



CITY  
OF  
DULUTH

**proceedings of the  
CITY COUNCIL  
2006**

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**OFFICIAL PROCEEDINGS**

Special meeting of the Duluth City Council held on Tuesday, January 3, 2006, 5:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: Councilor Johnson -- 1

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**RESOLUTION TABLED**

Councilor Reinert moved to remove Resolution 05-0887, of intent to transfer land to the Salvation Army, 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.

Major Mark Welsh and Denise Overstake, representing the Salvation Army, and Doug Franzen, attorney for the Salvation Army, reviewed: an approximate time table with regard to the submission of the application for the Kroc Center to the appropriate authorities within the Salvation Army for approval of the project; what the center will provide to the community in terms of programs and activities; what the construction period will be and the funding that will need to be raised if the project is approved.

Responding to Councilor Gilbert, Mr. Franzen stated that approval of this resolution is necessary so that it can be included with the application when it is submitted to the appropriate authorities and that without it, the application will not be approved.

Responding to Councilor Gilbert, Ms. Overstake stated that because the results of a final study done by a recreational consultant have not been received, it cannot be determined yet exactly what recreational facilities will be provided at the facility or what type of aquatic facility should be planned.

Councilor Gilbert stated that his issue with this project is that his expectations were that this facility would be recreational and that it would include a hockey rink and aquatic facility. He said his understanding now is that the hockey facility is no longer included in the facility being planned, the council does not know what type of aquatic facility there will be yet and his concern is that a lot of money will be wasted on a facility that the community really does not want.

Responding to Councilor Gilbert, Mr. Franzen stated that while he does not believe that amending the resolution to incorporate conditions as to what the facility should include will not be detrimental to the approval process, he feels that it would be more appropriate to include the suggested conditions in the development agreement if the project is approved. He stated that the paramount issue is to raise additional endowment pledges because without them the property will not be purchased and the project will not be approved.

Responding to Councilor Reinert, City Attorney Brown explained that the reason this resolution is being put before the council so hurriedly is because of a February deadline that the Salvation Army has to submit the application. He further stated that the administration has known for some time that this action needed to be taken but because of problems with obtaining the dimensions of the site that will be required from the firm doing the needs assessment and getting the figure for what the fair market value for the property is took additional time. Mr. Brown emphasized that this is a resolution of intent to sell the property and that before the sale of the property will take place the council will have to vote on a development agreement and authorize purchase of the property by ordinance.

Responding to Councilor Krause, Ms. Overstake stated that rooms for groups to hold program activities and meetings will be available to the public on a negotiated sliding fee basis regardless of whether they are an ethnic group or not.

Councilor Gilbert stated he will not support this resolution because the final draft showing what recreation activities will actually be allowed at this facility has not been made known and he feels that without that knowledge, the city is signing a blank check for activities that may already be provided by other facilities within the city, which is bad policy. He further stated that the plans include activities for spiritual and religious activities which may not be permissible in a governmental facility.

Councilors noted that this is just a resolution of intent to transfer property necessary for the project to move forward and that there will be plenty of time in the future to discuss what activities will be provided in the facility.

Resolution 05-0887 was adopted as follows:

BY COUNCILOR REINERT (introduced by President Ness):

The city council makes the following findings:

- (a) It is in the public interest to have adequate multi-use meeting, community center and recreational facilities that are conveniently located within the city;
- (b) Assisting in the development of such multi-use and recreational facility is a public purpose which purpose is consistent with the Laws of Minnesota and the City Charter;
- (c) After a needs assessment, the city has determined that there is a need for expanded multi-use and recreational facilities in the area of town served by the city park known as Wheeler Field;
- (d) City officials, community leaders and officials of the Salvation Army have engaged in extensive discussion and planning about a multi-use and recreational facility that would meet the public need. City of Duluth, through its employees and city council, has identified the preferred

site location, although the exact boundaries will depend upon the final facility design, which is currently in progress;

(e) The council's primary interest in completion of the facility, which will be part of a program operated under the legacy gift of Joan Kroc, donor, is the furnishing of multi-use and recreational opportunities to the citizens.

NOW, THEREFORE, BE IT RESOLVED, that the city of Duluth intends to, as soon as possible, as part of the development of the project known as the Kroc Center, transfer to the Salvation Army, an Illinois not for profit corporation, a suitable tract of land at the site in Duluth, Minnesota, known as Wheeler Field, of approximately four to five acres, the approximate boundaries of which are shown on the diagram on file with the clerk as Public Document No. 06-0103-01, for use as the location of the planned Kroc Center development, which is a multi-use meeting, recreation and community center, privately managed by Salvation Army, for fair market value, and at no loss of value to the city, and that the city now declares the land to be available for sale and to be sold without bids, and to be sold for an alternative price, as required by Duluth City Code sections 2-176 and 2-177, subject to conditions below.

BE IT FURTHER RESOLVED, that the transfer is conditioned upon the following:

(a) All legal requirements for such a transfer are met, including any required affirmative vote of the city council and planning commission, and declaration that the land is available for transfer;

(b) The city has fee ownership, or other estate acceptable to Salvation Army, that it can transfer to the buyer;

(c) The parties have duly entered into a purchase agreement and a development agreement for the construction and operation of the Kroc Center in accordance with all applicable laws, ordinances and regulations, including the Constitutions of Minnesota and of the United States of America;

(d) Any financing, subsidy, contribution or payment to be made by the city in relation to the project has been duly approved by the city council, or any other body from which approval is required, upon or after the date that this resolution is approved.

Resolution 05-0887 was adopted upon the following vote:

Yeas: Councilors Krause, Little, Reinert, Stauber, Stewart, Stover and President Ness -- 7

Nays: Councilor Gilbert -- 1

Absent: Councilor Johnson -- 1

Approved January 3, 2006

HERB W. BERGSON, Mayor

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## MOTIONS AND RESOLUTIONS

BY PRESIDENT NESS:

The council makes the following findings:

(a) The Duluth Entertainment Convention Center is very important to the cultural and economic life of the city;

(b) The University of Minnesota Duluth would benefit from, and actively seeks, an improved facility for its hockey program and other events;

(c) The city's tourism industry and cultural growth will significantly benefit from new additions to the DECC facility, which will be suitable for use for concerts, exhibitions, hockey games, sporting events, public gatherings and other uses;

(d) At this time, the city, the University of Minnesota and the DECC board have developed a feasible plan to construct the needed improvements and it is for the best of public purposes that this be accomplished.

THEREFORE, BE IT RESOLVED:

Section 1. That the council declares, under Section 51 of the Charter, that there shall be a special election on February 28, 2006, for the purpose of submitting to the electors of the city, by way of referendum, a resolution requesting the legislature to authorize the financing of the needed improvements to the DECC facility, in part, by allowing a .75 percent increase in the city food and beverage sales tax, under certain conditions. The clerk is authorized and directed to prepare and mail or publish any and all notices of such referendum question as are required by the City Charter.

Section 2. That the question presented to the electors on the ballot of the said special election shall read as follows:

If the state of Minnesota allocates enough funds for the project to go forward and to pay for up to one-half of the cost of a new arena for concerts, conventions, hockey and other events at the Duluth Entertainment Convention Center (DECC), then should the city of Duluth seek permission from the legislature to pay for part of the remaining cost by increasing the existing sales tax on food and beverages purchased in Duluth bars and restaurants by .75 percent (7.5 cents per ten dollars spent), subject to the following conditions:

(a) The tax increase would only take effect if the state allocates money for the project to go forward and to pay up to one-half of the project costs; and

(b) The state approves the new tax; and

(c) The tax is only in effect for the period of time needed for it to raise enough money to pay off the city's portion of the project cost?

A "yes" vote means you favor funding the new arena in this manner.

A "no" vote means you do not favor funding the new arena in this manner.

Section 3. That the clerk is directed to place the referendum question set out above on the ballot of the February 28, 2006, special election.

Resolution 06-0018 was unanimously adopted.

Approved January 3, 2006

HERB W. BERGSON, Mayor

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The meeting was adjourned at 5:57 p.m.

JEFFREY J. COX, City Clerk

**OFFICIAL PROCEEDINGS**

Duluth City Council meeting held on Monday, January 9, 2006, 6:00 p.m. in the Lake Superior Ballroom, Duluth Entertainment Convention Center.

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

Absent: None -- 0

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Judge Martin administered oaths of office to newly elected Councilor Krause and re-elected councilors Gilbert, Reinert and Stauber.

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**ELECTION OF OFFICERS**

Councilor Ness, 2005 council president, announced that the election of officers for 2006 would now take place.

Councilor Reinert was elected president upon a unanimous vote.

Councilor Stover was elected vice president upon a unanimous vote.

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**PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS**

06-0109-09 Heather Odden submitting communication regarding proposed reconstruction of Sundby Road (06-0005R). -- Received

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**REPORTS OF OFFICERS**

06-0109-01 Assessor:

(a) For confirmation the assessment roll levied to defray the assessable portion of the 2005 sidewalk repair program, Contract 5414 (assessable: \$21,039.43);

(b) Letter of sufficiency of petition to reconstruct Sundby Road from Page Street northerly 1,415± feet. -- Received

06-0109-02 Clerk applications to the Minnesota gambling control board for exemption from lawful gambling licenses from:

(a) AGC of Minnesota Foundation on March 30, 2006 (raffle);

(b) Rotary Club of Duluth Harbortown MN USA, Inc., on April 5, 2006 (raffle). --

Received

06-0109-03 City engineer report of satisfactory completion of local improvements including street, water, natural gas, sanitary sewer and storm sewer system improvements in Hawk Ridge Estates and acceptance of transfer of said local improvement unto the city, in trust for the use and benefit of the public, for inclusion into the public utility system of the city of Duluth, pursuant to Chapter 45, Article VII, of the Duluth City Code. -- Received

06-0109-04 Facilities management lease agreements, pursuant to Section 2-35 of the Duluth City Code:

(a) Sandra Gutsch for operation of the City Hall coffee shop;

(b) Cassie Hamlin and Stephen Ek for rental of the Wheeler Fieldhouse building.

-- Mayor for execution

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**REPORTS OF BOARDS AND COMMISSIONS**

- 06-0109-05 Duluth airport authority:
  - (a) Balance sheet for October 31, 2005;
  - (b) Minutes of November 15, 2005, meeting. -- Received
- 06-0109-06 Duluth/North Shore Sanitary District minutes of November 9, 2005, meeting. -- Received
- 06-0109-07 Duluth transit authority minutes of November 2, 2005, meeting. -- Received
- 06-0109-08 Planning commission minutes of November 8, 2005, 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 Reinert moved passage of the consent agenda, which motion was seconded and unanimously carried.

BY COUNCILOR STAUBER:

RESOLVED, that the assessment roll levied to defray the assessable portion of the following:

- (a) 2005 sidewalk repairs (Contract #5414; assessable amount: \$21,039.43) to be deposited in Fund 325; is hereby confirmed.

Resolution 06-0013 was unanimously adopted.

Approved January 9, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

RESOLVED, that Runzheimer International be and hereby is awarded a contract for furnishing professional service for the auto reimbursement program (FAVR) for the fleet services division in accordance with specifications on its low specification bid of \$10,199, terms net 30, FOB destination, various funds, departments/agencies, organizations and objects.

Resolution 06-0006 was unanimously adopted.

Approved January 9, 2006

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 on sale intoxicating liquor license and on sale Sunday license for the period ending August 31, 2006, subject to departmental approvals and the payment of sales and property taxes:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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Va Bene Café, Inc. (Va Bene), 734 East Superior Street, with James Berarducci, president and 100 percent stockholder.

Resolution 06-0014 was unanimously adopted.

Approved January 9, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

RESOLVED, that Julio Almanza, chief administrative officer to the mayor, is hereby designated as the responsible authority for data practices as defined by Section 13.02, subdivision 16, of Minnesota Statutes 1994.

BE IT FURTHER RESOLVED, that Resolution 03-0094 adopted February 10, 2003, be rescinded.

Resolution 06-0019 was unanimously adopted.

Approved January 9, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the abolishment of coordinator, handicapped access center, employee benefits administrator, environmental projects coordinator, park maintenance person II, and signal systems apprentice, which was approved by the civil service board on December 6, 2005, and which are filed with the city clerk as Public Document No. 06-0109-10, is approved.

Resolution 06-0003 was unanimously adopted.

Approved January 9, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the appointment by Mayor Bergson of Donna Ennis to the American Indian commission for a term expiring May 12, 2009, replacing Madeleine Tjaden, who resigned, is confirmed.

Resolution 06-0015 was unanimously adopted.

Approved January 9, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that by resolution of intent numbered 05-0825 the council did request the administration to prepare plans and specifications for construction of 125 feet of sanitary sewer in Central Avenue Alley beginning 60 feet north of Albion Avenue and extending northerly (City Job No. 0515SN) at an estimated cost of \$23,250.

Said plans and specifications have been prepared and filed with the secretary of the special assessment board, and all persons affected by the proposed improvement or assessment have executed waiver agreements waiving the rights to a public hearing before the special assessment board and mailed notice thereof to the report of said board to the council recommending the improvement and their right to file a remonstrance petition against the project, all under Section 62 of the Duluth City Charter and Sections 45-79 and 45-80 of the Duluth City Code, 1969, as

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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amended and have requested that the council immediately determine to make the subject improvements.

FURTHER RESOLVED, that said improvement as described above be made; that the estimated total cost of said improvement as estimated by the city engineer is \$23,250, payable from Special Assessment Fund 0410, Agency 038, Project Number 0515SN, 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.

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 06-0002 was unanimously adopted.

Approved January 9, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Hawkins, Inc., be and hereby is awarded a contract for furnishing and delivering 145 tons of liquid hydrofluosilicic acid for the utility operations division in accordance with specifications on its low specification bid of \$42,197.26, terms net 30, FOB destination, payable out of Water Fund 510, Department/Agency 500, Organization 1955, Object 5216-03.

Resolution 06-0008 was unanimously adopted.

Approved January 9, 2006

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 \$78,285, terms net 30, FOB destination, payable out of Water Fund 510, Department/Agency 500, Organization 1955, Object 5216-04.

Resolution 06-0009 was unanimously adopted.

Approved January 9, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Flexible Pipe Tool Company be and hereby is awarded a contract for furnishing and delivering a rodding machine for the utility operations division in accordance with specifications on its low specification bid of \$34,935.15, terms net 30, FOB destination, \$34,935.15 payable out of Sewer Fund 530, Department/Agency 500, Organization 1905, Object 5580.

Resolution 06-0010 was unanimously adopted.

Approved January 9, 2006

HERB W. BERGSON, Mayor

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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 the following

street: both sides of Blackman Avenue between Central Entrance and 15th Street, Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m.

Resolution 06-0001 was unanimously adopted.

Approved January 9, 2006

HERB W. BERGSON, Mayor

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The following resolution was also considered:

Resolution 06-0005, by Councilor Stover, of intent to reconstruct Sundby Road from Page Street northerly 1,415± feet and construct utilities per plans prepared by SEH, Inc., for City Project 0390TR01, dated August 28, 2005, was introduced for discussion.

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

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### **INTRODUCTION AND CONSIDERATION OF ORDINANCES**

The following entitled ordinance was read for the second time:

BY COUNCILOR STEWART

05-060 - AN ORDINANCE AMENDING CHAPTER 2 OF THE DULUTH CITY CODE, 1959, AS AMENDED; ADDING ARTICLE XXXIV - MINIMUM REQUIREMENTS FOR A DEVELOPMENT AGREEMENT.

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

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Councilor Ness spoke of the accomplishments of the council during the past year. He introduced President Reinert.

President Reinert presented a plaque to outgoing Councilor Atkins for his years on the city council.

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

Mayor Bergson presented the 2006 State of the City Address (Public Document No. 06-0109-11).

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Mayor Bergson announced the selection of Jack Teske as citizen of the year, Lake Superior Pastors Fellowship checks were presented to Rachel Kincade of Life House and Durbin Keeney of Minnesota Assistance Council for Veterans and corporate citizenship awards were presented to Minnesota Power and True Ride. He also announced the 2005 employee group award selections of William Todorovich, Dennis Edwards and Chad Rinda (firefighters); John Heikkinen, Ann Padden and Kimberly Zilka (police officers); Karla Culhane, Skip LeClair, Julie Dumas, Jackie Morris and Brian Hansen (financial systems); Ann Jenkins and Karen Richgruber (library); and Sandy Mass, Jeff Cook, Marv Fralich, Greg Guerrero, Loren Matson and Andy Swanson (inflow and infiltration).

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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 23, 2006, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: Councilor Johnson -- 1

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**PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS**

06-0123-01 St. Louis County Board of Commissioners certified copy of resolution appointing commissioners Fink and Kron, with Commissioner O'Neil as alternate, as St. Louis County's representatives to the Northwest Airlines tax increment financing district board (Duluth) for terms expiring December 31, 2006. -- Received

06-0123-11 Allen Beulier communication regarding proposed renaming of Denim Drive to Wisteria Lane (06-003-O). -- Received

06-0123-10 Janet Draper communication regarding proposed objection to the reclassification and sale of certain tax forfeited parcels (06-0061R). -- Received

06-0123-02 Robert W. Prestidge application for amendment to concurrent use permit granted by Ordinance 8792 to Harcourt, Brace, Jovanovich, Inc., to construct, maintain, use and repair a skyway, viaduct or overpass over Lake Avenue. -- Planning commission

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**REPORTS OF OFFICERS**

06-0123-09 Mayor Bergson order appointing Councilor Roger Reinert acting mayor in his absence. -- Received

06-0123-03 Clerk application to the Minnesota gambling control board for exemption from lawful gambling from St. James School on June 6, 2006 (raffle). -- Received

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**REPORTS OF BOARDS AND COMMISSIONS**

06-0123-04 Commission on disabilities: (a) Minutes of December 7, 2005, meeting; (b) Year end report for 2005. -- Received

06-0123-05 Duluth human rights commission minutes of November 9, 2005, meeting. -- Received

06-0123-06 Duluth/North Shore Sanitary District board minutes of December 14, 2005, meeting. -- Received

06-0123-07 Parking commission minutes of: (a) November 15; (b) November 22, 2005, meetings. -- Received

06-0123-08 Special assessment board minutes of December 13, 2005, meeting. -- Received

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At this time, 7:05 p.m., President Reinert called the public hearing regarding the intent to issue 2006-2010 capital improvement bonds to order.

Finance Director Stark reviewed the projects to be included in the 2006-2010 capital improvement plan.

At this time, 7:08 p.m., no one appeared who wished to be heard, the public hearing was closed and the regular order of business was resumed.

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### **OPPORTUNITY FOR CITIZENS TO BE HEARD**

K.L. Lewis voiced concern for public safety with the new apartment building at Sixth Avenue East and Fourth Street with more pedestrians crossing the streets and about the safety of residents in assisted living facilities, which do not come under the building code.

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Gordon Peterson reviewed that nine houses were flooded in October and the homeowners are frustrated that the city has not done anything about this.

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### **RESOLUTIONS TABLED**

Councilor Gilbert moved to remove Resolution 05-0761, terminating a concurrent use permit to the Duluth transit authority for a bus shelter on Second Avenue East above Superior Street (Norshor Building), from the table, which motion was seconded and unanimously carried.

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

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Councilor Stauber moved to remove Resolution 06-0005, of intent to reconstruct Sundby Road from Page Street northerly 1,415± feet and construct utilities per plans prepared by SEH, Inc., for City Project 0390TR01, dated August 28, 2005, by Councilor Stover, 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.

Heather Odden and Randy Budisalovich questioned why all of Sundby Road is not being redone because of the increased traffic of Kohl's store and the potential development that will bring more residents living on the road.

Planning and Development Department Director Bruce explained that one of the conditions placed on the developer for this project to be built was the improvement of Sundby Road, which has not yet happened. He continued by saying that the developer is trying to use the assessment process which would help finance the construction of the road. Mr. Bruce stated that the question that needs to be answered is why should the city finance the improvement that was a condition of the petitioner's original permission.

Councilor Krause reviewed that once this project goes forward, the next steps do not allow the residents of the area to submit a remonstrance petition because this individual owns 77 percent of this section of the road that is to be improved.

Resolution 06-0005 failed upon the following vote (Public Document No. 06-0123-12):

Yeas: Councilors Stewart and Stover -- 2

Nays: Councilors Gilbert, Krause, Little, Ness, Stauber and President Reinert -- 6

Absent: Councilor Johnson -- 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.)*

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

BY COUNCILOR STEWART:

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

Section 1. Under and pursuant to the authority contained in Minnesota Statutes, Chapter 475, and Section 475.521 (collectively the act), the city is authorized to issue general obligation capital improvement bonds to provide funds for capital improvements pursuant to a capital improvement plan approved by the council on December 19, 2005 (the plan).

Section 2. The city council held a public hearing on January 23, 2006, on the city's intention to issue bonds in 2006 in an amount not to exceed \$915,000 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 2006 (the bonds), in an amount not to exceed \$915,000, for the purpose of providing funds for continuation of the restoration of the granite and brick facades of City Hall; roofing projects at Fire Station No. 2 and the public works maintenance facility; remodeling of city offices in City Hall; fire department facilities repairs and maintenance including driveways, window and brick repairs and overhead door replacements; replacing the public works Lakeside toolhouse with a new maintenance facility; and upgrading an existing public works garage to comply with OSHA and code standards for the storage of "cold" asphalt.

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. 06-0123-13 as soon as practicable following the public hearing in the official newspaper of the city.

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

Resolution 06-0050 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

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 \$13,000,000 general obligation tax and aid anticipation certificates of indebtedness of 2006 (the certificates). The certificates are hereby authorized and shall be issued pursuant to the authority contained in Minnesota Statutes,

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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. 06-0123-14. 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 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 06-0062 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

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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. 06-0123-15, with the Historic Union Depot, Inc. (Depot), in an amount not to exceed \$148,807, payable from Fund 258-030-5436-03.

Resolution 06-0071 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

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 100-015-1515-2500-5441, said lease agreement filed as Public Document No. 06-0123-16.

Resolution 06-0027 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

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. 06-0123-17 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of Gonzalez Ramos, Inc. (Maya Family Mexican Restaurant), 1725 Miller Trunk Highway.

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 no

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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penalty as a result of late payment of the second quarter on sale intoxicating liquor license fee and on sale Sunday license fee.

Resolution 06-0034 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

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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Minnesota Chapter of the Multiple Sclerosis Society    Midway Bar, 1909 West Superior Street

Resolution 06-0035 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves issuance of the following brewery malt liquor off sale license for the period ending August 31, 2006, subject to departmental approvals, the payment of sales and property taxes, and the approval of the alcohol and gambling enforcement division:

Lake Superior Brewing Company, LLC (Lake Superior Brewing Company), 2711 West Superior Street, with Donald R. Hoag, president, Jo Ann Hoag, vice president and joint 56.656 percent stockholders, and John E. Judd, vice president, and Karen H. Olesen, vice president and joint 42.344 percent stockholders.

Resolution 06-0036 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

RESOLVED, that the proper city officials are hereby authorized to execute the contract with RTW, substantially in the form of that on file in the office of the city clerk as Public Document No. 06-0123-18, for third party administration of the city's self-funded workers' compensation program for 2006 and 2007 in the amount of \$95,000; payable from Fund 605, Agency 036, Organization 1651, Object 5441.

Resolution 06-0072 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

RESOLVED, that Change Order No. 1 to Contract No. 19944 with Minnesota Elevator, Inc., be and hereby is authorized, in an amount of \$16,962, payable from General Fund 100, Department/Agency 700, Organization 1420, Object 5530, for providing additional upgrade services to

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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City Hall elevators to comply with state elevator inspection requirements.

Resolution 06-0080 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

RESOLVED, that McGann Associates, Inc., be and hereby is awarded a contract for furnishing and delivering assorted equipment to convert Technology Village parking ramp in accordance with specifications on its low specification bid of \$160,985, terms net 30, FOB destination, payable out of Fund 100, Department/Agency 015, Organization 1515, Object 5406 Cost Center 2510.

Resolution 06-0082 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

RESOLVED, that MacQueen Equipment, Inc., be and hereby is awarded a contract for furnishing and delivering an Elgin Model Pelican SE2006 street sweeper for the street maintenance division in accordance with specifications on its low specification bid of \$141,750.14, terms net 30, FOB destination, payable out of Fund 535, Department/Agency 500, Organization 1905, Object 5580.

Resolution 06-0083 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the proposed amendments to the specifications for the civil service classification of heavy equipment mechanic, which were approved by the civil service board on January 3, 2006, and which are filed with the city clerk as Public Document No. 06-0123-19, are approved. This classification shall remain subject to the city's collective bargaining agreement with its basic unit employees and compensated at Pay Range 28, \$3,188 to \$3,771 per month.

Resolution 06-0026 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the reappointment of Richard Whiteman and the appointment of Robert J. Reichert, replacing James R. Peterson, by Mayor Bergson to the housing and redevelopment authority for terms expiring on January 3, 2011, are confirmed.

Resolution 06-0031 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the proposed specifications for the new civil service classification of supervisor, real property, which were approved by the civil service board on June 7, 2005, and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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which are filed with the city clerk as Public Document No. 06-0123-20, are approved; that said classification shall be subject to the city's collective bargaining unit with its supervisory unit employees; and that pay range for said classification shall be Range 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 06-0040 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the proposed amendments to the specifications for the civil service classification of senior engineering technician, which were approved by the civil service board on January 3, 2006, and which are filed with the city clerk as Public Document No. 06-0123-21, are approved. This classification shall remain subject to the city's collective bargaining agreement with its supervisory unit employees and compensated at Pay Range 31.

Resolution 06-0044 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointments by Mayor Bergson to the community development committee of Scott Lundberg (District 3) for a term expiring March 1, 2008, and Jennifer Murphy (at large) for a term expiring March 1, 2007, replacing Rick Minotte and Judy Harper who resigned, are confirmed.

Resolution 06-0051 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the reappointment of Jeffery D. Anderson (at large) and the appointments of Karla Miller (real estate), replacing Judy H. Brown, and Erik Torch (homeless issues) by Mayor Bergson to the Duluth housing commission for terms expiring on September 30, 2008, are confirmed.

Resolution 06-0052 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

RESOLVED, that the proper city officers are hereby authorized to enter into an agreement, substantially in the form of the agreement filed as Public Document No. 06-0123-22, with F.I. Salter Company, Inc., for professional appraisal services related to the acquisition of certain property for the First Street medical district parking ramp project, in the amount of not exceed \$42,000, payable from Fund 435, Agency 030, Object 5441.

Resolution 06-0011 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

- - -

BY COUNCILOR GILBERT:

RESOLVED, that the proper city officers are authorized and directed to enter into a license agreement with the state of Minnesota providing for the use of the Natural Heritage Information System for a two year period, agreement to be substantially in the form of Public Document No. 06-0123-23 on file in the office of the city clerk. The license is at no cost.

Resolution 06-0041 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

RESOLVED, that the board of county commissioners of St. Louis County is hereby requested to reclassify from conservation to nonconservation and to offer for sale the following tax forfeited parcel now withheld from sale in conservation.

File No.	Applicant	Legal Description	Location
06002	Daniel Williams	Lot 321, Block 157, Duluth Proper Second Division. 010-1220-03950	located at the end of West Sixth Street above Piedmont Avenue, at the intersection of 20th Avenue West and Sixth Street (Goat Hill - Lincoln Park)

Resolution 06-0060 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

RESOLVED, that the proper city officials are hereby authorized to convey by quit claim deed the property described below to the Duluth economic development authority (DEDA) without bids at no cost:

Lots 1 through 4-1/2, Block 186, West Duluth Seventh Division.

Resolution 06-0067 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

RESOLVED, that the proper city officials are hereby authorized to execute a consent of mortgage holder consenting to the declaration for common interest community No. 81 and any supplements thereto, substantially in the form of that on file in the office of the city clerk as Public Document No. 06-0123-24, related to the Lake Superior View condominium project.

Resolution 06-0069 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR NESS:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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RESOLVED, that the proper city officers are hereby authorized to enter into an agreement, on file in the office of the city clerk as Public Document No. 06-0123-25, with the St. Louis County health and human services department for furnishing approximately 35,933 hot meals for eligible senior citizens and guests at two St. Louis County facilities located in Duluth from January 1, 2006, through December 31, 2006, for the Duluth senior dining program at a cost of \$4.77 per meal for eligible senior citizens, \$5.18 per meal for guests, and an additional \$0.30 per meal for dining room management provided at Lincoln Park, or approximately \$177,648, payable out of Federal Program Fund 272, Agency 031, Project SN 2006 SD04, Object 5310.

Resolution 06-0025 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR NESS:

RESOLVED, that the proper city officers are authorized and directed to enter into a joint powers agreement with the cities of Hermantown, Minnesota, and Superior, Wisconsin, and St. Louis County providing for the participation by the city of Duluth in the Lake Superior drug and gang task force. The agreement to be substantially in the form of Public Document No. 06-0123-26 on file in the office of the city clerk.

Resolution 06-0066 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

- - -

BY PRESIDENT REINERT:

RESOLVED, that the city of Duluth does hereby approve the amendment to the rules administering public access channels on file in the office of the city clerk as Public Document No. 06-0123-27.

Resolution 06-0046 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

- - -

BY PRESIDENT 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. 06-0123-28, 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 1414, Object 5441.

Resolution 06-0004 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

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BY PRESIDENT REINERT:

BE IT RESOLVED, by the council of the city of Duluth, Minnesota (the city), as follows:  
Section 1. Recitals.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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1.01 The town board of Perch Lake, Minnesota, desires to establish a sanitary district within the town of Perch Lake (the sanitary district) pursuant to Minnesota Statutes, sections 115.18 through 115.37 (the act).

1.02 Section 115.19 of the act requires that no sanitary district shall be created within 25 miles of the boundary of any city of the first class without the approval of the governing body thereof.

1.03 The city is a city of the first class, the boundaries of which are within 25 miles of the proposed sanitary district.

Section 2. Findings. The city hereby finds, determines and declares that there are continuing and persistent issues of water quality in the Lake Superior watershed area which need to be addressed through the provision of adequate public systems for the collection and treatment of wastewater.

Section 3. Approval. The city supports the creation of the sanitary district and hereby approves creation of the sanitary district.

Resolution 06-0053 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

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BY PRESIDENT REINERT:

RESOLVED, that pursuant to Minnesota Statutes 204B.21, the following persons are hereby appointed as election judges in the respective precincts for the February 28, 2006, special referendum election, as listed in Public Document No. 06-0123-29.

RESOLVED FURTHER, that pursuant to Minnesota Statutes, 204B.31(d), election judges shall be compensated at a rate of \$7 per hour and chairperson 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 \$.445 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 serve, the clerk is empowered to substitute the name of a qualified legal voter for the one who is unable to serve.

Resolution 06-0058 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

- - -

BY PRESIDENT REINERT:

RESOLVED, that the proper city officials are hereby authorized to enter into a second amendment to the professional services agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 06-0123-30 with Moss and Barnett related to the cable franchise renewal process, increasing the amount payable thereunder by an amount not to exceed \$15,000, payable from Fund 0100, Agency 700, Organization 1428, Object 5441.

Resolution 06-0077 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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BY COUNCILOR STOVER:

RESOLVED, that the proper city officers are hereby authorized to execute an agreement with Northern Energetics for professional services relating to energy audits of 650 single and multi-family homes per year, for years 2006 and 2007; payment is not to exceed \$80,000, payable from the Public Utility Gas Fund 555, Department 500, Object 5441.

Resolution 06-0042 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with the United States department of the Army authorizing the city to accept a grant in the estimated amount of \$500,000 for the Morgan Park wastewater collection system improvement project, which funds shall be deposited into Fund 0530, Agency 500, Organization 1900, Revenue Source 4209-01.

Resolution 06-0045 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the proper city officers hereby authorize Amendment #1 to Agreement #19785 with Krech Ojard & Associates, P.A., for the sum of not to exceed \$3,500 from Capital Fund 0450, Agency 030, Organization 5530, Project #OT0503 for providing certain additional engineering services (as per Exhibit A) for a new city of Duluth salt/sand storage facility, 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. 06-0123-31.

Resolution 06-0049 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are authorized to pay to Dennis M. Doherty the sum of \$10,656.18 in full and final settlement of the claim which arose out of a break in a city watermain occurring on December 21, 2004, near 28 Cato Avenue; payment to be made from the Self Insurance Fund 610, Agency 036, Organization 1652, Object 5841.

Resolution 06-0064 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are authorized to pay to Liberty Mutual Insurance Group, as subrogee of David Klass, the amount of \$11,604.36 in full settlement of all claims for damage to their insured's property at 31 England Avenue resulting from a watermain break which

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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occurred on December 21, 2004; payment to be made from the Self Insurance Fund 610, Agency 036, Organization 1652, Object 5841.

Resolution 06-0065 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Hawkins, Inc., be and hereby is awarded a contract for furnishing and delivering 55 tons of liquid chlorine for the utility operations division in accordance with specifications on its low specification bid of \$28,677, terms net 30, FOB destination, payable out of Water Fund 510, Department/Agency 500, Organization 1955, Object 5216-02.

Resolution 06-0084 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that K.A. Steel, 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 \$169,000, terms net 30, FOB destination, payable out of Water Fund 510, Department/Agency 500, Organization 1955, Object 5216-05.

Resolution 06-0085 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

RESOLVED, that the city of Duluth gives to Officer Michelle Rafferty, of the city of Duluth police department, the police canine Timber, in recognition of Timber's retirement after two years of service to the city.

BE IT FURTHER RESOLVED, that the appropriate city officials are authorized to execute any documents necessary to transfer ownership of Timber to Michelle Rafferty.

Resolution 06-0063 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

RESOLVED, that, pursuant to Article XIV of Chapter 33 of the Duluth City Code, 1959, as amended, the so-called Irvin Lot and the so-called Sculptured Wall Lot, as described on Public Document No. 06-0123-32(a) and Public Document No. 06-0123-32(b), respectively, on file in the office of the city clerk, are hereby designated for use as off street parking.

Resolution 06-0074 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

RESOLVED, that in accordance with the provisions of Section 33-208 of the Duluth City Code, 1959, as amended, the following parking meter zones are hereby established:

The west side of Canal Park Drive between Railroad Street and Buchanan Street.

Both sides of Lake Avenue between Railroad Street and the Aerial Lift Bridge.

FURTHER RESOLVED, that metered parking shall be applicable between 9:00 o'clock A.M. and 9:00 o'clock P.M. with a limit of two hours of continuous parking.

FURTHER RESOLVED, that vehicles parking in the zones hereby created shall be charged for parking at the rate of \$0.25 for each 30 minutes of such usage.

Resolution 06-0075 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

*[Editor's Note: Resolution 06-0075 was repealed by Resolution 06-0183 on February 27, 2006.]*

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BY COUNCILOR LITTLE:

RESOLVED, that in accordance with the provisions of Section 33-208 of the Duluth City Code, 1959, as amended, the following parking meter zones are hereby established:

The northerly side of West Third Street between First Avenue West and Mesaba Avenue.

Both sides of West Fourth Street from Second Avenue West to Mesaba Avenue.

Both sides of East Fourth Street between Second and Third avenues East.

The northerly side of East Fourth Street between Third and Fourth avenues West.

Both sides of Second Avenue West from Third Street to Fourth Street.

The west side of Third Avenue West from Third Street to Fourth Street.

The east side of Third Avenue West from Third Street Alley to Fourth Street.

The west side of Fifth Avenue West from Third Street to Fourth Street Alley.

FURTHER RESOLVED, that metered parking shall be applicable between 6:00 o'clock A.M. and 6:00 o'clock P.M. Mondays through Fridays.

FURTHER RESOLVED, that vehicles parking in the zones hereby created shall be charged for parking at the rate of \$0.25 for each one hour of such usage.

Resolution 06-0076 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

*[Editor's Note: Resolution 06-0076 was repealed by Resolution 06-0183 on February 27, 2006.]*

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BY COUNCILOR STAUBER:

RESOLVED, that Grand America Bus Sales be and hereby is awarded a contract for furnishing and delivering a sprint van for the utility operation division in accordance with specifications on its low specification bid of \$45,311.98, terms net 30, FOB destination, \$38,515.18 payable out of Capital Fund 250, Department/Agency 015, Organization 2005, Object 5580 CE 250-V505 and \$6,796.80 payable out of Capital Fund 250, Department/Agency 015, Organization 2003, Object 5580 CE250-V305.

Resolution 06-0007 was unanimously adopted.

Approved January 23, 2006

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, the proper city officers are hereby authorized and directed to execute an agreement, on file in the office of the city clerk as Public Document No. 06-0123-33, between the city of Duluth and the Arrowhead Regional Development Commission for the furnishing of meals for eligible senior citizens during the period from January 1, 2006, through December 31, 2006, for an amount not to exceed \$268,984 (combined federal, NSIP [formerly known at USDA] and state funds).

RESOLVED FURTHER, that monies collected under said contract shall be deposited in Federal Program Fund 272, Agency 031, revenue sources 4214, 4215 and 4241.

Resolution 06-0022 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, the proper city officers are hereby authorized to execute an agreement, on file in the office of the city clerk as Public Document No. 06-0123-34, with the Woodland Gardens Association, for the nonexclusive use of the recreation room of the Woodland Gardens Apartments, from January 1, 2006, through December 31, 2006, for the operation of the Duluth Senior dining program.

Resolution 06-0023 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STAUBER:

RESOLVED, the proper city officers are hereby authorized and directed to execute an agreement, on file in the office of the city clerk as Public Document No. 06-0123-35, with the Holy Cross Lutheran Church of Duluth Heights for the nonexclusive use of the basement of the Holy Cross Lutheran Church of Duluth Heights from January 1, 2006, through December 31, 2006, for the operation of the Duluth senior dining program at a cost of \$7,416, payable at \$618 per month. All funds expended by the city pursuant to this agreement shall be drawn upon Fund 272, Agency 031, Project SN 2006, Object 5412.

Resolution 06-0024 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STAUBER:

RESOLVED, that the proper city officers are authorized to execute and implement an amended agreement with Willard Enterprises, Inc., said agreement to be substantially in the form of Public Document No. 06-0123-36 on file in the office of the city clerk; said monies to be deposited into Fund 100, Agency 400, Organization 1812, Revenue Source 4626.

Resolution 06-0037 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, that the proper city officers are authorized to execute and implement an agreement with William Starks providing for his use of the Washington Recreation Center for his basketball league activities for the period December 1, 2005, through March 31, 2006; said agreement to be substantially in the form of Public Document No. 06-0123-37 on file in the office of the city clerk; said monies to be deposited into Fund 210-030-3190-4644 in the amount of \$288.

Resolution 06-0038 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, that the proper city officers are hereby authorized to execute an agreement with the Minnesota department of natural resources so as to enable the city to receive \$270,000 from said department for use at the Lake Superior Zoo; a copy of which agreement is filed with the city clerk as Public Document No. 06-0123-38, which funds shall be deposited in General Fund 100, Agency 400, Organization 1814, Revenue Source 4220-02; these grant dollars are for a two year period beginning July 1, 2005, and ending June 30, 2007.

Resolution 06-0039 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STAUBER:

RESOLVED, that the proper city officers are authorized to execute and implement an agreement with Fond Du Lac Tribe of Lake Superior providing for its use of the Washington Recreation Center for senior recreational programming during 2006; said agreement to be substantially in the form of Public Document No. 06-0123-39 on file in the office of the city clerk; said monies to be deposited into Fund 100, Agency 400, Organization 1812, Revenue Source 4622, in the amount of \$500.

Resolution 06-0070 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

The council finds:

(a) The city and Seaway Port authority of Duluth (SPAD) have enjoyed a long and beneficial relationship;

(b) The parties have disagreed upon the application of M.S.A. Section 469.053 regarding levy of taxes;

(c) SPAD has acted in accordance with the city's position, but wishes a review;

(d) Neither party wants to incur the delay, expense, ill-will and damage to their relationship which would result from litigation of the issue.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are authorized to resolve the issue of the application of M.S.A. Section 469.053 to the budget and levy process by way of binding arbitration, at a cost to the city for arbitrator fees and expenses not to exceed \$1,500, payable from Fund 100-010-1104-5319, and to execute and implement contracts necessary to complete the arbitration.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

Resolution 06-0081 was unanimously adopted.  
 Approved January 23, 2006  
 HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, that Versatile Vehicles, Inc., be and hereby is awarded a contract for leasing approximately 110 golf carts and ten utility carts for the Enger Park and Lester Park golf courses in accordance with specifications on its low specification bid of \$97,080, terms net 30, FOB destination, payable out of Golf Fund 503-400-ENGR-5415 and 503-400-LSTR-5415 to be encumbered out of year 2006 budget.

BE IT FURTHER ADVISED, that the proper city officials be authorized to renew this contract for two additional one-year contracts subject to the availability of funds.

Resolution 06-0086 was unanimously adopted.  
 Approved January 23, 2006  
 HERB W. BERGSON, Mayor

- - -

The following resolutions were also considered:

Resolution 06-0061, by Councilor Gilbert, objecting to proposed reclassification to nonconservation and sale of certain tax forfeited parcels by the board of county commissioners of St. Louis County (December 14, 2005, reclassification letter), was introduced for discussion.

Councilor Stover moved to amend the resolution to add a parcel in the 4000 block of 100th Avenue West, which motion was seconded and failed upon the following vote:

Yeas: Councilor Stover -- 1

Nays: Councilors Gilbert, Krause, Little, Ness, Stauber, Stewart and President Reinert -- 7

Absent: Councilor Johnson -- 1

Resolution 06-0061 was adopted as follows:

BY COUNCILOR GILBERT:

RESOLVED, that the city council objects to the reclassification to nonconservation and sale of the following tax forfeited parcels by the board of county commissioners of St. Louis County:

Parcel ID and legal description	Location	Reason
010-220-4060 (Tract #1) Bayview Addition No. 1, Block 25, Lots 14 and 15	at the end of unbuilt Earl Street below Skyline Parkway (Bayview Heights)	trout stream protection (Keene Creek)
010-220-4210 (Tract #2) Bayview Addition No. 1, Block 26, Lots 14 and 15	at the end of Clay Street below Skyline Parkway (Bayview Heights)	trout stream protection (Keene Creek)
010-450-730; 010-450-760; 010-450- 770; 010-450-780; 010-450-790; 010- 450-800 (Tract #3) Century Acres, Block 8, Lots 3 and 6- 10	between Morgan Street and Walnut Street east of Osage Avenue (Duluth Heights)	wetlands protection, needed for future planning, may be a future park

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

Parcel ID and legal description	Location	Reason
010-1500-580; 010-1500-610 (Tract #5) Englewood Farms, Block 00, Lots 58-61	north of eastward extension of Englewood Drive at east branch of Chester Creek (Kenwood)	trout stream protection (east branch of Chester Creek flows through the parcels) and possible future park
010-2550-460; 010-2550-470; 010-2550-480 (Part of Tract #8) Ironton Fourth Division, Block 2, Lots 26, 27, 28 (all except part taken for highway)	southeast of the intersection of Grand Avenue and Clyde Avenue (Smithville)	trout stream protection (Stewart Creek flows through the parcels) and a sanitary sewer crosses the parcels
010-2710-5155 (Tract #11) Section 19, Twp 50N Rng 14W, N1/2 of SE1/4 of SW1/4 of NW1/4	between Haines Road and Decker Road south of Matterhorn Circle (Duluth Heights)	need to plan for future road and utility corridors in this area; also, many wetlands
010-2710-5130 (Tract #13) Section 19, Twp 50N Rng 14W, S1/2 of NE1/4 of SW1/4 of NW1/4	between Haines Road and Decker Road south of Matterhorn Circle (Duluth Heights)	need to plan for future road and utility corridors in this area; also, many wetlands
010-2710-5150 (Tract #14) Section 19, Twp 50N Rng 14W, N1/2 of SW1/4 of SW1/4 of NW1/4 except northerly 200 feet	between Haines Road and Decker Road south of Matterhorn Circle (Duluth Heights)	need to plan for future road and utility corridors in this area; also, many wetlands
010-2710-5160 (Tract #15) Section 19, Twp 50N Rng 14W, S1/2 of S1/2 of SW1/4 of NW1/4, except W1/2	Between Haines Rd. and Decker Rd. south of Matterhorn Cir. (Duluth Heights)	need to plan for future road and utility corridors in this area; also, many wetlands
010-2741-020 (part of Tract #12) Section 1, Twp 49 N Rng 15W, that part of NW1/4 of NW1/4 east of Getchell Road	Getchell Road at the city boundary (Bayview Heights)	trout stream (Keene Creek) and wetland protection; also WLSSD sewer pipe crosses

Resolution 06-0061 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

RESOLVED, that the city of Duluth hereby accepts \$6,000 in settlement of the debt owed by James McEnroe d/b/a/Kitchen Tune-Up to the revolving loan fund formerly operated by NSCDC payable into Fund 263 and authorizing the city's manager of community development to execute

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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a release substantially in the form of that on file in the office of the city clerk as Public Document No. 06-0123-42.

Resolution 06-0068 was adopted upon the following vote:

Yeas: Councilors Krause, Little, Ness, Stauber, Stewart, Stover and President Reinert -- 7

Nays: None -- 0

Abstention: Councilor Gilbert -- 1

Absent: Councilor Johnson -- 1

Approved January 23, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0047, by Councilor Ness, authorizing an agreement with the Sweetwater Alliance for the living water garden design project at Bayfront Park for an amount not to exceed \$58,179, was introduced for discussion.

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

Neale Roth, chairperson of the parks and recreation commission, requested the council send this project to the commission so they can review the project.

Councilor Little stated he would not support the resolution, even though city money is not being spent, but that this is not the best use of the land and the project definitely needs to go parks and recreation commission for review.

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

Yeas: Councilors Little, Stauber and Stewart -- 3

Nays: Councilors Gilbert, Krause, Ness, Stover and President Reinert -- 5

Absent: Councilor Johnson -- 1

Resolution 06-0047 was adopted as follows:

BY COUNCILOR NESS:

WHEREAS, the city has made application on behalf of the Sweetwater Alliance to the Minnesota department of natural resources coastal program for a matching grant for the living water garden design project at Bayfront Park; and

WHEREAS, the coastal grant program has approved said application in the amount of \$58,179; and

WHEREAS, the Sweetwater Alliance desires to take a leadership role in the hiring of design consultants, project oversight and the overall completion of project.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officers are authorized to execute an agreement, filed as Public Document No. 06-0123-41, with the Sweetwater Alliance which assigns the responsibility for carrying out all aspects of the coastal grant agreement, which was previously approved via Resolution 05-0601, to the Sweetwater Alliance for the living water garden design project at Bayfront Park and further authorizing the reimbursement to the

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

Sweetwater Alliance for an amount not to exceed \$58,179, payable from Fund 210, Organization 3159.

Resolution 06-0047 was adopted upon the following vote:

Yeas: Councilors Gilbert, Krause, Ness, Stover and President Reinert -- 5

Nays: Councilors Little, Stauber and Stewart -- 3

Absent: Councilor Johnson -- 1

Approved January 23, 2006

HERB W. BERGSON, Mayor

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BY PRESIDENT REINERT:

BE IT RESOLVED, that pursuant to Minnesota Statutes 204B.16, the following locations are designated as polling places for the February 28, 2006, special referendum election:

**POLLING PLACE LIST**

<b>POLLING PLACE</b>	<b>ADDRESS</b>
1. St. Michael's Catholic Church (lower level)	4901 East Superior Street
2. Lakeside Presbyterian Church (lower level)	4430 McCulloch Street
3. Lutheran Church of the Good Shepherd (lower level)	1325 North 45th Avenue East
4. Faith Lutheran Church (lower level)	1814 North 51st Avenue East
5. Lakeview Covenant Church (lower level)	1001 Jean Duluth Road
6. Woodland Community Club	3211 Allendale Avenue
7. Glen Avon Presbyterian Church	2105 Woodland Avenue
8. Duluth Congregational Church	3833 East Superior Street
9. Pilgrim Congregational Church	2310 East Fourth Street
10. U.M.D. Kirby Student Center	1120 Kirby Drive
11. Kenwood Lutheran Church	324 West Cleveland Street
12. Chester Park United Methodist Church (lower level)	819 North 18th Avenue East
13. Mt. Olive Lutheran Church (lower level)	2010 East Superior Street
* 14. Temple Israel	1602 East Second Street
15. Trinity Lutheran Church	1108 East Eight Street
16. Peace Church (Tenth Avenue entrance)	1015 East 11th Street
17. First United Methodist Church (Lakeview social hall)	230 East Skyline Parkway

**POLLING PLACE LIST**

<b>POLLING PLACE</b>	<b>ADDRESS</b>
18. Central Hillside Community Center	12 East Fourth Street
19. First Presbyterian Church (avenue entrance)	300 East Second Street
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
27. St. Lawrence Church	2410 Morris Thomas Road
28. Holy Family Catholic Church	2430 West Third Street
29. Harrison Community Club	3002 West Third Street
30. City Center West	5830 Grand Avenue
31. Faith Haven (recreation room)	4901 Grand Avenue
32. Elim Lutheran Church (social hall)	6101 Cody Street
33. Bayview Heights School (gym)	8702 Vinland Street
34. Bethany Baptist Church (social hall)	6700 Grand Avenue
35. Goodfellowship Community Center (warming area)	1242-88th Avenue West
36. Stowe School (Room 27)	715-101st Avenue West

\* Designates new polling place

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 February 28, 2006, election.

BE IT FURTHER RESOLVED, that the proper city officials are hereby authorized to establish and post temporary handicapped parking zones for the February 28, 2006, election.

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 06-0057 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

- - -

BY PRESIDENT REINERT:

WHEREAS, the city of Duluth, Minnesota, (hereinafter the city) through its city council adopts this resolution to express its concern about the rulemaking of the federal communication commission (FCC) which threatens to adversely affect the ability of local governments to continue to franchise cable services; and

WHEREAS, community control of cable services based on the guidelines of the Federal Cable Act has proven to be an effective, efficient model for developing and administering cable franchises, assuring that local interests and needs are met, addressing public safety and related concerns about the use of public rights-of-way, and handling customer service issues; and

WHEREAS, the last cable franchise negotiated with the city's cable service operator provided, in part, for payment of franchise fees equaling five percent of the service operator's gross revenues; the provision of five public, educational and governmental access channels; the provision of equipment and financial support for public, educational and governmental programming; free cable service to certain public institutions; customer service requirements; picture quality and technical requirements; carrying of emergency alert messages; and insurance and bonding requirements; and

WHEREAS, local cable franchising ensures that local cable operators are allowed access to the public rights-of-way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights-of-way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements; and

WHEREAS, franchise fees paid to the city have become an important source of revenue and a fair way to offset the city costs for acquisition and maintenance of rights-of-way; and

WHEREAS, the city has worked with cable service operators to offer service to all citizens within the franchise area without regard to location or income status; and

WHEREAS, the city has never been approached by a competitive operator to provide cable service; and

WHEREAS, the FCC rulemaking threatens to change the role of local governments in negotiating and granting franchise agreements with local cable operators that meet the unique needs and interests of communities and provide communities sources of revenue for utilization of public rights-of way; and

WHEREAS, the city desires to express to the FCC the importance of retaining the current structure of local franchising authority which has proven itself to be an effective system for governing the utilization of public rights-of-way by private cable operators and which has spawned an important local communications tool.

NOW, THEREFORE, BE IT RESOLVED, as follows:

(a) That the city hereby opposes any FCC rulemaking that will reduce the right of local governments to approve and administer franchised cable services; to charge reasonable franchise fees for the use of the city's rights-of-way; to require dedicated channels for public, educational and governmental purposes; to require funding, facilities and equipment for such channels; to

require customer service standards, to require picture quality and technical standards; to require provision of free cable service to certain public institutions; to require carrying of emergency alert messages; and to require certain levels of bonding and insurance coverage;

(b) That the city therefore respectfully requests that the FCC do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing federal law with regard to either existing cable service providers or new entrants;

(c) That a certified copy of this resolution be delivered after its passage to the federal communications commission.

Resolution 06-0088 was adopted upon the following vote:

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

Nays: Councilor Stauber -- 1

Abstention: Councilor Krause -- 1

Absent: Councilor Johnson -- 1

Approved January 23, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the Duluth City Council does hereby authorize Johnson Controls, Inc., to submit a proposal on behalf of the city to the Climate Trust for a carbon offset project grant for Steam District No. 1 for the purpose of making improvements to the district facilities which will result in generation of carbon dioxide offset credits.

FURTHER RESOLVED, that the proper city officials are hereby authorized to enter into a standstill agreement with the Climate Trust substantially in the form of that on file in the office of the city clerk as Public Document No. 06-0123-40 committing the city not to sell or transfer any carbon dioxide offset credits generated as a result of such grant to any third party during the pendency of negotiations for said grant.

Resolution 06-0073 was unanimously adopted.

Approved January 23, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0078, authorizing a grant agreement with AEOA to provide energy assistance grants to low income persons to prevent cut off of city utilities in an amount not to exceed \$50,000; Resolution 06-0079, authorizing a grant agreement with Salvation Army to provide energy assistance grants to low income persons to prevent cut off of city utilities in an amount not to exceed \$50,000; and Resolution 06-0089, amending Resolution 03-0588 authorizing immediate transfer of an additional \$100,000 to Fund 520 to reimburse it for funds loaned to the home energy loan fund, by Councilor Stover, were introduced for discussion.

Councilor Stewart explained that he would vote against this initiative not because there is a need, but because the process is unacceptable. He continued by saying that no one has their source of heat cut off during the heating season and this is not the time for the city to implement new money programs when there is a budget crunch. Councilor Stewart stated that a new loan program would be better than a give away program which would keep the loan fund revolving with money. He also suggested creating a program that would have incentives for a homeowner for installing some measures that would reduce consumption of energy.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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Councilor Gilbert reviewed that there are fewer programs available to people who need help with their heating costs, these new programs will help people on fixed or low incomes and this is the city's chance to make a difference.

Councilor Ness moved to return the resolutions to the administration with the expectation for a committee meeting on energy policy and how it will assist low income residents, which motion was seconded and carried upon the following vote:

Yeas: Councilors Krause, Little, Ness, Stauber, Stewart and President Reinert -- 6

Nays: Councilors Gilbert and Stover -- 2

Absent: Councilor Johnson -- 1

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BY COUNCILOR STAUBER:

RESOLVED, that the city hereby accepts a monetary gift of \$30,000 from the Friends of the Duluth Public Library to the Duluth public library, which monies shall be deposited in Fund 240, Agency 300, Organization SG50, Revenue Source 4660, gifts and donations.

Resolution 06-0048 was unanimously adopted.

Approved January 23, 2006

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

06-001 - AN ORDINANCE AUTHORIZING RECONVEYANCE OF PROPERTY IN THE ENGER PARK/ARLINGTON AVENUE AREA TO THE STATE OF MINNESOTA.

- - -

BY COUNCILOR GILBERT

06-002 - AN ORDINANCE AUTHORIZING CONVEYANCE OF LOTS 1 THROUGH 4-1/2, BLOCK 186, WEST DULUTH SEVENTH DIVISION, TO THE DULUTH ECONOMIC DEVELOPMENT AUTHORITY.

- - -

BY COUNCILOR GILBERT

06-003 - AN ORDINANCE TO RENAME DENIM DRIVE TO WISTERIA LANE (SACKETTE).

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

David Sackette urged the council to approve the name change of the street.

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The meeting was adjourned at 8:45 p.m.

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

**OFFICIAL PROCEEDINGS**

Special meeting of the Duluth City Council held on Thursday, February 9, 2006, 5:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: None -- 0

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**PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS**

06-0209-01 The PFM Group: (a) Presale analysis; (b) Official statement; (c) Bid results; regarding the proposed sale of \$13,000,000 G.O. tax and aid anticipation certificates of indebtedness of 2006 (06-0095R). -- Received

- - -

**MOTIONS AND RESOLUTIONS**

Resolution 06-0095, resolution providing for the issuance, sale and delivery of \$13,000,000 general obligation tax and aid anticipation certificates of indebtedness of 2006 of the city of Duluth, Minnesota, and prescribing the terms thereof; creating a debt service fund therefor; and awarding the sale thereof, by Councilor Stewart, was introduced for discussion.

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

Finance Department Director Stark and Jessica Cameron, representing The PFM Group, reviewed the results of the sale and recommended the council accept the bid.

Resolution 06-0095 was adopted as follows:

BY COUNCILOR STEWART:

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. 06-0062, adopted January 23, 2006, authorized the issuance and provided for the sale of \$13,000,000 General Obligation Tax and Aid Anticipation Certificates of Indebtedness of 2006 (the "Certificates") in anticipation of collection of taxes levied in the year 2005 for collection during the year 2006 and state aids receivable in 2006 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 Wells Fargo Brokerage Services, LLC of Minneapolis, Minnesota (the "Purchaser"), to purchase the Certificates at a cash price of \$13,101,920, plus accrued interest on the total principal amount from February 23, 2006, to the date of delivery of the Certificates and upon condition that the Certificates mature and bear interest at the times and annual rate 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 February 23, 2006, shall be issued in the denomination of \$5,000 each, or any integral multiple thereof, in fully registered form, and shall mature on December 29, 2006 (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 4.25 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 Rulemaking 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 14, 2006, 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:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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

CITY OF DULUTH

GENERAL OBLIGATION TAX AND AID ANTICIPATION CERTIFICATE  
OF INDEBTEDNESS OF 2006

R-1 \$13,000,000

Interest Rate	Maturity Date	Date of Original Issue	CUSIP
	December 29, 2006	February 23, 2006	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: THIRTEEN 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 14, 2006, 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 \$13,000,000, 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 9, 2006 (the "Resolution").

It is hereby certified and recited that a sum of \$33,645,800 was the amount (i) embraced in the tax levies for the general fund (the "Fund") of the City levied in the year 2005 for collection during the year 2006, and (ii) the estimated amount of state aids receivable by the City for the Fund in the year 2006; 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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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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 23rd day of February, 2006.

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.

Date	Registered Owner	Signature of Bond Registrar
2/23/06	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.

(Certificate as to Legal Opinion)

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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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 2006, of the City of Duluth which includes the within Certificate, dated as of the original date of delivery of and payment for the Certificates.

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City Clerk

Section 14. A. The treasurer shall credit \$13,000,000, 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 \$13,000,000, 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 \$400,000, pursuant to Section 3 of Ordinance No. 9762 (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 \$6,917,200, and based on notices from the Minnesota Department of Revenue, the State Aids are reasonably expected to be \$26,728,600.

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 2 of Ordinance No. 9762, adopted by the City Council on December 19, 2005 (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 2006 (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 06-0095 was adopted upon the following vote:

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

Nays: None -- 0

Abstention: Councilor Little -- 1

Approved February 9, 2006

HERB W. BERGSON, Mayor

- - -

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

JEFFREY J. COX, City Clerk

**OFFICIAL PROCEEDINGS**

Duluth City Council meeting held on Monday, February 13, 2006, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: Councilor Johnson -- 1

- - -

The minutes of council meetings held on December 1, 5, 15, 19 and 28, 2005, were approved upon a unanimous vote.

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**PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS**

06-0213-01 Miller-Dwan Foundation petition to vacate portions of Davis Street and Broadway, Virginia and Kentucky avenues in Claque and Prindles Oak Knoll Subdivision. -- Assessor

06-0213-02 Share Advantage, et al. (three signatures), petition to vacate and terminate that portion of Lot 1, Block 1, Village Mall First Addition (2502 Maple Grove Road). -- Assessor

06-0213-03 Marick Development, by Daniel D. Maddy, attorney, appealing planning commission denial of a variance at 3129 Minnesota Avenue. -- Committee 2 (planning and economic development)

06-0213-14 The following communications regarding construction of the Beacon Point Condominiums (06-0128R): (a) Jeff Anderson; (b) Marilyn and Joel Bamford; (c) David Carman; (d) Kathleen Clark; (e) Terry Clark; (f) E. Donley; (g) Joe Ferguson; (h) Mike Frain; (i) David Gangeness; (j) Scott and Anne Jaspersen; (k) Jan Karon; (l) Jerry Kimball; (m) Anne Macaulay; (n) Paul Makowski; (o) Steve O'Neil; (p) Shawn Roed; (q) Pam Roth; (r) Thom and Cindy Storm; (s) Suzanne Szucs; (t) Harvey Van Horn. -- Received

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**REPORTS OF OFFICERS**

Chief Administrative Officer Almanza gave an update on the employee health insurance, noting that the human resources division has been restructured by adding an internal auditing function and a health insurance/benefits position. He stated that the focus now is to analyze the city's existing retiree plans and how they may be combined or streamlined. Mr. Almanza also noted that the administration is opening up negotiations with the bargaining units, researching whether a self insured versus fully insured plan for retirees is more cost effective and looking at the drug importation program for a savings.

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City Attorney Brown informed the council of the status of the litigation relative to a cell tower placement and that it is before Federal Circuit Court of Appeals.

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06-0213-04 Assessor:

(a) Affidavit of mailing of notice of special assessment board public hearing to be held on February 14, 2006, at 3:30 p.m. in Room 106A, City Hall, regarding the proposed construction of a permanent alley in Central Avenue Alley from Bristol to Ramsey streets. -- Clerk

(b) For confirmation the assessment roll levied to defray the assessable portion of construction of a watermain in McCulloch Street from Superior Street to 48th Avenue East, Contract No. 5368 (assessable portion \$22,113.84);

(c) Letter of sufficiency of petition to vacate portions of Davis Street and Broadway, Virginia and Kentucky avenues in Claque and Prindles Oak Knoll Subdivision. -- Received

06-0213-05 Building official appeal of the board of zoning appeals denial of a variance to reduce the minimum street frontage requirement in a suburban zoning district from 250 feet to zero feet for the construction of a single family dwelling on vacant land with an access easement off Swan Lake Road (Dennis Jensen). -- Committee 2 (planning and economic development)

06-0213-06 Clerk applications to the Minnesota gambling control board for exemptions from lawful gambling licenses (raffles) from: (a) Holy Family Catholic Church on September 9, 2006; (b) Lincoln Park Business Group on June 24, 2006; (c) Minnesota Citizens Federation - Northeast on September 28, 2006. -- Received

06-0213-07 Parks and recreation department director minutes of Lake Superior zoological society meetings of: (a) November 16, 2005; (b) January 11, 2006: (1) Annual; (2) Business. -- Received

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### **REPORTS OF BOARDS AND COMMISSIONS**

06-0213-08 Commission on disabilities minutes of January 4, 2006, meeting. -- Received

06-0213-09 Duluth airport authority October 31, 2005, unaudited balance sheet. -- Received

06-0213-10 Duluth housing commission minutes of September 8, 2005, meeting. -- Received

06-0213-11 Duluth human rights commission 2005 year end report. -- Received

06-0213-12 Duluth transit authority: (a) Minutes of November 30, 2005, meeting; (b) October 2005 income statement. -- Received

06-0213-13 Library board minutes of November 29, 2005, meeting. -- Received

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### **OPPORTUNITY FOR CITIZENS TO BE HEARD**

Harold Frederick and Jack Ezell, representing the Western Lake Superior Sanitary District, reviewed for the council the nature of the restructuring of costing out their services by reducing the costs to existing users and adding a fee to new connection users when contractors come for new plumbing permits.

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Mike Casey, Sr., expressed his concern that property taxes and utility costs might be raised to cover the retirees healthcare problems. He noted that those on a fixed income cannot keep up with increased costs that are coming from all areas and should not have to "suffer" for bad decisions made by the city regarding funding for this liability.

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Jim Fetser felt that the city of Duluth has not acted responsibility to see that contaminated barrels in Lake Superior have been removed.

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Kay L. Lewis commented on her concerns of: a need for increased signal lights and signage if First Street is changed to two way traffic; that the intersection of Fourth Street and Sixth Avenue East is dangerous; that more attention should be given to attracting cruise ships and that there be a referendum as to the priority between the Duluth Entertainment Convention Center (DECC) expansion, the Kroc Center or the Hockey Heritage Center.

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

BY COUNCILOR STEWART:

RESOLVED, that the proper city officers are hereby authorized to accept the transfer from the Duluth economic development authority (DEDA) of all industrial development bond fees, when and as received by DEDA, which are paid to DEDA by the St. Mary's/Duluth Clinic Health System resulting from the issuance by DEDA of industrial development bonds for the benefit of the St. Mary's/Duluth Clinic Health System Digestive Disease/Cancer Center project, all said sums to be deposited in Debt Service Fund 320.

Resolution 06-0012 was unanimously adopted.

Approved February 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

RESOLVED, that the assessment roll levied to defray the assessable portion of the following: watermain in McCulloch Street from Superior Street to 48th Avenue East (Contract #5368; assessable amount - \$22,113.84) to be deposited in Fund 325; is hereby confirmed.

Resolution 06-0118 was unanimously adopted.

Approved February 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

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

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

Licensee	Gambling site
Welch Center	Grandma's Saloon & Deli, 4602 Grand Avenue

Resolution 06-0113 was unanimously adopted.

Approved February 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

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

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

Resolution 06-0114 was unanimously adopted.

Approved February 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

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

(a) On January 4, 2006, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of T-Bonz Enterprises, Inc. (T-Bonz Bar), and has submitted its report to the city council of the city of Duluth as Public Document No. 06-0213-15;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on February 13, 2006, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 06-0213-15 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of T-Bonz Enterprises, Inc. (T-Bonz Bar), 2531 West Superior Street are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the Duluth City Council fine the licensee \$500 and stay payment of the fine for one year contingent upon no same or similar violations during the one year period.

Resolution 06-0115 was unanimously adopted.

Approved February 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

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

(a) On January 4, 2006, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Wizner Company d/b/a Norman's Bar and has submitted its report to the city council of the city of Duluth as Public Document No. 06-0213-16;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on February 13, 2006, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 06-0213-16 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 are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the Duluth City Council imposes a \$1,500 fine to be paid in 60 days of council action and suspends the license of Wizner Company for the operation of Norman's Bar for a period of 30 days. The city council also revokes the stay

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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of the previously imposed ten day suspension passed in Resolution 05-0566 and the suspension of the license is in effect until the \$1,000 penalty previously imposed is paid.

Resolution 06-0116 was unanimously adopted.

Approved February 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the reappointments by Mayor Bergson of Lynn D. Beechler (realtor), David W. Krech (general citizenry), James A. Walters (building trade union) and Allen Willman (general citizenry) to the building appeal board for terms expiring on February 1, 2009, are confirmed.

Resolution 06-0028 was unanimously adopted.

Approved February 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the reappointments of Joyce Blodgett, Nettie R. Bothwell, Shannon McCarthy Bicha, Kimberly A. McKay and Katherine E. Quistad, and the appointment of Jennifer Murphy, replacing Walter Kramer who resigned, by Mayor Bergson to the commission on disabilities for terms expiring on November 1, 2008, are confirmed.

Resolution 06-0029 was unanimously adopted.

Approved February 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the reappointments by Mayor Bergson of Robert Cormier (at large), Nancy Costa (environmental) and Rebecca Pittner (at large) to the environmental advisory council for terms expiring on January 5, 2009, are confirmed.

Resolution 06-0030 was unanimously adopted.

Approved February 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointment by Mayor Bergson of Virginia T. Katz to the library board, replacing Terese M. Tomanek who resigned, for a term expiring on June 1, 2007, is confirmed.

Resolution 06-0032 was unanimously adopted.

Approved February 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the reappointments of Ruth Ann Eaton and Heather Rand, and the appointment of Henry L. Banks, replacing Jeanne Konecny who resigned, by Mayor Bergson to the planning commission for terms expiring on December 31, 2009, are confirmed.

Resolution 06-0033 was unanimously adopted.

Approved February 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointment by Mayor Bergson of Donald Dass to the Duluth public arts commission for a term expiring September 30, 2007, replacing Timothy Meyer, is confirmed.

Resolution 06-0043 was unanimously adopted.

Approved February 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the reappointments of Dean Grace (professional), Wendy Grethen (District 9), Barbara Stark (land management) and Luke W. Sydow (District 6) and the appointment of David L. Helf (District 8), replacing John Cummings who resigned, by Mayor Bergson to the parks and recreation commission for terms expiring on February 13, 2009, are confirmed.

Resolution 06-0091 was unanimously adopted.

Approved February 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointment by Mayor Bergson of Ronald D. DeGrio (at large) to the parking commission for a term expiring July 1, 2009, replacing Steven G. LaFlamme, is confirmed.

Resolution 06-0092 was unanimously adopted.

Approved February 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointments by Mayor Bergson to the Duluth human rights commission of Patrick Collins and Maria Danz for terms expiring on April 20, 2008, replacing Neil J. Glazman and Tadd M. Johnson; Jan Karon for a term expiring on April 20, 2009, replacing Leslie Gibbs who resigned; and Maria Stalzer Wyant Cuzzo for a term expiring on April 20, 2007, replacing Keely Marrs who resigned, are confirmed.

Resolution 06-0093 was unanimously adopted.

Approved February 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

RESOLVED, that the proper city officials are hereby authorized to enter into the amendment to sharing and subordination agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 06-0213-17, with Housing and Redevelopment Authority of Duluth, Minnesota (HRA), Greater Minnesota Housing Fund (GMHF), Center City Housing Corporation (Center City), Conro Properties, LLC (Conro) and US Bank National Association (US Bank) related to the four-plex adjacent to the Village Place project, pursuant to which all of Center

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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City's obligation under a 1997 HOME program forgivable loan will be assumed by Conro and the city's mortgage lien will be subordinated to an additional \$38,500 in new debt provided by US Bank.

Resolution 06-0096 was unanimously adopted.

Approved February 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

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. 06-0213-18, with Barr Engineering Company for services related to Duluth community-wide brownfield assessment program in the amount of not to exceed \$360,531, payable from Fund 210, Agency 30, Organization 3106, Object 5319.

Resolution 06-0107 was unanimously adopted.

Approved February 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

WHEREAS, that city of Duluth established certain 2006 CDBG accounts pursuant to Resolution 05-0865; and

WHEREAS, the community development committee (cd committee) for the community development program passed a resolution recommending funding in the programs as set forth below.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are authorized to make the following fund decrease in the Federal Program Fund 262, Agency 020, 2006 HUD-funded community development accounts as set forth below.

