance in the minimum amounts of \$300,000 for bodily injuries resulting in any year and \$50,000 property damage in any one year protecting such person or organization and the city of Duluth against liability for injuries or damages resulting from the placement of such objects or materials on public sidewalks or boulevard areas. The permission granted by such ordinance shall be conditioned upon such person or organization continuing to supply the city with evidence that such insurance premiums remain in effect and all insurance required herein shall contain a provision that no policy may be canceled until ten days after written notice is given to the city clerk. Such policy shall name the city as an additional insured and shall agree to pay the cost of publishing this ordinance and a recording of a certified copy thereof at the registrar of titles of St. Louis County, Minnesota.

Section 3. That said permit granted under this ordinance may be terminated at any time when and if the city of Duluth determines to use the area occupied by said permittees for any purpose in accordance with the duly dedicated easement or other lawful use. Giving the permittees six months' written notice by resolution of the council of the city of Duluth to the last known address of the permittees shall be sufficient notice of termination.

Section 4. That upon the giving of the notice of termination of aforesaid, the permittees shall remove said awnings and fixtures and appurtenances of every kind whatsoever attached thereto from the tract of land described above within said six months, all at the expense and cost of the permittees, and without right on the part of the permittees to claim from the city of Duluth, or any of its officers, agents or servants, any compensation, reimbursement for damages of any kind whatsoever.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Section 5. That by the acceptance of the terms of this ordinance as aforesaid, the permittees hereby agree to save harmless and defend and indemnify the city of Duluth against any claims or demand which may arise against the city of Duluth by reason of any act or omission of the permittees, and agree that said awning shall be so constructed and at all times maintained so as in no way to interfere with or damage any sewer, water mains, gas mains, pipes, conduits or other public utilities now or to be hereinafter located in any part of said 1334 Commonwealth Avenue and agree that the city of Duluth shall not be liable for damage caused to such awning while the city is engaged in making repairs to public utilities provided that the city exercises reasonable care to avoid such damage, and agree to pay to the City all extra costs of installation of any such sewers, gas, mains, water mains, pipes, conduits or other public utilities necessary by the presence of said awnings in said 1334 Commonwealth Avenue.

Section 6 That the permittee shall further install and maintain the awning in accordance with plans submitted by Advanced Awning Design, dated June 25, 2004.

Section 7. That this ordinance shall take effect and be in force 30 days from and after its passage and publication.(Effective date: October 17, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed September 13, 2004
Approved September 13, 2004
HERB W. BERGSON, Mayor

- - -

OFFICIAL PROCEEDINGS

Special emergency meeting of the Duluth City Council held on Thursday, September 16, 2004, 5:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Atkins, Johnson, Ness, Reinert, Stewart, Stover and President Stauber -- 7

Absent: Councilors Gilbert and Little -- 2

- - -

REPORTS OF OFFICERS

04-0916-01 Mayor Bergson submitting veto of Resolution 04-0634, authorizing referendum on Duluth's public smoking ordinance. -- Received

- - -

MOTIONS AND RESOLUTIONS

Resolution 04-0649, by Councilor Stewart, authorizing referendum on Duluth's public smoking ordinance, stating the referendum question for the ballot and setting the time therefore as the general election on November 2, 2004, was introduced for discussion.

The council received input from the city attorney and city clerk regarding deadlines and options.

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

Dale Swapinski, representing the Duluth Hospitality League; Brenda Haus, VFW commander; and Bob Woods, Northland Vietnam Veterans Association, opposed the resolution for reasons of: the time frames of the petition process were not met; the rationale for putting this on the upcoming ballot is a subversion of process; the petition did not have the necessary number of signatures to put this issue on the ballot this year; a private club, where members have fought in wars, should be able to have their members make their own decisions as to what is or is not allowed in that club; if this change is done, charitable gambling will be out of business; there is no other source of city funds to make up what would be lost from what charitable gambling provides for programs and the additional \$100,000 provided to the city from charitable gambling will be lost.

Resolution 04-0649 was adopted as follows:

BY COUNCILOR STEWART:

WHEREAS, the City Charter of Duluth declares, at Section 3, that the mayor and council shall at all times be subject to the control of the people through the process of initiative and referendum; and

WHEREAS, the electors of the city have presented to the clerk an initiative petition for submitting a proposed ordinance to the Duluth City Council - Proposed Ordinance creating Smoke-Free Public Places and Workplaces - which initiative petition is on the council agenda as Item 04-0913-14; and

WHEREAS, the petition has been certified by the clerk as sufficient to require a referendum, under paragraph 5 of Section 51 of the Charter; and

WHEREAS, the electors may, before the applicable deadline, present additional petitions that are sufficient to require a referendum under paragraph 3 of Section 51 of the Charter; and

WHEREAS, the council, under paragraph 12 of Section 51 of the Charter, has the authority to "of its own motion, submit to the electors for adoption or rejection at a general or special municipal" any ordinance that it has authority to enact; and

WHEREAS, it is consistent with Section 3 of the Charter and good public policy to schedule the referendum on Agenda Matter 04-0913-14 so that it can be voted upon at the same time as the next election, scheduled to occur November 2, 2004.

NOW, THEREFORE, BE IT RESOLVED:

(a) That the Duluth city clerk is hereby directed to place the initiative and referendum question relating to the public smoking ordinance, Agenda Item 04-0913-14, on the November 2, 2004, election ballot;

(b) That the city clerk is authorized and directed to prepare and mail or publish any and all notices of such initiative and referendum question as are required by the Duluth City Charter;

(c) That the city clerk is authorized and directed to incorporate said initiative and referendum question into the election ballot, which question shall be substantially in the following form:

Question

Should Duluth's existing smoking ordinance be changed to prohibit smoking in indoor public places and most places of work where two or more people work, including restaurants with bars, bars, and private clubs (Article VII, Chapter 28, Duluth City Code)?

A YES vote means Duluth's smoking ordinance will prohibit smoking indoors in public places and work places where two or more people work, including bars, restaurants with bars and private clubs.

A NO vote means Duluth's smoking ordinance will continue to allow smoking indoors in some public places and work places where two or more people work, including bars, some restaurants with bars and private clubs;

(d) Should the clerk, at any time after passage of this resolution, but before November 2, 2004, certify that the petition in said matter is sufficient under paragraph 3 of Section 51 of the Charter to be placed on the ballot for the November 2, 2004, election, then that shall occur;

(e) Should the clerk not change the current certification that the petition is sufficient under paragraph 5 of Section 51 of the Charter to be submitted to the voters, then, under its authority granted in Section 51, paragraph 12, of the Charter, the city council does submit to the voters, for adoption or rejection, using the ballot question set out above, at the election to be held November 2, 2004, the ordinance proposed by petition as shown in Agenda Item 04-0913-14 (ordinance creating smoke-free public places and workplaces);

(f) The council declares that, although by this resolution it submits the matter to be voted upon at the next election, the proposition has qualified by initiative, and it is an ordinance proposed by initiative;

(g) That a copy of Article VII, Chapter 28, Duluth City Code and the proposed ordinance shall be kept on file in the office of the city clerk prior to such election for examination by members of the public.

Resolution 04-0649 was adopted upon the following vote:

Yeas: Councilors Johnson, Ness, Reinert, Stewart and President Stauber -- 5

Nays: Councilors Atkins and Stover -- 2

Absent: Councilors Gilbert and Little -- 2

Approved September 16, 2004

HERB W. BERGSON, Mayor

- - -

The meeting was adjourned at 5:32 p.m.

JEFFREY J. COX, City Clerk

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, September 27, 2004, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Absent: None -- 0

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

04-0927-01 Joan L. Johnson, et al. (two signatures), submitting petition to extend the sanitary sewer and watermain within Quince Street beginning at Anderson Road and extending approximately 670 feet easterly. -- Assessor

04-0927-02 Thomas J. O'Brien, et al. (five signatures), submitting petition to amend C-3 zoning at Buffalo Street access easement. -- Planning commission

04-0927-03 Gerald A. Veillet, et al. (three signatures), submitting petition to extend the sanitary sewer and watermain from Trinity Road to serve properties at 3330, 3400 and 3408 Trinity Road. -- Assessor

04-0927-04 Daniel Williams submitting petition to vacate 20th Avenue West between Sixth and Seventh streets adjacent to Lots 322 through 330, Block 157, Duluth Proper Second Division. -- Assessor

04-0927-05 Minnesota state auditor submitting management and compliance report for the city of Duluth for the year ended December 31, 2003. -- Received

04-0927-07 Piedmont Heights Dental Associates II submitting acceptance of terms, conditions and provisions of concurrent use permit granted by Ordinance No. 9681 on July 26, 2004. -- Received

04-0927-32 The following submitting communications regarding the proposed policy against layoff of employees (04-0675R): (a) Rick and Nan Alden; (b) Todd Fedora; (c) Cheryl Graham; (d) Robert M. Hansen; (e) John Mc Allister; (f) Carl Svendsen; (g) Steve Townsend. -- Received

04-0927-06 The following submitting communications regarding the proposed reconveyance of property in Endion Division to state of Minnesota for Lakewalk Townhomes project (04-057-O): (a) Alison J. Clarke; (b) Robert Lyman. -- Received

04-0927-22 The following submitting communications regarding the proposed reclassification of R-1-c, one-family residential district, and R-1-b, one-family residential district, to R-3, apartment residential district, property located between Mesaba Avenue; and east Skyline Parkway, south of 12th Street and west of Fourth Avenue East (04-060-O): (a) David L. and Sharon A. Craig; (b) Nylen, Magie, & Strum Properties. -- Received

04-0927-30 The following submitting communications regarding the objections of land owners' relating to the Downtown Waterfront Special Services District (04-0676R): (a) Greater Downtown Council; (b) Viking Micrographics Business Systems. -- Received

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REPORTS OF OFFICERS

04-0927-08 Assessor submitting:

(a) Confirmation of assessment roll to be levied to defray in full the expense of solid waste collection during the period June 1, 2003, to June 1, 2004, for which the collector has not been reimbursed;

(b) Letters of sufficiency to:

(1) Construct sewer, water, gas, storm sewer and road to part of Outlot C, Northridge Estates, the N1/2 of SE1/4 of the NE1/4, and part of NE of NE1/4, Section 9, Township 50, Range 14;

(2) Extend the sanitary sewer 150 feet across Trinity Road beginning approximately 710 feet north of South Arlington Avenue intersection to serve 1315 South Arlington Avenue;

(3) Extend sanitary sewer and watermain from Trinity Road to serve properties at 3330, 3400 and 3408 Trinity Road;

(4) Reclassify from M-1 to R-3, Lot 399, Block 77, Duluth Proper Second Division;

(5) Vacate part of 42nd Avenue West from Grand Avenue south 280 feet to Second Street (Traverse Street). -- Received

04-0927-09 Clerk submitting: (a) Application to the Minnesota gambling control board for exemption from lawful gambling license from Minnesota Association of Soil and Water Conservation Districts on December 6, 2004 (raffle); (b) Amended petition certification regarding proposed ordinance creating smoke free public places and workplaces. -- Received

04-0927-26 Community development and housing division manager submitting 2005 CDBG funding requests. -- Received

--

REPORTS OF BOARDS AND COMMISSIONS

04-0927-10 Board of zoning appeals minutes of August 24, 2004, meeting. -- Received

04-0927-11 Duluth human rights commission minutes of July 14, 2004, meeting. -- Received

04-0927-12 Parking commission minutes of May 18, 2004, meeting. -- Received

04-0927-13 Special assessment board minutes of August 10, 2004, meeting. -- Received

04-0927-14 Spirit Mountain recreation area authority minutes of: (a) July 28; (b) August 11; (c) August 25, 2004, meetings. -- Received

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OPPORTUNITY FOR CITIZENS TO BE HEARD

Shannon Garcia expressed concern about the condition of a bald eagle exhibit at the Great Lakes Aquarium.

--

Tom Wright questioned why the city's budget includes the human rights office as this is a duplication of a state department.

--

KL Lewis stated support for installing cameras at problem spots in the city where safety is a concern for pedestrians.

--

Peggy Marrin voiced concern about the future of the sister city program and questioned if the delegations making the trips are receiving paid trips or if they should be paying the city back.

--

George Hanson requested the council look at the domestic terrorism that is going on in Duluth and asked the council to pass a resolution condemning these acts in Duluth.

--

RESOLUTIONS TABLED

Councilor Ness moved to remove Resolution 04-0637, setting fee for commercial use permit, from the table, which motion was seconded and unanimously carried.

Councilor Ness then moved to consider Ordinance 04-059 at this time, which motion was seconded and unanimously carried.

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinance was read for the second time:

BY COUNCILOR NESS

04-059 (9689) - AN ORDINANCE AMENDING SECTION 21-6 OF THE DULUTH CITY CODE, 1959, AS AMENDED, AUTHORIZING COLLECTION OF FEES.

- - -

Resolution 04-0637 was adopted as follows:

BY COUNCILOR NESS:

BE IT RESOLVED, that under authority of Duluth City Code Section 21-6 and Section 31-6, the proper city officials are authorized to enter into any necessary agreement with the state of Minnesota and do acts necessary to collect the fee for issuance of a three year commercial use permit or operational permit or construction permit under Section 105 of the Minnesota State Fire Code, as set out in the fee schedule on file with the city clerk as Public Document No. 04-0927-15.

Resolution 04-0637 was unanimously adopted.

Approved September, 27, 2004

HERB W. BERGSON, Mayor

- - -

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

- - -

Councilor Gilbert moved to remove Resolution 04-0601, denying a rezoning petition to Duluth Teachers Credit Union for property located on the southwest corner of Arrowhead Road and Kenwood Avenue (Duluth Teachers Credit Union - John Westlund); Resolution 04-0602, denying a vacation of an unimproved alley Easement West of Kenwood Avenue and south of Arrowhead Road (Duluth Teachers Credit Union); and Resolution 04-0603, vacating an unimproved alley easement west of Kenwood Avenue and south of Arrowhead Road (Duluth Teachers Credit Union), from the table, which motion was seconded and unanimously carried.

Councilor Gilbert then moved to consider Ordinance 04-054 at this time, which motion was seconded and unanimously carried.

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinance was read for the second time:

BY COUNCILOR GILBERT

04-054 (9690) - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NO. 37 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-c, ONE FAMILY RESIDENTIAL, TO C-1, COMMERCIAL, PROPERTY LOCATED ON THE SOUTHWEST CORNER OF ARROWHEAD ROAD AND KENWOOD AVENUE (DULUTH TEACHERS CREDIT UNION).

- - -

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

Barbara Brooks urged the council not to allow this project as it will bring this commercial development to within three to five feet of her daughter's house along with hundreds of cars into the parking lot next to their house. She also stated that not all of the information about the hazards and dangers of the intersection have been properly addressed.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Diane Sorenson stated that zoning laws are created to ensure the property owner's value of a dwelling, but this zoning change will devalue the property around this proposed development.

John Westlund reviewed that he has been working with residents and addressing their concerns regarding the project, especially the traffic, to make their property safer, quieter and in conformance with their wishes. He continued by saying that they have shown from the start of the project that they are willing to work with the city and the neighbors to make this a good project for the city.

Resolution 04-0601 failed upon the following vote (Public Document No. 04-0927-16):

Yeas: Councilor Gilbert -- 1

Nays: Councilors Atkins, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 8

- - -

Resolution 04-0602 failed upon the following vote (Public Document No. 04-0927-17):

Yeas: Councilor Gilbert -- 1

Nays: Councilors Atkins, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 8

- - -

Resolution 04-0603 was adopted as follows:

BY COUNCILOR GILBERT:

WHEREAS, a sufficient petition was filed with the city clerk requesting the vacation of an unimproved alley easement 125 feet west of and parallel to Kenwood Avenue and extending 125 feet south of Arrowhead Road legally described as the alley adjoining Lots 1-4 and the north 19 feet of Lot 5, Block 1, and Lot 1, Block 2, Myers and Whipples Addition to Duluth, except the northerly 12 feet thereof; and

WHEREAS, 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

WHEREAS, the city planning commission recommended denial of the easement vacation petition at its August 25, 2004, meeting (Reference File No. 04082).

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth finds that there will be no future need for this right-of-way and that the vacation would enlarge the petitioners properties to provide a larger buildable area to facilitate development of the adjoining properties; and approves the vacation of the easement described above and as more particularly described on Public Document No. 04-0927-18.

RESOLVED FURTHER, that the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of St. Louis County, Minnesota, a certified copy of this resolution together with a plat showing the portion of the alley easement to be vacated.

Resolution 04-0603 was adopted upon the following vote:

Yeas: Councilors Atkins, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 8

Nays: Councilor Gilbert -- 1

Approved September 27, 2004

HERB W. BERGSON, Mayor

- - -

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

Yeas: Councilors Atkins, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 8

Nays: Councilor Gilbert -- 1

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

BY COUNCILOR NESS:

RESOLVED, that the assessment roll on file in the office of the city clerk as Public Document No. 04-0927-08(a), which is levied to defray in full the expense of solid waste collecting during the period of June 1, 2003, to June 1, 2004, for which the licensed collector has not been reimbursed as provided for in Chapter 24 of the Duluth City Code, is hereby confirmed.

Resolution 04-0635 was unanimously adopted.

Approved September 27, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR NESS:

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

Section 1. Pursuant to Minnesota Statutes, Section 471.15 through 471.191, the city operates a program of public recreation, of which the Lester Park Golf Course and Enger Park Golf Course (the golf courses) are a part.

Section 2. The city previously issued its \$3,315,000 gross revenue recreation facility refunding bonds (municipal golf courses), Series 1995, dated November 1, 1995 (the 1995 bonds), to refund certificates of participation which were issued by the city to finance improvements to and equipment for the golf courses.

Section 3. The city desires to reduce its annual debt service payments under the 1995 bonds, and the council hereby states its intent that it is necessary, expedient, and in the best interests of the city's residents that the city issue, sell and deliver its gross revenue recreation facility refunding bonds (municipal golf courses), Series 2004 (the bonds), to refund the outstanding principal amount of the 1995 bonds.

Section 4. The terms and conditions of the bonds and the sale thereof shall be established by further resolution of the council.

Resolution 04-0661 was unanimously adopted.

Approved September 27, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

WHEREAS, the city entered into a construction contract with Max Gray Construction, Inc., in August, 2004, (Resolution 04-0471) in connection with the construction of handrails and related sitework, in accordance with plans and specifications as prepared by the city architect, on it's low bid of \$21,700, payable out of General Fund 0100, Agency 700, Organization 2725, Object I304; and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

WHEREAS, the city desires to incorporate Add Alternate #1 to this construction contract, as a project change order and increase the contract to cover this change order work;

NOW, THEREFORE, BE IT RESOLVED, that Max Gray Construction, Inc., be and hereby is awarded C.O. #1 to be added to their construction contract for construction of handrails at City Hall, and related sitework in accordance with plans and specifications as prepared by the city architect on its low bid/add alternate #1 amount of \$14,200, for a new total contract amount of \$41,300, payable out of General Fund 0100, Agency 700, Organization 2725, Object I304.

Resolution 04-0641 was unanimously adopted.

Approved September 27, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the proper city officers are hereby authorized to renew its agreement with Minnesota Mutual Life to provide group term life insurance coverage for city employees and retirees during the year 2005 at the amounts specified in various bargaining unit contracts, under which agreement the city will purchase such insurance at a rate of \$.35 per thousand per month, at an estimated cost of \$212,009, which shall be payable from various funds and agencies.

Resolution 04-0650 was unanimously adopted.

Approved September 27, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the proposed amendments to the specifications for the civil service classification of water quality specialist, which were approved by the civil service board on September 7, 2004, and which are filed with the city clerk as Public Document No. 04-0927-19, are approved. This classification shall remain subject to the City's collective bargaining agreement with its basic unit employees and compensated at Pay Range 31, \$3,337 to \$3,968 per month.

Resolution 04-0638 was unanimously adopted.

Approved September 27, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the proposed amendments to the specifications for the civil service classification of financial analyst, which were approved by the civil service board on September 7, 2004, and which are filed with the city clerk as Public Document No. 04-0927-20, are approved. This classification shall remain subject to the City's collective bargaining agreement with its Basic unit employees and compensated at Pay Range 70 percent -- 100 percent of 136E, \$3,177 to \$4,538 per month.

Resolution 04-0639 was unanimously adopted.

Approved September 27, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

WHEREAS, James King, Sr., Spirit Lake Marine, Inc., has submitted to the city council a request for a special use permit for seasonal campsites at marina on property described as:

A parcel of land located in Government Lot Two (2), Section Twenty-six (26), and Government Lot Three (3), Section Twenty-three (23), Township Forty-Nine (49) North of Range

Fifteen (15) West of the Fourth Principal Meridian, located in St. Louis County, Minnesota, and in Douglas County, Wisconsin, and described as follows, to wit:

Commencing at a point in said Government Lot Three (3) where the established U.S. Government Harbor Line intersects the boundary line of the states of Minnesota and Wisconsin; thence southwesterly along said established harbor line 89.30 feet to the extended north boundary line of Rearrangement of Lenroot's Addition to Ironton, which point is the place of beginning; thence north $57^{\circ} 16' 14''$ west a distance of 44.28 feet to the boundary line between the states of Minnesota and Wisconsin as determined and marked by a survey made by a boundary commission appointed by the United States Supreme Court in *Minnesota v. Wisconsin*, 258 U.S. 149, a map of which survey is on file in the office of the clerk of said court; thence continuing North $57^{\circ} 16' 4''$ west a distance of 617.47 feet to a point; thence north $32^{\circ} 43' 56''$ east a distance of 70 feet to a point; thence north $57^{\circ} 2' 44''$ west 152 feet to a point; thence south $32^{\circ} 57' 16''$ west a distance of 239.41 feet to a point; thence south $57^{\circ} 2' 44''$ east a distance of 120 feet to a point; thence south $32^{\circ} 57' 16''$ west a distance of 270 feet to a point; thence north $57^{\circ} 2' 44''$ west a distance of 140 feet to a point; thence south $32^{\circ} 57' 16''$ west a distance of 214 feet to a point; thence south $57^{\circ} 2' 44''$ east to the established U.S. Government harbor line; thence northeasterly along said harbor line to the point of beginning.

EXCEPTING THEREFROM a parcel of land described as follows, to wit:

Commencing at a point in said Government Lot Three (3) where the established U.S. Government harbor line intersects the boundary line of the states of Minnesota and Wisconsin; thence southwesterly along said established harbor line 89.30 feet to the extended north boundary line of Lenroot's Addition; thence continuing southwesterly along said established harbor line 400 feet more or less to a point which is 122 feet northeasterly of the extended southwesterly pier facing the southwesterly most pier of Spirit Lake Marine, Inc., which point is the point of beginning; thence northwesterly on a line perpendicular to the said established harbor line 350 feet to a point of said pier; thence southwesterly on a line parallel with said established harbor line 122 feet, more or less, to the point where said pier and the waters of the St. Louis River meet; thence southeasterly along the southwesterly edge of said pier to the said established harbor line; thence northeasterly along said established harbor line to the point of beginning. Including all riparian rights incident thereto.

Together with and subject to easements for ingress and egress to, from and across said parcel of property as follows:

Easement A:

A joint driveway easement 24 feet in width and more particularly shown as Parcel A upon Exhibits C and D which are made a part hereof by reference. Spirit Lake Marine, Inc., its successors and assigns, agrees that the obligation and cost of repair and maintenance of said joint driveway easement shall be shared equally with the owner of the adjoining premises which shares said joint driveway easement. Failure of any party to promptly pay for its share of any expense incurred in accordance with this agreement shall result in such share becoming a lien on said party's property, and the party who has paid for such expenses shall be entitled to enforce the same in any court of competent jurisdiction. Said joint driveway easement shall run with the land and shall be binding upon the successors and assigns of the parties hereto. The easement shall be used only for moving traffic and vehicles, and shall not be used to park vehicles or store property; and located at 121 Spring Street; and said permit application was duly referred to the city planning commission for a study, report and public hearing on September 14, 2004, and the city planning commission has subsequently reported its approval to the city council; and

WHEREAS, the approval was made because of the city planning commission's findings that appropriate safeguards will exist to protect the comprehensive plan and to conserve and to protect property values in the neighborhood if conditions are observed (Reference File No. 04091).

NOW, THEREFORE, BE IT RESOLVED, that a special use permit is hereby granted to James King, Sr., Spirit Lake Marine, Inc., to allow for the operation of seasonal campsites, in accordance with Section 50-35 (bb) of the City Code, at Spirit Lake Marina, 121 Spring Street, on the condition that the sites be located in accordance with the plan submitted by Spirit Lake Marine, Inc., dated received September 8, 2004, and as identified as Public Document No. 04-0927-21 and the following conditions:

(a) That the facility secure and maintain all licensing requirements of St. Louis County and the state of Minnesota, in accordance with Minnesota Statutes Sec. 327.15, with copies filed with the city of Duluth building safety and inspection division; and

(b) The term of this permit is as set out in MSA 462.3595.

Resolution 04-0646 was unanimously adopted.

Approved September 27, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

WHEREAS, a sufficient petition was filed with the city clerk requesting the vacation of street easements in Grays' Addition legally described as:

the east half of Virginia Avenue abutting Lots 4 to 7, Block 19, Virginia Avenue abutting Lot 9, Block 20 and Lot 8, Block 19 to Ohio Street; Niagara Street abutting Lot 9, Block 20 and Lot 16, Block 29 to Triggs Avenue; Hickory Street abutting Lot 9, Block 29 and Lot 16, Block 36 to Line A;

Kentucky Avenue abutting Lot 12, Block 19 and Lot 5, Block 18 to Line A;

Kennebec Avenue abutting Lot 12, Block 18, and Lot 5, Block 17 to Line A;

Line A is described as beginning 260.15 feet south of centerline of Niagara Street along the east of Block 32 thence southerly and westerly along a tangential curve concave to the northwest, having a radius of 407.74 feet and a central angle of 58°-42'-57", a distance of 417.85 feet and the chord of said curve bears south 29°-24'-34" west; thence south 58°-46'-02" west a distance of 582.82 feet to the south line of Block 35 and there terminating.

Subject to the retention of the full right-of-way of Niagara Street as a utility easement (Reference File No. 04099); and

WHEREAS, 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

WHEREAS, the city planning commission approved, by a unanimous vote, the vacation petition at its September 14, 2004, meeting.

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation of streets on contiguous property located north of Ohio Street, south of Buffalo Street, east of Broadway Avenue and west of Triggs Avenue including portions of Toledo and Niagara streets and portions of Virginia, Kentucky and Kennebec avenues and as more particularly described on Public Document No. 04-0927-23.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

RESOLVED FURTHER, that the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of St. Louis County, Minnesota, a certified copy of this resolution together with a plat showing the portion of the street to be vacated.

Resolution 04-0647 was unanimously adopted.

Approved September 27, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

WHEREAS, a sufficient petition was filed with the city clerk requesting the vacation of those portions of Blocks 2 through 5, Morgan Park First Addition described as:

that portion of 99th Avenue West abutting Lot 8, Block 2, and Lot 1, Block 3; those portions of alleys in Block 3 lying southeast of State Highway 23; that portion of 98th Avenue West abutting Blocks 3 and 4 lying between the north line of Commonwealth Avenue and the north line of Lot 19, Block 3, extended easterly to the north line of Lot 36, Block 4; all alleys in Blocks 4 and 5; that portion of 97th Avenue West abutting Blocks 4 and 5 (Reference File No. 04096); and

WHEREAS, 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

WHEREAS, the city planning commission approved, by a unanimous vote, the vacation petition at its September 14, 2004, meeting.

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation those portions of Blocks 2 through 5, Morgan Park First Addition, and as more particularly described on Public Document No. 04-0927-24.

RESOLVED FURTHER, that the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of St. Louis County, Minnesota, a certified copy of this resolution together with a plat showing the portion of the street to be vacated.

Resolution 04-0648 was unanimously adopted.

Approved September 27, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that Hovland, Inc., be and hereby is awarded a contract for alley pedestrian curb ramps, CDBG area accessibility project for the engineering division in accordance with specifications on its low specification bid of \$61,332, terms net 30, FOB job site, payable out of Community Development Fund 0262, Department/Agency 627, Object 6716.

Resolution 04-0671 was unanimously adopted.

Approved September 27, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

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. 04-0927-25 with Architectural Resources, Inc., for the development of the Woodland Business

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

District plan at a cost of not to exceed \$15,000; payable from Fund 0100, Agency 020, Organization 1202, Object 5319.

Resolution 04-0672 was unanimously adopted.

Approved September 27, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

WHEREAS, it appears that it may be necessary to construct 150 feet of sanitary sewer across Trinity Road beginning 710 feet north of South Arlington Avenue intersection to serve Northstar Baptist Church at 1315 South Arlington Avenue (City Job No. 0452SN).

NOW, THEREFORE, BE IT RESOLVED, that it is the intent of the city council to cause this improvement to be made, provided that further information demonstrated that the improvement should be made.

BE IT FURTHER RESOLVED, that to aid the council in determining whether or not to finally order in said project, the mayor shall cause to be prepared plans and specifications for said project and will further direct procedures prescribed by Section 62 of the Charter.

Resolution 04-0642 was unanimously adopted.

Approved September 27, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are authorized to pay to Ryan Patrick and Kathleen Johnson the sum of \$13,495.53 in full and final settlement of all claims for damage to property at 4401 West Sixth Street resulting from a blockage in the municipal sanitary sewer which occurred on May 30, 2004; payment to be made from Self Insurance Fund 0610.

Resolution 04-0644 was unanimously adopted.

Approved September 27, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are authorized to pay to American Family Insurance, as subrogee of Linda Latour, the amount of \$10,000 in full and final settlement of all claims for damage to their insured's property at 518 North 43rd Avenue West resulting from a sewer backup, which occurred on January 4, 2004; payment to be made from the Self Insurance Fund 0610.

Resolution 04-0645 was unanimously adopted.

Approved September 27, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are authorized to pay to Jocelyn A. Thompson and her attorney, James W. Balmer, the sum of \$75,000 in full and final settlement of the claim which arose out of a slip and fall accident occurring on July 14, 2003, near 324 West Superior Street; payment to be made from the Self Insurance Fund 0610.

Resolution 04-0657 was unanimously adopted.

Approved September 27, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

WHEREAS, by resolution of intent numbered 04-0642 the council did request the administration to prepare plans and specifications for the construction of approximately 150 feet of sanitary sewer across Trinity Road beginning approximately 710 feet north of the South Arlington Avenue intersection to serve Northstar Baptist Church at 1315 South Arlington Avenue (City Job No. 0442SN) at an estimated cost of \$13,000; and

WHEREAS, said plans and specifications have been prepared and filed with the secretary of the special assessment board; proper notice has been sent to the benefitting property owners; the special assessment board has submitted its report to this council pursuant to Section 45-79, Duluth City Code of 1959, and the said board, at the direction of the mayor, has furnished this council with information as required by Section 45-80 of the Duluth City Code of 1959.

NOW, THEREFORE, BE IT RESOLVED, that said improvement as described above be made; that the estimated total cost of said improvement as estimated by the city engineer is \$13,000, payable from Special Assessment Fund 0410, Agency 038, Organization 5400, Object 5530, and that all of the cost of said improvement be defrayed by special assessment against the land and premises specially benefitted; that those assessed be permitted to pay said assessment in installments over a 15 year period, subject to Section 68 of the City Charter; that said assessment satisfy all the requirements of Section 60 of the Charter.

BE IT FURTHER RESOLVED, that the council order in subject project in accordance with the provisions of Section 62 of the City Charter and that said improvement is hereby ordered.

Resolution 04-0658 was unanimously adopted.

Approved September 27, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

WHEREAS, it appears that it may be necessary to construct permanent streets, sanitary and storm sewers, watermains and gas mains in Middle Road and Middle Lane from Howard Gnesen Road northwesterly to cul-de-sac.

NOW, THEREFORE, BE IT RESOLVED, that it is the intent of the city council to cause this improvement to be made, provided that further information demonstrated that the improvement should be made.

BE IT FURTHER RESOLVED, that to aid the council in determining whether or not to finally order in said project, the mayor shall cause to be prepared plans and specifications for said project and will further direct procedures prescribed by Section 62 of the Charter.

Resolution 04-0659 was unanimously adopted.

Approved September 27, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

WHEREAS, it appears that it may be necessary to construct 850 feet of sanitary sewer and 700 feet of watermain easterly from Trinity Road to serve properties at 3330, 3400 and 3408 Trinity Road.

NOW, THEREFORE, BE IT RESOLVED, that it is the intent of the city council to cause this improvement to be made, provided that further information demonstrated that the improvement should be made.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

BE IT FURTHER RESOLVED, that to aid the council in determining whether or not to finally order in said project, the mayor shall cause to be prepared plans and specifications for said project and will further direct procedures prescribed by Section 62 of the Charter.

Resolution 04-0660 was unanimously adopted.

Approved September 27, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

WHEREAS, by the resolution of intent numbered 04-0659, the council did request the administration to prepare plans and specifications for the construction of permanent residential design streets in Middle Road and Middle Lane from Howard Gnesen Road northwesterly to cul-de-sac (approximately 2,504 feet), including concrete curb and gutter, sidewalks, bituminous surface, storm sewers, sanitary sewers, watermain and gas main at an estimated cost of \$898,000, payable from the Special Assessment Fund 0410 (City Job No. 0392TR); and

WHEREAS, said plans and specifications have been prepared and filed with the secretary of the special assessment board; proper notice has been sent to the benefitting property owners; the owners have waived their right to a hearing before the special assessment board; the special assessment board has submitted its report to this council pursuant to Section 45-79, Duluth City Code of 1959; and the said board, at the direction of the mayor, has furnished this council with information as required by Section 45-80 of the Duluth City Code of 1959.

NOW, THEREFORE, BE IT RESOLVED, that said improvement as described above be made; that the estimated total cost of said improvement as estimated by the city engineer is \$898,000, payable from the Special Assessment Fund 0410, Agency 038, Organization 5398, Object 5530; that all of the cost of said improvement be defrayed by special assessment against the land and premises specially benefited; that those assessed be permitted to pay said assessment in installments over a 15 year period, subject to Section 68 of the City Charter; that said assessment satisfy all the requirements of Section 60 of the Charter.

BE IT FURTHER RESOLVED, that the council order in subject project in accordance with the provisions of Section 62 of the City Charter and that said improvement is hereby ordered.

Resolution 04-0662 was unanimously adopted.

Approved September 27, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that ACME Alternate Fuel Systems be and hereby is awarded a contract for furnishing L.P. gas conversion on seven vehicles converting from compressed natural gas to liquid propane gas for the fleet division in accordance with specifications on its low specification bid of \$39,435.64, terms 30, FOB destination, \$23,996 payable out of Fleet Fund 0660, Department/Agency 015, Organization 1560, Object 5221; \$14,000 payable out of Fleet Fund 0660, Department/Agency 015, Organization 1560, Object 5404 and \$1,439.64 payable out of Fleet Fund 0660, Department/Agency 015, Organization 1560, Object 5441.

Resolution 04-0669 was unanimously adopted.

Approved September 27, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Larson Chevrolet-Olds be and hereby is awarded a contract for furnishing and delivering one Chevrolet truck cab and chassis 4x4 with nine foot triple tipper and hydraulic

system for the utility operation division in accordance with specifications on its low specification bid of \$41,104.98, terms net 30, FOB destination, payable out of Sewer Fund 0530, Department/Agency 500, Organization 1905, Object 5580.

Resolution 04-0670 was unanimously adopted.

Approved September 27, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are authorized to enter into a agreement with the St. Louis and Lake County regional railroad authority for use of its right-of-way in conjunction with the city's Lakeside sanitary sewage storage facility to be constructed at 52nd Avenue East and Dodge Street at a cost of not to exceed \$500; payable from Fund 0530, Agency 500, Organization 1915, Object 5441.

Resolution 04-0674 was unanimously adopted.

Approved September 27, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

WHEREAS, the state of Minnesota, through the Minnesota department of public safety, alcohol and gambling enforcement division, is in need of alternate enforcement activities by local jurisdictions to address underage persons in possession of alcohol and administers financial assistance to local communities in the enforcement of underage drinking laws; and

WHEREAS, the city of Duluth, Duluth police department, is qualified to provide such enforcement activities; and

WHEREAS, the city of Duluth is home to several colleges and universities and experiences an increase in underage drinking and disturbing party incidents during the fall as students return to school.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officers are authorized to accept said grant and to execute any documents required to be executed to accept such grant; grant funds in the amount of \$3,000 to be deposited in General Fund 0100-200-1620-4230.

Resolution 04-0665 was unanimously adopted.

Approved September 27, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

WHEREAS, the state of Minnesota, through the Minnesota department of public safety, office of traffic safety, administers the Safe & Sober grant program, which is dedicated to reducing deaths and injuries caused by traffic accidents by increasing seat belt and child seat use and decreasing impaired driving; and

WHEREAS, the city of Duluth, Duluth police department, is qualified to provide such enforcement activities, applied for such grant funds and is approved to receive \$17,500; and

WHEREAS, no matching funds are required.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officers are authorized to accept said grant and to execute any documents required to be executed to accept such grant; grant funds to be deposited in General Fund 0100-200-1620-4230.

Resolution 04-0666 was unanimously adopted.

Approved September 27, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

WHEREAS, the United States government, department of justice, office of justice programs, bureau of justice assistance, is the administrator of the local law enforcement block grant program (LLEBG), a program created to provide units of general purpose local government with funds to underwrite projects to reduce crime and improve public safety; and

WHEREAS, the city of Duluth, through its Duluth police department, is qualified to perform functions authorized by the LLEBG; and

WHEREAS, the city of Duluth applied for and has been awarded LLEBG program funds; and

WHEREAS, the LLEBG award requires the city to contribute \$2,414 in matching funds;

NOW, THEREFORE, BE IT RESOLVED, that the proper city officers are authorized to accept said grant and to execute any documents required to be executed to accept such grant; grant funds in the amount of \$24,575 to be deposited in Fund 0215, Agency 200, Organization (to be established upon acceptance of grant).

BE IT FURTHER RESOLVED, that the proper city officers are authorized to obligate up to \$2,414 in matching funds, payable from Fund 0100, Agency 200, Organization 2431.

Resolution 04-0667 was unanimously adopted.

Approved September 27, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

WHEREAS, the city of Duluth has participated in the Lake Superior drug task force and desires to continue such participation.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officers are authorized and directed to enter into a joint powers agreement with St. Louis County, Lake County, Cook County, the city of Two Harbors, the city of Proctor, the city of Hermantown and the University of Minnesota Duluth providing for the participation by the city of Duluth and other above-named governmental agencies in the Lake Superior drug task force through June 30, 2005; said agreement to be substantially in the form of Public Document No. 04-0927-27 on file in the office of the city clerk.

Resolution 04-0668 was unanimously adopted.

Approved September 27, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR REINERT:

BE IT RESOLVED, that the proper city officials are authorized to execute and implement an agreement, substantially the same as that on file with the city clerk as Public Document No. 04-0927-28, between the city, Duluth Audubon Society and Hawk Ridge Bird Observatory, which agreement will transfer the obligations of Duluth Audubon Society for administration of the Hawk Ridge facility to Hawk Ridge Bird Observatory, Inc.

Resolution 04-0663 was unanimously adopted.

Approved September 27, 2004

HERB W. BERGSON, Mayor

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The following resolutions were also considered:

President Stauber moved to consider Resolution 04-0664, ordering the construction of an eight inch watermain in Ethel Avenue from Springvale Road to 365 feet northerly at an estimated

cost of \$101,200 (City Job No. 0456WA), by Councilor Stover, at this time, which motion was seconded and unanimously carried.

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

Charles Andresen stated he is representing a property owner on Ethel Avenue who in 1964 put in a private water line to her home at her expense with the permission of the city who did not ask for any type of disclaimer. He continued by saying that now a new water line is going in on her block which she does not need nor benefit from, but is being told her share of the expense is approximately \$32,000. Mr. Andresen requested the council table this resolution until this issue can be resolved.

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

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Resolutions 04-0651 and 04-0652, by Councilor Gilbert, affirming and reversing, respectively, a decision of the board of zoning appeals to deny a request to allow the placement of a 14'x24' accessory storage shed on property without a main building on property located southeast of the applicant's dwelling at 422 North 19-1/2 Avenue West (Richard Weme), were introduced for discussion.

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

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Resolutions 04-0653 and 04-0654, by Councilor Gilbert, affirming and reversing, respectively, the decision of the board of zoning appeals to deny a request by Menard, Inc., for a variance to allow a ground sign to exceed the height limitation for the installation of a 100 foot high, 250 square foot ground sign on property located at 503 North 50th Avenue West, were introduced for discussion.

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

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Resolution 04-0673, by Councilor Gilbert, approving the city of Duluth tax abatement policy for housing developments, was introduced for discussion.

Councilor Stewart stated that this plan is better than the plan that was first proposed but that he does not think it is the right time to find more ways to give away tax money.

Resolution 04-0673 was adopted as follows:

BY COUNCILOR GILBERT:

RESOLVED, that the Duluth City Council hereby adopts the city of Duluth tax abatement financing policy for housing developments on file in the office of the city clerk as Public Document No. 04-0927-29.

Resolution 04-0673 was adopted upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stover and President Stauber -- 8

Nays: Councilor Stewart -- 1

Approved September 27, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0675, by Councilor Gilbert, for policy against layoff of employees, was introduced for discussion.

Councilor Gilbert requested the resolution withdrawn and President Stauber ordered it so.

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Resolution 04-0676, by President Stauber, making findings and determinations to objections of land owners' relating to the Downtown Waterfront Special Services District, was introduced for discussion.

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

Linwood Skafta stated he filed an objection to the district and asked to be excused from paying the tax because the Greater Downtown Council (GDC) has never given any recognizable benefit to his property. He also stated that the safe and clean budget is too low to support a service district of this size and diversity, which shows there is no intent to provide the services throughout the whole district.

Rick Dunbar stated his objection to the district as he does not believe he will receive equal benefits.

Lance Shively explained that although he owns residential property on Second Street and Tenth Avenue East and is not subject to the tax, he feels that property owners who have property of a greater value should be assessed their fair share.

Dewayne Torfin stated his objection to the special services district because it is unfair to the small property owners who will bear more of the financial assessments than the larger property owners. He went on to say that the allocation of services is grossly unfair and requested that small business owners be represented on an advisory board.

Kristi Stokes, representing the GDC, reviewed that the district is being created by a petition of Downtown business owners who want a healthier Downtown which will benefit every business in the district's boundaries.

Daniel Maddy reviewed that there are three grounds by which a property owner can seek to have their property deleted from the district or not charged with the service charge and that the council needs to decide if these businesses meet one of the three specific categories.

Councilor Atkins moved to amend the resolution by accepting the appeals of the applicants, which motion was seconded for discussion.

Councilor Atkins' amendment failed upon the following vote:

Yeas: Councilors Atkins, Little and Stover -- 3

Nays: Councilors Gilbert, Johnson, Ness, Reinert, Stewart, Stover and President Stauber -- 6

President Stauber moved for a vote on the resolution, which motion was carried upon the following vote:

Yeas: Councilors Atkins, Little and Stover -- 3

Nays: Councilors Gilbert, Johnson, Ness, Reinert, Stewart, Stover and President Stauber

Resolution 04-0676 was adopted as follows:

BY PRESIDENT STAUBER:

WHEREAS, on September 13, 2004, the Duluth City Council adopted Ordinance No. 9688 establishing the Downtown Waterfront Special Services District; and

WHEREAS, on September 13, 2004, the Duluth City Council adopted Resolution No. 04-0595 providing for the imposition of service charges within the Downtown Waterfront Special Services District; and

WHEREAS, the effective date of adoption is deemed September 15, 2004, on which day the mayor of the city of Duluth approved said ordinance and resolution; and

WHEREAS, Minnesota Statute Section 428A.02, subdivision 4, (the statute) provides a procedure by which land owners may at the hearing or before the ordinance is adopted, file written objections with the city clerk; and

WHEREAS, the basis for the objections are set forth in the statute; and

WHEREAS, on or before September 15, 2004, the city clerk received objections from the following persons:

- (a) Lance Shively - 925 East Second Street, Duluth, MN 55805;
- (b) Rick Dunbar - 210 and 216 East First Street, Duluth, MN 55802;
- (c) Herbert Jensen - 112 East First Street and 18 North First Avenue East, Duluth, MN 55802;
- (d) Donald Pasek;
- (e) Richard A. Peterson;
- (f) Wayne and Eleanor Polla;
- (g) Richard Sturm;
- (h) Lynwooda Skafta for Skafta Enterprises Inc.;
- (i) DeWayne Dale Torfin; and

WHEREAS, Minnesota Statute 428A.02 requires the city council to make a determination on the objections within 30 days of their filing.

NOW, THEREFORE, BE IT RESOLVED, that the Duluth City Council makes the findings and determinations regarding the above-referenced objections as listed on Public Document No. 04-0927-31 and incorporated herein.

Resolution 04-0676 was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Ness, Reinert, Stewart, and President Stauber -- 6

Nays: Councilors Atkins, Little and Stover -- 3

Approved September 27, 2004

HERB W. BERGSON, Mayor

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INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

BY COUNCILOR NESS

04-063 - AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF \$4,300,000 GENERAL OBLIGATION REVENUE BONDS OF THE CITY OF DULUTH FOR THE IMPROVEMENT OF THE MUNICIPAL SEWER UTILITY UPON TERMS AND CONDITIONS TO BE PROVIDED BY RESOLUTION OF THE CITY COUNCIL AND PLEDGING REVENUES FOR THE PAYMENT THEREOF.

- - -

BY COUNCILOR GILBERT

04-061 - 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 RECLASSIFY FROM R-1-C, ONE-FAMILY RESIDENTIAL DISTRICT, TO R-3, APARTMENT RESIDENTIAL, CONTIGUOUS PROPERTY LOCATED NORTH OF OHIO STREET, SOUTH OF BUFFALO STREET, EAST OF BROADWAY AVENUE AND WEST OF TRIGGS AVENUE (WILLIAM BURNS, HANFT FRIDE, P.A./COLLEGE OF SAINT SCHOLASTICA).

- - -

BY PRESIDENT STAUBER

04-060 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAPS 29 AND 35 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION OF R-1-C, ONE-FAMILY RESIDENTIAL DISTRICT, AND R-1-B, ONE-FAMILY RESIDENTIAL DISTRICT, TO R-3, APARTMENT RESIDENTIAL DISTRICT, PROPERTY LOCATED BETWEEN MESABA AVENUE

AND EAST SKYLINE PARKWAY, SOUTH OF 12TH STREET AND WEST OF FOURTH AVENUE EAST; THE BUENA VISTA MOTEL AND RESTAURANT SITE IS 1144 MESABA AVENUE (NYLEN, MAGIE & STRUM PROPERTIES).

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

KL Lewis expressed concern that because this development will be on the city's skyline and will be visible from the lake, that the property not become an eyesore.

Robert Magie, David Chmielewski and Robert Zaller reviewed that a zoning change is necessary for the project to move forward.