2006 CDBG Program - Fund 262 - Project CD06CD Account Revised 2006					
Sub project	Activity	Project	Amount	New grant	Difference
PSVC	2109	Veterans Outreach North	\$12,000	\$11,687	(\$ 313)
PSVC	1168	Boys and Girls Club	\$25,900	\$24,900	(\$ 1,000)
PSVC	1165	Grant Collaborative	\$13,900	\$12,900	(\$ 1,000)
PSVC	2805	NYS	\$24,000	\$23,000	(\$ 1,000)
PSVC	2755	Valley Youth Center	\$17,900	\$16,900	(\$ 1,000)
PSVC	2810	YMCA	\$26,000	\$25,000	(\$ 1,000)
PSVC	2811	YWCA	\$15,900	\$14,900	(\$ 1,000)

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

Sub project	Activity	Project	Amount	New grant	Difference
ADMC	AD03	Contingency	\$62,653	\$26,880	(\$35,773)
				TOTAL	\$42,086

Resolution 06-0109 was unanimously adopted.  
 Approved February 13, 2006  
 HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

WHEREAS, the city of Duluth established certain 2006 HOME accounts pursuant to Resolution 05-0866; and

WHEREAS, the community development committee (cd committee) for the community development program passed a resolution recommending funding programs as set forth below.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are authorized to make the following fund decreases in the Federal Program Fund 260, Agency 020, 2006 HUD-funded community development accounts as set forth below.

2006 HOME Program - Fund 260 - Project CD06HM Account Revised 2006					
Sub project	Activity	Project	Amount	New grant	Difference
GN06	AD01	Administration	\$ 76,600	\$ 76,400	(\$ 200)
GN06	1735	Property rehabilitation	\$242,500	\$240,863	(\$1,637)

Resolution 06-0110 was unanimously adopted.  
 Approved February 13, 2006  
 HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

WHEREAS, the city of Duluth established certain 2006 ESGP accounts pursuant to Resolution 05-0867; and

WHEREAS, the city received a decreased award of ESGP funding from the original program estimate; and

WHEREAS, the community development committee (cd committee) for the community development program recommended funding the following programs as set forth below.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are authorized to make the following fund decreases in the Federal Program Fund 262, Agency 020, 2006 HUD-funded community development accounts as set forth below:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

2006 ESGP Program - Fund 262 - Project CD06ES Account Revised - 2006				
Sub project	Project	Amount	New grant	Difference
AD01	Program administration	\$6,250	\$5,282	(\$968)

Resolution 06-0111 was unanimously adopted.  
 Approved February 13, 2006  
 HERB W. BERGSON, Mayor

- - -

BY COUNCILORS GILBERT, NESS AND KRAUSE:

The council makes the following findings:

- (a) The commission on higher education was created by Ordinance 9568 and is codified in the Duluth City Code, Section 2-158, et. seq.;
- (b) The activities of the commission are valuable;
- (c) Students, through their student government, have expressed interest in having the commission operate;
- (d) The commission has been inoperable in part because commissioners have not been appointed.

NOW, THEREFORE, BE IT RESOLVED, that the council requests that each of the named institutions of higher education, each student government and the mayor appoint representatives to the commission, as set out in the City Code, and do other acts necessary to facilitate operation of the commission on higher education.

Resolution 06-0117 was unanimously adopted.  
 Approved February 13, 2006  
 HERB W. BERGSON, Mayor

- - -

BY PRESIDENT REINERT:

RESOLVED, that the city of Duluth hereby accepts \$34,500 in settlement of underpaid franchise fee payments made by Charter to the city payable into Fund 100-030-1324-4071, and further authorizing the proper city officials to execute a settlement agreement and mutual release substantially in the form of that on file in the office of the city clerk as Public Document No. 06-0213-19.

Resolution 06-0112 was unanimously adopted.  
 Approved February 13, 2006  
 HERB W. BERGSON, Mayor

- - -

BY PRESIDENT REINERT:

RESOLVED, that the proper city officials are hereby authorized to execute an agreement, substantially the same as that on file with the city clerk as Public Document No. 06-0213-20, with Fryberger, Buchanan, Smith and Frederick, P.A., under which that firm will provide professional services related to the city's 2006 state legislative program, at a cost to the city not to exceed

\$44,940 for the year 2006, and ability for the administration to renew for a second year, which shall be payable from Fund 100-700-1402-5312.

Resolution 06-0125 was unanimously adopted.

Approved February 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, the city of Duluth desires to provide the Middle, Highland and Woodland pressure zone study.

The city desires to hire a consulting engineer to provide the engineering services required to evaluate the water supply and distribution requirements for the Middle, Highland and Woodland pressure zones.

M.S.A. Professional Services has submitted a proposal for engineering services in connection with this project.

The proper city officials are hereby authorized to enter into an agreement with M.S.A. Professional Services to provide the city with such engineering services.

FURTHER RESOLVED, the cost of said engineering services, estimated at \$27,710, will be payable from the Water Fund 0510, Department/Agency 500, Organization 1930, Object 5303.

Resolution 06-0090 was unanimously adopted.

Approved February 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that LHB Engineers and Architects be hereby awarded a contract for professional engineering services for a condition and rehabilitation study for Bridge No. 92277 at 26th Avenue West at Miller Creek for the engineering division in accordance with its low specification of \$8,960, payable out of Permanent Improvement Fund 411, Department/Agency 035, Object 5530, City Project No. 0540TR.

Resolution 06-0094 was unanimously adopted.

Approved February 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that the city of Duluth desires to construct an extension of Denim Drive from Denim Street to 780 feet south of Denim Street.

The city desires to hire a consultant engineer to provide the engineering services to evaluate the drainage requirements for the construction of the project, and to provide the required contract administration to complete the project.

Short Elliott Hendrickson, Inc., has submitted a proposal for engineering services in connection with this project.

The proper city officials are hereby authorized to enter into an agreement with Short Elliott Hendrickson, Inc., to provide the city with such services.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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FURTHER RESOLVED, that the said cost of said engineering services, estimated at \$42,000, will be payable from Special Assessment Fund 0410, Department/Agency 038, Object 5530, City Project Number 0500TR.

Resolution 06-0098 was unanimously adopted.

Approved February 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Resolution 04-0797 to RLK Kuusisto, Ltd., for engineering services for the construction of Butternut Avenue from Hickory Street to the cul-de-sac be amended to increase the amount as follows: \$7,024.85 for additional engineering services due to differing soil conditions encountered during construction of the project, for a new total of \$29,849.85. The increase of \$7,024.85 will be payable from Special Assessment Fund 0410, Agency 038, Object 5530, City Project No. 0325TR.

Resolution 06-0100 was unanimously adopted.

Approved February 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are authorized to settle its claim against A&L Development, Inc., for a total amount of \$26,472.25 arising out of a disputed bill for gas services provided by the city of Duluth and resulting in an action filed in St. Louis County District Court and entitled, "City of Duluth v. A&L Development, Inc.," St. Louis County File No. 69-02-04-602419.

BE IT FURTHER RESOLVED, that proper city officials are authorized to accept \$20,472.25 as the unpaid portion of the \$26,472.25 settlement amount; such payment to be made within 30 days of final approval of settlement; funds to be deposited in Fund 520, Account 1302.

Resolution 06-0102 was unanimously adopted.

Approved February 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are hereby authorized to enter into the first amendment (Public Document No. 06-0213-31) to City Contract No. 19592 with LHB Engineers and Architects, Inc. for services related to the GIS stormwater plan, increasing the scope of services for the year 2006 and the fee schedule and increasing the amount payable thereunder by \$20,000; payable from the Stormwater Utility Fund 535, Agency 500, Organization 1915, Object 5310.

Resolution 06-0103 was unanimously adopted.

Approved February 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Resolution 03-0468 awarding a contract to Northland Constructors of Duluth, LLC, for construction of Superior Street from 26th Avenue East to 47th Avenue East be amended to increase the amount by \$740,142.02 for a new total of \$3,112,040.30 payable out of

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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Permanent Improvement Fund 0411, Department/Agency 035, Object 5530, to be reimbursed by municipal state aid and turnback.

Resolution 06-0108 was unanimously adopted.

Approved February 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Resolution 05-0619, awarding a contract to Apex Mechanical for construction of Fourth Street culvert repairs (Oregon Creek emergency storm repair) be amended to increase the amount by \$152,467.83 for a new total of \$399,766.83, terms net 30, payable out of Stormwater Fund 0535, Department/Agency 500, Organization 1905, Object 5533, Project #0515ST.

Resolution 06-0126 was unanimously adopted.

Approved February 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

RESOLVED, that the proper city officials are hereby authorized to enter into Amendment No. 1 (Public Document No. 06-0213-21) to City Contract No. 19691 with the Minnesota department of public safety, division of homeland security and emergency management, extending the term thereof to May 31, 2006.

Resolution 06-0097 was unanimously adopted.

Approved February 13, 2006

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: on West Seventh Street next to 626 North 42nd Avenue West.

Resolution 06-0119 was unanimously adopted.

Approved February 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

RESOLVED, that the proper city officers are authorized to accept from the United States department of justice, bureau of justice assistance, office of justice programs, an Edward Byrne memorial justice assistance grant in the amount of \$40,489 and to execute any documents required to be executed to accept such grant. Funds to be deposited in Fund 215, Agency 200, Organization 2267, Revenue Source 4209-02.

BE IT FURTHER 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. 06-0213-22, with St. Louis County to establish each party's share of the grant proceeds.

Resolution 06-0121 was unanimously adopted.

Approved February 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

RESOLVED, that the proper city officials are authorized to accept a grant from the state of Minnesota, commissioner of public safety, office of justice programs, in the amount of \$285,000 for the purpose of supporting the operations of the Lake Superior drug and gang task force, to execute the grant agreement, a copy of which is on file in the office of the city clerk as Public Document No. 06-0213-23, and to expend matching funds in the amount of \$45,000. Grant funds to be deposited in Fund 215, Agency, 200, Organization 2260, Revenue Source 4210-02. Matching funds to be paid from Fund 100.

Resolution 06-0122 was unanimously adopted.

Approved February 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

RESOLVED, that the proper city officials are authorized to accept a grant from the state of Minnesota, commissioner of public safety, division of homeland security and emergency management, in the amount of \$20,250 for the acquisition and training of an explosive detection canine and to execute the grant agreement, a copy of which is on file in the office of the city clerk as Public Document No. 06-0213-24. Grant funds to be deposited in Fund 215, Agency 200, Organization 2268, Revenue Source 4210-02.

Resolution 06-0123 was unanimously adopted.

Approved February 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

RESOLVED, that the proper city officials are authorized to accept a community crime prevention grant from the state of Minnesota, office of justice programs, in the amount of \$200,000 and to execute the grant agreement, a copy of which is on file in the office of the city clerk as Public Document No. 06-0213-25. Grant funds to be deposited in Fund 215, Agency 200, Organization 2269, Revenue Source 4220-02.

Resolution 06-0124 was unanimously adopted.

Approved February 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, that the proper city officials are authorized to enter into Amendment No. 1 to CFMS Grant Nos. A80787 and A80788 with the state of Minnesota, department of natural resources, a copy of which is on file in the office of the city clerk as Public Document No. 06-0213-26, to increase the amount of the snowmobile trails assistance program grant by \$4,000 for a total amount of \$24,000; said funds to be deposited in the General Fund 100-500-1920-4226.

Resolution 06-0101 was unanimously adopted.

Approved February 13, 2006

HERB W. BERGSON, Mayor

- - -

The following resolutions were also considered:

BY COUNCILOR KRAUSE:

RESOLVED, that the city is 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. 06-0213-27, with Lake Superior Area Family Services, doing business as Gamblers Intervention Services for the operation of an outreach gambling program during year 2006, at a cost to the city of \$90,000, which shall be payable from Fund 256.

Resolution 06-0016 was unanimously adopted.

Approved February 13, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0059, by Councilor Gilbert, vacating Sumac Avenue between Page Street and Osage Street (DeGrio/Willoughby), was introduced for discussion.

Councilor Krause expressed concern that by approving this it would free up some of the potential options for future traffic solutions, such as the Joshua Avenue connection.

Resolution 06-0059 was adopted as follows:

BY COUNCILOR GILBERT:

WHEREAS, that a sufficient petition was filed with the city clerk requesting the vacation of Sumac Avenue between Page Street and Osage Street legally described as Sumac Avenue, adjoining Block 6 and Block 7, Home Acres First Division (FN 03123); 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 easement is useless for the purpose for which it was intended, based on the following findings:

(a) There are no existing improvements or utilities within this right-of-way;

(b) This portion of Sumac Avenue does not provide an alignment conducive for the "extension of Joshua Avenue." The existing alignment of platted/ dedicated Joshua Avenue and Cedar Avenue and upper Sumac (north of West Morgan) are more appropriate for consideration. And the commission did approve, unanimously, the street easement vacation petition at its January 10, 2006, meeting;

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation of the street easement described above and as more particularly described on Public Document No. 06-0213-28.

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 portion of the easement to be vacated.

Resolution 06-0059 was adopted upon the following vote:

Yeas: Councilors Little, Ness, Stauber, Stewart, Stover and President Reinert -- 6

Nays: Councilors Gilbert and Krause -- 2

Absent: Councilor Johnson -- 1

Approved February 13, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0128, by Councilor Gilbert, requesting that the planning commission review the special use permit and variances for Beacon Point Condominiums for compliance with conditions and agreements, was introduced for discussion.

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

Alison Clark, chairperson of Neighborhood Planning District No. 7, Jackie Falk, Janet Draper, Katie Krikorian, Kay L. Lewis, John Sanford, Myrna Matheson, Vickie Sandville, Peggy Marrin and Terry Brown, representing Duluth Public Policy Alliance, supported the resolution for the reasons of: the height of this development was understood to be a maximum of 35 feet rather than 42.5 feet; the right of all citizens to see and retain access to the lake needs to be protected; there needs to be adequate space for the Lakewalk between Lake Superior and the buildings; concern that this development conforms to the plans approved by the council in 2003; that the plat is accurately referenced in that 2003 resolution; new ordinances need to be passed to protect the citizens and developers; developers have to be more responsible to the citizenry; the neighborhood planning district has been working with the developer and the city on this project, with compromise, and now there appears to a "loop hole"; the impervious surface variance has been granted and there should have been some justification/benefit to the city to grant that variance; the shoreline needs to be protected from developments that adversely affect it; the process that approved this plan needs to be reviewed and plans should be developed as to how developments should proceed.

Wayne Dahlberg, architect and one of the original developers, and Dan Maddy, attorney for the current developer, spoke in opposition to the resolution for the reasons of: this site was previously zoned M-1, which had a transmission shop on it with 40-50 cars on the site; the process for this development included following the 1995 Endion District study and the restrictions outlined there have not been deviated from; the planning commission previously approved this and building permits have been lawfully issued and there would be a negative impact on potential buyers by sending this back to the planning commission.

Councilors Gilbert, Stewart, Stover, Krause and President Reinert commented at length on the issues of: the merits of the resolution; the outdated current zoning code; the possible discrepancy between designs versus actual construction; the need to address view corridors and the involvement of the neighborhood planning districts to understand what is being approved.

Resolution 06-0128 was adopted as follows:

BY COUNCILOR GILBERT:

The city council finds as follows:

On December 9, 2003, the planning commission approved a special use permit to provide for excavation and grading of 200 cubic yards of materials within the general development, Class I, shore land zone, and a variance to allow for (1) a 62 percent impervious surface in a 30 percent zone, and (2) allow for portions of seven parking spaces within the 50 foot setback from shoreline. A copy of the staff report is on file with the city clerk as Public Document No. 06-0213-29.

It has been reported to the council that special use permit and variances were approved subject to the following conditions:

(a) The project be limited to and developed in accordance with the plans submitted by Blesener, Dahlberg, Prestidge Architects, entitled Endion Shores development dated 11/17/03, and Endion Shores attachment "A" cut and fill calculations by BDP Architects dated 11/17/03;

(b) That the necessary MPCA permits be secured prior to the issuance of any construction permits; and

(c) That the vacation of 21st Avenue East and the acceptance of easement for Lakewalk be approved by the city council prior to the issuance of any construction permits;

It has been reported to the council that the approved plan was changed from townhouses to condominiums and the density was increased from seven to 12 units for the westerly Phase I of the project, and that other changes from the approved plan were made without review and consent of the planning commission or the public.

It has been reported to the council that the approved plans did not allow for the maximum height allowable by the R-3 zoning of 35 feet to "average" height of the hip roof, so the height which may comply with the zoning ordinance exceeds the height conditions set forth in the conditions of the special use permit and variances, and an agreement with residents; and further, that promotional materials by the owner show five story buildings, including loft and basement, which clearly is a change from the approved plan.

It has been reported to the council that the special use permit and variances were approved subject to an agreement with residents (neighborhood planning district 7) which agreement both further reduced the allowed height of the building to two stories and allowed lower density and lower total height and roofline. In exchange, the owner received the benefits of an impervious surface variance, and the vacation of 21st Avenue East without a pedestrian easement which was originally requested by neighborhood planning district 7.

It has been reported to the council that the special use permit and variances were also approved subject to an agreement with residents (neighborhood planning district 7) that the development would comply with Endion waterfront plans "that buildings are designed to reflect the scale and character of nearby development" and "would be compatible with the existing two story houses already in the area." Specifically, the residents (NPD 7) report they were promised that the new development would be compatible with the development project at 23rd Avenue East by Edmunds and with all other development along the shore and in Canal Park.

It has been reported to the council that the special use permit and variances were approved subject to a Lakewalk easement that was approved by the city council in Resolution 05-0286 adopted May 23, 2005, based on the drawing of Salo Engineering dated December 8, 2003, but that the drawing did not fairly represent the location of the easement, and it did not show that the Lakewalk would need to protrude into Lake Superior to be built around the building. These circumstances dictate that most likely there is means that it is tantamount to no useable Lakewalk easement at all, and there will be a permanent break in the Lakewalk.

NOW, THEREFORE, the city council respectfully requests the planning commission to review the special use permit and variances for Beacon Point for compliance with applicable conditions and agreements.

Resolution 06-0128 was adopted upon the following vote:

Yeas: Councilors Gilbert, Krause, Ness, Stauber, Stewart, Stover and President Reinert -- 7

Nays: None -- 0

Abstention: Councilor Little -- 1

Absent: Councilor Johnson -- 1

Approved February 13, 2006

HERB W. BERGSON, Mayor

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BY PRESIDENT REINERT AND COUNCILOR LITTLE:

The city council finds the following:

- (a) Steve LaFlamme possesses knowledge and experience in managing facilities and in vehicle parking issues;
- (b) For over a decade, Mr. LaFlamme served with particular distinction as a member of the Duluth parking commission;
- (c) Mr. LaFlamme's expertise and experience on the commission made him especially effective and instrumental in the successful operation of the commission;
- (d) Mr. LaFlamme's voluntary service, without compensation, illustrates a fine example of community service to and improvement of the city of Duluth.

NOW, THEREFORE, BE IT RESOLVED, that the city of Duluth expresses its gratitude and appreciation for Steve LaFlamme's effective and dedicated service on the Duluth parking commission.

Resolution 06-0129 was unanimously adopted.

Approved February 13, 2006

HERB W. BERGSON, Mayor

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Resolution 06-0099, authorizing the proper city officials to enter into a joint contract with the Minnesota department of transportation, the city of Duluth and Appraisal Professionals, P.A., for property appraisals relating to the reconstruction of Trunk Highway 53 (Miller Trunk Highway) and adjacent frontage roads, county roads and city streets, at an estimated cost to the city of \$70,250; Resolution 06-0104, authorizing the proper city officials to enter into a joint contract with the Minnesota department of transportation, St. Louis County, the city of Duluth and Norell on Real Property for property appraisals relating to the reconstruction of Trunk Highway 53 (Miller Trunk Highway) and adjacent frontage roads, county roads and city streets, at an estimated cost of \$38,000; Resolution 06-0105, authorizing the proper city officials to enter into a joint contract with the Minnesota department of Transportation, St. Louis County, the city of Duluth and Ramsland & Vigen for property appraisals relating to the reconstruction of Trunk Highway 53 (Miller Trunk Highway) and adjacent frontage roads, county roads and city streets, at an estimated cost of \$13,500; and Resolution 06-0106, authorizing the proper city officials to enter into a joint contract with the Minnesota department of transportation, St. Louis County, the city of Duluth and Tom Turner and Associates for property appraisals relating to the reconstruction of Trunk Highway 53 (Miller Trunk Highway) and adjacent frontage roads, county roads and city streets, at an estimated cost of \$29,000, by Councilor Stover, were introduced for discussion.

Councilor Krause felt, relative to the increased amount of traffic which would be created with connecting Joshua Avenue to Miller Trunk Highway, that until a better connector system can be considered, he would like to table the resolutions.

Councilors Stauber and Stover opposed tabling the resolutions because the plan for this area has been approved and these resolutions only relate to the appraisals for the properties affected.

Councilor Ness moved to table these resolutions so that there can be an update from the administration as it relates to this specific project and the larger traffic study for the area, which motion was seconded and carried upon the following vote:

Yeas: Councilors Gilbert, Krause, Ness, Stewart and President Reinert -- 5

Nays: Councilors Little, Stauber and Stover -- 3

Absent: Councilor Johnson -- 1

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**INTRODUCTION AND CONSIDERATION OF ORDINANCES**

The following entitled ordinances were read for the first time:

BY COUNCILOR GILBERT

06-004 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, AMENDING PUBIC DOCUMENT NO. 04-0419-01 ENTITLED "HARBOR VIEW/CENTRAL HILLSIDE REVITALIZATION, TRADITIONAL NEIGHBORHOOD DEVELOPMENT CODE" DOCUMENTS OF IMPLEMENTATION (HOUSING AND REDEVELOPMENT AUTHORITY).

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BY COUNCILOR NESS

06-005 - AN ORDINANCE AMENDING CHAPTER 6-78 OF THE DULUTH CITY CODE, 1959, AS AMENDED; REGULATING FEEDING OF PIGEONS.

- - -

The following entitled ordinances were read for the second time:

BY COUNCILOR GILBERT

06-001 (9766) - AN ORDINANCE AUTHORIZING RECONVEYANCE OF PROPERTY IN THE ENGER PARK/ARLINGTON AVENUE AREA TO THE STATE OF MINNESOTA.

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

- - -

BY COUNCILOR GILBERT

06-002 (9767) - AN ORDINANCE AUTHORIZING CONVEYANCE OF LOTS 1 THROUGH 4-1/2, BLOCK 186, WEST DULUTH SEVENTH DIVISION, TO THE DULUTH ECONOMIC DEVELOPMENT AUTHORITY.

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

- - -

BY COUNCILOR GILBERT

06-003 - AN ORDINANCE TO RENAME DENIM DRIVE TO WISTERIA LANE (SACKETTE).

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

Anna Sackette-Urness spoke in support of the ordinance on behalf of her parents who have owned the property for 52 years. To questioning from councilors, she noted that: the area affected by this ordinance has recently been approved for development; this new street runs off from Denim Street in a different direction; for safety and clarity of emergency services it should not retain the same name and this was approved by the planning commission 7 to 1.

Planning and Development Department Director Bruce stated that the code states that proposed streets that are to be the direct extensions or continuations of existing adjacent streets, should be given the same name as existing streets. He continued by saying that it is unlikely that Denim Street could continue straight forward, due to the wetland conditions.

Councilor Stauber noted that it can be very confusing when a street changes names and numbers.

The ordinance failed upon a unanimous vote (Public Document No. 06-0213-30).

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The meeting was adjourned at 9:43 p.m.

JEFFREY J. COX, City Clerk

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**ORDINANCE NO. 9766**

BY COUNCILOR GILBERT:

AN ORDINANCE AUTHORIZING RECONVEYANCE OF PROPERTY  
IN THE ENGER PARK/ARLINGTON AVENUE AREA 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:

South 1/2 of north 1/2 of west 1/2 of northeast 1/4 of southeast 1/4, Section 29, Township 50 North, Range 14 West, of the Fourth Principal Meridian. Except 5/10 acre for existing Arlington Avenue.

Except that portion of said property described as follows:

Beginning at the southeast corner of said south 1/2 of north 1/2 of west 1/2 of northeast 1/4 of southeast 1/4; thence westerly along the south line of said parcel a distance of 130 feet to a point; thence turning to the right and continuing northeasterly in a straight line to the northeast corner of said parcel; thence turning to the right and continuing southerly along the east line of said parcel to the point of beginning and there terminating.

Section 2. That this ordinance shall take effect 30 days from and after its passage and publication. (Effective date: March 26, 2006)

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

Yeas: Councilors Gilbert, Krause, Little, Ness, Stauber, Stewart, Stover and President Reinert -- 8

Nays: None -- 0

Absent: Councilor Johnson -- 1

ATTEST:  
JEFFREY J. COX, City Clerk

Passed February 13, 2006  
Approved February 13, 2006  
HERB W. BERGSON, Mayor

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**ORDINANCE NO. 9767**

BY COUNCILOR GILBERT:

AN ORDINANCE AUTHORIZING CONVEYANCE OF LOTS 1  
THROUGH 4-1/2, BLOCK 186, WEST DULUTH SEVENTH  
DIVISION, TO THE DULUTH ECONOMIC DEVELOPMENT  
AUTHORITY.

The city of Duluth does ordain:

Section 1. That the city of Duluth hereby grants and conveys by quit claim deed to the Duluth economic development authority (DEDA) its right, title and interest in and to real estate located in St. Louis County, Minnesota, at no cost to DEDA:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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Lots 1 through 4-1/2, Block 186, West Duluth Seventh Division.

Section 2. That this ordinance shall take effect and be in force 30 days after its passage and publication. (Effective date: March 26, 2006)

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

Yeas: Councilors Gilbert, Krause, Little, Ness, Stauber, Stewart, Stover and President Reinert -- 8

Nays: None -- 0

Absent: Councilor Johnson -- 1

ATTEST:  
JEFFREY J. COX, City Clerk

Passed February 13, 2006  
Approved February 13, 2006  
HERB W. BERGSON, Mayor

- - -

**OFFICIAL PROCEEDINGS**

Duluth City Council meeting held on Monday, February 27, 2006, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: None -- 0

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**PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS**

06-0227-01 Thomas and Mary Bell petition to reclassify from R-1-a to R-1-b all that part of Government Lot 1, Section 18, Township 50 North, Range 13 West. -- Assessor

06-0227-02 Scott and Susan Hansen, et al. (ten signatures), petition to reclassify from R-1-b to C-2, Parcels 243, 243A, 243B and 244, C.S. 6916 (53=106) 902, that part of N 1/2 of NW 1/4 of NE 1/4 of NE 1/4 lying between the westerly line of Trinity Road, and center line of Miller's Creek in Section 30, Township 50, Range 14. -- Assessor

06-0227-03 Minnesota state auditor audit report for Spirit Mountain recreation area authority for the years ended December 31, 2005 and 2004. -- Received

06-0227-04 Sixth Judicial District Chief Judge David P. Sullivan order appointing Cynthia Albright, replacing Kenneth Nebel, to the Charter commission for a term expiring June 1, 2006. -- Received

06-0227-08 The following communications regarding Beacon Point condominium project compliance (06-0182R): (a) Mary A. Austin; (b) Joel and Marilyn Bamford; (c) Iver Bogen; (d) Kathleen Clark; (e) Terry Clark; (f) Jan Karon; (g) Margi Preus; (h) Vicki Sanville. -- Received

06-0227-09 The following communications regarding appeal of planning commission denial of a variance request for 3129 Minnesota Avenue (Marrick Development, Inc.) (06-0165R and 06-0166R): (a) John M. Brostrom; (b) Larry and Kandy Leege; (c) Park Point Community Club. -- Received

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**REPORTS OF MAYOR, ADMINISTRATIVE ASSISTANT AND OTHER OFFICERS**

Mayor Bergson reported that relative to the issue of the retiree healthcare, the city of Duluth has hired an individual who will be negotiating union contracts for the city in conjunction with the city attorneys office, which should contribute to solving the current problem.

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06-0227-05 Assessor letters of sufficiency of petitions to:

(a) Reclassify from R-1-a to R-1-b all that part of Government Lot 1, Section 18, Township 50 North, Range 13 West;

(b) Reclassify from R-1-b to C-2, Parcels 243, 243A, 243B and 244, C.S. 6916 (53=106) 902, that part of N 1/2 of NW 1/4 of NE 1/4 of NE 1/4 lying between the westerly line of Trinity Road, and center line of Miller's Creek in Section 30, Township 50, Range 14;

(c) Vacate and terminate that portion of Lot 1, Block 1, Village Mall First Addition (2502 Maple Grove Road). -- Received

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**REPORTS OF BOARDS AND COMMISSIONS**

06-0227-06 Duluth human rights commission minutes of January 11, 2006, meeting. --  
Received

06-0227-07 Parks and Recreation commission minutes of January 11, 2006, meeting. --  
Received

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### **OPPORTUNITY FOR CITIZENS TO BE HEARD**

Kay L. Lewis commented on: the need to interface the zoning code with all the information and work that is being done on the new comprehensive plan; the need for new property owners to fully know the restrictions/conditions on the land they are purchasing, so that changes they wish to make will be acceptable and the need to have cameras at the most dangerous intersections.

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Alison Clarke commented on the council being aware of the major purposes for variances and special use permits. She noted that the major purposes stated in the city's ordinance are environmental concerns and quality of life, including scenic and esthetic values, setbacks, percentage of surfaces that may be covered by structures and the height of structures.

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### **RESOLUTIONS TABLED**

Councilor Ness moved to remove Resolution 06-0099, authorizing the proper city officials to enter into a joint contract with the Minnesota department of transportation, the city of Duluth and Appraisal Professionals, P.A. for property appraisals relating to the reconstruction of Trunk Highway 53 (Miller Trunk Highway) and adjacent frontage roads, county roads and city streets, at an estimated cost to the city of \$70,250; Resolution 06-0104, authorizing the proper city officials to enter into a joint contract with the Minnesota department of transportation, St. Louis County, the city of Duluth and Norell on Real Property for property appraisals relating to the reconstruction of Trunk Highway 53 (Miller Trunk Highway) and adjacent frontage roads, county roads and city streets, at an estimated cost of \$38,000; Resolution 06-0105, authorizing the proper city officials to enter into a joint contract with the Minnesota department of Transportation, St. Louis County, the city of Duluth and Ramsland & Vigen for property appraisals relating to the reconstruction of Trunk Highway 53 (Miller Trunk Highway) and adjacent frontage roads, county roads and city streets, at an estimated cost of \$13,500; and Resolution 06-0106, authorizing the proper city officials to enter into a joint contract with the Minnesota department of transportation, St. Louis County, the city of Duluth and Tom Turner and Associates for property appraisals relating to the reconstruction of Trunk Highway 53 (Miller Trunk Highway) and adjacent frontage roads, county roads and city streets, at an estimated cost of \$29,000, by Councilor Stover, from the table, which motion was seconded and unanimously carried.

Resolutions 06-0099, 06-0104, 06-0105 and 06-0106 were adopted as follows:

BY COUNCILOR STOVER:

RESOLVED, that the Minnesota department of transportation (Mn/DOT), St. Louis County and the city of Duluth previously adopted the Miller Trunk Highway implementation plan for needed improvements to Trunk Highway 53 (Miller Trunk Highway).

Mn/DOT intends to proceed with the reconstruction of T.H. 53 (Miller Trunk Highway) from approximately Trinity Road to approximately Haines Road in 2007-2008 as outlined in the Miller Trunk Highway implementation plan.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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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.

Mn/DOT, St. Louis County and the city of Duluth desire to hire appraisers to determine property values.

Appraisal Professionals, P.A. has been selected by Mn/DOT in cooperation with St. Louis County and the city of Duluth as one of the appraisers to provide these services in conjunction with this project.

The proper city officials are hereby authorized to enter into a joint contract with the Minnesota department of transportation and Appraisal Professionals, P.A. to provide such services.

FURTHER RESOLVED, that the cost of said services, estimated at \$70,250, will be payable from Permanent Improvement Fund 0411, Department/Agency 035, Object 5530, and would be reimbursed from the city's municipal state aid construction account, Project No. PI0391TR.

Resolution 06-0099 was unanimously adopted.

Approved February 27, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the Minnesota department of transportation (Mn/DOT), St. Louis County and the city of Duluth previously adopted the Miller Trunk Highway implementation plan for needed improvements to Trunk Highway 53 (Miller Trunk Highway).

Mn/DOT intends to proceed with the reconstruction of T.H. 53 (Miller Trunk Highway) from approximately Trinity Road to approximately Haines Road as outlined in the Miller Trunk Highway implementation plan.

St. Louis County and the city of Duluth have previously agreed to participate in this project through reconstruction of adjacent county roads and city streets as appropriate.

Mn/DOT, St. Louis County and the city of Duluth desire to hire appraisers to determine property values and Norell on Real Property has been selected by Mn/DOT in cooperation with St. Louis County and the city of Duluth as one of the appraisers to provide these services in connection with this project.

The proper city officials are hereby authorized to enter into a joint contract with the Minnesota department of transportation, St. Louis County and Norell on Real Property to provide such services.

FURTHER RESOLVED, that the cost of said services, estimated at \$38,000, will be payable from Permanent Improvement Fund 0411, Department/Agency 035, Object 5530, and would be reimbursed from the municipal state aid construction account, Project PI0391TR.

Resolution 06-0104 was unanimously adopted.

Approved February 27, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the Minnesota Department of transportation (Mn/DOT), St. Louis County and the city of Duluth previously adopted the Miller Trunk Highway implementation plan for needed improvements to Trunk Highway 53 (Miller Trunk Highway).

Mn/DOT intends to proceed with the reconstruction of T.H. 53 (Miller Trunk Highway) from approximately Trinity Road to approximately Haines Road as outlined in the Miller Trunk Highway implementation plan.

St. Louis County and the city of Duluth have previously agreed to participate in this project through reconstruction of adjacent county roads and city streets as appropriate.

Mn/DOT, St. Louis County and the city of Duluth desire to hire appraisers to determine property values and Ramsland & Vigen has been selected by Mn/DOT in cooperation with St. Louis County and the city of Duluth as one of the appraisers to provide these services in connection with this project.

The proper city officials are hereby authorized to enter into a joint contract with the Minnesota department of transportation, St. Louis County and Ramsland & Vigen to provide such services.

FURTHER RESOLVED, that the cost of said services, estimated at \$13,500, will be payable from Permanent Improvement Fund 0411, Department/Agency 035, Object 5530, and would be reimbursed from the municipal state aid construction account, Project PI0391TR.

Resolution 06-0105 was unanimously adopted.

Approved February 27, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the Minnesota department of transportation (Mn/DOT), St. Louis County and the city of Duluth previously adopted the Miller Trunk Highway implementation plan for needed improvements to Trunk Highway 53 (Miller Trunk Highway).

Mn/DOT intends to proceed with the reconstruction of T.H. 53 (Miller Trunk Highway) from approximately Trinity Road to approximately Haines Road as outlined in the Miller Trunk Highway implementation plan.

St. Louis County and the city of Duluth have previously agreed to participate in this project through reconstruction of adjacent county roads and city streets as appropriate.

Mn/DOT, St. Louis County and the city of Duluth desire to hire appraisers to determine property values and Tom Turner and Associates has been selected by Mn/DOT in cooperation with St. Louis County and the city of Duluth as one of the appraisers to provide these services in connection with this project.

The proper city officials are hereby authorized to enter into a joint contract with the Minnesota department of transportation, St. Louis County and Tom Turner and Associates to provide such services.

FURTHER RESOLVED, that the cost of said services, estimated at \$29,000, will be payable from Permanent Improvement Fund 0411, Department/Agency 035, Object 5530, and would be reimbursed from the municipal state aid construction account, Project PI0391TR.

Resolution 06-0106 was unanimously adopted.

Approved February 27, 2006

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

BY COUNCILOR KRAUSE:

BE IT RESOLVED, that the Duluth City Council hereby approves of the Minnesota gambling control board issuing a lawful gambling exemption to the National Wild Turkey Federation 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 06-0145 was unanimously adopted.

Approved February 27, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

RESOLVED, that A.W. Kuettel and Sons, Inc., be and hereby is awarded a contract for re-roofing Fire Station #2 located at 2627 West Superior Street for the architect's division in accordance with specifications on its low specification bid of \$76,245, payable out of Fund 450, Department/Agency 035, Object 5520 - Project # CP2006 - OT-0602.

Resolution 06-0147 was unanimously adopted.

Approved February 27, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

RESOLVED, that Jamar Co., Inc., be and hereby is awarded a contract for repairing the coping and flashing on the city's maintenance shop at 1532 West Michigan Street for the architect's division in accordance with specifications on its low specification bid of \$50,195, payable out of Fund 450, Department/Agency 030, Object 5520 Project Number CP-2006 - OT-0602.

Resolution 06-0148 was unanimously adopted.

Approved February 27, 2006

HERB W. BERGSON, Mayor

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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 street and utility purposes:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

PC File No.	Applicant	Legal Description	Location
06015	City of Duluth	westerly eight feet of Lot 8, Block 10, Homewood Garden Tracts (PID #2290-01050)	eight foot wide strip of Lot 8, east side of North Seventh Avenue East between Plum Street and Kelly Street

Resolution 06-0139 was unanimously adopted.  
 Approved February 27, 2006  
 HERB W. BERGSON, Mayor

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BY COUNCILOR NESS:

RESOLVED, that proper city officials are hereby authorized to amend Contract No. 20632, in substantially the form of the amendment on file with the clerk as Public Document No. 06-0227-10, 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 \$51,659 for the period October 1, 2005, through September 30, 2006.

FURTHER RESOLVED, that said monies received under this agreement shall be received from Funding Source 4260 (St. Louis County) and deposited in Fund 268, Agency 031, Organization 6237.

Resolution 06-0130 was unanimously adopted.  
 Approved February 27, 2006  
 HERB W. BERGSON, Mayor

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BY COUNCILOR NESS:

RESOLVED, that the proper city officials are hereby authorized to execute an agreement with Johnson Insurance Consultants for professional consulting services relating to city's group health insurance program during the year 2006, which agreement shall be substantially in the form of Public Document No. 06-0227-11 on file in the office of the city clerk, at a cost to the city of not to exceed \$13,200, which shall be payable from the Group Health Fund 630-036-1650-5441.

Resolution 06-0135 was unanimously adopted.  
 Approved February 27, 2006  
 HERB W. BERGSON, Mayor

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BY COUNCILOR NESS:

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. 06-0227-12, with Job Service for the provision of dislocated worker serviced to laid off airline workers pursuant to Minnesota Statutes, Chapter 268, for the period November 1, 2005, through June 30, 2006, at costs not to exceed \$42,332, payable from Fund 261, Agency 031, Organization 6212, Project WD12 NWA506.

Resolution 06-0159 was unanimously adopted.  
 Approved February 27, 2006  
 HERB W. BERGSON, Mayor

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BY COUNCILOR NESS:

RESOLVED, that proper city officials are hereby authorized to enter into an agreement, substantially in the form of that on file with the office of the city clerk as Public Document No. 06-0227-13, and receive funding from Duluth Public Schools for the provision of services related to the Children Succeeding in School Initiatives for the period of July 1, 2005, through June 30, 2006, in an amount not to exceed \$20,800. Funds to be received from Revenue Source 4260 and deposited in Fund 268, Agency 031, Organization 6228, Project WD28 SOOS.

Resolution 06-0160 was unanimously adopted.

Approved February 27, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR NESS:

RESOLVED, that proper city officials are hereby authorized to enter into an agreement, in substantially the form on file with the office of the city clerk as Public Document No. 06-0227-14, with Noah Dennis, independent licensed teacher, to provide part time basic education services to participants in the Children Succeeding in School Initiatives for the period July 1, 2005, through June 30, 2006, at a cost not to exceed \$20,800, payment to be made from Fund 268, Agency 031, Organization 6228, Project WD28 SOOS.

Resolution 06-0161 was unanimously adopted.

Approved February 27, 2006

HERB W. BERGSON, Mayor

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BY PRESIDENT REINERT:

WHEREAS, CC VIII Operating, LLC, d/b/a Charter Communications (Charter), currently operates a cable system for the provision of cable service in the city of Duluth, Minnesota (city); and

WHEREAS, the city commenced a proceeding to review the past performance of Charter and to ascertain the future cable-related needs and interests of the community; and

WHEREAS, city staff has prepared and the city council has received a formal needs assessment report identifying the cable-related needs and interests of the community and recommending requirements to be included in a request for formal renewal proposal for a cable franchise, consistent with federal law.

NOW THEREFORE, the city of Duluth does resolve as follows:

(a) The city council concludes that the past performance of Charter and the cable-related needs and interests of the city are accurately identified by the formal needs assessment report on file in the office of the city clerk as Public Document No. 06-0227-15;

(b) The formal needs assessment report is hereby adopted by the city council as its ascertainment of the cable-related needs and interests of the community. The city council further adopts the requirements as set forth in the formal needs assessment report;

(c) The city council hereby closes the ascertainment of cable-related needs and interests and the review of the past performance of Charter contemplated by 47 U.S.C. §546(a);

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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(d) The city council hereby establishes that the deadline for submission of responses to the request for formal renewal proposal for a cable franchise shall be determined at a future date by the chief executive officer; but no later than June 1, 2006.

Resolution 06-0136 was unanimously adopted.

Approved February 27, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Resolution 03-0562 awarding a contract to Peterson Engineering, Inc., for professional engineering services for the construction of a ten inch steel natural gas transmission pipeline, be amended to increase the contract amount by \$76,065 for a new total of \$348,442, payable out of the Gas Construction Bond Fund 0521, Department/Agency 500, Object 5532, Job Number 0180GS.

Resolution 06-0120 was unanimously adopted.

Approved February 27, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

By resolution of intent numbered 05-0826, the council did request the administration to prepare plans and specifications for the construction of a sewer main in Maple Grove Road beginning 200 feet west of Robin Avenue and extending 1,000 feet westerly.

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 of assessment; the special assessment board has submitted its report to the 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.

RESOLVED, that said improvement as described above be made, that the estimated total cost of said improvement as estimated by the city engineer is \$105,000, payable from Special Assessment Fund 0410, Agency 038, Object 5530, Project Number 0544SN, 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 will satisfy all the requirements of Section 60 of the Charter.

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 06-0127 was unanimously adopted.

Approved February 27, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the proper city officers 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. 06-0227-16, with the White Pines Development, Inc., for the construction of utilities for the Cedar Ridge Estates

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development and the assessment of the cost thereof to the developer, and for the payment of connections fees arising out of connection to said utilities to the developer.

Resolution 06-0131 was unanimously adopted.

Approved February 27, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Merit Chevrolet be and hereby is awarded a contract for furnishing and delivering one step van for the utility operations division in accordance with specifications on its low specification bid of \$42,512.67, terms net 30, FOB destination, payable out of Water Fund 0510, Department/Agency 500, Organization 1905, Object 5580, 20 percent (\$8,502.53); and Gas Fund 0520, Department/Agency 500, Organization 1905, Object 5580, 80 percent (\$34,010.14).

Resolution 06-0149 was unanimously adopted.

Approved February 27, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

By the resolution of intent numbered 05-0668, the council did request the administration to prepare plans and specifications for the construction of permanent alley in Central Avenue Alley between Bristol Street and Ramsey Street at an estimated cost of \$94,000, payable from the Special Assessment Fund 0410 (City Job No. 0524TR); and

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.

RESOLVED, that said improvement as described above be made; that the estimated total cost of said improvement as estimated by the city engineer is \$94,000.00, payable from the Special Assessment Fund 0410, Agency 038, Object 5530, Project SA2005-0524TR; 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.

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 06-0158 was unanimously adopted.

Approved February 27, 2006

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 six inch PE high pressure gas main and related work in East Superior Street from 60th Avenue East to Lakewood Road in accordance with specifications on its low specification bid of

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\$662,370.50, terms net 30, FOB job site, payable out of Gas Construction Bond Fund 521, Department/Agency 500, Object 5532.

Resolution 06-0162 was unanimously adopted.

Approved February 27, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that MSA Professional Services be hereby awarded a contract for professional engineering services for design and construction of Morgan Park wastewater collection system and street improvements - Phase IV project for the engineering division payable as follows: \$103,225 from Sewer Fund 530, Department/Agency 500, Object 5533; \$103,223 from Storm Fund 535, Department/Agency 500, Object 5533, and \$79,340 from Street Improvement Fund 440, Department/Agency 038, Object 5530; City Project Nos. 0262SN and 0262TR.

Resolution 06-0163 was unanimously adopted.

Approved February 27, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STAUBER:

RESOLVED, that the proper city officials are hereby authorized to execute an agreement with the Duluth airport authority which allows the authority to participate in the city's self insurance fund for a five-year term which shall be deemed to have become effective January 1, 2005, for purposes of workers' compensation and employee honesty bond coverage, which agreement shall be substantially in the form of Public Document No. 06-0227-17, on file in the office of the city clerk. Actual claim costs incurred by the city for the authority's workers' compensation claims will be reimbursed to the city using a moving three year prorated average of actual claim costs, including its prorated share of the annual costs associated with the workers' compensation special compensation fund, workers' compensation reinsurance premium and employee honesty bond premium. In addition, the authority shall pay an annual administrative fee not to exceed \$5,000. Payments received will be deposited in Self Insurance Fund 605-036-1659 and 610-036-1659.

Resolution 06-0140 was unanimously adopted.

Approved February 27, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STAUBER:

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 in the city's self insurance fund for a five-year term which shall be deemed to have become effective January 1, 2005, for purposes of liability, workers' compensation and employee honesty bond coverage, which agreement shall be substantially in the form of Public Document No. 06-0227-18, on file in the office of the city clerk. Actual claim costs incurred by the city for the authority's general liability claims and workers' compensation claims will be reimbursed to the city using a moving three year prorated average of actual claim costs, including its prorated share of the annual costs associated with the workers' compensation special compensation fund, workers' compensation reinsurance premium and employee honesty bond premium. In addition, the

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authority shall pay an annual administrative fee not to exceed \$5,000. Payments received will be deposited in Self Insurance Fund 605-036-1658 and 610-036-1658.

Resolution 06-0141 was unanimously adopted.

Approved February 27, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STAUBER:

RESOLVED, that the proper city officials are hereby authorized to subscribe, as set forth in that invoice on file in the office of the city clerk as Public Document No. 06-0227-19, with Newsbank, Inc., for the library's annual online, full text subscription to America's Newspapers-Minnesota State Package in the amount of not to exceed \$11,392; payable from Fund 100, Agency 300, Organization 1702, Object 5413.

RESOLVED FURTHER, that said officials are hereby authorized to accept a donation in the amount of \$5,000 from the Duluth Library Foundation, to be deposited in Fund 100, Agency 300, Organization 1702, Revenue Source 4654-02, to defray a portion of the cost thereof.

Resolution 06-0142 was unanimously adopted.

Approved February 27, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STAUBER:

RESOLVED, that the proper city officers are authorized and directed to enter into an agreement with Merritt Community Club providing for the club's shared use of the Merritt Community Recreation Center for its program activities for a period ending December 31, 2008, with an option to renew for successive two year periods; said agreement to be substantially in the form of Public Document No. 06-0227-20 on file in the office of the city clerk.

Resolution 06-0150 was unanimously adopted.

Approved February 27, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STAUBER:

RESOLVED, that the proper city officials are authorized to accept an outdoor recreation project fund grant from St. Louis County for improvements at the Portland Square recreation area playground in the amount of \$15,000 and to execute the grant agreement, a copy of which is on file with the city clerk as Public Document No. 06-0227-21; funds to be deposited in Fund 100, Agency 700, Organization 1420, Revenue Source 4260.

Resolution 06-0153 was unanimously adopted.

Approved February 27, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STAUBER:

RESOLVED, that the proper city officials are authorized to accept an outdoor recreation project fund grant from St. Louis County for repairs at the Central Hillside basketball court in the amount of \$15,000 and to execute the grant agreement, a copy of which is on file with the city

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clerk as Public Document No. 06-0227-22; funds to be deposited in Fund 100, Agency 700, Organization 1420, Revenue Source 4260.

Resolution 06-0154 was unanimously adopted.

Approved February 27, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STAUBER:

RESOLVED, that the proper city officials are authorized to accept an outdoor recreation project fund grant from St. Louis County for improvements at the Grant Recreation Center playground in the amount of \$17,500 and to execute the grant agreement, a copy of which is on file with the city clerk as Public Document No. 06-0227-23; funds to be deposited in Fund 100, Agency 700, Organization 1420, Revenue Source 4260.

Resolution 06-0155 was unanimously adopted.

Approved February 27, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STAUBER:

RESOLVED, that the proper city officials are authorized to accept an outdoor recreation project fund grant from St. Louis County for replacement of the Lester/Amity Trail bridge in the amount of \$20,000 and to execute the grant agreement, a copy of which is on file with the city clerk as Public Document No. 06-0227-24; funds to be deposited in Fund 100, Agency 700, Organization 1420, Revenue Source 4260.

Resolution 06-0156 was unanimously adopted.

Approved February 27, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STAUBER:

RESOLVED, that the proper city officials are authorized to accept an outdoor recreation project fund grant from St. Louis County for improvements at the Memorial Community Recreation Center playground in the amount of \$20,000 and to execute the grant agreement, a copy of which is on file with the city clerk as Public Document No. 06-0227-25; funds to be deposited in Fund 100, Agency 700, Organization 1420, Revenue Source 4260.

Resolution 06-0157 was unanimously adopted.

Approved February 27, 2006

HERB W. BERGSON, Mayor

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The following resolutions were also considered:

Resolution 06-0137, granting a special use permit to Miller-Dwan Foundation to construct and operate a 12 bed hospice house on property located on the north side of Baylis Street west of Pecan Avenue; and Resolution 06-0138, vacating portions of Kentucky Avenue; Kentucky Alley; Virginia Avenue; Virginia Alley; Broadway Avenue; and Broadway Alley, Between Baylis Street and Davis Street located south of Rice Lake Road and west of Pecan Avenue (Miller-Dwan Foundation), by Councilor Gilbert, were introduced for discussion.

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

Patrick Murphy expressed his concerns that: he purchased property in the area of this property 15 years ago under the understanding that this property would remain in conservation; he felt that with the 24 hours a day, seven days a week operation with employees people coming and going, the value of his property would be downgraded and felt that this operation should be in the area of the existing hospitals.

John Hinzman, SEH Architects, which has been involved with the planning process, noted that there will not be a noticeable amount of traffic, especially in the evening hours; from Mr. Murphy's property, the road accessing this facility is some distance away and the building itself will be 150 feet away.

Councilor Stewart moved to table both resolutions so additional information relative to affect of this development on adjacent property values could be reviewed, which motion was seconded and failed upon the following vote:

Yeas: Councilors Stauber and Stewart -- 2

Nays: Councilors Gilbert, Johnson, Krause, Little, Ness, Stover and President Reinert -- 7

Resolutions 06-0137 and 06-0138 were adopted as follows:

BY COUNCILOR GILBERT:

WHEREAS, the Miller-Dwan Foundation has submitted to the city council a request for a special use permit, in accordance with sections 50-35(v) and 50-56(e), to construct and operate a 12 bed residential hospice house on property described as: Block 11, Lots 1-16; Block 12, Lots 1-16 and odd numbered Lots 17-29; Block 13, even numbered Lots 2-30, all in Clague and Prindles Oak Knoll Division and located on the north side of Baylis Street west of Pecan Avenue; 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 Miller-Dwan Foundation to allow for the construction and operation of a 12 bed residential hospice house on property located on Baylis Street, 800 feet west of Pecan Avenue, on the condition that the project be developed consistent with the plans filed with the planning department on January 12, 2006, and on file as Planning Department File No. 06007 as identified as Public Document No. 06-0227-27.

Resolution 06-0137 was unanimously adopted.

Approved February 27, 2006

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 west 1/2 of Kentucky Avenue, Kentucky Alley, Virginia Avenue, Virginia Alley, Broadway Avenue and Broadway Alley, between Baylis Street and Davis Street, located south of Rice Lake Road and west of Pecan Avenue, legally described as, in Clague and Prindles Oak Knoll Division:

(a) West 1/2 of Kentucky Avenue adjoining Lots 1-16 (even numbered lots), Block 11;

(b) Alley adjoining Lots 1-16, Block 11;

(c) Virginia Avenue adjoining Lots 1-15 (odd numbered lots), Block 11 and Lots 2-16 (even numbered lots), Block 12;

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- (d) Alley adjoining Lots 1-16, Block 12;
- (e) West 1/2 of the alley adjoining Lots 17-29 (odd numbered lots), Block 12;
- (f) Broadway Avenue adjoining Blocks 12 and 13;
- (g) Alley in Block 13; and
- (h) South 1/2 of Davis Street adjoining Blocks 11 and 12 and Lot 2, Block 13 (FN 06006); 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 rights of way are useless for the purpose for which is was intended, based on the following findings:

(a) The currently platted street and alley network is obsolete for this proposal and adjacent development;

(b) Only one other private property owner is affected by this petition, there is no loss of street frontage to that owner as a result of the proposed vacations.

And the commission did approve, unanimously, the street and alley vacation petition at its February 14, 2006, 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. 06-0227-28.

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 portion of the easement to be vacated.

Resolution 06-0138 was unanimously adopted.

Approved February 27, 2006

HERB W. BERGSON, Mayor

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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 parcels for municipal, public recreation and trail purposes.

Legal Description	Parcel ID
NW1/4 of NW1/4 of NW1/4 of Section 5, T49 N, R14 W, except 468/1000 acre for city boulevard and except that part southeast of Skyline Parkway.	part of 010-2700-00070
All of the N1/2 of NW1/4 of Section 6, T49 N, R14 W, except for MN Power & Light Company right-of-way, 5-9/100 acres, more or less, and except that part southwest of Haines Road.	part of 010-2700-00280
SE1/4 of NW1/4 of Section 6, T49 N, R14 W, except 3-70/100 acres for boulevard, and except that part southwest of Haines Road, and except that part south of Skyline Parkway.	part of 010-2700-00310

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Legal Description	Parcel ID
Lots 3-8, Block 38, Whitman Park Addition, except part condemned for boulevard, and except part southeast of Skyline Parkway, including part of vacated streets and alleys adjacent.	parts of 010-4590-6730 through 6780
Lots 1-6, Block 39, Whitman Park Addition, except part southeast of Skyline Parkway, including part of vacated street adjacent.	part of 010-4590-7040 through 7090
Lots 1-4 and 6-10, Block 1 and Lots 1-4, Block 2, Rearrangement of Lots 30 and 31 Hutchinson Division.	010-2456-00010 through 00040 and 010-2456-00060 through 00140
SW1/4 of NE1/4 of Section 31, T50 N, R14 W, except E1/2 of N1/2 of N1/2.	010-2710-07860
E1/2 of E1/2 of N1/2 of N1/2 of SW1/4 of NE1/4, Section 31, T50 N, R14 W, except part platted as Beverly Hill Addition Second Division.	010-2710-07865
All of SE1/4 of NE1/4 of Section 31, T50 N, R14 W, except a piece of land described as follows, commencing at the northeast corner of SE1/4 of NE1/4, thence west at right angles with east boundary line of Section 31 366 feet to a point, thence south at right angles a distance of 524 feet to a point, thence east at right angles 366 feet to a point in the east boundary line of Section 31, thence north along said boundary line a distance of 524 feet to a place of beginning, 4.40 acres more or less, and except part platted as Hutchinson Division.	010-2710-07870
NE1/4 of SW1/4 of Section 31, T50 N, R14 W.	010-2710-07930
N1/2 of NW1/4 of SW1/4 of Section 31, T50 N, R14 W.	010-2710-07940
S1/2 of NW1/4 of SW1/4 of Section 31, T50 N, R14 W.	010-2710-07945
SW1/4 of SW1/4 of Section 31, T50 N, R14 W, except part west of Haines Road.	010-2710-07950
SE1/4 of SW1/4 of Section 31, T50 N, R14 W, except Great Northern Power Company right-of-way.	010-2710-07960

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

Legal Description	Parcel ID
All of NE1/4 of SE1/4 of Section 31, T50 N, R14 W, except that part lying within 50 feet of a straight line drawn from a point on the south line of said tract which is 301 feet east of the southwest corner thereof in a northeasterly direction at an angle of 29 degrees, 38 minutes, to the left of said south line, a distance of 920 feet to a point, thence extending in a straight line to a point on the east line of said tract which is 570 feet south of the northeast corner thereof, being a strip of land 100 feet, wide 37.05 acres, more or less.	010-2710-07980
NW1/4 of SE1/4 of Section 31, T50 N, R14 W.	010-2710-08000
All of SW1/4 of SE1/4 of Section 31, T50 N, R14 W, except that part lying within 50 feet on either side of a straight line drawn from a point on the west line of said tract which is 380 feet north of the southwest corner thereof, to a point on the east line which is 167 feet south of the northeast corner thereof, being a strip of land 100 feet wide, containing 3.48 acres, more or less.	010-2710-08010
All of the N1/2 of SE1/4 of SE1/4 of Section 31, T50 N, R14 W, except that part lying within 50 feet on either side of a straight line drawn from a point on the west line of said tract which is 167 feet south of the northwest corner thereof, to a point on the north line which is 301 feet east of the northwest corner, being a strip of land 100 feet wide, containing 0.80 acres, more or less.	010-2710-08030
S1/2 of SE1/4 of SE1/4 of Section 31, T50 N, R14 W.	010-2710-08050
W1/2 of SW1/4 of SW1/4 of Section 32, T50 N, R14 W, except 1-32/100 acres for boulevard, and except that part southeast of Skyline Parkway.	part of 010-2710-08170

Resolution 06-0146 was unanimously adopted.  
 Approved February 27, 2006  
 HERB W. BERGSON, Mayor

- - -

Resolution 06-0165, affirming the planning commission denial of a variance to Marick Development, Inc. (3129 Minnesota Avenue); and Resolution 06-0166, reversing the decision of the planning commission to deny a variance for the construction of a two-family dwelling on property located at 3129 Minnesota Avenue (Marick Development, Inc., by Daniel Maddy), by Councilor Gilbert, were introduced for discussion.

The rules were suspended upon a unanimous vote to hear from speakers on the resolutions Dawn Buck, Bob Swanson and Keith McLaughlin expressed their support for Resolution 06-0165 for reasons of: this proposed home does not meet the character of the surrounding neighborhood; this home is unreasonably too large; the owner should have correctly researched the conditions for building first; building this structure would not be in keeping with the neighborhood; this is not to prevent this developer from building on his property, only that it deserves a reasonable sized home; the City Code states that not more than 30 percent of the lot

be covered with impervious surface and this proposal has 40 percent impervious surface; the department of natural resources' shoreline management rules call for a 135 foot wide lot for a duplex and this plan does not meet that requirement; the back 20 feet of the property is not natural and the planning commission and the board of zoning appeals denied it.

Daniel Maddy, representing the developer, expressed support for Resolution 06-0166 for the reasons of: the size of a building is dealt with by limiting height, impervious surface, setbacks on the side, back and front and by allowing for variances when there is a demonstrated hardship, and shoreline setbacks allow for variances also, when there is a demonstrated hardship; all necessary conditions are being met except for a five foot front yard variance and that the focus of the appeal is the three part hardship test set forth by the appellants courts.

Councilors Stewart, Krause, Gilbert and Johnson expressed support for Resolution 06-0165 for the reasons of: this should have been resolved the first time it came to the council and denied; in the last ten years, this neighborhood has faced a dramatic increase in development pressure; the variance previously granted, taken as a whole, dramatically affects the "feel" of the Park Point neighborhood; this kind of action sets a precedence for future developers to point to and want the same conditions; the ordinance passed in 1980 was to prevent the patterns of history from being carried on into modern construction; there should not be variances on every side of the lot; this development will be too close to the road and there is a lot of pressure to build on the lakeshore, but ordinances need to be followed.

Councilor Stauber expressed support for Resolution 06-0166 for the reasons of: this exact house was previously approved for this lot; the existing house and garage were closer to the water and this new house is allowing for more green space.

Resolution 06-0165 was adopted as follows:

BY COUNCILOR GILBERT:

WHEREAS, an application for a variance from Marick Development was received on December 20, 2005; and

WHEREAS, said application sought an approval for variances of 15 feet on the north side, 42 feet on the west side and 20 feet on the south side from the ordinary high watermark to construct a duplex at 3129 Minnesota Avenue, in the city of Duluth; and

WHEREAS, the property in question is subject to setback requirements of 50 feet from ordinary high watermark pursuant to Duluth City Code Section 51-29(e); and

WHEREAS, pursuant to Duluth City Code Section 51-10(c), the planning commission may grant a variance only in accordance with the standards set forth in articles II, III and IV for each respective district and shall not compromise the purposes of Chapter 51; and

WHEREAS, Duluth City Code Section 51-30 provides authority to grant a variance only upon a showing of hardship; and

WHEREAS, Duluth City Code Section 51-1 sets forth the purposes of Chapter 51 as follows:

The purpose of this chapter is to promote, preserve and enhance the water resources and environment within the city and protect them from adverse effects caused by poorly sited or incompatible development by regulating developments that would have an adverse or potentially irreversible impact on unique and fragile land, by minimizing conflicts and encouraging compatibility between environmentally sensitive lands, and by requiring detailed review standards and procedures for developments proposed for such areas, thereby achieving a balance between urban growth and development and protection of natural areas; and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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WHEREAS, pursuant to Duluth City Code Section 51-2 the term "hardship" is defined as follows:

Hardship. The property in question cannot be put to reasonable use under the conditions allowed by the regulations set forth in this chapter; the plight of the landowner is due to circumstances unique to his property, not created by the landowner. Economic considerations alone shall not constitute a hardship; and

WHEREAS, this matter was considered during a public hearing by the planning commission on January 10, 2006; and

WHEREAS, the commission considered the information contained within Planning File No. 06004 and also received additional information during the course of the public hearings; and

WHEREAS, the commission voted 10 to 1 to deny the request;

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth, affirms the denial of the planning commissions application for variances upon the following grounds and reasons:

(a) The project compromises the purposes of the Code and the applicant has failed to demonstrate the existence of a hardship. The commission concluded that the proposed duplex would be out of character with the surrounding development pattern. A previous variance for a front yard setback has been approved for the proposed duplex and the approval of additional variances for the property are not in character with the neighborhood and the natural resources of the city. The commission found the applicant can achieve a reasonable use of the property through reduced setbacks with the construction of a smaller building. The need for the variances are due to the design choices of the applicant which are motivated by economics rather than conditions existing upon the land.

Resolution 06-0165 was adopted upon the following vote:

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

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

Approved February 27, 2006

HERB W. BERGSON, Mayor

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Resolution 06-0166 failed upon the following vote (Public Document No. 06-0227-29):

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

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

- - -

Resolution 06-0182, by Councilor Gilbert, requesting administration to determine whether Beacon Point is in compliance with water resource management ordinance setback requirements and to take appropriate action, was introduced for discussion.

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

Alison Clarke, Jackie Falk, Peggy Marrin and Myrna Mathison expressed support for the resolution for the reasons of: this development project appears to be encroaching into the setbacks; the Lakewalk easement also appears to be adversely affected so it can not be paved; rain gardens that were in the plan have been moved; the setback concerns should be reviewed by an outside source; if the impervious surface limits were applied, the structure built would have looked different; it is unfair to allow a few developers to build in violation and then get permission; Lake Superior's beauty is now the destination, not just the drive through, for visitors and that is why there should be balanced development which respects this gem of a resource and concern about the problems that have arisen relative to the measurement of the easement for the Lakewalk.

Jim Jauss, developer, and Dan Maddy, representing the developers, stated that: this could be tabled, so discussion could continue; the council has already referred this issue back to the planning commission for review; the architectural firm has assured the developer that there is no encroachment from the high water mark; the developers are residents of Duluth; all the restrictions that were in place prior to the current developer's involvement have been followed by professional engineers and architects and there was no notification that this resolution was going to be before the council this evening.

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

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BY PRESIDENT REINERT:

The city council makes the following findings:

- (a) Resolutions 06-0075 and 06-0076 were properly introduced;
- (b) At an agenda session, the council discussed sending both resolutions to the parking commission for review;
- (c) Both resolutions were placed on the consent agenda and were passed and approved January 23, 2006, without being reviewed by the parking commission;
- (d) It is appropriate that these resolutions be reviewed by the parking commission before the council acts upon them.

NOW, THEREFORE, BE IT RESOLVED, that Resolution 06-0075 is repealed in its entirety and that Resolution 06-0076 is repealed in its entirety.

Resolution 06-0183 was unanimously adopted.

Approved February 27, 2006

HERB W. BERGSON, Mayor

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Resolution 06-0143, by Councilor Stauber, accepting a public recreational trail easement from the regents of the University of Minnesota adjacent to Tischer Creek, was introduced for discussion.

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

John Sanford expressed concerns that the property west of Tischer Creek and up to 32nd Avenue has an recreational easement that was agreed to by the Board of Regents of the University of Minnesota, which is a covenant to the land, but will probably not be honored by the current property owners.

Jim Mohn, senior planner, noted that this covenant was fully disclosed to the current owners of the property at the time they purchased it.

Resolution 06-0143 was adopted as follows:

BY COUNCILOR STAUBER:

RESOLVED, that the proper city officials are hereby authorized to accept a public recreational trail easement, a copy of which is on file in the office of the city clerk as Public Document No. 06-0227-30, from the regents of the University of Minnesota for property adjacent to Tischer Creek east of 32nd Avenue East and between London Road and Greysolon Road, and to accept the terms thereof, which easement is legally described as:

A 200 foot wide strip of property lying 100 feet on either side of the centerline of Tischer Creek as it runs over, under and across Blocks 24 and 38, RE-ARRANGEMENT OF

PART OF EAST DULUTH AND OF FIRST ADDITION TO EAST DULUTH, county of St. Louis, state of Minnesota.

Resolution 06-0143 was unanimously adopted.

Approved February 27, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, that the proper city officers are authorized and directed to enter into an agreement with Duluth economic development authority, Lake Superior Center authority and Lou Campbell, d/b/a Lou Campbell Productions, providing for the production, promotion and management of three special events at Bayfront Festival Park; said agreement to be substantially in the form of Public Document No. 06-0227-31 on file in the office of the city clerk, and providing for the payment of \$25,000; payments to be made from the Special Projects and Events Account 100-700-1410-5408. All payments of facility rental fees shall be deposited in Fund 237, Agency 015, Revenue Source 4627.

Resolution 06-0151 was unanimously adopted.

Approved February 27, 2006

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 GILBERT

06-004 (9768) - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, AMENDING PUBIC DOCUMENT NO. 04-0419-01 ENTITLED "HARBOR VIEW/CENTRAL HILLSIDE REVITALIZATION, TRADITIONAL NEIGHBORHOOD DEVELOPMENT CODE" DOCUMENTS OF IMPLEMENTATION (HOUSING AND REDEVELOPMENT AUTHORITY).

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

- - -

BY COUNCILOR NESS

06-005 (9769) - AN ORDINANCE AMENDING CHAPTER 6-78 OF THE DULUTH CITY CODE, 1959, AS AMENDED; REGULATING FEEDING OF PIGEONS.

Councilors Stauber, Little, Gilbert and Johnson expressed concerns of: this issue should go through the animal humane board for their review and input, because that is what they are there for; a number of citizens who put food out for animals will be in violation of this ordinance; there has been no complaints to the council by other citizens other than one person and thus there is not a need for this ordinance; the practical effect of this ordinance is going to solve a problem; this ordinance will be unenforceable; there is not necessarily going to be voluntary compliance with this and if this is a big problem, then it needs to be a misdemeanor, not just a petty misdemeanor.

Councilors Ness, Stewart, Stover and President Reinert noted that: the intent of this ordinance is to send a message that those who are intentionally feeding pigeons in such a manner and bringing large flocks of them to neighborhoods is not desired; there have been complaints to the council in the past on this issue and this is a quality of life issue, where hundreds of pigeons come into a neighborhood, because of one neighbor who puts out a bucket of feed everyday.

Council Ness moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Krause, Ness, Stewart, Stover and President Reinert -- 5

Nays: Councilors Gilbert, Johnson, Little and Stauber -- 4

- - -

### **COUNCILOR QUESTIONS AND COMMENTS**

Councilor Krause requested of the administration that they respond as to if the snow is properly being removed in the Kohl's Department Store area as per the conditions of the 1994 resolution, relative to ground water contamination.

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The meeting was adjourned at 8:45 p.m.

JEFFREY J. COX, City Clerk

- - -

### **ORDINANCE NO. 9768**

BY COUNCILOR GILBERT:

AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, AMENDING PUBIC DOCUMENT NO. 04-0419-01 ENTITLED "HARBOR VIEW/CENTRAL HILLSIDE REVITALIZATION, TRADITIONAL NEIGHBORHOOD DEVELOPMENT CODE" DOCUMENTS OF IMPLEMENTATION (HOUSING AND REDEVELOPMENT AUTHORITY).

The city of Duluth does ordain:

Section 1. That development within the boundaries of TND No. 2 shall be governed by and regulated in accordance with Public Document No. 06-0227-26 entitled, "Harbor View /Central Hillside Revitalization, Traditional Neighborhood Development Code," dated November 15, 2002, amended December 20, 2002, amended March 24, 2004, amended September 28, 2005, amended October 14, 2005, amended January 25, 2006 (Planning Commission File No. 05106).

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: April 16, 2006)

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

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

Nays: None -- 0

ATTEST:  
JEFFREY J. COX, City Clerk

Passed February 27, 2006  
Approved February 27, 2006  
HERB W. BERGSON, Mayor

- - -

**ORDINANCE NO. 9769**

BY COUNCILOR NESS:

AN ORDINANCE AMENDING CHAPTER 6-78 OF THE DULUTH CITY CODE, 1959, AS AMENDED; REGULATING FEEDING OF PIGEONS.

The city of Duluth does ordain:

Section 1. That Section 6-78 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 6-78. Feeding of pigeons or deer prohibited.

(a) Feeding of pigeons or deer. Except for operation of the Duluth zoo and its programs, feeding a wild deer on publicly-owned or occupied, or publicly-controlled, land is prohibited. Feeding of a wild deer or allowing one or more of them to be fed on one's privately-owned or occupied property is prohibited within the city. No person shall feed a nondomesticated pigeon, nor place feed in a place or manner that a reasonable person would expect to result in feeding a nondomesticated pigeon, in any area of the city that is not in a district zoned suburban (or its successor designation), as set out in Chapter 50, Article VII, or its successor, of Duluth City Code, except in a designated feeding area of a city park. This Section does not apply to domesticated pigeons such as those kept for racing, entertainment performances or agricultural purposes;

(b) Enforcement. Any employee or agent of the city who is authorized to cite another for violation of Duluth City Code and any peace officer is authorized to enforce this ordinance;

(c) Penalty. The minimum fine for a violation of Section 6-78, or its successor, shall be \$50.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: April 16, 2006)

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

Yeas: Councilors Krause, Ness, Stewart, Stover and President Reinert -- 5

Nays: Councilors Gilbert, Johnson, Little and Stauber -- 4

ATTEST:  
JEFFREY J. COX, City Clerk

Passed February 27, 2006  
Approved February 27, 2006  
HERB W. BERGSON, Mayor

- - -

**OFFICIAL PROCEEDINGS**

Duluth City Council meeting held on Monday, March 13, 2006, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: President Reinert -- 1

Vice President Stover presided in the absence of President Reinert.

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The minutes of council meetings held on January 3, 9 and 23, 2006, were unanimously approved.

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**PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS**

06-0313-01 Diana C. Hill, et al. (three signatures), petition to vacate the alley adjacent to Blocks 1 and 2, and 101st Avenue West adjacent to Block 1, Riverside Park Second Addition. -- Assessor

06-0313-02 James A. Miner, Jr., et al (four signatures), petition to improve the alley in Central Avenue Alley from Bristol Street to Roosevelt Street. -- Assessor

06-0313-14 Alison Clarke communication regarding the Beacon Point development (06-0182R). -- Received

06-0313-15 The following submitting communications regarding installation of parking meters in Canal Park (06-0188R): (a) Canal Park Business Association (2); (b) Canal Park parking committee; (c) Grandma's Restaurant Company; (d) Lake Superior Maritime Visitor Center; (e) Bill Meierhoff; (f) Northern Lights Books and Gifts; (g) Word Processing of Duluth. -- Received

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**REPORTS OF MAYOR, ADMINISTRATIVE ASSISTANT AND OTHER OFFICERS**

Chief Administrative Officer Almanza introduced Labor Relations Specialist Korby and Human Resources Division Manager Meier.

Mr. Korby gave an update on the status of contract negotiations with each bargaining unit.

Mr. Meier gave an health insurance update, noting that: an employee benefits specialist will be starting shortly; a health club fair is scheduled; RTW, Inc., the new city administrator for workers' compensation is in place; the audit of Blue Cross Blue Shield reflected no payment errors and 99.81 percent financial accuracy; the administration is putting together a health care advisory board; Finance Department Director Stark is working with the state auditor's office to establish the irrevocable trust fund and has begun looking into implementing a prescription drug importation program.

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06-0313-03 Assessor:

(a) For confirmation the assessment rolls levied to defray the assessable portions of:

(1) Contract No. 5404, Bay View Alley from Piedmont Avenue to Diamond Avenue (assessable amount: \$20,805.79); Contract No. 5398, Cedar Ridge Estates full development (assessable amount: \$926,021.04);

(2) Various 2005 street improvement project contract Nos. 7079, 7080, 7081, 7083 (assessable amounts: various);

(b) Letter of sufficiency of petition to improve the alley in Central Avenue Alley from Bristol Street to Roosevelt Street. -- Received

06-0313-04 Facilities management submitting right of entry agreements for environmental investigation activities, pursuant to Section 2-35 of the Duluth City Code, with:

(a) Seaway Port authority of Duluth for property adjoining Garfield Avenue described as Lots 174-200 (even numbered), Block 38, Rice's Point Division;

(b) SEH, on behalf of Duluth Salvation Army, for property located at 3501 Grand Avenue. -- Mayor for execution

06-0313-05 Purchasing agent emergency order awarded to Otis-Magie, Inc., for insurance including premises coverages (building and personal property) and boiler and machinery coverage. -- Received

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### REPORTS OF BOARDS AND COMMISSIONS

06-0313-06 Commission on disabilities minutes of February 1, 2006, meeting. -- Received

06-0313-07 Duluth airport authority minutes of: (a) January 17, (b) February 3; (c) February 9, 2006, meetings. -- Received

06-0313-08 Duluth/North Shore Sanitary District board minutes of January 11, 2006, meeting. -- Received

06-0313-09 Housing and redevelopment authority of Duluth minutes of: (a) September 27; (b) October 25, 2005, meeting. -- Received

06-0313-10 Library board minutes of January 24, 2006, meeting. -- Received

06-0313-11 Parking commission minutes of January 10, 2006, meeting. -- Received

06-0313-12 Seaway Port authority of Duluth financial statement of January 31, 2006. -- Received

06-0313-13 Spirit Mountain recreation area authority minutes of: (a) November 17, (b) December 15; (c) December 28, 2005; (d) January 19, 2006, meetings. -- Received

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### OPPORTUNITY FOR CITIZENS TO BE HEARD

Karen Moore, expressed concern about the issue of circus animal cruelty. She felt that the city of Duluth animal humane board should look into this and make a recommendation to the city council as to not allowing this kind of activity in Duluth.

- - -

Greg Price expressed his concerns about the genocide that is occurring in the Sudan. He felt that the council should pass a resolution telling the United Nations to stop this through a peace keeping force.

- - -

Kay L. Lewis commented on: erosion that is taking place at the Bayfront and its effect on deteriorating a railing on the Lakewalk; the need for cruise ship dockage at a secure processing facility; the excess speed of vehicles in neighborhoods; that large concrete barriers be tested before establishing new dead end streets; concern for dangerous intersections and what is being done; what is the status on the proposal to turn First Street into a two way street and that the Beacon Point development may not be above the high wave limits.

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At this time, 7:20 p.m., the public hearing on the amendment to the 2006-2010 capital improvement plan began.

Ms. Stark reviewed that this is an amendment to the previously adopted plan. She noted that this amendment would add \$270,000 for the West Duluth police station, which was accomplished by moving existing capital improvement budget dollars to future years.

At this time, 7:32 p.m., no one else appeared who wished to be heard, the meeting was adjourned and the regular order of business was resumed.

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### **RESOLUTION TABLED**

Councilor Gilbert moved to remove Resolution 06-0182, requesting administration to determine whether Beacon Point is in compliance with water resource management ordinance setback requirements and to take appropriate action, from the table, which motion was seconded and unanimously carried.

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

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### **MOTIONS AND RESOLUTIONS**

The following entitled resolution was read for the first time:

BY PRESIDENT REINERT

06-0169 - RESOLUTION AMENDING RULE 7 OF THE STANDING RULES OF THE CITY COUNCIL.

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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.)*

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

BY COUNCILOR STEWART:

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

- (a) Duluth Heights SIP 2005 (Contract #7079; assessable amount - \$197,345.07);
- (b) Hunters Park SIP 2005 (Contract #7080; assessable amount - \$169,828.46);
- (c) Lincoln Park SIP 2005 (Contract #7081; assessable amount - \$210,059.89);
- (d) Woodland South 2 SIP 2005 (Contract #7083; assessable amount - \$267,582.51);

to be deposited in Fund 330, are hereby confirmed.

Resolution 06-0195 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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(a) Bay View Alley from Piedmont to Diamond Avenue (Contract #5404; assessable amount - \$20,805.79);

(b) Cedar Ridge Estates full development (Contract #5398; assessable amount - \$926,021.04);

to be deposited in Fund 325; are hereby confirmed.

Resolution 06-0196 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

RESOLVED, that Duluth Lawn and Sport, Inc., be and hereby is awarded a contract for furnishing and delivering John Deere repair parts and supplies as needed during year 2006 for the fleet services division in accordance with specifications at an estimated amount of \$10,000, terms net 30, discount 15 percent current price list, FOB destination, payable out of Fleet Services Fund 660, Department/Agency 015, Organization 1560, Object 5221.

Resolution 06-0167 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

RESOLVED, that Pumps Tire Service, Curtis Oil Company, be and hereby is awarded a contract for furnishing and delivering tires and tubes as needed for a 12 month period during year 2006 for the fleet services division in accordance with specifications at a total estimated amount of \$33,000, terms net 30, FOB destination, \$27,000 payable out of Fleet Fund 660, Department/Agency 015, Organization 1560, Object 5221 and \$6,000 payable out of Fleet Fund 660, Department/Agency 015, Organization 1560, Object 5404.

Resolution 06-0168 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

RESOLVED, that Maney International of Duluth, Inc., be and hereby is awarded a contract for furnishing and delivering O.E.M. Navistar parts and repairs as needed during year 2006 for the fleet services division in accordance with specifications at an estimated amount of \$40,000, terms net 30, discount 35 percent current price list, FOB destination, \$30,000 payable out of Fleet Services Fund 660, Department/Agency 015, Organization 1560, Object 5221 and \$10,000 payable out of Fleet Services Fund 660, Department/Agency 015, Organization 1560, Object 5404.

Resolution 06-0170 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

RESOLVED, that Boyer Trucks, Duluth-Superior, Inc., be and hereby is awarded a contract for furnishing and delivering O.E.M. parts and repairs for Ford Freightliner vehicles as needed for year 2006 for the fleet services division in accordance with specifications at an estimated amount

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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of \$16,000, terms net 30, discount 15 percent current price list, FOB destination, \$14,000 payable out of Fleet Services Fund 660, Department/Agency 015, Organization 1560, Object 5221 and \$2,000 payable out of Fleet Services Fund 660, Department/Agency 015, Organization 1560, Object 5404.

Resolution 06-0171 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

RESOLVED, that MacQueen Equipment, Inc., be and hereby is awarded a contract for furnishing and delivering O.E.M. parts and repairs for Elgin/Vactor O.E.M. repair parts as needed for year 2006 for the fleet services division in accordance with specifications at an estimated amount of \$30,000, terms net 30, discount ten percent current price list, FOB destination, payable out of Fleet Services Fund 660, Department/Agency 015, Organization 1560, Object 5221.

Resolution 06-0172 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

RESOLVED, that Ziegler, Inc., be and hereby is awarded a contract for furnishing and delivering O.E.M. parts and repairs for Caterpillar equipment as needed for year 2006 for the fleet services division in accordance with specifications at an estimated amount of \$25,000, terms net 30, FOB destination, \$20,000 payable out of Fleet Fund 660, Department/Agency 015, Organization 1560, Object 5221 and \$5,000 payable out of Fleet Fund 660, Department/Agency 015, Organization 1560, Object 5404.

Resolution 06-0173 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

RESOLVED, that St. Joseph Equipment of Duluth be and hereby is awarded a contract for furnishing and delivering O.E.M. Case parts, repairs and rental of equipment for the fleet services division, as needed during 2006, for an estimated total of \$13,000, terms net 30, FOB shipping point, \$10,000 payable out of Fleet Fund 660, Department/Agency 015, Organization 1560, Object 5221 and \$3,000 payable out of Fleet Fund 660, Department/Agency 015, Organization 1560, Object 5404.

Resolution 06-0174 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

RESOLVED, that Nortrax Equipment of Duluth be and hereby is awarded a contract for furnishing and delivering O.E.M. John Deere parts, repairs and rental of equipment for the fleet services division, as needed during 2006, for an estimated total of \$16,000, terms net 30, FOB shipping point, \$12,000 payable out of Fleet Fund 660, Department/Agency 015, Organization

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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1560, Object 5221 and \$4,000 payable out of Fleet Fund 660, Department/Agency 015, Organization 1560, Object 5404.

Resolution 06-0175 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

RESOLVED, that Inter-City Oil Company, Inc., be and hereby is awarded a contract for furnishing and delivering fuel as needed during the next 12 months for the various departments/divisions, in accordance with specifications at an estimated amount of \$50,000, terms net 30, FOB destination, payable out of various funds, departments/agencies, organizations, objects.

Resolution 06-0176 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

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 street maintenance division in accordance with specifications on its low specification bid of \$178,917.67, terms net 30, FOB destination, \$178,917.67 payable out of Capital Equipment Fund 250, Department/Agency 015, Organization 2006, Object 5580, Project CE250-V609.

Resolution 06-0177 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

RESOLVED, that Larson Chev-Olds be and hereby is awarded a contract for furnishing and delivering O.E.M. parts and repairs for General Motors Vehicles as needed for year 2006 for the fleet services division in accordance with specifications at an estimated amount of \$20,000, terms net 30, discount: 25 percent current price sheet, FOB destination, \$15,000 payable out of Fleet Fund 660, Department/Agency 015, Organization 1560, Object 5221 and \$5,000 payable out of Fleet Fund 660, Department/Agency 015, Organization 1560, Object 5404.

Resolution 06-0178 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

RESOLVED, that Emergency Automotive Technologies be and hereby is awarded a contract for furnishing and delivering emergency lights and strobes, and parts and supplies as needed during year 2006 for the fleet services division in accordance with specifications at an estimated amount of \$12,000, terms net 30, FOB destination, payable out of Fleet Services Fund 660, Department/Agency 015, Organization 1560, Object 5221.

Resolution 06-0179 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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BY COUNCILOR KRAUSE:

RESOLVED, that Napa Auto Parts, Inc., be and hereby is awarded a contract for furnishing and delivering filters: air, oil, fuel as needed during year 2006 for the fleet services division in accordance with specifications at an estimated amount of \$10,000, terms net 30, FOB destination, payable out of Fleet Services Fund 660, Department/Agency 015, Organization 1560, Object 5221.

Resolution 06-0180 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

RESOLVED, that Stepp Manufacturing Company, Inc., be and hereby is awarded a contract for furnishing and delivering two pre-mix heaters - Model SPH-3.0 for the street maintenance division in accordance with specifications on its low specification bid of \$37,967.25, terms net 30, FOB destination, payable out of Fund 250, Department/Agency 015, Organization 2006, Object 5580, Project No. CE250-V611.

Resolution 06-0181 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

RESOLVED, that Nelson Dodge GMC be and hereby is awarded a contract for furnishing and delivering two marked patrol vehicles for the police department in accordance with specifications on its low specification bid of \$47,760, terms net 30, FOB destination, payable out of Capital Equipment Fund 250, Department/Agency 015, Organization 2006, Object 5580, Project CE250-V604.

Resolution 06-0184 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

RESOLVED, that Elk River Ford 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 \$209,730, terms net 30, FOB destination, payable out of Capital Equipment Fund 250, Department/Agency 015, Organization 2006, Object 5580, Project CE250-V604.

Resolution 06-0185 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

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 approves the application of a 2:00 a.m. beverage license for the period ending August 31, 2006, subject to departmental approvals and the payment of sales and property taxes:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

Leblanc/Terwey, Inc. (Moldeez), 1426 Commonwealth Avenue, with James LeBlanc, 50 percent stockholder, and Alan Terwey, 50 percent stockholder, transferred from D.S. Property Management, Inc., (Limit Bar), same address.

Resolution 06-0190 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the transfer of the following on sale intoxicating liquor license and on sale Sunday license and approves the application of a 2:00 a.m. beverage license for the period ending August 31, 2006, subject to departmental approvals and the payment of sales and property taxes:

Hippo Down the Street, LLC (Carmody Irish Pub), 308 East Superior Street, with Mary Gleason, 50 percent stockholder, and Edmund Gleason, 50 percent stockholder, transferred from Nylen, Magie and Strum Properties (Buena Vista Lounge), 1144 Mesaba Avenue.

Resolution 06-0191 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

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.

Licensee	Gambling site
Irving Community Association	Moldeez, 1426 Commonwealth Avenue
Piedmont Heights Hockey Association	Bergey's, 2232 West Superior Street
	T-Bonz Bar and Grill, 2531 West Superior Street
Second Harvest Northern Lakes Food Bank	Reef Bar, 2002 London Road

Resolution 06-0193 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

WHEREAS, on February 28, 2006, there was held in the city of Duluth, pursuant to the provisions of Section 51 of the Duluth City Charter, a special municipal election for the purpose of submitting to the voters the following referendum question:

"If the state of Minnesota allocates enough funds for the project to go forward and to pay for up to one-half of the cost of a new arena for concerts, conventions, hockey and other events at the Duluth Entertainment Convention Center (DECC),

then should the city of Duluth seek permission from the legislature to pay for part of the remaining cost by increasing the existing sales tax on food and beverages purchased in Duluth bars and restaurants by .75 percent (7.5 cents per ten dollars spent), subject to the following conditions:

- (a) The tax increase would only take effect if the state allocates money for the project to go forward and to pay up to one-half of the project costs; and
- (b) The state approves the new tax; and
- (c) The tax is only in effect for the period of time needed for it to raise enough money to pay off the city's portion of the project cost?"; and

WHEREAS, the judges of the election precincts of the city have made their returns of said election; the city council, acting as a canvassing board, has duly canvassed said returns (Public Document No. 06-0313-16) and ascertained the number of ballots cast at said election and thereby declared that at said election there were a total of 13,330 votes, said votes having been cast in the following manner:

That there were 8,182 "yes" votes and 5,148 "no" votes;

NOW, THEREFORE, BE IT RESOLVED, that the referendum question requesting the legislature to authorize the financing of the needed improvements to the DECC facility, in part, by allowing a .75 percent increase in the city food and beverage sales tax, under certain conditions, received a majority of positive responses and is hereby declared to be approved by the electors voting upon such question and is hereby declared to be operative and in full force immediately, pursuant to the provisions of Section 51 of the Duluth City Charter.

Resolution 06-0194 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

RESOLVED, that Midwest EAP Solutions is awarded a contract to provide employee assistance program services and the proper city officials are hereby authorized to execute the contract with Midwest EAP Solutions, substantially in the form of that on file in the office of the city clerk as Public Document No. 06-0313-17, under which that company will provide employee assistance program services to the city for 2006, 2007 and 2008 as follows:

2006: \$6.50 per employee, but not to exceed \$6,500 for the year;

2007: \$7.00 per employee, but not to exceed \$7,000 for the year;

2008: \$7.50 per employee, but not to exceed \$7,500 for the year.

All amounts shall be paid from Fund 630, Agency 036, Organization 1650, Object 5441.

Resolution 06-0199 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

RESOLVED, that Alex Air Apparatus, Inc., be and hereby is awarded a contract for a 20-hp breathing air compressor and two cylinders for the fire department in accordance with the specifications on its low specification bid of \$29,071.31, terms net 30, FOB Duluth, payable out

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of Special Projects Fund 210, Department/Agency No. 030, Organization No. 3164, and \$25,375.21 from Object No. 5580 and \$3,696.10 from Object No. 5241.

Resolution 06-0205 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

RESOLVED, that MTI Distributing, Inc., be and hereby is awarded a contract for five year lease purchase of assorted golf course maintenance equipment for the parks and recreation department in accordance with specifications on its low specifications bid of \$16,873.86 monthly for six months of a five year period on a principal amount of \$463,005 at 3.95 percent annually, terms net 30, FOB Duluth, payable out of Enterprise Fund 503, Department/Agency 400, and \$250,023 from Enger Object 5580 and \$212,982 from Lester Object 5580.

Resolution 06-0209 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the appointment by Mayor Bergson of Roger Reinert (city council) replacing Jim Stauber for a term expiring January 4, 2010, to the sister city commission, is hereby confirmed.

Resolution 06-0144 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that the proper city officials are authorized to make the following transfer of funds in the Federal Fund 262-020-5434, 2005 HUD-funded community development accounts as set forth below:

Project #	Project	Budget amount	New amount	Amount of increase or decrease
CD-05-PF04	CD street assistance	\$75,000	\$87,700	\$12,700
2220	Deferred revenue	\$12,700	-0-	(\$12,700)

Resolution 06-0200 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, by the city of Duluth (city), that the Duluth City Council hereby approves the transfer to the Minnesota Assistance Council for Veterans (MACV) of the general partnership interest of Center City Housing Corporation (Center City) in MPA Limited Partners II Limited

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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Partnership (MPA Limited Partnership) with respect to the following agreements and corresponding notes and mortgages related to Memorial Park Apartments:

(a) HOME program loan agreement between city and MPA Limited Partnership dated September 25, 1995 (City Contract No. 17641) in the amount of \$108,500;

(b) CDBG SRO acquisition loan between city and Center City dated April 24, 1991 (City Contract No. 16261) in the amount of \$50,000 and assumed on April 26, 1996, by MPA Limited Partnership;

(c) CDBG grant agreement between city, Center City and Housing and Redevelopment Authority of Duluth dated October 29, 1992 (City Contract No. 16721) in the amount of \$75,000 as amended by first amendment dated February 14, 1995, assumed on April 26, 1996, by MPA Limited Partnership and amended by second amendment dated June 10, 1996.

Resolution 06-0206 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

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BY VICE PRESIDENT STOVER:

RESOLVED, that MSA Professional Services be hereby awarded a contract for professional engineering services for design, plans and specifications for a SCADA System to monitor the water, wastewater and gas flows within the city of Duluth for the engineering division in accordance with its low specification of \$58,830, payable as follows: \$21,767 from Water Fund 0510, Department/Agency 500, Organization 1905, Object 5535; \$21,767 from Gas Fund 0520, Department/Agency 500, Organization 1905, Object 5535; \$15,296 from Sewer Fund 0530, Department/Agency 500, Organization 1905, Object 5535; City Project No. 0047GS.

Resolution 06-0134 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

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BY VICE PRESIDENT STOVER:

RESOLVED, that Minnesota Municipal Utility Association be and hereby is awarded a contract for furnishing gas circuit rider program for the utility operation division in accordance with the specifications at an estimated amount of \$10,000, terms net 30, FOB destination, payable out of Gas Fund 520, Department/Agency 500, Director's Office 1900, Object 5433.

Resolution 06-0164 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

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BY VICE PRESIDENT STOVER:

RESOLVED, that the proper city officials are authorized to accept the quit claim deed and bill of sale, copies of which are on file in the office of the city clerk as Public Document Nos. 06-0313-18(a) and 06-0313-18(b), respectively, from the Western Lake Superior Sanitary District conveying the district's interest in the real property and the sanitary sewer force main located on the therein-described property, generally lying south of Superior Street between 47th

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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Avenue East and 52nd Avenue East, subject to receipt of \$730,167.47 from the district, payable to Fund 530, acceptance of which is herewith authorized.

Resolution 06-0197 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

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BY VICE PRESIDENT STOVER:

RESOLVED, that Hoffman and McNamara Company be and hereby is awarded a contract for tree planting for the 2005 street improvement program at various locations for the engineering division in accordance with its low specification bid of \$76,876, terms net 30, FOB job site, payable out of Street Improvement Fund 0440, Agency 038, Object 5530, City Job No. 0545TR.

Resolution 06-0201 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

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BY VICE PRESIDENT STOVER:

RESOLVED, that the proper city officials are hereby authorized to apply for and to accept, if offered, a Minnesota's Lake Superior coastal program STAR grant administered through the Minnesota department of natural resources in the amount of \$4,125 for supporting a spring outreach television and radio public service information campaign.

BE IT FURTHER RESOLVED, that the proper city officials are authorized to act as legal sponsor of said grant, to execute any documents required to be executed to accept such grant and to obligate up to \$3,625 in cash match from Fund 535, Organization 1915, Object 5439 and \$563.50 in match provided as in-kind services from city staff and staff of regional stormwater protection team partner organizations.

Resolution 06-0203 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

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BY VICE PRESIDENT 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. 06-0313-19, with the Soo Line Railroad Company, doing business as the Canadian Pacific Railway, for the purchase of approximately 135,000 square feet of property on Rice's Point for the construction of Helberg Drive, said property being legally described therein, in the amount of \$71,445.60, payable from the Fund 411, Organization 035, Object 5530, Project PI0103TR.

Resolution 06-0204 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

RESOLVED, that the proper city officials are authorized to execute and implement an agreement, containing substantially the terms as that contained in the contract on file with the city clerk as Public Document No. 06-0313-20, between the city and Western Lake Superior Sanitary

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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District for use of the city's solid waste compliance officer for an amount equal to 50 percent of the cost to the city of the employee's compensation.

Resolution 06-0198 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

- - -

The following resolutions were also considered:

BY COUNCILOR STEWART:

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

Section 1. Capital improvement plan.

1.01 (a) Under and pursuant to Minnesota Statutes, Section 475.521 (the act), the city council approved, pursuant to Resolution No. 05-0834, adopted on December 19, 2005, a capital improvement plan for the years 2006 through 2010 which was presented to the city council in a document entitled "Capital Improvement Budget and Five Year Plan 2006-2010," dated October 2005 (the plan);

(b) Amendments to the plan are necessary in order to complete the West Duluth police station project. There has been presented to the city council an amendment to the plan (the plan amendment);

(c) The city council has caused due notice to be given and on March 13, 2006, held a public hearing as required by the act, to provide an opportunity for residents to express their views on the plan amendment;

(d) The city council has considered the following for each project discussed in the plan amendment and for the overall plan:

(1) The condition of the city's existing infrastructure, including the projected need for repair or replacement;

(2) The likely demand for the improvement;

(3) The estimated cost of the improvement;

(4) The available public resources;

(5) The level of overlapping debt in the city;

(6) The relative benefits and costs of alternative uses of the funds;

(7) Operating costs of the proposed improvements; and

(8) Alternatives for providing services more efficiently through shared facilities with other cities or local government units.

1.02 (a) Based on the considerations set forth in the plan amendment, in the overall plan and Section 1.01(d) hereof, the city council finds that the plan, as amended by the plan amendment, is desirable and beneficial to the city and its residents;

(b) The city council finds that the proposed improvements under the plan, as amended by the plan amendment, will result in no unnecessary duplication of public facilities provided by other units of government in the region.

1.03 The plan, as amended by the plan amendment, is approved.

Section 2. Intent to issue bonds.

2.01 (a) Under and pursuant to the authority contained in the act, the city is authorized to issue general obligation capital improvement bonds to provide funds for capital improvements pursuant to the plan, as amended;

(b) The city council held a public hearing on March 13, 2006, on the city's intention to issue bonds in 2006 in an amount not to exceed \$915,000 for the purposes set forth

in the notice of public hearing. All persons who desired to speak at the public hearing were heard and written comments were accepted;

(c) The council hereby finds and determines that it is necessary, expedient and in the best interests of the city's residents that the city issue, sell and deliver its general obligation capital improvement bonds, Series 2006 (the bonds), in an amount not to exceed \$915,000, for the purpose of providing funds for continuation of the restoration of the granite and brick facades of City Hall; roofing projects at Fire Station No. 2 and the public works maintenance facility; remodeling of city offices in City Hall; fire department facilities repairs and maintenance including driveways, window and brick repairs and overhead door replacements; initial financing for replacing the public works Lakeside toolhouse with a new maintenance facility; upgrading an existing public works garage to comply with OSHA and code standards for the storage of "cold" asphalt; and completion of the West Duluth police station.

Section 3.

(a) The city clerk shall publish a notice of intent to issue the Bonds in substantially the form on file as Public Document No. 06-0313-21 as soon as practicable following the public hearing in the official newspaper of the city;

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

Resolution 06-0186 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

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Resolution 06-0192, by Councilor Krause, approving the transfer of the on sale intoxicating liquor license and Sunday license from Copasetic, Inc. (Kozy Bar), 129 East First Street, to Templecorp, Inc. (Kozy Bar), same address, was introduced for discussion.

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

Chris Dahlberg, representing a local business, noted that the council has a real golden opportunity to receive public input and discuss previous problems that have occurred at this location and surrounding area. He felt that the council has more discretion on this matter as long as they are not arbitrary and capricious.

Councilors Gilbert, Krause, Little, Ness and Stewart discussed: the merit of the speaker's request; that the actions of a prior licensee cannot be used as a basis for denying a license; that there are other problem activities in that area of town; a desire to receive input from the police department and that it would be good to discuss with the applicant his expectations and/or plans.

Councilor Ness moved to table the resolution in order to meet with the applicant, which motion was seconded and unanimously carried.

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Resolutions 06-0132 and 06-0133, affirming and reversing, respectively, the decision of the board of zoning appeals to deny a variance to reduce the minimum street frontage requirement in a suburban district from 25 feet to zero feet for the construction of a single family dwelling on vacant land with access easement off Swan Lake Road, legally described as N1/2 of SW1/4 of

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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SW1/4 of SE1/4 of Section 7, Township 50, Range 14 (Dennis Jensen), by Councilor Gilbert, were introduced for discussion.

Councilor Stewart moved to table the resolutions for further information, which motion was seconded and carried unanimously.

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Resolution 06-0202, by Vice President Stover, authorizing agreement with Barr Engineering Company for professional services for study, analysis and recommendation for sediment control in Coffee and Miller creeks in the amount of \$92,817, was introduced for discussion.

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

Harry Munger had questions as to: where does this sediment originate; how are these sediment traps going to be monitored; who is going to clean them and what will happen to the sediment after it is captured.

Councilor Ness moved to table the resolution for further information, which motion was seconded and carried upon the following vote:

Yeas: Councilors Gilbert, Johnson, Krause, Little, Ness, Stauber and Vice President Stover -- 7

Nays: Councilor Stewart -- 1

Absent: President Reinert -- 1

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Resolution 06-0187, by Councilor Little, requesting continuing report from the administration, was introduced for discussion.

Councilor Krause moved to amend the resolution by deleting the words "and requires" in the first sentence, which motion was seconded for discussion.

Councilor Krause felt that this amendment would be appropriate because the City Charter states that the council can only "request" something from the administration.

After council discussion, the amendment carried unanimously.

Resolution 06-0187, as amended, was adopted as follows:

BY COUNCILOR LITTLE:

RESOLVED, that the city council requests that the chief administrative officer or other proper city official, at the time set out in the agenda according to the standing rules of the city council, deliver to the council a report of measures being taken, and update on progress, to resolve the city's unfunded retiree health insurance situation.

Resolution 06-0187, as amended, was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

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Resolution 06-0188, by Councilor Little, establishing parking meter zones in Canal Park and rates and time limits therefore, was introduced for discussion.

Councilor Stewart moved to table the resolution for further review, which motion was seconded and carried upon the following vote:

Yeas: Councilors Gilbert, Johnson, Krause, Little, Ness and Stewart -- 6

Nays: Councilor Stauber and Vice President Stover -- 2

Absent: President Reinert -- 1

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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Resolution 06-0054, approving a grant agreement from the state of Minnesota department of natural resources coastal program for \$7,740 to be used for land acquisition of Burlington Northern Railroad property on Grassy Point; Resolution 06-0055, approving a grant agreement from the state of Minnesota department of natural resources remediation fund grant program for \$7,740 to be used for land acquisition of Burlington Northern Railroad property on Grassy Point; Resolution 06-0056, authorizing a purchase agreement with Burlington Northern Santa Fe Railway Company for the purchase of property on Grassy Point in West Duluth for \$16,000; and Resolution 06-0087, authorizing an assignment of rights agreement with Apex Property and Track Exchange, Inc., and the Burlington Northern Santa Fe Railway Company for property being acquired from the Burlington Northern Santa Fe Railway Company on Grassy Point in West Duluth, by Councilor Stauber, were introduced for discussion.

Councilor Stauber moved to table the resolutions so that the parks and recreation commission's trails committee has an opportunity to review these resolutions and make a recommendation, which motion was seconded and failed upon the following vote:

Yeas: Councilors Krause, Little, Ness and Stauber -- 4

Nays: Councilors Gilbert, Johnson, Stewart and Vice President Stover -- 4

Absent: President Reinert -- 1

Resolutions 06-0054, 06-0055, 06-0056 and 06-0087 were adopted as follows:

BY COUNCILOR STAUBER:

RESOLVED, that the proper city officers are authorized and directed to execute the grant agreement on file in the office of the city clerk as Public Document No. 06-0313-22, between the city of Duluth and the state of Minnesota, which awards the city a matching grant in the amount of \$7,740 to be used for the land acquisition of Burlington Northern property on Grassy Point, said grant funds to be deposited into Fund 450, Agency 030, Revenue Source 4210-01, Project CP2005-C0503.

Resolution 06-0054 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STAUBER:

RESOLVED, that the proper city officers are authorized and directed to execute the grant agreement on file in the office of the city clerk as Public Document No. 06-0313-23, between the city of Duluth and the state of Minnesota, which awards the city a matching grant in the amount of \$7,740 to be used for the land acquisition of Burlington Northern property on Grassy Point, said grant funds to be deposited into Fund 450, Agency 030, Revenue Source 4220-01, Project CP2005-C0503.

Resolution 06-0055 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STAUBER:

RESOLVED, that the proper city officials are hereby authorized to enter into a purchase agreement, a copy of which is on file in the office of the city clerk as Public Document No. 06-0313-24, with the Burlington Northern Santa Fe Railway Company for the purchase of the following described property on Grassy Point in St. Louis County, Minnesota, for the sum of \$16,000, payable from Fund 450, Agency 030, Object 5510, Project CP2005-C0503:

A strip of land or land covered with water, described as follows to wit:

Beginning at a point on the south line of the right-of-way of the Duluth Short Line Railway Company seven hundred and thirty-nine and seventeen one hundredths (739.17) feet east of and measured along the said south line of said right-of-way from the intersection of the same with the centre line of Fourth Avenue East in West Duluth, Third Division, prolonged south, thence in a southeasterly direction at an angle of thirty-four degrees and thirty minutes to the right, with said south line of said right-of-way, for a distance of three hundred and twenty-nine and six one hundredths (329.06) feet, thence to the right, at an angle of the thirteen degrees and thirteen minutes, in a direct line, and except for a short distance at the commencement being ninety-two and one half (92-1/2) feet distant, measured at right angles and on the southwesterly side of the centre line of the railroad of the said party of the second part, as now located and constructed, to the established dock line in the Bay of St. Louis, thence in a northeasterly direction, along the said dock line, to a point one hundred (100) feet distant from and measured at right angles from the last above described direct line, thence, in a northwesterly direction parallel to and one hundred (100) feet distant from the said above described direct line, to the south line of the right-of-way of the said Duluth Short Line Railway Company, thence westerly, along said south line, one hundred and seventy-six and fifty-four hundredths (176.54) feet to the place of beginning, the same being part and parcel of Government Lot One (1) in Section Seventeen (17), and Lots Two (2) and Three (3) in Section Eighteen (18), in Township Forty-nine (49) North, of Range Fourteen (14) West of the Fourth Principal Meridian, reserving the right to the said party of the first part to lay and dedicate a highway, forty feet in width across the northerly end of said tract.

RESOLVED, that the proper city officials are hereby authorized to execute such documents as are necessary to complete said transaction.

Resolution 06-0056 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, that the proper city officials are hereby authorized to enter into an assignment of rights agreement, a copy of which is on file in the office of the city clerk as Public Document No. 06-0313-25, with the Apex Property and Track Exchange, Inc., and the Burlington Northern Santa Fe Railway Company for the assignment of rights from Burlington Northern Santa Fe Railway Company to Apex Property and Track Exchange, Inc., of the property on Grassy Point being acquired from Burlington Northern Santa Fe Railway Company pursuant to Resolution 06-0056.

Resolution 06-0087 was unanimously adopted.

Approved March 13, 2006

HERB W. BERGSON, Mayor

- - -

The meeting was adjourned at 8:25 p.m.

JEFFREY J. COX, City Clerk

**OFFICIAL PROCEEDINGS**

Duluth City Council meeting held on Tuesday, March 28, 2006, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: None -- 0

- - -

The minutes of council meetings held on February 9, 13 and 27, 2006, were unanimously approved.

- - -

**PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS**

06-0328-12 Diana C. Hill, et al. (four signatures), further petition to vacate the alley adjacent to Blocks 1 and 2, and 101st Avenue West adjacent to Block 1, Riverside Park Second Addition. -- Assessor

06-0328-01 Kelly K. Johnson, et al. (five signatures), petition to vacate 28th Avenue East (formerly Victoria Place) between East Eighth Street and Elizabeth Street. -- Assessor

06-0328-02 Janette Radich, et al. (four signatures), remonstrance petition regarding construction of a sewer main in Maple Grove Road beginning 200 feet west of Robin Avenue and extending westerly 1,000 feet. -- Assessor

06-0328-03 Cottage Homesteads of Duluth III, Inc., communication regarding planning commission recommendation to deny a request to amend an existing special use permit (06-0228R and 06-0236R). -- Received

06-0328-13 Thom Holden communication regarding installation of parking meters in Canal Park (06-0188R). -- Received

06-0328-04 Phyllis Miller communication regarding appeal of the board of zoning appeals denial of a variance for the construction of a single family dwelling with an access easement off Swan Lake Road (Dennis Jensen) (06-0132R and 06-0133R). -- Received

06-0328-14 The following communications regarding the transfer of the on sale intoxicating liquor license and Sunday license from Copasetic, Inc. (Kozy Bar), 129 East First Street, to Templecorp, Inc. (06-0192R): (a) CJ Bird; (b) National Audio Visual. -- Received

- - -

**REPORTS OF MAYOR, ADMINISTRATIVE ASSISTANT AND OTHER OFFICERS**

06-0328-05 Assessor:

(a) Assessment roll levied to defray the assessable portion of Contract No. 5401, Butternut Avenue - Maple Ridge full development (assessable amount: \$298,101.32);

(b) Letter of sufficiency of remonstrance petition regarding construction of a sewer main in Maple Grove Road beginning 200 feet west of Robin Avenue and extending westerly 1,000 feet. -- Received

06-0328-06 Parks and recreation department director minutes of Lake Superior zoological society March 15, 2006, meeting. -- Received

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**REPORTS OF BOARDS AND COMMISSIONS**

06-0328-07 Duluth housing commission minutes of January 12, 2006, meeting. -- Received

06-0328-08 Duluth human rights commission minutes of February 8, 2006, meeting. -- Received

06-0328-09 Duluth legacy endowment fund project group minutes of February 23, 2006, meeting. -- Received

06-0328-10 Heritage preservation commission minutes of: (a) August 23; (b) September 27; (c) October 25; (d) November 22; (e) December 13, 2005, meetings. -- Received

06-0328-11 Planning commission minutes of February 14, 2006, meeting. -- Received

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**OPPORTUNITY FOR CITIZENS TO BE HEARD**

Alison Clarke reviewed the history of the maximum height requirements for granting permits for new construction in R-3 zones and stated it is unclear what the requirement is.

- - -

Jon Donahue voiced concern that the council is considering using property taxes to help fund the retiree health insurance problems when the property taxes are already very high.

- - -

Andy Thielen, representing the Hermantown City Council, reviewed that their city has a need for animal control and requested that Duluth and Hermantown start a dialogue to use the city's animal control services.

- - -

Peggy Marrin stated her hope that the council and planning commission hold the Beacon Point developers to the regulations in the City Code.

- - -

Ken Kalligher questioned the dollar figure that the property taxes would have to be raised to to help solve the retiree healthcare problem and hoped that the council would do the right thing for the citizens.

- - -

Pam Kramer invited the public to the Charette presentation for the final report on April 4.

- - -

**RESOLUTIONS TABLED**

Councilor Krause moved to remove Resolution 06-0192, approving the transfer of the on sale intoxicating liquor license and Sunday license from Copasetic, Inc. (Kozy Bar), 129 East First Street, to Templecorp, Inc. (Kozy Bar), same address, 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.

Ben Marsen spoke in favor of the resolution, but that there is a lack of police enforcement along First Street and they need to step up their response to the calls on that street.

Chris Dahlberg reviewed that the council has broad discretionary power over liquor licensing and that state statute and City Code state that consideration of liquor licensing should be in the public interest, not the owner's interest. He added that the two issues to be considered with this transfer are whether the premise is such an unsuitable location that suspension and

revocation of the license should be considered and, does the new owner have liquor license experience, handled a problematic bar like this before and has he had experience with the city with other compliance issues.

Ray Sande urged the councilors to have the new owner present a plan on how to make the Kozy Bar better and stated he was tired of working with the city and getting no where to make the business community better on First Street.

Eric Ringsred, transferee, stated that if the Kozy Bar went away, the problems on First Street would not go away and it is not fair to blame all of the problems on the bar itself.

Natasha Kowalowski, representing the transferor, reviewed that the owner of the bar has asked the city for help in the past, but has not gotten any and that they have done the best they could during the last year. She urged the council to give the new owner a chance as there is a community that thrives and lives at the bar.

Councilor Ness said that this transfer is from an owner who has demonstrated that he has not managed it well to a person who has potential to manage it much better.

Councilor Stewart stated that while the problems on First Street are serious, the issue before the council is the narrow scope of a liquor license transfer, and if they do not approve the transfer, the status quo is maintained. He continued by saying that this is an opportunity for change for the bar and the corridor on First Street and if things do not get better, the council could consider revocation at a later date.

Councilor Krause reviewed that the Kozy Bar has a climate of negativity and the best way of solving that problem is to seize the opportunity to improve that area of Downtown by not approving the transfer.

Resolution 06-0192 was adopted as follows:

BY COUNCILOR KRAUSE:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the transfer of the following on sale intoxicating liquor license and on sale Sunday license for the period ending August 31, 2006, subject to departmental approvals and the payment of sales and property taxes:

Templecorp, Inc. (Kozy Bar), 129 East First Street, with Eric Ringsred, 100 percent stockholder, transferred from Copasetic, Inc. (Kozy Bar), same address.

Resolution 06-0192 was adopted upon the following vote:

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

Nays: Councilor Krause -- 1

Approved March 28, 2006

HERB W. BERGSON, Mayor

- - -

At this time, 8:00 p.m., the council meeting was recessed to call to order the public hearing regarding the 2007 qualified allocation plan for the housing tax credit program.

Karen Oleson, community development division, reviewed the tax credit program and the process for developing criteria for projects.

Deb [no last name given] explained that affordable housing includes being able to afford their energy bills, not enough credit is given for people trying to do the right thing in conserving energy and if extra points for homelessness are taken away, the focus of the need for homeless and disabled people is gone.

The public hearing closed at 8:12 p.m.

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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At this time, 8:13 p.m., the public hearing regarding Sinex Aviation Technologies, d/b/a EmpowerMX, business subsidy work out agreement was called to order.

Heidi Timm-Bujold, business development division, reviewed the loan requirements that the city made when loaning \$250,000 to Sinex Aviation and that the business is requesting an extension of time to the end of the year in order to create more jobs to get to their required 75 jobs.

No one else appeared who wished to be heard.

At this time, 8:15 p.m., the public hearing was closed and the regular order of business was resumed.

- - -

Councilor Gilbert moved to remove resolutions 06-0132 and 06-0133, affirming and reversing, respectively, the decision of the board of zoning appeals [BZA] to deny a variance to reduce the minimum street frontage requirement in a suburban district from 250 feet to zero feet for the construction of a single family dwelling on vacant land with access easement off Swan Lake Road, legally described as N1/2 of SW1/4 of SW1/4 of SE1/4 of Section 7, Township 50, Range 14 (Dennis Jensen), from the table, which motion was seconded and unanimously carried.

Resolution 06-0132, affirming the decision of the BZA, was adopted as follows:

BY COUNCILOR GILBERT:

BE IT RESOLVED, that the council has heard the appeal of Dennis Jensen of the decision of the board of zoning appeals denying applicant's variance request and finds that there does not exist factors or circumstances that are unique to the subject property which cause the applicant, through no act of his own from enjoying a reasonable use of the property; and in order to constitute a buildable lot, the land in question must have at least one border that is on a street, a public open space or a public passageway that connects to a public street at each end (DCC 50-1.43, 50-1.77, 50-1.30, 50-1.44, 50-1.54, Blacks Law Dictionary).

BE IT FURTHER RESOLVED, that the board of zoning appeals' decision of January 24, 2006, is hereby affirmed by the city council.

Resolution 06-0132 was adopted upon the following vote:

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

Nays: None -- 0

Abstention: Councilor Krause -- 1

Approved March 28, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0133, reversing the decision of the BZA, failed upon the following vote (Public Document No. 06-0328-15):

Yeas: None -- 0

Nays: Councilors Gilbert, Johnson, Little, Ness, Stauber, Stewart, Stover and President Reinert -- 8

Abstention: Councilor Krause -- 1

- - -

Councilor Little moved to remove Resolution 06-0188, establishing parking meter zones in Canal Park and rates and time limits therefore, from the table, which motion was seconded and unanimously carried.

Councilor Stewart stated that the Canal Park Business Association would like to meet with the administration and present their proposal and cost estimate for a parking ramp in Canal Park before the council votes on the resolution.

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

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

Nays: Councilors Little, Stauber and Stover -- 3

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### **MOTIONS AND RESOLUTIONS**

The following entitled resolution was read for the second time:

BY PRESIDENT REINERT

06-0169 - RESOLUTION AMENDING RULE 7 OF THE STANDING RULES OF THE CITY COUNCIL.

Resolution 06-0169 was adopted as follows:

BY PRESIDENT REINERT:

RESOLVED, that Rule 7 of the standing rules of the Duluth City Council be amended to read as follows:

Rule 7. ORDER OF BUSINESS FOR ALL MEETINGS EXCEPT ANNUAL ORGANIZATION MEETING.

Upon the appearance of a quorum, the council shall then proceed to the business before it in the following order:

1. Roll call;
2. Pledge of allegiance;
3. Approval of minutes of previous meeting(s);
4. Presentation of petitions and other communications;
5. Reports from the administration;
6. Reports from other officers;
7. Reports of boards and commissions;
8. Reports of council committees;
9. Reports of council open issues;
10. Opportunity for citizens to be heard;
11. Unfinished business;
12. New business, motions, resolutions;
13. Introduction and consideration of ordinances;
14. Councilor questions and comments.

Resolution 06-0169 was unanimously adopted.

Approved March 28, 2006

HERB W. BERGSON, Mayor

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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.)*

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

BY COUNCILOR STEWART:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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RESOLVED, that the assessment roll levied to defray the assessable portion of Butternut Avenue-Maple Ridge full development (Contract #5401; assessable amount - \$298,101.32), to be deposited in Fund 325, is hereby confirmed.

Resolution 06-0224 was unanimously adopted.

Approved March 28, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

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:

Duluth Harbormasters (Duluth Airshow), 4127 Grinden Drive, for July 7-9, 2006, with Ryan Kern, manager.

Resolution 06-0213 was unanimously adopted.

Approved March 28, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

BE IT RESOLVED, that the Duluth City Council hereby approves of the Minnesota gambling control board issuing a lawful gambling exemption to the Lincoln Park Business Group and does hereby waive the 60 day waiting period which it has to object to the issuance of said 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 06-0215 was unanimously adopted.

Approved March 28, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the proposed amendments to the specifications for the civil service classification of assessment systems analyst, including a title change to special assessment coordinator, which were approved by the civil service board on February 7, 2006, and which are filed with the city clerk as Public Document No. 06-0328-16, are approved. This classification remains represented by the basic unit and compensated at Pay Range 129, \$3,058 to \$3,624 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 06-0207 was unanimously adopted.

Approved March 28, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the proposed specifications for the new civil service classification of water lab chemist, which was approved by the civil service board on November 1, 2005, and which are

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

filed with the city clerk as Public Document No. 06-0328-17, 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 32. 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 06-0208 was unanimously adopted.  
 Approved March 28, 2006  
 HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

RESOLVED, that the proper city officials are hereby authorized to enter into a work out agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 06-0328-18, with Sinex Aviation Technology d/b/a EmpowerMX (developer) pursuant to which developer will pay a prorated portion of an amount previously loaned to developer.

Resolution 06-0189 was unanimously adopted.  
 Approved March 28, 2006  
 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 of the copy on file in the office of the city clerk as Public Document No. 06-0328-19 to the low income housing tax credit program joint powers agreement with the Minnesota housing finance agency (MHFA) extending the term thereof.

Resolution 06-0220 was unanimously adopted.  
 Approved March 28, 2006  
 HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

RESOLVED, that the proper city officials are authorized to make the following transfer of funds in the Federal Fund 260-020-5434, Project CD06HM, 2006 HUD-funded HOME accounts as set forth below:

Activity	Project	Budget amount	New amount	Amount of increase or decrease
GN06-4143	Supportive housing-ASI	\$42,460	\$42,560	\$100
CH06-1050	Technical assistance-AICHO	\$ 9,300	\$ 9,250	(\$ 50)
CH06-2270	Housing predevelopment-WCDO	\$13,000	\$12,975	(\$ 25)
CH06-2804	City Homes VI-NCLT	\$16,000	\$15,975	(\$ 25)

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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Resolution 06-0222 was unanimously adopted.  
Approved March 28, 2006  
HERB W. BERGSON, Mayor

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BY COUNCILLOR GILBERT:

RESOLVED, that LHB, Inc., be hereby awarded a contract (Public Document No. 06-0328-20) for professional engineering services for the design and engineering of a public parking lot to be constructed near the Cirrus Design Corporation campus off of Airport Road in the amount of \$88,958, payable out of Permanent Improvement Fund 41, Project PI 0561TR.

Resolution 06-0230 was unanimously adopted.  
Approved March 28, 2006  
HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Resolution 04-0542 awarding a contract to SEH, Inc., for engineering services for the design of the city's portion of the Miller Trunk Highway project be amended to increase the amount as follows: \$78,021 for additional engineering services due to additional retaining walls, temporary traffic signals, city utility design, layout changes and increased project management during the design of the project, for a new total of \$415,003.15; the increase of \$78,021 will be payable from Fund 0411, Agency 035, Object 5530, City Project No. 0391TR.

Resolution 06-0211 was unanimously adopted.  
Approved March 28, 2006  
HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the proper city officers hereby authorize Amendment #1 to Agreement #19893 with Northspan Group, Inc., for the sum of \$3,148.03 from Capital Fund 0450, Agency 030, Organization 5520, Project #OT-0511, for providing certain additional professional services (Public Document No. 06-0328-21(a)) in conjunction with the Peterson Arena replacement (a.k.a. Duluth Heritage Hockey Center), 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. 06-0328-21(b).

Resolution 06-0219 was unanimously adopted.  
Approved March 28, 2006  
HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are authorized to pay to Mary Lou Ruff and Jack Ruff and their attorney, Douglas P. Anderson, the amount of \$24,000 in full and final settlement of the claim which arose out of a trip and fall accident occurring on June 12, 2002, on the public sidewalk at or near 1105 East Superior Street; payment to be made from Self Insurance Fund 610-036-1651-5841.

Resolution 06-0223 was unanimously adopted.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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Approved March 28, 2006  
HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Viele Contracting, Inc., be and hereby is awarded a contract for construction of 125 feet of sanitary sewer in Central Avenue Alley beginning 60 feet north of Albion Street and extending northerly for the engineering division in accordance with its low specification bid of \$17,910, terms net 30, FOB job site, payable out of the Special Assessment Fund 0410, Agency 038, Object 5530, Project Number 0515SN.

Resolution 06-0225 was unanimously adopted.

Approved March 28, 2006  
HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Nels Nelson and Sons, Inc., be and hereby is awarded a contract for construction year 2006 street improvement of Cody Southwest II for the engineering division in accordance with specifications on its low specification bid of \$323,978.83, terms net 30, FOB job site, payable out of SIP 2006-0088TR, Street Improvement Fund 0440, Department/Agency 038, Object 5530.

Resolution 06-0227 was unanimously adopted.

Approved March 28, 2006  
HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Resolution 05-0046 awarding a contract to Camp, Dresser and McKee, Inc., for engineering services for the development of a long term plan for the evaluation and elimination of sanitary sewer overflows in the city's sanitary sewer system be amended to increase the amount by an estimated amount of \$35,620 to prepare a facility development plan for the Lakeside sanitary sewer overflow storage basin facility, for a new total of \$235,620; the increase of \$35,620 will be payable from Sewer Fund 0530, Agency 500, Organization 1930-2330, Object 5303, City Project Number 0511SN.

Resolution 06-0229 was unanimously adopted.

Approved March 28, 2006  
HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with Pro-West and Associates, Inc., for professional services related to the surveying and locating of government and plat corners in the amount of not to exceed \$20,000, payable as follows:

\$5,000 from the Water Utilities Fund 510-500-1915-5310;

\$5,000 from the Gas Utilities Fund 520-500-1915-5310;

\$5,000 from the Sewer Utilities Fund 530-500-1915-5310;

\$5,000 from the Stormwater Utilities Fund 535-500-1915-5310.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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Resolution 06-0232 was unanimously adopted.  
Approved March 28, 2006  
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:

In front of 3829 West Fifth Street.

In front of 411 East Fifth Street.

Resolution 06-0212 was unanimously adopted.  
Approved March 28, 2006  
HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

RESOLVED, that the proper city officials are authorized to accept a grant from the state of Minnesota, office of traffic safety, in the amount of \$5,000 for increased seat belt and child seat enforcement during the month of May 2006 and to execute the grant agreement, a copy of which is on file in the office of the city clerk as Public Document No. 06-0328-22; grant funds to be deposited in Fund 100, Agency 200, Organization 1620, Revenue Source 4209-2.

Resolution 06-0231 was unanimously adopted.  
Approved March 28, 2006  
HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, that the proper city officers are authorized to utilize a form of agreement to be substantially in the form of Public Document No. 06-0328-23 on file in the office of the city clerk providing for the services as game officials for youth and adult athletic league program activities. Payments for such officiating shall not exceed the amount budgeted and shall be paid from Fund 210, Agency 030, Organization 3190, Object 5319.

Resolution 06-0218 was unanimously adopted.  
Approved March 28, 2006  
HERB W. BERGSON, Mayor

- - -

The following resolutions were also considered:

Resolution 06-0214, by Councilor Krause, issuing an on sale 3.2 percent malt liquor license to Just Take Action, Inc. (Brewhouse Burrito), 1332 East Fourth Street, was introduced for discussion.

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

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Resolution 06-0221, by Councilor Gilbert, approving 2007 low income housing tax credit qualified allocation plan, was introduced for discussion.

Councilor Krause voiced concern that this plan is in direct conflict with the direction of the comprehensive plan of the city and needs to be corrected at this level.

Resolution 06-0221 was adopted as follows:

BY COUNCILOR GILBERT:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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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 2007 LIHTCs in an amount to be announced by the Minnesota housing finance agency in early 2007; and

WHEREAS, in accordance with Section 42 of the Internal Revenue Code of 1986, as amended, a qualified allocation plan for 2007 (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 March 28, 2006.

NOW, THEREFORE, BE IT RESOLVED, that the 2007 city of Duluth low income housing tax credit qualified allocation plan, on file in the office of the city clerk as Public Document No. 06-0328-24, is hereby approved.

Resolution 06-0221 was adopted upon the following vote:

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

Nays: Councilor Krause -- 1

Approved March 28, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0228, denying an amendment to special use permit Resolution 03-0463, as adopted June 23, 2003, by Cottage Homesteads of Duluth III for expansion of a low density planned development on property located on the east side of Sundby Road and 200 to 400 feet north of Page Street; and Resolution 06-0236, granting conditional approval to an amendment to special use permit Resolution 03-0463, as adopted June 23, 2003, by Cottage Homesteads of Duluth III for expansion of a low-density, planned development on property located on the east side of Sundby Road and 200 to 400 feet north of Page Street, by Councilor Gilbert, were introduced for discussion.

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

Heather Odden reviewed that this developer has many flaws in his plan and urged the council to uphold the planning commission's denial of the special use permit.

Resolution 06-0228, denying the amendment, was adopted as follows:

BY COUNCILOR GILBERT:

(a) The city council of Duluth finds as follows: Cottage Homesteads of Duluth III has submitted to the city council a request for an amendment to expand a special use permit for a low density planned development as approved by Resolution 03-0463, to add property area and add one four-unit building on property located on the northwest corner Sundby Road and Page Street, expanding the special use permit property to include all lands described as: the SE1/4 of NE1/4 of SW1/4, Section 18, T50, R14, lying easterly of Sundby Road (PID's: 2710-4594; 2710-4592 and 2710-4590); 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 denial to the city council;

(b) The requested amendment does not comply with the structure setback requirements of Section 50-36.3(b) of the City Code.

NOW, THEREFORE, BE IT RESOLVED, that the requested amendment to special use permit as specified in Resolution 03-0463 is denied.

Resolution 06-0228 was unanimously adopted.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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Approved March 28, 2006  
HERB W. BERGSON, Mayor

- - -

Resolution 06-0236, granting conditional approval to an amendment, failed unanimously (Public Document No. 06-0328-25).

- - -

Resolution 06-0217, by Councilor Stover, authorizing an agreement between the city of Duluth and St. Louis County, including plan approval, for the reconstruction of Snively Road between Arrowhead Road and Glenwood Street for an estimated cost of \$41,245, was introduced for discussion.

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

Peggy Marrin questioned if all of Snively Road is going to be improved.

Resolution 06-0217 was adopted as follows:

BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are hereby authorized and directed to execute an agreement between the city of Duluth and St. Louis County for the reconstruction of Snively Road between Woodland Avenue and Glenwood Street. The city's cost in this project is estimated to be \$41,245, \$14,000 coming from Fund 0510, Agency 500, Organization 1905, Object 5533, and \$27,245 from Fund 0530, Agency 500, Organization 1905, Object 5533.

FURTHER RESOLVED, that the plans and specifications prepared by St. Louis County for the reconstruction of Snively Road, City of Duluth Project Number 0535SN, are hereby approved.

Resolution 06-0217 was unanimously adopted.

Approved March 28, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0210, by Councilor Ness, authorizing proper city officials to enter into an agreement with and accept funds from the Minnesota department of employment and economic development for provision of Workforce Investment Act Title I services, Minnesota youth program services and older American program services for program years 2006-2009, was introduced for discussion.

Councilor Stauber explained that these programs allow the city to seek recovery of retiree healthcare for job training employees by setting aside money and that the council needs to start implementing the recommendations that the task force presented, which was accepted by both the council and administration.

Chief Administrative Officer Almanza reviewed there are two conditions that need to be met for healthcare money to be set aside: an irrevocable trust needs to be set up by the state legislature which he anticipates will be done this year and the city needs to have the same funding procedures in place for all of the other city employees and all of the other programs. He voiced concern that cutting the funds would result in a cut in services to the public.

Councilors Stauber, Stewart and Gilbert said there has to be some leadership from the administration in regards to what the city's priorities are in dealing with retiree healthcare benefits.

Councilor Stewart moved to table the resolution until April 10 for more information, which motion was seconded and unanimously carried.

- - -

Resolution 06-0237, by councilors Gilbert and Johnson, declaring city council and DEDA policy for the review and approval of certain development agreements pursuant to which the city of Duluth promises to provide physical improvements, was introduced for discussion.

- - -

At this time, Councilor Stewart moved to remove Ordinance 05-060 from the table, which motion was seconded and unanimously carried.

- - -

**INTRODUCTION AND CONSIDERATION OF ORDINANCES  
ORDINANCE TABLED**

BY COUNCILOR STEWART

05-060 - AN ORDINANCE AMENDING CHAPTER 2 OF THE DULUTH CITY CODE, 1959, AS AMENDED; ADDING ARTICLE XXXIV - MINIMUM REQUIREMENTS FOR A DEVELOPMENT AGREEMENT.

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

John Rathe stated that the resolution was written to protect the nonprofits they favor and asked for council support of the ordinance.

Rick Ball, representing the Housing and Redevelopment Authority and Affordable Housing Coalition, stated that the ordinance discourages development, especially for nonprofit housing, and with affordable housing projects there are often unknowns when a project starts and often changes as it progresses.

Pam Kramer, representing Local Initiatives Support Corporation (LISC), voiced concern that the ordinance could be a barrier to economic development and that the resolution covers the concern for unexpected costs without impacting development in the community.

Peggy Marrin urged the council to support the ordinance which will account for the public's tax dollars for projects.

Councilor Stewart reiterated that this ordinance creates two requirements that the city must follow when it engages in development agreements with private parties: it must state a known maximum dollar amount that the city can be forced to pay, and every development project must have a known cost to the city and a known source of funds to pay that cost before the council votes on the matter. He reviewed that these are issues that have caused problems for the city in the past and there are projects that the city has promised to do that it does not have money set aside for. Councilor Stewart went on to say that this ordinance would only apply to a developer who wants a public subsidy from Duluth and that the public deserves to know this information upfront when they are providing a benefit to a developer. He reviewed that this ordinance puts a limit on what the council can do because the council has historically shown it cannot limit itself when people come to the council with a good project and need support. Councilor Stewart added that the resolution option is a feel good measure that has no actual authority or impact on the developer and protects the private, not the public, interest.

Councilor Gilbert stated that it is the responsibility of the council to make the tough decisions and not hide behind an ordinance, but make sure the information that the city gets from a developer is accurate. He added that the council has the will to say no when they need more money for cost overruns.

Councilor Krause explained that the ordinance changes the process which would require the staff to do specific things for a project which would be a better process. He added that the resolution does not have the authority to require staff or developers to change their process.

Councilor Stewart moved passage of the ordinance and the same failed upon the following vote (Public Document No. 06-0328-27):

Yeas: Councilors Krause, Stewart and Stover -- 3

Nays: Councilors Gilbert, Johnson, Little, Ness, Stauber and President Reinert -- 6

*[Editor's Note: Ordinance 05-060 was reconsidered, amended and tabled at the April 10, 2006, city council meeting; amended and adopted at the May 22, 2006, city council meeting and vetoed by the mayor on May 25, 2006.]*

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Councilor Krause moved to amend the second to last paragraph of the resolution to delete "\$500,000" and insert "\$100,000," which motion was seconded and failed upon the following vote:

Yeas: Councilors Gilbert, Johnson, Krause and Ness -- 4

Nays: Councilors Little, Stauber, Stewart, Stover and President Reinert -- 5

Resolution 06-0237 failed upon the following vote (Public Document No. 06-0328-26):

Yeas: Councilors Gilbert, Johnson, Krause and Ness -- 4

Nays: Councilors Little, Stauber, Stewart, Stover and President Reinert -- 5

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### **INTRODUCTION AND CONSIDERATION OF ORDINANCES**

The following entitled ordinances were read for the first time:

BY COUNCILORS KRAUSE AND LITTLE

06-011 - AN ORDINANCE AMENDING SECTION 29C-9 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO THE CITY ATTORNEY'S DUTIES TO REPRESENT HUMAN RIGHTS COMPLAINANTS.

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BY COUNCILOR GILBERT

06-006 - AN ORDINANCE TO RENAME DENIM DRIVE TO DENIM STREET (SACKETTE).

- - -

BY COUNCILOR GILBERT

06-008 - AN ORDINANCE AMENDING ORDINANCE NO. 8792, TO EXPAND THE USES WITHIN THE SKYWAY OVER LAKE AVENUE IN THE CITY OF DULUTH (WELCH BUILDING LLC).

- - -

BY COUNCILOR GILBERT

06-009 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, ZONING DISTRICT MAP NO. 23 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, PROPERTY LOCATED AT THE NORTHEAST CORNER OF TRINITY ROAD AND ANDERSON ROAD (SCOTT AND SUSAN HANSEN).

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

Greg Toon explained to the council that the new site plan for the gas station will put a driveway six feet from his bedroom window and would decrease the property value. He continued by saying that the business is being increased by 250 percent, which will increase the impervious surface from 30 percent to 70 percent.

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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BY COUNCILOR LITTLE

06-007 - AN ORDINANCE AMENDING CHAPTER 21 OF THE CITY CODE; AMENDING SECTION 21-5 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO UPDATE A REFERENCE TO THE STATE FIRE CODE AND REPEALING SECTIONS 21-24 AND 21-34 THEREOF.

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

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

**OFFICIAL PROCEEDINGS**

Duluth City Council meeting held on Monday, April 10, 2006, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: Councilor Gilbert -- 1

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**PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS**

06-0410-01 Mark and Kimberly Gilbertson petition to reclassify from S-2 to R-1-a the property described as Lots 1 through 5, including Lots 62 through 66, Lakewood Division Duluth. -- Assessor

06-0410-02 Stephen and Susan Nelson, et al. (three signatures) petition to vacate 12th Avenue West street easement that lies between Lot 193, Block 66, and Lot 191, Block 65, in Duluth Proper Third Division. -- Assessor

06-0410-13 Thom Holden communication regarding establishment of parking meter zones in Canal Park (06-0188R). -- Received

06-0410-04 Greg S. Toon appeal of planning commission approval of a water resources management ordinance variance for site excavation at 3802 Trinity Road (granted to Scott Hansen, Hansen's Auto Service). -- Committee 2 (Planning and economic development)

06-0410-14 The following communications regarding amendment of Section 29C-9, Duluth City Code, pertaining to city attorney's duties to represent human rights complainants (06-011-O): (a) Henry Banks; (b) Beth Bartlett; (c) Maria Stalzer Wyant Cuzzo; (d) Craig and Diane Grau; (e) Sunny Kang; (f) Sue Lawson; (g) Jane Ellen Maddy; (h) Rachel Schneider. -- Received

06-0410-03 The following communications regarding reclassification from R-1-b to C-2 the property located at the northeast corner of Trinity Road and Anderson Road (06-009-O): (a) Scott and Sue Hansen; (b) Greg and Jane Toon, by Christopher Dahlberg, attorney. -- Received

06-0410-12 The following communications regarding amendment to Chapter 2, Duluth City Code, adding minimum requirements for a development agreement (05-060-O): (a) Cirrus Design Corporation; (b) Rick Heimbach. -- Received

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**REPORTS FROM OTHER OFFICERS**

06-0410-05 Assessor:

(a) Affidavit of mailing of notice of informational meeting at 5:00 p.m. on April 5, 2006, and a Duluth City Council public hearing at 7:00 p.m. on April 10, 2006, both to be held in the Council Chamber, Third Floor, City Hall, regarding the proposed 2007 street improvement program – Duluth Heights and Lakeside. -- Clerk

(b) Letters of sufficiency regarding petitions to:

(1) Reclassify from S-2 to R-1-a the property described as Lots 1 through 5, including Lots 62 through 66, Lakewood Division Duluth;

(2) Vacate the alley adjacent to Blocks 1 and 2, and 101st Avenue West adjacent to Block 1, Riverside Park Second Addition;

(3) Vacate 28th Avenue East between East Eighth Street and Elizabeth Street. -- Received

06-0410-06 Clerk applications to the Minnesota gambling control board for exemption from lawful gambling licenses (raffles) from:

(a) MN AIDS Trek on September 10, 2006;

(b) St. Luke's Foundation on July 10, 2006. -- Received

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### REPORTS OF BOARDS AND COMMISSIONS

06-0410-07 Duluth airport authority minutes of February 21, 2006, meeting. -- Received

06-0410-08 Duluth transit authority:

(a) December 2005 income statement;

(b) Minutes of January 25, 2006, meeting. -- Received

06-0410-09 Library board minutes of February 28, 2006, meeting. -- Received

06-0410-10 Parking commission minutes of February 21, 2006, meeting. -- Received

06-0410-11 Spirit Mountain recreation area authority minutes of February 16, 2006, meeting. -- Received

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At this time, 7:02 p.m. the public hearing on the 2007 street improvement program began.

Chief Administrative Officer Almanza reviewed a memo entitled *Community Investment Trust* from former Administrative Assistant Winson (Public Document No. 06-0410-27) noting that the investment earnings have not met their expectations. In addition, he noted that in a second memo entitled *Street Improvement Costs* from Acting City Engineer Benning, the 2006-2009 street improvement programs would be reduced due to the reduction from investment earnings.

Mr. Benning and Pat Mlakar, who manages the street improvement program, gave an overview of the specific streets planned for the 2007 street improvement program.

City Auditor Parson reviewed the funding process, which determines the amount of dollars that will be available for the street improvement program.

Eddy Gilmore spoke in support of the streets in Lakeside that are being proposed and questioned if there were community development block grant (CDBG) dollars that would be available for this area of town if the individuals met the income guidelines.

Steve Hennessy questioned if prisoners could be utilized on road projects, where they could earn some money that would be put in a savings account until they were released.

At this time, 7:13 p.m., the public hearing was declared closed and the regular order of business resumed.

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### OPPORTUNITY FOR CITIZENS TO BE HEARD

Jon Donahue expressed his concerns relative to the possibility of having to pay for retiree healthcare, water and gas increases and the difficulty of citizens to pay for those costs.

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Myrna Matheson commented on: the increased number of single family homes that are being changed into rental houses; rentals that have increased noises associated with parties and the loss of parking in neighborhoods. She noted that a proposed ordinance a couple years ago

addressing this housing density did not pass and that landlords with rental units need to provide off street parking for their tenants.

- - -

Susan Larson and Denise Johnson expressed concerns regarding the recent sewer backup in the Lincoln Park area, noting that: there should be funding from the city to assist homeowners to cover unusual events; there was over three feet of raw sewage and in order to get insurance there has to be three years of no problems.

City Attorney Brown noted that he has been in contact with the Western Lake Superior Sanitary District (WLSSD) and they are unwilling to contribute to funding the problems, but there has been contact with the federal government to assist in this problem.

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Kay L. Lewis stated that: developers should be required to define the nature of the jobs that they will create; the safety fencing at the harbor by the Duluth Entertainment Convention Center (DECC) needs attention; Second Avenue West needs warning signs at the top; cameras should be considered at busy intersections to catch violators; Minntac should not be allowed to pollute Lake Superior; a new bus line in the area of the proposed Kroc Center should be considered and there should be traffic lights at Fourth Avenue East.

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### RESOLUTIONS TABLED

Councilor Krause moved to remove Resolution 06-0214, issuing an on sale 3.2 percent malt liquor license to Just Take Action, Inc. (Brewhouse Burrito), 1332 East Fourth Street, from the table, which motion was seconded and unanimously carried.

Resolution 06-0214 was adopted as follows:

BY COUNCILOR KRAUSE:

BE IT RESOLVED, that the city council of the city of Duluth hereby issues the following on sale 3.2 percent malt liquor license for the period beginning May 1, 2006, and ending April 30, 2007, subject to departmental approvals and the payment of sales and property taxes:

Just Take Action, Inc. (Brewhouse Burrito), 1332 East Fourth Street, with Tim Nelson, 50 percent stockholder, and Rod Raymond, 50 percent stockholder.

Resolution 06-0214 was unanimously adopted.