Councilors Stewart and Ness urged the developers to share information on the development with the neighborhood and the council.

David Craig voiced concern that questions that the neighbors have regarding the development have not been answered by the developers and asked the council to protect the neighborhood's interest.

- - -

BY PRESIDENT STAUBER

04-064 - AN ORDINANCE AMENDING CHAPTER 29C OF THE DULUTH CITY CODE, 1959, AS AMENDED, AND THE FAIR HOUSING SUPPLEMENT MADE A PART THEREOF.

- - -

BY COUNCILOR LITTLE

04-062 - AN ORDINANCE AMENDING CHAPTER 36 OF THE DULUTH CITY CODE, 1959, AS AMENDED, REGULATING PAWNBROKERS.

- - -

The following entitled ordinances were read for the second time:

BY COUNCILOR NESS

04-056 - AN ORDINANCE AMENDING DULUTH CITY CODE SECTION 8-22, PROHIBITING OPEN CONTAINERS OF ALCOHOLIC BEVERAGES IN PUBLIC PLACES.

Councilor Ness moved to table the ordinance for review by the alcohol, gambling and tobacco commission, which motion was seconded and unanimously carried.

- - -

BY COUNCILOR GILBERT

04-055 (9691) - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAPS NO. 35 AND NO. 38 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-3 APARTMENT RESIDENTIAL TO R-4, APARTMENT RESIDENTIAL, PROPERTY BOUNDED BY EAST THIRD STREET, EAST FOURTH STREET, 17TH AVENUE EAST AND 18TH AVENUE EAST (DANIEL KING, ET AL.).

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

- - -

BY COUNCILOR GILBERT

04-057 (9692) - AN ORDINANCE AUTHORIZING RECONVEYANCE OF PROPERTY IN ENDION DIVISION TO STATE OF MINNESOTA FOR LAKEWALK TOWNHOMES PROJECT.

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

Peggy Marrin, Tom Hollenhorst and Alison Clarke urged the council not to vote on this ordinance until a complete development agreement has been finalized and approved by the council.

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

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

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

ORDINANCE NO. 9689

BY COUNCILOR NESS:

AN ORDINANCE AMENDING SECTION 21-6 OF THE DULUTH CITY CODE, 1959, AS AMENDED, AUTHORIZING COLLECTION OF FEES.

The city of Duluth does ordain:

Section 1. That Section 21-6 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 21-6. Permit fees.

The fee for any permit required or authorized by this Chapter or Chapter 10, including any regulation or code adopted by reference, shall be set in accordance with Section 31-6(a) of this Code and shall be submitted at the time of application for the permit.

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: November 7, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Nays: None -- 0

Passed September 27, 2004
Approved September 27, 2004
HERB W. BERGSON, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

ORDINANCE NO. 9690

BY COUNCILOR GILBERT:

AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NO. 37 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-C, ONE FAMILY RESIDENTIAL, TO C-1, COMMERCIAL, PROPERTY LOCATED ON THE SOUTHWEST CORNER OF ARROWHEAD ROAD AND KENWOOD AVENUE (DULUTH TEACHERS CREDIT UNION).

The city of Duluth does ordain:

Section 1. That Plate No. 37 of the zoning district maps as contained in the Appendix to Chapter 50 of the Duluth City Code, 1959, is amended to read as follows:

(MAP)

[see Map No. 37 at end of meeting]

(Reference File No. 04081)

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: November 7, 2004)

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

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

Yeas: Councilors Atkins, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 8

Nays: Councilor Gilbert -- 1

ATTEST:
JEFFREY J. COX, City Clerk

Passed September 27, 2004
Approved September 27, 2004
HERB W. BERGSON, Mayor

- - -

ORDINANCE NO. 9691

BY COUNCILOR GILBERT:

AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAPS NO. 35 AND NO. 38 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-3 APARTMENT RESIDENTIAL TO R-4, APARTMENT RESIDENTIAL, PROPERTY BOUNDED BY EAST THIRD STREET, EAST FOURTH STREET, 17TH AVENUE EAST AND 18TH AVENUE EAST (DANIEL KING, ET AL.).

The city of Duluth does ordain:

Section 1. That Plates No. 35 and No. 38 of the zoning district map as contained in the Appendix to Chapter 50 of the Duluth City Code, 1959, as amended, is amended to read as follows:

(MAPS)

[see Map Nos. 35 and 38 at end of meeting]
(Reference File No. 04084)

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: November 8, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed September 27, 2004
Approved September 27, 2004
HERB W. BERGSON, Mayor

- - -

ORDINANCE NO. 9692

BY COUNCILOR GILBERT:

AN ORDINANCE AUTHORIZING RECONVEYANCE OF PROPERTY IN ENDION DIVISION TO STATE OF MINNESOTA FOR LAKEWALK TOWNHOMES PROJECT.

The city of Duluth does ordain:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Section 1. That the proper city officials are hereby authorized to convey the below-described property in St. Louis County, Minnesota by reconveyance deed to the state of Minnesota to be held in trust as provided for in Minnesota Statutes Section 281.25:

Lot 11, Block 2, ENDION DIVISION OF DULUTH, except the northerly 25 feet thereof.

Section 2. This ordinance shall take effect 30 days from and after its passage and publication. (Effective date: November 7, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed September 27, 2004
Approved September 27, 2004
HERB W. BERGSON, Mayor

- - -

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Tuesday, October 12, 2004, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Atkins, Gilbert, Johnson, Little, Reinert, Stewart, Stover and Vice President Ness -- 8

Absent: President Stauber -- 1

Vice President Ness presided in the absence of President Stauber.

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

04-1012-01 Harlan Hendrickson, et al. (eight signatures), submitting petition to vacate the utility easement between Fourth and Fifth streets from 22nd to 23rd avenues East. -- Assessor

04-1012-02 Sherman Associates, by LHB Architects and Engineers, submitting petition to reclassify from S to R-1-a 18.7 acres in the N1/2 of the NW1/4 of the SE1/4 of Section 6, T49N, R14W, St. Louis County, Duluth, MN. -- Assessor

04-1012-03 Summit Commons, LLC, by Mark Lambert, submitting petition to reclassify from R-1-c and R-1-b to R-3 property described as Blocks 2, 3 and 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, in Clague and Prindles Addition to Duluth; those parts of Blocks 38, 39, 42, 43, 44 and 45 lying southwest of Rice Lake Road, including those parts of dedicated unbuilt streets and alleys lying adjacent thereto, in Triggs and Kennedy's Addition to Duluth. -- Assessor

04-1012-04 Minnesota state auditor submitting audit report for the Duluth/North Shore Sanitary District for the years ended December 31, 2003 and 2002. -- Received

04-1012-05 The following submitting communications regarding the 2005 street improvement project (Morgan Park) (04-0678R): (a) Mike Akervik; (b) Brenda Denton; (c) Terese Foucault; (d) Leo McDonnell (e) Debbie Isabell Nelson; (f) Bill Majewski. -- Received

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REPORTS OF OFFICERS

04-1012-06 Assessor submitting:

(a) Affidavit of mailing of notice of public meeting and hearing regarding the 2005 street improvement program. -- Clerk

(b) Letters of insufficiency of petitions regarding the following:

(1) Extension of sanitary sewer and watermain in Quince Street beginning at Anderson Road and extending approximately 670 feet easterly;

(2) Remonstrance petition for reclassification from R-1-c to C-1, property described as Lots 1 through 7 and northerly 11 feet of Lot 8, Block 1 and Lots 1 through 6, Block 2, Myers and Whipples Addition to Duluth;

(c) Letters of sufficiency of petitions regarding the following:

(1) Reclassification from R-1-c to C-1, property described as Lots 1 through 7 and northerly 11 feet of Lot 8, Block 1 and Lots 1 through 6, Block 2, Myers and Whipples Addition to Duluth;

(2) Reclassification from R-1-c and R-1-b to R-3 property described as Blocks 2, 3 and 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, in Clague and Prindles Addition to Duluth; those parts of Blocks 38, 39, 42, 43, 44 and 45 lying southwest of Rice Lake Road, including those parts of dedicated unbuilt streets and alleys lying adjacent thereto, in Triggs and Kennedy's Addition to Duluth;

(3) Vacation of the utility easement between Fourth and Fifth streets from 22nd to 23rd avenues East;

(4) Vacation of 20th Avenue West between Sixth and Seventh streets adjacent to Lots 322 through 330, Block 157, Duluth Proper Second Division. -- Received

04-1012-07 Building official submitting appeal to reverse the board of zoning appeals' decision to deny a request to relax the minimum side yard setback on corner lots from 15 feet to five feet for the construction of an addition to property located at 2635 Minnesota Avenue (Kramer). -- Committee 2 (Planning and economic development)

04-1012-08 Clerk submitting report in the matter of the on sale intoxicating liquor license of Scanlon River Inn, Inc. (Pioneer Bar), 323 West First Street (04-0689R). -- Received

04-1012-09 Engineering division monthly project status report of September 1, 2004. -- Received

04-1012-19 Facilities management submitting rental agreement with Adam J. Gerlach for residential dwelling unit located at Irving Community Center, pursuant to Section 2-35, Duluth City Code. -- Mayor for execution

04-1012-10 Parks and recreation department director submitting Lake Superior zoological society minutes of September 22, 2004, meetings. -- Received

04-1012-11 Purchasing agent submitting emergency order awarded to Interstate Companies, Inc., for the repair of an aerial fire truck transmission. -- Received

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REPORTS OF BOARDS AND COMMISSIONS

04-1012-31 Alcohol, gambling and tobacco commission minutes of September 1, 2004, meeting. -- Received

04-1012-12 Board of zoning appeals minutes of September 28, 2004, meeting. -- Received

04-1012-13 Duluth airport authority: (a) Unaudited balance sheet dated July 31, 2004; (b) Minutes of: (1) August 17; (2) August 24, 2004, meetings. -- Received

04-1012-14 Duluth/North Shore Sanitary District board minutes of August 3, 2004, meeting. -- Received

04-1012-15 Duluth transit authority: (a) Expense analysis for July 2004; (b) Minutes of June 30, 2004, meeting. -- Received

04-1012-16 Housing and redevelopment authority minutes of: (a) June 2; (b) June 23, 2004, meetings. -- Received

04-1012-17 Parks and recreation commission minutes of: (a) July 14; (b) August 11, 2004, meetings. -- Received

04-1012-18 Seaway Port authority of Duluth minutes of: (a) February 26; (b) March 25; (c) April 21; (d) May 10; (e) July 19, 2004, meetings. -- Received

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At this time, 7:10 p.m., the public hearing regarding modification of redevelopment plan/municipal development district program plan (04-0687R) began.

Keith Hamre, community development and housing manager, reviewed the nature of the hearing and respective resolution.

There were no speakers from the public.

At this time, 7:15 p.m., the public hearing was declared closed.

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A motion was made, seconded and unanimously carried to suspend the rules to consider Resolution 04-0687 at this time.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Resolution 04-0687, by Councilor Gilbert, modifying redevelopment plan/municipal development district program plan dated May 15, 1989, was introduced for discussion.

Resolution 04-0687 was adopted as follows:

BY COUNCILOR GILBERT:

BE IT RESOLVED, by the Duluth City Council (the council), as follows:

Section 1. Recitals. The council hereby finds, determines and declares as follows:

1.01 The council desires to promote development and redevelopment of property for housing within the city of Duluth, Minnesota (the city).

1.02 In order to promote such development, the Duluth economic development authority (DEDA) established and the council approved, a redevelopment plan/municipal development district within the city (the project) and adopted a redevelopment plan/municipal development district program plan therefor (the plan) pursuant to Minnesota Statutes, Sections 469.001 through 469.047 (the act), and Minnesota Statutes, Sections 469.124 through 469.134 (the development district act).

1.03 In order to finance public improvements and encourage investment throughout the city, the council is considering the modification of the plan by increasing the area of the project (as modified, the modified project) to include the real property within the boundaries of the city of Duluth as described on Exhibit A and shown on Exhibit B, all pursuant to and in accordance with the act and the development district act.

1.04 DEDA has transmitted a copy of the modification to the plan to the council and the city's planning commission (the planning commission) in a document entitled, "Modification to Redevelopment Plan/municipal Development District Program Plan Dated May 15, 1989" (the modified plan) (Public Document No. 04-1012-28).

1.05 The planning commission has reviewed the modified plan and by resolution dated September 14, 2004, has issued a written opinion to DEDA regarding the modified plan.

1.06 Pursuant to Sections 469.027, Subdivision 6 and 469.126, Subdivision 1, on October 12, 2004, DEDA and the city council held a joint public hearing on the modified plan and heard the views of all interested parties.

1.07 Pursuant to Sections 469.027, Subdivision 6 and 469.126, Subdivision 1, on October 12, 2004, DEDA adopted the modified plan.

Section 2. Intent. The council hereby declares its intent to use the powers granted to it by the act and the development district act to achieve the objectives thereof.

Section 3. Findings. The council hereby finds and determines as follows:

3.01 The modified plan sets forth definite local objectives, activities and development techniques which comport with appropriate land use.

3.02 The modified plan sets forth general land uses and general standards of development and redevelopment.

3.06 Based on information set forth in the modified plan, the modification to the project described therein conforms to the general plan for the development or redevelopment of the city as a whole.

Section 4. Approval.

4.01 The modified plan is hereby approved.

4.02 The geographic boundary of the modified project which is described in the modified plan, is hereby adopted and approved.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Resolution 04-0687 was adopted upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Stewart, Stover and Vice President Ness -- 7

Nays: Councilor Reinert -- 1

Absent: President Stauber -- 1

Approved October 12, 2004

HERB W. BERGSON, Mayor

- - -

At this time, 7:18 p.m., the public hearing regarding 2005 SIP (Morgan Park) (04-0678R) began.

Mike Metso, city engineer, reviewed the nature of the public hearing as it relates to Resolution 04-0687, the history of this project, the issue of utility replacement at the time of the street improvements and that half of the utility assessment would be covered by the utility.

Mr. Hamre reviewed the aspect that the other half of the utility assessment would be covered by community development funds, if approved by the community development committee. He stated that this project is being deemed appropriate because this would fall into a "transition" policy for projects that were started prior to 2004.

The council reviewed and discussed the information presented.

Chester Johnson, John Toman, Leo McDonnell, Mike Akervik, Brian Parenteau, Debbie Isabell Nelson, Carl Nelson, Karen Wickner and Patricia Lewis spoke in support of the proposal as most recently presented by staff.

At this time, 7:40 p.m., the public hearing was declared closed.

- - -

A motion was made, seconded and unanimously carried to suspend the rules to consider Resolution 04-0678 at this time.

Resolution 04-0678, by Councilor Stover, reaffirming Resolution 04-0192 ordering the improvement known as the 2005 street improvement program pursuant to Section 61(b) of the Home Rule Charter of the city of Duluth at an estimated cost of \$4,608,620, was introduced for discussion.

Councilors expressed unanimous support for the resolution, but felt that it would be better to wait until the community development committee meets and approves the proposal as presented from the administration this evening.

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

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At this time, 7:45 p.m., the public hearing the residential permit parking zone (34th Avenue East from Ridgewood Road to Fourth Street) (04-0694R) began.

Mr. Metso reviewed that this is a small amendment to the East High School permit parking zone, to add a small area, that is considered "in-fill" because areas above and below are already in the zone.

Gary Battuello spoke in support of the resolution, noting that all seven residents that are affected by this addition signed the petition requesting this amendment.

At this time, 7:49 p.m., the public hearing was declared closed.

- - -

A motion was made, seconded and unanimously carried to suspend the rules to consider Resolution 04-0694 at this time.

Resolution 04-0694, by Councilor Little, amending Resolution 89-0652 adding part of 34th Avenue East to residential parking permit zones, was introduced for discussion.

Resolution 04-0694 was adopted as follows:

BY COUNCILOR LITTLE:

WHEREAS, by Resolution 89-0652, adopted on August 10, 1989, the city council designated portions of certain streets in the vicinity of Duluth East High School as resident permit parking zones pursuant to Section 33-125 of the City Code, 1959, as amended; and

WHEREAS, the residents of 34th Avenue East between Ridgewood Road and Fourth Street have submitted a petition requesting that the parking areas adjacent to said residents be added to these zones; and

WHEREAS, after review of the matter, the city council has determined that the addition of such parking area to the resident permit parking zones is appropriate.

RESOLVED, that Resolution 89-0652 is hereby amended by adding the parking areas on both sides of 34th Avenue East between Ridgewood Road and Fourth Street as resident permit parking zones pursuant to Section 33-125 of the Duluth City Code, 1959, as amended.

Resolution 04-0694 was unanimously adopted.

Approved October 12, 2004

HERB W. BERGSON, Mayor

- - -

OPPORTUNITY FOR CITIZENS TO BE HEARD

KL Lewis expressed concern about the possible Duluth Transit Authority bus center being moved and how businesses in the area would be adversely affected with the loss of sales from those waiting for a bus. She added that there will always be congestion where ever the buses load and unload. Ms. Lewis also commented that the signage for underage purchases of tobacco needs to be placed inside establishments and higher above counters.

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RESOLUTIONS TABLED

Councilor Stewart moved to remove Resolutions 04-0651 and 04-0652, affirming and reversing, respectively, a decision of the board of zoning appeals to deny a request to allow the placement of a 14'x24' accessory storage shed on property without a main building on property located southeast of the applicant's dwelling at 422 North 19-1/2 Avenue West (Richard Weme), from the table, which motion was seconded and unanimously carried.

Councilors Stewart and Ness supported Resolution 04-0651, noting that: the memo received from the city attorneys office (attached to Resolution 04-0651) implies that in this case there is no such thing as a use variance, so it does not allow the council to grant the variance in this case, unless the council determined that this is something other than a use variance; no permit was secured to build this building and this sets a bad precedent.

Councilors Atkins, Gilbert and Little supported Resolution 04-0652, citing reasons of: the applicant has received mixed messages on the ability to put this shed up; the language of the appeal says that if there are extraordinary or exceptional conditions existing a variance could be approved and the shed is relatively close to the where the applicant lives, so the facts could be interpreted broadly to allow this.

Resolution 04-0651 was adopted as follows:

BY COUNCILOR GILBERT:

WHEREAS, Richard Weme has appealed the board of zoning appeals denial of a variance request to allow the placement of a 14 feet x 24 feet accessory storage shed on property without a main building on property located southeast of his dwelling at 422 North 19-1/2 Avenue West; and

WHEREAS, the property is located within an R-3, apartment residential, zoning district; and

WHEREAS, Chapter 50-72(h) allows accessory building or use customarily incidental to any of the permitted uses, including a storage garage on a lot occupied by a multiple dwelling, apartment hotel, row or group house, rooming or boardinghouse, provided that any such accessory building shall be erected at the same time or after the construction of the principal building; and

WHEREAS, the board of zoning appeals denied the appeal upon the following grounds and reasons:

(a) The definition of a lot was revised by the city council (Ordinance No. 9562, 10-15-2002) to provide for a lot to include two or more lots of record which are contiguous or separated only by a public easement not exceeding 25 feet in width;

(b) The property in question is separated from the appellant's dwelling by a 20 feet wide parcel of land and a dwelling which is privately owned by another party;

(c) The proposed use of this property constitutes a request for a use variance which is prohibited by the Municipal Planning Act and the board of zoning appeals has no authority to authorize use variances under Section 50-47 of the Code or M.S.A 462.357; and

(d) The applicant failed to demonstrate the existence of a hardship which would justify the granting of a variance under Section 50-47 of the Code; and

WHEREAS, Richard Weme has appealed the aforesaid decision to the Duluth City Council pursuant to Section 50-49 of the Duluth City Code; and

WHEREAS, the city council has considered this appeal and hereby agrees with the decision made by the board of zoning appeals.

NOW, THEREFORE, BE IT RESOLVED, that the city council of Duluth finds that the proposed use of this property constitutes a use variance and further that the council lacks the legal authority to authorize a use variance.

FURTHER RESOLVED, that the city council of Duluth affirms the board of zoning appeals' decision of August 24, 2004, and the appeal is denied.

Resolution 04-0651 was adopted upon the following vote:

Yeas: Councilors Johnson, Little, Reinert, Stewart, Stover and Vice President Ness -- 6

Nays: Councilors Atkins and Gilbert -- 2

Absent: President Stauber -- 1

Approved October 12, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0652 failed upon the following vote (Public Document No. 04-1012-20):

Yeas: Councilors Atkins and Gilbert -- 2

Nays: Councilors Johnson, Little, Reinert, Stewart, Stover and Vice President Ness -- 6

Absent: President Stauber -- 1

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Councilor Stover moved to remove Resolution 04-0664, ordering the construction of an eight inch watermain in Ethel Avenue from Springvale Road to 365 feet northerly at an estimated cost of \$101,200 (City Job No. 0456WA), from the table, which motion was seconded and unanimously carried.

Resolution 04-0664 was adopted as follows:

BY COUNCILOR STOVER:

WHEREAS, by Resolution of Intent Numbered 04-0630 the council did request the administration to prepare plans and specifications for the construction of an eight inch watermain in Ethel Avenue from Springvale Road to 365 feet northerly at an estimated cost of \$101,200; and

WHEREAS, said plans and specifications have been prepared and filed with the secretary of the special assessment board; proper notice has been sent to the benefitting property owners; the special assessment board has conducted a hearing to meet and hear any person affected by the proposed improvement or assessment; the special assessment board has submitted its report to this council pursuant to Section 45-79, Duluth City Code of 1959; and the said board, at the direction of the mayor, has furnished this council with information as required by Section 45-80 of the Duluth City Code of 1959.

NOW, THEREFORE, BE IT RESOLVED, that said improvement as described above be made; that the estimated total cost of said improvement as estimated by the city engineer is \$101,200, payable from Special Assessment Fund 0410, Agency 038, Organization 5399, Object 5530, and that all of the cost of said improvement be defrayed by special assessment against the land and premises specially benefitted, which land and premises are described in the report of the special assessment board; that those assessed be permitted to pay said assessment in installments over a 15 year period, subject to Section 68 of the City Charter; that said assessment will satisfy all the requirements of Section 60 of the Charter.

BE IT FURTHER RESOLVED, that the council order in subject project in accordance with the provisions of Section 62 of the City Charter and that said improvement is hereby ordered.

Resolution 04-0664 was unanimously adopted.

Approved October 12, 2004

HERB W. BERGSON, 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.)

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

BY COUNCILOR STEWART:

WHEREAS, the Lincoln Park Business Group and Minnesota Fraternal Order of Police have applied to the Minnesota gambling control board for a lawful gambling exemption (raffle); and

WHEREAS, the Duluth City Council has received copies of said exemption applications to the Minnesota gambling control board and has 60 days in which to present a resolution to said Minnesota gambling control board objecting to the exemption applications; and

WHEREAS, the city council approves of the exemption applications and wishes to waive the 60 day waiting period.

NOW, THEREFORE, BE IT RESOLVED, that the Duluth City Council hereby approves of the Minnesota gambling control board issuing a lawful gambling exemption to the Lincoln Park Business Group and Minnesota Fraternal Order of Police 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 04-0698 was unanimously adopted.

Approved October 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

WHEREAS, the following organization has applied to the Minnesota gambling control board for a premise permit; and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

WHEREAS, a copy of said application was also filed with the city of Duluth as required by Minnesota Statutes 349.213, Subdivision 2, and was investigated by the Duluth police department and reviewed and approved by the Duluth alcohol, gambling and tobacco commission; and

WHEREAS, the city council approves of the issuance of said license.

NOW, THEREFORE, 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

ADOPT - A Denfeld Organ Project Midway Bar

Resolution 04-0699 was unanimously adopted.

Approved October 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

BE IT RESOLVED, that the city council of the city of Duluth hereby issues the following on sale Sunday intoxicating liquor license for the period ending August 31, 2005, subject to departmental approvals:

Dwayne & Kimberly, Inc. (The Kom On Inn), 332 North 57th Avenue West.

Resolution 04-0700 was unanimously adopted.

Approved October 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the proposed specifications for the new civil service classification of environmental projects coordinator, which were approved by the civil service board on October 5, 2004, and which are filed with the city clerk as Public Document No. 04-1012-21 are approved; that said classification shall be subject to the city's collective bargaining unit with its basic unit employees and that pay range for said classification shall be Range 35. 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 04-0632 was unanimously adopted.

Approved October 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

WHEREAS, a sufficient petition was filed with the city clerk requesting the vacation of a portion of 42nd Avenue West between Grand Avenue and West Second Street, legally described as 42nd Avenue West adjoining Lot 9, Block 2, Chandler Park Addition; Lots 8 and 16, Block 72; and Lots 1 and 9, Block 73, Oneota Addition; and

WHEREAS, 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

WHEREAS, the city planning commission unanimously approved the street vacation petition at its September 22, 2004, meeting (Reference File No. 04105).

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation of the easement described above and as more particularly described on Public Document No. 04-1012-22.

RESOLVED FURTHER, that the full right-of-way being vacated be retained as a utility easement.

RESOLVED FURTHER, the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of St. Louis County, Minnesota, a certified copy of this resolution together with a plat showing the portion of the street to be vacated and the utility easement being retained.

Resolution 04-0679 was unanimously adopted.

Approved October 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

RESOLVED, that the proper city officials are hereby authorized to enter into an amendment substantially in the form on file in the office of the city clerk as Public Document No. 04-1012-23 to the CDBG rehabilitation and homeownership services project agreement (City Contract No. 19434) with NHS, extending the term of the agreement to June 30, 2005.

Resolution 04-0683 was unanimously adopted.

Approved October 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

RESOLVED, that the proper city officials are hereby authorized to enter into an amendment substantially in the form on file in the office of the city clerk as Public Document No. 04-1012-24 to the HOME program development project agreement (City Contract No. 19501) with Habitat, extending the term of the agreement to September 30, 2005.

Resolution 04-0684 was unanimously adopted.

Approved October 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR ATKINS:

RESOLVED, that proper city officials are hereby authorized to execute and implement a contract, in substantially the form of the contract on file with the clerk as Public Document No. 04-1012-25, with LaVonne R. Bertucci, independent licensed teacher, to serve as a .75 FTE contract teacher to provide basic education instructional services to Workforce Investment Act program participants at the Duluth workforce center for the period October 1, 2004, through June 30, 2005, at a cost of \$23,400, payment to be made from Fund 0268.

Resolution 04-0677 was unanimously adopted.

Approved October 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR ATKINS:

RESOLVED, that proper city officials are hereby authorized to enter into an agreement, in substantially the form of the contract on file with the clerk as Public Document No. 04-1012-26, with St. Louis County to accept funds in order to provide Minnesota family investment program (MFIP) employment and training services, in the amount of \$560,335. Contract dates shall run from July 1, 2004, through December 31, 2004.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

FURTHER RESOLVED, that monies received under this agreement shall be deposited in Fund 0268, Budget Item 6265.

Resolution 04-0690 was unanimously adopted.

Approved October 12, 2004

HERB W. BERGSON, Mayor

- - -

BY PRESIDENT STAUBER:

RESOLVED, that the proper city officials are hereby authorized to accept the donation of the below-described property in St. Louis County, Minnesota, from the heirs of John F. and Olga Locks and to execute all documents necessary with regard thereto:

Lots 17 and 18, Block 11, Mesaba Heights Second Division (450-0060-03210).

FURTHER RESOLVED, that the city hereby expresses its appreciation for said donation from the heirs of John F. and Olga Locks.

Resolution 04-0681 was unanimously adopted.

Approved October 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Erling R. Hansen Contractor be and hereby is awarded a contract for restoration of the surge suppression building located at Lakewood pump station, 8130 Congdon Boulevard, for the city architects division in accordance with specifications on its low specification bid of \$86,650, terms net 30, FOB job site, payable out of Water Fund 0510, Department/Agency 500, Organization 1955, Object 5401.

Resolution 04-0688 was unanimously adopted.

Approved October 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

RESOLVED, that the proper city officials are authorized to purchase one LDV Mobile Command Center Model No. MMC30LLS260H-03 from LDV, Inc., for the amount of not to exceed \$406,613; payable from Fund 0215, Agency 200, Organization 2472, Object 5580.

Resolution 04-0691 was unanimously adopted.

Approved October 12, 2004

HERB W. BERGSON, Mayor

- - -

The following resolutions were also considered:

Resolution 04-0682, by Vice President Ness, adopting license, permit and fee charges for 2005, was introduced for discussion.

Vice President Ness moved to table the resolution pending the upcoming public hearing, which motion was seconded and unanimously carried.

- - -

Resolution 04-0703, by Vice President Ness, concerning civility in political campaigns, was introduced for discussion.

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

Terry Dzuck, mother of one of the youths that recently had vandalized political signs, commented that: what the youth did was wrong; there needs to be proper consequences for their actions, but that notoriety is not what is needed.

Councilors Gilbert and Little felt that: the resolution is redundant to existing laws; this is in reaction to a specific incident; it is being blown out of proportion and that this is notoriety to that incident.

Resolution 04-0703 was adopted as follows:

BY VICE PRESIDENT NESS:

WHEREAS, the American public is polarized over political and cultural lines, and current trends lead us to believe this polarization is on the rise; and

WHEREAS, much of our current political involvement is focused on political dialogue amongst like-minded individuals, our political news is increasingly from biased and partisan sources, and our public dialogue is corrupted by ideologically narrow, emotionally fueled and factually challenged information; and

WHEREAS, this political culture has impaired the ability of many politically-minded citizens to listen, understand and appreciate a perspective that might be different from their own; and

WHEREAS, the result of our unwillingness to hear and appreciate different perspectives is a breakdown of civil political discussion, which leads to a political shouting match in which obnoxious behavior from one perspective is met with increasingly negative and angry obnoxious behavior from a different perspective; and

WHEREAS, we have seen a rise of increasingly negative and angry rhetoric, a disrespect for person and property and behaviors and actions, that have ranged from unfortunate to despicable, from individuals of different political ideologies that deserve to be condemned by all reasonable people in the community; and

WHEREAS, such behaviors and actions serve only to damage the social fabric and sense of community within the city of Duluth, to reduce the value of political debate and discussion and potentially damage our relationship with neighbors who share different perspectives.

NOW, THEREFORE, BE IT RESOLVED, that the Duluth City Council rejects the behaviors and actions described above and strongly condemns any politically motivated damage to, or theft of, personal property.

BE IT FURTHER RESOLVED, that the Duluth City Council encourages public debate and political campaigns that are based upon a mutual respect for different perspectives, a factual portrayal of the issues and an understanding that we can all learn from one another if we are willing to listen.

BE IT FURTHER RESOLVED, that the Duluth City Council points out that no matter the result of the upcoming election, that life will go on and great civic challenges will remain - our ability to work with neighbors of all perspectives will be the key to our success.

Resolution 04-0703 was adopted upon the following vote:

Yeas: Councilors Atkins, Johnson, Reinert, Stewart, Stover and Vice President Ness -- 6

Nays: Councilors Gilbert and Little -- 2

Absent: President Stauber – 1

Approved October 12, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0702, by Councilor Stewart and Vice President Ness, expressing a desire to preserve city services and avoid layoffs, was introduced for discussion.

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

The following spoke in support of the resolution:

Ken Loeffler-Kemp, business agent for AFSCME Local, noted that the city has over the last couple of years eliminated 40 positions and reduced services at the library, after school programs, skating rinks, senior citizen programs, snow removal, and fire stations. He noted that

consideration of additional cuts of 30-40 positions would severely affect city services in all areas. Mr. Loeffler-Kemp, in conclusion, stated that the employees and the union are, and have been, working with the administration in finding other options to retain services without layoffs.

Roger Carlson, Minnesota Citizens Federation Northeast, stated that families and the business community would suffer with the loss of decent wages and benefits. He added that the city could save substantially with the use of prescription drugs from Canada.

Marlene Hart, member of the Minnesota Citizens Federation Northeast, stated that the issue of the legality of drug importation is a matter of dispute, because congress authorized it pending the approval of the food and drug administration (FDA); over 1 million Americans import their drugs from Canada now; bills have been introduced in congress to allow drug purchases from Canada regardless of the FDA resistance; the argument of the need for profits for research by drug companies is not warranted because drug companies have exorbitant profits of over five times that of the top Fortune 500 companies and other cities and Governor Pawlenty support the use of Canadian drugs.

Councilor Little felt that this resolution is not needed because the administration has stated that they are looking at all cost savings measures to not have layoffs, to maintain the level of services and look at all other revenue sources.

Resolution 04-0702 was adopted as follows:

BY COUNCILOR STEWART AND VICE PRESIDENT NESS:

WHEREAS, in environments where employers focus on maintaining a trained and knowledgeable workforce, workers tend to be dedicated, creative and productive; and

WHEREAS, layoffs lead to cuts in services which are essential for maintaining a healthy and vibrant community; and

WHEREAS, numerous opportunities exist for increasing revenues and decreasing costs without layoffs; and

WHEREAS, layoffs involve indirect costs, including low worker morale, trauma to the unemployed worker and other social cost associated with unemployment; and

WHEREAS, the Duluth City Council has an interest in working cooperatively with the administration regarding the 2005 budget.

NOW, THEREFORE, BE IT RESOLVED, that the city council expresses its desire to establish a budget that will preserve city services and avoid layoffs.

BE IT FURTHER RESOLVED, that the city council encourages the administration to explore all cost saving measures and potential revenue sources prior to considering layoffs.

Resolution 04-0702 was adopted upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Reinert, Stewart, Stover and Vice President Ness -- 7

Nays: Councilor Little -- 1

Absent: President Stauber -- 1

Approved October 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

BE IT RESOLVED, that the city council of the city of Duluth hereby makes the finding of facts as set forth in Public Document No. 04-1012-08 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of Scanlon River Inn, Inc. (Pioneer Bar), 323 West First Street.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the Duluth City Council impose a

\$500 penalty on Scanlon River Inn, Inc. (Pioneer Bar), 323 West First Street, as a result of a selling alcohol after hours violation.

Resolution 04-0689 was unanimously adopted.

Approved October 12, 2004

HERB W. BERGSON, Mayor

- - -

Resolutions 04-0655 and 04-0656, affirming and reversing, respectively, the decision of the board of zoning appeals to deny a variance to reduce the minimum front yard setback from 25 feet to 19 feet for the construction of an addition to the dwelling on property located at 2635 Minnesota Avenue (Alex and Brenda Kramer); Resolutions 04-0692 and 04-0693, affirming and reversing, respectively, the decision of the board of zoning appeals to deny a variance to reduce the minimum side yard setback on a corner lot from 15 feet to five feet for the construction of an addition to the dwelling on property located at 2635 Minnesota Avenue (Alex and Brenda Kramer); and Resolution 04-0697, vacating portions of 27th Street South between Minnesota Avenue and St. Louis Harbor on Park Point (Kramer- Koski), by Councilor Gilbert, were introduced for discussion.

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

Judy Dwyer expressed her concern for the preservation of green space and the public access rights of citizens to use the water and parks.

Alex Kramer expressed support for resolutions 04-0656 and 04-0693.

Councilor Stewart noted that he would only support the front yard variance (Resolution 04-0656) because he felt that not having an adequate garage, especially on Park Point, is a hardship. He added that while a variance for side yard setback (Resolution 04-0693) would be convenient, that it is not a hardship and that the vacation of portions of the street (Resolution 04-0697) would be setting a bad precedence.

Resolution 04-0655 failed upon a unanimous vote (Public Document No. 04-1012-27).

- - -

Resolution 04-0656 was adopted as follows:

BY COUNCILOR GILBERT:

WHEREAS, William M. Burns, attorney on behalf of Alex and Brenda Kramer, has applied to the board of zoning appeals for a variance to reduce the minimum front yard setback from 25 feet to 19 feet for the construction of an addition to a dwelling on property located at 2635 Minnesota Avenue and legally described as Lots 157 and 159, Lower Duluth - Minnesota Avenue, and Lots 158 and 160, Lower Duluth - St. Louis Avenue; and

WHEREAS, the board of zoning appeals denied the variance to reduce the front yard setback because they found that no hardship to the property existed which constituted special circumstances or conditions applying to the building or land in question which was peculiar to such property and that did not apply generally to other land or buildings in the vicinity and because it was not necessary for the preservation and enjoyment of a substantial property right and was merely a convenience of the applicant; and

WHEREAS, William M. Burns has appealed the aforesaid decision to the Duluth City Council; and

WHEREAS, the city council has considered this appeal and disagrees with the decision of the board of zoning appeals and finds that the granting of a variance to reduce the minimum front yard setback requirement is appropriate in this case.

NOW, THEREFORE, BE IT RESOLVED, the council finds that the location and topography of the property in relation to the St. Louis Bay and the need of the applicant to modernize the

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

dwelling, constitute factors and circumstances that are unique to the subject property and which prevent the applicant, through no fault of their own, from making a reasonable use of the property in conformance with the requirements of the zoning code.

FURTHER RESOLVED, by the city of Duluth that the board of zoning appeals' decision of August 24, 2004, is hereby reversed by the city council and the appeal is granted.

Resolution 04-0656 was unanimously adopted.

Approved October 12, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0692 failed upon the following vote (Public Document No. 04-1012-29):

Yeas: Councilors Reinert, Stewart and Stover -- 3

Nays: Councilors Atkins, Gilbert, Johnson, Little and Vice President Ness -- 5

Absent: President Stauber -- 1

- - -

Resolutions 04-0693 and 04-0697 were adopted as follows:

BY COUNCILOR GILBERT:

WHEREAS, William M. Burns, attorney on behalf of Alex and Brenda Kramer, has applied to the board of zoning appeals for a variance to reduce the minimum side yard setback on a corner lot from 15 feet to five feet for the construction of an addition to a dwelling on property located at 2635 Minnesota Avenue and legally described as Lots 157 and 159, Lower Duluth - Minnesota Avenue, and Lots 158 and 160, Lower Duluth - St. Louis Avenue; and

WHEREAS, the board of zoning appeals denied the variance to reduce the corner side yard setback because they found that no hardship to the property existed which constituted special circumstances or conditions applying to the building or land in question which was peculiar to such property and that did not apply generally to other land or buildings in the vicinity, and because it was not necessary for the preservation and enjoyment of a substantial property right and was merely a convenience of the applicant; and

WHEREAS, William M. Burns has appealed the aforesaid decision to the Duluth City Council; and

WHEREAS, the city council has considered this appeal and disagrees with the decision of the board of zoning appeals and finds that the granting of a variance to reduce the minimum corner side yard setback requirement is appropriate in this case.

NOW, THEREFORE, BE IT RESOLVED, the council finds that the location and topography of the property in relation to the St. Louis Bay and the need of the applicant to modernize the dwelling, constitute factors and circumstances that are unique to the subject property and which prevent the applicant, through no fault of their own, from making a reasonable use of the property in conformance with the requirements of the zoning Code.

FURTHER RESOLVED, by the city of Duluth that the board of zoning appeals' decision of September 28, 2004, is hereby reversed by the city council and the appeal is granted.

Resolution 04-0693 was adopted upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Little and Vice President Ness -- 5

Nays: Councilors Reinert, Stewart and Stover -- 3

Absent: President Stauber -- 1

Approved October 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

WHEREAS, a sufficient petition was filed with the city clerk requesting the vacation of the

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

northerly and southerly ten feet of 27th Street South legally described as the northerly ten feet of 27th Street South adjoining Lot 159, Minnesota Avenue, and Lot 160, St. Louis Avenue, Lower Duluth; and the southerly ten feet of 27th Street South adjoining Lot 161, Minnesota Avenue, and Lot 162, St. Louis Avenue Lower Duluth (Reference File No. 04077); and

WHEREAS, 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

WHEREAS, the city planning commission approved, by a vote of 8-1-1, the easement vacation petition at its regular August 25, 2004, meeting.

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation of the easement described above and as more particularly described on Public Document No. 04-1012-30(a).

RESOLVED FURTHER, that this resolution shall become effective upon the recording of the easement agreement, Public Document No. 04-1012-30(b), with the register of deeds and/or the registrar of titles of St. Louis County, Minnesota.

RESOLVED FURTHER, that the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of St. Louis County, Minnesota, a certified copy of this resolution together with a plat showing the portion of the easement to be vacated.

Resolution 04-0697 was adopted upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Reinert, Stover and Vice President Ness -- 7

Nays: Councilor Stewart -- 1

Absent: President Stauber -- 1

Approved October 12, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

BE IT RESOLVED, that under the authority of Duluth City Code Section 2-16, the proper city officials are hereby authorized to enter any necessary agreements with JOBZ applicants and do acts necessary to collect a \$500 JOBZ application and monitoring fee, payment into Fund 0100-010-1103 and refundable if the application is denied by the city council.

Resolution 04-0701 was unanimously adopted.

Approved October 12, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0680, by Councilor Stover, concerning city councilors' membership in Duluth Area Chamber of Commerce, was introduced for discussion.

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

- - -

BY COUNCILOR STOVER:

WHEREAS, by the Resolution of Intent Numbered 04-0530, the council did request the administration to prepare plans and specifications for the construction of a permanent residential design street in Butternut Avenue from Hickory Street to cul-de-sac (approximately 1,120 feet), including concrete curb and gutter, bituminous surface, storm sewers, sanitary sewers, watermain and gas main at an estimated cost of \$234,000, payable from the Special Assessment Fund 0410 (City Job No. 0325TR); and

WHEREAS, said plans and specifications have been prepared and filed with the secretary of the special assessment board; proper notice has been sent to the benefitting property owners; the owners have waived their right to a hearing before the special assessment board; the special assessment board has submitted its report to this council pursuant to Section 45-79, Duluth City Code of 1959; and the said board, at the direction of the mayor, has furnished this council with information as required by Section 45-80 of the Duluth City Code of 1959.

NOW, THEREFORE, BE IT RESOLVED, that said improvement as described above be made; that the estimated total cost of said improvement as estimated by the city engineer is \$234,000, payable from the Special Assessment Fund 0410, Agency 038, Organization 5401, Object 5530; that all of the cost of said improvement be defrayed by special assessment against the land and premises specially benefitted; that those assessed be permitted to pay said assessment in installments over a 15 year period, subject to Section 68 of the City Charter; that said assessment satisfy all the requirements of Section 60 of the Charter.

BE IT FURTHER RESOLVED, that the council order in subject project in accordance with the provisions of Section 62 of the City Charter and that said improvement is hereby ordered.

Resolution 04-0685 was unanimously adopted.

Approved October 12, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0704, by Councilor Reinert, requesting delay in decision on closing schools, was introduced for discussion.

Councilor Reinert, as sponsor of the resolution, requested that the resolution be removed in light of the stated intent of the school board and city council to meet, which was approved without objections.

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INTRODUCTION AND CONSIDERATION OF ORDINANCES ORDINANCE TABLED

BY VICE PRESIDENT NESS

04-056 (9693) - AN ORDINANCE AMENDING DULUTH CITY CODE SECTION 8-22, PROHIBITING OPEN CONTAINERS OF ALCOHOLIC BEVERAGES IN PUBLIC PLACES.

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

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

Kristi Stokes, executive director of the Greater Downtown Council, noted her organization's support for the ordinance.

Vice President Ness moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

The following entitled ordinances were read for the first time:

BY COUNCILOR GILBERT

04-065 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NO. 42 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM S, SUBURBAN, TO R-1-A, ONE-FAMILY RESIDENTIAL DISTRICT, PROPERTY LOCATED EAST OF WOODLAND AVENUE AND NORTH OF PLEASANT VIEW AVENUE (CARLSON/NELSON).

- - -

BY COUNCILORS ATKINS AND STOVER

04-066 - AN ORDINANCE AMENDING ORDINANCE 9688; CREATING AN ADVISORY COMMITTEE FOR THE DOWNTOWN WATERFRONT SPECIAL SERVICE DISTRICT.

- - -

BY COUNCILOR STOVER

04-058 - AN ORDINANCE AUTHORIZING DEDICATION OF A STREET EASEMENT OVER CERTAIN CITY PROPERTY IN THE ENGER PARK AREA AND THE SALE OF THE REMAINDER TO PETER L. AND JUDITH A. GEMUENDEN.

- - -

The following entitled ordinances were read for the second time:

BY VICE PRESIDENT NESS

04-063 (9694) - AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF \$4,300,000 GENERAL OBLIGATION REVENUE BONDS OF THE CITY OF DULUTH FOR THE IMPROVEMENT OF THE MUNICIPAL SEWER UTILITY UPON TERMS AND CONDITIONS TO BE PROVIDED BY RESOLUTION OF THE CITY COUNCIL AND PLEDGING REVENUES FOR THE PAYMENT THEREOF.

Vice President Ness moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

BY COUNCILOR GILBERT

04-061 (9695) - 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 RECLASSIFY FROM R-1-C, ONE-FAMILY RESIDENTIAL DISTRICT, TO R-3, APARTMENT RESIDENTIAL, CONTIGUOUS PROPERTY LOCATED NORTH OF OHIO STREET, SOUTH OF BUFFALO STREET, EAST OF BROADWAY AVENUE AND WEST OF TRIGGS AVENUE (WILLIAM BURNS, HANFT FRIDE, P.A./COLLEGE OF SAINT SCHOLASTICA).

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

- - -

BY COUNCILOR STEWART (INTRODUCED BY PRESIDENT STAUBER)

04-060 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAPS 29 AND 35 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION OF R-1-C, ONE-FAMILY RESIDENTIAL DISTRICT, AND R-1-B, ONE-FAMILY RESIDENTIAL DISTRICT, TO R-3, APARTMENT RESIDENTIAL DISTRICT, PROPERTY LOCATED BETWEEN MESABA AVENUE AND EAST SKYLINE PARKWAY, SOUTH OF 12TH STREET AND WEST OF FOURTH AVENUE EAST; THE BUENA VISTA MOTEL AND RESTAURANT SITE IS 1144 MESABA AVENUE (NYLEN, MAGIE & STRUM PROPERTIES).

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

Bob Magie, Tim Wicklund, David Chimielewski and Bob Zaller, applicant and applicant representatives for the development, expressed support for the ordinance, citing the following reason: they have met with the neighbors and tried to address their concerns; this should not be blocking any neighbors' view; this is being built into the land contours; the existing building is aged and has limited options; this will significantly cut down current traffic flows from the existing operations; this is a brownfield sight and does not affect green space; and that these 48 private units will provide a higher property value and property tax income stream to the city.

Kay L. Lewis expressed concern over the number of units in a small area.

David Craig and Mark Monacelli, neighbors to the development, expressed concerns that: they were not aware of the development until recently; it is in very close proximity to the adjoining property and they would like more time to review the plans and see what other flexibility and options are available.

Councilor Stewart moved to table the ordinance, so that there could be further discussion between the developers and neighbors, which motion was seconded and carried upon the following vote:

Yeas: Councilors Atkins, Johnson, Little, Reinert, Stewart, Stover and Vice President Ness -- 7

Nays: None -- 0

Abstention: Councilor Gilbert -- 1

Absent: President Stauber -- 1

- - -

BY COUNCILOR STEWART (INTRODUCED BY PRESIDENT STAUBER)
04-064 (9696) - AN ORDINANCE AMENDING CHAPTER 29C OF THE DULUTH CITY CODE, 1959, AS AMENDED, AND THE FAIR HOUSING SUPPLEMENT MADE A PART THEREOF.