Approved April 10, 2006

HERB W. BERGSON, Mayor

- - -

Councilor Ness moved to remove Resolution 06-0210, authorizing proper city officials to enter into an agreement with and accept funds from the Minnesota department of employment and economic development for provision of Workforce Investment Act Title I services, Minnesota youth program services and older American program services for program years 2006-2009, 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.

Steve Sandstrom, Kevin Snyder, chair of the Duluth workforce council, Stan Kaitfors, executive director of Community Action Duluth, Michelle LeBeau, Shannon Hammack and Tara Hanson spoke in support of the resolution, citing reasons of: the senior aide program is a good program; employers turn to the Workforce Center for specifically trained workers; getting back into the workforce is good emotionally and mentally for workers; by not accepting these federal funds, other agencies receiving the funds do not have the knowledge and expertise of the Duluth citizens;

workers with already high case loads would be over burdened to help those that need assistance; employers have had good experiences in working with the work center's experienced staff and the job counselors do a great job in working with clients.

Council Stauber commented on his concerns relative to accepting these kinds of grants where the retiree healthcare should be covered. He noted that the council last year made a commitment to fund retiree healthcare when these kinds of grants came up.

Councilor Stauber moved to amend the resolution as follows:

(a) In the title, add the phrase "AND CONDITIONS THERETO" after the phrase "PROGRAM YEARS 2006-2009";

(b) In the first paragraph, add the following language at the beginning:

"The city council finds as follows:

(a) For many years, the city has accepted grants from the state of Minnesota and, pursuant to contract, has used the funds to provide services to the public under Title I of the Workforce Investment Act, using city employees;

(b) By a unanimous vote on Resolution 05-0884, the Duluth City Council, on December 19, 2005, committed to implementing the recommendations for the retiree healthcare task force by December 31, 2006, one of which included that the city seek recovery of the retiree costs for the job training staff;

(c) The mayor, on January 9, 2006, during the State of the City Address, committed his time and staff to implement same.

NOW, THEREFORE, BE IT";

(c) In the second original paragraph, delete the word "city" after the phrase "system by which each" and insert the phrase "of the city" after the phrase "program and operation;"

(d) Add the following paragraphs at the end of the resolution:

"BE IT FURTHER RESOLVED, that if the amount charged to the benefit fund is less than 100 percent of the amount of the cost to cover retiree health insurance benefits currently being borne by the city of Duluth or if this charging does not occur by December 31, 2006, the city will notify the Minnesota department of employment and economic development (DEED) that we are implementing our 30 day cancellation option as noted in Section V of the contract.

BE IT FURTHER RESOLVED, that the Duluth City Council recognizes the exceptional work done by workforce development and the programs they fund and that Duluth has been a significant benefactor from this work; and that in the event of cancellation, the city administration will make every effort to find an alternative institution or government body to continue this work for our region,"

which motion was seconded and discussed.

Councilors Krause and Ness and President Reinert expressed opposition to the amendment, for reasons of: the complexity and interlocking of issues associated with the retiree healthcare problem; not accepting this resolution does nothing to solve the retiree healthcare issue, in fact it eliminates a revenue stream; the resolution as proposed by the administration addresses the retiree healthcare issue in a manner that is allowed by the federal government and the rate that will be charged to these types of grants will be resolved by December 31, 2006.

The amendment failed upon the following vote:

Yeas: Councilors Little, Stauber and Stewart -- 3

Nays: Councilors Johnson, Krause, Ness, Stover and President Reinert -- 5

Absent: Councilor Gilbert -- 1

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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Councilor Stauber moved to amend the resolution, by adding the language, "If this charging does not occur by December 31, 2006, the city will notify Minnesota DEED that we are implementing our 30 day cancellation option, as noted in Section V of the contract," which motion was seconded and failed upon the following vote:

Yeas: Councilors Little, Stauber and Stewart -- 3

Nays: Councilors Johnson, Krause, Ness, Stover and President Reinert -- 5

Absent: Councilor Gilbert -- 1

Resolution 06-0210 was adopted as follows:

BY COUNCILOR NESS:

RESOLVED, that proper city officials are hereby authorized to execute and implement a contract, in substantially the form and containing substantially the terms of the contract on file in the office of the city clerk as Public Document No. 06-0410-15, with, and accept funds from, the Minnesota department of employment and economic development to provide services under Title I of the Workforce Investment Act, the Minnesota youth program services, Minnesota state dislocated worker program services and the older American program as defined in the local workforce investment plan, for the term beginning April 1, 2006, and ending March 31, 2009. Program funds will be accepted upon receipt of notices of funds available. For Title I Workforce Investment Act, Minnesota youth program services and Minnesota state dislocated worker program services funds will be deposited into and paid from Fund 268. For older American program funds will be deposited into and paid from Fund 270.

BE IT FURTHER RESOLVED, that at the time the city implements its system by which each city program and operation is charged an amount to fund retiree health insurance, which amount is transferred to a fund or trust, the programs funded by this contract will be charged at the same rate and the funds will be transferred and used in the same manner.

Resolution 06-0210 was unanimously adopted.

Approved April 10, 2006

HERB W. BERGSON, Mayor

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Councilor Stover moved to remove Resolution 06-0202, authorizing agreement with Barr Engineering Company for professional services for study, analysis, recommendations and design for sediment control in Coffee and Miller creeks in the amount of \$92,817, from the table, which motion was seconded and unanimously carried.

Resolution 06-0202 was adopted as follows:

BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement (Public Document No. 06-0410-16) with Barr Engineering Company for services related to sediment control in Coffee and Miller creeks in the amount not to exceed \$92,187, payable from Fund 535, Agency 500, Organization 1930-2330, Object 5303.

Resolution 06-0202 was unanimously adopted.

Approved April 10, 2006

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

BY COUNCILOR KRAUSE:

RESOLVED, that the proper city officers are hereby authorized to enter into a consultant agreement with Krech, Ojard and Associates, Inc., for the sum of not to exceed \$5,500, from Capital Bond Fund 450, Agency 030, Organization 5520, Project #OT-0607, for providing certain professional services to the city of Duluth in connection with the East Duluth vehicle storage facility, 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. 06-0410-17.

Resolution 06-0241 was unanimously adopted.

Approved April 10, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

RESOLVED, that the proper city officers are hereby authorized to enter into a consultant agreement with SAS+Associates, for the sum of \$5,500, from General Fund 100, Agency 700, Organization 1420, Object 5530, Project No. CM 100-OT-0613, for providing certain consulting services to the city of Duluth in connection with Lester Park pedestrian bridge replacement, 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. 06-0410-18.

Resolution 06-0243 was unanimously adopted.

Approved April 10, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

RESOLVED, that the proper city officers are hereby authorized to enter into a consultant agreement with Northland Consulting Engineers, LLP, for the sum of not to exceed \$15,000, from Capital Bond Fund 450, Agency 030, Object 5520, Project No. CP2006-OT0601, for providing certain engineering and architectural services to the city of Duluth in connection with City Hall masonry restoration/Phase 3, 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. 06-0410-19.

Resolution 06-0245 was unanimously adopted.

Approved April 10, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

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

(a) On March 1, 2006, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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license of Scanlon River Inn, Inc. (Pioneer Bar), 323 West First Street, and has submitted its report to the city council of the city of Duluth as Public Document No. 06-0410-20;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on March 1, 2006, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 06-0410-20 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, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the Duluth City Council fine the licensee \$500 and such penalty be payable within 60 days of council action.

Resolution 06-0247 was unanimously adopted.

Approved April 10, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

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 22, 2006, with Ronald Minter, manager.

College of St. Scholastica, 1200 Kenwood Avenue, for April 23 and 28, 2006, with Luke Moravec, manager.

Resolution 06-0251 was unanimously adopted.

Approved April 10, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

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, on sale Sunday license and 2:00 a.m. beverage license for the period ending August 31, 2006, subject to departmental approvals and the payment of sales and property taxes:

Shotz Bar, Inc. (Shotz Bar), 1321 Commonwealth Avenue, with Kathleen Rose, 100 percent stockholder.

Resolution 06-0252 was unanimously adopted.

Approved April 10, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the following on sale intoxicating liquor 2:00 a.m. beverage license for the period ending August 31, 2006:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

Black River Mills, Inc. (Dubh Linn Pub & Billiards), 109 West Superior Street.  
Resolution 06-0253 was unanimously adopted.  
Approved April 10, 2006  
HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

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 5, 2006, with Marlene David, manager.

Resolution 06-0254 was unanimously adopted.  
Approved April 10, 2006  
HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

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.

Licensee	Gambling site
Duluth Softball Players Association	Rustic Bar, 401 North Central Avenue Bedrock Bar, 2023 West Superior Street Players Sports Bar, 4024 Grand Avenue
Duluth Curling Club	Grandma's Sports Garden, 425 Lake Avenue South

Resolution 06-0255 was unanimously adopted.  
Approved April 10, 2006  
HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

BE IT RESOLVED, that the Duluth City Council hereby approves of the Minnesota gambling control board issuing a lawful gambling exemption to Marshall School 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 06-0256 was unanimously adopted.  
Approved April 10, 2006  
HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the proper city officials are hereby authorized to enter into a second amendment substantially in the form of the copy on file in the office of the city clerk as Public

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

Document No. 06-0410-21 to the HOME program housing development projects purchase/rehabilitation/resale agreement with Neighborhood Housing Services (NHS) extending the time within which construction/rehabilitation and submittal of the HOME program completion report must be completed to June 30, 2006.

Resolution 06-0248 was unanimously adopted.

Approved April 10, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the board of county commissioners of St. Louis County is hereby requested to reclassify from conservation to nonconservation and to offer for sale the following tax forfeited parcel now withheld from sale in conservation.

File No.	Applicant	Legal Description	Location
06012	James P. Carroll	Lot 19, Block 2, Nortons Garden Tracts. 010-3520-00280	located at the corner of 79th Avenue West and unbuilt Hazel Street, north of St. Louis River Road and west of Getchell Road (Bayview Heights)

Resolution 06-0257 was unanimously adopted.

Approved April 10, 2006

HERB W. BERGSON, Mayor

- - -

BY PRESIDENT REINERT:

RESOLVED, that proper city officials are hereby authorized to execute a major sponsorship agreement with Grandma's Marathon-Duluth, Inc., for the 30th anniversary celebration of Grandma's Marathon to be held on June 15-17, 2006, which agreement is on file in the office of the city clerk as Public Document No. 06-0410-22, at a cost to the city not to exceed \$15,000, plus in-kind services, which shall be paid from Fund 258-030-5436-06.

Resolution 06-0250 was unanimously adopted.

Approved April 10, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that 3B's Sewer and Drain Services be and hereby is awarded a contract to rehabilitate by cured-in-place pipe (CIPP) lining 110 sanitary sewer laterals totaling approximately 6,600 feet of lateral pipe in Basin #1 for the engineering division in accordance with its low specification bid of \$798,169.90, terms net 30, FOB job site, payable out of the Sanitary Sewer Find 0530, Agency 500, Organization 1970, Object 5535, City Job Number 0548SN.

Resolution 06-0226 was unanimously adopted.

Approved April 10, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

By Resolution 04-0335, the council did authorize the proper city officials to enter into an agreement with American Engineering Testing, Inc., Twin Ports Testing, Inc., GME Consultants, Inc., and Service Engineering Group to provide the city with field and laboratory testing services for a three-year period at a total estimated cost of \$50,000.

Service Engineering Group is no longer providing testing services.

RESOLVED, that the proper city officials are hereby authorized to amend Resolution 04-0335 to enter into an agreement with Engineering Partners, LLC, for testing services formerly provided by Service Engineering Group at a total estimated amount of \$10,000. The costs of said field and laboratory testing services will be payable from the various funds, departments/agencies, organizations and objects.

Resolution 06-0244 was unanimously adopted.

Approved April 10, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Ulland Brothers, Inc., be and hereby is awarded a contract for construction of approximately 3,940 feet of sanitary sewer, 2,340 feet of storm sewer, rehabilitate 990 feet of sanitary sewer by pipe bursting, rehabilitate 3,600 feet of sanitary sewer by cured-in-place pipe lining and reconstruct 2,200 feet for street for Morgan Park wastewater collection system and street improvements - Phase IV project for the engineering division in accordance with its low specification bid of \$1,822,320, terms net 30, FOB job site, payable as follows: \$1,059,489.43 from Sanitary Sewer Fund 0530, Agency 500, Organization 1905, Project No. 0262SN, Object 5533; \$518,567.73 from Storm Sewer Fund 0535, Agency 500, Organization 1905, Project No. 0262SN, Object 5533; and \$244,262.84 from Street Improvement Fund 0440, Agency 038, Project No. 0262TR, Object 5530.

Resolution 06-0246 was unanimously adopted.

Approved April 10, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are authorized to make payments to the individuals and in the amounts shown below as settlement of claims against the city arising from sewage backing up into the basement of dwellings identified below in the area of 22nd Avenue West and Second Street on October 4, 2005, and waiving any immunities the city could claim, up to the amounts shown:

Marliss J. Burnett	\$1,346.12	117 North 22nd Avenue West
Susan M. Larson	\$3,013.10	2210 West Second Street
Denise K. Johnson	\$8,499.00	2208 West Second Street
Richard Packingham	\$4,491.99	2132 West Second Street
Gordon D. Peterson	\$3,748.53	119 North 22nd Avenue West



PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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NE1/4 of NW1/4, Section 31, Township 51, Range 14, west of the Fourth Principal Meridian, except the easterly 200 feet thereof.

Resolution 06-0242 was unanimously adopted.

Approved April 10, 2006

HERB W. BERGSON, Mayor

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The following resolutions were also considered:

Resolution 06-0216, by Councilor Krause, rescinding resolution Nos. 05-0306 and 05-0434 and setting standards and rules for the annual deer hunt, was introduced for discussion.

Councilors Stover, Stauber and Little opposed the resolution for reasons of: the rules of the hunt should be set in the contract for the hunt; those with more expertise should be involved in rule development; April is too late to be changing rules for this year; this process has taken too much time and the existing organization should be given another opportunity to run the hunt and if the city is going to continue to have problems with this type of operation, then it should just have sharpshooters harvest the deer in two days.

Councilors Ness and Krause felt: that this resolution makes a lot of sense and removes the politicized process of the council of who is going to conduct the hunt; it sets the standards, regardless of who conducts the hunt; that the purposes of this should be to eliminate deer and insure that the rights of landowners and deer hunters are upheld; that the impartiality and credibility of elected officials on issues like this is very important; that a bidding process makes an organization accountable and that some staff members have been accused of wrongdoings that have not occurred.

Resolution 06-0216 failed upon the following vote (Public Document No. 06-0410-25):

Yeas: Councilors Johnson, Krause, Ness and President Reinert -- 4

Nays: Councilors Little, Stauber, Stewart and Stover -- 4

Absent: Councilor Gilbert -- 1

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Resolution 06-0233, by Councilor Stover, awarding a three year contract to Carlson Media, Inc., for development and promotion of public awareness about product safety and utility services not to exceed \$84,900 in 2006, \$85,000 for 2007 and \$85,000 for 2008, was introduced for discussion.

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

Paul Lemenager, representing Parthe Productions, expressed concern that they were not contacted to bid on this project. He noted that his company: has been in business for over 30 years; has been doing this type of project for the county for over 20 years; has full time writers and designers on staff and that this company has a lot to offer at a very reasonable price.

Eric Schlacks, city gas energy coordinator, explained that the list for those to be requested to submit proposals was taken from: the phone book listing of full service advertising agencies, the names from an advertising publication that lists full time advertising agencies and in talking to the vice president of the company that previously had this contract. He further noted that one of the main criteria is that the firm be a full service advertising agency.

Councilor Ness moved to table the resolution because Councilor Gilbert had expressed an

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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interest in voting on this resolution, which motion was seconded and carried upon the following vote:

Yeas: Councilors Johnson, Krause, Little, Ness, Stauber, Stewart and President Reinert -- 7

Nays: Councilor Stover -- 1

Absent: Councilor Gilbert -- 1

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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. 06-0410-26 on file with the office of the city clerk; that the costs of said improvement estimated at \$2,926,200 shall be paid from the Street Improvement Fund 0440 and that one-fourth 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 06-0249 was unanimously adopted.

Approved April 10, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

WHEREAS, the city of Duluth is home to the fifth oldest children's museum in the nation, the Duluth Children's Museum; and

WHEREAS, over 70,000 visitors annually benefit from the educational programs and services offered by the Duluth Children's Museum; and

WHEREAS, the Duluth Children's Museum is positioned to expand the use of traveling exhibits to better serve the interests of the residents of our community and those who visit the museum from across the globe; and

WHEREAS, by expanding their exhibition offerings the Duluth Children's Museum will enhance the educational services to all students of the region; and

WHEREAS, having a vibrant and strong cultural organization focused on the celebration of area youth strengthens the livability of the city of Duluth.

NOW, THEREFORE, BE IT RESOLVED, that the city of Duluth supports the Duluth Children's Museum request for \$475,000 in FY07 earmark funding to support a traveling exhibition and expanded educational program activities and urges our distinguished Congressman James Oberstar and the entire Minnesota congressional delegation to do everything reasonably possible to secure the full amount of this request.

BE IT FURTHER RESOLVED, that the clerk shall send a copy of this resolution to the Minnesota congressional delegation.

Resolution 06-0262 was unanimously adopted.

Approved April 10, 2006

HERB W. BERGSON, Mayor

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**INTRODUCTION AND CONSIDERATION OF ORDINANCES**

**ORDINANCE FOR RECONSIDERATION**

BY COUNCILOR STAUBER

05-060 - AN ORDINANCE AMENDING CHAPTER 2 OF THE DULUTH CITY CODE, 1959, AS AMENDED; ADDING ARTICLE XXXIV - MINIMUM REQUIREMENTS FOR A DEVELOPMENT AGREEMENT.

Councilor Stauber moved to reconsider the ordinance, which motion was seconded and unanimously carried.

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

Kay L. Lewis felt that this ordinance would be equivalent to minimum homework standards that you would do if you were investing your own money into a project.

Craig Olson, president of the Duluth Building Trades Council, stated that their group is opposed to this ordinance because: the city council still has the authority and right to review business proposals that come to them; there are already many obstacles for developers who come into the city; it is already too easy for developers to go to neighboring communities and the comprehensive plan, that is nearly complete, will address many problems that the city has had issues with in the past.

John Rathe felt that the ordinance lays out guidelines that are needed.

Councilor Stauber moved to amend the ordinance as follows:

(a) In Section 2-182(d) of the Article, delete the phrase “an enforceable and” and insert the word “a”;

(b) In Section 2-182 (f) of the Article, after the word “contingency” insert the word “reserve”;

(c) In the first sentence of Section 2-182(g) of the Article, after the words “mutual mistake” insert the phrase “or unforeseen and unusual cost problems not caused by any party to the contract”;

(d) In Section 2-182(g) of the Article, add a second sentence as follows: “The reopener shall contain a provision that the city and/or DEDA engage in good faith efforts to contribute to continuing the project in some feasible form”;

(c) Replace Section 2-183 of the Article to read as follows:

“Sec. 2-183. Remedies.

“If any development agreement that does not conform to the requirements of sections 2-181 or 2-182 of this Article (public activity summary, requirements for development agreement), or the successor of each, is entered into, then the city must cure the nonconformities and within 30 days, resubmit the measure to the city council for a vote. If the council fails to approve the measure, then the city must make a good faith effort to negotiate an agreement the council will approve. If this effort is unsuccessful, after 30 days, the previously approved development agreement remains in force, and, within 15 days, the mayor shall cause an investigation to be completed and shall issue a public report on how the nonconformities occurred and shall take appropriate action, if warranted under applicable standards. An intentional violation of this Article by a government agent or employee is punishable as set out in D.C.C. Section 1-7, or its successor,”

which motion was seconded and discussed.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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Councilor Stauber noted that the amendment removes all references to developers and the burden falls on city staff. He continued to note that on projects worth over \$100,000 staff must tell the council what it will cost and where the money is coming from.

The amendment carried unanimously.

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

- - -

The following entitled ordinance was read for the first time:

BY COUNCILOR GILBERT

06-012 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NO. 23, AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM S, SUBURBAN, TO R-1-B, SINGLE FAMILY RESIDENTIAL, R-2, TWO FAMILY RESIDENTIAL, AND R-3, APARTMENT RESIDENTIAL, THE PROPERTY BETWEEN TRINITY ROAD AND QUINCE STREET 300 FEET EAST OF ANDERSON ROAD (DAN AND TED STOCKE (COFFEE CREEK)).

- - -

The following entitled ordinances were read for the second time:

BY COUNCILORS KRAUSE AND LITTLE

06-011 - AN ORDINANCE AMENDING SECTION 29C-9 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO THE CITY ATTORNEY'S DUTIES TO REPRESENT HUMAN RIGHTS COMPLAINANTS.

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

Kim McKay and Human Rights Officer Bye spoke in opposition to the ordinance, noting: there is some confusion with the use of the word "commission" in two different contexts; this change could affect the receipt of the federal funding that has been approved; the timing of receiving a housing and urban development grant cannot be confirmed and at some time in the future the council might consider this ordinance, but should not to do it at this time.

Councilors Little and Krause requested that the ordinance be removed from the agenda, which motion was unanimously supported.

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BY COUNCILOR JOHNSON (Introduced by Councilor Gilbert)

06-006 (9770) - AN ORDINANCE TO RENAME DENIM DRIVE TO DENIM STREET (SACKETTE).

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

- - -

BY COUNCILOR JOHNSON (Introduced by Councilor Gilbert)

06-008 (9771) - AN ORDINANCE AMENDING ORDINANCE NO. 8792, TO EXPAND THE USES WITHIN THE SKYWAY OVER LAKE AVENUE IN THE CITY OF DULUTH (WELCH BUILDING LLC).

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

Kay L. Lewis supported public use of this skywalk to cross the high traffic volume on Lake Avenue.

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

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BY COUNCILOR JOHNSON (Introduced by Councilor Gilbert)

06-009 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, ZONING DISTRICT MAP NO. 23 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, PROPERTY LOCATED AT THE NORTHEAST CORNER OF TRINITY ROAD AND ANDERSON ROAD (SCOTT AND SUSAN HANSEN).

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

Michael Kalnbach, engineer for applicant, Randy Bloomquist, architect for the applicant, Michael Orman, attorney for the applicant, Sue and Scott Hansen, applicants, and Zach Morris expressed support for the ordinance, noting: the applicant will follow MPCA guidelines to insure that contaminants will not get into the soil; there is a buffering to the neighborhood of landscaping of eight foot high pine trees, fencing and a 50 foot berm; the location of the new structure will be approximately twice the distance away from the neighboring residence than the prior structure was; the new building has been designed with a residential imagery, to compliment the adjoining community; the applicant has received all the necessary approvals from the city staff, city attorney, planning commission and DEDA; the applicant had no obligation to purchase a neighbor's property, but has made a reasonable offer of \$150,000 plus closing costs to purchase the neighbors property; a service station has been in operation at this location for over 50 years; the applicants are more than business owners, they live in this neighborhood; environmentalist Harry Munger supports this project; all the neighbors, except one, support this project; over 1,200 individuals have signed a petition supporting this project; Neighborhood Planning District 4 supports this project; there are no city funds or tax incentives with this project; our customers are wanting us to continue in this location and the Hansen's are great employers.

Greg Toon and Chris Dahlberg, Mr. Toon's attorney, opposed the ordinance for reasons of: this development is too close to a residential property; it will crush the lifestyle of the immediate neighbor; the waiver of the setback requirements, allowing an increase impervious surface, moving the access road back further onto Anderson Road and the disregard for eminent domain laws all should not be forgotten; any developer should follow the laws in place and not look to have as many variances as it can; from 6:00 a.m. to 10:00 p.m. you would not want to have this operation next to your house; this is a matter of fairness for the rights of individuals; everything is being done for the business development and the individual has been forgotten; last October the Toons' property was assessed at \$144,000 for a home improvement loan and then the individuals put \$20,000 of improvements in; the Toon's are asking for \$189,000 because of moving costs and that one family member who walks to work will need to purchase a vehicle.

There was council discussion on: the merits of the appropriateness of rezoning; should there be more time allowed for both parties to negotiate an agreement and that this has been before the council long enough and this should be voted on at this time.

Councilor Stewart moved to table the ordinance to allow for Councilor Gilbert to vote on the issue, which motion was seconded and carried upon the following vote:

Yeas: Councilors Johnson, Little, Stauber, Stewart, Stover and President Reinert -- 6

Nays: Councilors Krause and Ness -- 2

Absent: Councilor Gilbert -- 1

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BY COUNCILOR LITTLE

06-007 (9772) - AN ORDINANCE AMENDING CHAPTER 21 OF THE CITY CODE; AMENDING SECTION 21-5 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO UPDATE A REFERENCE TO THE STATE FIRE CODE AND REPEALING SECTIONS 21-24 AND 21-34 THEREOF.

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

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

JEFFREY J. COX, City Clerk

- - -

**ORDINANCE NO. 9770**

BY COUNCILOR JOHNSON (Introduced by Councilor Gilbert):

AN ORDINANCE TO RENAME DENIM DRIVE TO DENIM STREET  
(SACKETTE).

The city of Duluth does ordain:

Section 1. That the following public thoroughfare shall be and is hereby renamed Denim Street: all of Denim Drive located within the plat of Sackette Addition according to the plat therefor on file with the register of deeds for St. Louis County, Minnesota.

Section 2. That the city clerk, upon passage of this ordinance, shall:

(a) Notify the director of public works and utilities to proceed with erection of street signs relating to such change;

(b) Notify the property owners within 300 feet of the street;

(c) Notify the following agencies and utilities of the specific changes:

(1) Business office of Qwest Communications;

(2) Manager of delivery and collection, main post office;

(3) County auditor, St. Louis County;

(4) President, Minnesota Power;

(5) Chief, Duluth fire department;

(6) Chief, Duluth police department;

(7) Director, department of public works and utilities;

(8) City assessor;

(9) City voter registration department;

(10) Minnesota department of transportation;

(11) St. Louis County 911 agency.

Section 3. That this ordinance shall take effect 30 days after its passage and publication.  
(Effective date: May 21, 2006)

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

Yeas: Councilors Johnson, Krause, Little, Ness, Stauber, Stewart, Stover and President Reinert -- 8

Nays: None -- 0

Absent: Councilor Gilbert -- 1

ATTEST:

JEFFREY J. COX, City Clerk

Passed April 10, 2006

Approved April 10, 2006

HERB W. BERGSON, Mayor

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**ORDINANCE NO. 9771**

BY COUNCILOR JOHNSON (Introduced by Councilor Gilbert):

AN ORDINANCE AMENDING ORDINANCE NO. 8792, TO EXPAND THE USES WITHIN THE SKYWAY OVER LAKE AVENUE IN THE CITY OF DULUTH (WELCH BUILDING LLC).

The city of Duluth does ordain:

Section 1. That the limitations of Ordinance No. 8792, passed June 23, 1986, be amended to allow for either pedestrian connector or general office use of the structure, subject to compliance with applicable building and life safety codes; further that:

(a) There shall be no walls, partitions, signage or other uses within the structure which obstruct the existing windows;

(b) That all other terms of Ordinance No. 8972 remain in force and effect.

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: May 21, 2006)

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

Yeas: Councilors Johnson, Krause, Little, Ness, Stauber, Stewart, Stover and President Reinert -- 8

Nays: None -- 0

Absent: Councilor Gilbert -- 1

Passed April 10, 2006

Approved April 10, 2006

HERB W. BERGSON, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

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**ORDINANCE NO. 9772**

BY COUNCILOR LITTLE:

AN ORDINANCE AMENDING CHAPTER 21 OF THE CITY CODE; AMENDING SECTION 21-5 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO UPDATE A REFERENCE TO THE STATE FIRE CODE AND REPEALING SECTIONS 21-24 AND 21-34 THEREOF.

The city of Duluth does ordain:

Section 1. That Section 21-5 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 21-5. Open burning prohibitions and permits.

(a) For the purposes of this Section, terms used herein shall have the meanings given them in Minnesota Rules, Part 7005.0705;

(b) Except as specifically modified in this Section, Minnesota Rules, parts 7005.0705 to 7005.0805, are incorporated by reference herein and shall govern open burning and the issuance of open burning permits in the city;

(c) Open burning is prohibited without a permit;

(d) Permits for open burning may be issued by the fire chief, deputy fire chief or fire marshal and shall be issued only in strict conformance with Minnesota pollution control agency rules and the Minnesota State Fire Code;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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(e) No permit shall authorize the burning of leaves.

Section 2. That Section 21-24 of the Duluth City Code, 1959, as amended, be repealed in its entirety.

Section 3. That Section 21-34 of the Duluth City Code, 1959, as amended, be repealed in its entirety.

Section 4. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: May 21, 2006)

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

Yeas: Councilors Johnson, Krause, Little, Ness, Stauber, Stewart, Stover and President Reinert -- 8

Nays: None -- 0

Absent: Councilor Gilbert -- 1

ATTEST:  
JEFFREY J. COX, City Clerk

Passed April 10, 2006  
Approved April 10, 2006  
HERB W. BERGSON, Mayor

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**OFFICIAL PROCEEDINGS**

Duluth City Council meeting held on Monday, April 24, 2006, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: None -- 0

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**PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS**

06-0424-01 Housing and redevelopment authority petition to vacate London Avenue lying between the easterly extension of the north line of Lot 18, and the south line of Lot 21 extended, all in the plat of Lester Park Garden Tracts. -- Assessor

06-0424-02 Trinity Development Group, LLC, et al. (two signatures), petition to vacate that part of the unnamed street as platted in Auditor's Plat No. 24 which lies northerly of Lots 2-8, which lies westerly of the northerly extension of the west line of Lot 1 and easterly of the west line of the SE1/4 of the NW1/4 of Section 29, Township 50 North, Range 14 West of the Fourth Principal Meridian; and the unnamed street as platted in Auditor's Plat No. 24, which lies between Lots 8 and 9, which lies southerly of the westerly extension of the north line of Lot 8 and northerly of the Minnesota Department of Transportation Right-of-Way Plat No. 69-65. -- Assessor

06-0424-12 Carol Prohaska submitting communication regarding parking meters in Canal Park (06-0188R). -- Received

06-0424-13 The following communications regarding amendment to Chapter 2, Duluth City Code, adding minimum requirements for a development agreement (05-060-O): (a) Duluth Area Chamber of Commerce; (b) Steve Townsend; (c) Priscilla Ulland. -- Received

06-0424-03 The following communications regarding reclassification from R-1-b to C-2 the property located at the northeast corner of Trinity Road and Anderson Road (06-009-O): (a) Gary and Kathy Ames; (b) Bradley W. Bohlmann; (c) Ted Borst; (d) Alison Clarke; (e) Christopher Dahlberg (2); (f) Duluth Area Chamber of Commerce; (g) Arne Erickson; (h) Lynne Erickson; (i) Rolf Flaig; (j) Leon and Carole Gerjets; (k) Roy and Lucile Hammerstedt; (l) Alice Hansen; (m) Randy Hansen; (n) Rod and Patti Hansen; (o) Scott and Sue Hansen; (p) Milton N. Hill; (q) Jesse Hurtig; (r) Michael T. Kenney; (s) Janet LePard; (t) Eli J. Miletich; (u) Miller Mall Auto Parts; (v) Clarence and Shirley Olson; (w) Kathy Othon; (x) Wade Petrich; (y) Glen Pratt; (z) Matt Reardon; (aa) Lenore Lampi Rukavina; (bb) David E. Sarko; (cc) Cassandra Skadsberg; (dd) Sue Stromquist; (ee) Brad Tersteeg; (ff) Don and Janet Wagner. -- Received

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**REPORTS FROM THE ADMINISTRATION**

06-0424-26 Administration update on retiree healthcare benefits. -- Received

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**REPORTS FROM OTHER OFFICERS**

06-0424-04 Assessor:

(a) Assessment roll levied to defray the assessable portion of Contract No. 70791 direct benefit sanitary sewer (assessable amount - \$1,475.92);

(b) Letters of sufficiency of petitions to vacate:

(1) London Avenue lying between the easterly extension of the north line of Lot 18 and the south line of Lot 21 extended, all in the plat of Lester Park Garden Tracts;

(2) 12th Avenue West street easement that lies between Lot 193, Block 66, and Lot 191, Block 65, in Duluth Proper Third Division. -- Received

06-0424-05 Engineer notice of off street parking facility regulation amendment for Parking Lot G, adjacent to Superior Street and between Fourth Avenue East and Fitger's, increasing the time limit on meters to three hours, pursuant to Section 33-222 of the Duluth City Code. -- Received

06-0424-06 Facilities management right of entry agreement with Service Engineering Group with respect to city owned property near the intersection of 63rd Avenue West and Fremont Street in conjunction with remediation activities at the St. Louis River/Interlake/Duluth Tar (SLRIDT) site, pursuant to Section 2-35 of the Duluth City Code. -- Mayor for execution.

06-0424-07 Parks and recreation department director 2005 annual report. -- Received

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### **REPORTS OF BOARDS AND COMMISSIONS**

06-0424-08 Commission on disabilities minutes of March 1, 2006, meeting. -- Received

06-0424-09 Duluth legacy endowment fund project group minutes of March 9, 2006, meeting. -- Received

06-0424-10 Duluth/North Shore Sanitary District board minutes of: (a) February 8; (b) March 8, 2006, meetings. -- Received

06-0424-11 Duluth state convention center administrative board minutes of: (a) December 20, 2005; (b) January 31; (c) February 28, 2006, meetings. -- Received

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### **OPPORTUNITY FOR CITIZENS TO BE HEARD**

Alan Barschdorf stated that garbage dumping is a problem and it is time for the city to take action against litterers; the city needs to tear down condemned houses; a solution for police overtime is for them to take it as vacation; the Duluth Entertainment Convention Center (DECC) is fine as it is and the city should sell the aquarium to pay off the debt.

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Allen Richardson thanked councilors for agreeing to sign an open letter to state officials not to fund the University of Minnesota program to genetically engineer wild rice as it is an essential part of the Anishinabe culture.

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Jack Perry reviewed that a group of citizens called Responsible Development for Duluth (RDD) have hired him to look at the development at Beacon Point and determine if there were any issues of concern. He continued by saying that he has reviewed the report from the planning department that was in response to a council request and has sent the council a summation of his findings. There are three points to his findings: the height of a building in an R-3 zone, the ordinary high water mark and the Lakewalk and rights of the city to get an easement to the Lakewalk.

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KL Lewis stated that mobile hospitals are a good idea for disasters; there needs to be a community discussion on eminent domain; does the city have a rough draft for a pandemic and there are dangerous intersections in the city that do not get improved.

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Dan Maddy, attorney representing the owners of Beacon Point Condominiums, stated that the Beacon Point project is proceeding and going well and he is available for the councilors at any time for questions.

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John Sanford expressed concern that Beacon Point Condominiums is an ugly structure blocking a great view of Lake Superior and the council needs to prevent a bad situation from getting worse.

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Gina Temple stated that her peers are concerned that Lake Superior needs to be protected and access to the Lakewalk is also a concern.

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### **RESOLUTIONS TABLED**

Councilor Little moved to remove Resolution 06-0188, establishing parking meter zones in Canal Park and rates and time limits therefore, 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.

Scott Miller and Matt Reardon urged the council not to support putting meters in Canal Park for the following reasons: the businesses are year-round businesses; the businesses depend upon the local citizens for nine months; people need longer than two hours on a meter to shop and dine; current parking regulations should be enforced; the expense to put up new meters and the city would be sending a message that business is not welcome.

Councilor Little stated he supports the resolution as Canal Park is a tourist area and there is no reason for people not to pay to park. He continued by saying that it is not anti-business to put parking meters up as the Downtown already has two hour parking meters.

Councilor Stover reviewed that the design of the area was geared to limit car activity and be a pedestrian area, and that a plan needs to be created that puts it on a par with Downtown.

Councilor Stewart stated that parking is only a problem in the summer months and a parking ramp is not prudent for only three months. He suggested that the money should go to a dedicated fund to solve long term parking problems and that more cars in Canal Park are not what is needed as it is already too congested.

Resolution 06-0188 failed upon the following vote (Public Document No. 06-0424-14):

Yeas: Councilors Johnson, Little, Stewart and Stover -- 4

Nays: Councilors Gilbert, Krause, Ness, Stauber and President Reinert -- 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.)*

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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

BY COUNCILOR STEWART:

RESOLVED, that the budget for the fiscal year May 1, 2006, to April 30, 2007, in the amount of \$3,751,999, including the 2006 repair and replacement budget in the amount of \$225,000 as set out in the budget on file with the city clerk as Public Document No. 06-0424-15 for the Spirit Mountain recreation area authority is hereby approved.

FURTHER RESOLVED, the city acting through the city finance director, shall make available a line of credit up to \$250,000, to be drawn upon as needed, to assist in the management of cash flow within the budget as approved, same to be repaid in full (to a zero balance) at least once per calendar year, by October 31 of that year. If repaid as agreed with the city finance director, no interest shall be charged. The city finance director may authorize the transfer of money from the city to the authority for use consistent with the authority's budget, based upon a showing of need and of a reasonable probability of repayment by October 31 of each year as set forth above. The city finance director shall determine the forms, procedures and supporting documentation that will be required to draw on the line of credit. Such transactions shall be subject to audit and public disclosures.

Resolution 06-0279 was unanimously adopted.

Approved April 24, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

RESOLVED, that the assessment roll levied to defray the assessable portion of direct benefit sanitary sewer (Contract #70791; assessable amount: \$1,475.92), to be deposited in Fund 330, is hereby confirmed.

Resolution 06-0285 was unanimously adopted.

Approved April 24, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

BE IT RESOLVED, that the city council of the city of Duluth hereby issues the following on sale intoxicating liquor license and on sale Sunday license for the period and ending August 31, 2006, subject to departmental approvals and the payment of sales and property taxes:

Anderson Golf, Inc. (Enger Golf Course), 1801 West Skyline Parkway, with Steven Anderson, president and 50 percent stockholder, Nancy Anderson, secretary/treasurer and 50 percent stockholder, and Aaron Anderson, vice president.

Resolution 06-0267 was unanimously adopted.

Approved April 24, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the transfer of the following on sale intoxicating liquor license and on sale Sunday license for the period ending August 31, 2006, subject to departmental approvals and the payment of sales and property taxes:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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Templecorp, Inc. (Norshor Theatre), 211 East Superior Street, with Eric Ringsred, 100 percent stockholder, transferred from Theatre in the State (Norshor Theatre), same address.

Resolution 06-0268 was unanimously adopted.

Approved April 24, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

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

(a) On February 1, 2006, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Grandma's Angie's, Inc. (Little Angie's Cantina), 11 East Buchanan Street, and has submitted its report to the city council of the city of Duluth as Public Document No. 06-0424-16;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on April 24, 2006, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 06-0424-16 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of Grandma's Angie's, Inc. (Little Angie's Cantina), 11 East Buchanan Street, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the Duluth City Council fine the licensee \$500 and stay payment of the fine for one year contingent upon no same or similar violations during the one year period.

Resolution 06-0269 was unanimously adopted.

Approved April 24, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

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, 2006, and ending April 30, 2007, 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. 06-0424-17.

Resolution 06-0270 was unanimously adopted.

Approved April 24, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

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, 2006, and ending April 30, 2007, 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. 06-0424-18.

Resolution 06-0271 was unanimously adopted.

Approved April 24, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

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, 2006, and ending April 31, 2007, 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. 06-0424-19.

Resolution 06-0272 was unanimously adopted.

Approved April 24, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

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, 2006, and ending March 31, 2007, subject to departmental approvals and the payment of sales and property taxes:

Order of Owls, Nest #1200, 118 East Second Street.

Resolution 06-0273 was unanimously adopted.

Approved April 24, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

RESOLVED, that Airgas Specialty Products 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 \$22,400, terms net 30, FOB destination, payable out of Water Fund 0510, Department/Agency 500, Organization 1955, Object 5216-01.

Resolution 06-0291 was unanimously adopted.

Approved April 24, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

RESOLVED, that Northland Materials, LLC, dba Northland Bituminous, be and hereby is awarded a contract for the Hillside Sport Court improvements for the city architect office in accordance with specifications on its low specification bid of \$62,035, terms net 30, FOB destination, payable out of CDBG Fund 0262, Agency 020, Object 5434, Project CD05CD-PFAC-PF04.

Resolution 06-0298 was unanimously adopted.

Approved April 24, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

RESOLVED, that Ray Riihiluoma, Inc., be and hereby is awarded a contract for construction of the City Center West police station and emergency operations center for the police department, administered by the city architect's office, in accordance with specifications on its low specification bid of \$1,288,800, terms net 30, FOB City Center West, payable from the following funding sources:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

Capital Improvements Fund No.	Agency No.	Object No.	Project No.	Amount
450	030	5520	OT 0504 CP 2005	\$ 646,550
450	030	5520	OT 0651 CP 2006	\$ 500,000
450	030	5520	OT 0650 CP 2006	\$ 142,250
				<u>\$1,288,800</u>

Resolution 06-0304 was unanimously adopted.

Approved April 24, 2006

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 pipeline welder, which were approved by the civil service board on February 7, 2006, and which are filed with the city clerk as Public Document No. 06-0424-20, are approved; that said classification shall remain subject to the city's collective bargaining agreement with its basic unit employees, that the pay range will change from Pay Range 29 to Pay Range 31. 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 06-0234 was unanimously adopted.

Approved April 24, 2006

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 library technician, which were approved by the civil service board on April 4, 2006, and which are filed with the city clerk as Public Document No. 06-0424-21, be approved. This classification shall remain subject to the city's collective bargaining agreement with its basic unit employees and compensated at Pay Range 124.

Resolution 06-0260 was unanimously adopted.

Approved April 24, 2006

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 police sergeant, which were approved by the civil service board on April 4, 2006, and which are filed with the city clerk as Public Document No. 06-0424-22, are approved. This classification shall remain subject to the city's collective bargaining agreement with its police unit employees and compensated at Pay Range 328, \$4,236 to \$4,763 per month.

Resolution 06-0263 was unanimously adopted.

Approved April 24, 2006

HERB W. BERGSON, Mayor

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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BY COUNCILOR JOHNSON:

RESOLVED, that the proposed amendments to the specifications for the civil service classification of zoo manager, which were approved by the civil service board on April 4, 2006, and which are filed with the city clerk as Public Document No. 06-0424-23, are approved. This classification shall remain subject to the city's collective bargaining agreement with its supervisory unit employees and compensated at Pay Range 1075, \$4,341 to \$5,273 per month.

Resolution 06-0264 was unanimously adopted.

Approved April 24, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the reappointment of George Hanson and the appointment of Steve Khalar, replacing Terry Johnson who resigned, by Mayor Bergson to the alcohol, gambling and tobacco commission for terms expiring on March 20, 2009, and 2007, respectively, are confirmed.

Resolution 06-0274 was unanimously adopted.

Approved April 24, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the reappointment of Virgil Swing (planning commission) and the appointment of Joseph J. Kmiech III, replacing George Weller who resigned, by Mayor Bergson to the board of zoning appeals for terms expiring on July 31, 2010, are confirmed.

Resolution 06-0275 was unanimously adopted.

Approved April 24, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the reappointments of Jeffery Anderson (at large) and Howard Martz (at large) and the appointments of Allan Beaulier (planning commission) and Allen Richardson (District 6), replacing Carol Thomson and Marvella Davis, respectively, by Mayor Bergson to the community development committee for terms expiring on March 1, 2009, are confirmed.

Resolution 06-0276 was unanimously adopted.

Approved April 24, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the appointment of Richard D. Gitar, replacing Rebecca Pittner who resigned, by Mayor Bergson to the environmental advisory council for a term expiring on January 5, 2009, is confirmed.

Resolution 06-0277 was unanimously adopted.

Approved April 24, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the appointments of Jennifer Wutz (District 4) and Jim Topie (District 7), replacing Josh Schomberg and Francis (Frank) M. Nash who resigned, by Mayor Bergson to the

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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parks and recreation commission for terms expiring on February 13, 2007, and 2008, respectively, are confirmed.

Resolution 06-0278 was unanimously adopted.

Approved April 24, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the proposed specifications for the new civil service classification of safety and training officer, which were approved by the civil service board on April 4, 2006, and which are filed with the city clerk as Public Document No. 06-0424-24, are approved; that said classification shall be subject to the city's collective bargaining unit with its supervisory unit employees; and that pay range for said classification shall be ranges 1100-1110. The proper city officials are authorized to execute and implement an agreement with the union to provide for employing one or more unit members consistent with this resolution.

Resolution 06-0294 was unanimously adopted.

Approved April 24, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR NESS:

RESOLVED, that the proper city officers are hereby authorized to enter into a lease agreement (Public Document No. 06-0424-25) 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, 2006, through September 30, 2006, at no cost to the authority.

Resolution 06-0288 was unanimously adopted.

Approved April 24, 2006

HERB W. BERGSON, Mayor

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BY PRESIDENT REINERT:

RESOLVED, that the proper city officials are hereby authorized to enter into a channel sharing agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 06-0424-27 with the city of Superior (Superior) pursuant to which Duluth agrees to show Superior public access programming on a portion of Duluth's message board channel and Superior agrees to show Duluth public access programming on a portion of Superior's message board channel; said agreement necessitating the purchase of certain equipment in an amount not to exceed \$8,000, payable from Fund 210, Agency 030, Organization 3145, Object 5404.

Resolution 06-0292 was unanimously adopted.

Approved April 24, 2006

HERB W. BERGSON, Mayor

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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BY PRESIDENT REINERT:

The Duluth City Council does hereby resolve that the deadline for submission of responses to the request for formal renewal proposal for a cable franchise is hereby extended to July 17, 2006.

Resolution 06-0297 was unanimously adopted.

Approved April 24, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that API Electric Company be and hereby is awarded a contract for the construction year 2006 traffic signal - LED replacement for the engineering division in accordance with the specifications on its low specification bid of \$46,094, terms net 30, FOB job site, payable out of Energy Management Fund 257, Department/Agency 015, Object 5530, City Project No. 0557TR.

Resolution 06-0259 was unanimously adopted.

Approved April 24, 2006

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. 06-0424-28, 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 4220-02.

Resolution 06-0280 was unanimously adopted.

Approved April 24, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that R.W. Beck be and hereby is awarded a contract for professional services to conduct a cost of service and rate design on the city's public works and utilities gas utility in accordance with specifications on its statement of qualifications dated March 6, 2006, proposal dated March 31, 2006, and its proposal clarification dated April 4, 2006, in the estimated amount of \$28,200, and is payable from Gas Fund 520, Agency 500, Organization 1915, Object 5310, City Project Number 0565GS.

Resolution 06-0289 was unanimously adopted.

Approved April 24, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that LHB, Inc., be and hereby is awarded a professional engineering services contract for design and contract administration services for the West Duluth water reservoir rehabilitation project in accordance with its proposal dated April 10, 2006, in the estimated amount

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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of \$159,014, payable from Water Fund 510, Department 500, Organization 1905, Object 5536, City Project Number 0514WA.

Resolution 06-0290 was unanimously adopted.

Approved April 24, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are authorized to pay to Robert and Florence McGreevy the sum of \$15,368.44 in full and final settlement of the claim which arose out of a break in a city watermain occurring on December 25, 2005; payment to be made from the Self Insurance Fund 610-036-1652-5841.

Resolution 06-0293 was unanimously adopted.

Approved April 24, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that United Piping, Inc., be and hereby is awarded a contract for construction of high pressure 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 \$248,962.50, terms net 30, FOB job site, payable out of Gas Construction Bond Fund 521, Department/Agency 500, Object 5532, City Job Number 0205GS.

Resolution 06-0296 was unanimously adopted.

Approved April 24, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that pursuant to Minnesota Statute Section 161.36, the commissioner of transportation be appointed as agent to the city of Duluth to accept, as its agent, federal aid funds which may be made available for eligible transportation-related projects.

FURTHER RESOLVED, that the proper city officials are hereby authorized to execute an agreement with the commissioner of transportation, filed as Public Document No. 06-0424-29, prescribing the terms and conditions of said federal aid participation as set forth and contained in Minnesota Department of Transportation Agency Agreement No. 89598.

Resolution 06-0305 was unanimously adopted.

Approved April 24, 2006

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: in front of 5706 Juniata Street.

Resolution 06-0261 was unanimously adopted.

Approved April 24, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

RESOLVED, that the proper city officials are authorized to accept a grant from the state of Minnesota, financial crimes task force, in an amount not to exceed \$7,368, to support the investigation of identity theft and forgery; grant funds to be deposited in Fund 215, Agency 200, Organization 2262, Revenue Source 4220-02.

FURTHER RESOLVED, that the proper city officials are authorized to execute all documents necessary to accept such grant.

Resolution 06-0283 was unanimously adopted.

Approved April 24, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

RESOLVED, that the proper city officials are authorized to accept a grant from the state of Minnesota, financial crimes task force, in an amount not to exceed \$8,100, to support the investigation of identity theft and forgery; grant funds to be deposited in Fund 215, Agency 200, Organization 2262, Revenue Source 4220-02.

FURTHER RESOLVED, that the proper city officials are authorized to execute all documents necessary to accept such grant.

Resolution 06-0284 was unanimously adopted.

Approved April 24, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STAUBER:

RESOLVED, that the proper city officers are authorized and directed to enter into an agreement with Woodland Fastpitch Softball League providing for the league's shared use of the Tony Emanuel Field located at the Woodland Community Recreation Center for its league activities for a period ending December 31, 2006, with an option to renew for two successive one year periods; said agreement to be substantially in the form of Public Document No. 06-0424-30 on file in the office of the city clerk.

Resolution 06-0286 was unanimously adopted.

Approved April 24, 2006

HERB W. BERGSON, Mayor

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The following resolutions were also considered:

Resolution 06-0306, by Councilor Krause, awarding contract to Twin Cities Mack and Volvo Truck for two Mack Truck cab and chassis in the amount of \$208,509; superceding Resolution 06-0177, was introduced for discussion.

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

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Resolution 06-0310, by Councilor Krause, amending resolutions 05-0306 and 05-0434; providing for selection of hunters for the annual deer hunt, was introduced for discussion.

Councilors Stewart and Stover stated that a hunter should not be excluded just because they do not reside in Duluth and it is not good to amend the terms of the contract before there is a contract with the agency managing the hunt.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

Councilor Krause explained that there have been complaints from property owners on the actions of the hunters, that a number of hunters were excluded from certain sections and that this resolution will create a better sense of fairness to hunters by eliminating the cliques.

Councilor Ness stated that a random selection process for the more desirable locations and giving the citizens of Duluth the first chance at a zone is fair and does not disqualify hunters residing outside of the city.

Resolution 06-0310 failed upon that following vote (Public Document No. 06-0424-35):

Yeas: Councilors Gilbert, Krause and Ness -- 3

Nays: Councilors Johnson, Little, Stauber, Stewart, Stover and President Reinert -- 6

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Resolution 06-0299, by Councilor Gilbert, authorizing housing investment fund (HIF) loan agreements with appropriate agencies, was introduced for discussion.

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

Rick Ball, Housing and Redevelopment Authority of Duluth director, and Gina Sweeney encouraged the councilors to consider the Hope VI project for any additional funds that are left from projects that do not move forward.

Jeff Corey thanked the councilors for the funding to support their work.

Mike Sayers reviewed that Hope VI has been funded for several years in a row and there needs to be support for other projects that have been passed over.

Councilor Krause explained that he is not able to support all of the projects in the resolution.

Councilor Stewart reviewed that he did not favor the creation of this program and stated that the city should not be in the business of subsidizing private housing developers, especially when rental housing units are freeing up.

Resolution 06-0299 was adopted as follows:

BY COUNCILOR GILBERT:

BE IT RESOLVED, that the proper city officials are authorized to enter into HIF loan agreements substantially in the form of those on file in the office of the city clerk as Public Document No. 06-0424-32, with the agencies set forth below in the corresponding funding levels set forth below, payable from Fund 266:

AMOUNT	PROJECT	ORGANIZATION
\$105,000	Gap funding for 14 homes	Northern Communities Land Trust (NCLT)
\$ 15,000	House of Phoenix renovations	Life House
\$120,000	Lake Superior View Condos	Neighborhood Housing Services (NHS)
\$150,000	Supportive housing development	Accessible Space, Inc.
\$ 40,000	Develop home on East Fifth Street	Women in Construction

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

AMOUNT	PROJECT	ORGANIZATION
\$ 20,000	Exterior matching rehabilitation loan program	Spirit Valley Citizens' Neighborhood Development Association (SVCNDA)

Resolution 06-0299 was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Ness, Stover and President Reinert -- 5

Nays: Councilors Krause, Little, Stauber and Stewart -- 4

Approved April 24, 2006

HERB W. BERGSON, Mayor

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Resolutions 06-0302 and 06-0303, affirming and reversing, respectively, the planning commission's approval for an impervious surface WRMO variance for construction of a service station at 3802 Trinity Road (Scott and Susan Hansen), by Councilor Gilbert, were introduced for discussion.

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**INTRODUCTION AND CONSIDERATION OF ORDINANCE**

**ORDINANCE TABLED**

BY COUNCILOR GILBERT

06-009 (9773) - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, ZONING DISTRICT MAP NO. 23 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, PROPERTY LOCATED AT THE NORTHEAST CORNER OF TRINITY ROAD AND ANDERSON ROAD (SCOTT AND SUSAN HANSEN).

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

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

Renee Peterson explained that the property she owned was bought by the state of Minnesota, given to the Duluth economic development authority (DEDA), and now her property is included in the land for the Hansen's project when she had told the state that she would like to be able to buy her property back if it was not needed for the project.

Bob LaFlamme, Ron McDonald, Robert Powless, Sue Hansen, Scott Hansen and Steve Willemarck spoke in favor of the reclassification for the following reasons: the new gas station will be full service, which is good for the handicapped and the neighborhood; there seems to be fewer locally owned businesses in Duluth; the owners are trying to be fair with the neighbors; the council is interested in the welfare of local businesses; the owners have followed the process for two years to rebuild their business; livelihoods for several families that work for this business need to be considered; the fencing and landscaping will help buffer the noise from the neighbors and the reclassification and variance are necessary for the project to move forward.

Mike Fitzgerald, Matt Reardon, Greg Toon and Chris Dahlberg spoke against the reclassification for the following reasons: it is not fair to the neighbors; councilors should not legislate on emotion; the council is being asked to approve a variance after the plans have already been made when there are laws already on the books; this puts the council in a bad position; the

council should take responsibility and set a standard for future developments for ordinances already on the books; the sewer system is not an adequate solution to protect Miller Creek; there is no hardship in this request and the concern for taking private property which is not for public purpose.

Peter Yurista reviewed that Miller Creek is below standard and voiced concern about the impact of this development on this creek. He added that impervious surfaces also affect other trout streams in Duluth.

Councilor Stewart voiced several concerns on the reclassification, as the area being rezoned has no commercial property abutting it, questioning if this would be considered spot zoning, and also had concerns about the eminent domain issue of the neighboring land owner who lost her land and that the Hansen's have received a fair market price for their property from the state. He continued by saying that the law requires all three criteria for hardship needs to be met for a variance and none of them have been met.

Councilor Stauber reminded the council that if the ordinance passes to change the zoning, the value of the neighbor's home will be reduced.

Resolution 06-0302, affirming the planning commission's approval, was adopted as follows:  
BY COUNCILOR GILBERT:

The city council finds as follows:

(a) The planning commission, on March 14, 2006, by a vote of 11 members, granted the variance from strict application of Ordinance 51-29(c)(1) to the premises at 3802 Trinity Road, which variance was requested by Scott and Susan Hansen (applicants);

(b) The council has heard the appeal of the decision of the planning commission and bases its decision upon the entire file of the city and the planning commission and the testimony and materials presented to it;

(c) The standards for granting this variance are found in state law and in City Code, sections 51-30, 51-2;

(d) The requested variance does not compromise the general purposes or intent of Article III of Chapter 51 and of Chapter 51 because the variance, if granted, will not significantly adversely affect Miller Creek, a water resource within the city, or any other water resource, nor cause an irreversible impact upon unique and fragile land;

(e) The grant of a variance must be based upon a showing of the existence of a hardship.

The claimed hardship is:

(1) That the following circumstances are unique to the property in question. The project cannot go forward without a variance due to the unique circumstances of the property in question;

(2) The strict application of Section 51-29 (e)(1) would not allow the property to be used for the reasonable use of operating a service station, because an impervious surface is a major land use of operating a service station.;

(3) The plight of the applicant is caused by actions from the state of Minnesota department of transportation to improve Trinity Road (Highway 53) and is not created by the landowner;

(4) The claimed hardship is not made up of only economic considerations;

(f) The following propositions set out above have been shown: paragraphs (d), (e)(1), (e)(2), (e)(3), (e)(4) (insert above only ones from this list that have been shown or proven: paragraphs (d), (e)(1), (e)(2), (e)(3), (e)(4));

(g) In order to qualify to receive a variance, all propositions in the list of paragraphs in paragraph (f), above, must have been proven and shown. Because all were proven or shown, the applicants are qualified to receive the requested variance;

(h) Any additional important, relevant considerations that have been shown are: methods to reduce the impervious surface coverage are not practical for service stations; pervious pavers would allow gas, oil and other products a direct route to ground water, with a subsequent impact on Miller Creek which is located directly across from the proposed service station; applicant will be installing stormceptors that will separate petroleum products from stormwater runoff thus reducing environmental impacts. In addition, the pervious surfaces areas will channel potential spills away from public roadways into the on-site drainage system that directs spills and fluids to the stormceptors.

THEREFORE, BE IT RESOLVED, that the decision of the planning commission to grant the requested variance from impervious surface limits for construction of an allowed use located at 3802 Trinity Road (Scott and Susan Hansen, F.N. 06019) is affirmed and the variance is granted.

Resolution 06-0302 was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Krause, Little, Ness, Stauber, Stover and President Reinert -- 8

Nays: Councilor Stewart -- 1

Approved April 24, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0303, reversing the planning commission's approval, failed upon the following vote (Public Document No. 06-0424-31):

Yeas: Councilor Stewart -- 1

Nays: Councilors Gilbert, Johnson, Krause, Little, Ness, Stauber, Stover and President Reinert -- 8

- - -

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

Yeas: Councilors Gilbert, Johnson, Krause, Little, Ness, Stover and President Reinert -- 7

Nays: Councilors Stauber and Stewart -- 2

- - -

Resolution 06-0307, by Councilor Ness, supporting Duluth's membership in the Coalition of Greater Minnesota Cities, was introduced for discussion.

Councilor Stover questioned how much money the city would have to pay this year to join this coalition and where the money would come from.

Resolution 06-0307 was adopted as follows:

BY COUNCILOR NESS:

WHEREAS, the Coalition of Greater Minnesota Cities was founded on the belief that cities in greater Minnesota can accomplish more by working together at the legislature than by working separately; and

WHEREAS, the coalition has become an effective advocacy organization on issues critical to the health of greater Minnesota cities; and

WHEREAS, the CGMC has been an aggressive advocate for local government aid, which has provided considerable benefit to the taxpayers of Duluth. In 2003, the governor recommended

cutting LGA by \$358 million. After intensive lobbying by the CGMC, the aid was reduced by \$150 million, saving Duluth \$6.7 million; and

WHEREAS, the Minnesota house in 2005 sought to cut \$1.07 million in local government aid due the city of Duluth, and CGMC lobbying efforts resulted in Duluth receiving an extra \$1.07 million in LGA, a difference of \$2.14 million; and

WHEREAS, the CGMC created, has advocated for and successfully passed economic development and redevelopment grant programs that have provided Cirrus with \$1,250,000, the Heritage Sports Center with \$935,000, and St. Mary's with \$500,000; and

WHEREAS, while local legislators may support some local issues, it often takes statewide pressure from a non-partisan group such as the CGMC to influence legislators from both parties to support issues crucial to greater Minnesota; and

WHEREAS, the CGMC is an advocacy group for greater Minnesota issues only and does not duplicate the services provided by the League of Minnesota Cities or individual city lobbyists.

THEREFORE, BE IT RESOLVED, the Duluth City Council encourages the mayor and his administration to engage the Coalition of Greater Minnesota Cities in negotiations to join the coalition.

Resolution 06-0307 was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Krause, Ness, Stauber, Stewart and President Reinert -- 7

Nays: Councilors Little and Stover -- 2

Approved April 24, 2006, pursuant to Section 12 of the Duluth City Charter.

*[Editor's Note: Resolution 06-0307 was reconsidered and failed at the May 8, 2006, city council meeting.]*

- - -

Resolution 06-0287, by President Reinert, appropriating tourism tax fund balance, was introduced for discussion.

Councilor Stauber stated that Duluth's share of the cost for this study is too high and would prefer to have the cost spread to the other cities who will benefit.

Resolution 06-0287 was adopted as follows:

BY COUNCILOR STEWART:

WHEREAS, there is an available fund balance in the tourism taxes fund of the city of Duluth; and

WHEREAS, the city desires to contribute \$40,000 toward a comprehensive feasibility study to assess the establishment of high-speed passenger rail service between Duluth and the Twin Cities.

NOW, THEREFORE, BE IT RESOLVED, that \$40,000 be allocated to St. Louis and Lake counties regional rail authority from the reserve for capital improvement fund balance in the tourism tax fund (258).

Resolution 06-0287 was adopted upon the following vote:

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

Nays: Councilors Little and Stauber -- 2

Approved April 24, 2006

HERB W. BERGSON, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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BY COUNCILOR STOVER:

RESOLVED, that Glacier Paving, Inc., be and hereby is awarded a contract for 2006 fine mix paving at various locations for the engineering division in accordance with its low specification bid of \$81,604.85, terms net 30, FOB job site, payable out of Fund 0411, Agency 035, Object 5530, Project Number 0135TR.

Resolution 06-0295 was adopted upon the following vote:

Yeas: Councilors Johnson, Krause, Little, Ness, Stauber, Stewart, Stover and President Reinert -- 8

Nays: None -- 0

Abstention: Councilor Gilbert -- 1

Approved April 24, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0265, establishing parking meter zones on Second Street and rates and time limits therefore; and Resolution 06-0266, to establish no parking 2:00 a.m. to 6:00 a.m. on north side of Second Street from Fourth Avenue West to Fourth Avenue East, by Councilor Little, were introduced for discussion.

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

Hank Calvert spoke against the resolutions as people in the neighborhood do not know the council is considering this issue tonight, there is no off street parking for many of the residents in the area and not everyone works during the day.

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

- - -

Resolution 06-0281, authorizing a golf professional agreement for operation of Enger Park Golf Course with Anderson Golf, Inc., for up to \$93,000 in compensation plus operating expenses; and Resolution 06-0282, authorizing a golf professional agreement for operation of Lester Park Golf Course with Paul Shintz, Inc., for up to \$90,000 in compensation plus operating expenses, by Councilor Stauber, were introduced for discussion.

Councilor Stauber reviewed that the two golf courses have lost money again this year.

Resolutions 06-0281 and 06-0282 were adopted as follows:

BY COUNCILOR STAUBER:

RESOLVED, that the proper city officials are authorized to execute and implement a contract between the city of Duluth and Anderson Golf, Inc., substantially the same as that on file with the clerk as Public Document No. 06-0424-33, for services as a golf professional in operating Enger Park Golf Course, for compensation of \$45,000, possible additional compensation of \$3,000, possible performance incentive payments of \$45,000, and reimbursement of operating expenses; payment to be made from Fund 503, Agency 400, Organization ENGR.

Resolution 06-0281 was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Krause, Little, Ness, Stover and President Reinert -- 7

Nays: Councilors Stauber and Stewart -- 2

Approved April 24, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, that the proper city officials are authorized to execute and implement a contract between the city of Duluth and Paul Schintz, Inc., substantially the same as that on file with the clerk as Public Document No. 06-0424-34, for services as a golf professional in operating Lester Park Golf Course, for compensation of \$45,000, possible performance incentive payments of \$45,000, and reimbursement of operating expenses; payment to be made from Fund 503, Agency 400, Organization LSTR.

Resolution 06-0282 was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Krause, Little, Ness, Stover and President Reinert -- 7

Nays: Councilors Stauber and Stewart -- 2

Approved April 24, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0301, by Councilor Stauber, authorizing the proper city officers to execute an amendment to Agreement No. 19897 with the Minnesota Conservation Corps for the brushing and clearing of overlooks along Skyline Parkway, was introduced for discussion.

Councilor Little moved to table this resolution for further information, which motion was seconded and unanimously carried.

- - -

#### **INTRODUCTION AND CONSIDERATION OF ORDINANCES**

The following entitled ordinance was read for the first time:

BY PRESIDENT REINERT

06-013 - AN ORDINANCE GRANTING A FRANCHISE TO CC VIII OPERATING, LLC, D/B/A CHARTER COMMUNICATIONS, ITS SUCCESSORS AND ASSIGNS, TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY OF DULUTH SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND PUBLIC RIGHTS-OF-WAY; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISION HEREIN.

- - -

The following entitled ordinance was read for the second time:

BY COUNCILOR GILBERT

06-012 (9774) - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NO. 23, AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM S, SUBURBAN, TO R-1-B, SINGLE FAMILY RESIDENTIAL, R-2, TWO FAMILY RESIDENTIAL, AND R-3, APARTMENT RESIDENTIAL, THE PROPERTY BETWEEN TRINITY ROAD AND QUINCE STREET 300 FEET EAST OF ANDERSON ROAD (DAN AND TED STOCKE (COFFEE CREEK)).

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

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

Nays: President Reinert -- 1

- - -

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

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

- - -

**ORDINANCE NO. 9773**

BY COUNCILOR GILBERT:

AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, ZONING DISTRICT MAP NO. 23 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, PROPERTY LOCATED AT THE NORTHEAST CORNER OF TRINITY ROAD AND ANDERSON ROAD (SCOTT AND SUSAN HANSEN).

The city of Duluth does ordain:

Section 1. That Plate No. 23 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. 23 at end of meeting]*  
(Reference File No. 06022)

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: June 11, 2006)

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

Yeas: Councilors Gilbert, Johnson, Krause, Little, Ness, Stover and President Reinert -- 7

Nays: Councilors Stauber and Stewart -- 2

Passed April 24, 2006  
Approved April 24, 2006  
HERB W. BERGSON, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

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**ORDINANCE NO. 9774**

BY COUNCILOR GILBERT:

AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NO. 23, AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM S, SUBURBAN, TO R-1-B, SINGLE FAMILY RESIDENTIAL, R-2, TWO FAMILY RESIDENTIAL, AND R-3, APARTMENT RESIDENTIAL, THE PROPERTY BETWEEN TRINITY ROAD AND QUINCE STREET 300 FEET EAST OF ANDERSON ROAD (DAN AND TED STOCKE (COFFEE CREEK)).

The city of Duluth does ordain:

Section 1. That Plate No. 23 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. 23 at end of meeting]*  
(Reference Planning Commission File No. 05026)

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: June 11, 2006)

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

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

Nays: President Reinert -- 1

Passed April 24, 2006

Approved pril 24, 2006

ATTEST:

JEFFREY J. COX, City Clerk

HERB W. BERGSON, Mayor

- - -



**OFFICIAL PROCEEDINGS**

Duluth City Council meeting held on Monday, May 8, 2006, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: Councilor Krause -- 1

- - -

The minutes of council meetings held on March 13 and 28, 2006, were approved upon a unanimous vote.

- - -

**PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS**

06-0508-01 Elizabeth Maeshima, et al. (two signatures), petition to vacate 12th Avenue East from the north line of East Sixth Street Alley to the south line of East Seventh Street, Portland Division of Duluth. -- Assessor

06-0508-02 Philip Myzel, et al. (16 signatures), petition to reclassify from R-1 to C-1 the property described as Lots 13 and 14, Block 3, Woodland Park Second Division. -- Assessor

06-0508-03 Minnesota state auditor audit report for Duluth Entertainment Convention Center authority (Duluth state convention center administrative board) for the years ended December 31, 2005 and 2004. -- Received

06-0508-13 Bernard Bischoff communication regarding agreement with Arrowhead Bowhunter's Alliance for management of the annual deer control hunt (06-0348R). -- Received

06-0508-14 Minnesota Power communication regarding vacation of Victoria Place (06-0338R and 06-0339R). -- Received

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**REPORTS FROM THE ADMINISTRATION**

Chief Administrative Officer Almanza reviewed the status of legislation regarding the establishment of a trust fund for retiree healthcare.

- - -

**REPORTS FROM OTHER OFFICERS**

06-0508-04 Assessor:

(a) Affidavit of mailing of notice of special assessment board public hearing to be held on May 9, 2006, at 3:30 p.m. in Room 106A, City Hall, regarding the proposed construction of a permanent street with water, sewer and gas utilities on Spear Avenue from Silcox Avenue to Livingston Avenue (estimated assessable portion - \$430,000). -- Clerk

(b) Letter of sufficiency of petition to vacate that part of the streets as platted in Auditor's Plat No. 24 which lie adjacent to Lots 2-8 and which lie within the SE1/4 of the NW1/4 of Section 29, Township 50 North, Range 14 West of the Fourth Principal meridian lying northerly of the northerly right-of-way line of Trinity Road. -- Received

06-0508-05 Property manager lease agreement, pursuant to Duluth City Code Section 2-31, with Kathy Elden for operation of the City Hall coffee shop. -- Mayor for execution

- - -

**REPORTS OF BOARDS AND COMMISSIONS**

06-0508-06 Board of zoning appeals minutes of: (a) January 24; (b) March 28, 2006, meetings. -- Received

06-0508-07 Duluth airport authority minutes of March 21, 2006, meeting. -- Received

06-0508-08 Housing and redevelopment authority of Duluth minutes of November 29, 2005, meeting. -- Received

06-0508-09 Library board minutes of March 28, 2006, meeting. -- Received

06-0508-10 Parking commission minutes of March 28, 2006, meeting. -- Received

06-0508-11 Tree commission recommendation regarding acquisition and use of tax forfeited lands currently held by St. Louis County. -- Received

06-0508-12 Spirit Mountain recreation area authority board minutes of: (a) March 23; (b) March 30, 2006, meetings. -- Received

- - -

**OPPORTUNITY FOR CITIZENS TO BE HEARD**

Louise Levy spoke in opposition to Public Document No. 06-0508-01, for reasons that: the street should remain in public ownership; it is a pedestrian access; pedestrian access to neighborhoods are a desirable characteristic in the comprehensive plan and if this vacation was granted, the area to the right of this area would have to be the spot where snow would be piled and thus an impediment to pedestrian access.