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

- - -

BY COUNCILOR LITTLE
04-062 - AN ORDINANCE AMENDING CHAPTER 36 OF THE DULUTH CITY CODE, 1959, AS AMENDED, REGULATING PAWNBROKERS.

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

David Gilberg expressed concern over sections of the proposed ordinance that deals with: (a) the requirement to turnover video tapes, even if the store does not do video taping; and (b) the requirement that merchandise cannot be resold for 30 days, does not differentiate between merchandise purchased over the counter and that which is purchased from a wholesaler or other commercial means.

Councilor Little moved to table the ordinance, which motion was seconded and unanimously carried.

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The meeting was adjourned at 10:28 p.m.

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 9693

BY VICE PRESIDENT NESS:

AN ORDINANCE AMENDING DULUTH CITY CODE SECTION 8-22,
PROHIBITING OPEN CONTAINERS OF ALCOHOLIC BEVERAGES
IN PUBLIC PLACES.

The city of Duluth does ordain:

Section 1. That Section 8-22 of the Duluth City Code, 1959, as amended, be amended by adding a Section 8-22(g) to read as follows:

Sec. 8-22. Alcoholic beverages prohibited in public places; exceptions.

(a) No owner, manager or person having control of any public place shall serve, permit to be served or permit any person to drink alcoholic beverages in such

place unless such place has been duly issued an on sale or temporary on sale license;

(b) No person shall mix, prepare, serve or consume alcoholic beverages in any public place except a hotel, club, restaurant or other place licensed to sell on the premises; provided, however, that the city council may, by resolution, permit the serving and consumption of alcoholic beverages in public places in connection with special events and convention functions subject to whatever conditions it deems desirable to impose;

(c) No person shall consume or have alcoholic beverages in his possession in any public place holding an on sale license unless such alcoholic beverages have been served to him by the licensee or an employee of such licensee;

(d) Except as provided in paragraph (f) of this Section, no licensee, manager or employee of any place for which any on sale license has been issued shall allow any patron to leave the licensed premises with any drink or open container of alcoholic beverages;

(e) Except as provided in paragraph (f) of this Section, no person shall leave any on sale licensed premises with any drink or open container of alcoholic beverages;

(f) Managers and employees of a restaurant licensed to sell intoxicating liquor or wine at on-sale under this Chapter may permit a person purchasing a full bottle of wine in conjunction with the purchase of a meal to remove the bottle on leaving the licensed premises provided that the bottle has been opened and the contents partially consumed;

(g) No person shall, within or on any public street, sidewalk, avenue, alley, trail or skywalk:

(1) Possess an opened container which contains and alcoholic beverage or an alcoholic beverage container with the seal broken unless:

(A) An alcohol consumption permit has been issued for the area pursuant to Section 35-9(a)(4) or its successor; or

(B) An on sale license has been issued for the area pursuant to Chapter 8 of this Code; or

(C) The alcoholic beverage container is contained in a second container, which second container is not made from any paper or cardboard product, has an inside volume of one cubic foot or more, is securely closed and is carried on the back, or in some other manner so that the carrier's hands cannot reach the alcoholic beverage container inside it;

(2) Notwithstanding the foregoing, any person may possess an opened container of wine as authorized by Section 8-22(f), above, or its successor.

Section 2. That this ordinance shall take effect and be in force 30 days from and after its publication. (Effective date: November 21, 2004)

Vice President Ness moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Reinert, Stewart, Stover and Vice President Ness -- 8

Nays: None -- 0

Absent: President Stauber -- 1

Passed October 12, 2004

Approved October 12, 2004

ATTEST:

JEFFREY J. COX, City Clerk

HERB W. BERGSON, Mayor

- - -

ORDINANCE NO. 9694

BY VICE PRESIDENT NESS:

AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF \$4,300,000 GENERAL OBLIGATION REVENUE BONDS OF THE CITY OF DULUTH FOR THE IMPROVEMENT OF THE MUNICIPAL SEWER UTILITY UPON TERMS AND CONDITIONS TO BE PROVIDED BY RESOLUTION OF THE CITY COUNCIL AND PLEDGING REVENUES FOR THE PAYMENT THEREOF.

The city of Duluth does ordain:

Section 1. BOND PURPOSE AND AUTHORIZATION.

1.01 Under and pursuant to the provisions of Section 55 of the City Charter, Sections 115.46 and 444.075 and Chapter 475 of Minnesota Statutes, and other pertinent provisions of said Charter and Statutes, the city is authorized to issue its general obligation bonds to provide funds for the improvement of the municipal sewer utility plant, which bonds shall be a specific lien upon such plant and are payable primarily from net revenues, as hereinafter defined, to be derived from operation of the municipal sewer utility pledged for their payment.

1.02 The city council hereby determines that it is in the best interest of the city and it is necessary to improve the municipal sewer utility, and determines it is necessary to issue general obligation sewer utility revenue bonds in the maximum amount of \$4,300,000 for the purpose of paying costs of the improvement program, and paying for a portion of the interest cost of the issue, as allowed by Minnesota Statutes, Section 475.56.

1.03 The city has heretofore issued and sold the following: general obligation water and sewer refunding bonds dated May 1, 1998, the sewer utility portion of such bonds now outstanding in the amount of \$285,000; general obligation sewer and steam utility revenue bonds dated December 1, 1998, the sewer utility portion of such bonds now outstanding in the amount of \$600,000; general obligation sewer utility revenue bonds dated December 1, 1999, now outstanding in the amount of \$1,405,000; general obligation water and sewer utilities revenue bonds dated December 1, 2000, the sewer utility portion of such bonds now outstanding in the amount of \$490,000; general obligation gas and sewer utilities revenue bonds dated December 1, 2001, the sewer utility portion of such bonds now outstanding in the amount of \$1,200,000; general obligation utilities facility bonds dated September 1, 2002, the sewer utility portion of such bonds now outstanding in the amount of \$1,899,000; general obligation utilities revenue bonds dated December 1, 2002, the sewer utility portion of such bonds now outstanding in the amount of \$1,740,000; general obligation water and sewer utilities revenue refunding bonds dated March 1, 2003, the sewer utility portion of such bonds now outstanding in the amount of \$1,080,000; and general obligation sewer utility revenue note dated December 12, 2003, authorized in the amount

of \$1,179,115. Under the provisions of the ordinances authorizing said bonds, the city reserved the privilege of issuing additional bonds payable from said net revenues on a parity with the bonds dated May 1, 1998, December 1, 1998, December 1, 1999, December 1, 2000, December 1, 2001, September 1, 2002, December 1, 2002, March 1, 2003, and December 12, 2003.

1.04 Pursuant to the authority herein recited, the city council hereby authorizes and directs the issuance and sale of general obligation sewer utility revenue bonds of the city of Duluth in the maximum amount of \$4,300,000 and pledges the full faith and credit and taxing powers of the city irrevocably for the payment of the principal and interest when due on such bonds, and also pledges and appropriates irrevocably, to the amounts required for the payment of the principal of and interest on the bonds and the maintenance of a reserve, any and all net revenues to be derived from time to time from the operation of the municipal sewer utility. Net revenues are defined as sums from time to time within the sewer utility operating account within the sewer utility fund maintained under Section 54 of the City Charter, in excess of sums required to pay claims duly approved and allowed for payment of expenses which, under generally accepted accounting principles, constitute normal, reasonable, and current expenses of operating and maintaining the municipal sewer utility and to maintain such reasonable reserves for such expenses as the director of public works and utilities shall determine to be necessary from time to time in accordance with the policies established by the city council.

1.05 The city reserves the right and privilege of issuing additional bonds and of pledging and appropriating the net revenues of the municipal sewer utility for the payment thereof, when authorized in accordance with law and the City Charter and determined by the city council to be necessary for the improvement of the municipal sewer utility or for the refunding of indebtedness payable from said net revenues, provided that no such pledge shall constitute a lien upon the net revenues superior to the pledge thereof for the payment of the bonds issued hereunder.

Section 2. TERMS OF BONDS.

2.01 The city council shall, by resolution or resolutions, provide for the issuance and sale of such bonds in one or more series and shall fix the precise maturities, interest rates, redemption provisions, and other terms and conditions of such bonds, and prescribe the form thereof, and offer to sell such bonds in such manner and at such time or times as shall be deemed in the public interest, all in accordance with the provisions of Minnesota Statutes, chapter 475, and other applicable laws.

Section 3. REVENUES AND ACCOUNTS.

3.01 The city council shall, by resolution or resolutions, provide for the method of imposing and collecting just and equitable charges for all use and for the availability of all facilities of the municipal sewer utility at the times and amounts required to pay the normal, and current operating expenses and to maintain the municipal sewer utility and also to produce net revenues at least adequate at all times to pay the principal and interest due on the bonds issued hereunder and on all other bonds heretofore and hereafter issued and made payable from said net revenues.

3.02 The city council shall, by further resolution or resolutions, establish appropriate accounts and credit monies from the proceeds of the bonds herein authorized to accounts, all in accordance with Section 54 of the City Charter and Chapter 475 of Minnesota Statutes.

Section 4. CERTIFICATION OF PROCEEDINGS.

4.01 The city clerk is directed to file with the county auditor of St. Louis County a certified copy of this ordinance, and such other information as the county may require, and to obtain from the county auditor a certificate stating that the bonds herein authorized have been duly entered on his register.

4.02 The officers of the city and the county auditor are authorized and directed to prepare and furnish to the purchasers of the bonds, and to bond counsel, certified copies of all proceedings

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

and records of the city relating to the authorization and issuance of the bonds and such other affidavits and certificates as may reasonably be required to show the facts relating to the legality and marketability of the bonds, as such facts appear from the official books and records in the officers' custody and are otherwise known to them. All such certified copies, certificates, and affidavits, including any heretofore furnished, constitute representations of the city as to the correctness of the facts recited therein and the action stated therein to have been taken.

Section 5. EFFECTIVE DATE.

5.01 This ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: November 21, 2004)

Vice President Ness moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Reinert, Stewart, Stover and Vice President Ness -- 8

Nays: None -- 0

Absent: President Stauber -- 1

Passed October 12, 2004

Approved October 12, 2004

HERB W. BERGSON, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 9695

BY COUNCILOR GILBERT:

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 RECLASSIFY FROM R-1-C, ONE-FAMILY RESIDENTIAL DISTRICT, TO R-3, APARTMENT RESIDENTIAL, CONTIGUOUS PROPERTY LOCATED NORTH OF OHIO STREET, SOUTH OF BUFFALO STREET, EAST OF BROADWAY AVENUE AND WEST OF TRIGGS AVENUE (WILLIAM BURNS, HANFT FRIDE, P.A./COLLEGE OF SAINT SCHOLASTICA).

The city of Duluth does ordain:

Section 1. 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:

(MAP)

[see Map No. 34 at end of meeting]

(Reference File No. 04093)

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: November 21, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Reinert, Stewart, Stover and Vice President Ness -- 8

Nays: None -- 0

Absent: President Stauber -- 1

Passed October 12, 2004

Approved October 12, 2004

HERB W. BERGSON, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

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ORDINANCE NO. 9696

BY COUNCILOR STEWART (introduced by President Stauber):

AN ORDINANCE AMENDING CHAPTER 29C OF THE DULUTH CITY CODE, 1959, AS AMENDED, AND THE FAIR HOUSING SUPPLEMENT MADE A PART THEREOF.

The city of Duluth does ordain:

Section 1. That Section 11(b)(1) of the Fair Housing Supplement, adopted by Section 29C-11 of the Duluth City Code, 1959, as amended, be amended to read as follows:

(b) Relief Which May Be Granted.

(1) In a civil action under subsection (a), if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the plaintiff actual and punitive damages, and may grant relief that the court deems appropriate, including any permanent or temporary injunction, temporary restraining order, order enjoining the defendant from engaging in such practice, or ordering such affirmative action as may be appropriate.

The court may award damages that include actual damages suffered by the aggrieved person, damages for mental anguish or mental suffering, an amount of up to three times the amount for all such damages sustained. Such judgment or order may, to vindicate the public interest, assess a civil penalty against the respondent,

(A) in an amount not exceeding \$11,000 if the respondent has not been adjudged to have committed any prior discretionary housing practice;

(B) in an amount not exceeding \$32,500 if the respondent has been adjudged to have committed one other discriminatory housing practice during the 5-year period ending on the date of the filing of this charge; and

(C) in an amount not exceeding \$60,000 if the respondent has been adjudged to have committed 2 or more discriminatory housing practices during the 7-year period ending on the date of the filing of this charge;

except that if the acts constituting the discriminatory housing practice that is the object of the charge are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory housing practice, then the civil penalties set forth in subparagraphs (B) and (C) may be imposed without regard to the period of time within which any subsequent discriminatory housing practice occurred.

Section 2. That Section 1(n) of the Fair Housing Supplement, adopted by Section 29C-11 of the Duluth City Code, 1959, as amended, be amended to read as follows:

(n) "City attorney" means the Duluth city attorney, his/her staff, or an attorney whose services have been secured by the Duluth human rights commission for purposes of processing a case under this ordinance. Any attorney, other than the Duluth city attorney's staff, shall have no authority to settle any case or claim without approval of the city attorney.

Section 3. That Section 7(b) of the Fair Housing Supplement, adopted by Section 29C-11 of the Duluth City Code, 1959, amended, be amended to read as follows:

(b) Delegation of authority;

The Duluth human rights commission may delegate any of their functions, duties and power to employees of the City of Duluth Human Rights Office,

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter under this supplement.

Section 4. That Section 9 of the Fair Housing Supplement, adopted by Section 29C-11 of the Duluth City Code, 1959, amended, be amended to read as follows:

Sec. 9. Subpoenas; Giving of Evidence

(a) Enforcement of Subpoenas.— The City attorney, on behalf of the Duluth human rights commission, or other party at whose request a subpoena is issued, under this supplement, may enforce such subpoena in appropriate proceedings. The human rights officer shall utilize the office of City attorney to obtain and/or enforce a subpoena of persons or documents, or things that are relevant to a charge or investigation.

Section 5. That Section 8(a)(1) of the Fair Housing Supplement, adopted by Section 29C-11 of the Duluth City Code, 1959, amended, be amended to add a new provision (E), to read as follows:

(E) If at any time after the acceptance of a complaint, the human rights officer has reason to believe that prompt judicial action is necessary to carry out the purposes of this supplement, the human rights commission shall authorize the human rights officer to file a petition in district court seeking appropriate temporary relief as authorized in Section 29C-5(2).

Section 6. That the title to Section 29C-11 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 29C-11. Fair housing supplement adopted.

Section 7. That Section 1 of the Fair Housing Supplement, adopted by Section 29C-11 of the Duluth City Code, 1959, amended, is amended by adding the following after the end of Section 1(n):

(o) "Creed" means a belief system.

(p) "Religion" means a system of beliefs, practices, and rituals relating to the sacred and also uniting its adherents in a community.

(q) The definitions set out in or adopted by Duluth City Code Section 29C, or its successor, are operative in this supplement.

Section 8. That Section 1(m) of the Fair Housing Supplement, adopted by Section 29C-11 of the Duluth City Code, 1959, amended, be amended to read as follows:

(m) "Prevailing party" means a litigant in a court of competent jurisdiction who has brought a claim based upon enforcement of this Fair Housing Supplement, or a defense against such a claim, and has been awarded by the court all, or a significant and important portion of, the relief sought.

Section 9. That Section 2(a) of the Fair Housing Supplement, adopted by Section 29C-11 of the Duluth City Code, 1959, amended, be amended to read as follows:

(a) Nothing in section 3 of this supplement shall apply to—

Section 10. That Section 10(c) of the Fair Housing Supplement, adopted by Section 29C-11 of the Duluth City Code, 1959, amended, be amended to read as follows:

(c) Attorney's Fees. In any civil action under section 10, the court, in its discretion, may allow the prevailing party a reasonable attorney's fee and costs, but not to exceed \$1,000 to the City of Duluth or \$3,000 to any other prevailing party.

Section 11. That Section 11(b)(2) of the Fair Housing Supplement, adopted by Section 29C-11 of the Duluth City Code, 1959, amended, be amended to read as follows:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

(2) In a civil action under subsection (a), the court, in its discretion, may allow the prevailing party a reasonable attorney's fee and costs, but not to exceed \$1,000 to the City of Duluth or \$3,000 to any other prevailing party.

Section 12. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: November 21, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Reinert, Stewart, Stover and Vice President Ness -- 8

Nays: None -- 0

Absent: President Stauber -- 1

ATTEST:
JEFFREY J. COX, City Clerk

Passed October 12, 2004
Approved October 12, 2004
HERB W. BERGSON, Mayor

- - -

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, October 25, 2004, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Absent: None -- 0

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

04-1025-01 City of Duluth submitting petition to vacate Roe Street between the easterly right-of-way of 96th Avenue West and the westerly right-of-way of 94th Avenue West; alleys in Blocks 2, 3, 13, 14 and 15; 96th Avenue West between Blocks 3, 4, 13 and 14; 95th Avenue West between Blocks 2, 3, 14 and 15, all in Mesaba Heights Addition to Duluth. -- Assessor

04-1025-02 John Klaers, et al. (three signatures), submitting petition to reconstruct 100 feet of 12th Avenue West, south of West Third Street. -- Assessor

04-1025-03 Waugh Mahoney, Inc., et al. (four signatures), submitting petition to vacate that portion of 47th Avenue East lying southeasterly of the right-of-way of London Road. -- Assessor

04-1025-04 Alison Clarke submitting a communication regarding the Lakewalk Townhomes development project (04-0706R, 04-0707R and 04-0722R). -- Received

04-1025-05 Greater Downtown Council submitting steering committee's draft plan for an advisory committee to the Downtown Waterfront Special Service District (04-066-O). -- Received

04-1025-15 Menard, Inc., submitting proposed amendment regarding their appeal to the board of zoning appeals requesting permission to exceed the 25 foot height limitation for the installation of a 100 foot high ground sign on property located at 503 North 50th Avenue West (04-0653R and 04-0654R). -- Received

04-1025-06 Daniel Williams submitting communication withdrawing petition to vacate 20th Avenue West between Sixth and Seventh streets adjacent to Lots 322 through 330, Block 157, Duluth Proper Second Division. -- Received

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REPORTS OF OFFICERS

04-1025-07 Assessor submitting letters of sufficiency of petitions regarding the:

(a) Reclassification from S to R-1-a 18.7 acres in the N1/2 of the NW1/4 of the SE1/4 of Section 6, T49N, R14W, St. Louis County, Duluth, MN;

(b) Reconstruction of 100 feet of 12th Avenue West, south of West Third Street;

(c) Vacation of Roe Street between the easterly right-of-way of 96th Avenue West and the westerly right-of-way of 94th Avenue West; alleys in Blocks 2, 3, 13, 14 and 15; 96th Avenue West between Blocks 3, 4, 13 and 14; 95th Avenue West between Blocks 2, 3, 14 and 15, all in Mesaba Heights Addition to Duluth. -- Received

04-1025-08 Engineering division monthly project status report of October 1, 2004. -- Received

- - -

REPORTS OF BOARDS AND COMMISSIONS

04-1025-09 Commission on disabilities minutes of September 1, 2004, meeting. -- Received

04-1025-10 Duluth airport authority minutes of September 21, 2004, meeting. -- Received

04-1025-11 Duluth human rights commission minutes of October 13, 2004, meeting. -- Received

04-1025-12 Duluth/North Shore Sanitary District board minutes of September 14, 2004, meeting. -- Received

04-1025-13 Parks and recreation commission minutes of September 8, 2004, meeting. -- Received

04-1025-14 Spirit Mountain recreation area authority minutes of September 14, 2004, meeting. -- Received

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At this time, 7:10 p.m., President Stauber recessed the city council meeting for a Duluth economic development authority (DEDA) meeting.

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At this time, 7:25 p.m., President Stauber reconvened the city council meeting.

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RESOLUTIONS TABLED

Councilor Gilbert moved to remove Resolutions 04-0653 and 04-0654, affirming and reversing, respectively, the decision of the board of zoning appeals to deny a request by Menard, Inc., for a variance to allow a ground sign to exceed the height limitation for the installation of a 100 foot high, 250 square foot ground sign on property located at 503 North 50th Avenue West, 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 resolutions.

Tom Hanson, representing Menard, Inc., reviewed that they have changed their request from a 100 foot sign to a 75 foot sign, and explained that they have requested the variance for the extra height for their sign because the store sits below the freeway and they would like a sign that is visible from both the north and the south lanes.

Councilor Stover moved to withdraw the resolutions so that the new variance request can be considered, which motion was seconded and unanimously carried.

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Councilor Stover moved to remove Resolution 04-0678, reaffirming Resolution 04-0192 ordering the improvement known as the 2005 street improvement program pursuant to Section 61(b) of the Home Rule Charter of the city of Duluth at an estimated cost of \$4,608,620, from the table, which motion was seconded and unanimously carried.

Resolution 04-0678 was adopted as follows:

BY COUNCILOR STOVER:

WHEREAS, pursuant to Section 61(b) of the Home Rule Charter of the city of Duluth, the city council previously ordered the improvement, to city of Duluth standards, of those streets, avenues and parkways set forth in Public Document No. 04-0322-11 on file with the office of the city clerk; the costs of said improvement estimated at \$4,608,620 to be paid from the Street Improvement Fund 0440 and that 1/4 or less of said costs to be levied against the property specifically benefitted by said improvements; and

WHEREAS, the 2005 street improvement program included the 2005 Morgan Park 2 street improvement project, which initially provided for the payment of the special assessments with community development block grant funds in the CDBG target area; and

WHEREAS, the city community development committee has been required to revise the policy for payment of special assessments to limit the use of CDBG funds to only income-eligible property owners in CDBG target areas; and

WHEREAS, this policy change and resulting impacts have been presented to all property owners by way of public notification, a public informational meeting and a public hearing before the Duluth City Council.

NOW THEREFORE, BE IT RESOLVED, that the city council hereby reaffirms Resolution No. 04-0192 ordering the improvement known as the 2005 street improvement program pursuant to Section 61(b) of the Home Rule Charter of the city of Duluth.

Resolution 04-0678 was unanimously adopted.

Approved October 25, 2004

HERB W. BERGSON, Mayor

- - -

Councilor Stover moved to remove Resolution 04-0680, concerning city councilors' membership in Duluth Area Chamber of Commerce, from the table, which motion was seconded and unanimously carried.

President Stauber removed Resolution 04-0680 from the agenda.

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

BY COUNCILOR NESS:

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 and Minnesota Statutes, Chapter 475, and the City Charter, the city is authorized to issue its general obligation capital equipment certificates of indebtedness to provide funds to purchase capital equipment having an expected useful life at least as long as the term of the certificates of indebtedness.

Section 2. The city council declares the intent of the city to issue certificates of indebtedness in 2004 in the amount of approximately \$1,355,000 to finance the purchase of capital equipment authorized by the act. The capital equipment to be financed includes those items of equipment set forth on the list (Public Document No. 04-1025-22) previously authorized for purchases in the 2004 capital equipment budget and those items expected to be purchased in 2005, which items may only be a portion of the capital equipment authorized to be purchased in 2005.

Section 3. The terms and conditions of the certificates of indebtedness and the sale thereof shall be established by further resolution of the council.

Resolution 04-0713 was unanimously adopted.

Approved October 25, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR NESS:

RESOLVED, that the proper city officials are hereby authorized to execute supplemental labor agreements with the city of Duluth Supervisory Association, Local 101 International Association of Firefighters and Duluth Police Local adding language allowing retiring employees represented by these bargaining units the same health plan options as provided for in the approved bargaining agreements with A.F.S.C.M.E. Local 66 and the Confidential Unit, which

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

agreements are on file in the office of the city clerk as Public Document Nos. 04-1025-20(a), 04-1025-20(b) and 04-1025-20(c).

Resolution 04-0721 was unanimously adopted.

Approved October 25, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

WHEREAS, Cash Station LLC, dba MoneyXchange, has applied to the Minnesota department of commerce for a license to transact the business of a currency exchange at its offices at 101 East Superior Street; and

WHEREAS, the Duluth City Council has received a copy of the license application from the director of licensing of the department of commerce and can object to the issuance of said license; and

WHEREAS, the Duluth City Council has no objection to the issuance of said license to transact the business of a currency exchange.

NOW, THEREFORE, BE IT RESOLVED, that the Duluth City Council hereby approves of the Minnesota department of commerce issuing a license to conduct the business of a currency exchange at 101 East Superior Street to Cash Station LLC, dba MoneyXchange.

Resolution 04-0709 was unanimously adopted.

Approved October 25, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

WHEREAS, Pawn America Minnesota, LLC, has applied to the Minnesota department of commerce for a license to transact the business of a currency exchange at its offices at 339 East Central Entrance; and

WHEREAS, the Duluth City Council has received a copy of the license application from the director of licensing of the department of commerce and can object to the issuance of said license; and

WHEREAS, the Duluth City Council has no objection to the issuance of said license to transact the business of a currency exchange.

NOW, THEREFORE, BE IT RESOLVED, that the Duluth City Council hereby approves of the Minnesota department of commerce issuing a license to conduct the business of a currency exchange at 339 East Central Entrance to Pawn America Minnesota, LLC.

Resolution 04-0710 was unanimously adopted.

Approved October 25, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointment by Mayor Bergson of Toni Thorstad to the Duluth human rights commission for a term expiring on April 20, 2007, replacing Carl Crawford who resigned, is confirmed.

Resolution 04-0711 was unanimously adopted.

Approved October 25, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointment by Mayor Bergson of John T. Moir to the tree

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

commission for a term expiring on August 31, 2005, replacing Stephen W. Christopher who resigned, is confirmed.

Resolution 04-0712 was unanimously adopted.

Approved October 25, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointments by Mayor Bergson of Joycelyn Dorscher and Evelyn Tanner to the American Indian commission for terms expiring on May 12, 2005 and 2006, respectively, replacing Rick Ziegler and John Morrin who resigned, are confirmed.

Resolution 04-0723 was unanimously adopted.

Approved October 25, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the reappointments by Mayor Bergson of Bryan Jensen, Valerie LaPorte and David Moberg to the commission on disabilities for terms expiring on November 1, 2007, are confirmed.

RESOLVED FURTHER, that the appointments by Mayor Bergson of Claire Jasper and Shannon McCarthy Bicha to the commission on disabilities for terms expiring on November 1, 2007, and 2005, respectively, replacing Joan J. Morrison and Nina Fobear Busa who resigned, are confirmed.

Resolution 04-0724 was unanimously adopted.

Approved October 25, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointment by Mayor Bergson of Dawn Loraas to the Duluth public arts commission for a term expiring on September 30, 2007, replacing Cecilia Lieder, is confirmed.

Resolution 04-0725 was unanimously adopted.

Approved October 25, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointments by Mayor Bergson of Robert A. Berquist and Mark R. Sandahl to the animal humane board for terms expiring on October 31, 2009, replacing Jane Aynesworth and Patricia Wheeler, are confirmed.

Resolution 04-0728 was unanimously adopted.

Approved October 25, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Resolution 04-0550 to Visu-Sewer Clean and Seal, Inc., for construction of cured-in-place-pipe (CIPP) rehabilitation of sanitary sewer in various locations, be amended to

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

increase the amount by \$82,807.50 for a new total of \$262,758.95, payable out of Sewer Fund 0530, Department/Agency 500, Organization 1905, Object 5536.

Resolution 04-0715 was unanimously adopted.

Approved October 25, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

RESOLVED, that in accordance with the provisions of Section 33-88.2 of the Duluth City Code, 1959, as amended, the following handicapped parking zones are hereby established:

front of 3922 West Fifth Street;

front of 631 East Third Street;

front of 2320 West 11th Street.

Resolution 04-0718 was unanimously adopted.

Approved October 25, 2004

HERB W. BERGSON, Mayor

- - -

The following resolutions were also considered:

BY COUNCILOR STEWART:

RESOLVED, that the city is hereby authorized to execute agreements with Blue Cross and Blue Shield of Minnesota under which that company will provide administrative services and stop loss insurance to the city group health plan during calendar year 2005 for an administrative fee of \$26.50 per single employee or per family per month and a fee for stop loss coverage of \$10.88 per single employee per month and \$29.06 per family per month, for a total estimated cost of \$1,025,504, or to continue the agreement currently in force between the parties but with the terms set forth above, which shall be paid from the group health fund.

Resolution 04-0686 was unanimously adopted.

Approved October 25, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

RESOLVED, that proper city officials be and hereby authorized to sell two 1997 Caterpillar motor graders Model 163H, Serial Numbers 5AK00086 and 5AK00120 to Ziegler, Inc., in accordance with its high bid of \$241,000, revenue to General Fund 0100, Department/Agency 700, Organization 1448, Revenue Source 4639.

Resolution 04-0729 was unanimously adopted.

Approved October 25, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0705, by Councilor Gilbert, accepting reimbursement from DEDA for Baywalk construction expenses relating to Building N in the amount of \$298,900, authorizing a Baywalk easement agreement with Building N, Inc., and repealing Resolution 04-0039, was introduced for discussion.

Councilors Ness and Gilbert stated that extending the Baywalk behind the buildings along the waterfront is not a productive use of taxpayers money during tough economic times.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

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

Yeas: Councilors Atkins, Gilbert, Johnson, Ness and Stewart -- 5

Nays: Councilors Little, Reinert, Stover and President Stauber -- 4

- - -

Resolution 04-0706, granting to Lakewalk Townhomes, LLC, a special use permit for a townhouse or group dwellings for property located between Interstate Highway 35 and the Lake Superior shoreline and between 23rd and 25th avenues East (Lakewalk Townhomes, LLC); Resolution 04-0707, vacating portions of Water Street; 24th Avenue East; 25th Avenue East; 24th Alley East and 23-1/2 Alley East; all located east of 23rd Avenue East and below Interstate Highway 35 (Lakewalk Townhomes, LLC); and Resolution 04-0722, authorizing an agreement with Lakewalk Townhomes, LLC, and DEDA for the development of a townhome development and Lakewalk facilities adjacent to Lake Superior at 24th Avenue East, by Councilor Gilbert, were introduced for discussion.

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

Alison Clarke expressed her thanks to the councilors, the administration and the developers for working with the Neighborhood Planning District No. 7 from the beginning on this project; she hoped that this would serve as a model for future developments.

Resolutions 04-0706, 04-0707 and 04-0722 were adopted as follows:

BY COUNCILOR GILBERT:

WHEREAS, Lakewalk Townhomes, LLC, has submitted to the city council a request for a special use permit for up to 46 townhouse units or group dwellings on property described as Lots 11-16, Block 2; Lots 9-15, Block 3, and Lots 1-6, Block E, Endion Division of Duluth; Blocks 1 and 2, Langellier's Rearrangement of Block D, Endion Division of Duluth, and located between Interstate Highway 35 and the Lake Superior shoreline and between 23rd and 25th avenues East; and said permit application was duly referred to the city planning commission for a study, report and public hearing and the city planning commission has subsequently reported its approval to the city council; and

WHEREAS, the approval was made because of the city planning commission's findings that appropriate safeguards will exist to protect the comprehensive plan and to conserve and to protect property values in the neighborhood if conditions are observed (Reference File No. 03055).

NOW, THEREFORE, BE IT RESOLVED, that a special use permit is hereby granted to Lakewalk Townhomes, LLC, to allow for the construction of a townhouse or group dwellings development at 23rd Avenue East and Water Street, on the condition that development be limited to and constructed as identified on Public Document No. 04-1025-16(a) and the terms and conditions of the development agreement as identified as Public Document No. 04-1025-16(b).

Resolution 04-0706 was unanimously adopted.

Approved October 25, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

WHEREAS, a sufficient petition was filed with the city clerk requesting the vacation of Water Street from 23rd Avenue East to Lake Superior; 24th Avenue East from Interstate Highway 35 to Lake Superior; 25th Avenue East from Interstate Highway 35 to Water Street; 24th Alley East and 23-1/2 Alley East from Water Street to Lake Superior, and a utility easement in vacated 23-1/2 Avenue East, legally described as:

(a) Water Street adjoining Blocks 1, 2, 3 and E, Endion Division of Duluth, and Blocks 1 and 2, Langellier's Rearrangement of Block D, Endion Division of Duluth;

(b) 24th Avenue East adjoining Lot 16, Block 2, Lot 9, Block 3, and Lot 1, Block E, Endion Division of Duluth and Lots 1-16, Block 2, Langellier's Rearrangement of Block D, Endion Division of Duluth;

(c) 25th Avenue East adjoining Lot 15, Block 1, Lot 9, Block 2, Endion Division of Duluth;

(d) 23-1/2 Alley East, in Block 1 and 24th Alley East, in Block 2, Langellier's Rearrangement of Block D, Endion Division of Duluth;

(e) A ten foot utility easement extending 100 feet southerly of the south line of Water Street and lying within and against the easterly line of vacated 23-1/2 Avenue East; and

WHEREAS, 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

WHEREAS, the city planning commission approved, unanimously, this vacation petition at its meeting (Reference File No. 03054).

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation of the easement described above and as more particularly described on Public Document No. 04-1025-17.

RESOLVED FURTHER, that the following portions of vacated streets be retained as utility easement: the south half of Water Street from the easterly line of 23rd Avenue East to a point 13 feet westerly of the centerline of 24th Avenue East; and, ten feet each side of the following described line: beginning at a point 20 feet southerly and 18 feet westerly of the intersection of the centerlines of Water Street and 24th Avenue East, thence easterly to a point 27 feet northerly and 33 feet westerly of the intersection of the centerlines of Water Street and 25th Avenue East, thence easterly to a point on the west line of Lot 15, Block 1, Endion Division, said point being 27.1 feet northerly of the southwest corner. The sidelines of said easement shall be prolonged or shortened to terminate on the west line of said Lot 1.

RESOLVED FURTHER, that the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of St. Louis County, Minnesota, a certified copy of this resolution together with a plat showing the portion of the streets and alleys to be vacated as well as the easements to be retained.

Resolution 04-0707 was unanimously adopted.

Approved October 25, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

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. 04-1025-16(b) with Lakewalk Townhomes L.L.C. and the Duluth economic development authority authorizing the development of up to 46 townhomes units adjacent to Lake Superior between 23rd and 25th Avenues East and the purchase of property by the city for the extension of Lakewalk.

Resolution 04-0722 was unanimously adopted.

Approved October 25, 2004

HERB W. BERGSON, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Resolution 04-0714, by Councilor Gilbert, awarding contract to Northland Constructors, Inc., for Baywalk extension, in the amount of \$168,000, was introduced for discussion.

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

Yeas: Councilors Atkins, Gilbert, Johnson, Ness, Stewart and Stover -- 6

Nays: Councilors Little, Reinert and President Stauber -- 3

- - -

Resolutions 04-0719 and 04-0720, by Councilor Gilbert, granting and denying, respectively, a petition to amend the Kenwood Shopping Center C-3 Shopping Center District plan to eliminate conditions three and four of the March 12, 1973, city council resolution which requires the owner to maintain the pedestrian way that extends south from the shopping center to Buffalo Street (Thomas O'Brien/Barrington Waldorf, LLC, et al.), were introduced for discussion.

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

Mark Pilon, representing the owner of the Kenwood Plaza, reviewed that this walkway connects Buffalo Street with the back side of the shopping center. He continued by saying that this walkway was blocked off for almost a year with the construction in the shopping center and there was no public outcry from the neighborhood.

Joseph Martin stated that he did contact the city while the construction phase was going on requesting that the walkway reopen after construction. He went on to say that he did an informal survey of the neighborhood and found that most neighbors and University of Minnesota-Duluth (UMD) students want the walkway to remain open as it offers some convenience when walking to the shopping center and some safety as there are no sidewalks along Kenwood Avenue.

Resolution 04-0719 failed upon a unanimous vote (Public Document No. 04-1025-18).

- - -

Resolution 04-0720 was adopted as follows:

BY COUNCILOR GILBERT:

WHEREAS, Thomas O'Brien, Barrington Waldorf, LLC, Mike and Rebecca Pierce, and Chad and Michelle Pierson have submitted to the city council a request to amend the Kenwood Shopping Center C-3 zoning plan to eliminate conditions three and four of the March 12, 1973, city council resolution, thereby allowing the closing of the pedestrian path located between Buffalo Street and the rear of the shopping center; and said amendment application was duly referred to the city planning commission for a study, report, and public hearing; and

WHEREAS, a motion to deny the request, based on the need to preserve this easement for current and future use, failed to receive the minimum votes required by the commission's bylaws; and

WHEREAS, no other motion was offered; and

WHEREAS, the planning commission failed to make a recommendation; therefore, this matter is presented to the city council without recommendation from the planning commission (Reference File No. 04109).

NOW, THEREFORE, BE IT RESOLVED, that the petition to amend the March 12, 1973, city council resolution is hereby denied.

Resolution 04-0720 was unanimously adopted.

Approved October 25, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0726, by Councilor Gilbert, approving DEDA Resolution 04D-92 authorizing DEDA condemnation of Lots 44, 46 and 48, West Third Street, Duluth Proper First Division, for creation of a residential facility for chronic alcoholics, was introduced for discussion.

Councilor Atkins moved to table the resolution for further DEDA action, which motion was seconded and unanimously carried.

- - -

BY COUNCILOR STOVER:

WHEREAS, the state of Minnesota, through the Minnesota department of natural resources, division of waters, administers financial assistance for coastal management purposes through Minnesota's Lake Superior coastal program; and

WHEREAS, the city of Duluth in conjunction with the regional stormwater protection team and the Duluth streams partnership desires financial assistance from the coastal management assistance program for the purposes of employing the services of University of Minnesota staff from the natural resources research institute, Minnesota sea grant to expand and enhance the "duluthstreams.org" website as part of the stormwater education program.

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. 04-1025-21 with the Regents of the University of Minnesota, department of natural resources, in an amount of \$45,580 for said web site improvement; said sum to be payable from Fund 0535, Agency 500, Organization 1915, Object 5439.

Resolution 04-0696 was unanimously adopted.

Approved October 25, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0695, by Councilor Little, authorizing an agreement with St. Louis County to acquire property for an animal shelter for \$500, was introduced for discussion.

Councilor Stewart inquired as to why St. Louis County included a cemetery in the land transfer and if it would be a liability to the city.

Resolution 04-0695 failed upon the following vote (Public Document No. 04-1025-19):

Yeas: Councilors Reinert and Stover -- 2

Nays: Councilors Atkins, Gilbert, Johnson, Little, Ness, Stewart and President Stauber -- 7

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES ORDINANCES TABLED

BY PRESIDENT STAUBER

04-060 (9697) - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAPS 29 AND 35 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION OF R-1-C, ONE-FAMILY RESIDENTIAL DISTRICT, AND R-1-B, ONE-FAMILY RESIDENTIAL DISTRICT, TO R-3, APARTMENT RESIDENTIAL DISTRICT, PROPERTY LOCATED BETWEEN MESABA AVENUE AND EAST SKYLINE PARKWAY, SOUTH OF 12TH STREET AND WEST OF FOURTH AVENUE EAST; THE BUENA VISTA MOTEL AND RESTAURANT SITE IS 1144 MESABA AVENUE (NYLEN, MAGIE & STRUM PROPERTIES).

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

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

KL Lewis voiced concern that the footprint of the project is too large for the property.

David Craig, whose property abuts the proposed development, stated that he has worked out several issues with the developers and that he is no longer opposed to the project.

Tim Wiklund stated that he has been working with the neighborhood and making adjustments in the planning stages in order to make the project acceptable to the neighborhood and also make the units affordable. He added that they will also keep the neighborhood and the council informed as the project goes along.

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

Yeas: Councilors Atkins, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 8

Nays: None -- 0

Abstention: Councilor Gilbert -- 1

- - -

BY COUNCILOR LITTLE

04-062 (9698) - AN ORDINANCE AMENDING CHAPTER 36 OF THE DULUTH CITY CODE, 1959, AS AMENDED, REGULATING PAWNBROKERS.

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

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

- - -

The following entitled ordinances were read for the second time:

BY COUNCILOR GILBERT

04-065 (9699) - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NO. 42 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM S, SUBURBAN, TO R-1-A, ONE-FAMILY RESIDENTIAL DISTRICT, PROPERTY LOCATED EAST OF WOODLAND AVENUE AND NORTH OF PLEASANT VIEW AVENUE (CARLSON/NELSON).

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

- - -

BY COUNCILOR ATKINS

04-066 - AN ORDINANCE AMENDING ORDINANCE 9688; CREATING AN ADVISORY COMMITTEE FOR THE DOWNTOWN WATERFRONT SPECIAL SERVICE DISTRICT.

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

DeWayne Torfin reviewed that this means five years of increased taxes for him and there appears no way out of this commitment. He expressed frustration that a request by property owners for representatives from all areas of the district be involved in an advisory board was ignored by the Greater Downtown Council (GDC). Mr. Torfin questioned how the city can commit \$1,000,000 over the next five years for a special services district with no change in city services when the mayor has announced a cutback in city services and advertising.

Linwood Skafte voiced concern that the proposed ordinance would allow the GDC to appoint members to the advisory committee when it should be an independent body making the appointments and suggested changes to the ordinance.

KL Lewis stated that this proposed ordinance is getting too complicated and that the service district is unfair to all business owners.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Councilor Atkins stated he is advocating fairness for all business owners by proposing this ordinance. He moved to table the ordinance for more information, which motion was seconded and unanimously carried.

- - -

BY COUNCILOR STOVER

04-058 (9700) - AN ORDINANCE AUTHORIZING DEDICATION OF A STREET EASEMENT OVER CERTAIN CITY PROPERTY IN THE ENGER PARK AREA AND THE SALE OF THE REMAINDER TO PETER L. AND JUDITH A. GEMUENDEN.

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

- - -

The meeting was adjourned at 9:00 p.m.

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

- - -

ORDINANCE NO. 9697

BY PRESIDENT STAUBER:

AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAPS 29 AND 35 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION OF R-1-C, ONE-FAMILY RESIDENTIAL DISTRICT, AND R-1-B, ONE-FAMILY RESIDENTIAL DISTRICT, TO R-3, APARTMENT RESIDENTIAL DISTRICT, PROPERTY LOCATED BETWEEN MESABA AVENUE AND EAST SKYLINE PARKWAY, SOUTH OF 12TH STREET AND WEST OF FOURTH AVENUE EAST; THE BUENA VISTA MOTEL AND RESTAURANT SITE IS 1144 MESABA AVENUE (NYLEN, MAGIE & STRUM PROPERTIES).

The city of Duluth does ordain:

Section 1. That Plate Nos. 29 and 35 of the zoning district maps as contained in the Appendix to Chapter 50 of the Duluth City Code, 1959, as amended is amended to read as follows:

(MAPS)

[see Map Nos. 29 and 35 at end of meeting]
(Reference File No. 04094)

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: December 5, 2004)

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

Yeas: Councilors Atkins, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 8

Nays: None -- 0

Abstention: Councilor Gilbert -- 1

ATTEST:

JEFFREY J. COX, City Clerk

Passed October 25, 2004
Approved October 25, 2004
HERB W. BERGSON, Mayor

- - -

ORDINANCE NO. 9698

BY COUNCILOR LITTLE:

AN ORDINANCE AMENDING CHAPTER 36 OF THE DULUTH CITY CODE, 1959, AS AMENDED, REGULATING PAWNBROKERS.

The city of Duluth does ordain:

Section 1. That Section 36-6 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 36-6. Records to be kept; right of inspection; pawn tickets.

(a) Each person licensed hereunder shall keep a record of each reportable transaction made in the course of his business. Such records shall be in a form prescribed by the chief of police and shall, in all instances, be legibly made in ink and be in the English language. The record so kept shall include the following information about each transaction:

(1) A complete and accurate description of each item including, but not limited to, any trademark, identification number, serial number, model number, brand name or other identifying mark on such an item;

(2) The purchase price, amount of money loaned upon or pledged therefor;

(3) The maturity date of the transaction and the amount due, including monthly and annual interest rates and all pawn fees and charges;

(4) Date, time and place the item of property was received by the licensee and the unique alpha and/or numeric transaction identifier that distinguishes it from all other transactions in the licensee's records;

(5) Full name, current residence address, current residence telephone number, date of birth and accurate description of the person from whom the item of the property was received, including: sex, height, weight, race, color of eyes and color of hair;

(6) The identification number and state of issue from any of the following forms of identification of the seller:

(A) Current valid Minnesota driver's license;

(B) Current valid Minnesota identification card;

(C) Current valid photo identification card issued by another state or province of Canada;

(7) The signature of the person identified in the transaction;

(b) The records required herein shall be kept available for police inspection at any reasonable time at the licensee's place of business and shall be kept for at least three years after any transaction;

(c) The chief of police may require that all records and information required to be kept by this Section be kept by computer or other electronic format, or that video or photographic records be kept. The chief of police may also require that the computerized or electronic records of the pawnbrokers be electronically transmitted to police headquarters on a periodic basis. The format for computerized pawnbroker records shall be the "interchange file specification format" specified in Minnesota Statutes Section 325J.05(b) and (c) or its successor;

(d) The pledgor or seller shall sign a pawn ticket and receive an exact copy of the pawn ticket. The following shall be printed on all pawn tickets:

(1) The statement that "Any personal property pledged to a pawnbroker within this state is subject to sale or disposal when there has been no payment made on the account for the period of not less than 90 days past the day of the pawn transaction, renewal, or extension; no further notice is necessary. There is no obligation for the pledgor to redeem pledged goods.";

(2) The statement that "The pledgor of this item attests that it is not stolen, it has no liens or encumbrances against it, and the pledgor has the right to sell or pawn the item.";

(3) The statement that "This item is redeemable only by the pledgor to whom the receipt was issued, or any person identified in the receipt, or a person identified in writing by the pledgor at the time of the initial transaction and signed by the pledgor. Written authorization for release of property to persons other than the original pledgor must be maintained along with the original transaction record."; and

(4) A blank line for the pledgor's signature.

Section 2. That Section 36-7 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 36-7. Daily reports to chief of police.

Every pawnbroker shall make available to the chief of police every day, before the hour of 12:00 noon, a complete, legible and correct copy of the records required by Section 36-6 for all transactions occurring on the previous day. If the chief of police requires computerized recordkeeping for pawnbroker records, the chief shall also set and enforce specifications for each licensee's transmittal of those records to local and statewide authorities or data systems.

(a) Effective no later than 60 days after the police department provides licensees with the current version of the Automated Pawn System Interchange File Specification, licensees must submit every reportable transaction to the police department daily in the following manner:

(1) Licensees must provide to the police department all reportable transaction information by transferring it from their computer to the Automated Pawn System via modem using the current version of the Automated Pawn System Interchange File Specification. All required records must be transmitted completely and accurately after the close of business each day in accordance with standards and procedures established by the issuing authority. Any transaction that does not meet the Automated Pawn System Interchange File Specification must be corrected and resubmitted the next business day. The licensee must display a sign of sufficient size, in a conspicuous place in the premises, which informs patrons that all transactions are reported to the police department daily;

(b) Billable transaction fees. Licensees will be charged for each billable transaction reported to the police department;

(1) If a licensee is unable to successfully transfer the required reports by modem, the licensee must provide the police department, upon request, printed copies of all reportable transactions along with the video tape(s) for that date, by noon the next business day;

(2) If the problem is determined to be in the licensee's system and is not corrected by the close of the first business day following the failure, the licensee must continue to provide the required reports as detailed in Section 36-6(a) of this Code, and must be charged a \$50 reporting failure penalty, daily, until the error is corrected; or

(3) If the problem is determined to be outside the licensee's system, the licensee must continue to provide the required reports in Section 36-6(a) of this Code, and resubmit all such transactions via modem when the error is corrected;

(4) Regardless of the cause or origin of the technical problems that prevented the licensee from uploading their reportable transactions, upon correction of the problem, the licensee shall upload every reportable transaction from every business day the problem had existed;

(5) Section 36-7(b)(1) through (3) notwithstanding, the police department may, upon presentation of extenuating circumstances, delay the implementation of the daily reporting penalty.

Section 3. That Section 36-8 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 36-8. Pledge or pawn not forfeited for 90 days.

Any person pledging or pawning any article with any pawnbroker shall have 90 days to redeem the same before the pledge or pawn becomes forfeited.

Section 4. That Section 36-9 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 36-9. Holding periods; labels required.

(a) Holding periods. Any item purchased or accepted in trade by a licensee must not be sold or otherwise transferred for 30 days from the date of the transaction. An individual may redeem an item 72 hours after the item was received on deposit, excluding Sundays and legal holidays;

(b) Label required. Licensees must attach a label to every item at the time it is pawned, purchased, or received in inventory from any reportable transaction. Permanently recorded on this label must be the number or name that identifies the transaction in the shop's records, the transaction date, the name of the item and the description or the model and serial number of the item as reported to the police department, whichever is applicable, and the date the item is out of pawn or can be sold, if applicable. Labels shall not be re-used.

Section 5. That Section 36-11 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 36-11. Police order to hold property.

(a) Investigative hold. Whenever a law enforcement official from any agency notifies a licensee not to sell an item, the item must not be sold or removed from the premises. The investigative hold shall be confirmed in writing by the originating agency within 72 hours and will remain in effect for 15 days from the date of initial notification, or until the investigative order is canceled, or until an order to hold/confiscate is issued, pursuant to Section 36-11(b)(c) of this Code, whichever comes first;

(b) Order to hold. Whenever the chief of police, or the chief's designee, notifies a licensee not to sell an item, the item must not be sold or removed from the licensed premises until authorized to be released by the chief or the chief's designee. The order to hold shall expire 90 days from the date it is placed unless the chief of police or the chief's designee determines the hold is still necessary and notifies the licensee in writing;

(c) Order to confiscate. If an item is identified as stolen or evidence in a criminal case, the chief or chief's designee may:

(1) Physically confiscate and remove it from the shop, pursuant to a written order from the chief or the chief's designee; or

(2) Place the item on hold or extend the hold as provided in Section 36-11(b) of this Code, and leave it in the shop.

When an item is confiscated, the person doing so shall provide identification upon request of the licensee, and shall provide the licensee the name and phone number of the confiscating agency and investigator, and the case number related to the confiscation.

When an order to hold/confiscate is no longer necessary, the chief of police, or chief's designee, shall so notify the licensee.

Section 6. This ordinance shall take effect 30 days from and after its passage and publication. (Effective date: December 5, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Nays: None -- 0

ATTEST:

JEFFREY J. COX, City Clerk

Passed October 25, 2004

Approved October 25, 2004

HERB W. BERGSON, Mayor

- - -

ORDINANCE NO. 9699

BY COUNCILOR GILBERT:

AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NO. 42 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM S, SUBURBAN, TO R-1-A, ONE-FAMILY RESIDENTIAL DISTRICT, PROPERTY LOCATED EAST OF WOODLAND AVENUE AND NORTH OF PLEASANT VIEW AVENUE (CARLSON/NELSON).

The city of Duluth does ordain:

Section 1. That Plate No. 42 of the zoning district maps as contained in the Appendix to Chapter 50 of the Duluth City Code, 1959, is amended to read as follows:

(MAP)

[see Map No. 42 at end of meeting]

(Reference File No. 04095)

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: December 5, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Nays: None -- 0

ATTEST:

JEFFREY J. COX, City Clerk

Passed October 25, 2004

Approved October 5, 2004

HERB W. BERGSON, Mayor

- - -

ORDINANCE NO. 9700

BY COUNCILOR STOVER:

AN ORDINANCE AUTHORIZING DEDICATION OF A STREET EASEMENT OVER CERTAIN CITY PROPERTY IN THE ENGER PARK AREA AND THE SALE OF THE REMAINDER TO PETER L. AND JUDITH A. GEMUENDEN.

The city of Duluth does ordain:

Section 1. That the proper city officials are hereby authorized to convey and dedicate to the general public an easement for street and roadway purposes over the following described property in St. Louis County, Minnesota, and to execute all documents necessary thereto:

An easement for street and utilities over, under and across that part of Southeast Quarter of Southwest Quarter (SE1/4 of SW1/4), Section Twenty-eight (28), Township Fifty (50) North, Range Fourteen (14) West of the Fourth Principal Meridian, according to the U.S. Government Survey thereof, described as follows:

Commencing at the most westerly corner of Lot 192, Block 101, Duluth Proper Third Division, thence southwesterly along the extension of the northwesterly line of said Block 101 a distance of 58.79 feet to the intersection with the westerly line of said plat of Duluth Proper Third Division and said intersection being the point of beginning of the easement to be described; thence continue southwesterly along the last described line a distance of 75.03 feet; thence deflect 41°-47'-24" to the left in a southerly direction along a line 50 feet distant and parallel with the said east line of said Southeast Quarter of Southwest Quarter (SE1/4 of SW1/4) a distance of 75.03 feet; thence deflect 138°-12'-36" to the left in a northeasterly direction a distance of 75.03 feet to said east line; thence deflect 41°-47'-24" to the left in a northerly direction along said east line a distance of 75.03 feet to the point of beginning.

Section 2. That upon recording of the easement granted pursuant to Section 1. above in the office of the county recorder for St. Louis County, Minnesota, the proper city officials are hereby authorized to sell and convey the following described property in St. Louis County, Minnesota, by quit claim deed, to Peter L. and Judith A. Gemuenden for \$22,581, to be deposited in General Fund 0100-700-1448-4640, and to execute all documents necessary with regard to said conveyance:

That part of Southeast Quarter of Southwest Quarter (SE1/4 of SW1/4), Section Twenty-eight (28), Township Fifty (50) North, Range Fourteen (14) West of the Fourth Principal Meridian described as follows:

Commencing at the most westerly corner of Block 101, Duluth Proper Third Division, thence southwesterly along the extension of the northwesterly line of said Block 101 a distance of 58.79 feet to the intersection with the westerly line of said plat of Duluth Proper Third Division and said intersection being the point of beginning of the parcel of land to be described; thence continue southwesterly along the last described line a distance of 75.03 feet; thence deflect 41°-47'-24" to the left in a southerly direction along a line 50 feet distant and parallel with said east line of said Southeast Quarter of Southwest Quarter (SE1/4 of SW1/4) a distance of 127.55 feet; thence deflect 41°-47'-24" to the right in a southwesterly direction a distance of 36.09 feet; thence defect 90°-00'-00" to the left in a southeasterly direction a distance of 75 feet; thence deflect 90°-00'-00" to the left in a northeasterly direction a distance of 27.20 feet to said east line of said Southeast Quarter of Southwest Quarter (SE1/4 of SW1/4); thence deflect 41°-47'-24" to the left along said easterly line a distance of 240.09 feet to the point of beginning.

Section 3. That this ordinance shall take effect 30 days from and after its passage and publication. (Effective date: December 5, 2004)

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed October 25, 2004
Approved October 25, 2004
HERB W. BERGSON, Mayor

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OFFICIAL PROCEEDINGS

Special meeting of the Duluth City Council held on Thursday, November 4, 2004, 5:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Atkins, Johnson, Little, Reinert, Stewart, Stover and Vice President Ness -- 7

Absent: Councilor Gilbert and President Stauber -- 2

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MOTIONS AND RESOLUTIONS

Resolution 04-0737, by Councilor Ness, providing for the issuance, sale and delivery of \$1,040,000 gross revenue recreation facility refunding bonds (municipal golf courses), Series 2004; establishing the terms and form thereof; and creating a debt service fund therefor, was introduced for discussion.

Finance Director Bass explained the purpose for issuance of these bonds.

Resolution 04-0737 was adopted as follows:

BY COUNCILOR NESS:

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

Section 1. Authorization of bonds.

1.01. Pursuant to Minnesota Statutes, Section 471.15 through 471.191, the city operates a program of public recreation, of which the Lester Park Golf Course and Enger Park Golf Course (the golf courses) are a part.

1.02. Under and pursuant to Minnesota Statutes, Section 471.191, and Chapter 475 (collectively, the act), the city previously issued its \$3,315,000 gross revenue recreation facility refunding bonds (municipal golf courses), Series 1995, dated November 1, 1995 (the 1995 bonds), pursuant to an indenture of trust dated as of November 1, 1995 (the 1995 indenture), between the city and Norwest Bank Minnesota, National Association (now known as Wells Fargo Bank, National Association), as trustee, to refund certificates of participation which were issued by the city to finance improvements to and equipment for the golf courses. Under the terms of the 1995 Indenture, the city has the option to refund the 1995 bonds maturing on and after December 1, 2005, on or any date after December 1, 2004.

1.03. The city has determined that it is necessary and desirable that the city refund the 1995 bonds maturing on and after December 1, 2005, of which \$1,215,000 of principal amount is outstanding (the refunded bonds), call for the redemption and prepayment of the refunded bonds on December 10, 2004 (the redemption date), and issue gross revenue recreation facility refunding bonds (municipal golf courses), Series 2004 (the bonds), in the amount of \$1,040,000, pursuant to an Indenture of trust between the city and Wells Fargo Bank, National Association (the trustee).

1.04. The form of the indenture of trust (the indenture) proposed to be made and entered into between the city and the trustee (Public Document No. 04-1104-01) relating to the financing has been prepared and submitted to the city council.

Section 2. The city has retained Public Financial Management, Inc. (PFM), an independent financial advisor, in connection with the sale of the bonds. PFM has solicited proposals for purchasing the bonds from firms PFM has determined to be prospective purchasers of the bonds. Based on such solicitation and the nature of the revenue obligations, PFM has recommended that the sale of the bonds should be through private negotiations. The council hereby determines and ratifies the administration's recommendation to negotiate the sale of the bonds with Dougherty & Company LLC of Minneapolis, Minnesota (the purchaser). All actions of

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

the mayor, the clerk, the finance director and Public Financial Management, Inc., taken with regard to the sale of the bonds are hereby ratified and approved. Pursuant to such solicitation for the sale of the bonds, the city council has received and considered the proposal by the purchaser to purchase the bonds at a cash price of \$1,022,320, plus accrued interest, if any, on the total principal amount from December 1, 2004, to the date of delivery of the bonds and upon condition that the bonds bear interest at the annual rates as indicated below and shall mature on December 1 in the following respective years and amounts:

Maturity Year	Amount	Interest Rate	Maturity Year	Amount	Interest Rate
2005	\$120,000	2.00%	2009	\$130,000	3.25%
2006	120,000	2.30%	2010	135,000	3.40%
2007	125,000	2.60%	2011	140,000	3.65%
2008	125,000	3.00%	2012	145,000	3.80%

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 proposal.

Section 3. The bonds shall not be general obligations but shall be special limited obligations of the city, payable solely out of gross revenues (as defined in the Indenture) of the golf course facilities (other than to the extent payable out of proceeds of the bonds or the net proceeds out of insurance claims or condemnation awards). The bonds shall be secured by the indenture. The city has agreed to segregate the gross revenues derived from the golf course facilities on its official books and records and to remit such gross revenues pursuant to the Indenture. The mayor and the city clerk are hereby authorized and directed to execute the bonds in accordance with the Indenture.

Section 4. The Indenture is hereby approved. The mayor and the city clerk are hereby authorized and directed to execute and deliver the Indenture, substantially in the form now on file with the city clerk, with such necessary and appropriate omissions, modifications, insertions and additions as do not materially affect the substance of the transaction, consistent with the act, as the mayor in his discretion shall determine. The execution of the indenture by the mayor, with the advice of the city attorney, shall be conclusive evidence of such determination. All of the provisions of the indenture, when executed and delivered as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated herein and shall be in full force and effect from the date of execution and delivery thereof.

Section 5. The mayor, the city clerk and other city officials are hereby authorized to execute and deliver, on behalf of the city, such other documents as are necessary or appropriate in connection with the issuance, sale and delivery of the bonds. The city clerk is authorized and directed to give notice of redemption of the refunded bonds in accordance with the requirements of this resolution, the resolution authorizing the 1995 bonds and the 1995 indenture.

Section 6. All covenants, stipulations, obligations and agreements of the city contained in this resolution and the indenture shall be deemed to be the covenants, stipulations, obligations and agreements of the city to the full extent authorized or permitted by law, and all such covenants, stipulations, obligations and agreements shall be binding upon the city upon execution and delivery of such documents. Except as otherwise provided in this resolution, all rights, powers

and privileges conferred and duties and liabilities imposed upon the city or its officers by the provisions of this resolution or of the aforementioned documents to be executed and delivered by the city shall be executed or performed by the city or by such officers of the city, or such board, body, authority or agency thereof as may be required by law to exercise such powers and to perform such duties.

Section 7. Except as herein otherwise expressly provided, nothing in this resolution or the indenture, expressed or implied, is intended or shall be construed to confer upon any person or firm or corporation, other than the city, the trustee, the purchaser, or any holder of the bonds issued under the provisions of this resolution, any right, remedy or claim, legal or equitable, under and by reason of this resolution or any provision hereof, that the aforementioned documents and all of their provisions being intended to be and being for the sole and exclusive benefit of the city, the trustee, the purchaser, and any holder from time to time of the bonds issued under the provisions of this resolution.

Section 8. The officers and other agents or employees of the city are hereby authorized to do all acts and things required of them by or in connection with this resolution, the indenture and the bonds for the full, punctual and complete performance of all the terms, covenants and agreements contained in the bonds, the aforementioned documents including the prepayment and redemption of the refunded bonds and this resolution.

Section 9. In the event any of the officers of the city Authorized to execute the documents on behalf of the city under this resolution shall for any reason be unable to do so, any other officer of the city authorized to act for such designated officer is hereby directed and authorized to do so on behalf of the city with the same effect as if executed by the officer authorized to do so in this resolution.

Section 10. All actions of the members, officers, employees and staff of the city heretofore taken and in furtherance of this financing are hereby approved, ratified and confirmed.

Section 11. The mayor, the city clerk and other officers of the city are authorized and directed to prepare and furnish, with regard to the issuance of the bonds, certified copies of all proceedings and records of the city relating to the bonds and such other affidavits, certificates and opinions as may be required to show the facts relating to the legality, tax exemption and marketability of the bonds as such facts appear from the books and records in the officers' custody and control or as otherwise known to them; that all such certified copies, certificates, affidavits and opinions, including and heretofore furnished, shall constitute representations of the city as to the truth of all statements made by the city and contained herein.

Section 12. The Trustee is hereby appointed authenticating agent and paying agent with respect to the bonds.

Section 13. The city hereby authorizes the circulation of the official statement in connection with the sale and delivery of the bonds.

Section 14. Refunding; findings; redemption of refunded bonds.

14.01. A. The city council hereby finds that the refunding and prepayment of the refunding bonds is consistent with the 1995 Indenture and the covenants made with the holders of the 1995 bonds; that it is necessary and desirable for the extension and adjustment of the maturities in relation to the revenues of the golf course facilities available for the payment of the 1995 bonds and for reduction of interest rates on such financing.

B. It is hereby found and determined that the proceeds of the bonds in the amount of \$885,341.69, together with the funds available in the 1995 indenture debt service fund and reserve fund will be sufficient to pay the principal and interest due on the refunded bonds through the redemption date.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

14.02. A. The refunded bonds shall be redeemed and prepaid in accordance with their terms and in accordance with the terms and conditions set forth in the form of notice of call for redemption, as set forth in Section 14.03, which terms and conditions are approved. The clerk or the designee thereof is hereby authorized and directed to send written notice of call for redemption to the 1995 trustee in accordance with the terms of the 1995 Indenture.

14.03. The notice of call for redemption for the refunded bonds shall be in substantially the following form:

**NOTICE OF CALL FOR REDEMPTION
\$3,315,000 GROSS REVENUE RECREATION FACILITY REFUNDING BONDS
(MUNICIPAL GOLF COURSES), SERIES 1995
OF THE CITY OF DULUTH, MINNESOTA**

NOTICE IS HEREBY GIVEN that, by order of the City Council of the City of Duluth, Minnesota (the "City"), there have been called for redemption and prepayment on

December 10, 2004,

all outstanding Bonds of the City designated as Gross Revenue Recreation Facility Refunding Bonds (Municipal Golf Courses), Series 1995, dated November 1, 1995, having stated maturity dates of December 1 in the years 2005, 2006 and 2007, totaling \$1,215,000 in outstanding principal amount, and with the following CUSIP numbers:

Number	Maturity	Principal Amount*	Interest Rate	CUSIP Number**
R-10	2005	\$295,000	6.00%	26444M BH2
R-11	2006	305,000	6.05%	26444M BJ8
R-12	2007	615,000	6.10%	26444M BK5

The Bonds are being called at a price of par plus accrued interest to December 10, 2004, on which date all interest on said Bonds will cease to accrue. Holders of the Bonds hereby called for redemption are requested to present their Bonds for payment at the office of Wells Fargo Bank, National Association (formerly known as Norwest Bank Minnesota, National Association), Corporate Trust Operations, Sixth & Marquette, Minneapolis, Minnesota 55479, on or before December 10, 2004. It is recommended that you mail your bond registered or certified mail to guard against loss.

Important Notice: In compliance with the Economic Growth and Tax Relief Reconciliation Act of 2001, federal backup withholding tax will be withheld at the applicable backup withholding rate in effect at the time of payment by the redeeming institutions if they are not provided with your social security number or federal employer identification number, properly certified. This requirement is fulfilled by submitting a W-9 Form, which may be obtained at a bank or other financial institution.

* Indicates full call of stated maturity.

** Neither the City nor the trustee shall be responsible for the selection of or use of the CUSIP number, and no representation is made as to its correctness indicated in the Notice of Call for Redemption. CUSIP numbers are included solely for the convenience of the Holders.

BY ORDER OF THE CITY OF DULUTH, MINNESOTA

Section 15. Tax covenants. The city's representations, covenants and agreements set forth in Section 7.04 of the Indenture are true and correct as of the date hereof.

Section 16. Continuing disclosure. The city acknowledges that the bonds are subject to the continuing disclosure requirements of Rule 15c2-12 promulgated by the securities and exchange commission under the Securities Exchange Act of 1934 (17 C.F.R. § 240.15c2-12) (the rule). The rule governs the obligations of certain underwriters to require that issuers of municipal bonds enter into agreements for the benefit of the bondholders to provide continuing disclosure with respect to the bonds. To provide for the public availability of certain information relating to the bonds and the security therefor and to permit underwriters of the Bonds to comply with the rule, which will enhance the marketability of the bonds, the mayor and the clerk are hereby authorized and directed to execute a continuing disclosure certificate substantially in the form of the certificate currently on file in the office of the city clerk as Public Document No. 04-0219-02.

Resolution 04-0737 was unanimously adopted.

Approved November 4, 2004

HERB W. BERGSON, Mayor

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The meeting was adjourned at 5:10 p.m.

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

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, November 8, 2004, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Absent: None -- 0

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At this time, 7:00 p.m., President Stauber canceled the public hearing regarding the JOBZ business subsidy for Fineli Restoration, Inc.

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

04-1108-01 Kile Haugland, et al. (64 signatures), submitting petition objecting to Ordinance No. 9688, establishing the Downtown Waterfront Special Service District and Resolution 04-0596. -- Assessor

04-1108-02 Peg Hom, et al. (11 signatures), submitting petition to surface Bay View Alley from Piedmont Avenue to West Diamond Avenue with asphalt. -- Assessor

04-1108-03 One West Condominium Association, Inc., submitting petition to vacate that portion of the sidewalk easement on Lake Avenue and West Superior Street adjacent to the building at 1 West Superior Street. -- Assessor

04-1108-13 Harbor City Masonry, Inc., submitting communication regarding a JOBZ business subsidy agreement with Fineli Restoration, Inc. (04-0746R). -- Received

04-1108-04 Don Kinsey submitting communication regarding the proposed reclassification from R-1-b to R-3 of the property located southwest of Rice Lake Road between Blackman and Pecan avenues (supported by 344 signatures) (04-069-O). -- Received

04-1108-05 The PFM Group submitting presale analysis regarding sale of \$4,045,000 G.O. sewer utility revenue Bonds, Series 2004D, and \$1,355,000 G.O. equipment certificates of indebtedness, Series 2004E (04-0734R). -- Received

04-1108-06 DeWayne Torfin submitting communication regarding the petition objecting to the creation of the Downtown Waterfront Special Service District (04-1108-01). -- Received

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REPORTS OF OFFICERS

04-1108-07 Assessor submitting:

(a) Affidavit of mailing of notice of public hearing of the special assessment board meeting to be held at 3:30 p.m. on Tuesday, November 9, 2004, in Room 106A, City Hall, regarding the proposed utility improvement in Trinity Road - sanitary sewer and watermain (estimated cost - \$115,500). -- Clerk

(b) Letter of insufficiency of petition objecting to Ordinance No. 9688, establishing the Downtown Waterfront Special Service District;

(c) Letters of sufficiency of petitions to:

(1) Resurface Bay View Alley from Piedmont Avenue to West Diamond Avenue with asphalt;

(2) Vacate:

(A) That portion of 47th Avenue East lying southeasterly of the right-of-way of London Road;

(B) That portion of the sidewalk easement on Lake Avenue and West Superior Street adjacent to the building at 1 West Superior Street. -- Received

04-1108-08 Building official submitting appeal of the board of zoning appeals' decision to deny a request to relax the minimum front yard setback from 25 feet to 22 feet and the minimum rear yard setback from 25 feet to 19 feet for the construction of an eight unit condominium/townhouse building on property located at 908-26 Lake Avenue South (Sola Properties, LLC). -- Committee 2 (Planning and economic development)

04-1108-09 Clerk submitting application to the Minnesota gambling control board for exemption from lawful gambling license from St. James School on April 14, 2005 (raffle). -- Received

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REPORTS OF BOARDS AND COMMISSIONS

04-1108-10 Duluth airport authority unaudited balance sheet dated August 31, 2004. -- Received

04-1108-11 Duluth state convention center administrative board minutes of September 28, 2004, meeting. -- Received

04-1108-12 Duluth transit authority minutes of August 31, 2004, meeting. -- Received

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OPPORTUNITY FOR CITIZENS TO BE HEARD

Dale Swapinski, representing the Hospitality League, thanked the council for clarifying the language on the ballot so the public knew what they were voting for and urged the council not to change the current smoking in public places ordinance. He asked the council to abide by the citizens' wishes as reflected with the failure of the recent city vote on the proposed ordinance. Mr. Swapinski also stated that the Hospitality League wants to be represented at any upcoming meetings called by the police department.

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Dave Barschdorf stated that the government does not have a right to get into private people's business and he voiced suggestions for intersections with signal lights, especially 46th Avenue West and Grand Avenue.

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RESOLUTIONS TABLED

Councilor Ness moved to remove Resolution 04-0705, accepting reimbursement from DEDA for Baywalk construction expenses relating to Building N in the amount of \$298,900, authorizing a Baywalk easement agreement with Building N, Inc., and repealing Resolution 04-003; and Resolution 04-0714, awarding contract to Northland Constructors, Inc., for Baywalk extension, in the amount of \$168,000, by Councilor Gilbert, from the table, which motion was seconded and unanimously carried.

Resolution 04-0705 was adopted as follows:

BY COUNCILOR GILBERT:

RESOLVED, that the city of Duluth does hereby authorize acceptance of reimbursement from DEDA for certain Baywalk construction expenses related to Building N in the amount of \$298,900; said funds to be deposited into Fund 0255.

FURTHER RESOLVED, that the proper city officials are hereby authorized to enter into a Baywalk easement agreement substantially in the form of that on file in the office of the city clerk as Public Document No. 04-1108-14, with Building N, Inc., in the amount of \$118,500, payable from Fund 0255.

FURTHER RESOLVED, that Resolution 04-0039 adopted January 26, 2004, is hereby repealed in its entirety.

Resolution 04-0705 was adopted upon the following vote:

Yeas: Councilors Atkins, Johnson, Reinert, Stewart, Stover and President Stauber -- 6

Nays: Councilors Gilbert, Little and Ness -- 3

Approved November 8, 2004

HERB W. BERGSON, Mayor

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Resolution 04-0714 was adopted as follows:

BY COUNCILOR GILBERT:

RESOLVED, that Northland Constructors Inc., be and hereby is awarded a contract for the Baywalk extension along the waterfront in Canal Park from the baby-blue bridge to the carnival thrill building with pedestrian walk-thru in accordance with specifications on its low specification bid of \$168,000, terms net 30, FOB job site, payable out of Economic Development Fund 0255, Dept./Agency 020, Object 5458.

Resolution 04-0714 was adopted upon the following vote:

Yeas: Councilors Atkins, Johnson, Reinert, Stewart, Stover and President Stauber -- 6

Nays: Councilors Gilbert, Little and Ness -- 3

Approved November 8, 2004

HERB W. BERGSON, Mayor

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Councilor Gilbert moved to remove Resolution 04-0726, approving DEDA Resolution 04D-92 authorizing DEDA condemnation of Lots 44, 46 and 48, West Third Street, Duluth Proper First Division, for creation of a residential facility for chronic alcoholics, from the table, which motion was seconded and unanimously carried.

Resolution 04-0726 was adopted as follows:

BY COUNCILOR GILBERT:

RESOLVED, that the use of eminent domain by DEDA approved pursuant to DEDA Resolution 04D-92 is hereby approved.

Resolution 04-0726 was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Little, Ness, Stewart, Stover and President Stauber -- 7

Nays: Councilors Atkins and Reinert -- 2

Approved November 8, 2004

HERB W. BERGSON, 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 Stauber moved passage of the consent agenda, which motion was seconded and unanimously carried.

BY COUNCILOR NESS:

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

(a) Authorization of bonds and certificates. 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 general obligation bonds and general obligation equipment certificates of indebtedness for the following purposes:

(1) \$4,045,000 general obligation sewer utility revenue bonds, Series 2004D (the bonds), are hereby authorized and shall be issued pursuant to Ordinance No. 9694, adopted October 12, 2004, Minnesota Statutes, Chapter 475, and Section 115.46 and 444.075, and Section 55 of the Home Rule Charter of the city for the payment of the costs of improvements to the municipal sewer utility; and

(2) \$1,355,000 general obligation equipment certificates of indebtedness, Series 2004E (the certificates), are hereby authorized and shall be issued 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 certificates;

(b) Issuance and sale of bonds and certificates. The terms and conditions of the bonds and certificates and the sales thereof are set forth in the official terms of offerings on file with the city clerk as Public Document No. 04-1108-15. Each and all of the terms and provisions set forth in the official terms of offerings are adopted and confirmed as the terms and conditions of the bonds and certificates and the sales thereof, and the city council shall meet at the time and place fixed herein to consider bids for the purchase of the bonds and certificates;

(c) Competitive sale of bonds and certificates. Public Financial Management, Inc., independent financial advisor to the city, is hereby authorized to provide the notice of the sales of the bonds and certificates 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 and certificates shall be set forth in subsequent resolutions of this city council.

Resolution 04-0734 was unanimously adopted.

Approved November 8, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

RESOLVED, that United Electric Company be and hereby is awarded a contract for furnishing and delivering QL induction lighting system at Depot parking ramp, Coney Island parking ramp, casino parking ramp and the Lakewalk walkways for the facilities division in accordance with specifications on its low specification bid of \$62,136.36, terms net 30, FOB destination, payable out of Energy Management Fund 0257, Department/Agency 015, Organization 3000, Object 5241.

Resolution 04-0743 was unanimously adopted.

Approved November 8, 2004, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

WHEREAS, the Greater Twin Cities Area Muscular Dystrophy Association has applied to the Minnesota gambling control board for a lawful gambling exemption (raffle); and

WHEREAS, the Duluth City Council has received a copy of said exemption application to the Minnesota gambling control board and has 60 days in which to present a resolution to said Minnesota gambling control board objecting to the exemption application; and

WHEREAS, the city council approves of the exemption application and wishes to waive the 60 day waiting period.

NOW, THEREFORE, BE IT RESOLVED, that the Duluth City Council hereby approves of the Minnesota gambling control board issuing a lawful gambling exemption to the Greater Twin

Cities Area Muscular Dystrophy Association and does hereby waive the 60 day waiting period which it has to object to the issuance of said exemption.

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

Resolution 04-0748 was unanimously adopted.

Approved November 8, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

WHEREAS, the following organization has applied to the Minnesota gambling control board for a premise permit; and

WHEREAS, a copy of said application was also filed with the city of Duluth as required by Minnesota Statutes 349.213, Subdivision 2, and was investigated by the Duluth police department and reviewed and approved by the Duluth alcohol, gambling, and tobacco commission; and

WHEREAS, the city council approves of the issuance of said license.

NOW, THEREFORE, 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

Duluth Amateur Youth Basketball Association

Resolution 04-0749 was unanimously adopted.

Approved November 8, 2004

HERB W. BERGSON, Mayor

Gambling Site

Pioneer Bar

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the proposed amendments to the specifications for the civil service classification of senior programs director, including a title change to associate director, park and recreation office and senior programs, which were approved by the civil service board on September 7, 2004, and which are filed with the city clerk as Public Document No. 04-1108-16, are approved. This classification shall be subject to the city's collective bargaining unit with its supervisory employees; and that pay range for said classification shall be ranges 1070 - 1080. 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 04-0736 was unanimously adopted.

Approved November 8, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

WHEREAS, a sufficient petition was filed with the city clerk requesting the vacation of the utility easement in the alley between East Fourth Street and East Fifth Street, from 22nd Avenue East to 23rd Avenue East, legally described as that part of the utility easement abutting Lot 3, easterly 40 feet of Lot 4, Lot 5 except easterly ten feet, Block 32; Lot 3, easterly 40 feet of Lot 4, westerly 40 feet of Lot 5, all of Lot 6, Block 33, East Lawn Division; and abutting Lots 1-3 and 13-16, Block 13, Highland Park Addition; and

WHEREAS, 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

WHEREAS, the city planning commission determined there is no need or necessity for the petitioned utility easement and, therefore, unanimously approved the vacation at its regular meeting of October 27, 2004 (Reference Planning Commission File No. 04119).

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth finds there is no need or necessity to retain the petitioned utility easement and approves the vacation more particularly described as Public Document No. 04-1108-17.

RESOLVED FURTHER, that the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of St. Louis County, Minnesota, a certified copy of this resolution together with a plat showing the portion of the streets and alleys to be vacated as well as the easements to be retained.

Resolution 04-0744 was unanimously adopted.

Approved November 8, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

WHEREAS, based on the recent history of actual sewer system overflows and the estimated flow of clear groundwater to the city's sanitary sewer system originating in each of its sewer basins, the availability of city resources to reduce such flows under the city's I&I program and the results anticipated from so allocating such resources, the director of public works and utilities has recommended that sewer basins 25 and 26 be added to sewer basins 1, 2, 3, 4, 5 and 6 as basins designated for inspection as provided for in Section 43-33 of the Code; and

WHEREAS, the council accepts said recommendation.

RESOLVED, that pursuant to the provisions of Section 43-33 of the Code, sanitary sewer basins 25 and 26 are hereby designated as the districts in the city wherein the city can best utilize its available resources to reduce the amount of unpolluted water entering or infiltrating the city's wastewater collection system and said basins are therefore designated as districts within which the city shall focus its enforcement efforts under Chapter 43 of the Code.

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

Resolution 04-0727 was unanimously adopted.

Approved November 8, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that the proper city officers are hereby authorized to reimburse the St. Louis County Soil and Water Conservation District as fiscal agent for the Miller Creek joint powers board, the sum of \$13,425.94 to pay the local share of the costs of construction of the Miller Creek sediment trap project located adjacent to the Miller Hill Mall; said sum to be payable from the Stormwater Utility Fund 0535, Agency 500, Organization 1915, Object 5439.

Resolution 04-0738 was unanimously adopted.

Approved November 8, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that the proper city officers are hereby authorized to execute an agreement with the Salvation Army, under which the Salvation Army would administer an emergency energy assistance program using \$16,086 in funds that the city will receive from the Ordean Foundation for such purpose, which agreement is on file in the office of the city clerk as Public Document No. 04-1108-18; payment by the city will be made from the General Fund 0100, Agency 700, Organization 1428, Object MS14.

Resolution 04-0740 was unanimously adopted.

Approved November 8, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that EPG Companies, Inc., be and hereby is awarded a contract for the SCADA telemetry system upgrade on resolving communication problems between ROC computer at Great Lakes interconnect and radios at Town Border stations for the utility operation division in accordance with specifications on its low specification bid of \$14,500, terms 30, FOB job site, payable out of Gas Fund 0520, Department/Agency 500, Organization 1960, Object 5404.

Resolution 04-0742 was unanimously adopted.

Approved November 8, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

RESOLVED, that Resolution 04-0409 authorizing the city to apply for and accept a terrorism prevention program grant from the Minnesota department of public safety, homeland security emergency management division, for an interoperable radio system be amended to increase the amount by \$3,038 for a new total of \$308,523; said monies to be deposited into Fund 0215.

Resolution 04-0735 was unanimously adopted.

Approved November 8, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

RESOLVED, that the city is hereby authorized to accept from the division of homeland security and emergency management, Minnesota department of public safety, a 2003 critical infrastructure, enhanced international border security, grant in the amount of \$149,548.

BE IT FURTHER RESOLVED, that the proper city officials are authorized to execute any agreements necessary to implement the project on behalf of the police department. All monies from this grant will be deposited into General Fund 0100, Agency 200, Organization 1620, Revenue Source 4230.

Resolution 04-0741 was unanimously adopted.

Approved November 8, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR REINERT:

RESOLVED, that the proper city officers are authorized and directed to enter into an agreement with Duluth Amateur Youth Basketball Association providing for the association's use of the Washington Recreation Center for its program activities for the period December 1, 2004, through April 1, 2005; said agreement to be substantially in the form of Public Document

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

No. 04-1108-19 on file in the office of the city clerk; said monies to be deposited into Special Projects Fund 0210, Agency 030, Special League Account 2190.

Resolution 04-0708 was unanimously adopted.

Approved November 8, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR REINERT:

RESOLVED, that the proper city officers are authorized and directed to enter into an agreement with Head of the Lakes Promotions and Events, Inc., providing for the use and operation of the Lower Chester ice skating facility for an initial period of one year with automatic renewal options for an additional two years; said agreement to be substantially in the form of Public Document No. 04-1108-20 on file in the office of the city clerk; said money to be deposited into General Fund 0100-400-1812-4612.

Resolution 04-0716 was unanimously adopted.

Approved November 8, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR REINERT:

RESOLVED, that the proper city officers are authorized and directed to enter into an agreement with Riverside Community Club, an unincorporated association, providing for the club's shared use of the Riverside Community Recreation Center for its program activities for a period ending December 31, 2005, with an option to renew for successive two year periods; said agreement to be substantially in the form of Public Document No. 04-1108-21 on file in the office of the city clerk.

Resolution 04-0717 was unanimously adopted.

Approved November 8, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR REINERT:

RESOLVED, that the proper city officers are hereby authorized to execute a grant agreement with the Minnesota department of natural resources, which agreement is on file in the office of the city clerk as Public Document No. 04-1108-22, under which agreement the city will receive up to \$5,000 to reimburse it for costs incurred in maintaining cross country ski trails in the city of Duluth during the 2004-2005 ski season. The reimbursement should be deposited in General Fund 0100, Agency 500, Organization 1920, Revenue Source 4232.

Resolution 04-0733 was unanimously adopted.

Approved November 8, 2004

HERB W. BERGSON, Mayor

- - -

The following resolutions were also considered:

Resolution 04-0730, by Councilor Johnson, appointing _____ to Seaway Port Authority of Duluth replacing Helena E. Jackson, was introduced for discussion.

Councilor Atkins moved to amend the title and body of the resolution by replacing the blank lines with the name "Betty George," which motion was seconded and failed upon the following vote:

Yeas: Councilors Atkins, Little, Ness and Stover -- 4

Nays: Councilors Gilbert, Johnson, Reinert, Stewart and President Stauber -- 5

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Councilor Ness moved to amend the title and body of the resolution by replacing the blank lines with the name "Garry Krause," which motion was seconded and failed upon the following vote:

Yeas: Councilors Gilbert, Ness and Stover -- 3

Nays: Councilors Atkins, Johnson, Little, Reinert, Stewart and President Stauber -- 6

Councilor Atkins moved to amend the title and body of the resolution by replacing the blank lines with the name "Ray Klosowski," which motion was seconded and carried upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Ness, Reinert, Stewart, Stover and President Stauber -- 8

Nays: Councilor Little -- 1

Resolution 04-0730, as amended, was adopted as follows:

BY COUNCILOR JOHNSON:

RESOLVED, that the city council hereby appoints Ray Klosowski to the Seaway Port authority of Duluth for a term expiring October 10, 2010, replacing Helena E. Jackson.

Resolution 04-0730, as amended, was adopted upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Ness, Reinert, Stewart, Stover and President Stauber -- 8

Nays: Councilor Little -- 1

Approved November 8, 2004

HERB W. BERGSON, Mayor

- - -

President Stauber moved to consider Resolution 04-0750, declaring the results of the special municipal election held November 2, 2004, at this time, which motion was seconded and unanimously carried.

Resolution 04-0750 was adopted as follows:

BY PRESIDENT STAUBER:

WHEREAS, on November 2, 2004, there was held in the city of Duluth, pursuant to the provisions of Laws of Minnesota, 1973, Chapter 281, a special municipal election for the purpose of deciding the following initiative and referendum question:

Should Duluth's existing smoking ordinance be changed to prohibit smoking in indoor public places and most places of work where two or more people work, including restaurants with bars, bars and private clubs (Article VII, Chapter 28, Duluth City Code); and

WHEREAS, the judges of the election precincts in the city have made their returns of said election, and the city council, acting as a canvassing board, has duly canvassed said returns (Public Document No. 04-1108-24) and ascertained the number of ballots cast at said election and thereby declared that at said election there were cast 50,177 votes, said votes having been cast in the following manner:

THAT on the question, "Should Duluth's existing smoking ordinance be changed to prohibit smoking in indoor public places and most places of work where two or more people work, including restaurants with bars, bars and private clubs (Article VII, Chapter 28, Duluth City Code)," there were 23,183 YES votes and 26,994 NO votes.

NOW, THEREFORE, BE IT RESOLVED, that the questions, "Should Duluth's existing smoking ordinance be changed to prohibit smoking in indoor public places and most places of work where two or more people work, including restaurants with bars, bars and private clubs (Article VII, Chapter 28, Duluth City Code)," having received a majority of negative responses and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

is hereby declared disapproved by the electors voting upon such question. The results of a declaration of disapproval is that there shall be no change in the city ordinance.

Resolution 04-0750 was unanimously adopted.

Approved November 8, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0746, by Councilor Gilbert, authorizing a job opportunity building zone (JOBZ) business subsidy agreement with Fineli Restoration, Inc., was introduced for discussion.

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

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At this time, 7:28 p.m., President Stauber recessed the council meeting until 7:30 p.m.

- - -

At this time, 7:30 p.m., President Stauber called the public hearing regarding a JOBZ business subsidy for TrueRide, Inc., to order.

Heidi Timm Bujuold reviewed the criteria passed by the council and how TrueRide, Inc., meets the criteria.

Garry Krause encouraged the council not to pursue random acts of developments but target certain developments which will create the spin-off businesses and support industries that will follow.

At this time, 7:40 p.m., President Stauber closed the public hearing and the regular order of business was resumed.

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Resolution 04-0745, by Councilor Gilbert, authorizing a job opportunity building zone (JOBZ) business subsidy agreement with TrueRide, Inc., Epicurean Cutting Surfaces, Inc., Loll Designs, Inc., and Hawks Boots, LLC., was introduced for discussion.

Mayor Bergson thanked the company for coming forward with the application, city staff and the Duluth Area Chamber of Commerce for urging the city to move forward with this project.

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

Greg Benson, co-owner of TrueRide, reviewed the history of TrueRide and explained that they will fix up the building, put the money back into the business and create job opportunities which will help Duluth.

Councilor Ness stated that the JOBZ program is controversial, but it is also a tool for a small business that needs to expand and that will bring revenue into the city. He continued by saying that this business is taking brown field that is a blight and making an investment into that piece of property.

Councilor Stewart reviewed that he opposed the creation of the JOBZ zone as it is a subsidy program which causes cities to make their citizens pay more for the services they provide because the state has a budget crisis. He stated, however, that he does support this project as it appears to be a very good business for the city.

Resolution 04-0745 was adopted as follows:

BY COUNCILOR GILBERT:

RESOLVED, that the proper city officials are authorized to enter into a JOBZ business subsidy agreement substantially in the form of that on file in the office of the city clerk as Public Document No. 04-1108-23 with Trueride, Inc, Epicurean Cutting Surfaces, Inc., Loll Designs, Inc.,

and Hawks Boots, LLC, (qualified business) related to property located at 1326 North 59th Avenue West.

Resolution 04-0745 was adopted upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stover and President Stauber -- 8

Nays: Councilor Stewart -- 1

Approved November 8, 2004

HERB W. BERGSON, Mayor

- - -

**INTRODUCTION AND CONSIDERATION OF ORDINANCES
ORDINANCE TABLED**

BY COUNCILOR ATKINS

04-066 - AN ORDINANCE AMENDING ORDINANCE 9688; CREATING AN ADVISORY COMMITTEE FOR THE DOWNTOWN WATERFRONT SPECIAL SERVICE DISTRICT.

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

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

Steve Townsend stated that he cannot find in state law where it allows caps on property taxes and therefore the weight of this special service district is being put disproportionately on the small businesses within the district.

Barbara Arnold stated that it is difficult for small business to compete with the big businesses and that the council should review the plan as 43 percent of property owners contest the service district.

Dwayne Torfin reviewed that the petition submitted failed because the small businesses are outnumbered by the large businesses who own more parcels of land. He reviewed that DEDA-owned land and partially exempt properties were used by the Greater Downtown Council (GDC) to get the percent needed to pass the special service district.

Woody Skafta voiced his lack of confidence in the GDC actions and promises based on how they obtained the needed percent to get the special service district passed.

Councilor Atkins moved to retable the ordinance, which motion was seconded and unanimously carried.

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The following entitled ordinances were read for the first time:

BY COUNCILOR NESS

04-067 - AN ORDINANCE AMENDING CHAPTER 2, ARTICLE XXXI, OF DULUTH CITY CODE, 1959, AS AMENDED; PERTAINING TO TAX BASE IMPACT STATEMENT.

- - -

BY COUNCILOR GILBERT

04-068 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NO. 21 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION OF M-1, MANUFACTURING DISTRICT, TO R-3, APARTMENT RESIDENTIAL DISTRICT, PROPERTY BOUNDED BY FIRST STREET, 25TH AVENUE WEST AND SECOND STREET ALLEY (THARALDSON AND BERGH, ET AL.).

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BY COUNCILOR GILBERT

04-069 - AN ORDINANCE AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NOS. 28 AND 34, AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-B,

ONE-FAMILY RESIDENTIAL DISTRICT, AND R-1-C, ONE FAMILY RESIDENTIAL DISTRICT, TO R-3, APARTMENT RESIDENTIAL DISTRICT, PROPERTY ON THE SOUTHWEST SIDE OF RICE LAKE ROAD, ROUGHLY BETWEEN PECAN AVENUE AND HOMES THAT FRONT ON BLACKMAN AVENUE AND NORTH OF THE UNBUILT DAVIS STREET RIGHT-OF-WAY (MARK LAMBERT/SUMMIT MANAGEMENT, LLC).

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

Dan Kinsey, Fred Vos and David W. Johnson voiced concern on the project as they have not been able to get the information they need to assess the project, including traffic studies; wetland reports that are inaccurate; there are doubts about the representative from the city doing the Indian burial study; the wetlands are full of animals and birds and the lack of parking for the number of students who would be living in the apartments. Mr. Johnson questioned if the project could be done in phases to see how each phase works before moving on to the second phase.

David Smith, Josh Gamble, David Stellmach, Joseph Marey and Necia Cochlin, University of Minnesota-Duluth (UMD) students, stated that they feel the UMD students are opposed to the development because Duluth does not need this type of student housing since affordable housing is always available for students, and questioned why the students have not been asked to be involved in the review of this project. Ms. Cochlin stated that they have started a petition drive asking the city not to approve this project, as the city should not be using undeveloped green spaces areas for development.

Vicki Sanville stated that Duluth needs multi-unit student housing to cut back on the student sprawl into single family houses and that the environmental issues have not been ignored with this project.

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BY COUNCILOR STOVER

04-070 - AN ORDINANCE AUTHORIZING AGREEMENT WITH OLIVER COMPANIES, INC., FOR SALE OF THE WATER AND GAS BUILDING.

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

Peggy Marrin stated that the city needs to get the best price it can for this building.