- - -

Bob Powless spoke on how for many Duluth is a fine place to live, work and raise a family.

- - -

Kay L. Lewis felt that renaming of streets should not be done for existing vintage streets, but that the name of streets for celebrities should be done for new streets that are created.

- - -

**RESOLUTION RECONSIDERED**

Councilor Gilbert moved to reconsider Resolution 06-0307, supporting Duluth's membership in the Coalition of Greater Minnesota Cities, which motion was seconded and carried upon the following vote:

Yeas: Councilors Gilbert, Johnson, Little, Stauber, Stewart and Stover -- 6

Nays: Councilor Ness and President Reinert -- 2

Absent: Councilor Krause -- 1

Councilors Stauber, Stewart, Ness and President Reinert supported the resolution for reasons of: this is only a recommendation to the administration; it could be tried for one year and then determine the value of it; because of the issues associated with local governmental aid, regional centers like Duluth need to build relationships with other outstate communities to be successful; before any expenditure is made, it would have to come back to the city council for approval and the city's involvement would bring more weight to the issues of regional centers and communities outside of the Twin Cities.

Councilors Gilbert, Stover and Johnson opposed the resolution because: the city of Duluth already belongs to the League of Minnesota Cities and has Kevin Walli as its personal lobbyist; it does not seem to be a good use of funds if positions might be cut to finance the membership fees; it should be in the budget plans and discussion for next year and more information is needed.

Resolution 06-0307 failed upon the following vote (Public Document No. 06-0508-15):

Yeas: Councilors Ness, Stauber, Stewart and President Reinert -- 4

Nays: Councilors Gilbert, Johnson, Little and Stover -- 4

Absent: Councilor Krause -- 1

- - -

## RESOLUTIONS TABLED

Councilor Stover moved to remove Resolution 06-0233, awarding a three year contract to Carlson Media, Inc., for development and promotion of public awareness about product safety and utility services not to exceed \$84,900 in 2006, \$85,000 for 2007 and \$85,000 for 2008, from the table, which motion was seconded and unanimously carried.

Councilor Stauber moved to remove the resolution from the agenda and request that the administration rebid this contract, which motion was seconded and carried upon the following vote:

Yeas: Councilors Gilbert, Johnson, Little, Stauber and Stewart -- 5

Nays: Councilors Ness, Stover and President Reinert -- 3

Absent: Councilor Krause -- 1

- - -

Councilor Stauber moved to remove Resolution 06-0301, authorizing the proper city officers to execute an amendment to Agreement No. 19897 with the Minnesota Conservation Corps for the brushing and clearing of overlooks along Skyline Parkway, from the table, which motion was seconded and unanimously carried.

Resolution 06-0301 was adopted as follows:

BY COUNCILOR STAUBER:

RESOLVED, that the proper city officers are authorized and directed to execute agreement amendment to Contract No. 19897, on file with the city clerk as Public Document No. 06-0508-16, between the city and the Minnesota Conservation Corps, for the brushing and clearing of overlooks along Skyline Parkway, increasing the amount owed by the city to \$6,027; funding budgeted in Capital Improvement Fund 100, Agency 700, Organization 1420, Object 5530, Project CM100-I507.

Resolution 06-0301 was unanimously adopted.

Approved May 8, 2006

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

BY COUNCILOR KRAUSE:

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, or equivalent approved by the purchasing agent that does not increase the price, for the street maintenance division in accordance with specifications on its low specification bid of \$208,509, terms net 30,

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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FOB destination, \$208,509 payable out of Capital Equipment Fund 250, Department/Agency 015, Organization 2006, Object 5580, Project CE250-V609.

BE IT FURTHER RESOLVED, that this resolution supercedes Resolution 06-0177.

Resolution 06-0306 was unanimously adopted.

Approved May 8, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

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

Grandma's Marathon - Duluth, Inc., Canal Park Drive and Buchanan Street, for June 16-17, 2006, with Linda Hanson, manager, with the music and serving ending at 1:00 a.m.

Resolution 06-0311 was unanimously adopted.

Approved May 8, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

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 June 16 and 17, 2006, with the serving and music ceasing at 11:00 p.m. on June 16, 2006, and serving and music ceasing at midnight on June 17, 2006.

Resolution 06-0312 was unanimously adopted.

Approved May 8, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

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 17, 2006, and confined to the fenced in parking lot at night on June 17, 2006, 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 06-0313 was unanimously adopted.

Approved May 8, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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license for the period ending August 31, 2006, subject to departmental approvals and the payment of sales and property taxes:

Black River Mills, Inc. (Norshor Theatre), 211 East Superior Street, with Eric Ringsred, 100 percent stockholder, transferred from Templecorp, Inc. (Norshor Theatre), same address.

Resolution 06-0325 was unanimously adopted.

Approved May 8, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

RESOLVED, that St. Louis County department of communications be and hereby is awarded a contract for furnishing computers aided dispatch system access during the year 2006 for the police department in accordance with specification at an estimated amount of \$19,080, terms net 30, FOB destinations, payable out of General Fund 0100, Department/Agency 200, Organization 1610, Object 5441.

Resolution 06-0331 was unanimously adopted.

Approved May 8, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

RESOLVED, that Swanson & Youngdale, Inc., be and hereby is awarded a contract for the exterior painting of Superior Street skywalks for the city architect division in accordance with specifications on its low specification bid of \$76,595, terms net 30, FOB job site, payable as follows: General Fund 100, Department/Agency 700, Organization 1420, Object 5530, Project No. CM 100-C223 - \$54,000; Project No. CM 100-1508 - \$2,000; GDC private funds - \$20,595.

Resolution 06-0332 was unanimously adopted.

Approved May 8, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the reappointments of Maria Krynicki and Samuel Resendez and the appointments of Myrna Raisanen, replacing John Staine, and Kristina Defoe, replacing Kamal Gindy, by Mayor Bergson to the Duluth human rights commission for terms expiring on April 20, 2009, are confirmed.

Resolution 06-0345 was unanimously adopted.

Approved May 8, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the reappointments of Robert Powless and Evelyn Tanner by Mayor Bergson to the American Indian commission for terms expiring on May 12, 2009, are confirmed.

Resolution 06-0346 was unanimously adopted.

Approved May 8, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

RESOLVED, that the city of Duluth (the city) hereby ratifies the submission of the contamination cleanup grant program application that was submitted by the city to the department of employment and economic development (DEED) on May 1, 2006, for the Clyde Park site (the application).

BE IT FURTHER RESOLVED, that the city act as the legal sponsor for the project described in the application and that the mayor of the city is hereby authorized to apply to DEED for \$1,930,391 in funding for this project on behalf of the city.

BE IT FURTHER RESOLVED, that the city has the legal authority to apply for financial assistance and the institutional, managerial and financial capability to ensure adequate project administration.

BE IT FURTHER RESOLVED, that a local match in the amount of up to \$643,464 is committed to the project from the insurance proceeds received due to the Peterson Arena fire and, if necessary, the capital improvement program general fund, all subject to acceptance of the grant.

BE IT FURTHER RESOLVED, that the city has not violated any federal, state or local laws pertaining to fraud, bribery, graft, kick-backs, collusion, conflicts of interest or other unlawful or corporate practice.

BE IT FURTHER RESOLVED, that upon approval of this application by the state, the acceptance thereof shall be subject to further resolution of the council authorizing such acceptance and designating the sources of the matching funds and the amount to be committed from each such fund.

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

Resolution 06-0319 was unanimously adopted.

Approved May 8, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

WHEREAS, a sufficient petition was filed with the city clerk requesting the vacation of the alley located 125 feet west of 100th Avenue West on the north side of West Skyline Parkway, legally described as alley adjoining Blocks 1 and 2, Riverside Park Second Addition (FN 06026); 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 the city planning commission found that said alley easement is useless for the purpose for which it was intended, based on the following findings:

(a) There are no existing or proposed utilities for this alley easement, all utilities are located in 100th Avenue West;

(b) The vacation will unify the ownerships and remove limitations for future private improvements;

and the commission did approve, unanimously, the alley vacation petition at its April 26, 2006, meeting.

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation of the alley easement described above and as more particularly described on Public Document No. 06-0508-17.

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 portion of the easement to be vacated.

Resolution 06-0336 was unanimously adopted.

Approved May 8, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

The city council finds the following:

(a) Ted Stocke of Trinity Development Group, LLC, has submitted to the city council a special use permit request for a low density planned development on 19 acres of property legally described as follows:

(1) In the proposed plat of Coffee Creek Division, Block 6, Lots 5-22; Block 7, Lots 1-6; Block 8, Lots 1-2; Block 9, Lots 1-14; Block 10, Lots 1-14; Outlot C, Outlot G, and Outlot I;

(b) Said permit application was duly referred to the city planning commission for a study, report and public hearing held during the regular meeting on Wednesday, April 26, 2006, and the commission has subsequently reported its recommendation of conditional approval to the city council;

(c) The applicant's compliance with conditions set out in this permitting resolution will remedy any shortcomings identified by the city planning commission's findings of inadequacies in the submitted documents, and that compliance with the conditions contained herein, will adequately protect the comprehensive plan and conserve and protect property values in the neighborhood and comply with City Code Section 50-32 (reference Planning Commission File No. 06033);

NOW, THEREFORE, BE IT RESOLVED, that a special use permit is hereby granted to Ted Stocke and Trinity Development Group, LLC, for ten acres of housing (54 units in 27 two-unit buildings), 4.5 acres of open space and 4.5 acres of street rights-of-way and stormwater ponds on 19 acres of property located between Trinity Road and Quince Street, approximately 300 feet east of Anderson Road, with the following terms and conditions:

(a) That the project be limited to, developed, and maintained according to plans entitled, "Coffee Creek Park Development, Special Use Permit Site Plan," and typical lot plans illustrated with the following documents: "Coffee Creek Park Development, Block 7 - Lots 1 & 2 - Grading Plan," "Coffee Creek Park Development, Block 9 - Lots 5 & 6 - Grading Plan," "Coffee Creek Park Development, Block 10 - Lots 13 & 14 - Grading Plan" all as submitted by MSA Professional Services, dated 4/5/2006, and identified as Public Document No. 06-0508-18;

(b) That the proper underlying zoning to support the special use permit be in effect prior to building construction;

(c) That the final plat for Coffee Creek Division be approved by the city planning commission and recorded with the Saint Louis County recorder of deeds;

(d) That the project site be provided with two roadway accesses as required by the city fire marshal or receive written permission from the fire marshal allowing the project to proceed without the required two access roads;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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(e) That the project secure necessary building, grading, erosion control and stormwater management permits from the city and Minnesota pollution control agency.

Resolution 06-0337 was unanimously adopted.

Approved May 8, 2006

HERB W. BERGSON, Mayor

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BY PRESIDENT REINERT:

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

WHEREAS, the city of Duluth will be receiving new federally funded HAVA Auto Mark assistive voting equipment, without privacy shields;

NOW THEREFORE, BE IT RESOLVED, that the proper city officials are hereby authorized to prepare and submit a grant application for \$958.50 to the Minnesota secretary of state to purchase equipment to assist individuals with disabilities to vote privately.

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 1420, Object 4220-02.

Resolution 06-0324 was unanimously adopted.

Approved May 8, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Midwest Region Gas Task Force be and hereby is awarded a contract for membership for year 2006 for the natural gas division in accordance with the fee of \$13,766.72, payable out of Gas Fund 520, Department/Agency 500, Organization 1915, Object 5319.

Resolution 06-0308 was unanimously adopted.

Approved May 8, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

WHEREAS, that Camp, Dresser and McKee has developed a facility plan for sanitary sewer overflow storage in the Lakeside area, that the city of Duluth desires to obtain funding from the state of Minnesota to implement the plan and that state law requires that the city adopt the facility plan in order to receive state funding for the project.

RESOLVED, that the Duluth City Council hereby adopts the sanitary sewer overflow storage plan for the Lakeside area, which is on file in the office of the city clerk as Public Document No. 06-0508-19.

Resolution 06-0309 was unanimously adopted.

Approved May 8, 2006

HERB W. BERGSON, Mayor

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are hereby authorized to enter into Amendment No. 2 (Public Document No. 06-0508-20) to City Contract No. 19704 with the Minnesota department of natural resources extending the term of the grant provided thereunder to December 29, 2006.

Resolution 06-0315 was unanimously adopted.  
Approved May 8, 2006  
HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that American Pavement Solutions, Inc., be and hereby is awarded a contract for 2006 crack seal of East Superior Street at various locations for the engineering division in accordance with its low specification bid of \$48,024, terms net 30, FOB job site, payable out of Fund 100, Agency 500, Organization 1920-2550, Object 5403, Project Number 0246TR.

Resolution 06-0320 was unanimously adopted.  
Approved May 8, 2006  
HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Reuben Johnson & Son, Inc., be and hereby is awarded a contract for Duluth Heights I for the 2006 street improvement program, City Project No. 0124TR, for the engineering division in accordance with its low specification bid of \$1,087,200, terms net 30, FOB job site, payable out of Street Improvement Fund 0440, Agency 038, Object 5530.

Resolution 06-0333 was unanimously adopted.  
Approved May 8, 2006  
HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that the Saint Louis County Board of Commissioners is hereby requested to free convey to the city of Duluth a utility easement across the following tax forfeited parcel for purposes of construction of a six inch PE high pressure gas main located on the south side of East Superior Street between 63rd Avenue East and 65th Avenue East (Job No. 0030GS):

Applicant	Legal description	Location
City of Duluth	All that part of Lot 4, Block 53, Lester Park Fourth Division (PID 2860-0460) lying within 15 feet of East Superior Street	15 foot wide strip of Lot 4 on the south side of East Superior Street between 63rd Avenue East and 65th Avenue East

Resolution 06-0335 was unanimously adopted.  
Approved May 8, 2006  
HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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RESOLVED, that the proper city officials are authorized to execute a contract, substantially the same as that on file with the city clerk as Public Document No. 06-0508-22, between the city and Lexington Insurance company, providing for joint effort and cost sharing in prosecuting claims for indemnity for the loss of Peterson Arena.

Resolution 06-0341 was unanimously adopted.

Approved May 8, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that LHB, Inc., be and hereby is awarded a professional engineering services contract for design services for the emergency repair of the West Fourth Street storm culvert between Tenth Avenue West and 11th Avenue West in accordance with its proposal dated April 28, 2006, in the estimated amount of \$15,974, payable from Stormwater Fund 535, Department 500, Organization 1905, Object 5533, City Project No. 0563ST.

Resolution 06-0347 was unanimously adopted.

Approved May 8, 2006

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, a copy of which is on file in the office of the city clerk as Public Document No. 06-0508-23, with the Seaway Port authority of Duluth for the temporary use of land in Airpark at no cost for the operation of police dog certification trials on June 25-27, 2006.

Resolution 06-0344 was unanimously adopted.

Approved May 8, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STAUBER:

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 2006 marathon, which agreement is on file in the office of the city clerk as Public Document No. 06-0508-24, and such contribution shall be paid from Fund 258-030-5436-06.

Resolution 06-0316 was unanimously adopted.

Approved May 8, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STAUBER:

RESOLVED, that the proper city officers are authorized to enter into an agreement with Friends of Tennis, Inc., providing for the shared use of the Longview tennis courts for a period ending December 31, 2006, with an option to renew for an additional one year period; said agreement to be substantially in the form of Public Document No. 06-0508-25 on file in the office of the city clerk.

Resolution 06-0318 was unanimously adopted.

Approved May 8, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STAUBER:

RESOLVED, that the city of Duluth accepts from the Duluth Library Foundation a gift of 152 stacking chairs and five storage carts to be used to facilitate operations of the library system.

BE IT FURTHER RESOLVED, that the city expresses its gratitude, on behalf of the thousands of citizens who use the library, for the generous gift from the Duluth Library Foundation and the on-going activities of the foundation which benefit the Duluth public library.

Resolution 06-0340 was unanimously adopted.

Approved May 8, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STAUBER:

RESOLVED, that the proper city officials are authorized to enter into a limited use permit for non-motorized recreational trail, a copy of which is on file with the city clerk as Public Document No. 06-0508-26, from the state of Minnesota department of transportation (Mn/DOT) to allow the extension of the Superior Hiking Trail over or upon Mn/DOT right-of-way at various locations.

Resolution 06-0342 was unanimously adopted.

Approved May 8, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STAUBER:

RESOLVED, that the proper city officers are hereby authorized to enter into a first amendment to Agreement No. 19606, a copy of which is on file in the office of the city clerk as Public Document No. 06-0508-27, with the Superior Hiking Trail Association, substituting and adding property thereto.

Resolution 06-0343 was unanimously adopted.

Approved May 8, 2006

HERB W. BERGSON, Mayor

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At this time, 7:32 p.m., the public hearing on the establishment of Lake Superior View Tax Increment Financing (TIF) District and adoption of the TIF plan began.

George Garnett, executive director of Neighborhood Housing Services of Duluth, developers of Lake Superior View, reviewed the content of the project and the need for the TIF.

At this time, 7:38 p.m., the public hearing was declared closed and the regular order of business was resumed.

- - -

Resolution 06-0322, by Councilor Gilbert, approving a tax increment financing plan for the Lake Superior View Tax Increment Financing District as proposed by the Housing and Redevelopment Authority of Duluth, Minnesota, was introduced for discussion.

Councilor Stover felt that more information should be supplied and a committee meeting held.

Councilor Stewart commented that: this resolution was not received by the council until the agenda session last Thursday; the TIF plan was only received last Friday; the project budget that was requested on Thursday has not been supplied yet and there are many more questions that need to be addressed.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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Councilor Stewart moved to table the resolution, which motion was seconded and carried as follows:

Yeas: Councilors Gilbert, Johnson, Little, Stauber, Stewart and Stover -- 6

Nays: Councilor Ness and President Reinert -- 2

Absent: Councilor Krause -- 1

- - -

Resolutions 06-0338 and 06-0339, denying and approving, respectively, the vacation of Victoria Place (aka 28th Avenue East) between East Eighth Street and Elizabeth Street, located between 2727 and 2801 East Eighth Street (Johnson, Reichhoff, Sjogren), by Councilor Gilbert, were introduced for discussion.

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

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BY COUNCILOR STOVER:

RESOLVED, that Nels Nelson & Sons, Inc., be and hereby is awarded a contract for construction of Central Avenue Alley from Ramsey Street to Bristol Street for the engineering division in accordance with specifications on its low specification bid of \$76,943.58, terms net 30, FOB job site, payable out of Special Assessment Fund 0410, Department/Agency 038, Object 5530, City Job No. 0524TR.

Resolution 06-0314 was adopted upon the following vote:

Yeas: Councilors Johnson, Little, Ness, Stauber, Stewart, Stover and President Reinert -- 7

Nays: None -- 0

Abstention: Councilor Gilbert -- 1

Absent: Councilor Krause -- 1

Approved May 8, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0334, by Councilor Stover, awarding a contract to Nels Nelson & Sons, Inc., for construction of a watermain in Lawn Street from Portal Avenue to approximately 383 feet east of centerline of Portal Avenue in the amount of \$47,858.15, was introduced for discussion.

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

- - -

Resolution 06-0323, by Councilor Little, requesting the city purchasing department seek a qualified legal firm that does not have a conflict of interest with the city's activities to investigate and, if appropriate, prosecute for the possible violation of Minnesota Statutes Section 3.979, subd. 4, alleged to have occurred by city of Duluth, was introduced for discussion.

Councilor Little moved to table the resolution until all councilors were present, which motion was seconded and failed upon the following vote:

Yeas: Councilors Gilbert, Little, Stauber and Stewart -- 4

Nays: Councilors Johnson, Ness, Stover and President Reinert -- 4

Absent: Councilor Krause -- 1

Councilor Little gave his view on the history of this issue.

Councilor Ness felt that there were good points on each side of the issue, but was not ready to vote on this at this time.

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

Yeas: Councilors Gilbert, Little, Ness, Stauber and Stewart -- 5

Nays: Councilors Johnson, Stover and President Reinert -- 3

Absent: Councilor Krause -- 1

- - -

Resolution 06-0348, by Councilor Stauber, approving agreement with Arrowhead Bowhunter's Alliance for management of the annual deer control hunt, was introduced for discussion.

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

Bernard Bischoff expressed his concerns relative to: the exemptions to the open meeting law relative of the assignment of hunting areas; there could more improvements and that the process should not have been politicalized by who you knew.

Resolution 06-0348 was adopted as follows:

BY COUNCILOR STAUBER:

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. 06-0508-21, between the city and Arrowhead Bowhunter's Alliance for conducting the annual deer control hunt at no net cost to the city.

Resolution 06-0348 was unanimously adopted.

Approved May 8, 2006

HERB W. BERGSON, Mayor

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## **INTRODUCTION AND CONSIDERATION OF ORDINANCES**

### **ORDINANCE TABLED**

BY COUNCILORS STEWART, STAUBER AND KRAUSE

05-060 - AN ORDINANCE AMENDING CHAPTER 2 OF THE DULUTH CITY CODE, 1959, AS AMENDED; ADDING ARTICLE XXXIV - MINIMUM REQUIREMENTS FOR A DEVELOPMENT AGREEMENT.

Councilor Stewart 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.

Kay L. Lewis expressed concerns that: the lack of knowing who is behind a project and how much money they are putting up has lead the city to find no one that is responsible for a failure; this ordinance would allow the city to see if the deal is too good to be true and it gives enough time for reviews and to decline agreements, if necessary.

Councilor Stewart moved to retable the ordinance, which motion was seconded and unanimously carried.

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The following entitled ordinance was read for the second time:

BY PRESIDENT REINERT

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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06-013 (9775) - AN ORDINANCE GRANTING A FRANCHISE TO CC VIII OPERATING, LLC, D/B/A CHARTER COMMUNICATIONS, ITS SUCCESSORS AND ASSIGNS, TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY OF DULUTH SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND PUBLIC RIGHTS-OF-WAY; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISION HEREIN.

President Reinert moved passage of the ordinance and the same was adopted upon a unanimous vote.

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The meeting was adjourned at 8:27 p.m.

JEFFREY J. COX, City Clerk

- - -

**ORDINANCE NO. 9775**

BY PRESIDENT REINERT:

AN ORDINANCE GRANTING A FRANCHISE TO CC VIII OPERATING, LLC, D/B/A CHARTER COMMUNICATIONS, ITS SUCCESSORS AND ASSIGNS, TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE SYSTEM IN THE CITY OF DULUTH SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM AND PUBLIC RIGHTS-OF-WAY; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF THE PROVISION HEREIN.

**STATEMENT OF INTENT AND PURPOSE**

City intends, by the adoption of this franchise, to bring about the further development of a cable system and the continued operation of it. Such development can contribute significantly to the communication needs and desires of the residents and citizens of city and the public generally. Further, city may achieve better utilization and improvement of public services and enhanced economic development with the development and operation of a cable system; and adoption of this franchise is, in the judgment of the city council, in the best interests of city and its residents.

**FINDINGS**

In review of the request for renewal by grantee and negotiations related thereto, the city council makes the following findings:

- (a) Grantee's technical ability, financial condition, legal qualifications and character were considered and approved in a full public proceeding after due notice and a reasonable opportunity to be heard;
- (b) Grantee's plans for operating the cable system were considered and found adequate and feasible in a full public proceeding after due notice and a reasonable opportunity to be heard;
- (c) The franchise granted to grantee by city complies with the existing applicable state statutes, federal laws and regulations;
- (d) The franchise granted to grantee is nonexclusive.

NOW, THEREFORE, the city of Duluth does ordain:

Section 1. Definitions.

For the purposes of this franchise, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "may" is directory and discretionary and not mandatory; the words "shall" and "will" are mandatory and not merely directory or discretionary. Words not defined shall be given their common and ordinary meaning.

(a) Applicable laws means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable by any governmental authority;

(b) Basic cable service means any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the franchise to be carried on the basic tier. Basic cable service as defined herein shall not be inconsistent with 47 U.S.C. § 543(b)(7);

- (c) Cable service, or service, means:
- (1) The one-way transmission to subscribers of:
    - (A) Video programming; or
    - (B) Other programming service; and
  - (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. Cable service as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(6);
- (d) City means the city of Duluth, a municipal corporation of the state of Minnesota, in its present incorporated form, or in any later recognized, consolidated, enlarged or reincorporated form;
- (e) Channel, or cable channel, means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel as defined by the FCC. Cable channel as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(4);
- (f) Converter means an electronic device which converts signals to a frequency acceptable to a television receiver of a subscriber.
- (g) Council means the present governing body of the city or any future board constituting the legislative body of the city;
- (h) Drop means the cable that connects the ground block on the subscriber's residence to the nearest feeder cable of the system;
- (i) FCC means the federal communications commission and any legally appointed, designated or elected agent or successor;
- (j) Franchise, or cable franchise, means this franchise ordinance and the regulatory and contractual relationship established hereby;
- (k) Franchise fee includes any tax, fee, or assessment of any kind imposed by the city or other governmental entity on grantee or subscriber, or both, solely because of their status as such. It does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable subscribers); capital costs which are required by the franchise to be incurred by grantee for public, educational, or governmental access facilities; requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages; or any fee imposed under Title 17 of the United States Code. Franchise fee defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 542(g);
- (l) Grantee is CC VIII Operating, LLC, d/b/a Charter Communications, its lawful successors, transferees or assignees;
- (m) Gross revenue means any and all revenue derived by grantee from the operation of its cable system to provide cable service within the city including, but not limited to:
- (1) All cable service fees;
  - (2) Franchise fees;
  - (3) Late fees and returned check fees;
  - (4) Installation and reconnection fees;
  - (5) Upgrade and downgrade fees;
  - (6) Local, state and national advertising revenue;
  - (7) Home shopping commissions;

- (8) Equipment rental fee; and
- (9) Guide revenue.

The term gross revenue shall not include bad debts or any taxes or fees on services furnished by grantee imposed upon subscribers by any municipality, state or other governmental unit, including the FCC regulatory fee, credits, refunds and any amounts collected from subscribers for deposits, PEG fees or PEG support. City and grantee acknowledge and agree that grantee will maintain its books and records in accordance with generally accepted accounting principles (GAAP);

(n) Installation means any connection of the system from feeder cable to the point of connection including standard installations and custom installations with the subscriber converter or other terminal equipment;

(o) Normal business hours means those hours during which most similar businesses in city are open to serve customers. In all cases, normal business hours must include some evening hours, at least one night per week and/or some weekend hours;

(p) Normal operating conditions means those service conditions which are within the control of grantee. Those conditions which are not within the control of grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions. Those conditions which are ordinarily within the control of grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods and maintenance or upgrade of the cable system. Normal operating conditions as defined herein shall not be inconsistent with the definition set forth in 47 C.F.R. § 76.309;

(q) Other programming service means information that a cable operator makes available to all subscribers generally. Other programming services as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522 (14);

(r) PEG means public, educational and governmental. Reference to access channels shall mean PEG access channels;

(s) Person is any person, firm, partnership, association, corporation, company, limited liability entity, excluding the city, or other legal entity;

(t) Service area, or franchise area, means the entire geographic area within the city as it is now constituted or may in the future be constituted;

(u) Service interruption means the loss of picture or sound on one or more cable channels. Service interruption as defined herein shall not be inconsistent with the definition set forth in 47 C.F.R. § 76.309;

(v) Standard installation means any residential or commercial installation which can be completed using a drop of 125 feet or less;

(w) Street means the surface of and the space above and below any public street, road, highway, freeway, lane, path, public way, alley, court, sidewalk, boulevard, parkway, drive or any easement or right-of-way now or hereafter held by city. To the extent required by applicable law, the term "street" shall include those rights expressly granted by Minn. Stat. § 238.35 subd. 3 and 47 U.S.C. § 541 (a);

(x) Subscriber means any person who receives broadcast programming distributed by a cable system and does not further distribute it. Subscriber as defined herein shall not be inconsistent with the definition set forth in 47 C.F.R. § 76.5(ee);

(y) System, or cable system, means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to

provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include:

- (1) A facility that serves only to retransmit the television signals of one or more television broadcast stations;
- (2) A facility that serves subscribers without using any public right-of-way;
- (3) A facility of common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. § 201 et seq., except that such facility shall be considered a cable system (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;
- (4) An open video system that complies with 47 U.S.C. § 573; or
- (5) Any facilities of any electric utility used solely for operating its electric utility systems.

Cable system as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(7);

(z) Video programming means programming provided by, or generally considered comparable to programming provided by, a television broadcast station. Video programming as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(20).

Section 2. Uses permitted by grantee.

The city hereby grants to grantee the nonexclusive right to engage in the business of operating and providing a system in the city, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any public street or highway, such poles, wires, cable, conductors, ducts, conduits, vaults, manholes, amplifiers, converters, modulators, fiber optic cables, repeaters, appliances, attachments and other property as may be necessary and appurtenant to the system; and in addition so to use, operate and provide similar facilities or properties rented or leased from other persons, including, but not limited to, a public utility or other grantee franchised or permitted to do business in the city. No permission or license is given to enter private property without the express consent of the owner or agent in possession thereof except as may be permitted by applicable law.

Section 3. Non-exclusivity of grant.

(a) Nothing in this franchise shall affect the right of the city to grant to any other person a franchise or right to occupy the streets, or any part thereof for the erection, installation, construction, reconstruction, operation, maintenance, dismantling, testing, repair or use of a cable system within the city;

(b) In the event the city enters into a franchise with any cable operator other than the grantee to enter into the city's streets for the purpose of constructing and operating a cable system or providing cable service, the material provisions thereof shall be on terms and conditions no more favorable or less burdensome than those in this franchise pertaining to:

- (1) The area served;
- (2) Public, educational or governmental access requirements; or
- (3) Franchise fees. Nothing in this paragraph shall prevent the city from imposing additional terms and conditions on any other person to whom it may grant a franchise;

(c) Notwithstanding any provision to the contrary, if a non-wireless facilities based entity, legally authorized by state or federal law, makes available for purchase by subscribers or customers "cable service" or its functional equivalent (including video programming under 47 U.S.C. § 571(a)(3) or § 573) within the franchise area without a franchise or other similar lawful

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

authorization granted by the city, then grantee or city shall have the right, upon 90 days advance written notice to the other party, to terminate this franchise and, negotiate a renewal or replacement franchise, license, consent, certificate or other authorization with any appropriate governmental entity. Provided, however, the city may not exercise the option to terminate the franchise under this provision if such action would deprive the grantee of authority to continue to provide cable services within the city. nothing herein shall in any way limit or reduce grantee's right to provide cable service in the city under applicable laws, nor the city's right to regulate grantee's provision of cable service in the city under applicable laws;

(d) Grantee specifically agrees that it shall fulfill its commitment specified in sections 22(b) and (c) even if grantee should have the right to, or does, terminate under Section 3(c) above.

Section 4. Duration of franchise.

This franchise shall be for a term of ten years following the date of adoption of this franchise by the council, unless said franchise is terminated prior to its date of expiration by the city in the manner hereinafter provided.

Section 5. Previous franchises.

Upon acceptance by grantee as required by Section 38 herein, this franchise shall supersede and replace any previous ordinance or other authorization granting a franchise to grantee. Ordinance No. 9191 is hereby expressly repealed. This franchise constitutes the entire agreement between the city and grantee regarding the subject matter hereof. This franchise may not be amended without an appropriate written amendment signed by both parties.

Section 6. Payment to the city.

(a) Throughout the term of this franchise, the grantee shall pay to the city, within 45 days of the end of each calendar quarter, five percent of grantee's gross revenues for the previous quarter. Payment of the franchise fee will be made with an itemization of the gross revenues showing the basis for the computation in form and substance substantially the same as Exhibit A:

Exhibit A Franchise Fee Payment Worksheet TRADE SECRET – CONFIDENTIAL				
	Month/Year	Month/Year	Month/Year	Total
Basic Cable Service				
Installation Charge				
Bulk Revenue				
Expanded Basic Service				
Pay Service				
Pay-per-view				
Guide Revenue				
Franchise Fee Revenue				

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

	Month/Year	Month/Year	Month/Year	Total
Advertising Revenue				
Home Shopping Revenue				
Digital Services				
Inside Wiring				
Other Revenue				
Equipment Rental				
Processing Fees				
Bad Debt				
REVENUE				
Fee Calculated				
Fee Factor: 5%				

City agrees to maintain the confidentiality of Exhibit A, consistent with the requirements of Section 14(a) hereof. In the event that a franchise fee payment or other sum due is not received by the city on or before the date due, or is underpaid, grantee shall pay in addition to the payment, or sum due, interest from the due date at an annual rate equal to the prime interest rate of the primary depository bank in the city plus two percent;

(b) Any payment shall not be construed as a release or as an accord and satisfaction of any claim the city may have for further or additional sums payable under this franchise, or for the performance of any other obligation hereunder. In the event the city should conduct a review of grantee's books and records pursuant to Section 14 of this franchise and such review indicates a franchise fee underpayment of ten percent or more, the grantee shall assume all reasonable documented out-of-pocket costs of such audit, and pay same upon demand by the city.

Section 7. Limitations of franchise.

(a) This franchise shall be nonexclusive and complies with franchise standards contained in Minnesota Statutes, Chapter 238;

(b) No privilege or exemption shall be granted or conferred by the franchise granted hereunder except those specifically prescribed herein;

(c) Any privilege claimed under this franchise by the grantee in any street, or other public property, shall be subordinate to any prior lawful occupancy of the streets, or other public property;

(d) Any franchise shall be a privilege to be held in personal trust by the grantee. It cannot in any event be sold, transferred, leased, assigned or disposed of, in whole or in part, either by forced or involuntary sale, merger, consolidation, or otherwise, without prior consent of the council expressed by resolution, and then only under such conditions as may be therein prescribed. The said consent of the city may not be arbitrarily refused provided, however, the proposed assignee must show financial and technical responsibility and any new grantee must

agree to comply with all provisions of this franchise; and provided, further, that no such consent shall be required for a transfer in trust, mortgage or other hypothecation as a whole, to secure an indebtedness. The provisions of 47 U.S.C. §533 and §537 and Minn. Stat. § 238.083 shall apply to all such transactions. The inclusion of new or different general partners in the partnership shall be deemed a partial transfer or sale of the franchise;

(e) Time shall be of the essence of this franchise. The grantee shall not be relieved of its obligation to comply promptly with any of the provisions of this franchise or by any failure of the city to enforce prompt compliance;

(f) Any right or power in, or duty impressed upon any officer, employee, department or board of the city shall be subject to delegation or transfer by the city to any other officer, employee, department or board of the city or to a nonprofit corporation;

(g) Any recourse the grantee may have against the city for any loss, cost, expense or damage arising out of any provisions or requirements, of this franchise, or its enforcement shall be consistent with the limitations of franchising authority liability provided for in the Cable Communications Policy Act of 1984, as amended;

(h) This franchise shall not relieve the grantee of any obligation involved in obtaining pole space from any department of the city, utility company or from others maintaining poles in streets;

(i) The grantee and the city agree that each of them will conform to applicable laws upon their respective effective dates or when compliance is required by the law, whichever is later.

#### Section 8. Location of grantee's properties.

(a) Any poles, wires, cable lines, conduits or other properties of the grantee to be constructed or installed in streets shall be so constructed or installed only at such locations and in such manner as shall be approved by the city engineer, acting in the exercise of his reasonable discretion;

(b) The grantee shall not install or erect any facilities or apparatus on public property or streets within the city (except those installed or erected upon public utility facilities now existing) without written approval of the city engineer;

(c) In those areas and portions of the city where both the transmission and distribution facilities of the public utility providing telephone service and those of the utility providing electric service are underground, or hereafter may be placed underground, then the grantee shall likewise construct, operate and maintain all of its transmission and, distribution facilities underground. Amplifiers in grantee's transmission and distribution lines and other equipment that may be unreasonably costly or adversely affected by underground placement may be in metal or concrete pedestals or vaults upon the surface of the ground;

(d) Where poles or other wire-holding structures already exist for use in serving the city are available for use by the grantee, but it does not make arrangements for such use, the city engineer may require the grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the grantee are just and reasonable.

#### Section 9. City rights in franchise.

(a) The right is hereby reserved to the city to adopt, in addition to the provisions contained herein and in existing applicable ordinances as of the effective date, such additional regulations of general applicability as it shall find necessary in the exercise of its police power; provided that such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the rights herein granted or any preemptive state or federal law;

(b) The city shall, upon request, have the right to inspect the books, records, maps, plans and other like materials of the grantee related to franchise responsibilities during normal business hours as provided herein, for the purposes of franchise administration;

(c) The city shall have the right, during the life of this franchise, to install and maintain free of charge upon the poles of the grantee any wire and pole fixtures necessary for a police alarm system, on the condition that such wire and pole fixtures do not interfere with the system operations of the grantee;

(d) The city shall have the right to make inspections of the construction or installation work performed pursuant to the provisions of this franchise and make any inspection it shall find necessary to secure compliance with the terms of this franchise and other pertinent provisions of law;

(e) At the expiration of the term for which this franchise is granted and any renewals thereof, or upon its termination and cancellation, as provided for herein, the city shall have the right to require the grantee to remove at its own expense all portions of the system from all public ways within the city.

Section 10. Change required by public improvements.

(a) The grantee 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 acting in a governmental or proprietary capacity;

(b) To the extent not inconsistent with any other local law, all wires, conduits, cable and other property and facilities of grantee shall be located, constructed, installed and maintained in compliance with applicable codes. Grantee shall keep and maintain all of its property so as not to unnecessarily interfere with the usual and customary trade, traffic, or travel upon the streets and public places of the franchise area or endanger the lives or property of any person.

Section 11. Failure to perform street work.

Upon failure of the grantee to complete any work required by law or by the provisions of this franchise to be done in any street within the time prescribed, and to the satisfaction of the city engineer, the city engineer may cause such work to be done, and the grantee shall pay to the city the cost thereof in the itemized amounts reported by the city engineer to the grantee within 60 days after receipt of such itemized report.

Section 12. Performance bond.

(a) The grantee shall maintain in full force and effect for the term of this franchise, at grantee's sole expense, a standard form corporate surety bond to be approved by the city attorney, which approval shall not be unreasonably withheld, in the amount of \$50,000 (performance bond). The performance bond shall be conditioned upon the grantee's compliance with all of the terms and provisions of this franchise. There shall be recoverable jointly and severally from the principle and surety of the performance bond any damages or loss suffered by the city as a result of grantee's failure to comply with the terms and provisions of the franchise, including the full amount of any compensation, indemnification, or other costs, languages or liabilities, plus a reasonable allowance for attorney's fees and costs, up to the full amount of the performance bond. The performance bond shall provide that 30 days prior written notice be given to city of any cancellation or material change in the performance bond or of grantee's intention not

to renew;

(b) Neither the provisions of this Section, any performance bond accepted by the city pursuant thereto, nor any damages recovered by the city thereunder, shall be construed to excuse faithful performance by the grantee, or limit the liability of the grantee under this franchise for damages, either to the full amount of the performance bond, or otherwise. The city agrees to either return the original bond or sign the necessary documentation to release the bond promptly upon the expiration, termination or transfer of this franchise;

(c) Notwithstanding any other provision of this franchise, the city does not waive and specifically reserves any and all rights it may have to pursue all legal and equitable remedies available to it under applicable law.

Section 13. Indemnification of the city.

(a) The grantee shall indemnify the city, its officers and its employees, against all claims, demands, actions, suits and proceedings by persons including agents or employees of grantee against all liability to others, and against any loss, cost and expense resulting therefrom including reasonable attorney's fees, arising out of the exercise or enjoyment of its franchise, irrespective of the amount of the comprehensive liability insurance policy required hereunder, provided that the city shall give the grantee written notice of its obligation to indemnify the city within ten business days of receipt of a written claim or action (e.g. summons and complaint or demand letter) pursuant to this Section. In the event any such claim arises, the city shall tender the defense thereof to the grantee and the grantee shall have the right to defend, settle or compromise any claims arising hereunder and the city shall cooperate fully herein. If the city determines in good faith that its interest cannot be represented by the grantee, the grantee shall be excused from any obligation to represent the city. Notwithstanding the foregoing, the grantee shall not be obligated to indemnify the city for any damages, liability or claims resulting from the willful misconduct or gross negligence of the city or for the city's use of the cable system, including any PEG channels;

(b) At all times during the term of this franchise, the grantee shall maintain in full force and effect (at its own cost and expense) a commercial general liability insurance policy, including contractual liability coverage in a form satisfactory to the city attorney, protecting against liability for loss or damage for personal injury, death and property damage, occasioned by the operations of grantee under such franchise, with minimum liability limits of \$2,000,000 per occurrence or combined single limit and \$3,000,000 for excess liability coverage. Grantee shall furnish to city a certificate of insurance evidencing such coverage;

(c) Current ISO additional insured endorsement CG 20 10 is not acceptable. If the ISO 20 10 is used, it must be a pre-2004 edition;

(d) The certificate of insurance mentioned in the foregoing paragraph shall name the city, its, officers, boards, commissions, agents and employees, as additional insured and shall contain a provision that a written notice of any cancellation or failure to renew said policy shall be delivered to the city 30 days in advance of the effective date thereof. If proof of such insurance is in the form of a so-called "accord" form of certificate, the words, "endeavor to" shall be stricken from the notice provisions thereof;

(e) This franchise shall not be effective unless and until each of the foregoing policies of insurance as required in this Section have been delivered to the city;

(f) Nothing in this franchise shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring grantee's facilities while performing any work connected with grading, regrading or changing the line of any street or public place or with the

construction or reconstruction of any sewer or water system.

Section 14. Inspection of property and property records.

(a) The city shall have the right, upon reasonable notice of not more than 30 days, to inspect and copy, during normal business hours at grantee's local office, or a location no more than 30 miles from the City Hall, documentation reasonably necessary for the city to monitor grantee's compliance with this franchise. Except as specifically set forth in this franchise, grantee shall not be required to create reports which are not generated in the normal course of business. Grantee shall not be required to disclose books and records of an affiliate which is not providing cable service in the service area, nor to provide subscriber information in violation of Section 631 of the Cable Act. City acknowledges that some of the books or records of grantee may be classified as confidential and therefore may subject grantee to a competitive disadvantage if made public. City shall maintain the confidentiality of any and all records provided to it by grantee that are not required to be made public pursuant to applicable laws. The city agrees to treat as confidential any information disclosed by, and clearly marked by, the grantee as confidential or trade secret and only disclose it to employees of the city, which may include elected officials, that have a business need to know, or in order to enforce the provisions of this franchise. No separate confidentiality agreement shall be required by grantee as a condition to said inspection by city employees. Any representatives or agents who are retained by the city and are to be provided access to data marked confidential by the grantee in connection with an inspection under this Section shall be required to execute a third party confidentiality agreement in form and substance substantially the same as in Exhibit B below prior to receipt of such confidential data.

Exhibit B

Third Party Confidentiality

In connection with the work that [individual and/or company name] \_\_\_\_\_ is performing for the city of Duluth, Minnesota, relating to the review of records held by Charter Communications ("Charter") with respect to Charter's franchise with the city, [individual and/or company name] is to be given access to certain material of Charter that is marked confidential or trade secret and which is to be treated as "not public data" or "nonpublic data" under the Government Data Practices Act.

[individual and/or company name] agrees that:

- it will maintain the confidentiality of such information to the same degree as if it were an employee of the city of Duluth;
  - to any person other than the city of Duluth, except as specifically authorized and required by the city of Duluth, in the performance of its duties on behalf of the city; and
  - it will return any information designated as confidential, including copies of such information, to the grantee upon the completion of the duties it has been retained to perform.
- \_\_\_\_\_

\_\_\_\_\_ [individual and/or company name] has read this agreement and agrees to comply with and be bound by its terms.

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

To the extent it is necessary for city to send employees, agents or representatives to a location more than 30 miles outside of the city to inspect grantee's books and records, grantee shall be responsible for all time and travel costs incurred by city representatives resulting from such travel;

(b) Throughout the term of this franchise, grantee shall maintain books and records in accordance with normal and accepted bookkeeping and accounting practices for the cable communications industry. City acknowledges that some of the records which may be inspected may be classified as confidential or trade secrets under applicable laws and therefore may subject grantee to competitive disadvantage if made public. City shall therefore maintain the confidentiality of any and all records provided to it by grantee which are not required to be made public pursuant to the Minnesota Data Practices Act and applicable laws. The books and records to be maintained by grantee shall include, but not be limited to, the following:

- (1) A two year record of all written subscriber complaints and the action taken;
- (2) A two year record of all service outages;
- (3) A file of all subscriber contract forms; and
- (4) Financial records related to franchise responsibilities.

Section 15. Reports to the city.

Grantee shall, upon request, file with the city by April 1 of each year during the term of this franchise the following information regarding the previous year's operations:

- (a) A copy of each document filed with all federal, state and local agencies not previously filed with city with respect to the ownership and operation of system;
- (b) A copy of its most recent annual notice to subscribers;
- (c) A current copy of its rules and policies;
- (d) A current copy of its subscriber service contract, if any;
- (e) Results of any performance tests, including those required by the FCC.

Section 16. Picture quality and technical requirements.

(a) Grantee shall construct and maintain a system that at least meets minimum technical standards or guidelines now or hereafter established by the FCC (47 C.F.R. Subpart K, § 76.601-76.640) relating to cable systems; provided, however, that in no event shall the technical standards required to be met by grantee be less stringent than the FCC standards or guidelines in effect during the term of this franchise;

(b) The system shall be designed for and operated on a 24 hour a day continuous operation basis. Grantee shall make provisions to ensure, as much as is reasonable, continuous operation of the system;

(c) Grantee shall test the technical capacity of the system in accordance with FCC standards and as necessary to diagnose problems and to respond to complaints. The results of any tests required by the FCC shall be filed with the city within ten days of a written request for

a copy of such tests. Representatives of city may, upon request, be present during testing. The expenses of any tests required by the FCC shall be paid by grantee.

Section 17. Consumer service requirements.

Grantee shall maintain a convenient local customer service and bill payment location in the city for matters such as receiving subscriber payments, handling billing questions, equipment replacement and customer service information. The grantee shall comply with the standards and requirements for customer service set forth below and shall comply with all applicable regulations relating to customer service obligations, including any amendments to 47 C.F.R. § 76.309 during the term of this franchise.

(a) Cable system office hours and telephone availability:

(1) Grantee will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week;

(A) Trained grantee representatives will be available to respond to customer telephone inquiries during normal business hours;

(B) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by a trained grantee representative on the next business day;

(2) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed 30 seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed 30 seconds. These standards shall be met no less than 90 percent of the time under normal operating conditions, measured on a quarterly basis;

(3) The grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply;

(4) Under normal operating conditions, the customer will receive a busy signal less than three percent of the time;

(5) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located;

(b) Installations, outages and service calls. Under normal operating conditions, each of the following standards will be met no less than 95 percent of the time measured on a quarterly basis:

(1) Standard installations will be performed within seven business days after an order has been placed. Standard installations are those that are located up to 125 feet from the existing distribution system;

(2) Excluding conditions beyond the control of the grantee, the grantee will begin working on service interruptions promptly and in no event later than 24 hours after the interruption becomes known. The grantee must begin actions to correct other service problems the next business day after notification of the service problem;

(3) The appointment window alternatives for installations, service calls and other installation activities will be either a specific time or, at maximum, a four hour time block during normal business hours (grantee may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer);

(4) Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment;

(5) If grantee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer;

(c) Communications between grantee and subscribers.

(1) Grantee will provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers and at any time upon request:

(A) Products and services offered;

(B) Prices and options for programming services and conditions of subscription to programming and other services;

(C) Installation and service maintenance policies;

(D) Instructions on how to use the cable service;

(E) Channel positions of programming carried on the system; and

(F) Billing and complaint procedures, including the address and telephone number of the city's cable office.

Subscribers shall be advised of the procedures for resolution of complaints about the quality of the television signal delivered by the grantee, including the address of the responsible officer of the city;

(2) Subscribers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of 30 days in advance of such changes if the change is within the control of the grantee. In addition, the grantee shall notify subscribers 30 days in advance of any significant changes in the information required by Section 17(c)(1);

(3) In addition to the requirement of subparagraph (2) of this Section regarding advance notification to subscribers of any changes in rates, programming services or channel positions, grantee shall give 30 days written notice to both subscribers and the city before implementing any rate or service change. Such notice shall state the precise amount of any rate change and briefly explain in readily understandable fashion the cause of the rate change (e.g., inflation, change in external costs or the addition/deletion of channels). When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. For purposes of the carriage of digital broadcast signals, the grantee need only identify for subscribers, the television signal added and not whether that signal may be multiplexed during certain day parts;

(4) To the extent grantee is required to provide notice of service and rate changes to subscribers, the grantee may provide such notice using any reasonable written means at its sole discretion;

(5) Notwithstanding any other provision of this Section, grantee shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment or charge of any kind imposed by any federal agency, state or city on the transaction between the grantee and the subscriber;

(d) Refunds. Refund checks will be issued promptly, but no later than either:

(1) The customer's next billing cycle following resolution of the request or 30 days, whichever is earlier; or

(2) The return of the equipment supplied by the grantee if service is terminated;

(e) Credits. Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted;

(f) Billing:

(1) Consistent with 47 C.F.R. § 76.1619, bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic cable service and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits;

(2) In case of a billing dispute, the grantee must respond to a written complaint from a subscriber within 30 days;

Grantee shall, upon request, provide city with information which shall describe in detail grantee's compliance with each and every term and provision of this Section 17;

(g) Subscriber contracts.

(1) Grantee shall, upon request, provide the city with any standard form residential subscriber contract utilized by grantee. If no such written contract exists, grantee shall file with the city a document completely and concisely stating the length and terms of the subscriber contract offered to customers. The length and terms of any subscriber contract(s) shall be available for public inspection during normal business hours. A list of grantee's current subscriber rates and charges for cable service shall be maintained on file with city and shall be available for public inspection;

(h) Refund policy. If a subscriber's cable service is interrupted or discontinued, without cause, for 24 or more consecutive hours, the grantee shall, upon request by the subscriber, credit such subscriber pro rata for such interruption. For this purpose, every month will be assumed to have 30 days;

(i) Late fees.

(1) Grantee shall comply with all applicable state and federal laws with respect to any assessment, charge, cost, fee or sum, however characterized, that the grantee imposes upon a subscriber for late payment of a bill. The city reserves the right to enforce grantee's compliance with all applicable laws to the maximum extent legally permissible;

(j) Disputes.

(1) All subscribers and members of the general public may direct complaints, regarding grantee's service or performance to the chief administrative officer of the city or the chief administrative officer's designee, which may be a board or commission of the city.

Section 18. Emergency use of facilities.

In the event of fire, disaster or other emergency, grantee shall make available the system to city during the period of the emergency for the cablecasting of emergency announcements on government access channels. Upon notice to grantee, city may also cut or move any of grantee's wires, cables, amplifiers, appliances or other component of the system as may be reasonably determined by city in the event of fire, disaster or other emergency. Grantee waives any claim against city arising from city's exercise of these rights.

Section 19. Miscellaneous provisions.

(a) The grantee must pay to the city a sum of money sufficient to reimburse it for expenses incurred by it in publishing legal notices and ordinances in connection with the granting of this franchise, such payment to be made within 30 days after the city shall furnish such grantee with a written statement of such expense;

(b) The chief administrative officer of the city is responsible for the continuing administration of the franchise and may delegate any or all franchise administration duties to any employee, officer or board or commission of the city or to a nonprofit corporation.

Section 20. Rates.

(a) The city reserves any and all authority to regulate grantee's subscriber rates

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consistent with federal and state law in accordance with rules and regulatory formats set forth in said laws;

(b) Upon request, the grantee shall file in the office of the city clerk a complete schedule of all of its fees and charges and shall file an amended schedule of fees and charges at least 30 days before any change in said fees and charges is to take effect. Such schedule shall be available for public inspection during normal business hours.

Section 21. Service to institutions.

(a) Grantee shall provide free of charge throughout the term of this franchise, installation of one network drop, one cable outlet and one converter, if necessary, and the most highly penetrated level of cable service (i.e. the equivalent of the basic and expanded basic service tiers) offered by grantee, excluding pay-per-view, pay-per-channel (premium) programming, high-speed data services or newly created non-video cable services, without charge to the institutions, as identified in Exhibit C:

Exhibit C Service to Public and Private Buildings		
1.	Duluth City Hall	411 West First Street
2.	Fire Department Station 1	602 West Second Street
3.	Fire Department Station 2	2627 West Superior Street
4.	Fire Department Station 4	425 West College Street
5.	Fire Department Station 5	2138 Minnesota Avenue
6.	Fire Department Station 6	1031 North 51st Street
7.	Fire Department Station 7	1419 Maple Grove Road
8.	Fire Department Station 8	5830 Grand Avenue
9.	Fire Department Station 10	1106 Commonwealth Avenue
10.	Fire Department Station 11	3501 Woodland Avenue
11.	Joint Law Enforcement Center	2501 Rice Lake Road
12.	St. Louis County Board Room	417 Federal Building, 515 West First Street
13.	St. Louis County Heritage and Arts Center	506 West Michigan Street
14.	Portman Recreation Center	4601 McCulloch Street
15.	Woodland Community Center	3211 Allendale Avenue
16.	Hartley Nature Center	3001 Woodland Avenue
17.	Central Hillside Community Center	12 East Fourth Street

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Exhibit C Service to Public and Private Buildings		
18.	Duluth Entertainment Convention Center	350 Harbor Drive
19.	Goodfellowship Community Center	1242 88th Avenue West
20.	Bayfront Park	South Fifth Avenue West at Railroad Street
21.	City Center West (senior center, parks, police and library)	5830 Grand Avenue
22.	Central Administration Building	215 North First Avenue East
23.	Washington Center	310 North First Avenue West
24.	Lafayette Square Community Club	3026 Minnesota Avenue
25.	Wade/Wheeler Fields Complex	35th Avenue West and Grand Avenue
26.	Garfield Public Works Headquarters and Utilities	411 West First Street, Room 206
27.	Public Works and Utilities – Engineering	414 West First Street
28.	Public Works and Utilities – Operations	520 Garfield Avenue
29.	Memorial Recreation Center and Police Sub Station	5215 Grand Avenue
30.	Library – Mount Royal	105 Mt. Royal Shopping Center
31.	Library – Main	520 West Superior Street
32.	Duluth International Airport	4701 Grinden Drive
33.	University of Minnesota-Duluth	1049 University Drive
34.	College of St. Scholastica	1200 Kenwood Avenue
35.	Duluth Technical College	2101 Trinity Road
36.	Duluth Community College	1309 Rice Lake Road
37.	Bay View Elementary	8708 Vinland

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Exhibit C Service to Public and Private Buildings		
38.	Congdon Park Elementary	3116 East Superior Street
39.	Grant Magnet Elementary	1027 North Eighth Avenue East
40.	Homecroft Elementary	4784 Howard Gnesen Road
41.	Laura MacArthur Elementary	727 Central Avenue
42.	Lester Park Elementary	315 North 51st Street
43.	Lincoln Park Elementary	2427 West Fourth Street
44.	Lowell Music Magnet Elementary	2000 Rice Lake Road
45.	Miller-Dwan ADOC	215 North First Avenue East
46.	Nettleton Magnet Elementary	108 East Sixth Street
47.	Northwood School	714-1/2 West College Street
48.	Piedmont Elementary	2827 Chambersburg Road
49.	Rockridge Elementary	4849 Ivanhoe Street
50.	Stowe Elementary	715 101st Avenue West
51.	Chisholm House Program	110 West Redwing Street
52.	Morgan Park Middle School	1243 88th Avenue West
53.	North Star Middle ALP	110 West Redwing Street
54.	Ordean Middle School	301 North 40th Avenue East
55.	Woodland Hills Academy	110 West Redwing Street
56.	Woodland Middle School	210 Clover Street
57.	Alternative Programs	215 North First Avenue East
58.	Central Secondary	800 East Central Entrance
59.	Denfeld Senior High School	4405 West Fourth Street
60.	Duluth ALC	2 East Second Street
61.	East Senior High School	2900 East Fourth Street
62.	Northwood West High School	4000 West Ninth Street
63.	Edison Charter School	1450 Kenwood Avenue

Exhibit C Service to Public and Private Buildings		
64.	Harbor City International Charter School	332 West Michigan Street
65.	Raleigh Primary/Elementary Academy	5905 Raleigh Street
66.	Washburn Junior Academy	201 West St. Andrews Street
67.	Holy Rosary School	2802 East Fourth Street
68.	Lakeview Christian Academy	155 West Central Entrance
69.	Montessori School of Duluth	313 Mygatt Avenue
70.	St. James Elementary School	715 North 57th Avenue West
71.	St. John Elementary School	1 West Chisholm Street
72.	St. Michael's Lakeside School	4628 Pitt Street
73.	Summit School	1600 North Eighth Avenue East
74.	Arrowhead Juvenile Center	1418 Arlington

and such other city buildings where public employees are located and accredited public and private school buildings subsequently designated by city as determined in city's sole discretion. This requirement shall not include any digital tier of services grantee may offer unless and until such time as grantee's digital programming reduces the amount of spectrum available for analog programming to less than approximately 60 channels of analog programming. Grantee shall be responsible for the costs of extension to subsequently designated institutions for the first 200 feet as measured from grantee's nearest active plant. The institution shall pay the net additional drop or extension costs beyond the 200 feet;

(b) Additional outlets in any of the locations identified on Exhibit C will be installed by grantee at the rate card price current for the city of Duluth customers. Alternatively, said institutions may add outlets at their own expense, as long as such Installation meets grantee's standards and approval which shall not be unreasonably withheld. Grantee shall have three months from the date of city designation of additional accredited schools or public institutions or relocations to complete construction of the drop and the outlet unless weather or other conditions beyond the control of grantee requires more time;

(c) The cable service provided pursuant to this Section shall not be used for commercial purposes and such outlets shall not be located in areas open to the public (i.e. open display). The city shall take reasonable precautions to prevent any use of the grantee's cable system that results in the inappropriate use thereof or any loss or damage to the cable system. Grantee shall provide city with reasonable advance written notice if grantee becomes aware of any open display in violation of this Section 21(c). The city shall hold the grantee harmless from any and all liability or claims by programmers arising out of the open display of cable service in violation of this Section 21(c).

Section 22. Live broadcast facilities and two-way network.

(a) Grantee shall, at no cost to city unless otherwise specified herein, provide a return connection to facilitate the exchange of programming, including live cablecasting of programming from those locations identified in Exhibit D:

Exhibit D	
	Additional two-way connections to public institutions
(a)	City Center West Community Center (senior center, parks, police, fire & library);
(b)	Library – main;
(c)	Duluth Entertainment Convention Center - Harborside and Lake Superior ballrooms;
(d)	Bayfront Park.

(b) The city and grantee agree that grantee shall, on or before November 30, 2006, complete all construction work to facilitate a fiber path for live cablecasting from the City Hall/PACT to grantee's headend;

(c) Within 90 days from the date grantee receives a written request from city, grantee shall also construct a fiber path to the remaining locations identified in Exhibit D. Grantee shall not be required to incur in excess of \$200,000 to complete the construction of such fiber paths required in this Section 22(c). The city shall have the right to prioritize the locations if the costs are expected to exceed the \$200,000 threshold. In the event the actual construction costs are estimated to exceed \$200,000, the city shall, at its sole option, have the right to cover those costs which exceed \$200,000, except that the city shall not be required to reimburse the grantee for the receiver set forth below. Before any construction is undertaken, both the city and grantee agree to share relevant information including work orders and bid specifications and agree to work cooperatively to attempt to reduce the total costs for such construction and minimize the subsequent impact on subscriber rates. The city shall be responsible for all terminal equipment at City Hall/PACT and at each location listed in Exhibit D, including any optical transmitters within the city facilities and all necessary production equipment the city may choose to utilize. Grantee shall be responsible to construct, operate and maintain the fiber paths from the specified locations (City Hall/PACT and the locations listed in Exhibit D) back to grantee's headend, including any headend equipment necessary to permit the signals transmitted from the city to be cablecast to subscribers on the system. Grantee initially estimates that a receiver will be required at its headend facility. Said receiver will be the grantee's obligation to purchase at its cost. The cost of the receiver shall not be included in the \$200,000 threshold. The grantee shall have all rights under federal law to pass through and collect from subscribers its costs associated with providing the two-way capability as well as any headend equipment which grantee may be required to purchase to permit the transmission of the signal on to the system for viewing by subscribers. Any and all payments or costs incurred by grantee to provide the two-way live cablecasting requirements specified in this Section 22 shall not be deemed franchise fees within the meaning of Section 622 of the Cable Act (47 U.S.C. § 542). Any recovery by grantee shall be in addition to and not by way of offset against the PEG capital access fee established by Section 28 of this franchise.

Section 23. Citywide service.

Grantee's cable system and its services shall be made available in every part of the city except in those areas, if any, where it appears that there are not sufficient potential users to make the installation and operation of the system economically feasible. A showing that the service area exceeds 25 dwelling units per cable mile shall be prima facie evidence of economic feasibility. Grantee shall not discriminate between persons or areas; and its service shall be equally available throughout the city.

Section 24. Rights of individuals.

Grantee shall at all times comply with the requirements of 47 U.S.C. § 551. In addition, as required by Minn. Stat. § 238.084(s), no signals of a Class IV cable communications channel may be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber. The request for permission must be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provisions. The written permission must be for a limited period of time not to exceed one year, which is renewable at the option of the subscriber. No penalty may be invoked for a subscriber's failure to provide or renew the authorization. The authorization is revocable at any time by the subscriber without penalty of any kind.

Section 25. Channel capacity.

Grantee shall maintain for the term of this franchise a system providing a minimum of 750 MHz capacity. The cable system shall be maintained to meet or exceed the requirements of the current additions of the National Electrical Code (NFPA 70) and the National Electrical Safety Code (ANSI C2). In all matters requiring interpretation of either of these codes, the city's interpretation shall control over all other sources and interpretations. The city's interpretation shall be consistently applied with respect to other occupants of the streets.

Section 26. Interconnection.

Grantee shall, at no cost to city, maintain an interconnection with the Superior, Wisconsin, cable system to facilitate the two-way distribution of PEG access programming. The city shall, in its sole discretion, determine what type of PEG access programming, if any, from Superior will be cablecast on the city's PEG channels. City or its designee shall be responsible for equipment required to enable programming to be cablecast. Grantee agrees not to assess any fees or costs to city or its designee to locate any required equipment at grantee's headend or other location in the system as may be technically required.

Section 27. Periodic review and renegotiation.

(a) City or grantee may require evaluation sessions at any time during the term of this franchise, upon 30 days written notice to the other party and no more frequently than once every three years unless mutually agreed upon;

(b) Topics which may be discussed at any evaluation session may include, but are not limited to, application of new technologies such as video on demand in lieu of PEG access channels, system performance, programming offered, utilization of PEG access channels and the quality of PEG access programming, municipal uses of cable, customer complaints, potential amendments to this franchise, the impact of legislative changes, judicial rulings, and/or FCC rulings, line extension policies and any other topics city or grantee deems relevant;

(c) As part of any periodic evaluation proceeding the city shall have the right to visit and/or inspect the grantee's headend facility, customer service center and any other facilities of grantee whether or not located in the city to the extent such facilities are directly related to grantee's ability to provide cable services to the city;

(d) As a result of a periodic review or evaluation session, grantee and city may agree

to meet and undertake good faith efforts to reach agreement on changes and modifications to the terms and conditions of the franchise which are both economically and technically feasible as measured over the remaining life of the franchise.

Section 28. Special channel and access requirements.

(a) Grantee shall provide, at no cost to the city or persons who submit programming, five channels for PEG access use. Three channels shall be designated for public access programming, one channel shall be designated for educational access programming and one channel shall be designated for government access programming. Whenever an access channel or channels within the specially designated categories identified above (i.e. public access, educational access or governmental access) is in use during 80 percent of the weekdays (Monday - Friday), for 80 percent of the time during a consecutive three hour period for six weeks running, and there is a demand for use of an additional channel for the same purpose, then at the request of the city, grantee shall have six months in which to provide a new specially designated access channel for the same purpose at no additional charge to subscribers; provided that, the provision of the additional channel or channels does not require the cable system to install converters. The city shall develop, subject to approval of the grantee, reasonable rules and regulations for determining percentage of access channel utilization and reasonable rules for replay of programming on the public access channels. For purposes of this subsection, the term "in use" shall mean live cablecasts and one repeat of each such live program, playback of prerecorded programs and one repeat of each such prerecorded program, plus periods of time less than 14 minutes between cablecasts of either live or prerecorded programs;

(b) Studio and playback facilities for the public access channels shall be located in a public building provided by the city. The city shall, directly or through its designee, administer the PEG access channels. It is anticipated that a nonprofit peg access corporation will administer by contract with the city the PEG access channels. The city shall maintain rules and regulations pertaining to the administration of the PEG access channels. In preparing such rules:

(1) City shall provide an equal opportunity for use of access service;

(2) The hours of operation of the access studio shall be established by city and shall not be modified without approval of city;

(3) The city or the city's designee shall schedule all PEG programming on the PEG channels;

(4) No paid commercial programming or commercial material shall be run on any PEG channel. Program material to be distributed on PEG access channels shall contain no advertising or commercial content for which consideration is received by city. Notwithstanding the foregoing, grantee and city agree that city or the producer or distributor of such programming may include brief acknowledgments for persons which sponsor or underwrite access programming in a manner substantially similar to the sponsorship information currently provided on the Public Broadcasting System (PBS); and

(5) No charges shall be made for channel time or playback of prerecorded programming on the specially designated noncommercial access channels. Personnel, equipment and production costs may be assessed for live studio presentations exceeding five minutes in length. Charges for those production costs and fees must be consistent with the goal of affording the public a low cost means of television access. Access facilities, equipment and/or channel time will be made available by the city or its designee to the general public or any group or individual resident for the production and/or cablecasting of noncommercial programming on a first come, nondiscriminatory basis;

(c) Grantee will comply, at a minimum, with the following requirements regarding access channels:

(1) Grantee shall provide city and all subscribers with at least 60 days prior written notice of any relocation of any PEG access channel to a different channel number. In the event any PEG access channel(s) is relocated, grantee shall reimburse city up to \$5,000 for the actual costs associated with such move including but not limited to change of letterhead, promotion of new channel location and promotional spots for the new location and/or newspaper advertisements. Grantee shall also inform subscribers of the new channel location through bill messages and/or bill inserts. The VHF spectrum must be used for one of the PEG access channels;

(2) Grantee shall continue to maintain the channel capacity available for the noncommercial PEG access channels throughout the term of the franchise and shall provide and maintain its system equipment and PEG access channels so as to transmit signals on such channels in accordance with the minimum technical standards required by this franchise. Grantee's responsibility for signal quality begins at the PEG access channels' modulators output, ending at the subscriber's ground block;

(3) All access channels shall be transmitted to subscribers on the basic cable service tier. The technical quality of all access channels under grantee's control shall be at least equal to the same FCC required technical standards to ensure the same quality as the channels used by grantee to retransmit local off-the-air broadcast television stations which are affiliates of the major national broadcast networks. Grantee shall insure that there is no material degradation in the signal that is received by grantee for distribution by grantee from the city over the cable system;

(4) The grantee shall provide the PEG channels as part of the basic cable service tier provided to any subscriber, at no additional charge beyond the price for the basic cable service tier, and so that the PEG channels are viewable by the subscriber without the need for additional equipment beyond that required to receive the basic cable service tier. If channels are selected through a menu system, the PEG channels shall be displayed as prominently as commercial programming choices offered by grantee;

(5) At such time as the grantee converts its basic cable service tier from an analog to a digital format, the city's PEG channels will continue to be carried along with the programming on the basic cable service tier. Such PEG channels shall be accessed by subscribers through use of standard digital equipment compatible with grantee's cable system;

(6) Grantee shall collect, on behalf of city, a per subscriber fee of \$.37 per month, solely to fund PEG access capital related expenditures (hereinafter PEG capital access fee). This PEG capital access fee shall be paid by grantee to city in the same manner as franchise fee payments, pursuant to Section 6 herein. Any and all payments by grantee to city in support of PEG access programming shall not be deemed franchise fees within the meaning of Section 622 of the Cable Act (47 U.S.C. Section 542);

(7) If city extends the term of this franchise and such extension is accepted by grantee, grantee shall continue to collect during the term of the extension, on behalf of the city, the access fee referenced in paragraph (8) above.

Section 29. Notice and default.

(a) City shall give grantee written notice specifying in detail the nature of any default if city determines that grantee has:

(1) Violated any material provision of this franchise or the acceptance hereof, or

any applicable law directly relating to its operations under the franchise and not in conflict with this franchise;

- (2) Attempted to evade any provision of this franchise or the acceptance hereof;
- (3) Practiced any fraud or deceit upon city or subscribers; or
- (4) Made a material misrepresentation of fact in the application for or negotiation

of the franchise;

(b) If grantee fails to cure such default within 30 days after the giving of such notice, or if such default is of such a character as to require more than 30 days within which to cure the same, and grantee fails to commence to cure the same within said 30 day period and thereafter fails to use reasonable diligence, in city's reasonable opinion, to cure such default as soon as possible, then and in any event, such default shall be a substantial breach of this franchise and city, at its option may elect to either cure the default or terminate and cancel this franchise and all rights and privileges of this franchise as follows:

(1) If the default interferes with the city or public use of a street, the city may cure any default and all reasonable sums expended by city, including attorneys' fees incurred in curing such default, whether suit be brought or not, shall be paid by grantee to city, upon demand, and failure to so pay upon demand likewise may be deemed by city to be a default under this franchise;

(2) City may place the issue of revocation and termination of the franchise before the council at a regular or special meeting of the city council. If city decides there is cause or reason to terminate, the following procedure shall be followed:

(A) City shall provide grantee with a written notice of city's intention to terminate the franchise and specify in detail the reason or cause for proposed termination. City shall allow grantee a minimum of 30 days subsequent to receipt of the notice in which to correct the default;

(B) Grantee shall be provided the right to a public hearing affording due process which shall include an opportunity to be heard and present evidence prior to any decision to terminate this franchise;

(C) In the event that city determines to terminate this franchise, the grantee shall have a period of 30 days, beginning on the date next following written notice to grantee of such decision, within which to file an appeal with a court of competent jurisdiction. During such 30 day period and if an appeal is taken, the franchise shall remain in full force and effect, unless the term thereof sooner expires;

(D) If a court of competent jurisdiction approves the action of city, the franchise shall terminate immediately unless the judgment is appealed to an appellate court. If a court of competent jurisdiction disapproves of the action of city, the franchise shall remain in full force and effect for the full term hereof unless the judgment is reversed on appeal or unless the franchise is sooner terminated in accordance with the provisions hereof, or applicable law. The franchise shall remain in effect during the duration of pending appeals.