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

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

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, November 22, 2004, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Absent: None -- 0

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

04-1122-01 Susan L. Cannon, et al. (34 signatures), submitting petition to extend 2,630 feet of sanitary sewer within Howard Gnesen Road beginning at Middle Road and extending northerly to Norton Road and 2,070 feet of sanitary sewer within Norton Road beginning at Howard Gnesen Road and extending westerly. -- Assessor

04-1122-18 Canal Park Business Association submitting communication regarding metering of parking in Canal Park (04-0776R and 04-0777R). -- Received

04-1122-02 The following submitting communications regarding the proposed reclassification from R-1-b and R-1-c, one family residential districts, to R3, apartment residential district, property on the southwest side of Rice Lake Road, roughly between Pecan Avenue and homes that front on Blackman Avenue and north of the unbuilt Davis Street right-of-way (04-069-O): (a) Minnesota Public Interest Research Group (MPIRG) (supported by 323 signatures); (b) Warner B. Wirta. -- Received

04-1122-19 The following submitting communications regarding the decision of the board of zoning appeals to deny a variance for the construction of an eight unit condominium/townhouse building on property located at 908-26 Lake Avenue South (04-0752R): (a) Andy Borg; (b) Patrick Contardo; (c) Mike Dosan; (d) Robert and Mary Feiro; (e) James B. Howe; (f) Jeff Lisakka; (g) Joel and Joy Johnson; (h) Lakehead Boat Basin; (i) J. Clark and Jean A. Laundergan; (j) Thomas J. Lyle; (k) Tom and Elizabeth Mackay; (l) Jerry Paulson; (m) Patti Peters; (n) Geri and Walter Pietrowski; (o) Al Robins; (p) James D. Robinson, Jr. -- Received

04-1122-20 The following submitting communications regarding the proposed special use permit to James Bechthold, Minnesota Towers, Inc., and American Cellular Corporation for the installation of a 195 foot tower designed to hold five wireless tenants on property located at 2901 Morris Thomas Road (04-0758R): (a) Amy Bourdeau; (b) Deb LaFave; (c) Jeanette Martimo. -- Received

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REPORTS OF OFFICERS

04-1122-03 Assessor submitting for confirmation the assessment rolls levied to defray the assessable portions of a permanent alley in 102nd Avenue West Alley from Gary Street to McGonagle Street, Contract 5387 (assessable - \$28,574.39), and Fond du Lac sanitary sewer and watermain, Contract 5333 (assessable - \$695,799.42). -- Received

04-1122-04 Engineering division submitting monthly status report of November 1, 2004. -- Received

04-1122-05 Purchasing agent submitting emergency purchase order awarded to GPM, Inc., to replace a burned out motor at the steam plant. -- Received

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REPORTS OF BOARDS AND COMMISSIONS

04-1122-21 Alcohol, gambling and tobacco commission minutes of October 6, 2004, meeting. -- Received

04-1122-06 Board of zoning appeals minutes of October 26, 2004, meeting. -- Received

04-1122-07 Commission on disabilities: (a) Communication regarding snow removal in the Downtown area; (b) Minutes of October 6, 2004, meeting. -- Received

04-1122-08 Housing and redevelopment authority of Duluth minutes of: (a) June 29; (b) July 27, 2004, meetings. -- Received

04-1122-09 Parking commission minutes of October 12, 2004, meeting. -- Received

04-1122-10 Spirit Mountain recreation area authority minutes of October 13, 2004, meeting. -- Received

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MOTIONS AND RESOLUTIONS

The following entitled resolution was read for the first time:

BY PRESIDENT STAUBER

04-0778R - RESOLUTION AMENDING THE STANDING RULES OF THE CITY COUNCIL; CREATING A NEW RULE 19 REGULATING USE OF ELECTRONIC MAIL.

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

BY COUNCILOR NESS:

RESOLVED, that the assessment rolls levied to defray the assessable portions of the following:

(a) Permanent alley in 102 Avenue West Alley from Gary Street to McGonagle Street (Contract No. 5387 - assessable amount: \$28,574.39);

(b) Fond du Lac sanitary sewer and watermain (Contract No. 5333 - assessable amount: \$695,799.42); are hereby confirmed.

Resolution 04-0760 was unanimously adopted.

Approved November 22, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR NESS;

WHEREAS, the city and its American Indian commission (commission) desire to facilitate the acceptance of gifts to further the duties and objectives of the commission by streamlining the acceptance process so that each gift does not require a separate city council resolution.

RESOLVED, that the city treasurer is authorized to accept gifts from individuals and organizations given to further the duties and objectives of the commission by streamlining the acceptance process so that each gift does not require a separate city council resolution. These gifts will be deposited in the Special Projects Fund 210-030-2156-4690 and will be used only in accordance with the expressed wishes of the donor.

RESOLVED FURTHER, that the amount and purpose of each gift be communicated in writing by the treasurer to the Duluth City Council within 14 days after the donation is made.

Resolution 04-0769 was unanimously adopted.

Approved November 22, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR NESS:

RESOLVED, that the proper city officials are hereby authorized to execute a supplemental labor agreement with Local 101 International Association of Firefighters modifying language

regarding the beginning dates of dental, sick leave and life insurance coverage of new employees and clarifying language on retiree health care, which agreement is on file in the office of the city clerk as Public Document No. 04-1122-11.

Resolution 04-0771 was unanimously adopted.
Approved November 22, 2004
HERB W. BERGSON, Mayor

- - -

BY COUNCILOR NESS:

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. 04-1122-16 with The Valuation Group, Inc., for appraisal services related to the tax court proceeding involving the Miller Hill K-Mart store property in the amount of not to exceed \$5,000, payable from Fund 0100-700-1428-5441.

Resolution 04-0779 was unanimously adopted.
Approved November 22, 2004
HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the proposed amendments to the specifications for the civil service classification of utility operations leadworker, which were approved by the civil service board on November 2, 2004, and which are filed with the city clerk as Public Document No. 04-1122-12, are approved. This classification shall remain subject to the city's collective bargaining agreement with its basic unit employees and compensated at Pay Range 32, \$3,487 to \$4,145 per month.

Resolution 04-0747 was unanimously adopted.
Approved November 22, 2004
HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

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

Section 1. Recitals.

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

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

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

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

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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

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

Mary Ann Sironen, of the town of Duluth, Minnesota, whose term shall expire on the first business day of January, 2008;

Rick Certano, of the city of Duluth, Minnesota, whose term shall expire on the first business day of January, 2008.

Section 3. Election of board of managers. Election of the above named person to the board of managers of the sanitary district is hereby approved and such person is hereby 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 each board member elected a certificate of the board member's election.

Resolution 04-0754 was unanimously adopted.

Approved November 22, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that the city of Duluth hereby agrees to accept the donation from Alex Kramer and Brenda Kramer (Public Document No. 04-1122-22), at no cost to the city, of a permanent easement for utility purposes over, under and across property in Saint Louis County, Minnesota, legally described as that portion of vacated 27th Street South lying within ten feet of Lot 159, Minnesota Avenue, Lower Duluth, and within ten feet of Minnesota Avenue.

Resolution 04-0756 was unanimously adopted.

Approved November 22, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

WHEREAS, a sufficient petition was filed with the city clerk requesting the vacation of streets and alleys under Mountain Villas in the Spirit Mountain Recreation Area legally described as:

(a) Roe Street between the easterly right-of-way of 96th Avenue West and the westerly right-of-way of 94th Avenue West, adjoining Block 2, Block 15, Block 3, and Block 14, Mesaba Heights Addition to Duluth;

(b) The alleys in Block 2, Block 15, Block 3, Block 14, and Block 13, Mesaba Heights Addition to Duluth;

(c) 96th Avenue West between Blocks 3 and 4 and 13 and 14, Mesaba Heights Addition to Duluth;

(d) 95th Avenue West between Blocks 2 and 3 and 14 and 15, Mesaba Heights Addition to Duluth; and

WHEREAS, 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

WHEREAS, the city planning commission found that said street and alley easements are useless for the purpose for which they were intended, based on the following findings: as part of the Spirit Mountain recreation area authority, these rights-of-way will not be needed for street or

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

utility purposes; and the commission did approve, unanimously, the street and alley vacation petition at its November 9, 2004, meeting (Reference Planning Commission File No. 04124).

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation of the street and alleys described above and as more particularly described on Public Document No. 04-1122-13.

RESOLVED FURTHER, that the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of St. Louis County, Minnesota, a certified copy of this resolution together with a plat showing the portion of the easement to be vacated.

Resolution 04-0757 was unanimously adopted.

Approved November 22, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

WHEREAS, that the Saint Louis County Board of Commissioners is hereby requested to free convey to the city of Duluth the following tax forfeited parcel for a 2.8 acre forest park and trails area.

PC File No.	Applicant	Legal Description	Location
04131	City of Duluth	easterly 200 feet of the NW1/4 of the SE1/4 of the SE1/4, Section 35, Township 51N, Range 14W Parcel ID #010-2720-00340 (east 200 feet)	approximately 460 feet east of the east end of Vassar Street, a parcel 200 feet by 612 feet

Resolution 04-0764 was unanimously adopted.

Approved November 22, 2004

HERB W. BERGSON, Mayor

- - -

BY PRESIDENT STAUBER:

WHEREAS, the state of Minnesota, department of natural resources, division of waters, administers financial assistance for coastal management purposes, through Minnesota's Lake Superior coastal program; and

WHEREAS, the city of Duluth desires financial assistance under the coastal management assistance grant program;

NOW, THEREFORE, BE IT RESOLVED, as follows:

(a) That the Duluth City Council approves of and supports the city administration in filing an application to Minnesota's Lake Superior coastal management program for financial assistance Amity Creek and Tischer Creek ownership mapping project;

(b) That the director of planning and development is hereby authorized and directed to execute and file an application with the Minnesota department of natural resources and to provide all information and documentation as required to become eligible for possible funding assistance;

(c) That the director of planning and development has signatory authority to apply for and accept if granted the funds;

- (d) That the city of Duluth does agree to act as legal sponsor and to obligate funds

required to satisfactorily complete the proposed project and become eligible for reimbursement

under the terms and conditions of Minnesota's Lake Superior coastal program matching funds to come from General Fund 0210-030-2154.

Resolution 04-0770 was unanimously adopted.

Approved November 22, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

WHEREAS, by resolution of intent numbered 04-0660, the council did request the administration to prepare plans and specifications for the construction of approximately 850 feet of sanitary sewer and 700 feet of watermain easterly from Trinity Road to serve properties at 3330, 3400 and 3408 Trinity Road (City Job No. 0455SN) at an estimated cost of \$115,000; and

WHEREAS, said plans and specifications have been prepared and filed with the secretary of the special assessment board; proper notice has been sent to the benefitting property owners; the public hearing has been held that allowed property owners to voice their opinion; the special assessment board has submitted its report to this council pursuant to Section 45-79, Duluth City Code of 1959, and the said board, at the direction of the mayor, has furnished this council with information as required by Section 45-80 of the Duluth City Code of 1959.

NOW, THEREFORE, BE IT RESOLVED, that said improvement as described above be made; that the estimated total cost of said improvement as estimated by the city engineer is \$115,000, payable from Special Assessment Fund 0410, Agency 038, Organization 5402, Object 5530 and that all of the cost of said improvement be defrayed by special assessment against the land and premises specially benefitted; that those assessed be permitted to pay said assessment in installments over a 15 year period, subject to Section 68 of the City Charter; that said assessment satisfy all the requirements of Section 60 of the Charter.

BE IT FURTHER RESOLVED, that the council order in subject project in accordance with the provisions of Section 62 of the City Charter and that said improvement is hereby ordered.

Resolution 04-0759 was unanimously adopted.

Approved November 22, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Venture Fuels be and hereby is awarded a contract for furnishing and delivering 45,454,545 tons of coal for two heating season requirements beginning with year 2005/2006 and year 2006/2007 for the Duluth Steam Cooperative District I to produce an estimated 850,000 mm btu's in accordance with specifications on its low specification bid of \$26.06 per ton for the year 2005/2006 season estimated annual total of \$1,184,545, and \$26.53 per ton for the year 2006/2007 season estimated annual total of \$1,205,909, terms net, FOB destination; to be encumbered out of year 2005/2006 budget and year 2006/2007 budget; payable out of Steam District 1 Fund 0540, Department/Agency 920, Organization 1440, Object 5387.

Resolution 04-0765 was unanimously adopted.

Approved November 22, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

WHEREAS, the state of Minnesota, through the Minnesota department of natural resources, division of waters, administers financial assistance for coastal program management purposes through Minnesota's Lake Superior coastal program; and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

WHEREAS, the city of Duluth desires financial assistance from Minnesota's Lake Superior coastal program for the purposes of developing a water protection education program for restaurants and food service establishments.

RESOLVED, that the proper city officials are hereby authorized to prepare and submit a grant application to the Minnesota department of natural resources in the amount of \$8,850 for said educational activities.

BE IT FURTHER RESOLVED, that the proper city officials are authorized to act as legal sponsor of said grant, to accept said grant if tendered by the Minnesota department of natural resources and to deposit grant funds tendered in Fund 0530, Agency 500, Division 1915, Object 5441, to execute any documents required to be executed to accept such grant and to obligate up to \$4,751 in match provided as in-kind services from city staff and \$50 in expenses from Fund 0530, Division 1915, Object 5441.

Resolution 04-0772 was unanimously adopted.

Approved November 22, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

WHEREAS, the state of Minnesota, through the Minnesota department of natural resources, division of waters, administers financial assistance for coastal program management purposes through Minnesota's Lake Superior coastal program; and

WHEREAS, the city of Duluth desires financial assistance from Minnesota's Lake Superior coastal program for the purposes of establishing demonstration rain gardens at the Garfield Service Center, 520 Garfield Avenue.

RESOLVED, that the proper city officials are hereby authorized to prepare and submit a grant application to the Minnesota department of natural resources in the amount of \$12,300 for said project.

BE IT FURTHER RESOLVED, that the proper city officials are authorized to act as legal sponsor of said grant, to accept said grant if tendered by the Minnesota department of natural resources, and to deposit grant funds tendered in Fund 0530, Agency 500, Division 1915, Object 5441, to execute any documents required to be executed to accept such grant and to obligate up to \$5,465 in match provided as in-kind services from city staff and equipment hours.

Resolution 04-0773 was unanimously adopted.

Approved November 22, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

WHEREAS, the state of Minnesota, through the Minnesota department of natural resources, division of waters, administers financial assistance for coastal program management purposes through Minnesota's Lake Superior coastal program; and

WHEREAS, the city of Duluth desires financial assistance from Minnesota's Lake Superior coastal program for the purposes of placing stream and creek signage along Duluth right-of-ways.

RESOLVED, that the proper city officials are hereby authorized to prepare and submit a grant application to the Minnesota department of natural resources in the amount of \$14,578 for said signage activities.

BE IT FURTHER RESOLVED, that the proper city officials are authorized to act as legal sponsor of said grant, to accept said grant if tendered by the Minnesota department of natural resources, and to deposit grant funds tendered in Fund 0530, Agency 500, Division 1915, Object 5441, to execute any documents required to be executed to accept such grant and to obligate up

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

to \$5,349 in match provided as in-kind services from city staff and \$50 in supplies from Fund 0530, Division 1915, Object 5441.

Resolution 04-0774 was unanimously adopted.

Approved November 22, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

WHEREAS, the state of Minnesota, through the Minnesota department of natural resources, division of waters, administers financial assistance for coastal program management purposes through Minnesota's Lake Superior coastal program; and

WHEREAS, the city of Duluth in conjunction with the regional stormwater protection team desires financial assistance from Minnesota's Lake Superior coastal program for the purposes of expanding the regional stormwater team educational outreach to use new outreach techniques and take the program to regional schools.

RESOLVED, that the proper city officials are hereby authorized to prepare and submit a grant application to the Minnesota department of natural resources in the amount of \$14,950 for said educational activities.

BE IT FURTHER RESOLVED, that the proper city officials are authorized to act as legal sponsor of said grant, to accept said grant if tendered by the Minnesota department of natural resources, and to deposit grant funds tendered in Fund 0530, Agency 500, Division 1915, Object 5441, to execute any documents required to be executed to accept such grant and to obligate up to \$4,981 in match provided as in-kind services from city staff and staff of RSPT partner organizations.

Resolution 04-0775 was unanimously adopted.

Approved November 22, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

RESOLVED, that in accordance with the provisions of Section 33-88.2 of the Duluth City Code, 1959, as amended, the following handicapped parking zones are hereby established:

front of 509 Spear Avenue;

front of 113 East Fifth Street;

front of 2716 West Third Street.

Resolution 04-0755 was unanimously adopted.

Approved November 22, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

RESOLVED, that the proper city officials are authorized to pay to James McCauley and his attorney, Peter Nickitas, \$13,500 in full and final settlement of the claim which arose out of the condemnation for demolition of property owned by James McCauley and located at 117 Park Avenue, Duluth, Minnesota, on February 22, 2000, and October 25, 2002; payment to be made from the self insurance fund.

Resolution 04-0767 was unanimously adopted.

Approved November 22, 2004

HERB W. BERGSON, Mayor

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The following resolutions were also considered:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Resolution 04-0777, by Councilor Stewart, supporting metering of parking in Canal Park with meter revenues to be deposited in the general fund, was introduced for discussion.

Councilor Reinert moved to suspend the rules to consider Resolution 04-0776, supporting metering of parking in Canal Park and dedicating revenues to construction of Canal Park parking ramp, by councilors Reinert and Ness, at this time, which motion was seconded and unanimously carried.

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

KL Lewis stated that she supported the use of parking meters and that a percentage of the receipts should go towards a parking ramp and possible skywalk.

Councilor Stewart favored the installation of meters in Canal Park, but felt that no action on the resolution should be taken until the parking commission has made their findings and all businesses in the Canal Park area are heard. He requested that Resolution 04-0777 be removed from the agenda, which request was supported with no objections.

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Councilor Reinert requested that Resolution 04-0776 be removed from the agenda, which request was supported with no objections.

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BY COUNCILOR GILBERT:

RESOLVED, that the proper city officers are hereby authorized to enter into an agreement (Public Document No. 04-1122-23) with the Duluth economic development authority to reimburse DEDA for the costs of acquiring by condemnation the so-called San Marco properties for wethouse project except for \$75,000, being DEDA's loaned participation in the project pursuant to its Resolution 03D-65, all reimbursement to be payable from Fund 0262, Agency 625, Object 6505 and Fund 0262, Agency 626, Object 6605.

Resolution 04-0739 was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 8

Nays: Councilor Atkins -- 1

Approved November 22, 2004

HERB W. BERGSON, Mayor

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Resolutions 04-0751 and 04-0752, by Councilor Gilbert, affirming and reversing, respectively, the decision of the board of zoning appeals to deny a variance to reduce the minimum front yard setback from 25 feet to 22 feet and the minimum rear yard setback from 25 feet to 19 feet for the construction of an eight unit condominium/townhouse building on property located at 908-26 Lake Avenue South, were introduced for discussion.

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

Craig Olson, president of the Duluth Building Trades Council; David Ross, executive director of the Duluth Area Chamber of Commerce; and William Burns, attorney for the applicant, expressed support for Resolution 04-0752 for reasons of: this new structure will replace old buildings that are already closer to the waterfront; this would only change the setbacks by six feet on one side and three feet on the other side; this is a private \$3 million investment that will contribute to property taxes received by the city; city staff feels that there is a "hardship" as required by the Duluth City Code and this will produce a dramatic improvement to the existing conditions.

Councilor Ness moved to amend Resolution 04-0752, paragraph 6, to read as follows:

“WHEREAS, the city council has considered this appeal and the documents, records and information provided and, based upon said record, it disagrees with the decision of the board of zoning appeals and finds as follows:

(a) By reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the property, the strict application of the terms of the City Code will result in peculiar and exceptional practical difficulties to, or exceptional or undue hardship upon, the owner of the property; the exceptional condition of the narrowness of multi-family residential (R-3) property caused by being bordered by Lake Superior and Lake Avenue right-of-way as compared to usual depth of multi-family property of 300 to 800 feet; and

(b) The following hardship, which would deny the applicant the enjoyment of the property right of developing the property consistent with zoning regulations exists: the narrowness of the site and inability to even maintain existing densities, with underground parking, in an economic development without increasing impervious surface; and

(c) The following special circumstances or conditions applying to the building or land in question are peculiar to such property, and do not apply generally to other land or buildings in the vicinity: this is R-3 property appropriately devoted to multi-family use, as opposed to the single-family property R-1 zoning on the vast majority of Park Point; and

(d) A variance is necessary for the preservation and enjoyment of the substantial property right set out above,” which motion was seconded and unanimously carried.

Councilor Stewart stated that he supported Resolution 04-0751 for reasons of: this would be a convenience, not a hardship for the applicants; Park Point is a densely developed area and this community has stated that they wish to maintain the neighborhood flavor and not to allow large structures to be constructed on small lots.

Resolution 04-0751 failed upon the following vote (Public Document No. 04-1122-14):

Yeas: Councilors Stewart and Stover -- 2

Nays: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert and President Stauber -- 7

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Resolution 04-0752, as amended, was adopted as follows:

BY COUNCILOR GILBERT:

WHEREAS, Sola Properties, LLC has applied to the board of zoning appeals for a variance to reduce the minimum front yard setback from 25 feet to 22 feet and the minimum rear yard setback from 25 feet to 19 feet for the construction of an eight unit condominium/townhouse building on property located at 908-26 Lake Avenue South and legally described as Lots 187, 189, 191, 195 and 197, Upper Duluth - Lake Avenue; and

WHEREAS, Chapter 50-20.2 requires a 25 feet minimum front yard setback and a 25 feet minimum rear yard setback for structures in an R-3, Apartment Residential, zoning district; and

WHEREAS, Chapter 50-47 outlines the powers of the board to grant a variance and requires a showing of those conditions specified in Chapter 50-47(b); and

WHEREAS, the board of zoning appeals denied the requested variance because the applicant failed to produce evidence of the existence of the conditions required to obtain a variance and upon the following grounds and reasons:

(a) There does not exist an exceptional topographic conditions or other extraordinary and exceptional situation or condition of the piece of property at issue for which the strict application of the terms of the Chapter would result in peculiar and exceptional practical difficulties to or exceptional or undue hardship upon the owner of such property, and

(b) The applicant failed to demonstrate the existence of the following two additional mandated requirements of Chapter 50-47, paragraph (b):

(1) Special circumstances or conditions applying to the building or land in question which are peculiar to such property and do not apply generally to other land or buildings in the vicinity; and

(2) The necessity of the variance in order to preserve the enjoyment of a substantial property right and not merely the convenience of the applicant; and

WHEREAS, Steven Sola has appealed the aforesaid decision to the Duluth City Council; and

WHEREAS, the city council has considered this appeal and the documents, records and information provided and, based upon said record, it disagrees with the decision of the board of zoning appeals and finds as follows:

(a) By reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the property, the strict application of the terms of the City Code will result in peculiar and exceptional practical difficulties to, or exceptional or undue hardship upon, the owner of the property; the exceptional condition of the narrowness of multi-family residential (R-3) property caused by being bordered by Lake Superior and Lake Avenue right-of-way as compared to usual depth of multi-family property of 300 to 800 feet; and

(b) The following hardship, which would deny the applicant the enjoyment of the property right of developing the property consistent with zoning regulations exists: the narrowness of the site and inability to even maintain existing densities, with underground parking, in an economic development without increasing impervious surface; and

(c) The following special circumstances or conditions applying to the building or land in question are peculiar to such property, and do not apply generally to other land or buildings in the vicinity: this is R-3 property appropriately devoted to multi-family use, as opposed to the single-family property R-1 zoning on the vast majority of Park Point; and

(d) A variance is necessary for the preservation and enjoyment of the substantial property right set out above.

NOW, THEREFORE, BE IT RESOLVED, by the city of Duluth that the board of zoning appeals' decision of October 26, 2004, is hereby reversed by the city council and the appeal is granted.

Resolution 04-0752, as amended, was adopted upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert and President Stauber -- 7

Nays: Councilors Stewart and Stover -- 2

Approved November 22, 2004

HERB W. BERGSON, Mayor

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At this time, 7:30 p.m., President Stauber recessed the meeting and announced that the public hearing on alcoholic beverage fees would begin.

Mark Mitchell and KL Lewis spoke in opposition to the proposed increase for the on sale intoxicating liquor licenses for reasons of: it is almost a \$1,000 increase; many establishments count on local customers and do not cater to the tourists; there is also a new fire department inspection fee; property taxes are increasing; there is no fairness when the small operations must pay the same fee as the large local or national chains do and possibly the fee could be based on a percentage of sales.

At this time, 7:44 p.m., President Stauber closed the public hearing and the regular order of business was resumed.

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Resolution 04-0758, by Councilor Gilbert, granting a special use permit to Minnesota Towers, Inc., and American Cellular Corporation (dba Cellular One) for the installation of a 195

foot tower designed to hold five wireless tenants on property located at 2901 Morris Thomas Road, the northwest corner of Morris Thomas Road and Karl Avenue (James Bechthold, Minnesota Towers, Inc., American Cellular Corporation), was introduced for discussion.

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

Rick Beaudeau, Amy Beaudeau, Mike Young, Eric Erkkila and Noelle Coombes opposed the resolution for reasons of: the neighbors who signed this applicant's previous rezoning petition feel that they were misled and have submitted a communication (Public Document No. 04-1122-20) opposing the granting of this special use permit; the applicant was aware of the cell tower possibility when he applied for the rezoning; this tower will devalue neighborhood properties; neighbors' homeowner insurance may require an additional rider; there are legal means to deny cell towers; cell towers do not belong in residential neighborhoods; the cell tower was not mentioned at the time of the rezoning and thus this permit should be denied; the footings for this tower will require an area of approximately 16 square feet and be eight feet deep which may uncover the contaminated soil from the county garage that was there previously; this tower will have more than minimal neighborhood impact, ice storms will cause this structure to be unsafe for the neighborhood; cell phone reception is not a problem from this area and neighbors do not want to have to look at this tower.

Richard Adams, applicant for the special use permit, expressed support for the resolution, citing reasons of: Mr. Bechthold did not plan or conceive to have this tower on his property prior to receiving his rezoning; Mr. Bechthold did meet with staff in order to comply with all the ordinance requirements; this type of structure would have the least visual impact on the community versus a self supporting tower and this application has nothing to do with the rezoning.

James Bechthold, owner of the property, stated that his character has been diminished by certain media in the community and that this tower was not in the plans when he requested the rezoning.

Councilors discussed aspects of how this structure would not fit into this neighborhood because of: the extreme visual impact; that at the time of the rezoning request this was not mentioned as part of the intended use for this location; the property values will be adversely affected; the scale of this project is out of proportion to the immediate neighborhood; the neighbors supported the applicant's rezoning only because of the stated intent of the auto repair shop; there already is cell phone coverage for this area; the 190 foot height of the tower, in proximity to the neighbors, is a safety hazard with ice build ups and other potential sites have not been evaluated.

Resolution 04-0758 failed upon the following vote (Public Document No. 04-1122-15):

Yeas: None -- 0

Nays: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart and Stover -- 8

Abstention: President Stauber -- 1

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Resolution 04-0763, by Councilor Gilbert, requesting the free conveyance of tax forfeited land located south of unbuilt Davis Street, north of Baylis Street and Oak Bend Drive, east of unbuilt Connecticut Avenue and west of the unbuilt Block 13 alley, an 18 acre public recreation and outdoor education area, was introduced for discussion.

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

Dave Johnson expressed support for the resolution, noting: the wide variety of floral growth; there is a densely populated area that would utilize it and it is an educational treasure.

Robert Bruce, planning division manager, reviewed his discussions with Marshall School and St. Louis County officials as to a possible option to acquire an additional nine acres.

Resolution 04-0763 was adopted as follows:

BY COUNCILOR GILBERT:

RESOLVED, that the Saint Louis County Board of Commissioners is hereby requested to free convey to the city of Duluth the following tax forfeited parcel for an 18 acre public recreation and outdoor education area.

PC File No.	Applicant	Legal Description	Location
04130	City of Duluth	Claque and Prindle's Addition: Block 13 (odd numbered lots) Block 14 (all) Block 15, Lots 1-24, 25, 27 and 29 Oak Knoll Subdivision: Lots 19-32, 64 and 65	south of unbuilt Davis Street, north of Baylis Street and Oak Bend Drive, east of unbuilt Connecticut Avenue, and west of the unbuilt Block 13 Alley

Resolution 04-0763 was unanimously adopted.
Approved November 22, 2004
HERB W. BERGSON, Mayor

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**INTRODUCTION AND CONSIDERATION OF ORDINANCES
ORDINANCE TABLED**

BY COUNCILORS ATKINS AND STOVER

04-066 (9701) - AN ORDINANCE AMENDING ORDINANCE 9688; CREATING AN ADVISORY COMMITTEE FOR THE DOWNTOWN WATERFRONT SPECIAL SERVICE DISTRICT.

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

Councilor Ness opposed the ordinance for reasons of: there is an annual review of the budget for this district and that would be the appropriate time to ask them about the makeup of their advisory board; the council should trust that there will be a balance of opinions on that board and the council should not create a process that may not be necessary.

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

Yeas: Councilors Atkins, Gilbert, Johnson, Reinert, Stewart and Stover -- 6
Nays: Councilor Ness and President Stauber -- 2
Abstention: Councilor Little -- 1

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The following entitled ordinance was read for the first time:

BY PRESIDENT STAUBER

04-071 - AN ORDINANCE PERTAINING TO CABLE TELEVISION FRANCHISE.

- - -

The following entitled ordinances were read for the second time:

BY COUNCILOR NESS

04-067 (9702) - AN ORDINANCE AMENDING CHAPTER 2, ARTICLE XXXI, OF DULUTH CITY CODE, 1959, AS AMENDED; PERTAINING TO TAX BASE IMPACT STATEMENT.

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

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BY COUNCILOR GILBERT

04-068 (9703) - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NO. 21, AS CONTAINED IN THE APPENDIX TO

CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM M-1, MANUFACTURING, TO R-3, APARTMENT RESIDENTIAL, PROPERTY BOUNDED BY FIRST STREET, 25TH AVENUE WEST AND SECOND STREET ALLEY (THARALDSON AND BERGH, ET AL.).

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

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BY COUNCILOR GILBERT

04-069-O - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NOS. 28 AND 34, AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-B, ONE-FAMILY RESIDENTIAL DISTRICT, AND R-1-C, ONE FAMILY RESIDENTIAL DISTRICT, TO R-3, APARTMENT RESIDENTIAL DISTRICT, PROPERTY ON THE SOUTHWEST SIDE OF RICE LAKE ROAD, ROUGHLY BETWEEN PECAN AVENUE AND HOMES THAT FRONT ON BLACKMAN AVENUE AND NORTH OF THE UNBUILT DAVIS STREET RIGHT-OF-WAY (MARK LAMBERT/SUMMIT MANAGEMENT, LLC).

Councilor Gilbert moved to table the ordinance, which motion was seconded and unanimously carried.

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BY COUNCILOR STOVER

04-070 (9704) - AN ORDINANCE AUTHORIZING AGREEMENT WITH OLIVER COMPANIES, INC., FOR SALE OF THE WATER AND GAS BUILDING.

Councilors Gilbert and Reinert opposed the ordinance for reasons of: the father of this purchaser received a loan from the Duluth economic development authority (DEDA) for another location and did not pay it back, put up road blocks and then settled for less than the original loan and concern that there be language in the contract that will preserve the historical appearance of the entrance.

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

Yeas: Councilors Atkins, Johnson, Little, Ness, Stewart, Stover and President Stauber -- 7

Nays: Councilors Gilbert and Reinert – 2

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The meeting was adjourned at 9:00 p.m.

JEFFREY J. COX, City Clerk

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ORDINANCE NO. 9701

BY COUNCILORS ATKINS AND STOVER:

AN ORDINANCE AMENDING ORDINANCE 9688; CREATING AN ADVISORY COMMITTEE FOR THE DOWNTOWN WATERFRONT SPECIAL SERVICE DISTRICT.

The city of Duluth does ordain:

Section 1. That Ordinance 9688 be amended by adding a new Section 10 thereto to read as follows:

Section 10. ADVISORY BOARD.

10.01. There is created an advisory board for the Downtown Waterfront Special Service District. The board shall consist of 11 members. Each member, or the business controlled by the member, must be obligated to pay the special service charge authorized by this ordinance. Each member shall be appointed by the

Greater Downtown Council and approved by vote of the city council. For the initial board, beginning January 1, 2005, one member shall serve a one year term, two shall serve a two year term, and two shall serve a three year term. Thereafter, each member shall serve a three year term, beginning January 1 and ending December 31. A member shall cease serving upon resignation, inability to serve, removal for cause by the mayor, approved by the council, failure to be obligated to pay the service charge authorized by this ordinance, or the end of the specified term. Any vacancy shall be filled as set out above, for the remaining portion of the term. The executive director of the Greater Downtown Council shall be secretary and ex-officio member of the board.

10.02. The board shall elect, annually, a president, keep minutes of its meetings and determine its procedures. It shall act by majority vote.

10.03. The board shall advise the city council in connection with the construction, maintenance, operation of improvements and the furnishing of special services in the district. The board shall make recommendations to the city council on the requests and complaints of owners, occupants, users of property within the district and members of the public. Before the adoption by the city council of any proposal to provide services or impose charges within the district, the advisory board shall review and report to the council its comments and recommendations.

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: January 2, 2005)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Reinert, Stewart and Stover -- 6

Nays: Councilor Ness and President Stauber -- 2

Abstention: Councilor Little -- 1

Passed November 22, 2004
Approved November 22, 2004
HERB W. BERGSON, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 9702

BY COUNCILOR NESS:

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE XXXI, OF
DULUTH CITY CODE, 1959, AS AMENDED; PERTAINING TO TAX
BASE IMPACT STATEMENT.

The city of Duluth does ordain:

Section 1. That Section 2-162 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 2-162. Definitions.

For purposes of this Article:

(a) Tax base means the property, and the valuation of it, that is subject, under the law, to ad valorem taxes, any part of which tax, when collected, may be part of the city of Duluth's revenues;

(b) Tax base impact worksheet means the form document, developed by the finance department and approved by resolution of the council, which records the relevant values and factors of a proposal;

(c) Tax base impact summary means a short statement approved by the mayor or city attorney that appears at the beginning of the statement of purpose of any proposal to which this Article applies;

(d) Tax base impact statement is a report that analyzes the information on the tax base impact worksheet, includes different and more detailed information, and states a conclusion as to the proposal's expected impact on the property tax base during each of the first 25 years following adoption or approval of the proposal;

(e) Proposal means any ordinance or resolution, filed with the city clerk, or communicated to the city council, Duluth planning commission or DEDA, or any report or other written communication from the mayor, administrative assistant or other officer of the executive branch of city government, or of any city board or commission, which ordinance, resolution or written communication would allow, require or recommend any of the following:

(1) A transfer of any interest in real property, except an easement;

(2) A change in the tax classification of any property;

(3) The erection or demolition of any building covering an area of land greater than 1,100 square feet;

(4) A change or objection to change in the classification of tax forfeit land;

(5) The granting or recommendation of a loan, grant, business subsidy as defined in Minnesota Statutes Section 116J.993, et. seq., or its successor, tax abatement, tax assessment agreement;

(6) A lease or land use license for a period longer than one year;

(7) A special use permit or variance from zoning;

(8) The acceptance by the city of a gift or other conveyance of real property or any interest therein;

(9) The vacation of any easement;

(10) Any other action or transaction that will affect the property tax base.

The term "proposal" does not include a transfer of property from one unit of government to another, nor an improvement completely paid for by one or more government units, located upon land owned by a government unit and the transferred property or improvement is intended for public use or to be exclusively used for government operations.

Section 2. That Section 2-163 of Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 2-163. Tax base impact worksheet required.

Before any proposal that requires a tax base impact statement is filed with the city clerk or presented to the city council, Duluth planning commission or DEDA, the proposer must cause to be accurately completed a tax base impact worksheet pertaining to the proposal. The completed worksheet shall be filed with the clerk as a public document, and shall be presented with any proposal that is not an ordinance or resolution, or with any proposal that requires a tax base impact statement.

Section 3. That Section 2-165 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 2-165. Tax base impact statement required.

The proposer of the following proposals shall prepare a complete and accurate tax base impact statement, file it with the clerk as a public document and present it to the city council, Duluth planning commission or DEDA at the same time the proposal is presented:

- (a) A proposal that involves more than 15 acres;
- (b) A proposal that involves real property of fair market value, as shown on the records of the city assessor, in excess of \$850,000, or that will involve construction, financed in any part with public money or business subsidy, of improvements, which construction will cost at least \$1 million;
- (c) A proposal that involves rezoning an area greater than two acres;
- (d) A proposal for which a tax base impact statement is requested by the mayor, city council or Duluth planning commission.

Section 4. That this ordinance shall take effect 30 days after its passage, approval and publication. (Effective date: January 2, 2005)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed November 22, 2004
Approved November 22, 2004
HERB W. BERGSON, Mayor

- - -

ORDINANCE NO. 9703

BY COUNCILOR GILBERT:

AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NO. 21 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION OF M-1, MANUFACTURING DISTRICT, TO R-3, APARTMENT RESIDENTIAL DISTRICT, PROPERTY BOUNDED BY FIRST STREET, 25TH AVENUE WEST AND SECOND STREET ALLEY (THARALDSON AND BERGH, ET AL.).

The city of Duluth does ordain:

Section 1. That Plate No. 21 of the zoning district maps as contained in the Appendix to Chapter 50 of the Duluth City Code, 1959, as amended, is amended to read as follows:

(MAP)
[see Map No. 21 at end of meeting]
(Reference No. 04103)

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: January 9, 2005)

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Nays: None -- 0

ATTEST:

JEFFREY J. COX, City Clerk

Passed November 22, 2004

Approved November 22, 2004

HERB W. BERGSON, Mayor

- - -

ORDINANCE NO. 9704

BY COUNCILOR STOVER:

AN ORDINANCE AUTHORIZING AGREEMENT WITH OLIVER COMPANIES, INC., FOR SALE OF THE WATER AND GAS BUILDING.

The city of Duluth does ordain:

Section 1. 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. 04-1122-17 with Oliver Companies, Inc., for the sale of the below-described property in St. Louis County, Minnesota, for the sum of \$376,500, one-half of which shall be paid to the Water Fund 0510, Agency 500, Source 4853 and one-half of which shall be paid to the Gas Fund 0520, Agency 500, Source 4853:

Lot 72, West First Street, DULUTH PROPER.

Section 2. This ordinance shall take effect 30 days from and after its passage and publication. (Effective date: January 2, 2005)

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

Yeas: Councilors Atkins, Johnson, Little, Ness, Stewart, Stover and President Stauber -- 7

Nays: Councilors Gilbert and Reinert -- 2

ATTEST:

JEFFREY J. COX, City Clerk

Passed November 22, 2004

Approved November 22, 2004

HERB W. BERGSON, Mayor

OFFICIAL PROCEEDINGS

Special meeting of the Duluth City Council held on Thursday, December 2, 2004, 5:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Gilbert, Johnson, Little, Ness, Reinert, Stewart and President Stauber -- 7

Absent: Councilors Atkins and Stover -- 2

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

04-1202-01 The PFM Group submitting the following regarding the sale of \$4,045,000 general obligation sewer utility revenue bonds, Series 2004D, and \$1,355,000 general obligation equipment certificates of indebtedness, Series 2004E: (a) Official statement; (b) Post sale bid analysis. -- Received

- - -

MOTIONS AND RESOLUTIONS

Resolutions 04-0761, providing for the issuance, sale and delivery of \$4,045,000 general obligation sewer utility revenue bonds, Series 2004D, establishing the terms and form thereof, and awarding the sale thereof; and 04-0762 providing for the issuance, sale and delivery of \$1,355,000 general obligation equipment certificates of indebtedness, Series 2004E, establishing the terms and form thereof, creating a debt service fund therefor, and awarding the sale thereof, by Councilor Ness, were introduced for discussion.

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

Kathy Cardell, representing the PFM Group, reviewed the nature of the resolutions and results of the respective bids (Public Document No. 04-1202-01(b)).

Resolutions 04-0761 and 04-0762 were adopted as follows:

BY COUNCILOR NESS:

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

Section 1. Bond purpose and authorization.

1.01 Under and pursuant to the provisions of Section 55 of the City Charter, Minnesota Statutes, Sections 115.46 and 444.075 and Chapter 475, and other pertinent provisions of said Charter and Statutes, the city is authorized to issue its general obligation bonds to provide funds for the payment of costs of improvements to the municipal sewer utility (including bonds representing part of the interest cost of the issue, within the limitations specified in Minnesota Statutes, Section 475.56), which bonds shall be a specific lien upon the sewer utility and are payable primarily from net revenues to be derived from the operation of the municipal sewer utility and pledged for their payment.

1.02 The city council has, by Ordinance No. 9694 adopted October 12, 2004, ordered the issuance, sale and delivery of general obligation sewer utility revenue bonds in the maximum amount of \$4,300,000 of the city, for the payment of the costs of improvements to the municipal sewer utility and for payment of part of the interest cost of the bonds.

1.03 The city council has determined that it is necessary and expedient that the city issue its \$4,045,000 general obligation sewer utility revenue bonds, Series 2004D (the bonds).

1.04 Public Financial Management, Inc., financial consultant to the city, has given notification by mail, facsimile or electronic data transmission to at least five firms determined by Public Financial Management, Inc., to be prospective bidders on the bonds at least two days (omitting Saturdays, Sundays and legal holidays) before the date set for receipt of bids on the bonds. 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.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

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 UBS Financial Services, Inc., of Chicago, Illinois (the purchaser), to purchase the bonds at a cash price of \$4,022,999.90, plus accrued interest on the total principal amount from December 1, 2004, to the date of delivery of the bonds 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. 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 December 1, 2004, as the date of original issue, shall be issued in the denomination of \$5,000 each, or any integral multiple thereof, in fully registered form, and lettered and numbered R-1 and upward. The bonds shall mature on February 1 in the respective years and amounts stated and shall bear interest as follows:

Year	Amount	Interest Rate
2006	\$195,000	3.00%
2007	220,000	3.00%
2008	225,000	3.00%
2009	230,000	3.25%
2010	240,000	3.25%
2011	245,000	3.25%
2012	255,000	4.00%
2013	265,000	4.00%
2014	275,000	4.00%
2015	285,000	4.00%
2016	295,000	4.00%
2017	310,000	4.00%
2018	320,000	4.10%
2019	335,000	4.15%
2020	350,000	4.20%

2.02 (a) The bonds maturing in the years 2006 through 2013 shall not be subject to optional redemption and prepayment before maturity, but those maturing or subject to mandatory redemption pursuant to Section 2.01(b), in the year 2014 and in subsequent years shall each be subject to redemption and prepayment at the option of the city on February 1, 2013, and on any date thereafter, in whole or in part, and if in part, in such order of maturities as selected by the city and by lot as to the bonds maturing in the same year, at a price equal to the principal amount thereof plus accrued interest to the redemption date.

(b) In the event any of the bonds are called for redemption, notice thereof identifying the bonds to be redeemed will be given by the bond registrar by mailing a copy of the

redemption notice by first class mail (postage prepaid) at least 30 days but not more than 60 days prior to the date fixed for redemption to the registered owner of each bond to be redeemed at the address shown on the registration books kept by the bond registrar; provided however, that so long as the bonds are registered in the name of Cede & Co. as nominee of The Depository Trust Company, New York, New York (DTC), notice of redemption shall be given in accordance with the terms of the representation letter hereinafter described. Failure to give notice by mail to any registered owner, or any defect therein, will not affect the validity of any proceeding for the redemption of bonds not affected by such defect or failure. Bonds so called for redemption will cease to bear interest after the specified redemption date, provided that the funds for the redemption are on deposit with the place of payment at that time.

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

2.03 Interest on the bonds shall be payable semiannually on February 1 and August 1 in each year (each referred to herein as an interest payment date), commencing August 1, 2005. Interest will be computed on the basis of a 360-day year of twelve 30-day months and will be rounded pursuant to the rules of the municipal securities rulemaking board. The bond registrar designated below shall make all interest payments with respect to the bonds by check or draft mailed to the registered owners of the bonds shown on the bond registration records maintained by the bond registrar at the close of business on the 15th day (whether or not a business day) of the month next preceding the interest payment date at such owners' addresses shown on such bond registration records.

2.04 (a) The bonds shall be prepared for execution in accordance with the approved form and shall be signed by the manual or facsimile signature of the mayor and attested by the manual or facsimile signature of the city clerk. In case any officer whose signature or a facsimile of whose signature shall appear on the bonds shall cease to be an officer before delivery of the bonds, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, as if he or she had remained in office until delivery.

(b) The city clerk is authorized and directed to obtain a copy of the proposed approving legal opinion of Fryberger, Buchanan, Smith & Frederick, P.A., of Duluth, Minnesota, which is to be complete, and cause the opinion to be attached to each bond, together with a certificate to be signed by the manual signature of the city clerk in substantially the form set forth in Section 2.11, but only if the opinion is not manually executed. The city clerk is authorized and directed to execute the certificate in the name of the city upon receipt of the opinion, if required by the preceding sentence, and to file the opinion in the city offices.

2.05 The city hereby appoints Wells Fargo Bank, National Association, in Minneapolis, Minnesota, as registrar, authenticating agent, paying agent and transfer agent for the bonds (such bank or its successor is herein referred to as the bond registrar). To provide for the bond registrar services, the mayor and the clerk are authorized and directed to execute a bond registrar/paying agent agreement substantially in the form of the agreement currently on file in the office of the city clerk as Public Document No. 04-0219-02. No bond shall be valid or obligatory for any purpose until the bond registrar's authentication certificate on such bond, substantially set forth in

Section 2.11 hereof, shall have been duly executed by an authorized representative of the bond registrar. Authentication certificates on different bonds need not be signed by the same representative. The manual signature of one officer of the city or the executed authentication certificate on each bond shall be conclusive evidence that it has been authenticated and delivered under this resolution.

2.06 (a) In order to make the bonds eligible for the services provided by 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) 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.

(c) Additional matters with respect to, among other things, notices, consents and approvals by bond holders and payments on the bonds are set forth in the representation letter.

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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

GENERAL OBLIGATION SEWER UTILITY REVENUE BOND, SERIES 2004D

R-__ \$_____

Interest Rate	Maturity Date	Date of Original Issue	CUSIP
	February 1, ____	December 1, 2004	

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 December 1, 2004, 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, 2005. 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 \$4,045,000, all of like date and tenor, except for number, denomination, maturity date and interest rate, pursuant to a resolution adopted on December 2, 2004, by the governing body of the City (the "Resolution"). The Bonds are issued for improvements to the municipal sewer utility pursuant to the authority contained in Minnesota Statutes, Chapter 475, and Sections 115.46 and 444.075 and Section 55 of the Home Rule Charter of the City, and all other laws and charter provisions thereto enabling and pursuant to Ordinance No. 9694 adopted October 12, 2004, for the purpose of providing funds for improvements to such municipal sewer utility

and for payment of part of the interest cost of such bond issue. The Bonds are payable from the net revenues to be derived from the operation of the municipal sewer utility of the City, as set forth in the Resolution to which reference is made for a full statement of rights and powers thereby conferred. In the Resolution, the City has pledged and appropriated the net revenues to be derived from the operation of the municipal sewer utility in excess of normal, reasonable and current costs of the operation and maintenance of the utility, for the payment of the principal and interest when due on the Bonds, and has covenanted and agreed that it will impose and collect just and equitable charges for all use and for the availability of all facilities of the municipal sewer utility at the times and in the amounts required to pay the normal, reasonable and current expenses of operating and maintaining such facilities, and also to produce net revenues at least adequate at all times to pay the principal and interest due on the Bonds.

The Bonds of this series maturing in the years 2006 through 2013 are not subject to redemption before maturity, but those maturing, or subject to mandatory redemption, in the year 2014 and in subsequent years are each subject to redemption and prepayment at the option of the City on February 1, 2013, and on any date thereafter, in whole or in part, in such order of maturities as selected by the City and by lot as to Bonds maturing in the same year, at a price equal to the principal amount plus accrued interest to the redemption date.

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

If less than all the Bonds of a maturity are called for redemption while the Bonds are registered in the name of Cede & Co., the City or the Bond Registrar designated below will notify DTC of the particular amount of such maturity to be prepaid. DTC will determine by lot the amount of each participant's interest in such maturity to be redeemed and each participant will then select by lot the beneficial ownership interest in such maturity to be redeemed. If less than all the Bonds of a maturity are called for redemption and the Bonds are not registered in the name of Cede & Co., the Bond Registrar will determine by lot or other manner deemed fair, the amount of each maturity to be redeemed. All prepayments shall be at a price equal to the principal amount thereof plus accrued interest. If any Bond is redeemed in part, upon surrender of the Bond being redeemed, the City shall deliver or cause to be delivered to the registered owner of such Bond, a bond in like form in the principal amount equal to that portion of the Bond so surrendered not being redeemed.

The Bonds of this series are issued as fully registered bonds without coupons, in the denomination of \$5,000 or any integral multiple thereof. Subject to limitations set forth in the Resolution, this Bond is transferable by the registered

owner hereof upon surrender of this Bond for transfer at the principal corporate office of the Bond Registrar, duly endorsed or accompanied by a written instrument of transfer in form satisfactory to the Bond Registrar and executed by the registered owner hereof or the owner's attorney duly authorized in writing. Thereupon the City shall execute and the Bond Registrar shall authenticate, if required by law and this Resolution, and deliver, in exchange for this Bond, one or more new fully registered bonds in the name of the transferee, of an authorized denomination, in an aggregate principal amount equal to the unpaid principal amount of this Bond, of the same maturity and bearing interest at the same rate.

IT IS CERTIFIED AND RECITED that all acts and conditions required by the Charter of the City and by the laws and the Constitution of the State of Minnesota to be done and to exist precedent to and in the issuance of this Bond, in order to make it a valid and binding general obligation of the City in accordance with its terms, have been done and do exist in form, time and manner as so required; that all taxable property within the corporate limits of the City is subject to the levy of ad valorem taxes to the extent needed to pay the principal hereof and the interest hereon when due, without limitation as to rate or amount; and that the issuance of this Bond does not cause the indebtedness of the City to exceed any constitutional, statutory or charter limitation.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Bond Registrar's Authentication Certificate hereon shall have been executed by the Bond Registrar by one of its authorized representatives.

IN WITNESS WHEREOF, the City of Duluth, by its city council, has caused this Bond to be executed in its name by the signatures of the mayor and the city clerk.

Attest:

Clerk

Mayor

Date of Authentication: _____

BOND REGISTRAR'S AUTHENTICATION CERTIFICATE

The Bond Registrar confirms that the books reflect the ownership of a Bond registered in the name of the owner named above, in the principal amount stated above, and this Bond is one of the Bonds of the series issued pursuant to the Resolution hereinabove described.

WELLS FARGO BANK, NATIONAL ASSOCIATION
Bond Registrar

By _____
Authorized Representative

REGISTRATION CERTIFICATE

This Bond must be registered as to both principal and interest in the name of the owner on the books to be kept by Wells Fargo Bank, National Association, of Minneapolis, Minnesota, as Bond Registrar. No transfer of this Bond shall be valid unless made on said books by the registered owner or the owner's attorney thereunto duly authorized and similarly noted on the registration books. The ownership of the unpaid principal balance of this Bond and the interest accruing thereon is registered on the books of Wells Fargo Bank, National Association as Bond Registrar, in the name of the registered owner last noted below.

Date	Registered Owner	Signature of Bond Registrar
12/__/04	Cede & Co. c/o The Depository Trust Company 55 Water Street New York, NY 10041 Federal Taxpayer I.D. No.: 13-555119	_____

BOND COUNSEL OPINION

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

Clerk

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns, and transfers unto

(Name and Address of Assignee)

Social Security or Other
Identifying Number of Assignee

the within Bond and all rights thereunder and does hereby irrevocably constitute and appoint _____

attorney to transfer the said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name of the registered owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

(Bank, Trust Company, member of
National Securities Exchange)

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City or its agent for registration of transfer, exchange, or payment, and any bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL, inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

Section 3. Revenues, accounts and covenants.

3.01 (a) The city council covenants and agrees with the holders of the bonds and with its taxpayers that it will impose and collect just and equitable charges for all use and for the availability of all facilities of the municipal sewer utility at the times and in the amounts required to pay the normal, reasonable and current expenses of operating and maintaining such facilities, and also to produce net revenues at least adequate at all times to pay the principal and interest due on the bonds and on all other bonds heretofore or hereafter issued and made payable from said net revenues, and will operate the utility and segregate and account for the revenues thereof as provided in this section.

The city will place all such charges, when collected, and all money received from the sale of any facilities or equipment of the municipal sewer utility in a separate sewer utility operating account within the public utility sewer fund maintained under Section 54 of the City Charter. Except as provided in this section, this account shall be used only to pay claims duly approved and allowed for payment of expenses which, under generally accepted accounting principles, constitute normal, reasonable and current expenses of operating and maintaining the municipal sewer utility, and to maintain such reasonable reserves for such expenses as the director of finance shall determine to be necessary from time to time in accordance with policies established by the city council. Sums from time to time on hand in this account, in excess of sums required to make such payments and maintain such reserves, constitute the net revenues which are herein pledged and appropriated first to pay the principal of and interest on all sewer utility bonds when due.

(b) The city has created a separate construction account within the public utility sewer fund to which there shall be credited \$4,045,000 from the proceeds of the bonds, less amounts used to pay a part of the interest cost of the issue as allowed by Minnesota Statutes, Section 475.56, together with any additional funds which may be available and are appropriated for improvements to the utility. This account shall be used only to pay expenses duly approved and allowed which, under generally accepted accounting principles, constitute capital expenditures for the completion of improvements to the sewer utility and costs of the issuance of the bonds.

(c) Until the bonds issued hereunder are fully paid or duly called for redemption, or otherwise discharged, the city will also maintain a separate debt service account (the debt service fund) in the public utility sewer fund to be used solely for the payment of the principal and interest, as such principal and interest become due and payable, on the bonds and on any other bonds which have been or may be issued and made payable from said net revenues of the sewer utility. The treasurer shall credit to the debt service fund all proceeds of the bonds in excess of \$4,045,000, less amounts used to pay a part of the interest cost of the issue, as allowed by Minnesota Statutes, Section 475.56, plus the amount of accrued interest on the bonds. The treasurer shall transfer from the sewer utility operating account to the debt service fund amounts of the net revenues sufficient for the payment of all interest and principal then due on the bonds and all charges due to the bond registrar. Such transfers shall be made at the times and in the amounts determined by the treasurer, in accordance with policies established by resolutions of the city council.

(d) Surplus utility revenues from time to time received in the sewer utility operating account, in excess of payments due from and reserves required to be maintained in the sewer utility operating account and in the debt service fund, may be used for necessary capital expenditures for the improvement of the municipal sewer utility, for the prepayment and redemption of bonds constituting a lien on the municipal sewer utility, and for any other proper municipal purpose consistent with policies established by resolutions of the city council.

3.02 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. It is estimated that the net revenues herein pledged and appropriated to said debt service fund will be received at the times and in amounts not less than 5 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 4. Tax covenants; miscellaneous.

4.01 The city covenants and agrees with the holders of the bonds that the city will (i) take all action on its part necessary to assure that the interest on the bonds will be excluded from gross income for federal income taxes including, without limitation, restricting, to the extent necessary, the yield on investments made with the proceeds of the bonds and investment earnings thereon, making required payments to the federal government, if any, and maintaining books and records in a specified manner, where appropriate, and (ii) refrain from taking any action which would cause interest on the bonds to be subject to federal income taxes, including, without limitation, refraining from spending the proceeds of the bonds and investment earnings thereon on certain specified purposes.

4.02 (a) No portion of the proceeds of the bonds shall be used directly or indirectly to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments, except (i) for a reasonable temporary period until such proceeds are needed for the purpose for which the bonds were issued, and (ii) in addition to the above, in an amount not greater than the lesser of five percent of the proceeds of the bonds or \$100,000. To this effect, any proceeds of the bonds and any sums from time to time held in the debt service fund (or any other city account which will be used to pay principal and interest to become due on the bonds) in excess of amounts which under the applicable federal arbitrage regulations may be invested without regard as to yield shall not be invested at a yield in excess of the applicable yield restrictions imposed by the arbitrage regulations on such investments after taking into account any applicable temporary periods of minor portion made available under the federal arbitrage regulations.

(b) In addition, the proceeds of the bonds and money in the debt service funds shall not be invested in obligations or deposits issued by, guaranteed by or insured by the United States or any agency or instrumentality thereof if and to the extent that such investment would cause the bonds to be federally guaranteed within the meaning of Section 149(b) of the Internal Revenue Code of 1986, as amended (the code).

(c) The city hereby covenants not to use the proceeds of the bonds, or to cause or permit them to be used, in such a manner as to cause the bonds to be "private activity bonds" within the meaning of Sections 103 and 141 through 150 of the Code.

4.03 (a) Pursuant to Section 1.148-7(d) of the treasury regulations, relating to exception from rebate, the city hereby covenants that with respect to the gross proceeds of the bonds, the following schedule will be met: (i) at least 15 percent 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 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 5 percent of the available proceeds of the bonds, and that 100 percent of the available proceeds of the bonds will be allocated within 30 months from the date of issue of the bonds.

(b) The city shall use its best efforts to comply with any federal procedural requirements which may apply in order to effectuate the designation made by this section.

Section 5. Continuing disclosure. The city acknowledges that the bonds are subject to the continuing disclosure requirements of Rule 15c2-12 promulgated by the securities and exchange commission under the Securities Exchange Act of 1934 (17 C.F.R. § 240.15c2-12) (the rule). The rule governs the obligations of certain underwriters to require that issuers of municipal bonds enter into agreements for the benefit of the bondholders to provide continuing disclosure with respect to the bonds. To provide for the public availability of certain information relating to the bonds and the security therefor and to permit underwriters of the bonds to comply with the rule, which will enhance the marketability of the bonds, the mayor and the clerk are hereby authorized and directed to execute a continuing disclosure certificate substantially in the form of the certificate currently on file in the office of the city clerk as Public Document No. 04-0219-02.

Section 6. Certificate of proceedings.

6.01 The city clerk is directed to file with the county auditor a certified copy of this resolution and such other information as the county auditor may require, and to obtain from the county auditor a certificate stating that the bonds herein authorized have been duly entered on his register.

6.02 The officers of the city are authorized and directed to prepare and furnish to the purchaser and to bond counsel certified copies of all proceedings and records of the city relating to the authorization and issuance of the bonds and other affidavits and certificates as may reasonably be requested to show the facts relating to the legality and marketability of the bonds as such facts appear from the official books and records of the officers' custody or otherwise known to them. All of such certified copies, certificates and affidavits, including any heretofore furnished, constitute representations of the city as to the correctness of facts recited therein and the actions stated therein to have been taken.

6.03 The officers of the city are hereby authorized and directed to certify that they have examined the official statement prepared and circulated in connection with the sale of the bonds and that to the best of their knowledge and belief the official statement is a complete and accurate representation of the facts and representations made therein as of the date of the official statement.

Resolution 04-0761 was unanimously adopted.

Approved December 2, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR NESS:

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

Section 1. Certificate 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 certificates of indebtedness to provide funds to purchase capital equipment having an expected useful life at least as long as the term of the certificates of indebtedness.

1.02 The city council adopted Resolution No. 04-0734 declaring the intention of the city to issue such certificates of indebtedness in the amount of approximately \$1,355,000 to finance the purchase of capital equipment authorized by the act. It is hereby certified that the amount of the certificates of indebtedness to be issued by the city pursuant to this resolution is less than 0.25 percent of the market value of the taxable property of the city.

1.03 The city council hereby determines that it is necessary and expedient to issue \$1,355,000 general obligation equipment certificates of Indebtedness, Series 2004E, of the city (the certificates) to provide funds to purchase capital equipment authorized by the act, to pay certain expenses incurred in the issuance of the certificates 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 certificates will have a useful life of more than five years.

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 certificates at least two days (omitting Saturdays, Sundays and legal holidays) before the date set for receipt of bids on the certificates. All actions of the mayor, the clerk and Public Financial Management, Inc., taken with regard to the sale of the certificates are hereby ratified and approved.

1.05 Pursuant to such solicitation for bids for the sale of the certificates, 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 Chicago, Illinois (the purchaser), to purchase the certificates at a cash price of \$1,366,996.60, plus accrued interest on the total principal amount from December 20, 2004, to the date of delivery of the certificates and upon condition that the certificates mature and bear interest at the times and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

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. 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 certificates 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, execution and delivery of the certificates.

2.01 The certificates to be issued hereunder shall be dated December 20, 2004, 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 certificates shall mature on December 20 in the respective years and amounts stated and shall bear interest as follows:

Year	Amount	Interest Rate
2005	\$260,000	3.00%
2006	265,000	3.00%
2007	270,000	3.00%
2008	275,000	3.00%
2009	285,000	3.25%

2.02 The certificates are not subject to redemption and prepayment before maturity.

2.03 The interest shall be payable semiannually on June 20 and December 20 in each year (each referred to herein as an interest payment date), commencing June 20, 2005. 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 certificates by check or draft mailed to the registered owners of the certificates shown on the bond registration records maintained by the bond registrar at the close of business 15 days next preceding the interest payment date (whether or not a business day) at such owners' addresses shown on such bond registration records.

2.04 The certificates 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 certificates shall cease to be an officer before delivery of the certificates, 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 Certificate, together with a certificate to be signed by the manual or facsimile signature of the city clerk in substantially the form set forth in the form of the certificate. The city clerk is authorized and directed to execute the certificate in the name of the city upon receipt of the opinion, if required by the preceding sentence, and to file the opinion in the city offices.

2.05 The city council hereby appoints Wells Fargo Bank, National Association, in Minneapolis, Minnesota, as registrar, authenticating agent, paying agent and transfer agent for the certificates (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 certificate shall be valid or

obligatory for any purpose until the bond registrar's authentication certificate on such certificate, 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 certificates need not be signed by the same representative. The manual signature of one officer of the city or the executed authentication certificate on each certificate shall be conclusive evidence that it has been authenticated and delivered under this resolution.

2.06 (a) In order to make the certificates 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) All of the certificates shall be registered in the name of Cede & Co., as nominee for DTC. Payment of interest on and principal of any certificate 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 of 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.

(c) Additional matters with respect to, among other things, notices, consents and approvals by certificate holders and payments on the certificates are set forth in the representation letter.

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 certificates and the registration of transfers of the certificates 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 certificate 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 certificates of the like aggregate principal amount, as requested by the transferor.

2.08 Each certificate delivered upon transfer of or in exchange for or in lieu of any other certificate shall carry all of the rights to interest, accrued and unpaid and to accrue, which are carried by such other certificate. Each certificate 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 certificates called for redemption or to make any such exchange or transfer of the certificates 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 certificates.

2.09 The city and the bond registrar may treat the person in whose name any certificate is registered as the owner of such certificate for the purpose of receiving payment of principal of and interest on such certificate and for all other purposes whatsoever, whether or not such certificate 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 certificates 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 certificates 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 EQUIPMENT CERTIFICATE
OF INDEBTEDNESS, SERIES 2004E

R-___ \$_____

Interest Rate	Maturity Date	Date of Original Issue	CUSIP
	December 20, ____	December 20, 2004	

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 December 20, 2004, 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 June 20 and December 20 of each year (each referred to herein as an "Interest Payment Date") commencing on June 20, 2005. 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 Certificate 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 15 days 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 Certificate, the presentation or surrender of this Certificate, 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 Certificate 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 Certificate is one of a series issued by the City in the aggregate amount of \$1,355,000, 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 December 2, 2004 (the "Resolution"), and is issued for the purpose of providing money, together with other available funds, for the purchase of capital equipment. The City has levied a direct, annual ad valorem tax upon all taxable property within the City which shall be extended upon the tax rolls for the years and in the amounts sufficient to produce sums not less than five percent in excess of the amounts of principal and interest on the Certificates, as such principal and interest respectively come due. The Certificates are not subject to redemption and prepayment before maturity.

The Certificates 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 Certificate is transferable by the registered owner hereof upon surrender of this Certificate 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 Certificate, one or more new fully registered certificates in the name of the transferee, of an authorized denomination, in an aggregate principal amount equal to the unpaid principal amount of this Certificate, 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 Certificate 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 Certificate does not cause the indebtedness of the City to exceed any constitutional or statutory limitation.

This Certificate 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 Certificate to be executed in its name by the facsimile signatures of the mayor and the city clerk.

Attest:

City Clerk

Mayor

Date of Authentication: _____

BOND REGISTRAR'S AUTHENTICATION CERTIFICATE

The Bond Registrar confirms that the books reflect the ownership of a Certificate registered in the name of the owner named above, in the principal amount stated above, and this Certificate is one of the Certificates of the series issued pursuant to the Resolution hereinabove described.

WELLS FARGO BANK, NATIONAL ASSOCIATION
Bond Registrar

By _____
Authorized Representative

BOND COUNSEL OPINION

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

City Clerk

REGISTRATION CERTIFICATE

This Certificate 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 Certificate 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 Certificate and the interest accruing thereon is registered on the books of the City in the name of the registered owner last noted below.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Date	Registered Owner	Signature of Bond Registrar
12/20/04	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 Certificate and all rights thereunder and does hereby irrevocably constitute and appoint _____ attorney to transfer the said Certificate 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 Certificate in every particular, without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

(Bank, Trust Company, member of
National Securities Exchange)

Unless this Certificate 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 certificate 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 to which there shall be credited \$1,355,000, less amounts used to pay a part of the interest cost of the issue as allowed by Minnesota Statutes, Section 475.56, from the proceeds for the certificates, 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 five years, and costs of issuance of the certificates, as such payments become due.

3.02 (a) There shall be and is hereby levied a direct, annual, ad valorem tax upon all taxable property within the city, which shall be extended upon the tax rolls for the years and in amounts sufficient to produce sums not less than 5 percent in excess of the amounts of principal and interest on the certificates as such principal and interest respectively become due as follows:

Levy Year	Collection Year	Tax Levy
2004	2005	\$309,750*
2005	2006	306,810*
2006	2007	310,394
2007	2008	307,139
2008	2009	308,976

* \$11,996.60 of premium from the purchaser of the bonds has been deposited in the debt service fund and is used to reduce the tax levy.

(b) A separate debt service account is hereby created and designated as the 2004 G.O. equipment certificates 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 certificates; 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 all of the proceeds of the certificates in excess of \$1,355,000, if any, plus the amount of accrued interest paid by the purchaser upon closing and delivery of the certificates.

3.03 If the balance in the debt service fund is ever insufficient to pay all principal and interest then due on the certificates, 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

irrepealable until the certificates 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 certificates and the interest thereon, in accordance with the terms set forth in this resolution.

3.05 Proceeds of the certificates 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 improvement program and/or payment of the principal and interest on the certificates when due.

Section 4. Tax covenants.

4.01 The city covenants and agrees with the holders of the certificates that the city will (i) take all action on its part necessary to assure that the interest on the certificates 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 certificates 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 certificates to be subject to federal income taxes, including, without limitation, refraining from spending the proceeds of the certificates and investment earnings thereon on certain specified purposes.

4.02 (a) No portion of the proceeds of the certificates 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 certificates 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 certificates or \$100,000. To this effect, any proceeds of the certificates 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 certificates) 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 certificates 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 certificates 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 certificates, or to cause or permit them to be used, in such a manner as to cause the certificates to be private activity bonds within the meaning of Sections 103 and 141 through 150 of the code.

4.03 (a) Pursuant to Section 1.148-7(d) of the treasury regulations, relating to exception from rebate, the city hereby covenants that with respect to the gross proceeds of the certificates, the following schedule will be met: (i) at least 15 percent of the gross proceeds of the certificates will be allocated to expenditures for the governmental purpose of the certificates within six months of the date of issue of the certificates; (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 5 percent of the available proceeds of the certificates, and that 100 percent of the available proceeds of the certificates will be allocated within 30 months from the date of issue of the certificates.

(b) The city shall use its best efforts to comply with any federal procedural requirements which may apply in order to effectuate the designation made by this section.

Section 5. Continuing disclosure. The city acknowledges that the certificates 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 certificates. To provide for the public availability of certain information relating to the certificates and the security therefor and to permit underwriters of the certificates to comply with the rule, which will enhance the marketability of the certificates, the mayor and the clerk are hereby authorized and directed to execute a continuing disclosure certificate substantially in the form of the certificate on file in the office of the city clerk as Public Document No. 04-0219-02.

Section 6. Certificates 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 certificates 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 certificates and such other affidavits and certificates as may reasonably be required to show the facts relating to the legality and marketability of the certificates, 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 certificates 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 certificates, and do all things and execute all instruments and documents required to be done or executed by such absent or disabled officers.

Resolution 04-0762 was unanimously adopted.

Approved December 2, 2004

HERB W. BERGSON, Mayor

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The meeting was adjourned at 5:07 p.m.

JEFFREY J. COX, City Clerk

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, December 6, 2004, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Absent: None -- 0

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The minutes of the city council meetings held on August 9, 19 and 23, 2004, were unanimously approved.

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

04-1206-01 Allete, Inc., submitting petition to vacate a portion of the existing public skywalk space located on the first floor of the Lake Superior Place building. -- Assessor

04-1206-02 Cliff Lanthier, et al. (eight signatures), submitting petition to reclassify from M-1 to C-2 property described as Lots 17 - 21, Marine Division of Duluth. -- Assessor

04-1206-3 Steven Long, et al. (three signatures), submitting petition to vacate the pedestrian easement in that part of St. Andrews Street in Lot 1, Block 22, Glen Avon between the west line of Dunedin Avenue and the west line of Block 2, Glen Avon. -- Assessor

04-1206-19 Fitger's Brewery Complex submitting communication regarding an increase of alcoholic beverage license fees for 2005 (04-0682R). -- Received

04-1206-12 St. Louis County Heritage and Arts Center submitting communication regarding 2005 distribution of tourism taxes of hotel-motel and food and beverage (04-0785R). -- Received

04-1206-04 The following submitting communications regarding the city of Duluth 2005 budget (04-072-O): (a) Bill Cheslak, Jr.; (b) Eric Mandelin. -- Received

04-1206-05 The following submitting communications regarding construction of a sanitary sewer within Howard Gnesen Road (04-0789R): (a) Sally Burns; (b) Michael Cashin; (c) Dennis and Ann Empey (2); (d) Roche and Kathleen Lally; (e) Joan Nurminen; (f) Theresa Pearson (supported by 36 signatures); (g) Deborah and Brian Richardson; (h) Corliss Tuttle; (i) Paula and Greg Veatch (2). -- Received

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REPORTS OF OFFICERS

04-1206-06 Assessor submitting letters:

(a) For confirmation of the assessment rolls levied to defray the assessable portions Crystal Drive Development, Contract 5382 (assessable - \$475,645.38); and Roslyn Avenue sanitary sewer and watermain replacement, Contract 5379 (assessable - \$79,884.45); and

(b) Of sufficiency of petition to extend 2,630 feet of sanitary sewer within Howard Gnesen Road beginning at Middle Road and extending northerly to Norton Road and 2,070 feet of sanitary sewer within Norton Road beginning at Howard Gnesen Road and extending westerly. -- Received

04-1206-07 Clerk submitting application to the Minnesota gambling control board for exemption from lawful gambling license from St. Louis and Carlton County Chapter of Pheasants Forever on February 11, 2005 (raffle). -- Received

04-1206-08 Parks and recreation department director submitting Lake Superior zoological society minutes of November 17, 2004, meeting. -- Received

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REPORTS OF BOARDS AND COMMISSIONS

04-1206-09 Duluth airport authority: (a) Unaudited balance sheet dated September 30, 2004; (b) Minutes of October 19, 2004, meeting. -- Received

04-1206-10 Duluth human rights commission minutes of September 8, 2004, meeting. -- Received

04-1206-11 Duluth transit authority: (a) Income statement for September 2004; (b) Levy information (04-0786R); (c) Minutes of September 29, 2004, meeting. -- Received

- - -

OPPORTUNITY FOR CITIZENS TO BE HEARD

Garry Krause expressed concerns on safety regarding the possible consideration by the city of allowing archery deer hunting in areas that have a large residential population near it and that small businesses need information regarding small business relocation loans.

- - -

Todd Fedora commented on his concerns over the unfunded retirees health care benefits and that the city needs to have a proactive plan to deal with this issue.

- - -

George Hanson commented on the need to improve the city from within, that regrouping instead of rebuilding is the only solution and that the city needs to do things to attract individuals and to retain its residents.

- - -

Todd Pfeffer expressed his concern over the Fond du Lac water and sewer assessment.

- - -

At this time, 7:16 p.m., President Stauber announced that the public hearing on Residential Services of Northeastern Minnesota, Inc., tax exempt bond issuance would begin.

Steve Fenlon, Midwest Healthcare Capital, reviewed that this is financing for six group homes that are located in five different cities, including Duluth, and there is a legal requirement that this public hearing be conducted.

- - -

At this time, 7:18 p.m., President Stauber closed the public hearing and announced that the public hearing regarding the 2005 budget and levy would begin.

Administrative Assistant Winson reviewed the budget process, including the resolution passed in September which set the maximum levy, and summarized the levy and budget.

Rick Heimbach expressed his concerns that: the unfunded retirees health insurance liability needs to be addressed like a business would; expenses need to be looked at to see if they are necessary; police and fire coverage should not be cut; the city's attitude needs to be changed on how to address issues like Downtown parking and leadership is needed to make this a "can do" city.

- - -

At this time, 7:28 p.m., President Stauber closed the public hearing and announced that the public hearing regarding the 2005-2009 capital improvement plan would begin.

Mr. Winson reviewed the process of bonding for capital improvements and that it requires a five year plan and public hearing.

At this time, 7:30 p.m., President Stauber closed the public hearing and the regular order of business resumed.

- - -

RESOLUTION TABLED

Councilor Ness moved to remove Resolution 04-0682, adopting license, permit and fee charges for 2005, from the table, which motion was seconded and unanimously carried.

Councilor Ness moved to amend the resolution to change certain fees for alcoholic beverages to read as follows, which motion was seconded:

"Alcoholic beverage	
Intoxicating liquor	
Bottle club - annual	\$300.00
Brewery malt liquor off sale - annual	\$200.00
Club - annual	
Less than 200 members	\$300.00
201-500 members	\$500.00
501-1,000 members	\$650.00
1,001-2,000 members	\$800.00
2,001-4,000 members	\$1,000.00
4,001-6,000 members	\$2,000.00
6,001 or more members	\$3,000.00
**Late penalty fee	
Off sale	\$100.00
*On Sale	\$250.00
Wine	\$75.00
**Off sale - annual	\$1,000.00
**On sale	
Additional bar	\$500.00
Annual	\$2,650.00
Dancing	
Annual	\$900.00
Seasonal	\$300.00
Special Sunday license - annual	\$125.00
**Temporary - on sale	

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

	First day	\$250.00
	Each additional day	\$125.00
	**Transfer	\$300.00
	**Wine - on sale	
	Annual	\$700.00
	Bed and breakfast - annual	\$350.00
	Dancing	
	Annual	\$750.00
	Seasonal	\$300.00
	*Investigations	
	In state	\$500.00
	Outside of state	\$10,000.00
	**Late hours entertainment - annual	\$200.00
	Nonintoxicating liquor	
	**Late penalty fee	
	Off sale	\$25.00
	On sale	\$50.00
	**Off sale - annual	\$130.00
	**On sale	
	Annual	\$350.00
	Dancing	
	Annual	\$750.00
	Seasonal	\$300.00
	**Temporary - on sale	
	First day	\$100.00
	Each additional day	\$20.00
	**Transfer	\$100.00
	**Permanent expansion	\$100.00
	Special meeting request fee - per applicant	\$100.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

**Temporary expansion	
First day	\$300.00
Each additional day	\$150.00"

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

Steve Townsend, Bob Bennett and David Ross expressed support for the amendment for reasons of: the proposed fee increase is approximately 40 percent; the level of service has not increased 40 percent; property taxes are increasing 17 percent; a new fire inspection fee is being imposed; the special services district fee is being imposed; sales are not increasing enough to cover these increased costs; most business owners only have one business as a source to cover costs; businesses, in order to stay competitive, have had to absorb increases like this and the city needs adjust their own expenses rather than looking to businesses to solve its budget problems.

George Hanson spoke in support of keeping in place the inspection fee rebate from the building safety division, which is intended to encourage compliance.

Councilor Ness's amendment carried upon a unanimous vote.

President Stauber expressed concerns that the fee schedule increases should have been based on the consumer price index inflation rate and the new fire department inspection fee is not based on a new service.

Resolution 04-0682, as amended, was adopted as follows:

BY COUNCILOR NESS:

RESOLVED, that pursuant to sections 2-15, 2-16, 2-17, 6-3, 6-12, 6-14, 6-39, 6-82, 18-4, 24-22, 29A-30, 31-6(a), 33-126, 35-9.1, 43-12.1, 48-3, 48-14, 48-207, 48-210 and 49-2, Duluth City Code, 1959, as amended, the following license, permit and fee charges for 2005 shall be adopted:

Assessor	
License, Permit, Fee Name	2005 Fee
Abatement processing fee	
Homestead	\$25.00
Valuation	\$50.00
Certificate of real estate value (CRV) duplicate	\$1.00
CD data	\$155.00
EOY microfiche	\$155.00
Map	
8.5 x 11; 8.5 x 14; 11 x 17	\$1.00
*11 x 17 copy of milar	\$2.00
28 x 41	\$2.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Assessor	
License, Permit, Fee Name	2005 Fee
*Fax a map copy	\$3.00
Member access to internet website	\$240.00
Ownership search	
Notification	\$25.00
Rezoning	\$25.00
Property record - full page (free to property owner)	\$2.00
* New license, permit or fee	

Attorney	
License, Permit, Fee Name	2005 Fee
Research - after first 1/4 hour (per hour)	\$50.00

Building Safety	
License, Permit, Fee Name	2005 Fee
Board of zoning appeals filing fee	\$120.00
Certificate of occupancy	\$5.00
Demolition/razing/wrecking permit	
For every 100 cubic feet of volume	\$.25
Minimum fee	\$15.00
Housing Code books	\$9.30
Mobile home permit	
Inspection fee	\$25.00
Installation fee	\$50.00
Rental housing (three year licenses)	
**Each bed in rooming unit	\$20.00
**Each building - for a new license for an existing structure or renewal of an existing license (includes initial inspection and one reinspection)	\$200.00
**Each dwelling or housekeeping unit	\$20.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Building Safety	
License, Permit, Fee Name	2005 Fee
**Each failure to appear for reinspection	\$75.00
Inspections made in response to citizen complaints	-0-
Issuing new license in conjunction with certificate of occupancy	\$25.00
**Per unit investigation fee for each occupied rental unit being operated as rental housing that is not licensed	\$200.00
Reinspection after license suspended/revoked	\$150.00
*Reinstating an expired, revoked or suspended license	\$500.00
Reissuance of existing license with new owner and/or manager name and address for the remainder of license period	\$25.00
Services rendered pursuant to a contract	as per contract
Second or more reinspection and/or initial inspections requested by owner or authorized agent of a structure	\$150.00
*Voluntary inspection requested by the owner or his or her agent	\$200.00
Subpoena fee	
**Building official	
Additional hourly rate	\$46.00
Initial fee	\$186.00
**Code plan review	
Additional hourly rate	\$25.00
Initial fee	\$101.00
**Inspector (27)	
Additional hourly rate	\$25.00
Initial fee	\$101.00
Inspector (29)	
Additional hourly rate	\$26.00
Initial fee	\$104.00
**Inspector (31)	
Additional hourly rate	\$30.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Building Safety	
License, Permit, Fee Name	2005 Fee
Initial fee	\$118.00
**Zoning (30)	
Additional hourly rate	\$28.00
Initial fee	\$114.00
*Clerical/administrative (129)	
Additional hourly rate	\$23.00
Initial fee	\$94.00
*Clerical/information (126)	
Additional hourly rate	\$20.00
Initial fee	\$83.00
Water resource management district	
**Special use permit	\$150.00
**Use permit	\$50.00
**Variance	\$150.00
*New license, permit or fee	
**Change in license, permit or fee	

Citywide	
License, Permit, Fee Name	2005 Fee
Audio tape/CD-ROM copies (per tape/CD-ROM)	\$7.00
Microfilm copies - 18"x24" (per page)	\$3.00
Microfilm copies - 8"x12" (per page)	\$2.00
Photocopies (per page)	\$.25
Research - per hour (first 1/4 hour free) [excluding attorney and library]	\$15.00
NSF checks	\$25.00
Special assessment incidental fee (per parcel)	\$122.75
Zoning booklets	\$10.75

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Clerk	
License, permit, fee name	2005 Fee
Adult bookstore - annual	\$30.00
Alcoholic beverage	
Intoxicating liquor	
Bottle club - annual	\$300.00
Brewery malt liquor off sale - annual	\$200.00
Club - annual	
Less than 200 members	\$300.00
201-500 members	\$500.00
501-1,000 members	\$650.00
1,001-2,000 members	\$800.00
2,001-4,000 members	\$1,000.00
4,001-6,000 members	\$2,000.00
6,001 or more members	\$3,000.00
**Late penalty fee	
Off sale	\$100.00
*On Sale	\$250.00
Wine	\$75.00
**Off sale - annual	\$1,000.00
**On sale	
Additional bar	\$500.00
Annual	\$2,650.00
Dancing	
Annual	\$900.00
Seasonal	\$300.00
Special Sunday license - annual	\$125.00
**Temporary - on sale	
First day	\$250.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Clerk	
License, permit, fee name	2005 Fee
Each additional day	\$125.00
**Transfer	\$300.00
**Wine - on sale	
Annual	\$700.00
Bed and breakfast - annual	\$350.00
Dancing	
Annual	\$750.00
Seasonal	\$300.00
*Investigations	
In state	\$500.00
Outside of state	\$10,000.00
**Late hours entertainment - annual	\$200.00
Nonintoxicating liquor	
**Late penalty fee	
Off sale	\$25.00
On sale	\$50.00
**Off sale - annual	\$130.00
**On sale	
Annual	\$350.00
Dancing	
Annual	\$750.00
Seasonal	\$300.00
**Temporary - on sale	
First day	\$100.00
Each additional day	\$20.00
**Transfer	\$100.00
**Permanent expansion	\$100.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Clerk		
License, permit, fee name		2005 Fee
	Special meeting request fee - per applicant	\$100.00
	**Temporary expansion	
	First day	\$300.00
	Each additional day	\$150.00
Banner license		
	Non-skywalk	\$75.00
	Skywalk	\$50.00
Bowling alley - annual		
	First lane	\$60.00
	Each additional lane	\$20.00
C-3 shopping center district revision		\$160.00
Certified copies		\$10.00
Cigarette license - annual		\$120.00
Coin operated device - annual		
	Card	\$15.00
	Location	\$15.00
	Prorated monthly fee	\$1.50
	Supplier license	\$10.00
Concurrent use permit		\$200.00
Council minutes - per meeting		\$5.00
Council proceedings - annual		\$60.00
Dance hall		
	Annual	\$200.00
	One dance event	\$50.00
Emergency wrecker service		
	Annual	\$375.00
	Vehicle replacement fee	\$5.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Clerk		
License, permit, fee name		2005 Fee
Gambling manager - annual		\$50.00
Garbage collector license - annual		\$250.00
Gasoline filling station		
	First hose - annual	\$60.00
	Each additional hose - annual	\$15.00
	Initial service inspection fee	\$100.00
	New construction during license year	\$70.00
Grooming shop - annual		\$70.00
Horse and carriage livery service		
	Annual	\$130.00
	Per carriage/per year	\$20.00
	Per horse/per year	\$10.00
Hotel/motel/motor court - annual		
	First 25 rooms	\$70.00
	Each additional room	\$2.00
Jar operator - annual		\$20.00
Kennel - annual		
	Boarding	
	3-11 animals	\$70.00
	12 or more animals	\$110.00
	Breeding	
	2-5 animals	\$70.00
	6-11 animals	\$110.00
	12 or more animals	\$250.00
Legislative Code		
	CD-ROM	\$125.00
	Hard copy	\$250.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Clerk		
License, permit, fee name		2005 Fee
Supplement (changes only)		
	CD-ROM	\$60.00
	Hard copy	\$125.00
Massage establishment - annual		\$100.00
Massage therapist - annual		\$20.00
Motor vehicle dealer - annual		
	Main lot	\$325.00
	Each additional lot	\$100.00
Motor vehicle rental - annual		\$225.00
Nuisance wildlife removal business - annual		\$70.00
Parade, race, community/special event		\$75.00
Pawnbroker - annual		\$325.00
Peddler		\$30.00
Pedestrian transit zone		
	Initial fee	\$100.00
	Annual renewal fee	\$25.00
Pet license - annual		
	Altered	\$8.00
	Animal shelter license	\$2.50
	Duplicate tag	\$3.00
	Maximum exception	\$8.00
	Unaltered	\$8.00
Pet shop - annual		\$70.00
Pool, billiard snooker & bumper pool - annual		
	First table	\$60.00
	Each additional table	\$20.00
**Precinct finder		\$10.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Clerk	
License, permit, fee name	2005 Fee
**Precinct map	\$8.00
Precious metal dealer - annual	\$325.00
Recreation/sightseeing rides	
Annual	\$120.00
Per vehicle/per year	\$40.00
Vehicle(s) added during current license year inspection fee (per vehicle)	\$30.00
Resident permit parking - annual	
Resident	\$5.00
Visitor	
Regular	\$2.00
Special	\$1.00
**Rezoning petition	\$400.00
Shooting range	
Annual	\$100.00
Initial or new construction fees	\$275.00
Special use permit	
**Filing fee	\$250.00
**Low density planned developments and community unit plans	
Initial fee	\$500.00
Plan alteration review	\$200.00
*Plan unit development	\$500.00
Taxicab	
	\$130.00
License transfer	\$5.00
Vehicle permit	\$15.00
Vehicle permit transfer	\$5.00
Vacation petition filing fee	

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Clerk	
License, permit, fee name	2005 Fee
Easement	\$400.00
Vacation - street	
Less than or equal to 200 feet	\$400.00
Greater than 200 feet	\$700.00
Veterinary hospital - annual	\$70.00
*New license, permit or fee	
**Change in license, permit or fee	

Fire	
License, Permit, Fee Name	2005 Fee
Blasting permit	
Late fee	\$300.00
Regular	\$200.00
Bon fire permit	\$125.00
Burning permit	\$50.00
Christmas trees/wreaths permit deposit	\$100.00
Commercial use/occupancy permits (three year)	
Occupancy base fees	
Assembly occupancy	\$400.00
If occupant load exceeds 100, add additional	\$100.00
Combustible storage occupancy	\$325.00
Factory occupancy	\$325.00
Fire sprinklers or alarms systems (not otherwise requiring a permit)	\$300.00
Hazardous occupancy	\$400.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Fire	
License, Permit, Fee Name	2005 Fee
Residential occupancy	
R-1 (same as state fee)	\$435.00
Additional per unit (37-99 units)	\$7.00
Additional per unit (100 or more units)	\$8.00
R-3	\$200.00
Additional per unit	\$20.00
R-4	\$200.00
Additional per unit	\$20.00
Other fees	
Inspections made in response to citizen's complaint	-0-
Issuing new permit in conjunction with issuing a certificate of occupancy	\$25.00
Reinspection upon request of any owner/occupant whose permit has been suspended or revoked	\$150.00
Reinstating a suspended or revoked permit	\$500.00
Reissuing an existing permit with the name and address of a new owner for the remainder of permit period for an occupancy with a valid permit	\$25.00
Second and subsequent reinspection and/or any initial inspection requested by the owner/occupant of a structure or his/her authorized agent	\$150.00
**Fireworks/pyrotechnics display	\$200.00
Fuel tank inspection permit (per tank)	\$50.00
Sale of fireworks permit - annual	\$100.00
**Change in license, permit or fee	

Library	
License, Permit, Fee Name	2005 Fee
Barcode/security label destruction service charge	\$3.00
Billing service charge	\$2.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Library	
License, Permit, Fee Name	2005 Fee
Card replacement	\$2.00
*Computer lab rental	
Per computer with Internet access (11 available)	\$10.00
Room rental	\$100.00
Conference room rental	
Commercial (per day)	\$100.00
Noncommercial	
Four hours or less	\$45.00
Per day	\$55.00
Deposit card fee	\$50.00
Extended use fines (per day)	
Adult items	\$.25
Art prints	\$1.00
Civil service books	\$1.00
Juvenile items	\$.10
Toys	\$.50
Videos, software, story kits	\$2.00
**Fax service - per page	\$1.00
Final notice service charge	\$3.00
Gold room rental	
Commercial (per day)	\$150.00
Noncommercial	
**Four hours or less	\$55.00
Per day	\$70.00
Green room rental	
Commercial (per day)	\$250.00
Noncommercial	

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Library		
License, Permit, Fee Name		2005 Fee
	Four hours or less	\$95.00
	Per day	\$120.00
Lost/damaged materials fee		cost of replacement and processing
**Non-Minnesota resident borrower's card		
	First family member - annual	\$45.00
	Each additional family member - annual	\$10.00
Photocopies/printing (coin-operated machines) - per page		
	Photocopy	\$.10
	Reader/printer photocopy	\$.25
Research		
	After first 1/2 hour (per hour)	\$15.00
	Mailed photocopies (per page)	\$1.00
Sale of used adult books - minimum		\$.50
Sale of used children's books - minimum		\$.50
Sale of used magazines - minimum		\$.50
Space/room rental equipment fee		\$10.00
*New license, permit or fee		
**Change in license, permit or fee		

MIS		
License, Permit, Fee Name		2005 Fee
Aerial photo data GIS mapping products		
	Up to 11"x17" map products	
	Contours - Ortho photo with ten foot contours (scale 1:1200 or 1:2400)	\$20.00
	Unrectified aerial photo (black and white 1995)	\$4.00
	Up to 22"x34" standard map products	

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

MIS		
License, Permit, Fee Name		2005 Fee
	Contours - Ortho photo with ten foot contours (scale 1:1200 or 1:2400)	\$25.00
	Unrectified aerial photo (black and white 1995)	\$10.00
34"x44" standard map products		
	Contours - Ortho photo with ten foot contours (scale 1:1200 or 1:2400)	\$30.00
	Unrectified aerial photo (black and white 1995)	\$15.00
Custom mapping		
	Minimum charge	\$50.00
	Per hour	\$50.00
Standard map products and additional copies: available maps (scale 1:1200 or 1:2400)		
	Up to 11"x17"	\$10.00
	14"x22" utility map (scale: 1:3600 only)	\$4.00
	17"x22"	\$15.00
	22"x34"	\$15.00
	34"x44"	\$20.00
	35"x90" city map	\$30.00
Digital rectified aerial photo, predefined 1/2 Sec. (1/2 mile x 1 mile)		
	Black and white or color, PLUS elevation model	\$365.00
	Black and white	\$315.00
	Color	\$315.00
Elevation model - all derived products, predefined 1/2 Sec. (1/2 mile x 1 mile)		\$220.00
Labels - selecting/printing		
	Quantity of 500	\$170.00
	Quantity of 1,900	\$218.35
Raw Imagery - Without Rectification, PLSS Sec. (1 mile x 1 mile)		\$110.00
Reproducible Mylar - Predefined 1/2 Sec. (1/2 mile x 1 mile)		\$315.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

MIS	
License, Permit, Fee Name	2005 Fee
Specialized computer information	
Custom query	
Minimum	\$200.00
CD-ROM media (minimum fee plus \$20)	\$220.00
Label request fee (minimum fee plus \$10)	\$210.00
Repeat query	\$25.00
Standard query	\$50.00
Web-based Query	
Annual maintenance and subscription	\$240.00
Set up and handling	\$25.00

Parks and Recreation	
License, Permit, Fee Name	2005 Fee
Adult special league - annual	
**Adult softball (per team)	\$525.00
**Basketball (per team)	\$565.00
Bocce (per team)	\$30.00
**Broomball (per team)	\$940.00
**Classic softball (per team)	\$1,050.00
Flag football (per person)	\$55.00
**No check hockey (per team)	\$1,300.00
**Touch football (per team)	\$575.00
**Volleyball (per team)	\$395.00
Athletic field rental	
Lights (per hour/per field)	\$40.00
Per field/per day	\$40.00
**Banner permit	\$10.00 up to a maximum of \$50.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Parks and Recreation	
License, Permit, Fee Name	2005 Fee
Bayfront Festival Park	
*Playfront parking lot (during special events)	\$3.00
Use of entire park	
Damage/cleanup deposit (refundable if park left in acceptable condition)	\$1,000.00
Per paid admission on each ticket sold in excess of total daily rental payment (Payment due seven days after event)	\$.50
Set up/take down fee (advance payment required)	\$500.00
Usage fee, per day (advance payment required)	\$1,000.00
Vendor space, per day (based on 10'x10' minimum size space) (payment due seven days after event)	\$10.00
Use of Lois M. Paulucci Music Pavilion	
**Alcohol consumption permit	\$35.00
Damage deposit (refundable)	\$50.00
*Per hour rental (up to five hours)	
40-199 persons	\$45.00
200-499 persons	\$85.00
Building rental	
Alcohol permit	\$80.00
*Community recreation center conference room (up to two hours)	\$25.00
*Damage/cleanup deposit (refundable if building left in acceptable condition)	\$100.00
Evenings/weekends/*weekdays	
First hour	\$55.00
Per hour, after first	\$25.00
Late Fee	\$25.00
*Use of licensed kitchen	\$55.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Parks and Recreation	
License, Permit, Fee Name	2005 Fee
Duluth Logo Souvenirs	
**Baseball cap	\$13.00
**Can cooler	\$6.00
**Ceramic mug	\$6.00
**Ceramic mug with coffee package	\$9.00
Clear footed glass	\$7.00
*Denim shirt	\$25.00
**Fleece	\$35.00
**Golf balls (pkg of 3)	\$7.00
**Golf shirt	\$23.00
Grey sweatshirt	\$35.00
Key tag	\$3.00
Knit cap	\$10.00
**T-shirt	\$12.00
**Watch	\$25.00
**White sweatshirt	\$22.00
General recreation	
**3 on 3 basketball (per player) - annual	\$25.00
*Adventure recreation day camp (per person/one week)	\$150.00
Chester Bowl	
**Daily pass	\$5.00
**Family season pass (can buy down cost of pass by volunteering with ski operations, concessions, etc.)	\$75.00-\$140.00
**Single season pass (can buy down cost of pass by volunteering with ski operations, concessions, etc.)	\$45.00-\$85.00
**Ski rental	\$40.00
Cooking class (per person/per day)	\$2.00
Pizza parties (per person/per day)	\$3.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Parks and Recreation	
License, Permit, Fee Name	2005 Fee
*Summer program registration	\$10.00
Youth dances (per person/per day)	\$5.00
Northland Senior Games - annual/per person	
Banquet	
Guest	\$17.00
Participant	\$12.00
Bowling	\$6.00
Cards only	\$6.00
Early entry fee	
Non-residents	\$30.00
Residents	\$25.00
Entry fee	
Non-residents	\$35.00
**Residents	\$30.00
T-shirts (non-participants)	\$10.00
Picnic	
**Alcohol consumption	\$35.00
*Kits	\$5.00
**Permit	
40 to 199 persons (up to five hours)	\$45.00
200 to 499 persons (up to five hours)	\$85.00
500+ persons	\$100.00
*Recreation centers/team events	
Dodge ball (per person)	\$25.00
Floor hockey (per person)	\$25.00
Indoor soccer (per person)	\$25.00
Youth basketball (per person)	\$25.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Parks and Recreation	
License, Permit, Fee Name	2005 Fee
**Recreational fire	\$15.00
Senior programs (per person)	
Billiards tournament	\$8.00
Citywide picnic	\$10.00
Educational seminars	\$7.00
Holiday banquet	\$14.00
Special parties	\$4.00
**Sound amplification	\$15.00
Stage rental	\$350.00
Van rides - one way	\$1.00
Vendor space - parks (per day)	\$10.00
Washington Center	
Gym rental (per hour)	\$30.00
*Lap swim (per person/per month)	\$25.00
Pool rental	
Per hour/per group	\$45.00
Per hour/per person	\$3.00
*Swimming lessons (per person)	\$20.00
*New license, permit or fee	
**Change in license, permit or fee	