#### Section 30. Foreclosure.

Upon the foreclosure or other judicial sale of all or part of the system, grantee shall notify city of such fact and such notification shall be treated as a notification that a change in control of grantee has taken place, and the provisions of this franchise governing the consent to transfer or change in ownership shall apply.

#### Section 31. Receivership.

City shall have the right to cancel this franchise 120 days after the appointment of a

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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receiver or trustee to take over and conduct the business of grantee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said 120 days, or unless:

- (a) Within 120 days after election or appointment, such receiver or trustee shall have fully complied with all the provisions of this franchise and remedied all defaults hereunder; and
- (b) Such receiver or trustee, within said 120 days, shall have executed an agreement with city duly approved by the court having jurisdiction in the premises; whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this franchise.

Section 32. Abandonment.

Grantee may not abandon any portion of system without having given not less than three months prior notice to city or without prior written approval by city. Further, grantee may not abandon any portion of the system without compensating city for damages resulting from the abandonment. If grantee should abandon any portion of the system, grantee shall provide city maps, drawings, diagrams or other records of any underground facilities abandoned or out of service in accordance Minn. Stat. § 16D.04.

Section 33. Purchase of system.

Pursuant to Minn. Stat. § 238.084, when the franchise or cable system is transferred or sold the city has the right to purchase the system. Within 60 days after city's actual receipt of the bona fide offer, city shall submit to grantee notice of city's interest in purchasing the system.

Section 34. Franchise renewal.

Any renewal of this franchise shall be performed in accordance with applicable laws.

Section 35. Written notice.

All notices, reports, or demands required to be given in writing under this franchise shall be sent via registered or certified mail or shall be deemed to be given when delivered personally to any officer of grantee or city clerk or 48 hours after it is deposited in the United States mail in a sealed envelope, postage prepaid thereon, addressed to the party to whom notice is being given, as follows:

If to city:	City Clerk 330 City Hall Duluth, MN 55802
If to grantee:	Charter Communications Attention: VP/GM 1255 East Circle Drive NE Rochester, MN 55906
With courtesy copy to:	Charter Communications Attention: Vice President of Government Affairs 12405 Powerscourt Drive St. Louis, MO 63131-3674

Such addresses may be changed by either party upon notice to the other party given as provided in this Section.

Section 36. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this

franchise or any part thereof, is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this franchise, or any part thereof. The city council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional.

Section 37. Force majeure.

Neither party shall be liable for any failure of performance hereunder due to causes beyond its reasonable control including but not limited to acts of God, strikes, natural disasters, civil disturbances, power outages, telephone network, and severe or unusual weather conditions.

Section 38. Effective date/acceptance.

Before this franchise shall be in force or take effect, the grantee shall accept the same by filing with the city clerk of the city its written acceptance thereof within 45 days from the adoption of this franchise by the council, consenting to the terms and conditions hereof, and agreeing to perform all acts and things required and agreed to be done by the grantee. This franchise shall expire on May 8, 2016, unless extended by the mutual agreement of the parties.

Section 39. City Charter.

(a) To the extent consistent with applicable laws, the grantee shall be subject to the following provisions of the City Charter. Nothing in this Section shall be deemed to constitute a waiver by grantee of any rights grantee may have under the federal or state constitutions or applicable laws;

(b) The grantee shall be subject to, and will perform on its part all of the terms of sections 83, 85 and 86 of the Charter of the city;

(c) The grantee will comply with all of the terms of Section 84 of the Charter of the city, and will for failure to do so, pay the penalty prescribed therein; and if such failure continues for a period of 60 days, will upon demand of the city council, surrender the franchise to the city;

(d) The city council of the city shall have the right:

(1) To require reasonable extensions of any public service system;

(2) To make such rules and regulations as may be required to secure adequate and proper service, and to provide sufficient accommodations for the public.

Section 40. Publication.

Pursuant to Section 82 of the City Charter, this franchise shall be published verbatim in the official paper of the city once a week for four successive weeks after its passage and shall take effect 30 days from and after its last publication and after written acceptance thereof by the grantee. (Effective date: July 9, 2006)

President Reinert moved passage of the ordinance and the same was adopted upon the following vote:

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

Nays: None -- 0

Absent: Councilor Krause -- 1

ATTEST:  
JEFFREY J. COX, City Clerk

Passed May 8, 2006  
Approved May 8, 2006  
HERB W. BERGSON, Mayor

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**OFFICIAL PROCEEDINGS**

Special meeting of the Duluth City Council held on Thursday, May 11, 2006, 12:30 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: Councilor Krause -- 1

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**MOTIONS AND RESOLUTIONS**

BY COUNCILOR STOVER:

RESOLVED, that Push, Inc., be and hereby is awarded a contract for pipe bursting force-main in London Road from 60th Avenue East to 52nd Avenue East, for the engineering division, in accordance with its low specification bid of \$179,980, terms net 30, FOB job site, payable out of the Sewer Construction Bond Fund 0531, Agency 5500, Object 5532, City Project Number 0575SN.

Resolution 06-0352 was unanimously adopted.

Approved May 11, 2006

HERB W. BERGSON, Mayor

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The meeting was adjourned at 12:38 p.m.

JEFFREY J. COX, City Clerk

**OFFICIAL PROCEEDINGS**

Duluth City Council meeting held on Monday, May 22, 2006, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: Councilor Gilbert -- 1

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**PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS**

06-0522-01 Roberta Komrska petition to vacate the utility easement in Lots 25 and 54, Block 3, Oatka Beach Addition to Duluth. -- Assessor

06-0522-02 River of Life Church, et al. (two signatures), petition to vacate the alley between 69th Avenue West and 71st Avenue West between Clay and Earl streets. -- Assessor

06-0522-03 Va Bene Cafe, Inc., application for concurrent use permit to provide outside dining on sidewalk at 734 East Superior Street. -- Planning commission

06-0522-09 Eric Dings communication regarding the proposed hiring of outside legal counsel to investigate the possible violation of Minnesota Statutes Section 3.979, Subd. 4 (06-0323R). -- Received

06-0522-10 Brian Frederickson communication regarding the proposed reclassification to nonconservation and sale of certain tax forfeited parcels by St. Louis County (06-0398R). -- Received

06-0522-11 Dave Holappa communication regarding the proposed new minimum requirements for a development agreement (05-060-O). -- Received

06-0522-12 J. Munson communication regarding the proposed establishment of the Lake Superior View TIF District (06-0322R); and the proposed reclassification to nonconservation and sale of certain tax forfeited parcels by St. Louis County (06-0398R). -- Received

06-0522-04 Tom Zelman, et al. (24 signatures), communication opposing construction of a residential street, sanitary sewer and watermain in Spear Avenue between Silcox and Livingston (06-0382R). -- Received

06-0522-13 The following communications regarding the proposed establishment of the Lake Superior View TIF District (06-0322R): (a) Affordable Housing Coalition; (b) Carver Avenue Development Services, LLC (2); (c) East Downtown, Hillside and Waterfront Charrette Stewardship Group; (d) Jerelyn Speich and Robert Draves; (e) Roberta Whitehall. -- Received

06-0522-14 The following communications regarding the proposed designation of a Bob Dylan commemorative area (Robert Zimmerman) (06-0412R): (a) Zane Bail; (b) Don Dass; (c) Tom Hollenhorst; (d) Tim Nelson; (e) Mary Ostman; (f) Susan Phillips; (g) Rod Raymond; (h) Ben Small; (i) Carolyn Sundquist. -- Received

06-0522-15 The following communications regarding the proposed planning for a sustainable community (06-0368R): (a) Robert Aho; (b) Janet Draper; (c) Lloyd Schallbert. -- Received

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**REPORTS FROM OTHER OFFICERS**

06-0522-05 Assessor:

(a) Assessment roll for confirmation levied to defray the assessable portion of Contract #70798, Benson Heights (total assessable: \$152,889.25);

- (b) Letters of sufficiency of petitions to:
- (1) Reclassify from R-1 to C-1 the property described as Lots 13 and 14, Block 3, Woodland Park Second Division;
  - (2) Vacate:
    - (A) The alley between 69th Avenue West and 71st Avenue West between Clay and Earl streets;
    - (B) 12th Avenue East from the north line of East Sixth Street Alley to the south line of East Seventh Street, Portland Division of Duluth;
    - (C) The unnamed street as platted in Auditor's Plat No. 24 which lies northerly of Lots 2-8, which lies westerly of the northerly extension of the west line of Lot 1 and easterly of the west line of the SE1/4 of the NW1/4 of Section 29, Township 50 North, Range 14 West of the Fourth Principal Meridian; and the unnamed street as platted in Auditor's Plat No. 24, which lies between Lots 8 and 9, which lies southerly of the westerly extension of the north line of Lot 8 and northerly of the Minnesota Department of Transportation Right-of-Way Plat No. 69-65.
- Received

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### REPORTS OF BOARDS AND COMMISSIONS

- 06-0522-06 Commission on disabilities minutes of April 5, 2006, meeting. -- Received
- 06-0522-07 Duluth human rights commission minutes of April 12, 2006, meeting. -- Received
- 06-0522-08 Planning commission findings related to review of the special use permit and variance granted to Endion Shores, LLC (Beacon Point) on December 12, 2003, regarding compliance with applicable conditions, agreements and regulations and laws. -- Received

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### OPPORTUNITY FOR CITIZENS TO BE HEARD

Renee Peterson expressed concern about the transfer of her land that was bought by Mn/DOT, then given to DEDA and now to a private owner for additional property for his business. She continued by saying that it was her understanding with Mn/DOT that she was first on the list to buy the property back but was never contacted and requested the council look at how DEDA acquires land and if it is for the public good.

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### RESOLUTIONS TABLED

President Reinert moved to remove Resolution 06-0322, approving a tax increment financing [TIF] plan for the Lake Superior View Tax Increment Financing District as proposed by the Housing and Redevelopment Authority of Duluth, Minnesota, 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.

Gene McKeever, Chester Pepper, Shari Green, Sandy Robinson, Dan Williams, Gary Eckenberg, Abrum Olson, Rick Hauron, Nora Mahlberg, Pam Kramer, Bruce Wyman, Rick Ball and Bob Reichert spoke in favor of the resolution for the following reasons: this will help generate home ownership; trying to improve the Central Hillside through various programs that offer grants and loans; Central Hillside needs more home ownership; schools need the support and the city needs the tax base; this project will help start creating a thriving community; this will make a visible impact for other people to start making investments in their property; it is a continuation of the

Fourth Street project that will move the energy in the neighborhood; home ownership leads to interaction with neighbors; there is support from local housing organizations; need to have support from other groups to bring in developers and this provides affordable home ownership and stability to the neighborhood.

Councilor Stewart voiced his criticism of the project as the income status of the homeowner is not reviewed once the unit is sold and it would be better to use the median income for the Duluth area instead of the state median. He added that this is a lot of public money for only 12 units and is a large acquisition cost for a building in bad shape, but stated he will support the resolution as it will be an enhancement for the neighborhood and there is a lot of neighborhood support for the project.

Councilor Krause stated that TIF districts should be used for developments that bring jobs and incomes to Duluth.

Councilor Little stated he would not support the resolution as the price of the lot was inflated, all projects seem to need a TIF and the city should not support \$300,000 units that sell for \$150,000 when neighborhoods are coming back on their own.

Resolution 06-0322 was adopted as follows:

BY PRESIDENT REINERT (introduced 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 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, as amended (the act).

1.03 The authority has established the Lake Superior View Tax Increment Financing District (the district) within the project and adopted a tax increment financing plan (the TIF plan) therefor pursuant to Minnesota Statutes, Sections 469.174 through 469.1799, as amended, (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 the city to 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 city in a document entitled: *Tax Increment Financing Plan for the Establishment of the Lake Superior View 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 district is a housing district as defined in Section 469.174, Subdivision 11 of the TIF act because: it consists of a portion of a 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; it satisfies the requirements of Section 469.1761 of the TIF act; and tax increment

generated from the district will be used solely in accordance with Section 469.176, subdivision 4d, of the TIF act.

2.02 The land in the project would not be made available for redevelopment without the financial aid to be sought by establishing the district.

2.03 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.

(a) The viability of the district is infeasible without tax increment assistance because of the high costs of site preparation, construction and rehabilitation, which will not be recouped through anticipated sales prices for this mixed-income housing development, because of the intent to include residents of low and moderate income;

(b) The city and the authority have created a policy to redevelop the city's hillside neighborhoods to remove vacant and blighted buildings and reconstruct a mixture of affordable and market-rate housing units. Therefore, any redevelopment option, such as the district, must contain an affordable housing component and a pure market-rate housing development is not a viable option.

2.04 In further support of the council's statutory findings, 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 (\$0);

(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 (\$2,800,000); and

(c) The present value of the projected tax increments for the maximum duration of the district permitted by the TIF plan (\$331,939).

2.05 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.

2.06 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 and the district is established.

3.02 The geographic boundaries of the project and the district are as described in the plan and 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 district is designated a housing district as defined in Section 469.174, subdivision 11, of the TIF act.

Resolution 06-0322 was adopted upon the following vote:

Yeas: Councilors Johnson, Krause, Ness, Stauber, Stewart and Stover -- 6

Nays: Councilor Little -- 1

Abstention: President Reinert -- 1

Absent: Councilor Gilbert -- 1

Approved May 22, 2006

HERB W. BERGSON, Mayor

- - -

Councilor Stauber moved to remove Resolution 06-0265, establishing parking meter zones on Second Street and rates and time limits therefore; and Resolution 06-0266, to establish no parking 2:00 a.m. to 6:00 a.m. on north side of Second Street from Fourth Avenue West to Fourth Avenue East, by Councilor Little, from the table, which motion was seconded and unanimously carried.

Councilor Little moved to return the resolutions 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 Reinert moved passage of the consent agenda, which motion was seconded and unanimously carried.

BY COUNCILOR STEWART:

RESOLVED, that the assessment roll levied to defray the assessable portion of Benson Heights street improvements (Contract #70798; assessable amount: \$152,889.25), to be deposited in Fund 330, is hereby confirmed.

Resolution 06-0377 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

RESOLVED, that the appropriate city officials are authorized to transfer \$10,000 from the tourism tax fund balance, Fund 258, Account 2450, to the department of public works and utilities park maintenance fund, Fund 100, Agency 500, Department 1920-2560, Account 4730-20; monies to be used for various capital improvements to the Mission Creek and Kingsbury Creek trails.

Resolution 06-0383 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

RESOLVED, that the appropriate city officials are authorized to transfer \$6,500 from the

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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tourism tax fund balance, Fund 258, Account 2450, to the Lake Superior Zoo fund, Fund 100, Agency 400, Department 1814, Account 4730-20; monies to be used for various capital improvements.

Resolution 06-0390 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the transfer of the following on sale intoxicating liquor license and on sale Sunday license for the period ending August 31, 2006, subject to departmental approvals and the payment of sales and property taxes:

Black River Mills, Inc. (Kozy Bar), 129 East First Street, with Eric Ringsred, 100 percent stockholder, transferred from Templecorp, Inc. (Kozy Bar), same address.

Resolution 06-0327 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

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 Cantina), 11 East Buchanan Street, for June 17, 2006, with the serving ceasing at 4:00 p.m.

Lemon Reef, Inc. (Reef Bar), 2002 London Road, for June 17, 2006, with the serving and music ceasing at 4:00 p.m.

Resolution 06-0328 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

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 and application for a late night entertainment license for the period ending August 31, 2006, subject to departmental approvals and the payment of sales and property taxes:

Dubh Linn Pub & Billiards, LLC (Dubh Linn Pub & Billiards), 109 West Superior Street, with Michael P. Maxim, 50 percent stockholder and Michael P. Maxim, Jr., 50 percent stockholder, transferred from Black River Mills, Inc. (Dubh Lin Pub & Billiards), same address.

Resolution 06-0329 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the transfer of the following on sale intoxicating liquor license, on sale Sunday license and application for a 2:00 a.m. beverage license for the period ending August 31, 2006, subject to departmental

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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approvals, the payment of sales and property taxes, and approval of the liquor control commissioner:

Hospitality Associates of Duluth, LLC (Aces on First), 113 West First Street, with Nick Patronis, president and 33-1/3 percent stockholder, Mark Carlson, secretary/treasurer and 33-1/3 percent stockholder, and Bryan Flaherty, 33-1/3 percent stockholder.

Resolution 06-0330 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

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:

Duluth Skyline Rotary Club (Volleyfest), Bayfront Park, for June 24, 2006, with Thomas Meyer, manager.

Resolution 06-0349 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

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

Glen Avon Hockey Association

Twin's Bar, 501 East Fourth Street

Resolution 06-0350 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

RESOLVED, that Insight Public Sector, Inc., be and hereby are awarded a contract for furnishing and delivering miscellaneous microcomputer hardware, ordered as needed during a 12 month period, in accordance with specifications and referencing state of Minnesota contract pricing for the various city departments/divisions, terms net 30, FOB destination, payable out of various funds, departments/agencies, organizations, objects. This total will not exceed the year 2006 budget allocation of \$80,000 for computer equipment.

Resolution 06-0359 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

RESOLVED, that Gateway Companies, Inc., be and hereby are awarded a contract for furnishing and delivering miscellaneous microcomputer hardware, ordered as needed during a 12 month period, in accordance with specifications and referencing state of Minnesota contract

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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pricing for the various city departments/divisions, terms net 30, FOB destination, payable out of various funds, departments/agencies, organizations, objects. This total will not exceed the year 2006 budget allocation of \$150,000 for computer equipment.

Resolution 06-0360 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

RESOLVED, that Software House International (SHI) be and hereby is awarded a contract for furnishing and delivering computer software as needed during year 2006 for the management information system (MIS) division in accordance with specifications and referencing state of Minnesota contract pricing at an estimated amount of \$80,000, terms net, FOB destination, payable out of payable out of various funds, departments/agencies, organizations and objects.

Resolution 06-0361 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

RESOLVED, that CP Internet be and hereby is awarded a contract for professional services as an internet provider and website host for the management information systems (MIS) division in accordance with specifications as quoted for the estimated amount of \$11,503.80, terms net 30, FOB destination, payable out of General Fund 0100, Department/Agency 015, Organization 1513, Object 5309.

Resolution 06-0362 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

RESOLVED, that St. Joseph Equipment, Inc., be and hereby is awarded a contract for a tractor loader backhoe (Case Model 580SM-2) in the amount of \$97,625.35 for the city of Duluth fleet division in accordance with specifications as quoted based on Minnesota State Contract #435537 pricing, terms net 30, FOB destination, and payable as follows:

(a) \$55,000.20 (60 percent) from Water Fund 0510, Department/Agency 500, Object 5580; and

(b) \$36,666.80 (40 percent) from Gas Fund 0520, Department/Agency 500, Object 5580.

These amounts do not include the tax amount of \$5,958.35.

Resolution 06-0372 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

BE IT RESOLVED, that Resolution 06-0299 authorizing HIF loan agreements with the appropriate agencies is hereby amended to strike the project entitled *develop home on East Fifth Street* in the amount of \$40,000 with the organization Women in Construction.

Resolution 06-0381 was unanimously adopted.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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Approved May 22, 2006  
HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

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

(a) On April 5, 2006, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of CW Chips Grill & Bar, Inc. (Twins Bar), 501 East Fourth Street, and has submitted its report to the city council of the city of Duluth as Public Document No. 06-0522-16;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on May 22, 2006, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 06-0522-16 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of CW Chips Grill & Bar, Inc. (Twins Bar), 501 East Fourth Street are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the Duluth City Council fine the licensee \$500 and stay payment of the fine for one year contingent upon no same or similar violations during the one year period.

Resolution 06-0385 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

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

(a) On April 5, 2006, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of JM & JK, Inc. (John's Red Lion), 220 East Superior Street, and has submitted its report to the city council of the city of Duluth as Public Document No. 06-0522-17;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on May 22, 2006, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 06-0522-17 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of JM & JK, Inc. (John's Red Lion), 220 East Superior Street are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the Duluth City Council fine the licensee \$500 and stay payment of the fine for one year contingent upon no same or similar violations during the one year period.

Resolution 06-0386 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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(a) On April 5, 2006, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Shempco, Inc. (Round Up Bar & Grill), 415 East Fourth Street, and has submitted its report to the city council of the city of Duluth as Public Document No. 06-0522-18;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on May 22, 2006, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 06-0522-18 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of Shempco, Inc. (Round Up Bar & Grill), 415 East Fourth Street, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the Duluth City Council fine the licensee \$500 with payment due 60 days from city council action.

Resolution 06-0387 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

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

(a) On April 5, 2006, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Legacy Restaurants, Inc. (Duluth Athletic Club B & G), 21 North Fourth Avenue West, and has submitted its report to the city council of the city of Duluth as Public Document No. 06-0522-19;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on May 22, 2006, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 06-0522-19 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of Legacy Restaurants, Inc. (Duluth Athletic Club B & G), 21 North Fourth Avenue West, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the Duluth City Council fine the licensee \$500 with payment due 60 days from city council action.

Resolution 06-0388 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

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

(a) On April 5, 2006, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of O'Gilby's, Inc. (O'Gilby's Bar), 511 East Fourth Street, and has submitted its report to the city council of the city of Duluth as Public Document No. 06-0522-20;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on May 22, 2006, the city council considered the records and evidence submitted;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

(c) The finding of facts as set forth in Public Document No. 06-0522-20 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of O’Gilby’s, Inc. (O’Gilby’s Bar), 511 East Fourth Street are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the Duluth City Council fine the licensee \$500 and stay payment of the fine for one year contingent upon no same or similar violations during the one year period.

Resolution 06-0389 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

RESOLVED, that Leef Services be and hereby is awarded a contract for laundry services as needed during year 2006 at an estimated amount of \$45,900, terms net 30, FOB destination, and payable out of various funds, departments/agencies, organizations and objects.

Fund		Dept./Agency	Org.	Activity	Object
Fleet Services 660	\$8,000	015			05450
General Fund 0100	\$5,000	500	1920	2550	05450
General Fund 0100	\$700	500	1930	2310	05450
General Fund 0100	\$1,100	500	1930	2320	05450
Water Fund 0510	\$600	500	1915		05450
Gas Fund 0520	\$600	500	1915		05450
Sewer Fund 0530	\$600	500	1915		05450
Stormwater Fund 0535	\$600	500	1915		05450
Water Fund 0510	\$4,454	500	1945		05450
Gas Fund 0520	\$4,454	500	1945		05450
Sewer Fund 0530	\$8,384	500	1945		05450
Stormwater 0535	\$8,908	500	1945		05450
Water Fund 0510	\$2,500	500	1955		05450
TOTAL	\$45,900				

Resolution 06-0393 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

RESOLVED, that Hydro Metering Technology be and hereby is awarded a contract for furnishing and delivering Badger water meter repair parts as needed during year 2006 for the utility operations division in accordance with current prices and an estimated amount of \$39,724.50, terms net 30, FOB destination, payable out of Water Fund 0510, Department/Agency 500,

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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Organization 1940, Activity 5220 and Object 5220.

Resolution 06-0394 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

RESOLVED, that GATR GMC be and hereby is awarded a contract for one GMC deisel truck (Model 2006 Tc5042) for the fleet services division in accordance with specifications as quoted in the state of Minnesota Contract No. 435292 in the amount of \$44,866.32, terms net 30, FOB destination, payable out of capital equipment fund, Department/Agency 015, Organization 2006, Object 5580.

Resolution 06-0395 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

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

(a) On April 5, 2006, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Wizner Company (Norman's Bar), 113 West First Street, and has submitted its report to the city council of the city of Duluth as Public Document No. 06-0522-21;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on May 22, 2006, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 06-0522-21 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of Wizner Company (Norman's Bar), 113 West First Street, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the Duluth City Council impose a 60 day suspension and stay imposition of the suspension for a period of 30 days to accommodate the license transfer.

Resolution 06-0396 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

RESOLVED, that the proper city officials are hereby authorized to execute the service agreement and exhibits A and B with Blue Cross and Blue Shield of Minnesota, substantially in the form of that on file in the office of the city clerk as Public Document No. 06-0522-22, to provide administrative services and stop loss insurance to the city's group health insurance plans effective January 1, 2005; payable from the group health fund.

Resolution 06-0397 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

RESOLVED, that Pitney Bowes be and hereby is awarded a maintenance/rental contract for mailing equipment for the utility operations division in accordance with specifications as quoted in the amount of \$17,991.48, terms net 30, FOB destination, payable as follows: \$5,217.53 from Water Fund 0510, Department/Agency 0500, Organization 1940-2400, Object 5415; \$7,016.68 from Gas Fund 0520, Department/Agency 0500, Organization 1940-2400, Object 5415; \$4,138.04 from Sewer Fund 0530, Department/Agency 0500, Organization 1940-2400, Object 5415; and \$1,619.23 from Stormwater Utility Fund 0535, Department/Agency 0500, Organization 1940-2400, Object 5415.

Resolution 06-0401 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the proposed specifications for the new civil service classification of police captain, which were approved by the civil service board on May 15, 2006, and which are filed with the city clerk as Public Document No. 06-0522-23, are approved; that said classification shall be subject to the city's collective bargaining unit with its supervisory unit employees; and that pay range for said classification shall be Range 1115-1125, \$5,225 to \$6,507 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 06-0358 was unanimously adopted.

Approved May 22, 2006

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 police sergeant, which were approved by the civil service board on May 15, 2006, and which are filed with the city clerk as Public Document No. 06-0522-24, are approved. This classification shall remain subject to the city's collective bargaining agreement with its police unit employees and compensated at Pay Range 328, \$4,236 to \$4,763 per month.

Resolution 06-0363 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

S.V. Bayhill, LLC/Lotus Realty has submitted to the city council a request for a special use permit for a low density planned development on property located on the southwest corner of Bayhill Drive and 75th Avenue West/Pulasky Street in Fairmont Park described as that part of Government Lot 2, Section 24, and that part of the SW1/4, SW1/4, Section 13, T49N, R15W, lying southeasterly and south of a line described as follows:

Commencing at the northwest corner of said Section 24, thence south 0 degrees 29 minutes 58 seconds east (assumed bearing), along the west line of said Section 24 a distance of 1,177.03 feet to the beginning of the line to be described; then north 32 degrees 34 minutes 45 seconds east along the southeasterly right-of-way line Burlington Northern, Inc. (formerly the

Duluth transfer track of the Northern Pacific Railway) also being the northwesterly right-of-way line of the Lake Superior and Mississippi Railroad as described in deed recorded in Book K of Deeds, page 2, to the south line of said SW1/4 of SW1/4; then continuing northeasterly along the said southeasterly right-of-way line of the Burlington Northern, Inc., to the south line of Pulasky Street; thence southeast along the south line of Pulasky Street to the east line of said SW1/4 of SW1/4 except that part of Government Lot 2, Section 24, T49N, R15W, lying southeasterly, southerly and westerly of a line described as follows;

Commencing at the northwest corner of said Section 24, thence south 0 degrees 29 minutes 58 seconds east (assumed bearing), along the west line of said Section 24 a distance of 1,297.96 feet to the beginning of the line to be described; thence north 32 degrees 34 minutes 45 seconds east along a line 66.00 feet distant and parallel with the southeasterly right-of-way of Burlington Northern, Inc. (formerly the Duluth transfer track of the Northern Pacific Railway) a distance of 212.00 feet; thence south 57 degrees 25 minutes 15 seconds east a distance of 46.51 feet; thence southerly and easterly along a tangential curve concave to the north having a radius of 183.00 feet and a central angle of 49 degrees 21 minutes 28 seconds a distance of 157.65 feet and the cord of said curve bears south 82 degrees 05 minutes 59 seconds east; thence south 11 degrees 07 minutes 58 seconds east a distance of 307 feet, more or less, to the northwesterly bank of the St. Louis River and said line there terminating. Except that part platted as Spirit Cove Division.

ALSO

Lots 19 through 24, Block 33, Hunter and Markells Grassy Point Addition according to the plat thereof.

Lots 26 through 29, Block 34, Hunter and Markells Grassy Point Addition according to the original plat thereof on file and of record in the office of the register of deeds; in an for said St. Louis County, Minnesota, in Book "C" of Plats, page 130; 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

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 S.V. Bayhill LLC/Lotus Realty to allow for the operation of a 15 unit low density planned development at the southwest corner of Bayhill Drive and 75th Avenue west/Pulasky Street, on condition that the development be limited to, constructed, and maintained in accordance with the following plans:

- (a) Site plan and grading plan as submitted by Master Engineering entitled "Duluth Project, Bayhill Drive and Thompson Street," dated 3/17/06;
- (b) Building plans by FOX-1, entitled "SV Bay Hill," Tuck-under Modular Model dated 3-28-06 and Model #1 dated 3-2-06;
- (c) "Entry Monument Sign, L1," by Markell-Labree Design Group (no date); as identified as Public Document No. 06-0522-25; and
- (d) That the required SWPP, NPDES, grading and construction permits be secured prior to the issuance of any building permits.

Resolution 06-0374 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

A sufficient petition was filed with the city clerk requesting the vacation of the northerly 417.97 feet of North 52nd Avenue East legally described as that portion of London Avenue lying between the easterly extension of the north line of Lot 18, and the south line of Lot 21 extended, all in the recorded Plat of Lester Park Garden Tracts, abutting Lots 18, 19, 20, 21, 23 and 24, of said Lester Park Garden Tracts (FN 06036); and

Pursuant to Section 100 of the City Charter and Article IV of Chapter 45 of the Duluth City Code, 1959, as amended, such petition was duly referred to the city planning commission and such commission gave due notice of public hearing and did consider same in public hearing; and

The city planning commission found that said street easement is useless for the purpose for which is was intended, based on the following finding:

With the replatting of the adjoining lands as Hawk Ridge Estates- First Addition, this vacation will have no impact on public needs.

And the commission did approve, unanimously, the street easement vacation petition at its May 9, 2006, meeting.

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation of the street easement described above and as more particularly described on Public Document No. 06-0522-26.

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 portion of the street easement to be vacated, with the limitation that the vacation not become effective until the recording of the plat of Hawk Ridge Estates-First Addition.

Resolution 06-0375 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

A sufficient petition was filed with the city clerk requesting the vacation of the public conservation easement legally described as the westerly 35 feet of Lot 1, Block 1, Village Mall First Addition, as same is recorded with the register of deeds and/or the registrar of titles of St. Louis County, Minnesota, and recorded as Document #440519 on September 11, 1981 (FN 06013); and

Pursuant to Section 100 of the City Charter and Article IV of Chapter 45 of the Duluth City Code, 1959, as amended, such petition was duly referred to the city planning commission and such commission gave due notice of public hearing and did consider same in public hearing; and

The city planning commission found that said public conservation easement is useless for the purpose for which is was intended, based on the following findings:

(a) The purpose for which the easement was established, across this lot, is no longer appropriate with the C-5, Commercial, zoning on the adjoining property; and

(b) With the imminent changes in the Maple Grove Road right-of-way and roadway improvements, it is a public benefit to allow the changes in access and parking that affect this easement area.

And the commission did approve, unanimously, the conservation easement vacation petition at its March 14, 2006, meeting and in accordance with the agreement, the parks and

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

recreation commission also endorsed this vacation at its May 10, 2006, 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. 06-0522-27.

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 portion of the easement to be vacated.

Resolution 06-0376 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

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

<b>Parcel ID and legal description</b>	<b>Location</b>	<b>Reason</b>
In Tract #1: 010-0220-4060 Bayview Addition No. 1, Block 25, Lots 14 and 15	at the east end of unbuilt Earl Street below Skyline Parkway (Bayview Heights)	trout stream protection (Keene Creek)
In Tract #1: 010-0220-4080 Bayview Addition No. 1, Block 26, Lots 1-5	at the southeast corner of Clay Street and 71st Avenue West below Skyline Parkway (Bayview Heights)	Skyline Parkway viewshed protection
In Tract #1: 010-0220-4210 Bayview Addition No. 1, Block 26, Lots 14 and 15	at the east end of unbuilt Clay Street below Skyline Parkway (Bayview Heights)	trout stream protection (Keene Creek)
In Tract #1: 010-0220-4230 Bayview Addition No. 1, Block 27, Lots 1-6, including part of vacated alley adjacent	north side of Clay Street below Skyline Parkway (Bayview Heights)	Skyline Parkway viewshed protection
In Tract #1: 010-0220-4330 Bayview Addition No. 1, Block 27, Lots 11-14, including part of vacated alley adjacent	at the east end of unbuilt Clay Street below Skyline Parkway (Bayview Heights)	trout stream protection (Keene Creek) and Superior Hiking Trail crosses the property
In Tract #1: 010-0220-4400 Bayview Addition No. 1, Block 28, Lots 4-11, including part of vacated alley adjacent	lower side of Skyline Parkway north of Clay Street (Bayview Heights)	Skyline Parkway viewshed protection
In Tract #1: 010-0220-4540 Bayview Addition No. 1, Block 29, Lots 7-10, including part of vacated alley adjacent	at the east end of unbuilt Prince Street below Skyline Parkway (Bayview Heights)	preservation of Keene Creek (trout stream) and Superior Hiking Trail that cross the property

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

<b>Parcel ID and legal description</b>	<b>Location</b>	<b>Reason</b>
010-0790-03760 (Tract #2) 010-0790-03780 (Tract #2) Crosley Park Addition, Block 33, Lots 376-379, including part of vacated 53rd Avenue East adjacent	at the northeast corner of Glenwood Street and 53rd Avenue East (Lakeside-Lester Park)	preservation of 53rd Avenue East Creek, which crosses all of the lots
In Tract #5: 010-1350-08540, 010-1350-08550, 010-1350-08560, 010-1350-08570, 010-1350-08580 Duluth Proper Third Division, Block 126, Lots 50-58, even numbered lots, except highway right-of-way	at the southeast corner of Central Entrance and Third Avenue East (Central Hillside)	steep slope and Central Entrance viewshed preservation
In Tract #5: 010-1350-08790 Duluth Proper Third Division, Block 127, Lot 34, except highway right-of-way	at the southeast corner of Central Entrance and Second Avenue East (Central Hillside)	steep slope and Central Entrance viewshed preservation
In Tract #5: 010-1350-08730, 010-1350-08750, 010-1350-08780 Duluth Proper Third Division, Block 127, Lot 39-47, odd numbered lots, except highway right-of-way	at the southwest corner of Central Entrance and Third Avenue East (Central Hillside)	steep slope and Central Entrance viewshed preservation
010-1760-00590 (Tract #6) East Fond du Lac Division, Block 4, Lots 4, 5, 18 and 19	west side of 123rd Avenue West north of Highway 23 (Fond du Lac)	wetland and Saint Louis River floodplain preservation
In Tract #8: 010-1490-00100 Endion Park Division, Block 2, all of Lots 11 and 12, and Lot 13, except easterly 25 feet	at the northeast corner of East Third Street and 22nd Avenue East (Endion)	steep slope and stream (Oregon Creek) protection
In Tract #8: part of 010-2200-00470 Highland Park Addition, Block 5, Lots 14 and 15	at the northeast corner of East Third Street and 22nd Avenue East (Endion)	steep slope and stream (Oregon Creek) protection
010-2690-00520 (Tract #9) 010-2690-00521 (Tract #9) In Section 26, T51N, R13W, all of Lot 1 lying south of D and IR RY, except east 1184.75 feet	upper side of Congdon Boulevard, 1/4 mile south of Cant Road (North Shore)	reserve for future study as recommended in 2004 TF land plan
010-2741-00020 (Tract #10) In Section 1, T49N, R15W, NW1/4 of NW1/4, except Getchell Road and except that part east of Getchell Road	east side of Getchell Road at the north city boundary (Bayview Heights)	steep slope and stream preservation (Keene Creek)
010-3830-19720 (Tract #14) Portland Division, Block 116, Lots 5-7	East Fifth Street east of 13th Avenue East (East Hillside)	needed for utility and alley preservation

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

Parcel ID and legal description	Location	Reason
010-4315-00080 (Tract #15) G.R. Tomlinson's Addition, Lot 8	upper side of Congdon Boulevard, 300 feet south of Cant Road (North Shore)	reserve for future study as recommended in 2004 TF land plan

Resolution 06-0398 was unanimously adopted.  
Approved May 22, 2006  
HERB W. BERGSON, Mayor

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BY PRESIDENT REINERT:

RESOLVED, that the proper city officials are hereby authorized to enter into a third amendment to the professional services agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 06-0522-29 with Moss & Barnett related to the cable franchise renewal process, increasing the amount payable thereunder by \$3,201, payable from Fund 0100, Agency 700, Organization 1407, Object 5441.

Resolution 06-0357 was unanimously adopted.  
Approved May 22, 2006  
HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Duluth-Superior Erection be and hereby is awarded a contract for 2006 citywide patch and sidewalk at various locations for the engineering division in accordance with its low specification bid of \$471,953, terms net 30, FOB job site, payable out of Fund 0411, Agency 035, Object 5403, Project Number 0137TR.

Resolution 06-0326 was unanimously adopted.  
Approved May 22, 2006  
HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are authorized to pay to Jeanne and William Dolter and their attorney, John C. Dunlap, \$32,000 in full and final settlement of a claim which arose out of an accident occurring on April 21, 2001; payment to be made from the Self Insurance Fund 610-036-1652-5841.

Resolution 06-0366 was unanimously adopted.  
Approved May 22, 2006  
HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Stout Mechanical, Inc., be and hereby is awarded a contract for sliplining of the 24 inch watermain in 15th Avenue East from London Road to Fourth Street for the engineering division in accordance with its low specification bid of \$526,815, terms net 30, FOB

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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job site, payable out of the Water Fund 0510, Agency 500, Organization 1905, Object 5536, Project Number 0005WA.

Resolution 06-0378 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Nels Nelson & Sons, Inc., be and hereby is awarded a contract for the SIP 2006 Lakeside Central West neighborhood, City Project No. 0107TR, for the engineering division in accordance with its low specification bid of \$1,412,559.29, terms net 30, FOB job site, payable out of Street Improvement Fund 0440, Agency 038, Object 5530.

Resolution 06-0384 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Arrowhead Painting Company be and hereby is awarded at contract for painting of 2,952 gas meter piping sets throughout the city of Duluth for the utility customer service division in accordance with specifications on its low specification bid of \$32,750, terms net 30, FOB job site, payable out of Gas Fund 520, Department/Agency 500, Organization 1905, Object 5535, City Project No. 0379GS.

Resolution 06-0391 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that pursuant to Section 61(a) of the Home Rule Charter of the city of Duluth, the city council hereby orders the construction of approximately 100 feet of sanitary sewer in Grand Avenue beginning at 43rd Avenue West and extending southerly as part of the Grand Avenue reconstruction project; that the costs of said improvement estimated at \$8,000 shall be paid from the Special Assessment Fund 0410, Agency 038, Object 5530, Project No. 0112TR, and that said costs be levied against the property specifically benefitted by said improvements.

Resolution 06-0392 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Glacier Paving, Inc., and Northland Materials, LLC, dba Northland Bituminous, be and hereby are awarded contracts for furnishing and delivering bituminous materials as needed for year 2006 for the maintenance and utility operations division in accordance with specifications based on St. Louis County, Minnesota, Bid #4620, for an estimated amount of \$125,000, terms net 30, FOB picked up, payable out of General Fund 0100, Agency 500, Organization 1920-2550 and Object 5222.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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Resolution 06-0404 was unanimously adopted.  
Approved May 22, 2006  
HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

RESOLVED, that the proper city officials are authorized to enter into an agreement with Animal Allies Humane Society for the operation of an adoption program within the city of Duluth animal shelter; said agreement to be substantially in the form of Public Document No. 06-0522-30 on file in the office of the city clerk.

Resolution 06-0317 was unanimously adopted.  
Approved May 22, 2006  
HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

RESOLVED, that Enventis Telecom, Inc., be and hereby is awarded a contract for one embedded operation channel (EOC) router and EOC CISCO 24 port PoE switch for the police department in the amount of \$16,781.29, terms net 30, FOB destination, payable out of Duluth Police Grant Programs Fund 0215, Department/Agency 200, Organization 2272, Activity 5580.

Resolution 06-0354 was unanimously adopted.  
Approved May 22, 2006  
HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

RESOLVED, that Uniforms Unlimited, Inc., be and hereby is awarded a contract for ten X26 model tasers with holsters and air cartridges for the police department in the estimated amount of \$10,276, terms net 30, FOB destination, payable out of Duluth Police Grant Programs Fund 0215, Department/Agency 200, Organization 2275, Object 5241.

Resolution 06-0355 was unanimously adopted.  
Approved May 22, 2006  
HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

RESOLVED, that the proper city officials are authorized to accept a grant from the state of Minnesota, commissioner of public safety, office of justice programs, in the amount of \$37,500, and to execute the grant agreement, a copy of which is on file in the office of the city clerk as Public Document No. 06-0522-31; grant funds to be deposited in Fund 215, Agency 200, Organization 2260, Revenue Source 4220-02.

Resolution 06-0367 was unanimously adopted.  
Approved May 22, 2006  
HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

RESOLVED, that Motorola Communications be and hereby is awarded a contract for 13 vehicle modems and cable for the police department in accordance with specifications as quoted

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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in the amount \$29,172, terms net, FOB destination, payable out of Capital Equipment Fund 250, Department/Agency 015, Organization 2006, Object 5580.

Resolution 06-0369 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

RESOLVED, that Municipal Emergency Services, Inc., be and hereby is awarded a contract for six Scott Eagle X thermal imagers for the fire department in accordance with specifications on its low specification bid of \$34,800, terms net 30, FOB destination, payable out of Special Projects Fund 0210, Department/Agency 030, Organization 3164, Object 5580.

Resolution 06-0371 was unanimously adopted.

Approved May 22, 2006

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: in front of 1317 North 57th Avenue West.

Resolution 06-0379 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

RESOLVED, that in accordance with the provisions of Section 33-108 of the Duluth City Code, 1959, as amended, the following parking meter zones are hereby established:

On the north side of Superior Street between Fourth Avenue East and Fifth Avenue East.

Proposed rate to be:

Quarter for 30 minutes, with a three hour limit.

Metered parking shall be applicable between 8:00 AM and 6:00 PM.

This meter zone will take effect upon installation of the parking meters and completion of changes in the pavement markings.

Resolution 06-0380 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, that Sound Central, LLC, be and hereby is awarded a contract for construction of Bayfront Festival Park portable stage unit with adjustable deck for the parks and recreation department in accordance with specifications on its low specification bid of \$72,295.50, terms 30 days, FOB destination, payable out of Bayfront Festival Park Fund 0237, Department/Agency 015, Object 5530.

Resolution 06-0373 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STAUBER:

RESOLVED, that Central Nebraska Packing, Inc., be and hereby is awarded a contract for furnishing and delivering frozen meat and bones to be used as animal food as needed for year 2006 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 5214.

Resolution 06-0400 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

- - -

The following resolutions were also considered:

Resolution 06-0399, by Councilor Ness, authorizing agreement with U.S. department of housing and urban development for human rights enforcement, was introduced for discussion.

Councilor Stauber voiced concern that the funding from HUD will be used appropriately.

Resolution 06-0399 was adopted as follows:

BY COUNCILOR NESS:

RESOLVED, that the proper city officials are authorized to execute and implement a contract, substantially the same as that on file with the city clerk as Public Document No. 06-0522-28, between the city and the U.S. department of housing and urban development providing for enforcement of federal civil rights laws and processing of related complaints by the city human rights office and other related matters; no payment by either party.

Resolution 06-0399 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0368, by President Reinert, regarding planning for a sustainable community, was introduced for discussion.

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

Janet Draper urged support of the resolution by acting in ways to reduce fossil fuels and encroach less on nature for healthier lives, and to also encourage eco-industrial businesses to start up or move to Duluth.

David Syring encouraged the councilors to be leaders and pass the resolution because other cities who had implemented sustainable principles in their planning process found environmental, social and economic benefits for their city.

Jan Karon stated it is possible for Duluth to grow economically while sustaining natural resources and create a bright future.

Councilor Krause expressed concern on the effect of this resolution on the community and that there are newer models that are being used for communities to adopt.

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

Yeas: Councilors Krause and Little -- 2

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

Absent: Councilor Gilbert -- 1

Resolution 06-0368 was adopted as follows:

BY PRESIDENT REINERT:

The city council finds:

The city of Duluth has adopted Resolution 98-0480 which articulates guidelines for city council sustainable decision-making; and

The city of Duluth has adopted governing principles for the comprehensive plan (October 24, 2005), which include four sustainable practices (#1, #2, #5 and #10); and

The following four guidelines were developed by the American Planning Association (April 6, 2000) to help communities implement sustainable practices:

(a) Reduce dependence on fossil fuels, extracted underground metals and minerals;

(b) Reduce dependence on chemicals and other manufactured substances that can accumulate in nature;

(c) Reduce dependence on activities that harm life-sustaining ecosystems;

(d) Meet the hierarchy of present and future human needs fairly and efficiently;

and

The adoption of the four guidelines can provide a framework that will assist city employees and elected officials in moving in a more sustainable direction; and

The willingness of the city to move in the direction of becoming a sustainable community can serve as a model for others and encourage economic development along similar lines in our city and region.

NOW, THEREFORE, BE IT RESOLVED, that the city of Duluth hereby endorses the guidelines for sustainable community development described herein and agrees to apply those guidelines whenever possible in its planning, policy making and municipal practices.

Resolution 06-0368 was adopted upon the following vote:

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

Nays: Councilors Krause and Little -- 2

Absent: Councilor Gilbert -- 1

Approved May 22, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0408, by President Reinert, denying a rezoning petition to provide for the reclassification from S-2, Suburban Residential, to R-1-a, Single Family Residential, property located at 7717 Congdon Boulevard (Gilbertson), was introduced for discussion.

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

Mark Gilbertson reviewed the history of the zoning changes to his property and, because of that zoning change, he now is unable to sell any parcels of his land for development.

- - -

At this time, 8:30 p.m., Councilor Gilbert took his seat.

- - -

Al Katz explained to the council that the neighbors do not want Mr. Gilbertson to have a hardship, but there is concern that a change in zoning would put the shoreline at risk. He went on to say that he hopes there is a way to deal with their problem without putting the S-2 zoning at risk as the two acre density is critical to the shore.

Councilor Ness moved to table the resolution so that it could be considered with Ordinance 06-016 at the next council meeting, which motion was seconded and unanimously carried.

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**RESOLUTIONS TABLED**

At this time, Councilor Gilbert moved to remove Resolutions 06-0338 and 06-0339, denying and approving, respectively, the vacation of Victoria Place (aka 28th Avenue East) between East Eighth Street and Elizabeth Street, located between 2727 and 2801 East Eighth Street (Johnson, Reichhoff, Sjogren), from the table, which motion was seconded and unanimously carried.

Councilor Gilbert explained that there are several neighbors who have questions and moved to return the resolutions back to the planning commission, contingent upon a written letter from the applicant extending the action deadline by 60 days, which motion was seconded and unanimously carried.

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At this time, Councilor Little moved to remove Resolution 06-0323, requesting the city purchasing department seek a qualified legal firm that does not have a conflict of interest with the city's activities to investigate and, if appropriate, prosecute for the possible violation of Minnesota Statutes Section 3.979, subd. 4, alleged to have occurred by city of Duluth, from the table, which motion was seconded and unanimously carried.

Councilor Stover stated that this resolution is politically motivated and the state has looked into it and is not choosing to pursue it.

Councilors Stewart and Ness stated that this process should have been done a long time ago and it leaves a bad taste when an elected official allegedly does something and there is no investigation.

Councilor Gilbert stated that this should not be brought into this political arena for process and the state should be investigating this matter.

Resolution 06-0323 was adopted as follows:

BY COUNCILOR LITTLE:

WHEREAS, Minnesota State Statute Section 3.979, subd. 4, makes it a misdemeanor for public officials to prematurely release draft reports from the legislative auditor's office; and

WHEREAS, the legislative auditor for the state of Minnesota believes there was a breach of law when a copy of the draft audit report on the Minnesota Council on Compulsive Gambling (MCCG) was leaked to the media on or about May 26, 2005; and

WHEREAS, Mayor Bergson has taken responsibility for giving the document to the Duluth News Tribune; and

WHEREAS, the legislative auditor sent a request to the St. Louis County attorney to investigate and prosecute anyone in violation of Minnesota Statute Section 3.979, subd. 4; and

WHEREAS, the St. Louis County attorney's office noted that it did not have jurisdiction over the matter and turned the case over to the Duluth city attorney; and

WHEREAS, the city attorney's office has been informed by the state board of professional responsibility that a conflict of interest exists preventing it from handling this matter; and

WHEREAS, the Duluth City Code, Section 7, allows for the city council to employ and fix compensation of counsel, experts and employees to handle these matters.

NOW, THEREFORE, BE IT RESOLVED, that the Duluth City Council requests that the Duluth purchasing department, through normal procedures of contracting, employ a legal firm authorized to practice law in the state of Minnesota and capable to investigate, determine cause and prosecute as necessary any city employee who has violated state law as noted above. Should this law firm find that no crime has been committed, they will report to the council this information and to the state legislative auditor.

Resolution 06-0323 was adopted upon the following vote:

Yeas: Councilors Krause, Little, Ness, Stauber and Stewart -- 5

Nays: Councilors Gilbert, Johnson, Stover and President Reinert -- 4

Approved May 22, 2006

HERB W. BERGSON, Mayor

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At this time, the regular order of business was resumed.

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Resolution 06-0409, by Councilor Ness, reconvening retiree healthcare task force (resolutions 05-0460 and 05-0523), was introduced for discussion.

Councilor Ness voiced concern over the lack of intensity and sense of urgency by the administration in trying to get the retiree healthcare problem resolved by the end of the year.

Resolution 06-0409 was adopted as follows:

BY COUNCILOR NESS:

The city council finds:

(a) The task force created by resolutions 05-0460 and 05-0523 completed its work and fulfilled its obligations under the enabling resolution; and

(b) The council, the city administration, and the public have interest in the implementation of the task force recommendations and in the developments that affect that implementation; and

(c) It is in the best interests of the city to make use of available assistance in dealing with the problem of rising cost of retiree health care.

NOW, THEREFORE, BE IT RESOLVED, that the city council requests that the task force created by resolutions 05-0460 and 05-0523 reconvene for a term ending when the city council determines that no further work is warranted, or upon completion of implementation of its recommendations, to do the following:

(a) Meet with appropriate city officials to discuss the progress of implementing the task force recommendations;

(b) Review its report and recommendations, receive appropriate input from the administration, and other sources, and make any amendments, additions or corrections it determines are appropriate;

(c) Make a written report of its activities and recommendations to the council on or before June 30, 2006, and on a quarterly basis thereafter.

BE IT FURTHER RESOLVED, that the council requests that the administration cooperate fully with the task force, furnish to it all requested information and make available to it appropriate staff to discuss the matter, all so that the task force can perform its duties.

BE IT FURTHER RESOLVED, that the council renews its commitment to the goal of fully implementing the task force recommendations by December 31, 2006.

Resolution 06-0409 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

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Resolution 06-0412, by Councilor Ness, to grant designation as Bob Dylan commemorative area (Robert Zimmerman), was introduced for discussion.

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

Susan Phillips, Steve O'Neil and Don Dass encouraged the council to support this

resolution and honor Bob Dylan, as he is recognized nationally for his song writing.

Councilor Ness explained that this resolution would commemorate Bob Dylan by adding a commemorative designation to the streets, but would not change the street names. He explained that by starting the area at the St. Louis County Heritage and Arts Center (Depot) and ending it at the old Armory, it would include a stretch of road that has growing development and cultural opportunities and would also bring the plaza neighborhood, the development in Old Downtown and the traditional art and development in the Depot all together.

Councilor Ness moved to amend the seventh paragraph of the resolution, by:

(a) Deleting the language, "the following street (council will amend): (a)";

(b) Deleting the language, "(b) London Road starting at Tenth Avenue East" and replacing it with the phrase, "continuing on Superior Street to London Road," which motion was seconded and carried upon the following vote:

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

Nays: Councilor Krause -- 1

Resolution 06-0412, as amended, was adopted as follows:

BY COUNCILOR NESS:

Robert Allen Zimmerman, also known as Bob Dylan, was born in Duluth, Minnesota, on May 24, 1941; and

Bob Dylan grew up in Hibbing and learned how to play guitar and harmonica as a youth, giving his first public performance in the Hibbing National Guard Armory as a member of the Golden Chords Band; and

Bob Dylan has made St. Louis County, Minnesota, known throughout the world with his references to the "hills of Duluth" in "Something There is About You," the Iron Range mining industry in "North Country Blues" and "the north country fair" in "Girl from the North Country"; and

Bob Dylan is now recognized as one of the most influential poet/singer/songwriters in modern history combining influences of folk, rock, country, blues and bluegrass genres; and

Bob Dylan has released 31 albums, was inducted into the Rock and Roll Hall of Fame in 1989, and has been hailed as one of the three greatest influences on 20th Century music, with Elvis Presley and the Beatles; and

Our recognition of Bob Dylan's roots in Duluth is also a recognition of the talent that is born in our community every day. The spirit of artistic freedom and expression that Dylan represents is alive, well and thriving in Duluth; it is part of our heritage.

NOW, THEREFORE, BE IT RESOLVED, that the Duluth City Council places honorary designation of the vicinity of a Duluth city street to Bob Dylan commemorative area. The official street name will remain the same. The commemorative area is the vicinity of Michigan Street starting at I-35 exit traveling east to the point where Michigan Street ends, intersecting with Superior Street near Fourth Avenue East, continuing on Superior Street to London Road traveling east to 15th Avenue East.

BE IT FURTHER RESOLVED, that no cost shall be incurred by the city for this initiative. All costs associated with the honorary designation must be raised by private parties.

Resolution 06-0412, as amended, was adopted upon the following vote:

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

Nays: Councilor Krause -- 1

Approved May 22, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0382, by Councilor Stover, ordering the construction of a residential street, sanitary sewer and watermain on Spear Avenue from Silcox Avenue to Livingston Avenue at an estimated cost of \$430,000, was introduced for discussion.

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

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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. 06-0522-32 payment by the city will be made from the General Fund 0100, Agency 700, Organization 1407, Object 5407.

Resolution 06-0410 was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

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Resolution 06-0406, by Councilor Stauber and President Reinert, requesting restoration of funding to the state airports fund, was introduced for discussion.

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

Brian Ryks, Duluth International Airport executive director, expressed his disappointment that the legislature did not return any of the money this session to the fund and requested an amendment that would request the Duluth airport authority get all of the \$15 million paid back.

Councilor Stauber moved to amend the last paragraph of the resolution to delete the phrase, "a minimum of \$3," and insert "\$15," which motion was seconded and unanimously carried.

Resolution 06-0406, as amended, was adopted as follows:

BY COUNCILOR STAUBER AND PRESIDENT REINERT:

Duluth International Airport is vital to the community and its economy; and

In 2003, the governor and the legislature transferred \$15 million from the state airports fund to the general fund to assist with the shortfall in the general fund; and

all revenues to the state airports fund are "user" taxes; and

the current balance in the state airports fund will severely reduce the Minnesota aviation program; and

Action by the governor and the legislature are necessary to resolve this problem.

NOW, THEREFORE, the Duluth City Council requests that the Minnesota House of Representatives, the senate and the governor take action to transfer \$15 million from the general fund to the state airports fund not later than July 1, 2006.

Resolution 06-0406, as amended, was unanimously adopted.

Approved May 22, 2006

HERB W. BERGSON, Mayor

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## INTRODUCTION AND CONSIDERATION OF ORDINANCES

**ORDINANCE TABLED**

BY COUNCILORS STEWART, STAUBER AND KRAUSE  
05-060 (9776) - AN ORDINANCE AMENDING CHAPTER 2 OF THE DULUTH CITY CODE, 1959,  
AS AMENDED; ADDING ARTICLE XXXIV - MINIMUM REQUIREMENTS FOR A  
DEVELOPMENT AGREEMENT.

Councilor Stewart 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.

David Ross, representing the Duluth Area Chamber of Commerce, stated the consequence of this ordinance would reduce the level of private investment in our community by adding one more unnecessary hurdle to the development process, and that there already is a process in place where each project can be evaluated properly by the city council.

Deb Kiepach voiced concern that the business climate in Duluth makes it hard for a small business to open up and this ordinance could potentially make it harder.

John Rathe urged support of the ordinance as it is not a burden to the city or to the developers, but special interest groups and organizations want status quo when it comes to development, which does not work.

Councilor Stewart reviewed that the ordinance requires any development project that has a city funding component to provide the financial details of the project in advance, it requires a stated maximum amount the city can be required to spend and it requires that a source of funding be designated for that amount.

Councilor Stewart moved to replace subsection 2-182(g) to read as follows:

“(g) Contain a provision for the parties to amend the agreement if force majeure or mutual mistake, or unforeseen complexity, or unusual cost problems not caused by any party to the contract prohibits performance. Such provision shall specify that the city and/or DEDA engage in good faith efforts to contribute to continuing the project in some feasible form.”

Councilor Stauber offered a friendly amendment to subsection 2-180(c)(5), inserting “city” after the phrase, “based upon information currently available, of the total,” and deleting the phrase “to all parties.”

Councilors Krause and Stewart accepted the friendly amendment.

The amendment was carried upon a unanimous vote.

Councilor Ness explained that this ordinance asks the developer to assume risk on the cost overruns and, if the project has overruns, the developer would have to come back to the council and negotiate as to who would pay those increased costs and the developer would not want to take on that uncertainty.

Councilor Stover reviewed that with or without this ordinance, any developer who has financial troubles with cost overruns will still have to come back to the city and until the council says no to a project, this ordinance would not make any difference.

President Reinert stated that he only supports the part of the ordinance where the city would have to identify where the money would come from for their share of the project.

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

Yeas: Councilors Gilbert, Krause, Little, Stauber and Stewart -- 5

Nays: Councilors Johnson, Ness, Stover and President Reinert -- 4

*[Editor's Note: This ordinance was vetoed by Mayor Bergson on May 26, 2006 (Public Document No. 06-0612-08).]*

- - -

The following ordinances were read for the first time:

BY COUNCILOR GILBERT

06-015 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NO. 41 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-A, SINGLE FAMILY RESIDENTIAL, TO R-1-B, SINGLE FAMILY RESIDENTIAL, PROPERTY LOCATED AT 4100 LONDON ROAD (BELL).

- - -

BY COUNCILOR GILBERT

06-016 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NO. 47 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM S-2, SUBURBAN RESIDENTIAL TO R-1-A, SINGLE FAMILY RESIDENTIAL, PROPERTY LOCATED AT 7717 CONGDON BOULEVARD (GILBERTSON).

- - -

BY PRESIDENT REINERT

06-014 - AN ORDINANCE AMENDING CHAPTER 2 OF THE DULUTH CITY CODE, 1959, AS AMENDED; AMENDING SECTION 2-112 TO INCREASE THE MEMBERSHIP OF THE SISTER CITY COMMISSION TO 15 MEMBERS; AMENDING SECTION 2-113 TO PROVIDE FOR THE TERMS OF THE NEW MEMBERS.

- - -

The meeting was adjourned at 10:30 p.m.

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

**OFFICIAL PROCEEDINGS**

Duluth City Council meeting held on Monday, June 12, 2006, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: None -- 0

- - -

The minutes of council meetings held on April 10 and 24, 2006, were unanimously approved.

- - -

**PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS**

06-0612-01 Canal Park Lodge, LLC, application to amend concurrent use permit granted by Ordinance 9001 on October 9, 1990. -- Planning commission

06-0612-02 Sulo Kangas, Jr., et al. (three signatures), petition to vacate the portion of Lemon Street adjacent to Lots 1-8, Block 2, Jackson Division of Duluth. -- Assessor

06-0612-03 Lake Superior Dental Associates, et al. (nine signatures), petition to reclassify from R-3 to C-1 Lots 7 and 8, Block 18, Banning and Ray's Subdivision. -- Assessor

06-0612-04 USANDE, LLC, et al. (two signatures), petition to vacate 16 foot wide utility easement running through Lots 9, 10, 13, 14 and 15, Clearview Park. -- Assessor

06-0612-05 Minnesota state auditor audit report for Duluth transit authority for the years ended December 31, 2005 and 2004. -- Received

06-0612-06 Mike and JoAnn Lundstrom appeal of planning commission approval of a WRMO variance at 3302 Greysolon Road. -- Committee 2 (planning and economic development)

06-0612-07 The following communications regarding the proposed Gilbertson reclassification at 7717 Congdon Boulevard (06-0408R and 06-016-O): (a) Mark and Kim Gilbertson (2); (b) John E. Kessler; (c) Tim and Judy Sheriff (2). -- Received

06-0612-19 The following communications regarding temporary closure of the northbound lane of Lakeview Drive (06-0414R): (a) Scotty Albert; (b) Steven M. Dastoor; (c) Karen LaLiberte; (d) Sue Schumacher and Bob Cormier. -- Received

- - -

**REPORTS FROM THE ADMINISTRATION**

06-0612-08 Mayor Bergson veto of Ordinance 9776, amending Chapter 2 of the Duluth City Code, 1959, as amended; adding Article XXXIV - minimum requirements for a development agreement. -- Received

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**REPORTS FROM OTHER OFFICERS**

06-0612-09 Assessor letters of sufficiency regarding petitions to:  
(a) Reclassify from R-3 to C-1 Lots 7 and 8, Block 18, Banning and Ray's Subdivision;  
(b) Vacate a utility easement on Lots 25 and 54, Block 3, Oatka Beach. -- Received

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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06-0612-10 Clerk application to the Minnesota gambling control board for exemption from lawful gambling from Head of the Lakes Chapter Rocky Mountain Elk Foundation on September 9, 2006 (raffle). -- Received

06-0612-11 Parks and recreation department director:

(a) Lake Superior Zoological Society May 17, 2006, zoo director, executive and education reports. -- Received

(b) Rental agreement for Enger Park Golf Course clubhouse apartment with Travis Hill, pursuant to Section 2-35 of the Duluth City Code. -- Mayor for execution

06-0612-12 Purchasing agent emergency orders for police department awarded to:

(a) Tower 2000 for construction of a U-14x180 foot self supporting tower;

(b) Zones for 17 computer laptops and two docking stations. -- Received

- - -

### REPORTS OF BOARDS AND COMMISSIONS

06-0612-13 Duluth airport authority minutes of April 18, 2006, meeting. -- Received

06-0612-14 Duluth/North Shore Sanitary District minutes of April 12, 2006, meeting. -- Received

06-0612-15 Duluth transit authority:

(a) March 2006 income statement;

(b) Minutes of March 29, 2006, meeting. -- Received

06-0612-16 Housing and Redevelopment Authority of Duluth annual audit report for the year ended September 30, 2005. -- Received

06-0612-17 Library board minutes of April 25, 2006, meeting. -- Received

06-0612-18 Seaway Port authority of Duluth minutes of meetings on:

(a) December 14, 2005;

(b) January 26, 2006;

(c) March 28, 2006. -- Received

- - -

### OPPORTUNITY FOR CITIZENS TO BE HEARD

KL Lewis spoke on the following matters: the need for safety signs to be installed at Nettleton School to help the children crossing the street; proposed Ordinance 05-060, regarding minimum requirements for a development agreement, was good in concept and should be revisited soon; the new hockey heritage center looks good; and the rail service to the Twin Cities is a great idea to help preserve gas and should also be for mail deliveries beside passengers.

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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

BY COUNCILOR KRAUSE:

RESOLVED, that the proper city officials are hereby authorized to execute an agreement with All Computer Service covering computer hardware maintenance as needed during year 2006 for the management information systems (MIS) division in accordance with specifications at an estimated amount of \$16,775.28, terms net 30 days, FOB destination, payable out of General Fund 0100, Department/Agency 015, Organization 1513, Object 5404.

Resolution 06-0356 was unanimously adopted.

Approved June 12, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

RESOLVED, that Ace Property Maintenance, Inc., be and hereby is awarded contracts for furnishing grass cutting services for the public works, police and library departments in accordance with specifications on their low specification bids for a total of \$38,803.50, terms net 30, FOB job sites, payable as follows:

Fund	Amount	Dept./Agency	Org.	Activity	Object
General Fund 0100	\$25,339.00	500	1920	2560	5310
Water 0510	\$7,936.50	500	1945		5310
Gas 0520	\$1,278.00	500	1945		5310
Sewer 0530	\$2,800.00	500	1945		5310
Stormwater 0535	\$300.00	500	1945		5310
General Fund 0100	\$500.00	200	1610		5319
General Fund 0100	\$650.00	300	1703		5319
<b>Total</b>	<b>\$38,803.50</b>				

Resolution 06-0370 was unanimously adopted.

Approved June 12, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

RESOLVED, that Change Order No. 1 (Public Document No. 06-0612-20) to Resolution No. 05-0748 with Duluth Superior Erection be and hereby is authorized, in an amount of \$16,600, payable from CD Fund 262, Agency 020, Organization 5434, Project No. CD05-PFAC-PF02, for additional construction services in connection with the Harrison Recreation Center site improvements/Phase II, thereby increasing the total contract amount to \$77,200.

Resolution 06-0407 was unanimously adopted.

Approved June 12, 2006

HERB W. BERGSON, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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BY COUNCILOR KRAUSE:

RESOLVED, that Northwest Outlet be and hereby is awarded a contract for furnishing and delivering uniforms as needed for year 2006 for the utility and maintenance operation divisions in accordance with specifications at an estimated amount of \$40,400, terms net 30, FOB destination, payable out of various funds, department/agencies, organizations and objects.

Resolution 06-0429 was unanimously adopted.

Approved June 12, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

RESOLVED, that Monroe Truck Equipment, Inc., be and hereby is awarded a contract for eight Framacam and 19 H2 rear vision systems for the utility operations division in accordance with specifications on its quote of \$13,382.79, terms net 30, FOB destination, payable as follows and including sales tax:

Object 5540           \$2,542.73 from Water Fund 0510, Department/Agency 0500, Organization 1905,

Object 5540           \$6,156.08 from Gas Fund 0520, Department/Agency 500, Organization 1905, Object

Object 5540           \$3,078.04 from Sewer Fund 0530, Department/Agency 0500, Organization 1905,

Object 5540           \$1,605.94 from Stormwater Fund 0535, Department/Agency 500, Organization 1905,

Resolution 06-0435 was unanimously adopted.

Approved June 12, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

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, 2006, subject to departmental approvals, with any specific restrictions:

Va Bene Café, Inc. (Va Bene Caffee), 734 East Superior Street.

Resolution 06-0437 was unanimously adopted.

Approved June 12, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

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:

Ray Skelton (Bedrock Bar), 2023 West Superior Street, for June 24, 2006, with the music and serving ceasing at 11:00 p.m.

Resolution 06-0439 was unanimously adopted.

Approved June 12, 2006

HERB W. BERGSON, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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BY COUNCILOR KRAUSE:

RESOLVED, that the city council of the city of Duluth hereby issues the following on sale 3.2 percent malt liquor license for the period ending April 30, 2007, subject to departmental approvals and the payment of sales and property taxes:

Renegade Comedy Theatre, 222 East Superior Street, with Brian Matuszak manager.

Resolution 06-0441 was unanimously adopted.

Approved June 12, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the reappointments by Mayor Bergson of James Berry (at large) and Lynn Nephew (at large) to the technical design advisory committee for the Downtown Waterfront Mixed Use-Design Review District (DWMX-D) for terms expiring on May 31, 2009, are confirmed.

Resolution 06-0365 was unanimously adopted.

Approved June 12, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

The city council finds as follows:

(a) A sufficient petition was filed with the city clerk requesting the vacation of 150 feet of North 12th Avenue West above West Fifth Street, legally described as that portion of 12th Avenue West adjoining Lot 193, Block 66, and Lot 191, Block 65, Duluth Proper Third Division (FN 06039);

(b) Pursuant to Section 100 of the City Charter and Article IV of Chapter 45 of the Duluth City Code, 1959, as amended, such petition was duly referred to the city planning commission and such commission gave due notice of public hearing and did consider same in public hearing;

(c) The city planning commission found that portions of said of 120 feet of North 12th Avenue West is useless for the purpose for which is was intended, based on the following findings:

(1) This right-of-way has a 35+ foot elevation change (20 percent slope) and contains exposed ledge rock and (likely) shallow overburden, making street construction difficult/costly;

(2) There is a need to retain a portion for roadway and utilities;  
and the commission did approve, unanimously, the partial street vacation petition at its May 24, 2006, meeting.

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation from the northerly right-of-way of West Fifth Street to a point 120 feet north adjoining Lot 193, Block 66, and Lot 191, Block 65, Duluth Proper Third Division, retaining a 20 feet wide utility easement, ten feet each side of the centerline as a pedestrian and utility easement and as more particularly described on Public Document No. 06-0612-21.

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 portion of the easement to be vacated.

Resolution 06-0421 was unanimously adopted.

Approved June 12, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

The city council finds as follows:

(a) A sufficient petition was filed with the city clerk requesting the vacation of 12th Avenue East from the north line of East Seventh Street Alley to the south line of East Seventh Street, legally described as the avenue adjoining Lot 1, Block 137-1/2, Auditors Rearrangement of Part of Portland Division, and Lot 16, Block 138, Portland Division;

(b) Pursuant to Section 100 of the City Charter and Article IV of Chapter 45 of the Duluth City Code, 1959, as amended, such petition was duly referred to the city planning commission and such commission gave due notice of public hearing and did consider same in public hearing;

(c) The city planning commission unanimously approved the avenue vacation at its May 24, 2006, meeting.