Planning and Development	
License, Permit, Fee Name	2005 Fee
**C-3 and C-5 plan review	\$250.00
*EAW's (city as RGU)	\$500.00
Grant intermediary fee	
DTED/contamination clean-up	\$250.00
DTED/MIF - city	\$150.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Planning and Development	
License, Permit, Fee Name	2005 Fee
JOBZ application and monitoring fee (refundable if denied by council)	\$500.00
Platting	
Final review	
Five or less lots	\$100.00
Six to 70 lots	\$175.00
Over 70 lots (per lot)	\$2.50
**Preliminary review	\$500.00
Tax forfeit reclassification	\$150.00
*Zoning text change	\$250.00
*New license, permit or fee **Change in license, permit or fee	

Police	
License, Permit, Fee Name	2005 Fee
Animal shelter	
Daily board fee	\$25.00
Impound fee	\$35.00
Nonresident owner surrender	\$85.00
Quarantine fee	\$150.00
Rabies deposit	\$25.00
Resident owner surrender	\$75.00
Animals sold to institutions	\$200.00
Background investigation fee	\$8.00
Closed investigative product/data	
Per CD-ROM	\$1.00
Per image	\$1.50
Per page	\$2.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Police		
License, Permit, Fee Name		2005 Fee
Crime scene unit audio and video recordings		
	Per tape or CD	\$2.00
	Staff time (per hour)	\$50.00
Criminal history		\$25.00
Fingerprinting		
	First card	\$10.00
	Each additional card	\$5.00
Intrusion detection device permit		\$25.00
No parking signs - for construction sites (per sign)		\$2.00
Pawnbroker transaction surcharge (per transaction)		\$2.00

Public Works and Utilities		
License, Permit, Fee Name		2005 Fee
Aerial photo		
	2002	\$5.00
	Pre-2002	\$3.00
Building moving permit		
	Over private property	\$5.00
	Over public property	
	1,000 square feet or under of area on first floor	\$30.00
	Over 1,000 square feet of area on first floor	\$60.00
Certificate of unpaid bills		\$15.00
Driveway crossing (miscellaneous permit)		
	Base fee	\$20.00
	Inspection fee	\$15.00
Excavation permit		\$55.00
Fire service application		varies from \$642-\$1,533

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Public Works and Utilities	
License, Permit, Fee Name	2005 Fee
Gas furnace comfort policy fee - annual	
Electronic ignition	\$110.00
Standing pilot	\$99.00
Gas furnace/appliance service	
Midnight - 8:00 a.m.	
First hour OR no show fee	\$90.00
Each additional 15 minutes	\$22.50
Week days	
First 1/2 hour OR no show fee	\$30.00
Each additional 15 minutes	\$15.00
Week nights	
First 1/2 hour OR no show fee	\$45.00
Each additional 15 minutes	\$22.50
Inflow and infiltration noninspection/noncompliance surcharge (per month)	\$50.00
Land disturbance permit	
Accessory building with footprint of 1,000 square feet or less where erosion control permit is required	\$50.00
Commercial, industrial, multi family construction or demolition on parcels of 10,000 square feet or greater	\$200.00
Grading permit where no structure is being built	\$50.00
Plan review on parcels greater than 10,000 square feet but less than one acre where the engineer waives the permit	\$50.00
Reinspection (<i>note: permit fee includes one inspection</i>)	\$30.00
Single family dwelling construction	
On parcels less than 10,000 square feet where no permit is required by engineer	-0-
On parcels less than 10,000 square feet where permit is required due to special conditions	

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Public Works and Utilities		
License, Permit, Fee Name		2005 Fee
	First 3,000 square feet	\$75.00
	Each additional 1,000 square feet	\$25.00
	Maximum charge	\$250.00
On parcels equal to or greater than 10,000 square feet		
	First 3,000 square feet	\$75.00
	Each additional 1,000 square feet	\$25.00
	Maximum charge	\$250.00
Occupy or obstruct street		
	Base fee	\$15.00
	Per \$.05 increment of hourly charge per parking meter	
	Per day	\$0.25
	Per month	\$5.00
	Per week	\$1.25
	Per month, per square feet of area	\$0.07
	Minimum fee	\$10.00
	Yearly	\$200.00
**Sewer connection - property not previously assessed (per foot of frontage; varies depending on lot size)		\$65.00
Sidewalk repair or replacement (private construction) - base fee		\$15.00
Transportation permit		
	Regular	\$10.00
	Seasonal contractor	\$50.00
Violations/noncompliance service charge		
	Dispatch of service vehicle	\$35.00

Public Works and Utilities		
License, Permit, Fee Name		2005 Fee
Restoration of service		
	Between 12:00 a.m.-8:00 a.m.	\$60.00
	Between 4:30 a.m.-12:00 a.m.	\$45.00
	Between 8:00 a.m.-4:30 p.m.	\$35.00
**Water connection - property not previously assessed (per foot of frontage; varies depending on lot size)		\$65.00
Water hydrant, use of		\$90.00
Water service tapping fee		\$250.00
Watercourse obstruction		\$50.00
**Change in license, permit or fee		

Treasurer		
License, Permit, Fee Name		2005 Fee
Assessment search/certificate		
	First description	\$12.50
	Each additional description	\$12.50
Delinquent garbage accounts collection fee		\$25.00
Vehicle excise tax		\$20.00

RESOLVED FURTHER, that the following fees are hereby eliminated:

Eliminated Fees		
Dept./Div.	License, Permit, Fee Name	Current Fee
Building safety	Rebate for only needing one reinspection	(\$100.00)
Library	Fax service	
	Three pages or less	\$10.00
	More than three pages (per page)	\$3.00
	Gold room rental	

Eliminated Fees		
Dept./Div.	License, Permit, Fee Name	Current Fee
	Noncommercial	
	Two hours or less	\$25.00
Parks and Recreation	Bayfront Festival Park	
	Use of Lois M. Paulucci Music Pavilion	
	Per hour	\$35.00
	Warming shack kitchenette rental (per day)	\$15.00
	Building rental	
	City Center West kitchen use	\$50.00
	Weekdays	
	First hour	\$55.00
	Per hour, after first	\$25.00
	Washington Center	
Towel rental	\$2.00	

RESOLVED FURTHER, that any prior resolutions inconsistent or conflicting with this resolution are hereby rescinded.

RESOLVED FURTHER, that these fees shall become effective on January 1, 2005.

Resolution 04-0682, as amended, was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Little, Ness, Reinert and Stover -- 6

Nays: Councilors Atkins, Stewart and President Stauber -- 3

Approved December 6, 2004

HERB W. BERGSON, Mayor

- - -

MOTIONS AND RESOLUTIONS

The following entitled resolution was read for the second time:

BY PRESIDENT STAUBER

04-0778R - RESOLUTION AMENDING THE STANDING RULES OF THE CITY COUNCIL; CREATING A NEW RULE 19 REGULATING USE OF ELECTRONIC MAIL.

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

- - -

CONSENT AGENDA

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

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

BY COUNCILOR NESS:

RESOLVED, that the assessment rolls levied to defray the assessable portions of the following:

- (a) Crystal Drive development (Contract No. 5382 - assessable amount: \$475,645.38);
 - (b) Roslyn Avenue sanitary sewer and watermain replacement (Contract No. 5379 - assessable amount: \$79,884.45);
- are hereby confirmed.

Resolution 04-0782 was unanimously adopted.

Approved December 6, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR NESS:

RESOLVED, that the operation budget for the fiscal year January 1, 2005, to December 31, 2005, in the amount of \$2,638,833 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 04-0787 was unanimously adopted.

Approved December 6, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR NESS:

RESOLVED, that the operation budget for the fiscal year January 1, 2005, to December 31, 2005, for Duluth Steam District No. 2 in the amount of \$5,974,108 is hereby approved.

Resolution 04-0788 was unanimously adopted.

Approved December 6, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR NESS:

RESOLVED, that the proper city officers are authorized and directed to execute an agreement substantially in the form of that filed as Public Document No. 04-1206-13, with Duluth-Superior Public Access Community Television, Inc., for providing cablecasting, training, production and administrative services relating to public access television, in the amount of \$178,000 to be paid from General Fund 0100, Agency 700, Organization 1409, Object 5441.

Resolution 04-0790 was unanimously adopted.

Approved December 6, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

RESOLVED, that Corporate Express, Inc., be and hereby is awarded a contract for furnishing and delivering office supplies as needed during year 2005, year 2006 and year 2007 for the various departments and divisions in accordance with specifications on its low specification bid of an estimated \$175,000 per year for a three-year estimated total of \$525,000, terms net 30, FOB destination, payable out of various funds, departments/agencies, organizations, objects.

BE IT FURTHER RESOLVED, that proper city officials be authorized to renew this contract for two additional one year periods subject budget allocations and the agreement of both parties.

Resolution 04-0753 was unanimously adopted.

Approved December 6, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

RESOLVED, that the Duluth News Tribune be and hereby is designated the official newspaper of the city of Duluth for the year 2005, and the contract for publishing the proceedings of the city council of the city of Duluth, hereby is awarded to the Duluth News Tribune on its bid for said publications of \$1.94 per inch, these being the legal rates for the state of Minnesota. The estimated total annual cost \$20,000.

The billing is to be on the inch rate. Term: net 30 and payable out of various funds, departments/agencies, organizations and objects; to be encumbered out of year 2005 budget.

Resolution 04-0766 was unanimously adopted.

Approved December 6, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

RESOLVED, that Amendola Construction Company, Inc., be and hereby is awarded a contract for construction improvement at Longview Tennis Club, located at 326 North 25th Avenue East, for the architect division in accordance with specifications on its low specification bid of \$28,545, terms net 30, FOB job site, payable out of General Fund 0100, Department/Agency 700, Organization 2725, Object 1425.

Resolution 04-0795 was unanimously adopted.

Approved December 6, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

RESOLVED, that K.T.M. Paving be and hereby is awarded a contract for snow plowing of municipal parking lots and ramps as needed during the winter season year 2004/2005 for the facilities management division in accordance with specifications on its low specification bid at an estimated amount of \$25,000, terms net 30, FOB job sites, payable out of General Fund 0100, Department/Agency 015, Organization 2500, Object 5402.

Resolution 04-0798 was unanimously adopted.

Approved December 6, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

WHEREAS, the following organization has applied to the Minnesota gambling control board for a premise permit; and

WHEREAS, a copy of said application was also filed with the city of Duluth as required by Minnesota Statutes 349.213, Subdivision 2, and was investigated by the Duluth police department and reviewed and approved by the Duluth alcohol, gambling, and tobacco commission; and

WHEREAS, the city council approves of the issuance of said license.

NOW, THEREFORE, 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
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Piedmont Heights Hockey Association	T-Bonz Bar
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Resolution 04-0803 was unanimously adopted.

Approved December 6, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

WHEREAS, the Arrowhead Limbhangars - NWTF and Muskies, Inc., Lake Superior Chapter, have applied to the Minnesota gambling control board for a lawful gambling exemption (raffle); and

WHEREAS, the Duluth City Council has received copies of said exemption applications to the Minnesota gambling control board and has 60 days in which to present a resolution to said Minnesota gambling control board objecting to the exemption applications; and

WHEREAS, the city council approves of the exemption applications and wishes to waive the 60 day waiting period.

NOW, THEREFORE, BE IT RESOLVED, that the Duluth City Council hereby approves of the Minnesota gambling control board issuing a lawful gambling exemption to Arrowhead Limbhangars - NWTF and Muskies, Inc., Lake Superior Chapter, 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 04-0804 was unanimously adopted.

Approved December 6, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointment by Mayor Bergson of Alan P. Johnson to the Spirit Mountain recreation area authority for a term expiring on June 30, 2008, replacing Sidney R. Mason, who resigned, is confirmed.

Resolution 04-0780 was unanimously adopted.

Approved December 6, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

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

(a) General recitals.

(1) The city wishes to promote the welfare of the state of Minnesota (the state) by the active promotion, attraction, encouragement and development of economically sound industry and commerce through governmental action to prevent, so far as possible, the emergence of blighted and marginal lands and areas of chronic unemployment;

(2) Factors necessitating the active promotion and development of economically sound industry and commerce are the increasing concentration of population in the metropolitan areas and the rapidly rising increase in the amount and cost of governmental services required to meet the needs of the increased population and the need for development of land uses which will provide access to employment opportunities for such population;

(b) Description of the project. Residential Services of Northeastern Minnesota, Inc. (the borrower), located at 1309 Rice Lake Road in Duluth, Minnesota, a Minnesota nonprofit corporation and organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the code) has proposed issuance of revenue obligations, in one or more series, in an amount not to exceed \$1,000,000 (the obligations) by the city of Pine City (the issuer), to refinance debt incurred for the acquisition and equipping of, and finance capital improvements to, the four-bed adult foster care facilities located at 124 North 19th Avenue East in Duluth, Minnesota; 1135 Seventh Street Southwest in Pine City, Minnesota; 530 Watkins in Mora, Minnesota; 6701 Main Street in North Branch, Minnesota; and 805 - 24th Avenue Southwest in Cambridge, Minnesota (the project), a portion of which is located in the city, and paying costs associated with the financing;

(c) Recitals relating to the joint exercise of powers.

(1) Portions of the project are located in the city, the issuer and the cities of North Branch, Mora and Cambridge, Minnesota (collectively, and including the issuer and the city, the host cities);

(2) The borrower has requested that the host cities cooperate through a joint powers agreement in authorizing the financing of the project through the issuance of the obligations by the issuer;

(3) A draft copy of the joint powers agreement among the host cities (the joint powers agreement) has been submitted to the council and is on file in the office of the clerk;

(d) Recital of representations made by the borrower.

(1) The city has been advised by representatives of the borrower that:

(A) Conventional financing is available only on a limited basis and at such high costs of borrowing that the economic feasibility of operating the project would be significantly reduced;

(B) On the basis of information submitted to this council by the borrower and their discussions with representatives of area financial institutions and potential buyers of tax-exempt bonds, the obligations could be issued and sold upon favorable rates and terms to finance the project;

(C) The borrower will experience a significant debt service cost savings as a result of the project;

(D) The project would not be undertaken in its present form but for the availability of financing under the act;

(2) The borrower has agreed to pay any and all costs incurred by the city in connection with the issuance of the obligations, whether or not such issuance is carried to completion;

(3) The borrower has represented to the city that no public official of the city has either a direct or indirect financial interest in the project nor will any public official either directly or indirectly benefit financially from the project;

(e) Public hearing.

(1) The city council has, on December 6, 2004, held a public hearing on the proposal to undertake and finance, through the issuance of the obligations by the issuer, the portion of the project located within the jurisdictional limits of the city, at which all those appearing who desired to speak were heard and written comments were accepted;

(f) Findings. It is hereby found, determined and declared that, on the basis of information made available to this council by the borrower it appears, and this council hereby finds, that: the project would not be undertaken but for the availability of financing under the act and the willingness of the issuer to furnish such financing; and the effect of the project, if undertaken, will

be to: help prevent unemployment, provide the range of service and employment opportunities required by the population, and provide adequate adult foster care services to residents of the city at a reasonable cost;

(g) Approvals; execution of joint powers agreement; preconditions.

(1) The proposal to undertake and finance that portion of the project located in the city but outside of the jurisdictional limits of the other host cities, and the issuance of the obligations by the issuer are hereby given approval by the city subject to:

(A) The approval of the project by the department of employment and economic development of the state (DEED);

(B) Approval of the joint powers agreement by each of the other host cities;

(C) Approval of the issuance of the obligations by the issuer;

(2) The joint powers agreement is hereby made a part of this resolution as though fully set forth herein and is hereby approved in substantially the form presented to the city council. The mayor, the clerk or the authorized designee of any of the foregoing are authorized and directed to execute, acknowledge and/or deliver the joint powers agreement on behalf of the city with such changes, insertions and omissions therein as the city attorney may hereafter deem appropriate, such execution to be conclusive evidence of approval of such document in accordance with the terms hereof;

(3) The mayor, the clerk or the authorized designee of any of the foregoing are authorized and directed to execute and deliver such other documents or certificates needed from the city for the sale of the obligations;

(h) Limited obligation. The obligations, when and if issued for the project, shall not constitute a charge, lien or encumbrance, legal or equitable, upon any property of the host cities. (There will, however, be a charge, lien or encumbrance on the project, which is not an asset of the host cities.) The obligations, when and if issued, shall recite in substance that the obligations, and the interest thereon, are payable solely from revenues received from the project and property pledged for payment thereof, and shall not constitute a debt of the host cities;

(i) Payment of city's administrative fee and costs. The issuance of the obligations and the approvals given in this resolution are subject to the agreement by the borrower that it will pay the administrative fees of the city and pay, or, upon demand, reimburse the city for payment of, any and all costs incurred by the city in connection with the project and the issuance of the obligations by the issuer, whether or not the project is carried to completion or the obligations are issued;

(j) Ratification. The actions of the clerk taken with respect to causing the notice of public hearing, in the form on file in the office of the clerk as Public Document No. 04-1206-14, to be published in the official newspaper of the city and a newspaper of general circulation in the city not less than 14 days prior to the hearing are ratified and confirmed in all respects.

Resolution 04-0768 was unanimously adopted.

Approved December 6, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

The council acknowledges:

(a) James Bechthold, Minnesota Towers, Inc., and American Cellular Corporation have submitted to the city an application for a special use permit for land located at 2901 Morris Thomas Road, owned by Bechthold;

(b) The proposed tower would be 195 feet high and hold at least five antennas for cellular telephone signals;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

(c) Pursuant to ordinance, the matter was processed by city staff and the city planning commission at its meetings on October 27 and November 9, 2004. The applicants and all interested parties were allowed to submit information and participate as allowed by law. The commission recommended approval;

(d) The matter was referred to the city council, by Resolution 04-0758, and the council took up the matter at its meeting on the evening of November 22, 2004. The applicants and interested parties were heard. The materials from the planning commission file, the staff report and the applicants were presented;

(e) After consideration and discussion, and based upon the record before it, the council announced findings with regard to whether the application met the criteria of City Code, Chapter 50, including sections 50-32 and 50-25(ff), and based upon its findings, concluded to deny the application for permit and, accordingly, defeated Resolution 04-0758 by a vote of 0-8-1;

(f) On November 23, 2004, the city attorney sent to the applicants a written notice of denial of the application and the reasons therefor, the reasons being the council's findings that had been announced.

NOW, THEREFORE, BE IT RESOLVED:

(a) That the council by this resolution, shall ratify the denial and state its findings for inclusion in the public record;

(b) That the council made the following findings upon which it based its conclusion to deny the application:

(1) Property values in the immediate area will be significantly diminished by the presence of a 195 foot tower;

(2) This denial does not have the effect of prohibiting personal wireless services in the area as there is already adequate cellular phone coverage in the area;

(3) The height of the tower in its proximity to neighboring homes creates a hazard from blowing snow and ice as well as potential dangers from the proximity of the tower itself, should it fail structurally;

(4) The tower height requested is not the "least intrusive means" of achieving services in the area;

(5) Other potential tower sites have not been evaluated;

(6) The 195 foot tower does not blend into the surrounding area and the plans submitted do not show any attempt to alter its appearance to more appropriately match the character of the surroundings;

(7) The proposed use as a tower site would result in a random pattern of development with little contiguity to existing or programmed development, causing negative fiscal and environmental impacts. This is because the limited commercial activity in the area is, and is expected to be, neighborhood oriented, serving only the neighborhood. This proposed use is for commerce outside the neighborhood and its size, 195 feet high, shows that its use is out of scale with the neighborhood scale of commerce in this area. The region is better served by several small towers so that the neighborhood pattern of development that the city wants can be preserved.

Resolution 04-0802 was unanimously adopted.

Approved December 6, 2004

HERB W. BERGSON, Mayor

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BY PRESIDENT STAUBER:

WHEREAS, the state of Minnesota, department of natural resources, division of waters, administers financial assistance for coastal management purposes, through Minnesota's Lake

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Superior coastal program; and

WHEREAS, the city of Duluth desires financial assistance under the coastal management assistance grant program;

NOW, THEREFORE, BE IT RESOLVED, as follows:

(a) That the Duluth City Council approves of and supports the city administration in filing an application to Minnesota’s Lake Superior coastal management program for financial assistance in the construction of Phase II of the Grassy Point Trail;

(b) That the director of administrative services is hereby authorized and directed to execute and file an application with the Minnesota department of natural resources and to provide all information and documentation as required to become eligible for possible funding assistance;

(c) That the director of administrative services has signatory authority to apply for the funds;

(d) That the city of Duluth does agree to act as legal sponsor and to obligate funds required to satisfactorily complete the proposed project and become eligible for reimbursement under the terms and conditions of Minnesota’s Lake Superior coastal program;

(e) Matching funds to come from the city’s Capital Improvement Fund 0450, Object 5530.

Resolution 04-0792 was unanimously adopted.

Approved December 6, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are authorized to pay to William G. Cossette and Diane M. Cossette and their attorney, Peter Nickitas, \$45,000 in full and final settlement of the claim which arose out of a motorcycle accident occurring on August 30, 2002, in Duluth, Minnesota; payment to be made from the Self Insurance Fund 0610.

Resolution 04-0781 was unanimously adopted.

Approved December 6, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the proper city officers are hereby authorized to annually close those portions of Skyline Parkway specified below between the dates specified with regard thereto:

ROAD SEGMENTS CLOSED	CLOSURE DATES
Skyline Parkway from 0.4 miles east of Glenwood Street to Maxwell Road.	December 1 through April 15 of the following year.
Seven Bridges Road from the Lakeview Chalet to Maxwell Road.	December 1 through April 15 of the following year.
Maxwell Road from Skyline Parkway to Oak Street.	December 1 through April 15 of the following year.
Skyline Parkway from 0.3 miles south of 100th Avenue West southwest to the city limits.	November 1 through April 15 of the following year.

Resolution 04-0791 was unanimously adopted.

Approved December 6, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Twin Cities Mack and Volvo Truck be and hereby is awarded a contract for furnishing and delivering two Mack Model CV713 truck cab and chassis tandem axle for the utility operation division in accordance with specifications on its low specification bid of \$198,257.25, terms net 30, FOB destination, \$49,564.31 payable out of Water Fund 0510, Department/Agency 500, Organization 1905, Object 5580; \$49,564.31 payable out of Gas Fund 0520, Department/Agency 500, Organization 1905, Object 5580; \$49,564.31 payable out of Sewer Fund 0530, Department/Agency 500, Organization 1905, Object 5580 and \$49,564.32 payable out of Stormwater Utility Fund 0535, Department/Agency 500, Organization 1905, Object 5580.

Resolution 04-0793 was unanimously adopted.

Approved December 6, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Markhurd, Inc., be and hereby is awarded a contract for furnishing aerial photography mapping services for the engineering division in accordance with specifications on its low specification bid of \$11,780, terms net 30, FOB job site, payable out of various funds, departments/agencies, organizations, objects.

Resolution 04-0796 was unanimously adopted.

Approved December 6, 2004

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Twin Cities Mack and Volvo Truck be and hereby is awarded a contract for furnishing and delivering two Mack Model CV712 truck cab and chassis single axle for the utility operation division in accordance with specifications on its low specification bid of \$175,439.27, terms net 30, FOB destination, \$131,579.45 payable out of Water Fund 0510, Department/Agency 500, Organization 1905, Object 5580 and \$43,859.82 payable out of Gas Fund 0520, Department/Agency 500, Organization 1905, Object 5580.

Resolution 04-0800 was unanimously adopted.

Approved December 6, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that the city of Duluth does hereby accept a temporary construction easement substantially in the form of that on file in the office of the city clerk as Public Document No. 04-1206-15 from White Pine Development, Inc., for the Cedar Ridge residential development at no cost to the city.

Resolution 04-0805 was unanimously adopted.

Approved December 6, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

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 one side of the following street:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

North side of Piedmont Frontage Road between Fourth Street and Voss Avenue.
Resolution 04-0731 was unanimously adopted.

Approved December 6, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

BE IT RESOLVED, that in accordance with the provisions of Section 33-17 of the Duluth City Code, 1959, as amended, the following segment of Tenth Street is no longer a one way street:

Tenth Street between Piedmont Avenue and 22nd Avenue West.

This resolution to become effective only after said streets have been posted with proper signs indicating the change in description.

Resolution 04-0732 was unanimously adopted.

Approved December 6, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR REINERT:

RESOLVED, that Minnesota Army National Guard be and hereby is awarded a contract for providing volleyball court rental for the parks and recreation department in accordance with specifications on its low specification bid of \$10,260, terms net 30, FOB destination, payable out of Special League Fund 0210, Department/Agency 030, Organization 2190, Object 5421, to be encumbered out of year 2005 budget.

Resolution 04-0794 was unanimously adopted.

Approved December 6, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR REINERT:

RESOLVED, that the proper city officers are authorized and directed to enter into an agreement with Duluth Community Garden Program, Inc., a Minnesota nonprofit corporation, providing for the corporation's use of unmaintained parklands for its community garden program for a three year period expiring on October 31, 2007; said agreement to be substantially in the form of Public Document No. 04-1206-16 on file in the office of the city clerk; rental proceeds to be deposited in Fund 0100, Department 400, Organization 1812, Object 4180.

Resolution 04-0808 was unanimously adopted.

Approved December 6, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR REINERT:

BE IT RESOLVED, that pursuant to Section 35-15 of the Duluth City Code, 1959, as amended, the city council amends Resolution 03-0813 as follows:

In Exhibit A, under season passes, unlimited, the 2004 rate is changed to read \$500.

At the end of the resolution is added the following:

BE IT FURTHER RESOLVED, that the rates shown in Exhibit A for year 2004 shall continue in force until changed by action of the council.

Resolution 04-0811 was unanimously adopted.

Approved December 6, 2004

HERB W. BERGSON, Mayor

- - -

The following resolutions were also considered:

BY COUNCILOR NESS:

RESOLVED, that the city council of the city of Duluth does hereby approve the general fund budget, the debt service budget, the capital projects fund budget and the storefront loan fund budget of the Duluth economic development authority for the year 2005.

Resolution 04-0783 was unanimously adopted.

Approved December 6, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR NESS:

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

Section 1. Capital improvement plan.

1.01 (a) Under and pursuant to Minnesota Statutes, Section 475.521 (the act), the city council has authorized preparation of a capital improvement plan for the years 2005 through 2009 which has been presented to the city council in a document entitled "Capital Improvement Budget and Five Year Plan 2005-2009," dated November 2004 (the plan);

(b) The city council has caused due notice to be given and has this day held a public hearing as required by the act, to provide an opportunity for residents to express their views on the plan;

(c) The city 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 city council finds that the plan is desirable and beneficial to the city and its residents;

(b) The city 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 and reallocation of bond proceeds.

2.01 (a) The city council is considering the issuance of capital improvement bonds under the act and Minnesota Statutes, Chapter 475, in an amount not to exceed \$1,300,000 (the bonds), for the purpose of providing funds for continuation of the restoration of the granite and brick facades of City Hall; continuation of the installation of ventilation systems in fire halls; construction of a steel framed, fabric covered storage building to store salt/sand deicing material to protect surface water quality; and construction of a police station in west Duluth (collectively, the project) and payment of discount and costs of issuance;

(b) The city hereby expresses its intent to issue the bonds for the project in an aggregate principal amount not to exceed \$1,300,000, 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 2.03 of this resolution.

2.02 (a) The city previously issued its \$800,000 general obligation capital improvement bonds, Series 2004A, dated March 1, 2004 (the 2004A bonds). The sum of \$170,192 of proceeds from the 2004A bonds shall be reallocated to finance the construction of the police station in West Duluth;

(b) The city will reallocate the 2004A bonds if no petition requesting a vote on the reallocation of the 2004A 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 2.03 of this resolution.

2.03 The city council shall hold a public hearing on the issuance of the bonds and the reallocation of proceeds of the 2004A bonds at 7:00 p.m. on January 10, 2005. 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. 04-1206-18, 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.

2.04 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 04-0784 was adopted upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert and Stover -- 7

Nays: Councilor Stewart and President Stauber -- 2

Approved December 6, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0815, by Councilor Gilbert, regarding a change in proposed city budget - Duluth Convention and Visitors Bureau; and Resolution 04-0785, by Councilor Ness, distributing the estimated 2005 tourism taxes of hotel-motel and food and beverage, were introduced for discussion.

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

Mark Long and Ken Loeffler-Kemp, AFSME business agent, spoke in support of Resolution 04-0815 for reasons of: the Duluth Convention and Visitors Bureau had \$196,000 in their bank account at the start of this year; the city is facing budget shortfalls and has made cuts in other areas; a large amount of the bureau's promotions are up the shore and do not benefit the city; spending these dollars on public safety is more important and public attractions need tourists.

Ken Donovan, chairperson of the Duluth Convention and Visitors Bureau (DCVB), Terry Mattson, executive director of the DCVB, and Ken Buehler, executive director of the St. Louis County Heritage and Arts Center (Depot), spoke in opposition to Resolution 04-0815 for reasons of: over 450 members of the bureau are affected by the visitor industry; it is important to promote Duluth as a destination; the Edgewater Motel project would not have been undertaken without an adequately supported convention and visitors bureau; the DCVB is a revenue producer for Duluth that affects the livelihood of thousands of Duluthians; tourism generates additional tax revenue, jobs and growth and tourists support the Depot.

Councilor Stewart moved to amend Resolution 04-0815 to read as follows:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

“WHEREAS, the city council finds that, based upon the latest data from year 2002, the general fund’s tourism related expenses were \$200,000 more than reimbursement to it from the tourism fund.

NOW, THEREFORE, BE IT RESOLVED, that the city council requests that the administration changes the 2005 budget to increase by \$200,000 the amount transferred to the general fund from the unrestricted portion of Duluth’s special city excise and sales taxes,” which motion was seconded and unanimously carried.

Councilors Ness and Atkins opposed Resolution 04-0815, as amended, for reasons of: the tourism industry already benefits from services provided by the city; tourism taxes contribute \$1.1 million annually to the general fund; businesses agreed to the various beverage, food and lodging taxes; the DCVB should not be the “whipping boy” for cutting dollars for tourism; the DCVB is the entity that promotes the community to bring in the tourism dollars; this is not the way to address the budget crisis because it targets a specific industry and there is a \$4.60 return on investment for every dollar expended for tourism.

Resolution 04-0815, as amended, was adopted as follows:

BY COUNCILOR GILBERT:

WHEREAS, the city council finds that, based upon the latest data from year 2002, the general fund’s tourism related expenses were \$200,000 more than reimbursement to it from the tourism fund.

NOW, THEREFORE, BE IT RESOLVED, that the city council requests that the administration changes the 2005 budget to increase by \$200,000 the amount transferred to the general fund from the unrestricted portion of Duluth’s special city excise and sales taxes.

Resolution 04-0815, as amended, was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Reinert, Stewart and Stover -- 5

Nays: Councilors Atkins, Little, Ness and President Stauber -- 4

Approved December 6, 2004

HERB W. BERGSON, Mayor

- - -

Upon a request by the administration, Councilor Stewart moved to table Resolution 04-0785, which motion was seconded and unanimously carried.

- - -

Resolution 04-0786, by Councilor Ness, approving the fiscal year January 1, 2005, to December 31, 2005, operation budget of the Duluth Transit Authority, was introduced for discussion.

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

KL Lewis voiced support for the resolution because many individuals are dependent upon bus service.

President Stauber stated that he would not support the resolution because it is a 17 percent increase in the authority’s levy, which was not brought forth until the media brought it up.

Resolution 04-0786 was adopted as follows:

BY COUNCILOR NESS:

RESOLVED, that the operation budget for the fiscal year January 1, 2005, to December 31, 2005, in the amount of \$10,072,005 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 04-0786 was adopted upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Stewart and Stover -- 7

Nays: Councilor Reinert and President Stauber -- 2

Approved December 6, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0809, by Councilor Atkins, establishing the city's legislative priorities for the 2005 session of the Minnesota State Legislature, was introduced for discussion.

Councilor Ness moved to amend the resolution from the sixth paragraph to the end of the resolution as follows:

"FURTHER RESOLVED, that city staff is to support the following funding requests:

Port development assistance administered by the Minnesota department of transportation.

Redevelopment account administered by the department of employment and economic development.

Wastewater infrastructure funding administered by the public facilities authority (DEED) and the Minnesota pollution control agency.

State matching funds to complete a study of freshwater corrosion of structures in St. Louis Bay.

Greater Minnesota regional parks funding administered by the department of natural resources.

FURTHER RESOLVED, that city staff is to support the following legislative initiatives that have state wide effects:

Housing legislative initiatives:

A \$20 million bond allocation for permanent supportive housing loans through the Minnesota housing finance agency;

Modification of the 1995 Minnesota state legislation that provides "relative homestead" property tax status, restricting this status to "vacation homes";

Support for the programs and services of the Minnesota housing finance agency including the "Bridges program;"

Support property tax relief for low income rental properties;

Expand tax abatement authority to provide 20 year abatements for affordable housing development;

Support tax increment financing for development of mixed-income and mixed-occupancy housing; and

Support efforts to establish historic preservation tax credits.

FURTHER RESOLVED, that the administration and council express support for the initiatives advanced by the Minnesota state colleges and universities system for construction funds for a health and wellness facility at Lake Superior College; construction funds for a life sciences facility and a recreational sports addition at University of Minnesota Duluth; for the Duluth Grant School Youth and Community Center through the department of education; and for construction of, and tax exemptions for, a test facility of a personal rapid transit system in Minnesota; and for state tax exemptions for the relocation of dock facilities from a superfund site on St. Louis Bay waterfront,"

which motion was seconded and unanimously carried.

Resolution 04-0809, as amended, was adopted as follows:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

BY COUNCILOR NESS:

WHEREAS, the city administration and council wish to establish a clear set of priorities for legislative action during the 2005 legislative session; and

WHEREAS, there have been several meetings devoted to discussing city legislative concerns and priorities; and

WHEREAS, the administration and council choose to express support for a number of projects which will benefit the community while indicating whether the city will assume a lead role or a supporting role or will simply express its support for a funding request.

NOW, THEREFORE, BE IT RESOLVED, that the primary legislative objectives of the city of Duluth for the year 2005 are to:

Preserve a truly needs based formula for the allocation of local government aid and maintain the highest possible funding for the local government aid program.

Secure legislation to delay the take over of the collection of the city's local sales by the department of revenue until December 31, 2007.

Secure state bonding proceeds for the following requests:

Duluth sanitary sewer overflow storage.

Completion of the Aerial Lift Bridge rehabilitation.

Design for the new Duluth arena at the DECC.

Development of Spirit Mountain master plan.

Design and develop restrooms, exhibits and trail at Lake Superior Zoo.

FURTHER RESOLVED, that city staff and elected officials will take the lead role in advancing these initiatives during the 2005 legislative session.

FURTHER RESOLVED, that city staff is to support the following funding requests:

Port development assistance administered by the Minnesota department of transportation.

Redevelopment account administered by the department of employment and economic development.

Wastewater infrastructure funding administered by the public facilities authority (DEED) and the Minnesota pollution control agency.

State matching funds to complete a study of freshwater corrosion of structures in St. Louis Bay.

Greater Minnesota regional parks funding administered by the department of natural resources.

FURTHER RESOLVED, that city staff is to support the following legislative initiatives that have state wide effects:

Housing legislative initiatives:

A \$20 million bond allocation for permanent supportive housing loans through the Minnesota housing finance agency;

Modification of the 1995 Minnesota state legislation that provides "relative homestead" property tax status, restricting this status to "vacation homes;"

Support for the programs and services of the Minnesota housing finance agency including the "Bridges program;"

Support property tax relief for low income rental properties;

Expand tax abatement authority to provide 20 year abatements for affordable housing development;

Support tax increment financing for development of mixed-income and mixed-occupancy housing; and

Support efforts to establish historic preservation tax credits.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

FURTHER RESOLVED, that the administration and council express support for the initiatives advanced by the Minnesota state colleges and universities system for construction funds for a health and wellness facility at Lake Superior College; construction funds for a life sciences facility and a recreational sports addition at University of Minnesota Duluth; for the Duluth Grant School Youth and Community Center through the department of education; and for construction of, and tax exemptions for, a test facility of a personal rapid transit system in Minnesota; and for state tax exemptions for the relocation of dock facilities from a superfund site on St. Louis Bay waterfront.

Resolution 04-0809, as amended, was unanimously adopted.

Approved December 6, 2004

HERB W. BERGSON, Mayor

- - -

BY PRESIDENT STAUBER:

WHEREAS, the city council has by Ordinance 04-053 established the Downtown Waterfront Special Service District; and

WHEREAS, the city council has approved Resolution 04-0596, authorizing entering into a service contract with the Greater Downtown Council to provide services to implement the Downtown special services district; and

WHEREAS, the above-referenced service contract provides that the city will pay the Greater Downtown Council an amount of \$200,000 annually in 2005, 2006, 2007, 2008 and 2009 toward the expenses of special services district; and

WHEREAS, the Fond du Luth Casino added 144 slot machines to the original 556 machines in late 2003 and these additional machines are expected to generate approximately a minimum of five percent additional revenue, which equates to an increase of \$270,000 over 2003 receipts; and

WHEREAS, the Fond du Luth Casino is located in the area covered by the special services district.

NOW, THEREFORE, BE IT RESOLVED, that the appropriation of \$200,000 of the revenue received in 2005 from the Fond du Luth Casino to the general fund for the express purpose of funding the city of Duluth's payment to the special services district.

Resolution 04-0810 was adopted upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Ness, Reinert, Stewart, Stover and President Stauber -- 8

Nays: None -- 0

Abstention: Councilor Little -- 1

Approved December 6, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0789, by Councilor Stover, of intent to construct 2,630 feet of sanitary sewer within Howard Gnesen Road beginning at Middle Road and extending northerly to Norton Road and 2,070 feet of sanitary sewer within Norton Road beginning at Howard Gnesen Road and extending westerly, was introduced for discussion.

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

Rosemary Chos, Tom Pearson, Teresa Pearson, Corless Tuttle, Randy Gergen, Charlie Danielson, Paula Veath and KL Lewis opposed the resolution for reasons of: this project would be a great financial hardship for many residents; given the large size of the lots, the assessments would be huge; a communication (Public Document No. 04-1206-05(f)) signed by 36 affected families so far oppose this project; the individual costs for this project exceed any benefit that

could come from it; many neighbors have already spent money on the construction of new septic systems; the sewage from this area would be directed down Woodland Avenue and contribute to an area on Jefferson Street that has been documented and verified as a problem overflow area; modern septic systems last approximately 40 years; with this assessment, property owners will not be able to sell their properties and there is a need to first address the overflow problem at the lower end of this sewer system and not to create more problems by adding to it.

Councilors Stewart and Stover felt that the resolution should be approved so the legal process can be completed and then the council can make their decision.

Councilors opposing the resolution felt that the majority of the neighborhood does not support this project and there is no need to proceed further.

Resolution 04-0789 failed upon the following vote (Public Document No. 04-1206-17):

Yeas: Councilors Stewart and Stover -- 2

Nays: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert and President Stauber -- 7

- - -

BY COUNCILOR STOVER:

WHEREAS, the city of Duluth desires to provide the construction of Butternut Avenue from Hickory Street to cul-de-sac; and

WHEREAS, the city desires to hire a consulting engineer to provide the engineering services required for construction inspection and construction administration phases; and

WHEREAS, R.L.K.-Kuusisto, Ltd., has submitted a proposal for engineering services in connection with this project.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with R.L.K.-Kuusisto, Ltd., to provide the city with such engineering services. This agreement is in contingent on the award of the construction project.

BE IT FURTHER RESOLVED, that the cost of said engineering services, estimated at \$22,825, will be payable from the Special Assessment Fund 0410, Department/Agency 038, Organization 5401, Object 5530.

Resolution 04-0797 was unanimously adopted.

Approved December 6, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Letourneau and Sons, Inc., be and hereby is awarded a contract for construction of Butternut Avenue from Hickory Street to cul-de-sac for the engineering division in accordance with specifications on its low specification bid of \$248,666.50, terms net 30, FOB job site, payable out of Special Assessment Fund 0410, Department/Agency 038, Organization 5401, Object 5530.

Resolution 04-0799 was unanimously adopted.

Approved December 6, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR REINERT:

BE IT RESOLVED, that the city of Duluth accepts a conditional gift from Lake Superior zoological society in the amount of \$19,133.79, to be deposited in Account 0250-015-4690, which

gift is to be used only for the purchase of a van motor vehicle for the use of the zoo and the zoological society as set out in Requisition 04-0659 and Purchase Order 04-0659-7697.

Resolution 04-0801 was unanimously adopted.

Approved December 6, 2004

HERB W. BERGSON, Mayor

- - -

**INTRODUCTION AND CONSIDERATION OF ORDINANCES
ORDINANCE TABLED**

BY COUNCILOR GILBERT

04-069 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NOS. 28 AND 34, AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-B, ONE-FAMILY RESIDENTIAL DISTRICT, AND R-1-C, ONE FAMILY RESIDENTIAL DISTRICT, TO R-3, APARTMENT RESIDENTIAL DISTRICT, PROPERTY ON THE SOUTHWEST SIDE OF RICE LAKE ROAD, ROUGHLY BETWEEN PECAN AVENUE AND HOMES THAT FRONT ON BLACKMAN AVENUE AND NORTH OF THE UNBUILT DAVIS STREET RIGHT-OF-WAY (MARK LAMBERT/SUMMIT MANAGEMENT, LLC).

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

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

Vickie Sanville and Ben Small, members of the Affordable Housing Coalition, expressed support for the need for all types of housing, including student housing like this.

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

Yeas: Councilors Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 8

Nays: Councilor Atkins -- 1

- - -

The following entitled ordinances were read for the first time:

BY COUNCILOR NESS

04-072 - AN ORDINANCE SETTING THE BUDGET FOR THE FISCAL YEAR 2005 APPROPRIATION MONIES FOR THE SUPPORT OF THE CITY GOVERNMENT, PUBLIC UTILITIES, AND PUBLIC ENTERPRISE FUNDS AND FOR OTHER PURPOSES.

- - -

BY COUNCILOR NESS

04-073 - AN ORDINANCE DETERMINING THE SUM TO BE RAISED BY TAXATION FOR GENERAL PURPOSES FOR THE YEAR 2005.

- - -

BY COUNCILOR NESS

04-074 - AN ORDINANCE DETERMINING THE SUM TO BE RAISED BY TAXATION FOR THE SPECIAL TAXING DISTRICT, DULUTH TRANSIT AUTHORITY, FOR THE YEAR 2005.

- - -

BY COUNCILOR NESS

04-075 - AN ORDINANCE DETERMINING THE SUM TO BE RAISED BY TAXATION FOR THE SPECIAL TAXING DISTRICT, SEAWAY PORT AUTHORITY, FOR THE YEAR 2005.

- - -

BY COUNCILOR NESS

04-076 - AN ORDINANCE TO AMEND THE BUDGET OF THE CITY OF DULUTH FOR THE YEAR 2004 INCREASING THE BUDGET AND APPROPRIATING MONIES FOR THE PAYMENT OF SUCH INCREASE.

- - -

BY COUNCILOR STOVER

04-077 - AN ORDINANCE AUTHORIZING CONVEYANCE OF UTILITY EASEMENTS FOR A SANITARY SEWER SERVICE LINE SERVING THE LAKEWOOD PUMPING STATION PROPERTY TO THE NORTH SHORE SANITARY DISTRICT.

- - -

The following entitled ordinance was read for the second time:

BY PRESIDENT STAUBER

04-071 (9705) - AN ORDINANCE PERTAINING TO CABLE TELEVISION FRANCHISE.

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

- - -

The meeting was adjourned at 10:06 p.m.

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 9705

BY PRESIDENT STAUBER:

AN ORDINANCE PERTAINING TO CABLE TELEVISION
FRANCHISE.

The city of Duluth does ordain:

Section 1. The franchise granting Charter the right and privilege to operate a cable television system is hereby extended to April 30, 2005, or until a new franchise agreement is executed, whichever shall first occur.

Section 2. In granting this extension neither the city nor Charter waives any rights under the franchise or applicable law and both the city and Charter agree to comply with all terms and obligations of the franchise.

Section 3. This ordinance shall become effective upon the occurrence of both of the following conditions:

(a) Pursuant to Section 82 of the City Charter, this ordinance shall be published verbatim in the official paper of the city of Duluth once a week for four successive weeks after its passage, and shall take effect 30 days from and after its last publication; and

(b) Charter's acceptance of this ordinance and the franchise for the term specified in paragraph (1) above, provided Charter accepts and agrees to each and every term of this ordinance and the franchise within 14 days from the date this ordinance is adopted by the city council. (Effective date: February 6, 2005)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Nays: None -- 0

ATTEST:

JEFFREY J. COX, City Clerk

Passed December 6, 2004
Approved December 6, 2004
HERB W. BERGSON, Mayor

OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, December 20, 2004, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Atkins, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 7

Absent: Councilors Gilbert and Johnson -- 2

- - -

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

04-1220-16 Janet Draper submitting communication regarding the proposed Rice Lake Road reclassification (04-069-O). -- Received

04-1220-17 The following submitting communications regarding the 2005 CDBG funding for Neighborhood Housing Services of Duluth (04-0825R): (a) Gary Eckenberg; (b) Neighborhood Housing Services. -- Received

04-1220-18 The following submitting communications regarding the 2005 budget and levy (04-072-O and 04-073-O): (a) Charles M. Bell; (b) Rick Heimbach; (c) Mark Jeronimus; (d) Brenda Sproat. -- Received

04-1220-19 The following submitting communications regarding 2005 distribution of tourism taxes (04-0785R): (a) Ron Anderson; (b) Eric Dings; (c) Duluth Attractions Council. -- Received

- - -

REPORTS OF OFFICERS

04-1220-01 Assessor submitting:

(a) Confirmation of assessment rolls levied to defray the assessable portions of the following contracts: Arrowhead Road improvement from Woodland Avenue to Dodge Avenue (Contract #5375), total assessable, \$306,884.78; Kent Road permanent street from Chester Parkway to 19th Avenue East (Contract #5372), total assessable, \$12,112.11;

(b) Letters of sufficiency of petitions to:

(1) Reclassify from M-1 to C-2 Lots 17-21, Block 19, Marine Division of Duluth;

(2) Vacate:

(A) A portion of the existing public sidewalk on the Lake Superior Place Building;

(B) That part of St. Andrews Street at Lot 1, Block 11, Glen Avon Third Division, between the west line of Dunedin Avenue and the west line of Block 11, Glen Avon.

-- Received

- - -

REPORTS OF BOARDS AND COMMISSIONS

04-1220-02 Commission on disabilities: (a) Communication regarding the comprehensive plan steering committee; (b) 2004 year-end report. -- Received

04-1220-03 Duluth human rights commission minutes of November 10, 2004, meeting. -- Received

04-1220-04 Parks and recreation commission minutes of November 10, 2004, meeting. -- Received

04-1220-05 Spirit Mountain recreation area authority minutes of October 27, 2004, meeting. -- Received

- - -

OPPORTUNITY FOR CITIZENS TO BE HEARD

Rick Heimbach challenged the councilors to make tough decisions and turn the city around by not raising taxes and/or repeal the new fees that are were approved.

- - -

KL Lewis stated that the citizens of Duluth understand teamwork and rise to the occasion when needed, but the city needs to stop allowing special favors to businesses by letting them off the hook when they do not fulfill their requirements.

- - -

At this time, 7:10 p.m, Councilor Johnson took her seat.

- - -

Garry Krause suggested that the city put together a task force for developing some restrictions for deer hunting within the city limits.

- - -

Clarke Coole, director of Duluth Amateur Hockey Association (DAHA), stated that there is a desperate need for another ice facility in Duluth due to the recent Peterson Arena fire and reviewed that the Kroc facility is still two to three years away even if Duluth is awarded the grant. He requested that when the council votes on the budget for next year that some money will be set aside to build a new hockey facility.

- - -

Joe Michela suggested that a coalition of interested people get together to see what can be done to get a new hockey arena and suggested that the school district should be an active partner in this new venture.

- - -

I. Ags reviewed that he has been trying for the last four years to get CDBG money to replace the floor at Sacred Heart Music Center as it is a good mixing place for the hillside and the rest of the community, but the building will have to close soon if the floor is not replaced.

- - -

RESOLUTIONS TABLED

Councilor Ness moved to remove Resolution 04-0785, distributing the estimated 2005 tourism taxes of hotel-motel and food and beverage, from the table, which motion was seconded and unanimously carried.

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

Gina L. Beste-Wuorinen explained that as new business owners in Duluth, the Duluth Convention and Visitors Bureau (DCVB) helped their business get started and is an essential service to business owners in Duluth.

Rod Raymond reviewed that DCVB supplements businesses in their marketing costs of special events which draws tourists into Duluth and reviewed that the tourist industry is essential to Duluth.

Resolution 04-0785 was adopted as follows:

BY COUNCILOR NESS:

RESOLVED, that the 2005 tourism taxes of hotel-motel and food and beverage, as estimated, be distributed in the following manner:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

	3% Hotel-Motel	1% Hotel-Motel	1.5% Food & Beverage	Additional 2.5% Hotel-Motel	TOTAL
Duluth public arts commission			\$20,000	\$10,000	\$30,000
Sister cities			22,000	13,600	35,600
DECC	796,600				796,600
Convention and Visitors Bureau	428,900	141,300	482,300	169,700	1,222,200
Historical Union Depot		88,200	54,600	13,000	155,800
Donations			45,000		45,000
To general fund	64,500	195,500	669,800	187,700	1,117,500
Spirit Mountain debt service			225,000		225,000
To debt service			831,300	591,000	1,422,300
TOTALS	\$1,290,000	\$425,000	\$2,350,000	\$985,000	\$5,050,000

Resolution 04-0785 was unanimously adopted.

Approved December 20, 2004

HERB W. BERGSON, Mayor

- - -

President Stauber moved to remove Resolution 04-0778, amending the standing rules of the city council; creating a new Rule 19 regulating use of electronic mail, from the table, which motion was seconded and unanimously carried.

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

Garry Krause stated that it is a violation of the open meeting law if the councilors are e-mailing each other to discuss an issue that is going to be voted on.

- - -

At this time, 7:40 p.m., Councilor Gilbert took his seat.

- - -

President Stauber moved to retable the resolution, which motion was seconded and unanimously carried.

- - -

**MOTIONS AND RESOLUTIONS
CONSENT AGENDA**

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

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

BY COUNCILOR NESS:

WHEREAS, the city and the Duluth human rights commission (commission) desire to facilitate the acceptance of gifts to further the duties and objectives of the commission by streamlining the acceptance process so that each gift does not require a separate city council resolution.

RESOLVED, that the city treasurer is authorized to accept gifts from individuals and organizations given to further the duties and objectives of the commission by streamlining the acceptance process so that each gift does not require a separate city council resolution. These gifts will be deposited in the Special Projects Fund 210-030 and will be used only in accordance with the expressed wishes of the donor.

RESOLVED FURTHER, that an accounting of the amounts and purposes of each gift be communicated in writing by the treasurer to the Duluth City Council on an annual basis.

Resolution 04-0822 was unanimously adopted.

Approved December 20, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR NESS:

WHEREAS, the city and its commission on disabilities (commission) desire to facilitate the acceptance of gifts to further the duties and objectives of the commission by streamlining the acceptance process so that each gift does not require a separate city council resolution.

RESOLVED, that the city treasurer is authorized to accept gifts from individuals and organizations given to further the duties and objectives of the commission by streamlining the acceptance process so that each gift does not require a separate city council resolution. These gifts will be deposited in the Special Projects Fund 210-030 and will be used only in accordance with the expressed wishes of the donor.

RESOLVED FURTHER, that an accounting of the amounts and purposes of each gift be communicated in writing by the treasurer to the Duluth City Council on an annual basis.

Resolution 04-0823 was unanimously adopted.

Approved December 20, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR NESS:

RESOLVED, that the assessment rolls levied to defray the assessable portions of the following:

(a) Arrowhead Road improvement from Woodland Avenue to Dodge Avenue (Contract No. 5375 - assessable amount: \$306,884.78);

(b) Kent Road permanent street from Chester Parkway to 19th Avenue East (Contract No. 5372 - assessable amount: \$12,112.11);

are hereby confirmed.

Resolution 04-0824 was unanimously adopted.

Approved December 20, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

RESOLVED, that Lipe Brothers Construction, Inc., be and hereby is awarded a contract for overhead garage door replacement at Fire Station #1, located at 602 West Second Street for the architect division in accordance with specifications on its low specification bid of \$27,350, terms

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

net 30, FOB job site, payable out of Capital Improvements Fund 0450, Department/Agency 030, Organization C404, Object 5535.

Resolution 04-0830 was unanimously adopted.

Approved December 20, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

WHEREAS, the city of Duluth requires to have a digital plat and parcel data mapping project; and

WHEREAS, the city desires to hire a consultant to provide the services required for the coastal management assistance program for the Chester Creek and Miller Creek ownership mapping project; and

WHEREAS, Pro-West and Associates, Inc., has submitted a proposal for the consulting services in connection with this project.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with Pro-West and Associates, Inc., to provide the city with such consulting services.

BE IT FURTHER RESOLVED, that the cost of said consulting services, estimated at \$99,000, will be payable from the Special Project Fund 0210, Department/Agency 030, Organization 2154, Object 5319.

Resolution 04-0831 was unanimously adopted.

Approved December 20, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

RESOLVED, that Polyphase Electric Company be and hereby is awarded a contract for furnishing electrical services as needed for the month of December and year 2005 for the facility management division in accordance with specifications in the estimated total of \$47,995, terms net 30, FOB job sites, payable out of General Fund 0100, Department/Agency 015, Organization 2510, Object 5319; the amount of \$44,295 will be encumbered out of year 2005 budget.

Resolution 04-0832 was unanimously adopted.

Approved December 20, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

RESOLVED, that Henry A. Anderson Agency, Inc., be and hereby is awarded a contract for furnishing boiler insurance from January 1, 2005, through December 31, 2005, for 41 city locations that have steam boiler and other equipment in accordance with specifications on its specification bid of \$14,897, terms net 30, FOB destination, \$11,863 payable out of Self Insurance Liability Fund 0610, Department/Agency 036, Organization 1651, Object 5360; \$2,171 payable out of Self Insurance Liability Fund 0610, Department/Agency 036, Organization 1652, Object 5360; \$83 payable out of Self Insurance Liability Fund 0610, Department/Agency 036, Organization 1653, Object 5360 and \$780 payable out of Self Insurance Liability Fund 0610, Department/Agency 036, Organization 1664, Object 5360; to be encumbered out of year 2005 budget.

Resolution 04-0843 was unanimously adopted.

Approved December 20, 2004

HERB W. BERGSON, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the reappointment by Mayor Bergson of Larry Jeneson (treasurer) and the appointment of Tom Marshall (fire), replacing Mitchell Peterson, to the deferred compensation plan commission for terms expiring on December 31, 2008, are confirmed.

Resolution 04-0812 was unanimously adopted.

Approved December 20, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointment by Mayor Bergson of Timothy A. Bearheart (at large) to the Duluth transit authority, replacing Renae Switzer, for a term expiring on June 30, 2007, is confirmed.

Resolution 04-0813 was unanimously adopted.

Approved December 20, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the reappointments by Mayor Bergson of Gilbert W. Harries, John Vigen and Roger Wedin to the planning commission for terms expiring on December 31, 2008, are confirmed.

Resolution 04-0814 was unanimously adopted.

Approved December 20, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

WHEREAS, the city of Duluth established the following CDBG programs and funding changes as set forth below.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are authorized to make the following transfer of funds between the Federal Fund 0262, Agency 020, 2000, 2002 and 2004 HUD-funded community development accounts as set forth below:

2000 CDBG Transfers				
Project#	Project	Budget Amount	New Amount	Amount of Increase or Decrease
6309	Lincoln Park improvements Phase I	\$188,322	\$188,694	\$ 372
2002 CDBG Transfers				
6509	Grant Recreation Center	\$394,811	\$448,117	\$53,306

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

2004 CDBG Transfers				
6717	Citywide street improvements	\$ 69,949	\$ 16,643	(\$53,306)
6739	Contingency	\$ 28,657	\$ 28,285	(\$ 372)

Resolution 04-0841 was unanimously adopted.
 Approved December 20, 2004
 HERB W. BERGSON, Mayor

- - -

BY COUNCILOR ATKINS:

RESOLVED, that proper city officials are hereby authorized to amend an agreement, in substantially the form of the amendment on file with the clerk as Public Document No. 04-1220-06, with St. Louis County to accept funds in order to provide diversionary work program employment and training services, in the amount of \$100,000; contract dates shall run from July 1, 2004, through December 31, 2004.

FURTHER RESOLVED, that monies received under this agreement shall be deposited in Fund 0268, Budget Item 6266.

Resolution 04-0807 was unanimously adopted.
 Approved December 20, 2004
 HERB W. BERGSON, Mayor

- - -

BY COUNCILOR ATKINS:

RESOLVED, that proper city officials are hereby authorized to execute and implement a contract, in substantially the form of the contract on file with the clerk as Public Document No. 04-1220-07, with St. Louis County to provide services under food support employment and training (FSET) services at costs not to exceed \$400 per participant, with total costs not to exceed \$32,329 for the period October 1, 2004, through September 30, 2005.

FURTHER RESOLVED, that monies received under this agreement shall be deposited in Fund 0268, Budget Item 6267.

Resolution 04-0821 was unanimously adopted.
 Approved December 20, 2004
 HERB W. BERGSON, Mayor

- - -

BY COUNCILOR ATKINS:

RESOLVED, that proper city officials are hereby authorized to enter into an agreement, in substantially the form of the contract on file with the clerk as Public Document No. 04-1220-08, with the Duluth Housing and Redevelopment Authority to accept funds in order to provide vocational testing and assessment services to candidates for project Hope VI related employment opportunities, in the amount of \$40 per hour for staff time; contract dates will run from December 1, 2004, through the end of the Hope VI project grant on October 1, 2008. Monies received under this agreement shall be deposited in Fund 0268, Agency 031, Organization 6280.

Resolution 04-0840 was unanimously adopted.
 Approved December 20, 2004
 HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that the city council of the city of Duluth does hereby approve the declaration

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

of restrictions and covenants for replacement wetlands, on file in the office of the city clerk as Public Document No. 04-1220-09, for the creation of replacement wetlands pertaining to the Cedar Ridge development.

Resolution 04-0806 was unanimously adopted.

Approved December 20, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are authorized to pay to CIS Insurance Group, as subrogee of American Indian Community Housing Organization, the amount of \$97,028.20 in full settlement of all claims for damage to their insured's property at 419 and 421 North First Avenue West resulting from a watermain break which occurred on February 5, 2004; payment to be made from the Self Insurance Fund 0610.

Resolution 04-0819 was unanimously adopted.

Approved December 20, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Traffic Control Corporation be and hereby is awarded a contract for furnishing and delivering two traffic signal controller cabinets for the traffic operations division in accordance with specifications on its low specification bid of \$19,979.40, terms net 30, FOB destination, payable out of General Fund 0100, Department/Agency 500, Organization 1930, Object 5226.

Resolution 04-0833 was unanimously adopted.

Approved December 20, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

WHEREAS, the city of Duluth desires to provide the construction of Middle Lane and Middle Road from Howard Gnesen Road to cul-de-sac-Cedar Ridge Estates; and

WHEREAS, the city desires to hire a consulting engineer to provide the engineering services required for construction inspection and construction administration phases; and

WHEREAS, Salo Engineering has submitted a proposal for engineering services in connection with this project.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with Salo Engineering to provide the city with such engineering services. This agreement is contingent on the award of the construction project.

BE IT FURTHER RESOLVED, that the cost of said engineering services, estimated at \$89,918.36, will be payable from the Special Assessment Fund 0410, Department/Agency 038, Organization 5398, Object 5530.

Resolution 04-0834 was unanimously adopted.

Approved December 20, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Braun Pump and Controls, Inc., be and hereby is awarded a contract for one portable trailer mounted six inch dri-prime sewage pump for the utility operations division in accordance with specifications on its low specification bid of \$25,805.38, terms net 30, FOB

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

destination, payable out of Sewer Fund 0530, Department/Agency 500, Organization 1905, Object 5580.

Resolution 04-0836 was unanimously adopted.

Approved December 20, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Utility Systems of America, Inc., be and hereby is awarded a contract for construction of Middle Lane and Middle Road from Howard Gnesen Road to cul-de-sac-Cedar Ridge Estates for the engineering division in accordance with specifications on its low specification bid of \$926,658.25, terms net 30, FOB job site, payable out of Special Assessment Fund 0410, Department/Agency 038, Organization 5398, Object 5530.

Resolution 04-0837 was unanimously adopted.

Approved December 20, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are authorized to enter into an agreement, a copy of which is on file in the office of the city clerk as Public Document No. 04-1220-10, with Stora Enso North America Corporation for provision of up to 5.75 million gallons of water per day to its West Duluth paper mill operation and establishing rates therefore.

Resolution 04-0842 was unanimously adopted.

Approved December 20, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

BE IT RESOLVED, that the proper city officials are authorized to execute and implement a contract, in substantially the form and containing substantially the terms of that contract on file with the city clerk as Public Document No. 04-1220-11, with the state of Minnesota, department of public safety, fire marshall division, whereby the city will perform inspections of hotels.

Resolution 04-0816 was unanimously adopted.

Approved December 20, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

RESOLVED, that the city is hereby authorized to apply for and accept grant monies up to \$30,000 from the Minnesota department of public safety pursuant to Minnesota Statutes Section 299A.66 in the grant period from July 1, 2004, to June 30, 2005, to reimburse expenditures related to the grant to expand local capacity to combat gangs.

BE IT FURTHER RESOLVED, that the proper city officials are hereby authorized to execute such agreements as necessary to receive the grant money on behalf of the city. All grant proceeds are to be deposited in Police Grant Fund 0215-200-2463-4230.

Resolution 04-0820 was unanimously adopted.

Approved December 20, 2004

HERB W. BERGSON, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

BY COUNCILOR LITTLE:

RESOLVED, that JayEn of Duluth, Inc., be and hereby is awarded a contract for communication base station and various equipment for the police department in accordance with specifications on its low specification bid of \$41,648.71, terms net 30, FOB destination, \$11,727.27 payable out of Duluth Police Grant Programs Fund 0215, Department/Agency 200, Organization 2472, Object 5580 and \$29,921.44 payable out of Duluth Police Grant Programs Fund 0215, Department/Agency 200, Organization 2472, Object 5241.

Resolution 04-0838 was unanimously adopted.

Approved December 20, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

RESOLVED, that Marine Sonic Technology, Ltd, be and hereby is awarded a contract for one side scan sonar unit for the police department in accordance with specifications on its low specification bid of \$35,214.50, terms net 30, FOB destination, payable out of Duluth Police Grant Programs Fund 0215, Department/Agency 200, Organization 2472, Object 5580.

Resolution 04-0839 was unanimously adopted.

Approved December 20, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR REINERT:

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. 04-1220-12 with Chelsey Broadcasting Company of Duluth, LLC (KDLH), and Premier Pyrotechnics for the fireworks display at the *Warmer by the Lake* celebration on January 1, 2005; payment for said fireworks display to be made by KDLH.

Resolution 04-0829 was unanimously adopted.

Approved December 20, 2004

HERB W. BERGSON, Mayor

- - -

The following resolutions were also considered:

BY COUNCILOR NESS:

RESOLVED, that the proper city officials are hereby authorized to execute an agreement with the Duluth Convention and Visitors Bureau, which agreement is on file in the office of the city clerk as Public Document No. 04-1220-13 and under which agreement the bureau will provide advertising and promotion services to the city during the year 2005 at a cost to the city not to exceed \$1,222,200; payable from Fund 0258, Agency 030, Organization 1460, Object 5441.

Resolution 04-0846 was unanimously adopted.

Approved December 20, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

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

WHEREAS, Title 1 of the Housing and Community Development Act of 1974, as amended, establishes a community development block grant (CDBG) program for the purpose of developing

viable urban communities by providing decent housing and suitable living environment and expanding economic opportunities and preventing and/or eliminating conditions of slum and blight, principally for persons of low and moderate income; and

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

NOW, THEREFORE, BE IT RESOLVED, that the FY 2005-2009 consolidated plan and the FY 2005 action plan portion of the 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 04-0826 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 04-0827 and 04-0828 are necessary and appropriate and further, that said expenditures for the HOME and ESG programs will serve to assist low- and moderate-income people.

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

Resolution 04-0825 was adopted upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart and Stover -- 8

Nays: President Stauber -- 1

Approved December 20, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0826, by Councilor Gilbert, authorizing a request for HUD federal community development block grant (CDBG) funds for the 2005 program year as well as approving the reallocation of certain prior CDBG funds and authorizing agreements with appropriate agencies, was introduced for discussion.

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

John Miller, rehabilitation director for the Housing and Redevelopment Authority (HRA), reviewed the success of their programs and urged the council to restore the original amount of CDBG funds asked for.

Jeff Anderson, chair of the community development committee, reviewed that the city will receive \$4.3 million in CDBG funding and reviewed the process as to how the decisions were made.

George Garnett, representing Neighborhood Housing Services (NHS), stated that there seems to be a policy change by the city with movement away from neighborhood based services.

Councilor Stewart moved to amend the resolution by replacing in the Housing Projects the amount "\$115,124" with "\$137,124" for affordable homeownership services - NHS and replacing

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

the amount "\$750,000" with \$728,000" for Duluth property rehabilitation program - HRA/NCLT, which motion was seconded and discussed.

Councilor Stewart's amendment passed upon the following vote:

Yeas: Councilors Atkins, Gilbert, Little, Stewart, Stover and President Stauber -- 6

Nays: Councilor Ness --1

Abstention: Councilors Johnson and Reinert -- 2

Councilors Atkins and Ness questioned why \$213,000 for the West Duluth Police Station is being allocated when the council has not seen any plans for or been involved in the process for the project.

Mayor Bergson explained that this substation is for the officers who work the west side of the city and a federal grant from homeland security will be used for an emergency system in basement.

President Stauber questioned the process this year in determining the division of the money and did not think it was right for the administration to tell the CDC that the police substation was to be funded, which caused money to be cut from other worthwhile programs. He also questioned why the administration is pre-committing 2006 CDBG funds for the police substation when the city does not know what the funding level will be.

Resolution 04-0826, as amended, was adopted as follows:

BY COUNCILOR GILBERT:

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, city council Resolution No. 04-0825, adopted December 20, 2004, approved the FY 2005 action plan portion of the Duluth consolidated plan for housing and community development FY 2005-2009; and

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

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

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:

2005 CITY OF DULUTH COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM-FUND 262 PROJECT CD05CD			
SUB-PROJECT	ACTIVITY	AMOUNT	PROJECTS
			HOUSING PROJECTS
HOUS	2239	\$137,124	Affordable homeownership services - NHS
HOUS	2804	\$ 25,000	Permanent rental housing rehabilitation. - WTHC
HOUS	1291	\$ 15,000	HOPE VI individual development account - Community Action Duluth

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

2005 CITY OF DULUTH COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM-FUND 262 PROJECT CD05CD			
SUB-PROJECT	ACTIVITY	AMOUNT	PROJECTS
HOUS	1734	\$728,000	Duluth property rehabilitation program - HRA/NCLT
HOUS	1091	\$170,000	Duluth weatherization program - AEOA
HOUS	2270	\$146,510	Deconstruction/reconstruction - NCLT
			ECONOMIC DEVELOPMENT PROJECTS
ECDV	2412	\$ 70,100	Career development - Project SOAR
ECDV	05E1	\$106,860	Job incentive program
ECDV	1346	\$ 49,000	Opportunities Cooking - Damiano Center
ECDV	2804	\$ 46,000	Women in Construction - WTHC
ECDV	1244	\$ 47,900	CHUMWorks
			PUBLIC FACILITY IMPROVEMENT PROJECTS
PFAC	PF01	\$213,275	West Duluth police station
PFAC	PF02	\$ 39,750	Harrison basketball court
PFAC	PF03	\$ 75,000	CD target area street assistance program
PFAC	PF04	\$ 75,000	Hillside Sport Court renovation
PFAC	PFO9	\$ 16,725	Building exterior improvement-Union Gospel Miss.
PFAC	PF05	zero fd	Dining commons accessibility project - Damiano Center
PFAC	PF06	\$150,650	West Third Street lighting project
PFAC	PF07	\$142,000	Harbor View homeownership Phase I & II
PFAC	PF08	\$ 88,000	Morgan Park street improvements -Phase II
			PUBLIC SERVICE PROJECTS
PSVC	1244	\$ 58,660	Duluth hunger project - CHUM
PSVC	1929	\$ 64,340	Primary health care for low-income people - LSCHC
PSVC	1348	\$ 14,200	Clothes That Work - Damiano Center

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

2005 CITY OF DULUTH COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM-FUND 262 PROJECT CD05CD			
SUB-PROJECT	ACTIVITY	AMOUNT	PROJECTS
PSVC	2511	\$ 6,630	Money management program - Salvation Army
PSVC	1735	\$ 41,640	Tenant/landlord counseling - HAC
PSVC	2874	\$ 6,630	Food self-sufficiency program - Community Garden Program
PSVC	1974	\$ 20,810	Youth Center - Life House
PSVC	2001	\$ 14,200	Renaissance transitional living program - LSS
PSVC	2509	\$ 26,500	Shelter program - Safe Haven Shelter for Battered Women
PSVC	1050	\$ 4,740	Oshki Odaadiziwini Waaka'Igan Transitional Housing - AICHO
PSVC	251A	\$ 29,350	Family transitional housing - Salvation Army
PSVC	2109	\$ 9,470	Veterans Outreach North
PSVC	2804	\$ 29,800	Transitional housing - WTHC
PSVC	1168	\$ 39,260	Lincoln Park education & enrichment program - Boys & Girls Club
PSVC	1645	\$ 14,200	Youth enrichment program- Grant Collaborative
PSVC	2805	\$ 30,300	Washington Center - Neighborhood Youth Svcs.
PSVC	2755	\$ 22,700	Youth program expansion - Valley Youth Cen.
PSVC	2810	\$ 32,160	Mentor Duluth - YMCA
PSVC	2811	\$ 14,200	Girls and Youth Program - YWCA
			PLANNING/PROGRAM ADMINISTRATION
ADMC	AD01	\$457,826	Program administration
ADMC	AD02	\$ 50,000	Neighborhood planning
ADMC	2239	\$ 9,000	Neighborhood revitalization planning - NHS
		\$3,338,510	Total

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 2004

SOURCE OF FUNDING		
Year 2005	CDBG grant - city	\$3,198,600
Year 2001	CDBG grant - city	\$ 200
Year 2002	CDBG grant - city	\$ 10,417
Year 2003	CDBG grant - city	\$ 75,293
Program income	CDBG - city	\$ 54,000
Total		\$3,338,510

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

		Original	Modified	Revised
2001				
6409	Damiano Center renovation	\$ 65,000	-\$ 200	\$ 64,800
2002				
6515	NSCDC	\$200,000	-\$10,417	\$189,583
2003				
6607	Citywide streets	\$118,400	-\$20,955	\$ 97,445
6608	Damiano Center renovation	\$ 98,700	-\$ 35	\$ 98,665
6612	Ramsey streets	\$108,709	-\$13,809	\$ 94,900
6613	Lincoln Park sidewalk safety	\$ 44,200	-\$ 605	\$ 43,595
6615	NSCDC	\$111,267	-\$39,889	\$ 71,378
\$85,910 - Total amount reprogrammed				

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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

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 04-0826, as amended, was adopted upon the following vote:

Yeas: Councilors Atkins, Gilbert, Ness, Stewart and Stover -- 5

Nays: Councilor Little and President Stauber -- 2

Abstention: Councilors Johnson and Reinert -- 2

Approved December 20, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

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, City Council Resolution No. 04-0825, adopted December 20, 2004, approved the FY 2005 action plan portion of the Duluth consolidated plan for housing and community development FY 2005-2009; and

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

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

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:

2005 HOME PROGRAM - FUND 260, PROJECT CD05HM			
SUB PROJECT	ACTIVITY	PROJECTS	AMOUNT
GN05	1734	MURL housing - HRA	\$100,000
CH05	2271	New construction - NCLT city homes Phase IV	\$150,000
GN05	1735	Homeowner property rehabilitation - HRA/NCLT	\$330,000
CH05	2239	Fourth Street revitalization	\$ 30,000
GNO5	AD01	Program administration	\$ 69,600
CH05	2270	City Homes V - pre-development - NCLT	\$ 15,000
GN05	2239	Homebuyer downpayment assistance - NHS	\$ 40,000
GN05	1736	Tenant-based rental assistance - HRA	\$ 70,000
GN05	1737	Tenant-based rental assistance (administration) - HRA	\$ 5,000
CH05	1226	San Marco Apartments - CCHC	\$ 18,525

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

2005 HOME PROGRAM - FUND 260, PROJECT CD05HM			
SUB PROJECT	ACTIVITY	PROJECTS	AMOUNT
CH05	2805	Predevelopment - WTHC	\$ 9,000
TOTAL			\$837,125

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

Year 2005 HOME grant	\$746,000
Year 2002 HOME grant	125
Program income - HOME	91,000
Total	\$837,125

BE IT FURTHER RESOLVED, that the proper city officials are authorized to make the following transfer in prior year HOME program accounts:

2002	Original	Modified	Revised
2621 h001 New construction - Habitat	\$77,000	\$125	\$76,875

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 04-0827 was adopted upon the following vote:

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Stewart, Stover and President Stauber -- 8

Nays: None -- 0

Abstention: Councilor Reinert -- 1

Approved December 20, 2004

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

WHEREAS, city council Resolution No. 04-0825, adopted December 20, 2004, approved the FY 2005 action plan portion of the Duluth consolidated plan for housing and community development FY 2005-2009; and

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

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

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:

2005 ESG PROGRAM - FUND 260, PROJECT CD05ES		
SUB-PROJECT	PROJECTS	AMOUNT
1244	CHUM Shelter	\$ 20,000
1245	CHUM Drop-In Center	\$ 9,000
2804	WTHC	\$ 18,350
2509	Safe Haven Shelter	\$ 20,100
1974	Life House, Harbor House	\$ 14,450
2109	Veterans Outreach North	\$ 5,100
2511	Salvation Army	\$ 24,400
1050	AICHO, Dabinoo'Igan	\$ 4,900
2001	LSS, Renaissance Trans. Living Program	\$ 2,500
AD01	Administration	\$ 4,630
	Total	\$123,430

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

Source of Funding

2005 ESGP Grant \$123,430

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 04-0828 was unanimously adopted.

Approved December 20, 2004

HERB W. BERGSON, Mayor

- - -

Resolution 04-0845, by Councilor Little, amending Resolution 04-0682 and providing for a partial rebate of the fee for rental housing license, was introduced for discussion.

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

Sumlee Beede urged the council to pass the rebate and explained that with the increase of inspection fees she is running a deficit for her rental property.

Resolution 04-0845 failed upon the following vote (Public Document No. 04-1220-14):

Yeas: Councilors Atkins, Little, Stewart and President Stauber -- 4

Nays: Councilors Gilbert, Johnson, Little, Ness and Reinert -- 5

- - -

BY COUNCILOR REINERT:

RESOLVED, that the proper city officers are authorized to accept from the Irving community club a gift in the amount of \$10,000 for the purpose of resurfacing the north hockey rink at the Irving Community Club to provide for a multi-use surface for hockey, tennis and basketball; funds to be deposited in Fund 0100, Agency 700, Organization 1448, Revenue Source 4697.

Resolution 04-0818 was unanimously adopted.

Approved December 20, 2004

HERB W. BERGSON, Mayor

- - -

INTRODUCTION AND CONSIDERATION OF ORDINANCES ORDINANCE TABLED

BY COUNCILOR GILBERT

04-069 (9706) - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NOS. 28 AND 34, AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-B, ONE-FAMILY RESIDENTIAL DISTRICT, AND R-1-C, ONE FAMILY RESIDENTIAL DISTRICT, TO R-3, APARTMENT RESIDENTIAL DISTRICT, PROPERTY ON THE SOUTHWEST SIDE OF RICE LAKE ROAD, ROUGHLY BETWEEN PECAN AVENUE AND HOMES THAT FRONT ON BLACKMAN AVENUE AND NORTH OF THE UNBUILT DAVIS STREET RIGHT-OF-WAY (MARK LAMBERT/SUMMIT MANAGEMENT, LLC).

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

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

Nicole Ekstrom stated her support for Campus Park housing as it is a good place for college students to focus on their studies and a good transitional housing set up for students.

David Ross, representing the Duluth Area Chamber of Commerce, encouraged the council to support the rezoning of the property as the developer is not using any public financing while meeting the needs of 700 students.

Suzie Lannon stated that she works with students and their parents to find affordable good housing, which is hard to find in Duluth, and this project will fit the needs of students who come to college and want to study.

Sean Bell, representing UMD Student Association, stated their support for creating affordable housing for students and stated it is a small step in the right direction.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Drew Sundquist stated he supports the housing project as long as the environmental concerns have been addressed, but this project alone will not solve the problem of the housing needs in Duluth.

Ben Small stated that students who live in Campus Park like living there because of the peace and quiet and it works for those students who want to get their degree, but more work needs to be done in student housing and he supports a student housing district.

Councilors Ness and Stewart expressed their appreciation that the developer has worked with the neighborhood and kept the council informed on the status of the project.

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

- - -

The following entitled ordinances were read for the first time:

BY COUNCILOR GILBERT

04-078 - AN ORDINANCE GRANTING A CONCURRENT USE PERMIT TO THE UNIVERSITY OF MINNESOTA FOR SIDEWALK/BIKE PATH, RETAINING WALL, BACK SLOPES, STREET LIGHTINGS AND OTHER IMPROVEMENTS IN THE EASEMENT OR RIGHT-OF-WAY OF JUNCTION AVENUE, BUFFALO STREET AND ST. MARIE STREET (UNIVERSITY OF MINNESOTA, UNIVERSITY OF MINNESOTA-DULUTH).

- - -

BY COUNCILOR STOVER

04-079 - AN ORDINANCE DEDICATING A STREET EASEMENT AND A SNOW STORAGE EASEMENT OVER CERTAIN CITY PROPERTY IN THE VICINITY OF MESABA AVENUE AND WEST EIGHTH STREET AND AUTHORIZING THE SALE OF PROPERTY REMAINDER TO EDNA M. DAVIS.

- - -

BY COUNCILOR STOVER

04-080 - AN ORDINANCE DEDICATING STREET EASEMENT, AUTHORIZING CONVEYANCE OF UNDERLYING PROPERTY RIGHTS IN CRESCENT VIEW PARK TO ROBERT AND CYNTHIA BACKSTROM AND REPEALING ORDINANCE NO. 9524.

- - -

The following entitled ordinances were read for the second time:

BY COUNCILOR NESS

04-073 (9708) - AN ORDINANCE DETERMINING THE SUM TO BE RAISED BY TAXATION FOR GENERAL PURPOSES FOR THE YEAR 2005.

President Stauber stated he will not support this budget because there is no line item established for payment of health care benefit costs.

Mayor Bergson, Administrative Assistant Winson and councilors discussed at length the issues of health care benefits and how it will be paid for in the future and why overtime is necessary and its cost to the city.

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

Yeas: Councilors Atkins, Gilbert, Johnson, Ness, Reinert, Stewart and Stover -- 7

Nays: Councilor Little and President Stauber -- 2

- - -

BY COUNCILOR NESS

04-072 (9707) - AN ORDINANCE SETTING THE BUDGET FOR THE FISCAL YEAR 2005 APPROPRIATION MONIES FOR THE SUPPORT OF THE CITY GOVERNMENT, PUBLIC UTILITIES, AND PUBLIC ENTERPRISE FUNDS AND FOR OTHER PURPOSES.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

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

Yeas: Councilors Atkins, Gilbert, Johnson, Ness, Reinert, Stewart and Stover -- 7

Nays: Councilor Little and President Stauber -- 2

- - -

BY COUNCILOR NESS

04-074 (9709) - AN ORDINANCE DETERMINING THE SUM TO BE RAISED BY TAXATION FOR THE SPECIAL TAXING DISTRICT, DULUTH TRANSIT AUTHORITY, FOR THE YEAR 2005.

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

Yeas: Councilors Atkins, Gilbert, Johnson, Ness, Reinert, Stewart and Stover -- 7

Nays: Councilor Little and President Stauber -- 2

- - -

BY COUNCILOR NESS

04-075 (9710) - AN ORDINANCE DETERMINING THE SUM TO BE RAISED BY TAXATION FOR THE SPECIAL TAXING DISTRICT, SEAWAY PORT AUTHORITY, FOR THE YEAR 2005.

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

Yeas: Councilors Atkins, Gilbert, Johnson, Ness, Stewart and Stover -- 6

Nays: Councilors Little, Reinert and President Stauber -- 3

- - -

BY COUNCILOR NESS

04-076 (9711) - AN ORDINANCE TO AMEND THE BUDGET OF THE CITY OF DULUTH FOR THE YEAR 2004 INCREASING THE BUDGET AND APPROPRIATING MONIES FOR THE PAYMENT OF SUCH INCREASE.

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

- - -

BY COUNCILOR STOVER

04-077 (9712) - AN ORDINANCE AUTHORIZING CONVEYANCE OF UTILITY EASEMENTS FOR A SANITARY SEWER SERVICE LINE SERVING THE LAKEWOOD PUMPING STATION PROPERTY TO THE NORTH SHORE SANITARY DISTRICT.

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

- - -

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

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

- - -

ORDINANCE NO. 9706

BY COUNCILOR GILBERT:

AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NOS. 28 AND 34, AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-B, ONE-FAMILY RESIDENTIAL DISTRICT, AND R-1-C, ONE FAMILY RESIDENTIAL DISTRICT, TO R-3, APARTMENT RESIDENTIAL

DISTRICT, PROPERTY ON THE SOUTHWEST SIDE OF RICE LAKE ROAD, ROUGHLY BETWEEN PECAN AVENUE AND HOMES THAT FRONT ON BLACKMAN AVENUE AND NORTH OF THE UNBUILT DAVIS STREET RIGHT-OF-WAY (MARK LAMBERT/SUMMIT MANAGEMENT, LLC).

The city of Duluth does ordain:

Section 1. That Plate Nos. 28 and 34 of the zoning district maps as contained in the Appendix to Chapter 50 of the Duluth City Code 1959, as amended, is amended to read as follows:

(MAPS)

(see Map Nos. 28 and 34 at end of meeting)

(reference Planning Commission File No. 04117)

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: February 6, 2005)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Nays: None -- 0

Passed December 20, 2004
Approved December 20, 2004
HERB W. BERGSON, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 9708

BY COUNCILOR NESS:

AN ORDINANCE DETERMINING THE SUM TO BE RAISED BY TAXATION FOR GENERAL PURPOSES FOR THE YEAR 2005.

The city of Duluth does ordain:

Section 1. The sum to be raised by taxation for the year 2005 for general operations is hereby determined to be the sum of \$10,730,400 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 \$6,510,500.

Section 3. For the pay of debt, there will be levied for the general obligation debt fund the sum of \$3,742,100.

Section 4. For the pay of debt for the Duluth transit bonds, there will be levied the sum of \$157,800.

Section 5. That pursuant to laws of Minnesota 1971, Chapter 824, to pay for the portion of the cost of local improvements which will not sustain a special assessment, there will be levied for the permanent improvement fund the sum of \$320,000.

Section 6. That this ordinance shall take effect January 1, 2005.

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

Yeas: Councilors Atkins, Gilbert, Johnson, Ness, Reinert, Stewart and Stover -- 7

Nays: Councilor Little and President Stauber -- 2

Passed December 20, 2004
Approved December 20, 2004
HERB W. BERGSON, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 9707

BY COUNCILOR NESS:

AN ORDINANCE SETTING THE BUDGET FOR THE FISCAL YEAR
2005 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, 2005, the city council hereby budgets, determines and states the amount of money required to meet the principal and interest of maturing obligations comprising the outstanding indebtedness of such city; the amounts of money necessary to be provided for each such fund and each department of such city; and estimates the amount of income from all other sources and revenues, exclusive of taxes upon property, together with the probable amount required to be levied and raised by taxation to defray all expenses and obligations of such city during such fiscal year.

That the monies as so budgeted and hereinafter set forth shall be paid upon the presentation of properly verified vouchers bearing thereon the budget distribution for which such expenditures are to be charged in accordance with the detailed classification of accounts and the explanatory information of such as set forth in ordinance in effect governing same, excepting, however, payments for interest and sinking funds, which shall be paid in the manner set forth in Section 53 of the City Charter.

That any monies received by the several city departments as reimbursement for damages or repairs to city property or work done for others and not anticipated in the original budget may be credited to and added to the appropriate budget item upon approval by the administrative assistant or his 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 finance director.

Section 2. That the finance director be authorized to approve the payments of \$3,245,600 from the gas and steam public utility funds to the general fund for administrative services; comprised of \$3,165,600 or seven percent of the gross revenues of the gas utility fund to the general fund; and \$80,000 from public utility steam fund to the general fund.

Section 3. That the mayor or the administrative assistant or his 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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

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 010 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 in the sewer division, 535 in the stormwater division, 540 in the steam division and 503 in the golf 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 finance director, or his designee, 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 2005.

010 - LEGISLATIVE AND EXECUTIVE		
1101	City council - total	\$ 147,900
1102	Mayor's office - total	169,900
1103	Administrative assistant	425,000
1104	Attorney's office - total	1,280,200
1105	Human rights office - total	150,300
	Total legislative and executive	\$2,173,300

015 - ADMINISTRATIVE SERVICES		
1510	Human resources - total	\$ 626,300
1511	Budget - total	227,900
1512	City clerk - total	538,900
1514	Management information systems - total	1,333,700
1515	Facilities management - total	4,265,100
1516	Architect's office	194,000
	Total administrative services	\$7,185,900

020 - PLANNING AND DEVELOPMENT DEPARTMENT		
	Urban development - total	\$549,900

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

020 - PLANNING AND DEVELOPMENT DEPARTMENT		
	Total planning department	\$549,900

030 - FINANCE		
1322	City assessor's office - total	\$ 794,900
1324	City auditor's office - total	1,257,700
1325	Purchasing office - total	294,500
1327	City treasurer's office - total	352,600
	Total finance and records	\$2,699,700

100 - FIRE DEPARTMENT		
1501	Fire administration - total	\$ 414,600
1502	Firefighting operations - total	12,515,600
1503	Fire prevention and training - total	491,800
1504	Building safety - total	1,651,100
	Total fire department	\$15,073,100

200 - POLICE DEPARTMENT		
1610	Police support services - total	\$ 4,849,200
1620	Police uniform division - total	9,149,700
	Total police department	\$13,998,900

300 - LIBRARY		
1702	Library services - total	\$3,650,500
1703	Buildings and equipment - total	228,000
	Total library	\$3,878,500

400 - PARKS AND RECREATION		
1812	Recreation and senior services - total	\$1,515,200
1814	Zoo - total	1,034,500
	Total parks and recreation	\$2,549,700

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

500 - PUBLIC WORKS		
1900	Director's office - total	\$ 58,700
1920	Maintenance - total	6,806,800
1925	Bridges - total	691,000
1930	Transportation engineering services - total	1,668,700
	Total public works	\$9,225,200

700 - TRANSFERS AND OTHER FUNCTIONS		
	Total transfers and other functions	\$13,562,300

PUBLIC ENTERPRISE		
503	Golf Fund - total	\$1,811,300

PUBLIC UTILITIES		
510	Water fund - total	\$12,325,700
520	Gas fund - total	48,908,100
530	Sewer fund - total	17,639,100
535	Stormwater fund - total	4,406,900
540	Steam fund - total	4,069,600

Section 8. That the administrative assistant or his designee shall provide the council with a final budget report within three months of the end of the budget year setting forth the original approved and the modified budgets for each line item included in this ordinance and explaining in narrative form the reasons for any significant differences between the original approved and the modified budgets.

Section 9. That the city will review all state and federal grants prior to acceptance to determine the program's funding status. A statement should be included on each grant resolution outlining items such as whether the grant represents a one time revenue, an ongoing funding source, or a partial funding source with a local match required. The future fiscal impact of the program on the budget will be discussed prior to acceptance of the grant.

The programs funded by state and federal grants shall be reduced or eliminated accordingly if state or federal revenues are reduced or eliminated and another funding source is not secure. Local funding will be available after a full review to determine whether the program should be continued.

Section 10. That this ordinance shall take effect January 1, 2005.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

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

Yeas: Councilors Atkins, Gilbert, Johnson, Ness, Reinert, Stewart and Stover -- 7

Nays: Councilor Little and President Stauber -- 2

ATTEST:

JEFFREY J. COX, City Clerk

Passed December 20, 2004

Approved December 20, 2004

HERB W. BERGSON, Mayor

- - -

ORDINANCE NO. 9709

BY COUNCILOR NESS:

AN ORDINANCE DETERMINING THE SUM TO BE RAISED BY TAXATION FOR THE SPECIAL TAXING DISTRICT, DULUTH TRANSIT AUTHORITY, FOR THE YEAR 2005.

The city of Duluth does ordain:

Section 1. The sum to be raised by taxation for the year 2005 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, 2005.

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

Yeas: Councilors Atkins, Gilbert, Johnson, Ness, Reinert, Stewart and Stover -- 7

Nays: Councilor Little and President Stauber -- 2

ATTEST:

JEFFREY J. COX, City Clerk

Passed December 20, 2004

Approved December 20, 2004

HERB W. BERGSON, Mayor

- - -

ORDINANCE NO. 9710

BY COUNCILOR NESS:

AN ORDINANCE DETERMINING THE SUM TO BE RAISED BY TAXATION FOR THE SPECIAL TAXING DISTRICT, SEAWAY PORT AUTHORITY, FOR THE YEAR 2005.

The city of Duluth does ordain:

Section 1. The sum to be raised by taxation for the year 2005 for Seaway Port authority taxing district's operations is hereby determined to be the sum of \$775,400 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 458.15, there will be levied for the purpose of providing the Seaway Port authority special taxing district the sum of \$775,400.

Section 3. That this ordinance shall take effect January 1, 2005.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

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

Yeas: Councilors Atkins, Gilbert, Johnson, Ness, Stewart and Stover -- 6

Nays: Councilors Little and Reinert and President Stauber -- 3

Passed December 20, 2004
Approved December 20, 2004
HERB W. BERGSON, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 9711

BY COUNCILOR NESS:

AN ORDINANCE TO AMEND THE BUDGET OF THE CITY OF DULUTH FOR THE YEAR 2004 INCREASING THE BUDGET AND APPROPRIATING MONIES FOR THE PAYMENT OF SUCH INCREASE.

The city of Duluth does ordain:

Section 1. That Ordinance 9640 passed and approved December 15, 2003, is hereby amended by appropriating an additional \$1,100,000 from the general fund's excess revenues in state aids in the amount of \$800,000; investment earnings in the amount of \$100,000; building inspection fees in the amount of \$150,000; and cable franchise fee in the amount of \$50,000 as follows:

Department 100 - fire	\$200,000
Department 200 - police	\$200,000
Department 500 - public works	\$300,000
Department 700 - transfers	\$400,000

Section 2. That this ordinance shall take effect immediately upon its passage. (Effective date: December 20, 2004)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Nays: None -- 0

Passed December 20, 2004
Approved December 20, 2004
HERB W. BERGSON, Mayor

ATTEST:
JEFFREY J. COX, City Clerk

- - -

ORDINANCE NO. 9712

BY COUNCILOR STOVER:

AN ORDINANCE AUTHORIZING CONVEYANCE OF UTILITY EASEMENTS FOR A SANITARY SEWER SERVICE LINE SERVING THE LAKEWOOD PUMPING STATION PROPERTY TO THE NORTH SHORE SANITARY DISTRICT.

The city of Duluth does ordain:

Section 1. That the proper city officials are hereby authorized to convey an easement for a sanitary sewer pipeline related to the Lakewood pumping station, substantially in the form of that on file in the office of the city clerk as Public Document No. 04-1220-15, to the North Shore

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2004

Sanitary District over and across the property in St. Louis County, Minnesota, described on said public document.

Section 2. This ordinance shall take effect 30 days from and after its passage and publication. (Effective date: February 2, 2005)

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

Yeas: Councilors Atkins, Gilbert, Johnson, Little, Ness, Reinert, Stewart, Stover and President Stauber -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed December 20, 2004
Approved December 20, 2004
HERB W. BERGSON, Mayor