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation of the above-described portion of 12th Avenue East and as more particularly described on Public Document No. 06-0612-22 retaining a 20 foot wide utility and pedestrian easement, ten feet each side of the storm sewer main which is located 14 feet west from the centerline of 12th Avenue East.

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 06-0422 was unanimously adopted.

Approved June 12, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

RESOLVED, that this resolution approves a substantial amendment (Public Document No. 06-0612-23) to the FY 2006 action plan, withdrawing the Opportunities Cooking program, and that the proper city officials are authorized to make the following transfer of funds in the Federal Fund 262-020-5434 - CD06CD, 2006 HUD-funded community development accounts as set forth below:

Project No.	Project	Budget amount	New amount	Amount of increase or decrease
PSVC-1346	Opportunities Cooking	\$23,500	-0-	(\$23,500)
PSVC-1244	Duluth Hunger Project	\$57,000	\$80,500	\$23,500

Resolution 06-0432 was unanimously adopted.

Approved June 12, 2006

HERB W. BERGSON, Mayor

- - -

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 street and utility purposes.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

PC File No.	Applicant	Legal Description	Location
06027	City of Duluth	Bay View Addition Number 2 Duluth, Block 57, Lots 12 to 24 (Plat 0230, Parcel 05240) and the southerly 340 feet of land described as proprietor reservation reserved for railroad right-of-way (part of Plat 2030, Parcel 05240)	south of Irwin Avenue in Bayview Heights

Resolution 06-0433 was unanimously adopted.

Approved June 12, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

RESOLVED, that the proper city officials are hereby authorized to enter into a community development block grant agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 06-0612-24, with Ma & Pops 4th Street Market, Inc. (agency), pursuant to which the city agrees to purchase a certificate of deposit in an amount not to exceed \$80,000, payable from Community Development Program Fund 262 - community development - Agency 020, Project Account Number CD05CD-ECDV-05E1, and the agency agrees to operate a grocery market and create one full-time job equivalent for every \$20,000 of community development block grant funds deposited into the certificate of deposit with Members Cooperative Credit Union (MCCU) as a loan guaranty.

FURTHER RESOLVED, that the proper city officials are hereby authorized to enter into a third party pledge agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 06-0612-24, with MCCU pursuant to which the city agrees to pledge the certificate of deposit referenced above as collateral for the agency's bank loan with MCCU.

Resolution 06-0446 was unanimously adopted.

Approved June 12, 2006

HERB W. BERGSON, Mayor

- - -

BY PRESIDENT REINERT:

BE IT RESOLVED, that the proper city officials are hereby authorized to transfer from General Fund 100, Agency 700, Organization 1414, Object 5700-20, the sum of \$9,000 to the Special Projects Fund 210, Agency 030, Organization 3145, Source 4730-10, to provide for public access equipment and replacement.

Resolution 06-0436 was unanimously adopted.

Approved June 12, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Nels Nelson & Sons, Inc., be and hereby is awarded a contract for construction of an eight inch watermain in Lawn Street from Portal Avenue to approximately 383 feet east of centerline of Portal Avenue in accordance with specifications on its low specification bid of \$47,858.15, terms net 30, FOB job site, payable out of Special Assessments Fund 0410, Department/Agency 038, Object 5530, City Project No. SA-0546WA.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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Resolution 06-0334 was unanimously adopted.  
Approved June 12, 2006  
HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Duluth Ready Mix, Inc., be and hereby is awarded a contract for furnishing and delivering approximately 15,250 tons of washed sand for the maintenance operations division in accordance with specifications on its total low specification bid of \$127,948, terms net 30, FOB destination, payable out of General Fund 100, Department/Agency 500, Organization 1920, Activity 2550, Object 5223.

Resolution 06-0423 was unanimously adopted.  
Approved June 12, 2006  
HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Duluth Ready Mix, Inc., be and hereby is awarded a contract for furnishing and delivering 14,500 tons of Class 5 gravel, crushed rock as needed during year 2006 for the various utility operation and street maintenance operation divisions in accordance with specifications at an estimated amount of \$110,200, terms net 30, FOB destination, payable out of various funds.

Resolution 06-0424 was unanimously adopted.  
Approved June 12, 2006  
HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that pursuant to Section 61(a) of the Home Rule Charter of the city of Duluth, the city council hereby orders the construction of approximately 160 feet of sanitary sewer in East Skyline Parkway Alley beginning 360 feet south of Chester Parkway and extending southerly to alleviate a public health concern due to failure of a shared private sewer line resulting in sewer backups and surface spillage; that the costs of said improvement, estimated at \$37,500, be paid from Special Assessment Fund 0410, Agency 038, Object 5530, Project No. 0577SN, and that said costs be levied against the property specifically benefitted by said improvements.

Resolution 06-0425 was unanimously adopted.  
Approved June 12, 2006  
HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that MSA Professional Services, Inc., be and hereby is awarded a contract for professional services to review and identify fall protection options and develop procedures for the proper use of fall protection equipment at wastewater lift stations, and develop procedures for safe operations and maintenance of the wastewater lift stations to include a homeland security compliance assessment, in accordance with its proposal dated May 8, 2006, in the estimated

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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amount of \$17,657, payable from Sewer Fund 530, Agency 500, Organization 1945, Object 5310, City Project Number 0578SN.

Resolution 06-0426 was unanimously adopted.

Approved June 12, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Letourneau & Sons, Inc., be and hereby is awarded a contract for the construction of the Carlton Street reconditioning project for the engineering division in accordance with the specifications on its low specification bid of \$253,087.10, terms net 30, FOB job site, payable out of Fund 0411, Department/Agency 035, Object 5530, S.P. 118-194-005 (MTB), City Project No. 0132TR.

Resolution 06-0430 was unanimously adopted.

Approved June 12, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that the city of Duluth does hereby dedicate to the general public a perpetual easement for right-of-way purposes over, under and upon the following-described property in St. Louis County, Minnesota:

All of Lots One (1) through Twenty-Five (25), Block Five (5), Spaldings Addition, together with the alley located in said Block Five (5), lying between the northwesterly right-of-way of 25th Avenue West and a line connecting the southeasterly corner of Lot Twenty-Five (25) and the northeasterly corner of Lot Eight (8), said Spaldings Addition.

And, that portion of Block Twelve (12), said Spaldings Addition, beginning at the easterly corner of Lot One (1), Block Twelve (12), thence northwesterly along the northeasterly line of said Lot One (1), a distance of 123.32 feet, thence, southwesterly to the southerly corner of Lot Eleven (11), Block Twelve (12), said Spaldings Addition, thence northeasterly along the northwest right-of-way of Tenth Street to the point of beginning.

Resolution 06-0434 was unanimously adopted.

Approved June 12, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

RESOLVED, that E/S Support Services be and hereby is awarded a contract for furnishing computer hardware and software maintenance as needed during the year 2006 for the police department in accordance with specifications on its proposal of \$16,000, terms net 30, FOB destination, payable out of General Fund 100, Department/Agency 200, Organization 1610, Object 5404.

Resolution 06-0402 was unanimously adopted.

Approved June 12, 2006

HERB W. BERGSON, Mayor

- - -

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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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No. 06-0612-25, with St. James House d/b/a Woodland Hills to provide a youth diversion program for a total cost of \$50,000 and for a period beginning upon execution of the agreement and ending on December 31, 2007; payments to be made from Fund 215, Agency 200, Organization 2269, Object 5310.

Resolution 06-0431 was unanimously adopted.

Approved June 12, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, that the proper city officials are authorized to accept an outdoor recreation project fund grant from St. Louis County for improvements at the 12th Street park and garden bench in the amount of \$10,000 and to execute the grant agreement, a copy of which is on file with the city clerk as Public Document No. 06-0612-26; funds to be deposited in Fund 100, Agency 700, Organization 1420, Revenue Source 4260.

Resolution 06-0152 was unanimously adopted.

Approved June 12, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, that the proper city officers are hereby authorized to apply for and to accept, if offered, a snowmobile trails assistance program grant from the Minnesota department of natural resources for the maintenance of the Duluth snowmobile trails for the 2006-2007 season in the amount of \$24,000, said funds to be deposited in the General Fund 100-500-1920-4226.

Resolution 06-0415 was unanimously adopted.

Approved June 12, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, that the proper city officials are authorized to execute and implement an agreement, substantially in the form of that on file with the city clerk as Public Document No. 06-0612-27, between the city and 3M Library Systems for maintenance of the library's security and self-check systems. The agreement covers all labor, parts and any necessary modifications for the amount of \$10,712, payable from Fund 100, Agency 300, Organization 1702, Object 5404.

Resolution 06-0416 was unanimously adopted.

Approved June 12, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, that the proper city officials are authorized to enter into Amendment No. 1 to Agreement No. 19987 with the Drift Toppers Snowmobile Club, a copy of which is on file in the office of the city clerk as Public Document No. 06-0612-28, for services related to the grooming and maintenance of the eastern portion of the cross-city snowmobile trail to increase the amount payable thereunder by \$2,000, payable from Fund 100-500-1920-2560-5441.

Resolution 06-0417 was unanimously adopted.

Approved June 12, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, that the proper city officials are authorized to enter into Amendment No. 1 to Agreement No. 19988 with the Over the Hill Night Riders Snowmobile Club, a copy of which is on file in the office of the city clerk as Public Document No. 06-0612-29, for services related to the grooming and maintenance of the western portion of the cross-city snowmobile trail to increase the amount payable thereunder by \$2,000, payable from Fund 100-500-1920-2560-5441.

Resolution 06-0418 was unanimously adopted.

Approved June 12, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, that the proper city officials are authorized to accept a grant from the Northland Foundation in the amount of \$165 and to execute the grant agreement, said agreement to be substantially in the form of Public Document No. 06-0612-30 on file in the office of the city clerk; funds to be deposited in Fund 210, Agency 030, Organization 3107, Revenue Source 4700.

Resolution 06-0428 was unanimously adopted.

Approved June 12, 2006

HERB W. BERGSON, Mayor

- - -

The following resolutions were also considered:

BY COUNCILOR KRAUSE:

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:

Bridge Syndicate (Bayfront Reggae Festival), Bayfront Park, for July 8, 2006, with Jennifer Smith, manager.

Duluth Skyline Rotary (Fourth Fest), Bayfront Park, for July 3 and 4, 2006, with Thomas Meyer, manager.

Resolution 06-0438 was adopted upon the following vote:

Yeas: Councilors Johnson, Krause, Little, Ness, Stauber, Stewart, Stover and President Reinert -- 8

Nays: None -- 0

Abstention: Councilor Gilbert -- 1

Approved June 12, 2006

HERB W. BERGSON, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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BY COUNCILOR JOHNSON:

RESOLVED, that the appointment by Mayor Bergson of Daniel P. D'Allaird, replacing Mark Melhus, to the library board for a term expiring on June 1, 2011, is confirmed.

Resolution 06-0364 was adopted upon the following vote:

Yeas: Councilors Johnson, Krause, Little, Ness, Stauber, Stewart, Stover and President Reinert -- 8

Nays: None -- 0

Abstention: Councilor Gilbert -- 1

Approved June 12, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, that the proper city officers are authorized and directed to enter into an agreement with Duluth economic development authority, Lake Superior Center authority and Secret Service Entertainment, LLC, providing for the production, promotion and management of two special events at Bayfront Festival Park, said agreement to be substantially in the form of Public Document No. 06-0612-35 on file in the office of the city clerk, and providing for the payment of \$25,000, payments to be made from the Special Projects and Events Account 100-700-1410-5408, all payments of facility rental fees shall be deposited in Fund 237, Agency 015, Revenue Source 4627.

Resolution 06-0453 was adopted upon the following vote:

Yeas: Councilors Johnson, Krause, Little, Ness, Stauber, Stewart, Stover and President Reinert -- 8

Nays: None -- 0

Abstention: Councilor Gilbert -- 1

Approved June 12, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0413, by Councilor Gilbert, granting an obstruction of sidewalk permit to Va Bene Café, Inc. - Sorrento Group, LLC, for property located at 734 East Superior Street., was introduced for discussion.

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

Jack Arnold voiced concern that with the opening of this restaurant, the lack of public parking in the area has become even more noticeable and requested that the council table this resolution so that the city can review the situation and solve this problem.

KL Lewis agreed that there are parking shortages in the area and questioned if there will be enough public parking once the ramp is built.

Resolution 06-0413 was adopted as follows:

BY COUNCILOR GILBERT:

The city council finds as follows:

(a) Section 45-4.1 of the Duluth City Code, 1959, as amended, allows the city council, by resolution, to allow the placement of objects or material on the public sidewalks or boulevard areas where the city council finds that such objects will not substantially interfere with pedestrian traffic and that the placement of such objects is beneficial to the public welfare; and

(b) Va Bene Café, Inc., and Sorrento Group, LLC, have requested permission to place tables and chairs on the sidewalk of the Superior Street right-of-way of property located at 734

East Superior Street, described as Superior Street right-of-way adjoining Parts of Duluth, formerly Portland Square, Block 3, Lots 4 and 5; and 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. 06054).

NOW, BE IT RESOLVED, by the city council of the city of Duluth, that Va Bene Café, Inc., and Sorrento Group, LLC, are hereby permitted to place tables and chairs in accordance with the drawing identified as city council Public Document No. 06-0612-31 on or within the sidewalk area of the right-of-way of East Superior Street, as described above, 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 Va Bene Café, Inc., and shall be removed from the sidewalk when the business is closed;

(d) The 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, 2007, 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;

(h) Sidewalk construction is to meet city standards with approval by the city engineer.

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, that before this resolution shall be effective for any purpose whatsoever, the aforesaid permittees shall have constructed, to city of Duluth engineering division specifications, a three foot wide expansion of the sidewalk (including blind strip pattern) as illustrated in the city council public document.

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 06-0413 was unanimously adopted.

Approved June 12, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0419, by Councilor Gilbert, denying a rezoning petition to provide for the reclassification from R-1-a, Single Family Residential, to R-1-b, Single Family Residential, property located at 4100 London Road (Bell), was introduced for discussion.

- - -

### **INTRODUCTION AND CONSIDERATION OF ORDINANCE**

The following entitled ordinance was read for the second time:

BY COUNCILOR GILBERT

06-015 (9777) - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NO. 41 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-A, SINGLE FAMILY RESIDENTIAL, TO R-1-B, SINGLE FAMILY RESIDENTIAL, PROPERTY LOCATED AT 4100 LONDON ROAD (BELL).

President Reinert moved to consider the ordinance at this time, which motion was seconded and unanimously carried.

- - -

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

Gil Harries, attorney, reviewed that the applicant's lot was affected by Lakeshore Lutheran's expansion, and this zoning request will allow the applicant to divide his lot and enable him to build a new home. He continued by saying that there have been no objections by the neighbors and there should be no domino effect by this change because no one has had the same impact on their property as this applicant.

Tom Bell stated there has been a dramatic change to his property with the construction and this zoning change seems like the logical solution to his problem.

Councilor Gilbert urged caution about allowing a trend to start enabling people to build close to Lake Superior, which is the most valuable property in the city.

Resolution 06-0419 failed upon the following vote (Public Document No. 06-0612-32):

Yeas: Councilor Gilbert -- 1

Nays: Councilors Johnson, Krause, Little, Ness, Stauber, Stewart, Stover and President Reinert -- 8

- - -

The ordinance was adopted upon the following vote:

Yeas: Councilors Johnson, Krause, Little, Ness, Stauber, Stewart, Stover and President Reinert -- 8

Nays: Councilor Gilbert -- 1

- - -

Resolution 06-0420, by Councilor Gilbert, granting a special use permit to St. Louis County for a public safety building and communications tower on property located at 2501 Rice Lake

Road, was introduced for discussion.

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

Bob Zallar expressed his concern that the tower is not appropriate for this area and this special use permit would not be permitted in the Northwest Corner project study. He voiced four main concerns: how many dishes will be on the tower, there will be no sidewalks or public transportation in the area for detainees when they leave the building; the number of jail cells in the building and the color of the building so that it blends in with the neighborhood.

Tony Mancuso, property manager for St. Louis County, reviewed the process in choosing this site for the building. He added that this building is not a lock up facility to hold detainees and will have no jail cells; detainees will be interviewed there but will not be released there and that the building will be a cream color. Mr. Mancuso continued by saying that the county has lost their 911 lease at the airport and they need to keep this project moving to facilitate the relocation of the 911 center.

David Philips, St. Louis County undersheriff, stated that although there will be an occasional interviewee at this location, after the interview either the person will be transported to the jail or, upon release, the sheriff's office will make sure they have transportation out of there. He also repeated that there will be two interview rooms and one holding room, but no cells.

Bruce Hegernes, technical director for St. Louis County, stated that the towers will be the same height as the tower at the airport and there will be four dishes on the tower. He continued by saying that the tower should have minimal impact on the neighborhood as it is set back on the property.

Councilors Gilbert and Krause voiced concern that the neighborhood is not aware that this project is happening and questioned why there was not more information given out to the community.

Councilor Gilbert moved to table the resolution in order to put limitations on the special use permit, which motion was seconded and failed upon the following vote:

Yeas: Councilors Gilbert and Krause -- 2

Nays: Councilors Johnson, Little, Ness, Stauber, Stewart, Stover and President Reinert -- 7

Councilor Gilbert moved to amend the resolution by adding the following language to the last paragraph: "and on the condition that no more than one holding cell should be utilized at one time by the facility," which motion was seconded and failed upon the following vote:

Yeas: Councilors Gilbert, Krause and Little -- 3

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

Resolution 06-0420 was adopted as follows:

**BY COUNCILOR GILBERT:**

The city council finds as follows:

(a) St. Louis County has submitted to the city council a request for a special use permit (FN 06048) for a public safety building and communications tower (Zoning Code sections 50-35(t) and (u)) on property described as W1/2, NW1/4, Section 16, T50N, R14W, and located at 2501 Rice Lake Road; and said permit application was duly referred to the city planning commission for a study, report and public hearing held May 24, 2006, and the city planning commission has subsequently reported its approval to the city council; and

(b) 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 St.

Louis County to allow for the construction and operation of a public safety building and communications tower at 2501 Rice Lake Road, on the condition that the development be consistent with plans submitted by LHB entitled "St. Louis County Public Safety Building" (preliminary 65 percent review set) dated 4/6/06, Sheets A3.01, A3.02, C5.00 and C7.00, and tower elevation Order No. QU11908 by Valmont Microflect. as identified as Public Document No. 06-0612-33.

Resolution 06-0420 was unanimously adopted.

Approved June 12, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0427, by Councilor Gilbert, accepting reimbursement of \$4,000 from the Duluth economic development authority pertaining to the hiring of an additional parking meter monitor, was introduced for discussion.

Councilor Stauber said he was unable to support this resolution as DEDA would not be receiving any funds from these parking meters.

Resolution 06-0427 was adopted as follows:

BY COUNCILOR GILBERT:

RESOLVED, that the city of Duluth (the city) hereby authorizes acceptance from the Duluth economic development authority (DEDA) in an amount up to \$4,000 pertaining to the hiring of an additional parking meter monitor, payable into Fund 100, Agency 200, Organization 1620, Object 4650.

Resolution 06-0427 was adopted upon the following vote:

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

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

Approved June 12, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0414, by Councilor Stover, ordering the temporary closure of the northbound lane of Lakeview Drive at Snively Road for a six month period. was introduced for discussion.

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

Karen LaLiberte spoke against the resolution as it would be inconvenient for several of the residents and there should be other options in closing this public street.

Bob Fryberger, Peter Jeronimus, Tom Conrad, Mark Knustson, Katie Dwan, Celeste Curley-Black, John Carlson and Lise Lunge-Larsen spoke in favor of this resolution for the following reasons: this has been a problem for a long time; over 80 percent of the residents support this closure; the traffic has increased as a cut through street; this is a compromise with a six month closure to study the results; this is a public safety issue; there are no sidewalks to escape the drivers; the police department is not enforcing the traffic regulations on the road and the street is used for running and exercise because it is divided by a boulevard.

President Reinert reviewed that this is a six month study that gives the neighborhood an opportunity to see if a permanent closure of the street is a good idea.

Resolution 06-0414 was adopted as follows:

BY COUNCILOR STOVER:

RESOLVED, that the city council of the city of Duluth directs the public works and utilities department to physically close the northbound lane of Lakeview Drive at Snively Road for a period of six months, the exact location to be determined by appropriate city personnel.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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Resolution 06-0414 was unanimously adopted.

Approved June 12, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0265, by Councilor Little, establishing parking meter zones on Second Street and rates and time limits therefore, was introduced for discussion.

Councilors Stauber and Ness stated they cannot support this resolution as it is a three lane main artery of the city that is also used by emergency vehicles and an alternate route when Superior Street is blocked off.

Resolution 06-0265 failed upon the following vote (Public Document No. 06-0612-34):

Yeas: Councilor Stover -- 1

Nays: Councilors Gilbert, Johnson, Krause, Little, Ness, Stauber, Stewart and President Reinert -- 8

- - -

BY COUNCILOR LITTLE:

RESOLVED, that in accordance with the provisions of Section 33-97 of the Duluth City Code, 1959, as amended, the following zone is designated as a no parking zone from 2:00 a.m. to 6:00 a.m. seven days per week:

North side of Second Street between Fourth Avenue West and Fourth Avenue East.

Resolution 06-0266 was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Little, Stover and President Reinert -- 5

Nays: Councilors Krause, Ness, Stauber and Stewart -- 4

Approved June 12, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, that the city of Duluth accepts from the Duluth Library Foundation a gift of 140 stacking chairs to be used to facilitate operations of the library system.

BE IT FURTHER RESOLVED, that the city expresses its gratitude, on behalf of the thousands of citizens who use the library, for the generous gift from the Duluth Library Foundation, and the on-going activities of the foundation which benefit the Duluth public library.

Resolution 06-0445 was unanimously adopted.

Approved June 12, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0450, by Councilor Stauber, requesting the Duluth City Charter commission review and make a recommendation changing the Charter to include the city council on any removal decision of the city attorney, was introduced for discussion.

Councilor Stauber explained that although the city attorney is the only city employee that works for the city council according to the Charter, only the mayor is able to dismiss the city attorney. He further explained that this resolution is asking the Charter commission to review and recommend changing the Charter so the council becomes part of the removal process and not

solely the mayor.

Resolution 06-0450 was adopted upon the following vote:

Yeas: Councilors Krause, Little, Ness, Stauber and Stewart -- 5

Nays: Councilors Gilbert, Johnson, Stover and President Reinert -- 4

*[Editor's Note: Resolution 06-0450 was vetoed by Mayor Bergson on June 16, 2006 (Public Document No. 06-0626-02); reconsidered and failed by a 5/9ths vote at the June 26, 2006, council meeting (6/9ths is required to override a veto).]*

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Resolution 06-0464, by Councilor Stauber, authorizing city officials to enter into a termination agreement with Duluth economic development authority, Lake Superior Center authority and Lou Campbell, d/b/a Lou Campbell Productions, was introduced for discussion.

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

Richard Winkler explained that he had a contract with Lou Campbell and has done a lot of work for the Fourth Fest and questioned what the status of his contract is with the termination of Mr. Campbell's contract.

Resolution 06-0464 was adopted as follows:

BY COUNCILOR STAUBER:

RESOLVED, that the proper city officers are authorized and directed to enter into an agreement with Duluth economic development authority, Lake Superior Center authority and Lou Campbell, d/b/a Lou Campbell Productions, terminating city Contract No. 20043 providing for the production, promotion and management of three special events at Bayfront Festival Park, said termination agreement to be substantially in the form of Public Document No. 06-0612-36 on file in the office of the city clerk.

Resolution 06-0464 was unanimously adopted.

Approved June 12, 2006

HERB W. BERGSON, Mayor

- - -

## **INTRODUCTION AND CONSIDERATION OF ORDINANCES**

The following entitled ordinances were read for the first time:

BY COUNCILOR STEWART

06-017 - AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF \$1,725,000 GENERAL OBLIGATION STORMWATER UTILITY REVENUE BONDS OF THE CITY OF DULUTH FOR THE IMPROVEMENT OF THE MUNICIPAL STORMWATER UTILITY UPON TERMS AND CONDITIONS TO BE PROVIDED BY RESOLUTION OF THE CITY COUNCIL AND PLEDGING REVENUES FOR THE PAYMENT THEREOF.

- - -

BY COUNCILOR KRAUSE

06-018 - AN ORDINANCE PERTAINING TO INSPECTION AND REMOVAL OF VACANT BUILDINGS; AMENDING CHAPTER 10 OF THE DULUTH CITY CODE, 1959, AS AMENDED, AND CREATING A FEE.

- - -

The following entitled ordinances were read for the second time:

BY COUNCILOR GILBERT

06-016 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NO. 47 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM S-2, SUBURBAN RESIDENTIAL TO R-1-A, SINGLE FAMILY RESIDENTIAL, PROPERTY LOCATED AT 7717 CONGDON BOULEVARD (GILBERTSON).

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

- - -

BY PRESIDENT REINERT

06-014 (9778) - AN ORDINANCE AMENDING CHAPTER 2 OF THE DULUTH CITY CODE, 1959, AS AMENDED; AMENDING SECTION 2-112 TO INCREASE THE MEMBERSHIP OF THE SISTER CITY COMMISSION TO 15 MEMBERS; AMENDING SECTION 2-113 TO PROVIDE FOR THE TERMS OF THE NEW MEMBERS.

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

Ed Haller explained that the commission is involved in 15 separate projects and need more commission members to help with these community projects.

President Reinert moved passage of the ordinance and the same was adopted upon a unanimous vote.

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The meeting was adjourned at 8:55 p.m.

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

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**ORDINANCE NO. 9777**

BY COUNCILOR GILBERT:

AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NO. 41 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-A, SINGLE FAMILY RESIDENTIAL, TO R-1-B, SINGLE FAMILY RESIDENTIAL, PROPERTY LOCATED AT 4100 LONDON ROAD (BELL).

The city of Duluth does ordain:

Section 1. That Plate No. 41 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. 41 at end of meeting]*

Section 2. That this reclassification is approved based on the findings that the expansion of the Lakeshore Lutheran Home complex has significantly changed the character of the immediate neighborhood and uniquely impacted this property immediately adjacent.

Section 3. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: July 23, 2006)

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

Yeas: Councilors Johnson, Krause, Little, Ness, Stauber, Stewart, Stover and President Reinert -- 8

Nays: Councilor Gilbert -- 1

Passed June 12, 2006

Approved June 12, 2006

ATTEST:

JEFFREY J. COX, City Clerk

HERB W. BERGSON, Mayor

- - -

**ORDINANCE NO. 9778**

BY PRESIDENT REINERT:

AN ORDINANCE AMENDING CHAPTER 2 OF THE DULUTH CITY CODE, 1959, AS AMENDED; AMENDING SECTION 2-112 TO INCREASE THE MEMBERSHIP OF THE SISTER CITY COMMISSION TO 15 MEMBERS; AMENDING SECTION 2-113 TO PROVIDE FOR THE TERMS OF THE NEW MEMBERS.

The city of Duluth does ordain:

Section 1. That Section 2-112 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 2-112. Commission created.

There is hereby created a sister city commission consisting of 15 members.

Section 2. That Section 2-113 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 2-113. Appointment and terms of members; vacancies.

Members shall be appointed by the mayor subject to confirmation by the city council. Vacancies shall be filled for the unexpired term in the same manner. One member shall be a representative of the business community, one member shall be a representative of the educational community and one member shall be a city councilor. Of the initial members other than the city councilor, three shall be appointed for three years, three shall be appointed for two years, and two shall be appointed for one year; thereafter all appointments other than the city councilor and other than those to fill unexpired terms shall be for three years. Without delay, after the size of the membership of the commission is increased to a total of 15 members, the mayor shall appoint four new members, two members to serve an initial term of three years, one member to serve an initial term of two years and one member to serve an initial term of one year. The city council member shall be appointed for the duration of his or her current term of office. The terms of other members shall expire on March 30 of the appropriate year. Members shall serve until their successors are appointed and qualified.

Section 3. That this ordinance shall take effect 30 days after its passage and publication.  
(Effective date: July 23, 2006)

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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President Reinert moved passage of the ordinance and the same was adopted upon the following vote:

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

Nays: None -- 0

ATTEST:  
JEFFREY J. COX, City Clerk

Passed June 12, 2006  
Approved June 12, 2006  
HERB W. BERGSON, Mayor

- - -



**OFFICIAL PROCEEDINGS**

Duluth City Council meeting held on Monday, June 26, 2006, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: None -- 0

- - -

The minutes of council meetings held on May 8, 11 and 22, 2006, were unanimously approved.

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**PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS**

06-0626-01 Mark and Kim Gilbertson communication regarding reclassification of property at 7717 Congdon Boulevard (06-0408R and 06-016-O). -- Received

06-0626-11 The following communications regarding the proposed comprehensive plan (06-0491R): (a) Janet Draper; (b) Independent School District No. 709. -- Received

- - -

**REPORTS FROM THE ADMINISTRATION**

06-0626-02 Mayor Bergson veto of Resolution 06-0450 requesting the Duluth City Charter commission review and make a recommendation changing the Charter to include the city council on any removal decision of the city attorney. -- Received

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**REPORTS FROM OTHER OFFICERS**

06-0626-03 Assessor letters of sufficiency of petitions to vacate:

(a) A 16 foot wide utility easement running through Lots 9, 10, 13, 14 and 15, Clearview Park;

(b) Portion of Lemon Street adjacent to Lots 1-8, Block 2, Jackson Division of Duluth. -- Received

06-0626-04 Purchasing agent emergency order awarded to Stout Mechanical, Inc., for replacement of steam vault roof at First Avenue East and First Street. -- Received

- - -

**REPORTS OF BOARDS AND COMMISSIONS**

06-0626-05 American Indian commission minutes of May 15, 2006, meeting. -- Received

06-0626-06 Commission on disabilities minutes of May 3, 2006, meeting. -- Received

06-0626-07 Duluth/North Shore Sanitary District board minutes of May 10, 2006, meeting. -- Received

06-0626-08 Environmental advisory council minutes of: (a) September 7; (b) October 5; (c) November 2; (d) December 7, 2005; (e) January 4; (f) February 1; (g) March 1; (h) April 5, 2006, meetings. -- Received

06-0626-09 Heritage preservation commission minutes of: (a) January 25; (b) February 28; (c) March 28; (d) April 25, 2006, meetings. -- Received

06-0626-10 Planning commission minutes of: (a) April 26, (b) May 9, 2006, meetings. --  
Received

- - -

### OPPORTUNITY FOR CITIZENS TO BE HEARD

KL Lewis questioned: if someone is keeping account of the dollars that were supposed to be set aside when Miller-Dwan was transferred to St. Mary's – Duluth Clinic for the care of indigents; when will the report on dangerous intersections be completed and that the use of ethanol requires large amounts of water, so we need to protect our resources.

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### RESOLUTION RECONSIDERED

Councilor Stauber moved to reconsider vetoed Resolution 06-0450, requesting the Duluth City Charter commission review and make a recommendation changing the Charter to include the city council on any removal decision of the city attorney, which motion was seconded and unanimously carried.

Councilor Stauber noted that this resolution only requests that the Charter commission looks at this issue and that it would still have to come back to the city council for approval. He further noted that the city attorney must serve both the administration and the city council and thus both should be involved with any removal.

Councilor Stover noted that if at any time the council does not agree with the city attorneys opinion, they have the option to hire other legal counsel.

Resolution 06-0450 failed upon the following vote (City Charter requires a 6/9ths vote to override a veto) (Public Document No. 06-0626-12):

Yeas: Councilors Krause, Little, Ness, Stauber and Stewart -- 5

Nays: Councilors Gilbert, Johnson, Stover and President Reinert -- 4

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

BY COUNCILOR KRAUSE:

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.

Licensee	Gambling Site
Minnesota Chapter of the Multiple Sclerosis Society	Afterburner Lounge, 4701 Grinden Drive

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

Licensee	Gambling Site
Duluth Amateur Youth Basketball Association	Sneaker's Bar, 200 West First Street

Resolution 06-0440 was unanimously adopted.

Approved June 26, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

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

Duluth Police Softball Team, Wheeler Field, for July 29 and 30, 2006, with Matt McShane, manager.

Resolution 06-0454 was unanimously adopted.

Approved June 26, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

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:

Ridgeview Country Club, 700 West Redwing Street, for July 27, 28, 29 and 30, 2006, with Phil Gaudino, manager.

Northland Vietnam Veterans Association, Bayfront Park, for August 10, 11, 12 and 13, 2006, with Kathy Camps, manager.

Resolution 06-0455 was unanimously adopted.

Approved June 26, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

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:

Lyric Block Development Corporation (Sneakers/Porters/Greenery), 200 West First Street, for July 12, 2006, for Downtown Sidewalk Days from 5:00 p.m. to 8:00 p.m., and for July 13, 2006, for Rock the Block, from 5:00 p.m. to 8:00 p.m.

Resolution 06-0456 was unanimously adopted.

Approved June 26, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the abolishment of associate director, park maintenance and forestry; chemist; gas control leadworker; loss control specialist; senior pipeline welder; senior water chemist; and street and park maintenance area manager, which was approved by the civil service

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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board on June 6, 2006, and which are filed with the city clerk as Public Document No. 06-0626-13, is approved.

Resolution 06-0447 was unanimously adopted.

Approved June 26, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the reappointments of Robert Beaudin and Mark Emmel, and the appointment of John B. Arnold III, replacing Stephen Bianchi who resigned, by Mayor Bergson to the Duluth state convention center administrative board for terms expiring on June 30, 2009, are confirmed.

Resolution 06-0460 was unanimously adopted.

Approved June 26, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the reappointments by Mayor Bergson of Melanie Hendrickson (District 1), Walter Kramer (at large) and Lewis Martin (Superior, Wisconsin) to the Duluth transit authority for terms expiring on June 30, 2009, are confirmed.

Resolution 06-0461 was unanimously adopted.

Approved June 26, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the reappointment by Mayor Bergson of John Simpson (District 4), to the parking commission for a term expiring on July 1, 2009, is confirmed.

Resolution 06-0462 was unanimously adopted.

Approved June 26, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the reappointments of Ken Buehler, Nancy Nelson and Pauline Olsen, and the appointment of Willard M. Munger, Jr., replacing Eric Kaiser, by Mayor Bergson to the Spirit Mountain recreation area authority for terms expiring on June 30, 2009, are confirmed.

FURTHER RESOLVED, that the appointment by Mayor Bergson of Lisa E. Augustine, replacing John Goldfine, to the Spirit Mountain recreation area authority for a term expiring on June 30, 2008, is confirmed.

Resolution 06-0463 was unanimously adopted.

Approved June 26, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the proposed specifications for the new civil service classification of utility accounts receivable specialist, which were approved by the civil service board on April 4, 2006, and which are filed with the city clerk as Public Document No. 06-0625-15, are approved; that said classification shall be subject to the city's collective bargaining unit with its basic unit employees;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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and that pay range for said classification shall be Range 132. The proper city officials are authorized to execute and implement an agreement with the union to provide for employing one or more unit members consistent with this resolution.

Resolution 06-0465 was unanimously adopted.

Approved June 26, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointments by Mayor Bergson of Eri Fujieda and Michelle Wiklund, replacing Eileen Zeitz Hudelson and James F. Yeager who resigned, to the sister city commission for terms expiring on March 30, 2009, and 2007, respectively, are confirmed.

Resolution 06-0488 was unanimously adopted.

Approved June 26, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

The city council finds a sufficient petition was filed with the city clerk requesting the vacation of a 20-foot wide utility easement legally described as: ten feet along the rear of Lots 25 and 54, Block 3, Oatka Beach Addition to Duluth.

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.

The city planning commission unanimously approved the utility vacation easement vacation at its June 13, 2006, meeting.

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the utility easement vacation of the above-described and as more particularly described on Public Document No. 06-0626-16.

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 06-0467 was unanimously adopted.

Approved June 26, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

The city council finds a sufficient petition was filed with the city clerk requesting the vacation of the alley between 69th and 71st avenues West between Clay and Earl streets, legally described as alley adjoining Blocks 25 and 26, Bay View Addition No. 1 to Duluth (FN 06050); and, pursuant to Section 100 of the City Charter and Article IV of Chapter 45 of the Duluth City Code, 1959, as amended, such petition was duly referred to the city planning commission and such commission gave due notice of public hearing and did consider same in public hearing and the city planning commission found that said alley easement is useless for the purpose for which it was intended, based on the following findings:

- (a) Utilities can be provided to these blocks in the adjoining Clay and Earl street rights-of-way;
- (b) This vacation will enlarge the adjoining lots and enhance building site locations;

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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(c) This vacation is consistent with the April 2006 actions of the city and county to classify Lots 1-12 of both blocks for sale;

And the commission did approve, unanimously, the alley easement vacation petition at its meeting of June 13, 2006.

NOW, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation of the alley easement described above and as more particularly described on Public Document No. 06-0626-17; subject to the retention of a utility easement over that portion of the alley described as and the westerly 120 feet, adjoining Lots 1-3 in both Blocks 25 and 26.

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 portion of the alley to be vacated and the easement being retained.

Resolution 06-0471 was unanimously adopted.

Approved June 26, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

The city council finds a sufficient petition was filed with the city clerk requesting the vacation of the section of an alley in Sunnyside Gardens Division adjacent to Lot 7, Block 3, except the easterly 20 feet and the vacation of certain streets in Auditors Plat No. 24 adjacent to Lots 2-8, legally described as that part of Sunnyside Gardens Division lying adjacent to and eight feet southerly of Lot 7, Block 3, except the easterly 20 feet, according to the recorded plat thereof; and that part of the unnamed street adjoining the north side of Lots 2-8 of Auditors Plat No. 24; and that part of the unnamed street which lies between Lots 8 and 9 of Auditors Plat No. 24; and, pursuant to Section 100 of the City Charter and Article IV of Chapter 45 of the Duluth City Code, 1959, as amended, such petition was duly referred to the city planning commission, and such commission gave due notice of public hearing and did consider same in public hearing; and, the city planning commission found that said street and alley easements are useless for the purpose for which they were intended, based on the following findings:

(a) Portions of the proposed street and alley vacation are only dedicated at 1/2 of the width needed to be improved with streets or alleys and, therefore, are not useful to the public because they could never be improved as such;

(b) The north-south segment of the street right-of-way that intersects with Trinity Road is platted a full 66 feet wide but is too steep to be improved with a properly designed street;

(c) No property owner will lose access to their property as a result of the proposed vacations following the dedication of new rights-of-way in the proposed Coffee Creek Division plat; and the commission did approve, unanimously, the street and alley easement vacation petition at its meeting.

NOW, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation of the street and alley easements described above and as more particularly described on Public Document No. 06-0626-18; subject to the recording in the St. Louis County recorder's office of the plat of Coffee Creek Division.

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 Saint Louis County, Minnesota, a certified copy

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

of this resolution together with a plat showing the portion of the streets and alley to be vacated.

Resolution 06-0476 was unanimously adopted.

Approved June 26, 2006

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:

Parcel ID and Legal Description	Location	Reason
010-1800-00110, 00210  Gary First Division, Block 2, Lots 3, 4, 27, and 28	north of the dead-ends of Reis Street and 104th Avenue West (Gary-New Duluth)	adjacent to U.S. Steel Creek, stream preservation
010-2560-00870, 00880  Ironton Park Addition, Block 8, Lots 5 and 6	north of Gogebic Street near the intersection with Lanigan Boulevard (Riverside)	within the Spirit Mountain recreation area authority boundary
010-3530-02020, 02030, 02130, 02140, 02150, 02470, 02480, 02530, 02540  Nortons Lakewood Gardens Addition, Block 10, Lots 8, 9 except highway right-of-way, 19 except highway right-of-way, 20 and 21, Block 11, Lots 29 except highway right-of-way, and 30 except highway right-of-way, Block 12, Lots 5 except highway right-of-way, and 6	lots are on both sides of Highway 61 between Lakewood Road and 78th Avenue East (North Shore)	land packaging
010-3850-01200  Portland Division, Block 128, southerly 90 feet of Lot 6 and all of Lot 7	Upper side of Sixth Street between Eighth and Ninth avenues East (East Hillside)	storm sewer, Grey's Creek runs through the lot
010-4540-01955  West End Addition, Block 13, Lot 2 lying south of Grand Avenue	part of the Grand Avenue/63rd Avenue West intersection (Irving)	existing street over the lot

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Parcel ID and Legal Description	Location	Reason
010-2710-01160  Lands in the city, T50N, R14W, Section 5, N1/2 of NW1/4, except highway easement	79.91 acres at the southeast intersection of Ridgeview Road and Rice Lake Road (Kenwood)	land assembly, wetland bank

Resolution 06-0477 was unanimously adopted.  
 Approved June 26, 2006  
 HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that Viele Contracting, Inc., be and hereby is awarded a contract for the construction year 2006, accessibility project-curb ramps in the Downtown area of Duluth for the engineering division in accordance with the specifications on its low specification bid of \$84,700, terms net 30, FOB job site, payable out of CDBG Fund 262, Department/Agency 020, Object 5530, Project CD06-CD PFAC PF02, City Project No. 0564TR.

Resolution 06-0483 was unanimously adopted.  
 Approved June 26, 2006  
 HERB W. BERGSON, Mayor

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BY PRESIDENT REINERT:

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. 06-0626-19, with Johnson Controls, Inc. (JCI), pursuant to which JCI will develop a report for cost reducing strategies, operational efficiencies and revenue enhancing strategies for Duluth facilities and infrastructures in an amount not to exceed \$169,716, \$56,416 payable from Fund 257, Agency 015, Object 5310 (general/energy management fund); \$68,530 payable from Fund 510, Agency 500, Organization 1915, Object 5310 (water); \$17,505 payable from Fund 520, Agency 500, Organization 1915, Object 5310 (natural gas); \$10,585 payable from Fund 530, Agency 500, Organization 1915, Object 5310 (sewer); \$12,280 payable from Fund 100, Agency 700, Organization 1407, Object 5441 (library); and \$4,400 payable from Fund 660, Agency 015, Object 5319 (fleet services).

Resolution 06-0469 was unanimously adopted.  
 Approved June 26, 2006  
 HERB W. BERGSON, Mayor

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BY PRESIDENT REINERT:

RESOLVED, that the proper city officials are hereby authorized to enter into a sponsorship agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 06-0626-20, with Kernz and Kompany, Inc., and Duluth Air and Aviation Expo (both hereinafter referred to as Kernz) pursuant to which the city will provide in kind traffic control and police

services with respect to the Duluth airshow.

Resolution 06-0486 was unanimously adopted.

Approved June 26, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the establishment of steam consumption categories and service factors related thereto for Duluth Steam District No. 1 as shown on Public Document No. 06-0626-21, a copy of which is on file in the office of the city clerk, are hereby approved.

RESOLVED FURTHER, that the capacity charges attributable to each such consumption category as shown on Public Document No. 06-0626-21, a copy of which is on file in the office of the city clerk, are hereby approved.

RESOLVED FURTHER, that the cost of steam per one thousand pounds of steam consumed by each customer of the district for each customer calculated in accordance with the formula shown on said Public Document No. 06-0626-21 is hereby approved.

Resolution 06-0351 was unanimously adopted.

Approved June 26, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that 3B's Sewer and Drain Service was awarded a contract to rehabilitate by cured-in-place pipe (CIPP) lining 110 sanitary sewer laterals totaling approximately 6,600 feet of lateral pipe in Basin #1 for the engineering division in accordance with its low specification bid of \$798,169.90, terms net 30, FOB job site, payable out of the Sanitary Sewer Fund 0530, Agency 500, Organization 1970, Object 5535, City Job Number 0548SN, by Resolution 06-0226.

FURTHER RESOLVED, that 3B's Sewer and Drain Service's award of contract be and hereby is rescinded due to their failure to execute and deliver the bonds and contract.

Resolution 06-0442 was unanimously adopted.

Approved June 26, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Performance Pipelining, Inc., be and hereby is awarded a contract to rehabilitate the cured-in-place pipe (CIPP) lining 110 sanitary sewer laterals totaling approximately 6,600 feet of lateral pipe in Basin #1 for the engineering division in accordance with its second lowest specification bid of \$924,450, terms net 30, FOB job site, payable out of the Sanitary Sewer Fund 0530, Agency 500, Organization 1970, Object 5535, City Job No. 0548SN.

FURTHER RESOLVED, that Resolution 06-0226 previously awarded a contract to 3B's Sewer and Drain Services for this work and has since been rescinded due to their failure to execute and deliver the bonds and contract.

FURTHER RESOLVED, that the contract amount exceeds the low bidder by \$324,450 and that this award may require a mid-term rate increase effective not later than August 2006 to cover the overage.

Resolution 06-0443 was unanimously adopted.

Approved June 26, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are hereby authorized to enter into a joint agreement with the Minnesota department of transportation, Hermantown and St. Louis County. The costs associated with this agreement for the reconstruction of Airport Road have a total estimated cost of \$237,800: \$118,000 for the city's non-federal portion of the construction costs, \$72,600 for the design engineering costs by a consulting firm and \$47,200 for the construction engineering costs for St. Louis County. These costs will be payable from the Permanent Improvement Fund 0411, Department/Agency 035, Object 5530, and would be reimbursed from the city's municipal state aid construction account, Project PI0526TR.

Resolution 06-0448 was unanimously adopted.

Approved June 26, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are hereby authorized to enter into a joint agreement with the Minnesota department of transportation and St. Louis County. The costs of these services for property acquisition shall not exceed \$1,500,000 without written amendment to this agreement and will be payable from the Permanent Improvement Fund 0411, Department/Agency 035, Object 5530, and would be reimbursed from the city's municipal state aid construction account, Project PI0391TR.

Resolution 06-0449 was unanimously adopted.

Approved June 26, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are hereby authorized to acquire from the state of Minnesota, through St. Louis County, the tax forfeit real property described as follows:

Lots 9 through 13, Rearrangement of East Duluth and of First Addition to East Duluth.

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 06-0451 was unanimously adopted.

Approved June 26, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are hereby authorized to enter into a lease agreement with Clearwire, LLC, a copy of which is on file in the office of the city clerk as Public Document No. 06-0626-22, for the location and operation by Clearwire of wireless communication equipment on the Orphanage water tower, payments to be paid to the Water Fund 510, Agency 500, Revenue Source 4809.

Resolution 06-0457 was unanimously adopted.

Approved June 26, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Resolution No. 06-0204 is hereby amended by increasing the amount to be paid to the Soo Line Railroad Company, doing business as the Canadian Pacific Railway, for the purchase of property on Rice's Point for the construction of Helberg Drive to the amount of \$83,809.60, payable from the Fund 411, Organization 035, Object 5530, Project PI0103TR.

Resolution 06-0466 was unanimously adopted.

Approved June 26, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Alliance Steel Construction, Inc., be and hereby is awarded a contract for the construction of storm sewer extensions in various areas for the engineering division in accordance with the specifications on its low specification bid of \$125,273, terms FOB job site, payable out of Fund 535, Department/Agency 500, Organization 1905, Object 5533, City Project numbers 0518ST, 0549ST, 0553ST, 0576ST.

Resolution 06-0472 was unanimously adopted.

Approved June 26, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement (Public Document No. 06-0626-23) with Short Elliot Hendrickson, Inc., to provide engineering services for the 2007 municipal state aid turnback project located on Michigan Street between Carlton Street and 21st Avenue West, SAP 118-194-04, City Project No. 0250TR; 14th Avenue East between London Road and Third Street, SAP 118-172-04, City Project No. 0248TR; and 27th Avenue West between Michigan Street and Third Street, SAP 118-115-05, City Project No, 0249TR.

BE IT FURTHER RESOLVED, that the said engineering services, estimated at \$37,208, will be payable from the Public Improvement Fund 0411, Agency 035, Object 5530.

Resolution 06-0478 was unanimously adopted.

Approved June 26, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are hereby authorized to reimburse the Duluth airport authority in the amount of up to \$23,835 for excavation and backfilling of a trench for the installation by the city of a three inch gas line adjacent to the airport perimeter road, payable from the Gas Fund 520, Public Works and Utilities Department 500, Organization 1905, Capital Improvements - Revenue Object 5533, City Project No. 0049GS.

Resolution 06-0481 was unanimously adopted.

Approved June 26, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are authorized to enter into the third amendment, a copy of which is on file in the office of the city clerk as Public Document No. 06-0626-24, with the University of Minnesota's Natural Resources and Research Institute for services related to the

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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Duluth streams project, extending the term thereof through March 31, 2007, and increasing the amount payable thereunder by \$20,000, payable from Fund No. 535, Department 500, Organization 1915, Object 5441.

Resolution 06-0482 was unanimously adopted.

Approved June 26, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that pursuant to Section 61(a) of the Home Rule Charter of the city of Duluth, the city council hereby orders the construction of approximately 100 feet of sanitary sewer in Grand Avenue beginning at 45th Avenue West and extending southerly as part of the Grand Avenue reconstruction project; that the costs of said improvement estimated at \$11,000 shall be paid from the Special Assessment Fund 0410, Agency 038, Object 5530, Project No. 0112TR, and that said costs be levied against the property specifically benefitted by said improvements.

Resolution 06-0484 was unanimously adopted.

Approved June 26, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Letourneau & Sons, Inc. is hereby awarded a contract for the construction of 214 feet of repairs to the West Fourth Street storm tunnel between Tenth and 11th avenues West for the engineering division in accordance with its low bid of \$161,286 payable out of the Storm Sewer Fund 535, Agency 500, Organization 1905, Object 5533, City Project Number 0574ST.

Resolution 06-0490 was unanimously adopted.

Approved June 26, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STAUBER:

RESOLVED, that Resolution No. 05-0088, as amended by Resolution No. 05-0878, is hereby further amended to extend the time allowed to raise sufficient funds to qualify for matching funds from the city as set forth in said Resolution No. 05-0088, for development of the replacement to Peterson Arena, now referred to as the Duluth Heritage Sports Center, through September 30, 2006.

Resolution 06-0489 was unanimously adopted.

Approved June 26, 2006

HERB W. BERGSON, Mayor

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The following resolutions were also considered:

Resolution 06-0458, by Councilor Krause, in the matter of the on sale intoxicating liquor license of Scanlon River Inn, Inc. (Pioneer Bar), 323 West First Street., was introduced for discussion.

Councilor Ness expressed concern that this recommendation exceeds the fine and suspension standards in the Code for a second violation just because the alcohol, gambling and tobacco commission felt that the "aggravating or mitigating circumstances" were that the underage persons had been convicted of consumption, and therefore he moved to amend the resolution to change the fine to "\$750" and the suspension to "one-day," which was seconded and failed upon

the following vote:

Yeas: Councilor Ness -- 1

Nays: Councilors Gilbert, Johnson, Krause, Little, Stauber, Stewart, Stover and President Reinert -- 8

Resolution 06-0458 was adopted as follows:

BY COUNCILOR KRAUSE:

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

(a) On June 7, 2006, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor license of Scanlon River Inn, Inc. (Pioneer Bar), 323 West First Street, and has submitted its report to the city council of the city of Duluth as Public Document No. 06-0626-25;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on June 26, 2006, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 06-0626-25 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, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the Duluth City Council fine the licensee \$1,000 and suspend the licensee's license for five days with the suspension beginning the first Friday following final city action.

Resolution 06-0458 was unanimously adopted.

Approved June 26, 2006

HERB W. BERGSON, Mayor

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Resolution 06-0459, by Councilor Johnson, confirming the reappointment of Michael Orman and the appointments of Conrad E. Firling and Robert C. Pearson, replacing Todd Fedora and Dennis Ramberg, to the Duluth airport authority, was introduced for discussion.

Councilor Gilbert noted that he would be abstaining from discussion and voting on this resolution because of a conflict with his law firm.

Resolution 06-0459 was adopted as follows:

BY COUNCILOR JOHNSON:

RESOLVED, that the reappointment of Michael Orman and the appointments of Conrad E. Firling and Robert C. Pearson, replacing Todd Fedora and Dennis Ramberg, by Mayor Bergson to the Duluth airport authority for terms expiring on July 1, 2009, are confirmed.

Resolution 06-0459 was adopted upon the following vote:

Yeas: Councilors Johnson, Krause, Little, Ness, Stauber, Stewart, Stover and President Reinert -- 8

Nays: None -- 0

Abstention: Councilor Gilbert -- 1

Approved June 26, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0468, by Councilor Gilbert, denying a rezoning petition to provide for the reclassification from R-1-b, One Family Residential, to C-1, Commercial District, property located on Redwing Street (Myzel), was introduced for discussion.

Councilor Gilbert moved to table the resolution until the ordinance is considered, which

motion was seconded and unanimously carried.

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Resolution 06-0491, by Councilor Gilbert, adopting the comprehensive plan for the city of Duluth, was introduced for discussion.

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

KL Lewis, Heather Rand, chair of the comprehensive plan committee, Penny Clark, Kevin Skwira-Brown, Joan Barrett, Nancy Schuldt and Dave Sarvela expressed support for the resolution for reasons of: good solid ideas have been submitted from all across the city; the last comprehensive plan was adopted when Calvin Coolidge was president; there have been eight public meetings and 27 working meetings; there was an environmental assessment of identifying the most environmentally sensitive lands; this plan is a vision for the next 20 years; this will help lead the city into the future for economic development and more residential opportunities, but still protects a vital green infrastructure and the committee established a good compromise with the diverse interests.

Resolution 06-0491 was adopted as follows:

BY COUNCILOR GILBERT:

The city council finds as follows:

(a) It is in the best interests of the city to adopt a comprehensive plan as set out in Minnesota Laws, Chapter 462;

(b) The city planning department and the city planning commission have developed, reviewed and recommended adoption of this comprehensive plan;

(c) The planning department and planning agency have, after due public notice, conducted one or more public hearings about this comprehensive plan.

NOW, THEREFORE, BE IT RESOLVED, that the document on file with the city clerk as Public Document No. 06-0626-26 is adopted as the comprehensive plan for the city of Duluth and all previous comprehensive plans are rescinded.

BE IT FURTHER RESOLVED, that the city offers thanks to the committee, planning commission, staff and citizens who worked over a period of many months to develop this comprehensive plan.

Resolution 06-0491 was unanimously adopted.

Approved June 26, 2006

HERB W. BERGSON, Mayor

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Resolution 06-0452, by Councilor Stover, authorizing easement agreement with Northwest Publications, Inc., for equipment related to Steam District No. 1 chilled water facilities at 408 West First Street, was introduced for discussion.

Councilor Gilbert noted that he would be abstaining from discussion and voting on this resolution because of a conflict with his law firm.

Resolution 06-0452 was adopted as follows:

BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with Northwest Publications, Inc., accepting easements for chilled water piping on the following-described property in St. Louis County, Minnesota, and setting forth the terms thereof:

Lot 70 and the westerly 25 feet of Lot 68, West First Street, DULUTH PROPER First Division.

Resolution 06-0452 was adopted upon the following vote:

Yeas: Councilors Johnson, Krause, Little, Ness, Stauber, Stewart, Stover and President Reinert -- 8

Nays: None -- 0

Abstention: Councilor Gilbert -- 1

Approved June 26, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0479, by Councilor Stover, awarding a contract to Northland Constructors, Inc., for the Norton Park West 2006 street improvement project site in the amount of \$418,185.72, was introduced for discussion.

Councilor Gilbert noted that he would be abstaining from discussion and voting on this resolution because of a conflict with his law firm.

Resolution 06-0479 was adopted as follows:

BY COUNCILOR STOVER:

RESOLVED: that Northland Constructors, Inc., be and hereby is awarded a contract for Norton Park West for the 2006 street improvement program, City Project No. 0128TR, for the engineering division in accordance with its low specification bid of \$418,185.72, terms net 30, FOB job site, payable out of Street Improvement Fund 0440, Agency 038, Object 5530.

Resolution 06-0479 was adopted upon the following vote:

Yeas: Councilors Johnson, Krause, Little, Ness, Stauber, Stewart, Stover and President Reinert -- 8

Nays: None -- 0

Abstention: Councilor Gilbert -- 1

Approved June 26, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0485, by councilors Stover, Gilbert, Johnson and President Reinert, supporting efforts to restore and protect the Great Lakes, was introduced for discussion.

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

Rosie Loeffler-Kemp spoke in support of the resolution, because it shows local support for this federal legislation and funding

Resolution 06-0485 was adopted as follows:

BY COUNCILORS STOVER, GILBERT, JOHNSON AND PRESIDENT REINERT:

The city council finds as follows:

(a) The Great Lakes comprise almost 20 percent of the world's surface freshwater and 95 percent of North America's fresh surface water, and supply drinking water to more than 40 million U.S. and Canadian residents

(b) The Great Lakes support local agriculture; a diversity of wildlife, including a world class fishery; maritime trade; industry; and tourism

(c) The Great Lakes are ailing from a multitude of environmental stressors, including aquatic invasive species, toxic contamination of river and lake sediments, partially or inadequately treated sewage discharges, pollution from nonpoint sources and coastal habitat loss

(d) Lake Superior is the largest and most pristine of the Great Lakes and the headwaters

of the Great Lakes–St. Lawrence River system

(e) Lake Superior has the largest surface area of any freshwater lake in the world, with a drainage basin totaling 49,300 square miles, and encompassing parts of Michigan, Minnesota, Wisconsin and Ontario

(f) The health of Lake Superior is essential to the quality of life and economic vitality of Duluth and other communities along the shores and in the surrounding basin, supporting tourism, industrial, recreational, commercial, tribal and cultural activities

(g) The port of Duluth, ships more cargo than any other Great Lakes port, with an estimated value of \$2 billion annually, and supports 2,000 jobs

(h) Over 140 scientists have endorsed a paper, "Prescription for Great Lakes Ecosystem Protection and Restoration – Avoiding the Tipping Point of Irreversible Changes," which calls for urgent action in the Great Lakes to avoid degradation of the lakes' ecosystem

(i) There has been an unprecedented collaborative effort on the part of 1,500 people representing federal, state, tribal and local governments, research institutions including universities, businesses, agricultural organizations, non governmental entities and private citizens to develop an action plan to restore and protect the Great Lakes

(j) Members of Congress have introduced the Great Lakes Collaboration Implementation Act, which seeks approximately \$20 billion over a five year period (about \$14 billion in federal funding and about \$6 million from state, local and other sources) to fund projects that implement the action plan to restore and protect the Great Lakes

(k) Specifically, the act will provide funding to:

- (1) Prevent and control aquatic invasive species;
- (2) Create and restore wetlands and other fish and wildlife habitat;
- (3) Reduce municipal sewage overflows;
- (4) Clean up toxic sediments in Great Lakes areas of concern, including the St.

Louis River;

- (5) Reduce mercury pollution;
- (6) Otherwise implement the action plan to restore and protect the Great Lakes

(l) Local governments need financial assistance to upgrade wastewater treatment plants and infrastructure, to reduce nonpoint source pollution and to address other water quality problems

(m) The Florida Everglades and other nationally significant water resources have already benefitted from significant federal investments in restoration and protection

(n) The Great Lakes are a significant natural resource in need of substantial state and federal financial assistance.

NOW, THEREFORE, BE IT RESOLVED, that the Duluth City Council hereby supports the Great Lakes Collaboration Implementation Act, which seeks approximately \$20 billion over a five year period.

BE IT FURTHER RESOLVED, that we urge the state of Minnesota to continue its proud tradition of protecting Lake Superior and to fulfill its commitment to protecting and restoring the Great Lakes by taking substantial steps and, whenever practical, match federal funding to implement the Great Lakes Collaboration Implementation Act.

BE IT FURTHER RESOLVED, that the clerk shall transmit copies of this resolution to members of the Minnesota congressional delegation, the members of the Minnesota state legislature, the governor of Minnesota, and the Great Lakes Regional Collaboration, c/o U.S. EPA,

Great Lakes National Program Office, 77 West Jackson Boulevard, G17J, Chicago, Illinois, 60604-3511.

Resolution 06-0485 was adopted upon the following vote:

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

Nays: Councilor Little -- 1

Approved June 26, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0475, by Councilor Stauber, authorizing the city to enter into an agreement with Duluth economic development authority and Bayfront Reggae Festival, LLC, authorizing a permit for the production of a reggae festival at Bayfront Festival Park, was introduced for discussion.

Councilor Gilbert noted that he would be abstaining from discussion and voting on this resolution because of a conflict with his law firm.

Resolution 06-0475 was adopted as follows:

BY COUNCILOR STAUBER:

RESOLVED, that the proper city officers are authorized to enter into an agreement with Duluth economic development authority and Bayfront Reggae Festival, LLC, authorizing a permit for the production of a reggae festival at Bayfront Festival Park; said agreement to be substantially in the form of Public Document No. 06-0626-27 on file in the office of the city clerk; all payments of facility rental fees shall be deposited in Fund 237, Agency 015, Revenue Source 4623.

Resolution 06-0475 was adopted upon the following vote:

Yeas: Councilors Johnson, Krause, Little, Ness, Stauber, Stewart, Stover and President Reinert -- 8

Nays: None -- 0

Abstention: Councilor Gilbert -- 1

Approved June 26, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0495, by councilors Stauber, Stewart and Stover, amending Resolution No. 05-0306 designating areas for the 2006 city deer hunt, was introduced for discussion.

Councilors Johnson and Ness opposed the resolution for reasons of : the size of the hunt area is doubling and thus will be closer to residential activity; the maps were just released last week, therefore the vast majority of Duluthians do not know of it infringing on their homes and there is not enough information to support the statement that "the majority of Duluthians want a larger hunt area."

Resolution 06-0495 was adopted as follows:

BY COUNCILORS STAUBER, STEWART AND STOVER:

RESOLVED, that paragraph (f) of Resolution No. 05-0306 is hereby amended to delete Public Document No. 05-0509-15 therefrom and by substituting Public Document No. 06-0626-14 therefore.

Resolution 06-0495 was adopted upon the following vote:

Yeas: Councilors Krause, Little, Stauber, Stewart, Stover and President Reinert -- 6

Nays: Councilors Gilbert, Johnson and Ness -- 3

Approved June 26, 2006

HERB W. BERGSON, Mayor

- - -

**INTRODUCTION AND CONSIDERATION OF ORDINANCES**

The following entitled ordinances were read for the first time:

BY COUNCILOR STEWART

06-022 - AN ORDINANCE REGULATING ADULT ENTERTAINMENT ESTABLISHMENTS; AMENDING CHAPTER 5, ARTICLE IV, OF THE DULUTH CITY CODE, 1959, AS AMENDED.

- - -

BY COUNCILOR GILBERT

06-019 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, ZONING DISTRICT MAP NO. 40 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-b, ONE FAMILY RESIDENTIAL, TO C-1, COMMERCIAL DISTRICT, PROPERTY LOCATED ON REDWING STREET (MYZEL).

- - -

BY COUNCILOR GILBERT

06-020 - AN ORDINANCE AMENDING ORDINANCE NO. 9001 TO PROVIDE FOR A NEW PUBLIC DOCUMENT (DULUTH LODGE, LLC).

- - -

BY COUNCILOR GILBERT

06-021 - AN ORDINANCE AUTHORIZING LAND EXCHANGE AGREEMENT WITH ODYSSEY DEVELOPMENT, INC., FOR CERTAIN NORTH SHORE PROPERTY.

- - -

The following entitled ordinances were read for the second time:

BY COUNCILOR STEWART

06-017 (9779) - AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF \$1,725,000 GENERAL OBLIGATION STORMWATER UTILITY REVENUE BONDS OF THE CITY OF DULUTH FOR THE IMPROVEMENT OF THE MUNICIPAL STORMWATER UTILITY UPON TERMS AND CONDITIONS TO BE PROVIDED BY RESOLUTION OF THE CITY COUNCIL AND PLEDGING REVENUES FOR THE PAYMENT THEREOF.

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

- - -

BY COUNCILOR KRAUSE

06-018 - AN ORDINANCE PERTAINING TO INSPECTION AND REMOVAL OF VACANT BUILDINGS; AMENDING CHAPTER 10 OF THE DULUTH CITY CODE, 1959, AS AMENDED, AND CREATING A FEE.

Councilor Krause moved to table the ordinance for a July 17 committee meeting, which motion was seconded and unanimously carried.

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The meeting was adjourned at 8:13 p.m.

JEFFREY J. COX, City Clerk

- - -

**ORDINANCE NO. 9779**

BY COUNCILOR STEWART:

AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF \$1,725,000 GENERAL OBLIGATION STORMWATER UTILITY REVENUE BONDS OF THE CITY OF DULUTH FOR THE IMPROVEMENT OF THE MUNICIPAL STORMWATER 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 stormwater 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 stormwater 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 stormwater utility, and determines it is necessary to issue general obligation stormwater utility revenue bonds in the maximum amount of \$1,725,000 for the purpose of paying the costs of improvements to the municipal stormwater utility, including the construction of the Morgan Park stormwater improvements, phases III and IV (the project), and paying for a portion of the interest cost of the issue, as allowed by Minnesota Statutes, Section 475.56.

1.03 The city has heretofore issued and sold the following: general obligation utilities revenue bonds dated September 1, 2002, the stormwater utility portion of such bonds now outstanding in the amount of \$1,200,000. Under the provisions of the ordinance authorizing said bonds, the city reserved the privilege of issuing additional bonds payable from said net revenues on a parity with the bonds dated September 1, 2002.

1.04 Pursuant to the authority herein recited, the city council hereby authorizes and directs the issuance and sale of general obligation stormwater utility revenue bonds of the city of Duluth in the maximum amount of \$1,725,000 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 stormwater utility. Net revenues are defined as sums from time to time within the stormwater 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 stormwater 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 stormwater utility for the payment thereof, when authorized in accordance with law and the City Charter and determined by the city council to be necessary for the improvement of the municipal stormwater utility or for the refunding of

indebtedness payable from said net revenues, provided that no such pledge shall constitute a lien upon the net revenues superior to the pledge thereof for the payment of the bonds issued hereunder.

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 stormwater utility at the times and amounts required to pay the normal, and current operating expenses and to maintain the municipal stormwater utility and also to produce net revenues at least adequate at all times to pay the principal and interest due on the bonds issued hereunder and on all other bonds heretofore and hereafter issued and made payable from said net revenues.

3.02 The city council shall, by further resolution or resolutions, establish appropriate accounts and credit monies from the proceeds of the bonds herein authorized to accounts, all in accordance with Section 54 of the City Charter and Chapter 475 of Minnesota Statutes.

Section 4. CERTIFICATION OF PROCEEDINGS.

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

4.02 The officers of the city and the county auditor are authorized and directed to prepare and furnish to the purchasers of the bonds, and to bond counsel, certified copies of all proceedings and records of the city relating to the authorization and issuance of the bonds and such other affidavits and certificates as may reasonably be required to show the facts relating to the legality and marketability of the bonds, as such facts appear from the official books and records in the officers' custody and are otherwise known to them. All such certified copies, certificates, and affidavits, including any heretofore furnished, constitute representations of the city as to the correctness of the facts recited therein and the action stated therein to have been taken.

Section 5. EFFECTIVE DATE.

5.01 This ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: August 13, 2006)

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

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

Nays: None -- 0

ATTEST:  
JEFFREY J. COX, City Clerk

Passed June 26, 2006  
Approved June 26, 2006  
HERB W. BERGSON, Mayor

- - -

**OFFICIAL PROCEEDINGS**

Special meeting of the Duluth City Council held on Thursday, July 6, 2006, 5:05 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: None -- 0

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**MOTIONS AND RESOLUTIONS**

BY COUNCILOR STOVER:

RESOLVED, that Northland Constructors of Duluth, LLC, be and hereby is awarded a contract for construction of Central Avenue (MSAS 107) from I-35 to Grand Avenue for the engineering division in accordance with specifications on its low specification bid of \$1,824,639.75, terms net 30, FOB job site, payable out of Fund 0450, Department/Agency 030, Object 5530, City Project No. 0529TR, S.P. 118-107-011, Minnesota Project No. HPPH H179(001).

Resolution 06-0499 was unanimously adopted.

Approved July 6, 2006

HERB W. BERGSON, Mayor

- - -

The meeting was adjourned at 5:08 p.m.

JEFFREY J. COX, City Clerk

**OFFICIAL PROCEEDINGS**

Duluth City Council meeting held on Monday, July 10, 2006, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: None -- 0

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**PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS**

06-0710-01 Minnesota state auditor submitting audit reports for Duluth airport authority for the years ended December 31, 2005 and 2004. -- Received

06-0710-02 Charter Communications acceptance of terms, conditions and provisions of Ordinance 9775, approved on May 8, 2006, granting a franchise. -- Received

06-0710-12 Doug and Kim Olsen communication regarding the proposed ordinance to regulate adult entertainment establishments (06-022-O). -- Received

06-0710-03 The following communications regarding reclassification of property at 7717 Congdon Boulevard (06-0408R and 06-016-O): (a) Mark and Kim Gilbertson; (b) Carol Kivi; (c) William and Bonita Tasky. -- Received

- - -

**REPORTS FROM OTHER OFFICERS**

06-0710-04 Assessor assessment roll, for confirmation, to be levied to defray in full the expense of solid waste collection during the period March 1, 2005, to June 1, 2006, for which the collector has not been reimbursed. -- Received

06-0710-05 Auditor comprehensive annual financial report for the city of Duluth for the fiscal year ended December 31, 2005. -- Received

06-0710-06 Clerk application to the Minnesota gambling control board for exemption from lawful gambling license from Memorial Blood Centers on September 28, 2006 (raffle). -- Received

- - -

**REPORTS OF BOARDS AND COMMISSIONS**

06-0710-07 Duluth transit authority: (a) March 2006 income statement; (b) Minutes of April 26, 2006, meeting. -- Received

06-0710-08 Board of zoning appeals minutes of: (a) April 25; (b) May 23, 2006, meetings. -- Received

06-0710-09 Library board minutes of May 23, 2006, meeting. -- Received

06-0710-10 Parks and recreation commission minutes of May 10, 2006, meeting. -- Received

06-0710-11 Tree commission minutes of May 15, 2006, minutes. -- Received

- - -

**OPPORTUNITY FOR CITIZENS TO BE HEARD**

Dave Barschdorf felt that: there should be a recall of the mayor, that police and fire department employees should not be laid off; that the aquarium, golf courses, Spirit Mountain and the Duluth Entertainment Convention Center should be sold to solve the retiree health care

problem and that relative to the recent air show, individuals can not be evicted out of their homes due to an event.

- - -

KL Lewis commented that the movie, *Inconvenient Truth*, was astonishing as it relates to the reality felt by the mainstream of people and that there is a need for more electrical sources for the development of all electric cars.

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### **RESOLUTION TABLED**

Councilor Gilbert move to remove Resolution 06-0468, denying a rezoning petition to provide for the reclassification from R-1-b, one family residential, to C-1, commercial district, property located on Redwing Street (Myzel), from the table, which motion was seconded and unanimously carried.

- - -

### **INTRODUCTION AND CONSIDERATION OF ORDINANCE**

The following entitled ordinance was read for the second time:

BY COUNCILOR GILBERT

06-019 (9780) - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, ZONING DISTRICT MAP NO. 40 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-b, ONE FAMILY RESIDENTIAL, TO C-1, COMMERCIAL DISTRICT, PROPERTY LOCATED ON REDWING STREET (MYZEL).

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

- - -

Councilor Gilbert stated that he would not be discussing or voting on this issue as there is a conflict with his law firm.

Resolution 06-0468 failed upon the following vote (Public Document No. 06-0710-13):

Yeas: None -- 0

Nays: Councilors Johnson, Krause, Little, Ness, Stauber, Stewart, Stover and President Reinert -- 8

Abstention: Councilor Gilbert -- 1

- - -

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

Yeas: Councilors Johnson, Krause, Little, Ness, Stauber, Stewart and President Reinert -- 7

Nays: Councilor Stover -- 1

Absention: Councilor Gilbert -- 1

- - -

**MOTIONS AND RESOLUTIONS**

**CONSENT AGENDA**

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

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

BY COUNCILOR STEWART:

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) \$895,000 general obligation capital improvement bonds, Series 2006A, are hereby authorized and shall be issued pursuant to Minnesota Statutes, Section 475.521 and Chapter 475, and the City Charter, for the purpose providing funds for capital improvements projects pursuant to an approved capital improvement plan;

(2) \$1,705,000 general obligation stormwater utility revenue bonds, Series 2006B, are hereby authorized and shall be issued pursuant to Ordinance No. 9779, adopted June 26, 2006, Minnesota Statutes, Chapter 475, Minnesota Statutes, Section 444.075 and Section 55 of the Home Rule Charter of the city for the payment of the costs of construction of the Morgan Park stormwater improvements, phases III and IV;

(3) \$3,355,000 general obligation street improvement bonds, Series 2006C, are hereby authorized and shall be issued for the purpose of financing the 2006 street improvement program, pursuant to Minnesota Statutes, Chapter 475, and the City Charter; and

(4) \$1,985,000 general obligation improvement bonds, Series 2006D, are hereby authorized and shall be issued pursuant to Minnesota Statutes, Chapter 475, and the City Charter, for the purpose of financing local public improvements.

The \$895,000 general obligation capital improvement bonds, Series 2006A, the \$1,705,000 general obligation stormwater utility revenue bonds, Series 2006B, the \$3,355,000 general obligation street improvement bonds, Series 2006C, and the \$1,985,000 general obligation improvement bonds, Series 2006D, 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. 06-0710-14. 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 resolutions. The form, specifications and provisions for repayment of the bonds shall be set forth in subsequent resolutions of this city council.

Resolution 06-0500 was unanimously adopted.

Approved July 10, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

RESOLVED, that A.J. Spanjers Company, Inc., be and hereby is awarded a contract for Phase III City Hall exterior renovation in accordance with its combined low bid of \$186,715, terms net 30, FOB jobsite, payable out of Capital Improvements Fund 450, Department/Agency 030, Object 5520, Project CP2004-C403, Project CP2005-OT-0501, and Project CP2006-OT-0601.

Resolution 06-0496 was unanimously adopted.

Approved July 10, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

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:

Hospitality Associates of Duluth, LLC (Aces on First), 113 West First Street, for July 14 and 15, 2006, with the music and serving from 6:00 p.m. to 12:00 a.m.

Resolution 06-0509 was unanimously adopted.

Approved July 10, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

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

Beerhunters Softball Team, Wheeler Field, for August 5 and 6, 2006, with Ron Herung, manager.

Copasetic Softball Team, Wheeler Field, for July 22 and 23, 2006, Paul King, manager.

Woodland Fastpitch Association (Jimmy Herald Memorial Tournament), Woodland Avenue and Anoka Street, for July 29 and 30, 2006, with Brett Klosowski, manager.

Resolution 06-0510 was unanimously adopted.

Approved July 10, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

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.

<b>Licensee</b>	<b>Gambling Site</b>
Duluth Curling Club	Aces on First, 113 West First Street
Welch Center	Congress Bar, 1334 Commonwealth Avenue

Resolution 06-0511 was unanimously adopted.

Approved July 10, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

RESOLVED, that Groebner and Associates, Inc., be and hereby is awarded a contract for furnishing and delivering 800 gas meters for the utility operations division in accordance with specifications on its low specification bid of \$46,077.23, terms net 30, FOB destination, payable out of Gas Fund 0520, Department/Agency 500, Organization 1940-2410, Object 5227.

Resolution 06-0512 was unanimously adopted.

Approved July 10, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the appointments by Mayor Bergson of Donald Dass (at large) Tony Dierckins (at large) and Maryanne Norton (preservation professional), replacing Elliot Bayly, Diane Kettelhut and Hugh Reitan, to the heritage preservation commission for terms expiring on May 31, 2009, are confirmed.

FURTHER RESOLVED, that the appointment by Mayor Bergson of Carolyn Sundquist (at large), replacing Gordon Fon who resigned, to the heritage preservation commission for a term expiring on May 31, 2007, is confirmed.

Resolution 06-0487 was unanimously adopted.

Approved July 10, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

A sufficient petition was filed with the city clerk requesting the vacation of a portion of Lemon Street, legally described as Lemon Street adjoining Lots 18-24, Block 1, and Lots 1-8, Block 2, Jackson Division (FN 06063); and, pursuant to Section 100 of the City Charter and Article IV of Chapter 45 of the Duluth City Code, 1959, as amended, such petition was duly referred to the city planning commission, and such commission gave due notice of public hearing and did consider same in public hearing; and the city planning commission unanimously approved the street vacation at its June 28, 2006, meeting; and the city planning commission found that said street is useless for the purpose for which it was intended, based on the finding that; There is no need for this right of way as a street, and an additional intersection with Arlington Avenue at this location is undesirable.

NOW, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation of Lemon Street described above, as more particularly described on Public Document No. 06-0710-15; retaining the center 20 feet as a pedestrian and utility easement.

RESOLVED FURTHER, that the city clerk is hereby directed to record, with the register of deeds and/or the register 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 easement being retained.

Resolution 06-0507 was unanimously adopted.

Approved July 10, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR NESS:

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. 06-0710-16, with Noah A. Dennis, independent licensed teacher, to serve as a part time

contract teacher to provide basic education instructional services to Workforce Investment Act program participants at the Duluth workforce center for the period July 16, 2006, through July 15, 2007, at a cost of \$20,800, payment to be made from Fund 268.

Resolution 06-0506 was unanimously adopted.

Approved July 10, 2006

HERB W. BERGSON, Mayor

- - -

BY PRESIDENT REINERT:

RESOLVED, that Resolution No. 01-0601 is hereby further amended to read as follows:

(a) That a special board of review for the city of Duluth is hereby created and all the powers and duties of the city council under Minnesota Statutes 274.01, subdivision 1, are hereby delegated to said special board of review;

(b) That said board shall be comprised of five members, one of whom shall be an employee of the city, other than an employee of the city assessor's office, and the remainder of whom shall by training and experience be well versed and familiar with property values in the city of Duluth. Other than the city employee member, one member shall be an appraiser by profession, one member shall be a real estate broker, one member shall be an attorney, and the final member shall be any person familiar with real property valuations in Duluth;

(c) The city employee member of the board shall be designated prior to each meeting of the board by the chief administrative officer of the city, or in his or her absence, the mayor, and shall have attended the equalization course required by Minnesota Statutes, Section 274.014, subd. 2. Of the other members of the board, one member shall initially be appointed for a two year term, another for a three year term, the other for a four year term, and, thereafter, all appointments, except those made to fill an unexpired term and that of the employee member, shall be for four years;

(d) The board shall meet annually on such day as the county auditor shall designate and from time to time thereafter until all duties and responsibilities imposed on said board by Minnesota Statutes 274.01 are discharged in full;

(e) All meetings of the special board of review shall be public, and it shall keep minutes of its proceedings which shall be immediately forwarded to the council, and which shall be a public record. At any meeting, three members shall constitute a quorum. Necessary staff, recording, transcription and mailing service shall be provided the board by the assessor's office.

Resolution 06-0498 was unanimously adopted.

Approved July 10, 2006

HERB W. BERGSON, Mayor

- - -

BY PRESIDENT REINERT:

RESOLVED, that the city's sponsorship of the festival of cultures will serve to promote the city of Duluth and generate tourism tax revenues for the city.

FURTHER RESOLVED, that proper city officials are hereby authorized to execute a major sponsorship and Bayfront Festival Park permit agreement with Duluth Public Arts Fund, Inc., for the festival of cultures to be held on July 22 and 23, 2006, which agreement is on file in the office of the city clerk as Public Document No. 06-0710-17 at a cost to the city not to exceed \$10,000,

which shall be paid from Bayfront Festival Park Fund 237, Agency 015, Object 5441, and in-kind services.

Resolution 06-0505 was unanimously adopted.

Approved July 10, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Duncan Parking Technologies be and hereby is awarded a contract for furnishing and delivering parking meters and parts for the maintenance operations division in accordance with specifications on its low specification bid of \$49,080, terms net 30, FOB destination, payable out of General Fund 100, Department/Agency 700, Organization 1407, Object 5406, in the amount of \$32,920.47; and Duluth Economic Development Authority (DEDA) Fund 860 Department/Agency 860, Organization 8640, Object 5405, in the amount of \$16,959.03.

Resolution 06-0492 was unanimously adopted.

Approved July 10, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that YZ Systems, Inc., be and hereby is awarded a contract for furnishing and delivering one natural gas odorizer for the city public works department, terms net 30, FOB destination, payable out of Fund 520, Department/Agency 500, Organization 1905, Object 5580, in the amount of \$23,180.

Resolution 06-0493 was unanimously adopted.

Approved July 10, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Resolution 05-0046 to Camp, Dresser and McKee, Inc., for engineering services for the development of a long term plan for the evaluation and elimination of sanitary sewer overflows in the city's sanitary sewer system be amended to increase the amount by an estimated amount of \$109,953 to implement Phase 2 using data collected in Phase 1 to develop a long term program to eliminate sanitary sewer overflows in the Lakeside interceptor area (basins 1 through 6) and east interceptor area (basins 7 through 14), for a new total of \$345,573; the increase of \$109,953 will be payable from Sewer Fund 0530, Agency 500, Organization 1930-2330, Object 5303, City Project Number 0511SN.

Resolution 06-0494 was unanimously adopted.

Approved July 10, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Letourneau & Sons, Inc., be and hereby is awarded a contract for the reconditioning of Michigan Street from 13th Avenue West to 11th Avenue West, City Project No. 0133TR, SAP 118-194-006 (MTB) for the engineering division in accordance with its low

specification bid of \$229,266.25, terms net 30, FOB job site, payable out of the Public Improvement Fund 0411, Agency 035, Object 5530.

Resolution 06-0497 was unanimously adopted.

Approved July 10, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Stout Mechanical, Inc., be and hereby is awarded a contract for construction of 165 feet of sanitary sewer in Skyline Parkway Alley at 15th Avenue East for the engineering division in accordance with its low specification bid of \$32,942, terms net 30, FOB job site, payable out of the Special Assessment Fund 0410, Agency 038, Organization 1905, Object 5530, Project Number 0577SN.

Resolution 06-0503 was unanimously adopted.

Approved July 10, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Nels Nelson and Sons, Inc., be and hereby is awarded a contract for the Fire Station #4 driveway replacement (UMD Station, 425 West College Street) in accordance with the low bid of \$41,895, terms net 30, FOB job site, payable out of Capital Improvements Fund 450, Department Agency 030, Object 5530, Project No. CP 2006-OT-0604.

Resolution 06-0513 was unanimously adopted.

Approved July 10, 2006

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 Superior Street between Third and Fourth Avenues West on July 12 and 13, 2006, from 5:00 p.m. to 8:00 p.m., between Lake Avenue and First Avenue West on July 27, 2006, from 5:00 p.m. to 8:00 p.m., between First and Second Avenue East on August 10, 2006, from 5:00 p.m. to 8:00 p.m., between Lake Avenue and First Avenue East on August 24, 2006, from 5:00 p.m. to 8:00 p.m., in conjunction with Rock the Block events, and on First Street between First and Second Avenues West on July 14 and 15, 2006, from 6:00 p.m. to 12:00 a.m. in conjunction with the Downtown Sidewalk Days, provided that all alcoholic beverages consumed outside of designated serving areas of licensed establishments be consumed only from paper or plastic cups.

BE IT FURTHER RESOLVED, that the dates of this authority may be amended, in the case of inclement weather, if requested in writing by the licensee and approved by the administration.

Resolution 06-0521 was unanimously adopted.

Approved July 10, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, that the proper city officers are authorized to enter into an agreement with Duluth economic development authority and Green Man Festival, Inc., authorizing a permit for the production of a music festival at Bayfront Festival Park, said agreement to be substantially in the

form of Public Document No. 06-0710-18 on file in the office of the city clerk. All payments of facility rental fees shall be deposited in Fund 237, Agency 015, Revenue Source 4623.

Resolution 06-0508 was unanimously adopted.

Approved July 10, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, that the proper city officers are authorized and directed to execute a grant agreement amendment to Contract No. 20025, on file with the city clerk as Public Document No. 06-0710-19, between the city and the state of Minnesota department of natural resources for land acquisition of Burlington Northern Railroad property on Grassy Point extending the grant expiration date from June 6, 2006, to December 30, 2006, and correcting the acquisition acreage from 1.61 acres to 7.38 acres.

Resolution 06-0514 was unanimously adopted.

Approved July 10, 2006

HERB W. BERGSON, Mayor

- - -

The following resolutions were also considered:

Resolution 06-0517, by Councilor Krause, authorizing agreement with Hanft Fride for legal services related to parking ramp agreement with St. Mary's/Duluth Clinic (SMDC), not to exceed \$8,500, was introduced for discussion.

Councilors Stauber and Johnson opposed the resolution for reasons of: there is a fair amount of contention between SMDC and the administration and that is very sad because they are the largest employer in the city; an August 8, 2005, letter from SMDC to the city addressed points that they were trying to have the city to agree to, was rejected; the city attorney's office is capable of handling this; \$8,500 will not cover the costs associated with this; the ramp will be completed and unoccupied if the city does not sit down and talk with SMDC to work this out; mediation, which is less costly; should be looked at first and the city still needs to work with SMDC on the skywalk.

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

Bill Burns, Hanft Fride Law firm, responded to council inquiry as to if there was a conflict with his firm representing the city and also Mr. Sherman's hotel, which will also be a tenant of the parking ramp. He stated that it is his understanding that his firm has no conflict of interest on this issue, because Mr. Sherman has a signed lease for the spaces that would be available for his business.

President Reinert stated that he would not be discussing or voting on this issue as there is a conflict with this being his employer.

Resolution 06-0517 was adopted as follows:

BY PRESIDENT REINERT:

RESOLVED, that the proper city officials are authorized to execute and implement an agreement, substantially as the one on file with the city clerk as Public Document No. 06-0710-20, between the city and the law firm of Hanft, Fride for legal services in creating an agreement

between the city and SMDC for use of a city-owned parking ramp; cost not to exceed \$8,500, payable from Fund 435, Agency 030, Object 5441.

Resolution 06-0517 was adopted upon the following vote:

Yeas: Councilors Gilbert, Krause, Little, Ness, Stewart and Stover -- 6

Nays: Councilors Johnson and Stauber -- 2

Abstention: President Reinert -- 1

Approved July 10, 2006

HERB W. BERGSON, Mayor

- - -

Resolutions 06-0338 and 06-0339, by Councilor Gilbert, denying and granting, respectively, the vacation of Victoria Place (aka 28th Avenue East) between East Eighth Street and Elizabeth Street, located between 2727 and 2801 East Eighth Street (Johnson, Reichhoff, Sjogren), were introduced for discussion.

Councilor Gilbert expressed his concern that without the vacation and the potential of a development being put here, it would create an increase in traffic, with this roadway being connected to 28th Avenue East and East Eighth Street.

Resolution 06-0338 was adopted as follows:

BY COUNCILOR GILBERT:

WHEREAS, a sufficient petition was filed with the city clerk requesting the vacation of Victoria Place (aka 28th Avenue East) between East Eighth Street and Elizabeth Street, located on the north side of East Eighth Street between 2727 and 2801 East Eighth Street legally described as Victoria Place adjoining Lots 3 and 4, Block 6, and Lot 1, Block 2, Mount Royal Division of Duluth, lying south of the southerly right-of-way of Elizabeth Street extended (FN 06030); 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 the city planning commission found that said street is not useless for the purpose for which it was intended, based on the following findings:

(a) The vacation of Victoria Place will remove the potential for future through street connection with (primarily) Elizabeth Street. Elizabeth Street is currently a "no outlet" or "dead end" street that serves multiple apartment/condominium units and the Mt. Royal Medical Center;

(b) With growth potential of the vacant private and public lands zoned R-3, the need to provide future ingress-egress options to other than the uncontrolled access to Woodland Avenue this right-of-way needs to be preserved;

(c) Easements for existing utilities would need to be preserved;

(d) The Neighborhood District 10 and area residents requested preservation of pedestrian access from Eighth Street to the Mount Royal Shopping Center;

and the commission did recommend denial, by a vote of 8-0-1, the street vacation petition at its April 26, 2006, meeting.

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth denies the vacation of the street described above.

Resolution 06-0338 was adopted upon the following vote:

Yeas: Councilors Johnson, Krause, Little, Ness, Stauber, Stewart, Stover and President Reinert -- 8

Nays: Councilor Gilbert -- 1

Approved July 10, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0339 failed upon the following vote (Public Document No. 06-0710-21):

Yeas: Councilor Gilbert -- 1

Nays: Councilors Johnson, Krause, Little, Ness, Stauber, Stewart, Stover and President Reinert -- 8

- - -

Resolutions 06-0501 and 06-0502, by Councilor Gilbert, granting and denying, respectively, a Water Resource Management Ordinance variance for property located at 3302 Greysolon Road, Planning File No. 06025 (DeArmond/Crowell), were introduced for discussion.

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

Joe Ferguson, counsel for the applicants, spoke in support of Resolution 06-0501, citing reasons of: regarding the hardship issue, none of the shoreline ordinances that are being dealt with here were in place 30 years ago; the variance and construction will have a minimum impact on the environment; the applicants are committed to have zero warm water runoff; it will not change the character of the neighborhood; there are already houses that are built right up to this stream and this is more like a minor ditch, which is included in the shoreline ordinance.

Mike Lundstrom spoke in support of Resolution 06-0502, citing reasons of: the ditch referred to by the prior speaker is really a brook that is continuously flowing and has runoff in the Spring and after storms; anytime the density of an area is changed, the character of the neighborhood is altered; there is no hardship here, except economics - which is not a reason for a hardship; the owner created the need for the variance and that is now allowed under the law; the Water Resources Management Ordinance takes this whole property out of compliance for building; eight residents in the surrounding area oppose this development and the environmental advisory council opposes this development.

Councilors Stauber, Stewart and Johnson supported Resolution 06-0502 for reasons of: last year the council passed the surface water management goals and policies that dealt with this issue; this year the council passed a resolution to protect the waters of Lake Superior; there was no statement of hardship from the staff report; while the current ordinance may need updating based on current technologies, it is what is in effect today; prior to the property owner dividing the property, he should have reviewed if it was still buildable; hardships can not be based on economics and adjacent properties that are closer to the stream were built before current ordinances were written.

Resolution 06-0501 failed upon the following vote (Public Document No. 06-0710-22):

Yeas: Councilors Krause and Stover -- 2

Nays: Councilors Johnson, Little, Ness, Stauber, Stewart and President Reinert -- 6

Abstention: Councilor Gilbert -- 1

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Resolution 06-0502 was adopted as follows:

BY COUNCILOR GILBERT:

RESOLVED, that the May 24, 2006, action of the planning commission approving a variance from the 150 foot setback from the ordinary high water mark as required by Duluth City Code 51-29(e) (Planning File No. 06025) is reversed for the following reasons:

(a) At the time of the passage of the Water Resource Management Ordinance, codified as Chapter 51, the property located at 3302 Greysolon Road consisted of a single parcel accommodating a single family home. The legal description of this parcel was Lots 5-12, Block 25, East Duluth Rearrangement, First Addition to Duluth. This property enjoyed a reasonable use;

(b) The property owner has now divided the parcel and desires to sell the newly created lot legally described as Lots 5, 6, 11 and 12, Block 25, East Duluth Rearrangement, First Addition to Duluth;

(c) The newly created lot meets the minimum dimension requirements of chapters 50 and 51 of the City Code, but a home cannot be built on the lot without a variance from the required 150 foot minimum building set back from the ordinary high water mark. The water resources that establishes the ordinary high water mark is an unnamed stream located east of the parcel but does not abut the parcel;

(d) No hardship exists to support a variance because the need for a variance was created by the landowner when the original parcel known as 3302 Greysolon Road was divided into two parcels. Economic considerations are the only basis for the variance and economic considerations alone may not support the granting of a variance.

Resolution 06-0502 was adopted upon the following vote:

Yeas: Councilors Johnson, Little, Ness, Stauber, Stewart and President Reinert -- 6

Nays: Councilors Krause and Stover -- 2

Abstention: Councilor Gilbert -- 1

Approved July 10, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0504, by Councilor Gilbert, vacating a utility easement on property located along the south side of Central Entrance east of Blackman Avenue (Usande, LLC), was introduced for discussion.

Councilor Krause expressed concern over a new large commercial building that is being constructed at this location with the entrance to it being off of Blackman Avenue. He noted that there were plans for a signal light being installed due to the already increased traffic with the access to Central High School and now this structure will increase this traffic problem.

Robert Bruce, director of planning, noted that this is just an easement for public utilities, that it is zoned properly for this and that a site review by staff will be completed before any building permits can be issued.

Councilor Ness moved to table the resolution for further information, which motion was seconded and failed upon the following vote:

Yeas: Councilors Krause and Ness -- 2

Nays: Councilors Gilbert, Johnson, Little, Stauber, Stewart, Stover and President Reinert -- 7

Resolution 06-0504 was adopted as follows:

BY COUNCILOR GILBERT:

A sufficient petition was filed with the city clerk requesting the vacation of a utility easement legally described as easement common to the rear eight feet of Lots 9, 10, 11, 12, 13 and 14, Block 1, Clearview Park (FN 06068); and pursuant to Section 100 of the City Charter and Article

IV of Chapter 45 of the Duluth City Code, 1959, as amended, such petition was duly referred to the city planning commission, and such commission gave due notice of public hearing and did consider same in public hearing and the city planning commission found that said easement is useless for the purpose for which it was intended, based on the following findings:

- (a) There are no utilities in the easement;
- (b) There are no plans for future utilities to be located within the easement;
- (c) Adequate utility corridors are available in the adjacent public street rights-of-way;

and the commission did approve, unanimously, the easement vacation petition at its June 28, 2006, 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. 06-0710-23; and 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 06-0504 was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Little, Stauber, Stewart, Stover and President Reinert -- 7

Nays: Councilors Krause and Ness -- 2

Approved July 10, 2006

HERB W. BERGSON, Mayor

- - -

BY PRESIDENT REINERT:

RESOLVED, that the proper city officials are authorized to execute and implement an employment contract with John E. Hall for the position of chief administrative officer, which contract is on file with the city clerk as Public Document No. 06-0710-24.

Resolution 06-0518 was unanimously adopted.

Approved July 10, 2006

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 STOVER

06-023 - AN ORDINANCE AUTHORIZING CONVEYANCE OF PROPERTY TO TRINITY DEVELOPMENT GROUP FOR \$12,358.49.

- - -

The following entitled ordinances were read for the second time:

BY COUNCILOR STEWART

06-022 (9781) - AN ORDINANCE REGULATING ADULT ENTERTAINMENT ESTABLISHMENTS; AMENDING CHAPTER 5, ARTICLE IV, OF THE DULUTH CITY CODE, 1959, AS AMENDED.

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

- - -

BY COUNCILOR GILBERT

06-020 (9782) - AN ORDINANCE AMENDING ORDINANCE NO. 9001 TO PROVIDE FOR A NEW PUBLIC DOCUMENT (DULUTH LODGE, LLC).

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

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BY COUNCILOR GILBERT

06-021 (9783) - AN ORDINANCE AUTHORIZING LAND EXCHANGE AGREEMENT WITH ODYSSEY DEVELOPMENT, INC., FOR CERTAIN NORTH SHORE PROPERTY.

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

- - -

The meeting was adjourned at 8:07 p.m.

JEFFREY J. COX, City Clerk

- - -

**ORDINANCE NO. 9780**

BY COUNCILOR GILBERT:

AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, ZONING DISTRICT MAP NO. 40 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1-b, ONE FAMILY RESIDENTIAL, TO C-1, COMMERCIAL DISTRICT, PROPERTY LOCATED ON REDWING STREET (MYZEL).

The city of Duluth does ordain:

Section 1. That Plate No. 40 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. 40 at end of meeting]*

(Reference File No. 06049)

Section 2. That this ordinance shall take effect 30 days from and after its passage and publication. (Effective date: August 20, 2006)

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

Yeas: Councilors Johnson, Krause, Little, Ness, Stauber, Stewart and President Reinert -- 7

Nays: Councilor Stover -- 1

Abstention: Councilor Gilbert -- 1

ATTEST:

JEFFREY J. COX, City Clerk

Passed July 10, 2006

Approved July 10, 2006

HERB W. BERGSON, Mayor

- - -

**ORDINANCE NO. 9781**

BY COUNCILOR STEWART:

AN ORDINANCE REGULATING ADULT ENTERTAINMENT ESTABLISHMENTS; AMENDING CHAPTER 5, ARTICLE IV, OF THE DULUTH CITY CODE, 1959, AS AMENDED.

The city of Duluth does ordain:

Section 1. That Section 5-17 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Article IV. Adult Bookstores; Adult Entertainment Establishments.

Sec. 5-17. Definitions.

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

(a) Adult bookstore. As used in this Article, means a retail establishment which is in the business of selling books, pamphlets, magazines or other pictorial or printed material and which:

(1) Advertises or holds out in any manner that the printed or pictorial matter sold therein is for adults only or is distinguished or characterized by a principal emphasis on nudity, sado-masochistic abuse, sexual conduct, or sexual excitement; and/or

(2) Has 40 percent or more of its gross sales in books, pamphlets, magazines or other pictorial or printed material which are distinguished or characterized by a principal emphasis on nudity, sado-masochistic abuse, sexual conduct, or sexual excitement; and/or

(3) Has 30 percent or more of books, pamphlets, magazines or other pictorial or printed material displayed for sale on the premises distinguished or characterized by a principal emphasis on nudity, sado-masochistic abuse, sexual conduct or sexual excitement;

(b) Adult entertainment establishment has the meaning set out in M.S.A. Section 617.242, or its successor, which currently reads as follows: A business that is open only to adults and that presents live performances that are distinguished or characterized by an emphasis on the depiction of sexual conduct or sexually-oriented entertainment;

(c) Nudity. The showing of the post-pubertal human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or the showing of a post-pubertal female breast with less than a fully opaque covering of any portion thereof below the top of the nipple or the depiction of covered male genitals in a discernibly turgid state;

(d) Sado-masochistic abuse. Scenes involving a person or persons, any of whom are nude, clad in undergarments or in sexually revealing costumes, and who are engaged in activities involving the flagellation, torture, fettering, binding or other physical restraint of any such persons;

(e) Sexual conduct. Acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person's unclothed genitals, pubic area, buttocks or, if such a person be a female, her breast, and the meaning set out in M.S.A. Section 617.241, or its successor;

(f) Sexual excitement. The condition of the human male or female genitals or the breasts of the female when in a state of sexual stimulation or the sensual experiences of humans engaging in or witnessing sexual conduct or nudity;

(g) Residential zone. Any zone provided in Chapter 50 of the Duluth City Code, 1959, as amended, that is designated R-1-a, R-1-b, R-1-c, R-2, R-3, R-4 or S;

(h) Public skywalk. Any place within the city public skywalk system. For the purpose of this Article, the city council shall, by resolution, designate those areas which constitute the public skywalk system;

(i) Pedestrian plaza. A man-made structure upon which have been placed amenities such as walking surfaces, plantings, street furniture or other similar improvements which is substantially open to the elements and held open to the general public.

Section 2. That Section 5-18 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 5-18. Statement of purpose and policy.

The city council of the city of Duluth hereby finds that the operation of adult bookstores or adult entertainment establishments in or near churches, schools, parks, residential zones and public skywalks tends to have a deleterious effect upon such churches, schools, parks, residential zones and skywalks because of objectionable characteristics and secondary effects that are inherent in the operation of adult bookstores and adult entertainment establishments. The city council of the city of Duluth further finds that adult bookstores and adult entertainment establishments which are in operation in or near churches, schools, parks, residential zones and public skywalks are contrary to the public interest, are harmful to public morals and safety, and constitute a nuisance. The city council of the city of Duluth further finds that it is necessary to license adult bookstores and to regulate the location of adult bookstores and adult entertainment establishments with respect to their respective distances from churches, schools, parks, residential areas and public skywalks, consistent with existing property rights and First Amendment rights of all the citizenry of the city of Duluth. It is the council's intent, as authorized by M.S.A. Section 617.242, subd. 7, that the provision of this Article, or its successor, prevail over the contrary provisions of M.S.A. Section 617.242, or its successor.

Section 3. That Section 5-19 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 5-19. License required--hours of operation.

No person shall own or operate an adult bookstore within the city without first having obtained a license to do so. No person shall operate an adult entertainment establishment in any area where it is prohibited by Section 5-21, or its successor. An adult entertainment establishment may operate only during the hours that an on sale licensed premises may operate as set out in Section 8-19, or its successor, and state statute.

Section 4. That Section 5-21 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 5-21. Licenses not to be issued in certain places.

No license for the ownership or operation of an adult book store shall be issued and operation of any adult entertainment establishment shall not be allowed within the following areas:

- (a) Within 600 feet of a church, school, public park or building in which programmed, scheduled or supervised educational activity, recreational activity, religious training, behavioral guidance/correction activity or personal guidance counseling is regularly provided to children 12 years of age or younger;
- (b) Within 600 feet of a residential zone;
- (c) In an area that is within or fronts on public skywalk;
- (d) Within 400 feet of a pedestrian plaza.

For purposes of this Section, distance shall be measured from the center of the closest doorway giving ingress or egress to the adult book store along a straight line to the closest boundary of the property upon which is located the thing to which the measurement is made.

The restrictions of (b) thru (d), above, and M.S.A. Section 617.242, or its successor, shall not apply to a location where an adult entertainment establishment that operated in a premises duly licensed for on sale intoxicating liquor sales had, on May 26, 2006, been in continuous operation at the same location for a period of at least one year, and was legally operating at that time at that location.

Section 5. That this ordinance shall take effect 30 days after its passage and publication.

(Effective date: August 20, 2006)

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

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

Nays: None -- 0

ATTEST:  
JEFFREY J. COX, City Clerk

Passed July 10, 2006  
Approved July 10, 2006  
HERB W. BERGSON, Mayor

- - -

**ORDINANCE NO. 9782**

BY COUNCILOR GILBERT:

AN ORDINANCE AMENDING ORDINANCE NO. 9001 TO PROVIDE  
FOR A NEW PUBLIC DOCUMENT (DULUTH LODGE, LLC).

The city of Duluth does ordain:

Section 1. That the provisions of Ordinance No. 9001, passed October 9, 1990, be amended as follows:

(a) That Section 6, subd. 2, be amended to replace Public Document No. 90-1009-24 with the architectural site plan submitted and dated 5/19/06 and on record as Public Document No. 06-0710-25.

Section 2. That all other terms of Ordinance No. 9001 remain in force and effect.

Section 3. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: August 20, 2006)

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

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

Nays: None -- 0

ATTEST:  
JEFFREY J. COX, City Clerk

Passed July 10, 2006  
Approved July 10, 2006  
HERB W. BERGSON, Mayor

- - -

**ORDINANCE NO. 9783**

BY COUNCILOR GILBERT:

AN ORDINANCE AUTHORIZING LAND EXCHANGE AGREEMENT  
WITH ODYSSEY DEVELOPMENT, INC., FOR CERTAIN NORTH  
SHORE PROPERTY.

The city of Duluth does ordain:

Section 1. That by virtue of the ability to make the exchange of properties authorized by Public Document No. 06-0710-26, the Duluth City Council finds that the North Shore property as described therein and owned by the city is surplus to the city's needs and available for disposal in accordance with the terms and conditions of said public document.

Section 2. That the proper city officials are authorized to make this exchange because the council finds that the property to be received pursuant to such exchange has higher potential use and greater benefit as recreational property to serve the interests of the citizens of the city of Duluth than the property to be conveyed and further will provide a better connection to Lake Superior for said citizens and therefore will better meet the intention of the donor of funds originally used to acquire said North Shore property and that therefore competitive bidding is not appropriate in this case.

Section 3. 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. 06-0710-26, authorizing the conveyance of certain city-owned property in St. Louis County, Minnesota, southeast of Stoney Point to Odyssey Development, Inc., as described therein in exchange for the conveyance to the city by Odyssey of certain property adjacent to the Little Sucker River as described therein.

Section 4. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: August 20, 2006)

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

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

Nays: None -- 0

ATTEST:  
JEFFREY J. COX, City Clerk

Passed July 10, 2006  
Approved July 10, 2006  
HERB W. BERGSON, Mayor

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**OFFICIAL PROCEEDINGS**

Duluth City Council meeting held on Monday, July 24, 2006, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: None -- 0

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The minutes of council meetings held on June 12 and 26, 2006, were unanimously approved.

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**PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS**

06-0724-01 Haines Properties, LLP, et al. (five signatures), petition to reclassify from IT to C-5 property described as SW1/4 of SW1/4 except W1/2 of S1/2 of S1/2 of W1/2 of Section 7, Township 50, Range 14. -- Assessor

06-0724-09 Mark and Kim Gilbertson, by Charles Andresen, attorney, notice withdrawing their petition to rezone from S-2, suburban residential, to R-1-a, single family residential, property located at 7717 Congdon Boulevard (06-0408R and 06-016-O). -- Received

06-0724-02 The following communications regarding proposed ordinance pertaining to inspection and removal of vacant buildings (06-018-O): (a) Jim Aird; (b) Michael Letourneau. -- Received

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**REPORTS FROM THE ADMINISTRATION**

06-0724-10 Administration update on retiree healthcare benefits. -- Received

- - -

**REPORTS FROM OTHER OFFICERS**

06-0724-03 Assessor letter of sufficiency of petition to reclassify from IT to C-5 property described as SW1/4 of SW1/4 except W1/2 of S1/2 of S1/2 of W1/2 of Section 7, Township 50, Range 14. -- Received

06-0724-04 Facilities management lease agreement, pursuant to Section 2-35 of the Duluth City Code, with Legacy Restaurants, Inc., for operation of the City Hall coffee shop. -- Mayor for execution

- - -

**REPORTS OF BOARDS AND COMMISSIONS**

06-0724-05 Duluth human rights commission minutes of June 14, 2006, meeting. -- Received

06-0724-06 Duluth/North Shore Sanitary District minutes of June 14, 2006, meeting. -- Received

06-0724-07 Housing and redevelopment authority minutes of: (a) February 28; (b) March 28, 2006, meetings. -- Received

06-0724-08 Planning commission minutes of: (a) June 13; (b) June 19; (c) June 28, 2006, meetings. -- Received

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## REPORT OF COUNCIL COMMITTEE

On July 17, 2006, the council's retiree health care task force presented a report on the administration's implementation of the task force's recommendations (Public Document No. 06-0724-17).

- - -

## OPPORTUNITY FOR CITIZENS TO BE HEARD

KL Lewis spoke on the lighting of the new parking ramp and suggested lighting changes for First Street to save the city money.

- - -

John Sanford and Alison Clarke voiced concern with the following points on Phase 2 of the Beacon Point development: none of the issues have been resolved from the Phase 1 and now Phase 2 has started; the public is not able to view the final site plan until the permit is issued; the permit had not been issued when they started excavating and the chance to appeal the permit will be limited due to the delay of issuing the permit.

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## RESOLUTIONS TABLED

Councilor Gilbert moved to remove Resolution 06-0408, denying a rezoning petition to provide for the reclassification from S-2, suburban residential, to R-1-a, single family residential, property located at 7717 Congdon Boulevard (Gilbertson), from the table, which motion was seconded and unanimously carried.

President Reinert moved to return the resolution to the administration since the applicants' have withdrawn their petition (Public Document No. 06-0724-09), which motion was seconded and unanimously carried.

- - -

Councilor Stover moved to remove Resolution 06-0382, ordering the construction of a residential street, sanitary sewer and watermain on Spear Avenue from Silcox Avenue to Livingston Avenue at an estimated cost of \$430,000, from the table, which motion was seconded and unanimously carried.

Councilor Stover moved to return the resolution to the administration, 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 Reinert moved passage of the consent agenda, which motion was seconded and unanimously carried.

BY COUNCILOR STEWART:

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

The city council by Resolution 06-0500 adopted July 10, 2006, authorized the issuance and provided for the sale of bonds of the city pursuant to official terms of offerings on file with the city clerk as Public Document No. 06-0710-14. The official terms of offerings called for the bonds to be sold on August 10, 2006, at 10:00 a.m. Due to a delay in the publication of

Ordinance 9779, the bond sale is rescheduled for August 24, 2006, at 10:00 a.m., and the council shall consider the resolutions awarding the sale of the bonds at a special meeting to be held at 5:00 p.m. on Thursday, August 24, 2006. All other terms and conditions set forth in Public Document No. 06-0710-14 shall remain the same.

Resolution 06-0536 was unanimously adopted.

Approved July 24, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the temporary expansion of the designated serving area of the following on sale intoxicating liquor licenses, subject to departmental approvals, with any specific restrictions:

D&D Enterprises of Cloquet, Inc. (Mr. D's Bar and Grill), 5622 Grand Avenue, for August 4, 2006, with the music and serving ceasing at 1:00 a.m.

Rustic Bar, Inc. (Rustic Bar), 401 North Central Avenue, for August 4, 2006, with the music and serving ceasing at 1:00 a.m.

Dwayne and Kimberly, Inc. (Kom on Inn), 332 North 57th Avenue West, for August 4, 2006, with the music and serving ceasing at 1:00 a.m.

Resolution 06-0524 was unanimously adopted.

Approved July 24, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

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 Country Club, 3901 East Superior Street, for August 16, 2006, with Gary Schneider, manager.

Resolution 06-0525 was unanimously adopted.

Approved July 24, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves issuance of an additional bar license for the following on sale intoxicating liquor license for the period ending August 31, 2006, subject to departmental approvals:

S&D Enterprises, Inc. (Gopher Restaurant and Lounge), 402 North Central Avenue.

Resolution 06-0526 was unanimously adopted.

Approved July 24, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

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

(a) On July 5, 2006, the alcohol, gambling and tobacco commission held a public hearing to consider whether disciplinary action should be taken against the intoxicating liquor

license of Darrel Fredrickson, d/b/a Horseshoe Billiards, 2415 West Superior Street, and has submitted its report to the city council of the city of Duluth as Public Document No. 06-0724-11;

(b) Pursuant to Duluth City Code Chapter 8, Section 9, clause (a), on July 24, 2006, the city council considered the records and evidence submitted;

(c) The finding of facts as set forth in Public Document No. 06-0724-11 regarding any suspension, revocation and/or civil penalty relating to the on sale intoxicating liquor license of Darrel Fredrickson, d/b/a Horseshoe Billiards, 2415 West Superior Street, are adopted.

BE IT FURTHER RESOLVED, that the decision of the city council regarding any suspension, revocation and/or civil penalty is as follows: that the Duluth City Council fine the licensee \$500 payable within 60 days of final city action.

Resolution 06-0549 was unanimously adopted.

Approved July 24, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

RESOLVED, that Hewlett-Packard Company be and hereby is awarded a contract for furnishing and delivering miscellaneous microcomputer hardware and software products as needed during year 2006 in accordance with specifications and state of Minnesota contract pricing for various city departments/divisions, terms net 30, FOB destination, payable out of various funds, departments/agencies, organizations, and objects. This total will not exceed the 2006 budget allocation of \$110,000 for computer equipment.

Resolution 06-0550 was unanimously adopted.

Approved July 24, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

RESOLVED, that Enventis Telecom be and hereby is awarded a contract for the purchase of network security hardware and software in accordance with specifications on its quote of \$24,344.46 plus tax of \$1,582.39, for a total of \$25,926.85, terms net 30, FOB destination, payable out of Capital Equipment Fund 250, Department/Agency 015, Organization 2006, Object 5580, Project CE250-E307.

Resolution 06-0551 was unanimously adopted.

Approved July 24, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the proposed specifications for the new civil service classification of safety and training specialist, which were approved by the civil service board on April 4, 2006, and which are filed with the city clerk as Public Document No. 06-0724-12, 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 135. The proper city officials are authorized to execute and implement an agreement with the union to provide for employing one or more unit members consistent with this resolution.

Resolution 06-0519 was unanimously adopted.

Approved July 24, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the proposed specifications for the new civil service classification of telecommunications administrator, which were approved by the civil service board on June 6, 2006, and which are filed with the city clerk as Public Document No. 06-0724-13, 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. 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 06-0520 was unanimously adopted.

Approved July 24, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the appointment by Mayor Bergson of Paul A. Heller to the sanitary sewer board of the Western Lake Superior Sanitary District for a term expiring on July 1, 2009, replacing Mark Dylla, is confirmed.

Resolution 06-0530 was unanimously adopted.

Approved July 24, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointment by Mayor Bergson of Bruce L. Hansen to the sister city commission for a term expiring on March 30, 2009, replacing Albert M. Katz, is confirmed.

Resolution 06-0531 was unanimously adopted.

Approved July 24, 2006

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 high pressure gas valves and meters for the utility operations division for a quoted amount of \$31,925.38, terms net 30, FOB destination, payable out of Gas Fund 0520, Agency 500, Organization 1945, Object 5227.

Resolution 06-0470 was unanimously adopted.

Approved July 24, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Northern Water Works Supply, Inc., be and hereby is awarded a contract for furnishing and delivering fire hydrants for the utility operations division for a quoted amount of \$35,755.35, terms net 30, FOB destination, payable out of Water Fund 0510, Agency 500, Organization 1945, Object 5227.

Resolution 06-0473 was unanimously adopted.

Approved July 24, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Monroe Truck Equipment be and hereby is awarded a contract for furnishing and installing two dump bodies and sanders and one utility body on a 4500 Chevrolet chassis for the fleet services division in accordance with specifications on its low specification bid of \$199,976, terms net 30, FOB destination, payable as follows: \$119,702 out of Capital Equipment Fund 250, Department/Agency 015, Organization 2006, Object 5580, Project No. CE250-V609; \$16,054.80 out of Water Fund 510, Department/Agency 500, Organization 1905, Object 5580; and \$64,219.20 out of Gas Fund 520, Department/Agency 500, Organization 1905, Object 5580.

Resolution 06-0515 was unanimously adopted.

Approved July 24, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Resolution 05-0764 to LHB, Inc., for professional engineering services for structural inspection, painting and repair programming Phase II for the Aerial Lift Bridge be amended to increase the amount by \$89,531 for a new total of \$103,976, payable out of Permanent Improvement Fund 0411, Department/Agency 035, Object 5520, to be reimbursed by municipal state aid funds, City Project No. 0079TR.

Resolution 06-0522 was unanimously adopted.

Approved July 24, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Twin Ports Environmental/Construction be and hereby is awarded a contract for the remediation and removal of lead-contaminated soils at the former Gary-New Duluth Water Tower site at 105th Avenue West and McGonagle Street in accordance with its low specification bid of \$17,253.25, payable out of Water Fund 0510, Department/Agency 500, Organization 1905, Object 5535, City Project No. 0178WA.

Resolution 06-0523 was unanimously adopted.

Approved July 24, 2006

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 cold water meters with remote registers as needed during year 2006 for the utility operations division in accordance with specifications of its quote estimated at \$51,013.50, terms net 30, FOB destination, payable out of Water Fund 0510, Department/Agency 500, Organization 1940-2410, Object 5227.

Resolution 06-0528 was unanimously adopted.

Approved July 24, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Cargill, Inc., be and hereby is awarded a contract for furnishing road salt for year 2006/2007 winter season for the maintenance operations division in accordance with

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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specifications on its low bid of \$472,640 plus sales tax of \$30,721.60, for a total of \$503,361.60, payable out of the General Fund 0100, Department/Agency 500, Organization 1920-2550, Object 5223.

Resolution 06-0529 was unanimously adopted.

Approved July 24, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Trenchers Plus, Inc., be and hereby is awarded a contract for furnishing and delivering a 4-wheel drive crawler trencher and heavy duty trailer for the public works department in accordance with specifications on its low bid of \$33,094 plus tax of \$2,151.11, for a total of \$35,245.11, terms net 30, FOB destination, payable out of the Gas Fund 520, Department/Agency 500, Organization 1905, Object 5580.

Resolution 06-0533 was unanimously adopted.

Approved July 24, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that ABM Equipment and Supply, Inc., be and hereby is awarded a contract for purchasing and mounting an aerial bucket and body for the administrative services department in accordance with specifications on its low bid of \$117,688 plus tax of \$7,649.72, for a total of \$125,337.72, terms net 30, FOB destination, payable out of Capital Equipment Fund 250, Department/Agency 015, Organization 2006, Object 5580, Project CE250-V610.

Resolution 06-0534 was unanimously adopted.

Approved July 24, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Larson Chevrolet-Oldsmobile, Inc., be and hereby is awarded a contract for furnishing and delivering light and heavy duty trucks and vans for the public works and utilities department in accordance with specifications on its line item bids of \$185,219 plus tax of \$12,039.24, for a total of \$197,258.24, terms net 30, FOB destination, payable as follows: \$67,615.36 from the Sewer Fund 530, Department/Agency 500, Organization 1905, Object 5580; \$46,722.83 from the Water Fund 510, Department/Agency 500, Organization 1905, Object 5580; and \$82,920.05 from the Gas Fund 520, Department/Agency 500, Organization 1905, Object 5580.

Resolution 06-0537 was unanimously adopted.

Approved July 24, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Duluth Ford, LLC, dba Northstar Ford, be and hereby is awarded a contract for furnishing and delivering light and heavy duty trucks and vans for the public works and utilities department in accordance with specifications on its line item bids of \$95,186 plus tax of

\$6,187.10, for a total of \$101,373.10, terms net 30, FOB destination, payable as follows: \$75,317.87, from Capital Equipment Fund 250, Department/Agency 015, Organization 2006, Object 5580; \$19,541.42 from Water Fund 510, Department/Agency 500, Organization 1905, Object 5580; and \$6,513.81 from Gas Fund 520, Department/Agency 1905, Object 5580.

Resolution 06-0538 was unanimously adopted.

Approved July 24, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Mike Motors, Inc., be and hereby is awarded a contract for furnishing and delivering light and heavy duty trucks and vans for the public works and utilities department in accordance with specifications on its line item bids of \$46,549 plus tax of \$3,025.69, for a total of \$49,574.69, terms net 30, FOB destination, payable from Capital Equipment Fund 250, Department/Agency 015, Organization 2006, Object 5580.

Resolution 06-0539 was unanimously adopted.

Approved July 24, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Luther Eggebrecht Chevrolet be and hereby is awarded a contract for furnishing and delivering light and heavy duty truck and vans for the public works and utilities department in accordance with specifications on its line item bids of \$45,022 plus tax of \$2,926.43, for a total of \$47,948.43, terms net 30, FOB destination, payable as follows: \$4,794.84 from Water Fund 510, Department/Agency 500, Organization 1905, Object 5580; and \$43,153.59 from Gas Fund 0520, Department/Agency 500, Organization 1905, Object 5580.

Resolution 06-0540 was unanimously adopted.

Approved July 24, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Resolution No. 05-0475, adopted July 11, 2005, to MSA Professional Services, Inc., for professional engineering services for the rehabilitation and reconstruction of sanitary sewer lift stations 2, 7, 21 and 38, be amended to increase the amount by \$12,000 for a new total of \$107,360, payable from Sewer Fund 530, Department/Agency 0500, Organization 1905, Object 5536, City Project No. 0169SN.

Resolution 06-0545 was unanimously adopted.

Approved July 24, 2006

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 temporary easement, valid until December 31, 2008, for road construction purposes from Cirrus Corporation at no cost to the city over the following-described property in St. Louis County, Minnesota:

A temporary easement for road construction purposes over, under and across that part of Lot 1, Block 5, Lot 20, Block 4, and that portion of Taylor Circle that lies between Lot 1, Block 5 and Lot 20, Block 4, all in Airport Division. Said easement is bounded on the north by a line parallel with and ten feet northerly of the northerly right-of-way line of Airport Road, bounded on the south by the northerly right-of-way line of Airport Road, bounded on the east by a line parallel with and 106.74 feet westerly of the east line of said Lot 1, Block 5, and bounded on the west by a line 197.73 feet east of the west line of said Lot 20, Block 4.

Resolution 06-0547 was unanimously adopted.

Approved July 24, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that the city council hereby requests that the Charter commission recommend approval of an ordinance amending Section 69 of the City Charter, which proposed ordinance is on file in the office of the city clerk as Public Document No. 06-0724-14.

Resolution 06-0548 was unanimously adopted.

Approved July 24, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are hereby authorized to enter into an amendment to City Contract No. 20128 with R.W. Beck for additional cost analysis services related to the gas utility, increasing the amount payable thereunder by \$5,000 to \$33,200, payable from the Gas Fund 520, Agency 500, Organization 1915, Object 5310, City Project Number 0565GS.

Resolution 06-0552 was unanimously adopted.

Approved July 24, 2006

HERB W. BERGSON, Mayor

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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, Bristol Street and 57th Avenue West between Grand Avenue and Central Avenue on August 4, 2006, from 6:00 p.m. to 1:00 a.m. (August 5) in conjunction with Spirit Valley Days, provided that all alcoholic beverages consumed outside of the designated serving areas of licensed establishments be consumed only from paper or plastic cups.

BE IT FURTHER RESOLVED, that the dates of this authority may be amended, in the case of inclement weather, if requested in writing by the licensee and approved by the administration.

Resolution 06-0527 was unanimously adopted.

Approved July 24, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

RESOLVED, that the proper city officers are authorized to enter into an agreement with Fond du Lac Tribal and Community College to provide pressure point control tactics instructor training to police officers, said agreement to be substantially in the form of Public Document No. 06-0724-15 on file in the office of the city clerk, and providing for the payment in an amount not to exceed \$3,620; payments to be made from Fund 100-200-1640-2235-5441.

RESOLVED FURTHER, that proper city officials are authorized to allow participation in such course by other law enforcement agencies and to accept payment for such participation in the amount of \$350 per student, such payments to be deposited in Fund 100-200-1640-2235-4644.

Resolution 06-0543 was unanimously adopted.

Approved July 24, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

RESOLVED, that the proper city officers are authorized to accept a grant in the amount of \$2,000 for purposes of alcohol and gambling enforcement from the Minnesota department of public safety and to execute any documents required to be executed to accept such grant. Such funds to be deposited in Fund 100, Agency 200, Organization 1620, Revenue Source 4220-01.

Resolution 06-0544 was unanimously adopted.

Approved July 24, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

RESOLVED, that Cushman Motor Company, Inc., be awarded a contract for the purchase and delivery of two 2006 Westward Industries Interceptor III patrol vehicles for the Duluth police department in accordance with specifications on its quote of \$49,870, terms net 30, FOB destination, payable out of General Fund 100, Department/Agency 700, Organization 1407, Object 5406.

Resolution 06-0546 was unanimously adopted.

Approved July 24, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, that the proper city officers are authorized to enter into an agreement with Duluth economic development authority and Bayfront Blues Festival, Inc., authorizing a permit for the production of a music festival at Bayfront Festival Park, said agreement to be substantially in the form of Public Document No. 06-0724-16 on file in the office of the city clerk. All payments shall be deposited in Fund 237, Agency 015, Revenue Source 4623, except parking revenues which shall be deposited in Fund 100, Agency 400, Organization 1812, Revenue Source 4613.

Resolution 06-0542 was unanimously adopted.

Approved July 24, 2006

HERB W. BERGSON, Mayor

- - -

The following resolutions were also considered:

Resolution 06-0516, by Councilor Stover, awarding a five year contract to Nortrax Equipment Company to lease four John Deere 772 motor graders in the account amount of not to exceed \$337,903.20, was introduced for discussion.

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

Dave Walter, representing Ziegler Cat, stated that both vendors were not treated fairly as the other vendor was given an unfair advantage to adjust their prices after the bids were received and requested that the bid results be rejected and be rebid.

Joe Meierhoff, representing Nortrax Equipment Company, stated that the bid was clear and the bid with the trade-ins was done openly and urged the council to approve the resolution.

Resolution 06-0516 was adopted as follows:

BY COUNCILOR STOVER:

RESOLVED, that Nortrax Equipment Company be and hereby is awarded a contract for furnishing and delivering four John Deere 772 motor graders to the street maintenance division for lease during the six month winter season each year in accordance with specifications in the net amount not to exceed \$337,903.20, payable out of General Fund 100, Department/Agency 500, Organization 1920-2550, Object 5415.

BE IT FURTHER RESOLVED, that the purchasing agent is authorized to negotiate terms resulting in a lesser amount.

Resolution 06-0516 was unanimously adopted.

Approved July 24, 2006

HERB W. BERGSON, Mayor

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Resolution 06-0532, by Councilor Gilbert, denying a rezoning petition to provide for the reclassification from R-3, apartment residential, to C-1, commercial, the property located at 1225 East First Street (Lake Superior Dental Associates), was introduced for discussion.

Councilor Gilbert moved to table the resolution for two weeks so that it can be considered with the companion ordinance on August 14, which motion was seconded and unanimously carried.

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Resolution 06-0541, by Councilor Gilbert, transferring funds in the amount of \$40,000 in the 2005 HUD home investment partnerships (HOME) program and approving a first amendment to the tenant-based rental assistance program contract, was introduced for discussion.

Councilor Stewart stated that this resolution is shifting money from a home purchase program to a tenant rental program because Neighborhood Housing Service of Duluth (NHS) was unable to administer the program. He stated that the city should find someone else to administer the program so homeowner dollars are not lost to a rental program as the Hillside needs more home ownership.

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

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BY COUNCILOR LITTLE:

The city council finds:

Communities across the United States have designated August 1, 2006, as a National Night Out to celebrate community and neighborhood awareness and unity; and

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

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 1, 2006, 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 06-0535 was unanimously adopted.  
Approved July 24, 2006  
HERB W. BERGSON, Mayor

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## INTRODUCTION AND CONSIDERATION OF ORDINANCES

### ORDINANCES TABLED

BY COUNCILOR KRAUSE

06-018 (9784) - AN ORDINANCE PERTAINING TO INSPECTION AND REMOVAL OF VACANT BUILDINGS; AMENDING CHAPTER 10 OF THE DULUTH CITY CODE, 1959, AS AMENDED, AND CREATING A FEE.

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

Councilor Stewart stated that while some of the ordinance is good, registering a vacant building along with filing a plan with the city would be cumbersome along with a high fee.

Several councilors voiced concern that vacant houses that are in good shape and secured are not a nuisance in the neighborhood, but should be required to follow the registration process.

Councilor Stewart moved to amend the ordinance by deleting Section 10-3(d)(4), which motion was seconded and failed upon the following vote:

Yeas: Councilors Little, Ness, Stewart and President Reinert -- 4

Nays: Councilors Gilbert, Johnson, Krause, Stauber and Stover -- 5

Councilor Stauber moved to amend the ordinance, Section 10-3(d)(4)(A), as follows:

(a) In the first paragraph, delete the last two words - "that is," insert the words "at least" before the word "one" and insert the words "of the following" after the word "one";

(b) In subparagraph 2., delete the number "five" and insert the number "30," which motion was seconded and unanimously carried.

Councilor Stewart moved to amend the ordinance, Section 10-3(d)(3)(C), to delete the last sentence, which motion was seconded and unanimously carried.

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

Yeas: Councilors Gilbert, Johnson, Krause, Little, Ness, Stauber, Stover and President Reinert -- 8

Nays: Councilor Stewart -- 1

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BY COUNCILOR GILBERT

06-016 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NO. 47 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM S-2, SUBURBAN RESIDENTIAL TO R-1-A, SINGLE FAMILY RESIDENTIAL, PROPERTY LOCATED AT 7717 CONGDON BOULEVARD (GILBERTSON).

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

Councilor Ness moved to return the ordinance to the administration since the applicants' have withdrawn their petition (Public Document No. 06-0724-09), which motion was seconded and unanimously carried.

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The following entitled ordinances were read for the first time:

BY COUNCILOR GILBERT

06-024 - 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-1, COMMERCIAL DISTRICT, PROPERTY LOCATED AT 1225 EAST FIRST STREET (LAKE SUPERIOR DENTAL ASSOCIATES).

- - -

BY COUNCILOR STOVER

06-025 - AN ORDINANCE DEDICATING AN EASEMENT FOR STREET RIGHT-OF-WAY PURPOSES FOR WEST TENTH STREET, BETWEEN 24TH AVENUE WEST AND 26TH AVENUE WEST.

- - -

BY COUNCILOR STOVER

06-027 - AN ORDINANCE AUTHORIZING GRANTING OF STREET EASEMENTS OVER CITY-OWNED PROPERTY AT DIAP.

- - -

The following entitled ordinance was read for the second time:

BY COUNCILOR STOVER

06-023 (9785) - AN ORDINANCE AUTHORIZING CONVEYANCE OF PROPERTY TO TRINITY DEVELOPMENT GROUP FOR \$12,358.49.

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

- - -

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

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

- - -

**ORDINANCE NO. 9784**

BY COUNCILOR KRAUSE:

AN ORDINANCE PERTAINING TO INSPECTION AND REMOVAL OF VACANT BUILDINGS; AMENDING CHAPTER 10 OF THE DULUTH CITY CODE, 1959, AS AMENDED, AND CREATING A FEE.

The city of Duluth does ordain:

Section 1. That Section 10-3 of the Duluth City Code, 1959, as amended, be amended by adding a new Section 10-3(d) to read as follows:

(d) In addition to other provisions of the Code, this Section 10-3(d) is enacted;

(1) Policy. Pursuant to authority provided in Minnesota Statutes, Section 463.26, permitting cities to enact and enforce ordinances on hazardous buildings, and in order to enhance the livability and preserve the tax base and property values of buildings within the city, and based upon the findings contained in Section (2); and because of the need to assure that buildings which are capable of rehabilitation are promptly rehabilitated and buildings which are not capable of rehabilitation be promptly demolished, the city hereby declared that it is the policy

of the city to promote rehabilitation of vacant and unoccupied buildings, and to assure a prompt process for demolition of hazardous buildings through a procedure fixing appropriate responsibility in accordance with due process requirements;

(2) Findings. The city council finds, determines and declares that buildings which remain vacant and unoccupied for any appreciable period of time become an attractive nuisance to children, a harborage for rodents, and invitation to derelicts, vagrants and criminals as a temporary abode, and an increased fire hazard, and that the unkempt grounds surrounding such property invite the dumping of garbage and rubbish thereon; that such buildings are permitted to become dilapidated since such buildings are often economically obsolete and the owners of such buildings are unwilling to expend the necessary funds to repair or raze the buildings; that such buildings contribute to the growth of blight within the city, depress market values of surrounding properties to the detriment of the various taxing districts and require additional governmental services; that the use and maintenance of property in such condition and manner endangers the public safety and health, constitutes an unreasonable use and condition to the annoyance, discomfort and repose of a considerable number of the public, is detrimental to the public good and to the common welfare; and renders a considerable number of the public insecure in the use and enjoyment of their property, and thus may constitute a nuisance condition. Adequate protection of public health, safety and welfare, therefore, requires the establishment and enforcement of the means by which such nuisance conditions may be abated;

(3) Securing vacant buildings;

(A) In general, if any building becomes vacant or unoccupied and is deemed hazardous due to the fact that the building is open to trespass and has not been secured and the building could be made safe by securing the building, the building official may order the building secured and shall cause notice of the order to be served upon the owner of the premises. Such notice may be served personally or by mail. Service by mail is complete upon mailing a copy of the order to the owner at the last known address. If the owner fails to comply with the order within six days after the order is served, the building official shall cause the building to be boarded up or otherwise properly secured;

(B) Emergency. When it is determined by the building official or the chief of police, or the fire chief that an emergency exists with respect to the health or safety of persons in the community, and immediate boarding and securing of a building is required, and where danger will exist to children, transients or others in the absence of an immediate boarding or securing of the building, the building official or the chief of police, or the fire chief may waive all requirements herein and immediately board or otherwise secure the building, provided that:

1. The conditions showing the existence of an exigency are documented in writing by the building official or the chief of police or the fire chief or their designees;

2. Notice be mailed immediately by the department invoking this Section to the address of the owner and taxpayer, and, if recorded on the assessor's rolls, the address of the mortgage holder, of the date of boarding or otherwise securing and the reasons therefore;

(C) After a vacant or unoccupied building has been boarded or otherwise secured under this section, should the owner fail to maintain the building in a secured condition until such time as it has been repaired and reoccupied, the building official shall resecure any openings into the building whenever it again becomes open to trespass, without further notice to the owner. An administrative fee shall be set in accordance with Section 31-6(a) of this Code and all other costs incurred by the city for boarding or otherwise securing a building under this Chapter, including, but not limited to the actual costs for boarding, posting and monitoring the building, building and housing code compliance inspections, police or fire department inspection, response, or protection; public health and safety investigation; control of people or property wrongfully on the premises shall be assessed as provided in Duluth City Code Section 10-3. The above fees, when collected, shall be dedicated to the use of the department(s) that administer(s) the enforcement actions. Owner, for the purposes of this Section, shall mean the person who is listed as the contact person on the current rental licensing application on file with the city, if any; or, if none, the person listed as owner by the city assessor on the homestead record; or, if none, the taxpayer as shown by the records of the city assessor;

(4) Vacant building registration;

(A) The owner of a residential building or building located in a residentially zoned area shall register the building with the building official within 30 days after it becomes a vacant building. In this Section, a vacant building is at least one of the following:

1. Condemned;
2. Unoccupied and unsecured for 30 days or more;
3. Unoccupied and secured by means other than those normally used in the design of the building for 30 days or more;
4. Unoccupied and has multiple housing maintenance, fire or building code violations existing for 30 days or more;

(B) The registration shall be submitted on forms provided by the building official and shall include the following information supplied by the owner:

1. A description of the premises;
2. The names and addresses of the owner or owners;
3. The names and addresses of all known lien holders and all other parties with an ownership interest in the building;
4. The period of time the building is expected to remain vacant; and a plan and timetable for returning the building to appropriate occupancy or for demolition of the building;

(C) The owner shall submit a plan and timetable that must comply with the guidelines adopted by the building official. The guidelines are adopted for purposes of preventing nuisance conditions and maintaining compliance with this Code. These guidelines shall be made available to building owners. The plan shall be submitted at the time of registration, or within a reasonable period of time thereafter to be determined by the building official;

(D) The owner shall comply with all applicable laws and codes. The owner shall notify the building official of any changes in information

supplied as part of the vacant building registration within 30 days of the change. If the plan or timetable for the vacant building is revised in any way, the revisions must meet the approval of the building official;

(E) The owner and the subsequent owners shall keep the building secured and safe and the building and grounds properly maintained until the rehabilitation or demolition has been completed;

(F) Failure of the owner or any subsequent owner to maintain the building and premises that result in abatement completed by the city shall be grounds for revocation of the approved plan and shall be subject to any applicable penalties provided by law;

(G) The new owner(s) shall register or re-register the vacant building with the building official within 30 days of any transfer of an ownership interest in a vacant building. The new owner(s) shall comply with the approved plan and timetable submitted by the previous owner until any proposed changes are submitted and meet the approval of the building official;

(H) The building official shall include in the file any property-specific written statements from community organizations, other interested parties or citizens regarding the history, problems, status or blighting influence of a vacant building;

(I) Vacant building fees:

1. The owner of a vacant building shall pay an annual fee, which shall be set in accordance with Section 31-6(a) of this Code. The fee is imposed to defray the administrative costs for registering and processing the vacant building registration form and for the costs of the city in monitoring the vacant building site;

2. The first annual fee shall be paid no later than 30 days after the building becomes vacant. Subsequent annual fees shall be due on the anniversary date of initial vacancy. The fees shall be paid in full prior to the issuance of any building permits, with the exception of a demolition permit;

3. Unpaid fees shall be levied and collected as a special assessment against the property as provided for under Section 10-3, with interest at the rate of eight percent per annum on the unpaid balance thereof. Upon transfer of ownership, the new owner(s) shall be responsible for all unpaid and subsequent annual fees;

(J) A building owner shall provide access to all interior portions of an unoccupied building in order to permit a complete inspection for the purpose of enforcing and assuring compliance with the provisions of this Chapter.

Section 2. That this ordinance shall take effect 30 days after its passage and publication.

(Effective date: September 3, 2006)

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

Yeas: Councilors Gilbert, Johnson, Krause, Little, Ness, Stauber, Stover and President Reinert -- 8

Nays: Councilor Stewart -- 1

ATTEST:  
JEFFREY J. COX, City Clerk

Passed July 24, 2006  
Approved July 24, 2006  
HERB W. BERGSON, Mayor

- - -

**ORDINANCE NO. 9785**

BY COUNCILOR STOVER:

AN ORDINANCE AUTHORIZING CONVEYANCE OF PROPERTY  
TO TRINITY DEVELOPMENT GROUP FOR \$12,358.49.

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 Trinity Development Group, for the sum of \$12,358.49; payable to the General Fund 100, Agency 700, Object 1420, Revenue Source 4640:

The northerly 33 feet of the SE1/4 of NW1/4, Section 29, Township 50 North of Range 14 West of the Fourth Principal Meridian that lies westerly of the east line of Lot 4, AUDITORS PLAT NO. 24 extended northerly to the north line of said SE1/4 of NW1/4;

AND

The westerly 33 feet of the SE1/4 of NW1/4, Section 29, Township 50 North of Range 14 West of the Fourth Principal Meridian that lies adjacent to Lot 8, AUDITORS PLAT NO. 24.

Section 2. That the city council finds, upon advice from the city assessor, that the sale is for fair market value.

Section 3. This ordinance shall take effect 30 days from and after its passage and publication. (Effective date: September 3, 2006)

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

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

Nays: None -- 0

ATTEST:

JEFFREY J. COX, City Clerk

Passed July 24, 2006

Approved July 24, 2006

HERB W. BERGSON, Mayor

- - -

**OFFICIAL PROCEEDINGS**

Duluth City Council meeting held on Monday, August 14, 2006, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: Councilor Ness -- 1

- - -

**PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS**

06-0814-01 City of Duluth petition to reclassify from R-3 to R-2 property described as Lots 7-9, Block 55, and Lots 10-12, Block 79, Duluth Proper Third Division. -- Assessor

06-0814-02 Joseph and Rose Kleiman petition to reclassify from M-1 to C-1 property described as Lot 14 and the southerly 58 feet of lots 15 and 16, Block 23, Endion Division of Duluth. -- Assessor

06-0814-03 Pizza Lucé and A&L Properties application for renewal of concurrent use permit for obstruction of sidewalk for Pizza Luce' III, Inc., 11 East Superior Street. -- Planning commission

06-0814-04 Sixth Judicial District Chief Judge David P. Sullivan order reappointing Steven Filipovich, Jeffery Davin Anderson and Cynthia Albright; and appointing Robert F. Eaton, George Hanson, Ronald Dean Hanson and Eli J. Miletich for four year terms effective June 1, 2006. -- Received

06-0814-05 The following proposed 2007 tax levy requests: (a) Arrowhead Regional Development Commission (budget also); (b) Duluth Seaway Port Authority. -- Received

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**REPORTS FROM THE ADMINISTRATION**

Chief Administrative Officer Hall reported that there has either been, or scheduled, negotiation meetings with the basic, fire, police and confidential unions. He further noted that the drug cost reduction task force has completed its recommendations, that the administration is reviewing them and that they would be released shortly.

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Councilor Ness arrived at this time.

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**REPORTS FROM OTHER OFFICERS**

06-0814-06 Assessor affidavit of mailing of notice of hearing by the special assessment board on Tuesday, August 8, 2006, at 3:30 p.m. in Room 106A, City Hall, regarding reassessment of canceled assessments. -- Clerk

06-0814-07 Clerk application to the Minnesota gambling control board for exemption from lawful gambling from Rotary Club of Duluth Harbortown, Minnesota, USA, on November 17, 2006 (raffle). -- Received

06-0814-08 Parks and recreation department director Lake Superior zoological society: (a) Director, education and executive reports for July 2006; (b) Minutes of May 17, 2006, meeting. -- Received

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**REPORTS OF BOARDS AND COMMISSIONS**

- 06-0814-09 Board of zoning appeals minutes of June 27, 2006, meeting. -- Received
- 06-0814-10 Duluth airport authority minutes of June 20, 2006, meeting. -- Received
- 06-0814-11 Duluth state convention center administrative board minutes of: (a) April 4; (b) April 25; (c) May 30; (d) June 27, 2006, meetings. -- Received
- 06-0814-12 Parks and recreation commission minutes of June 14, 2006, meeting. -- Received
- 06-0814-13 Planning commission minutes of July 11, 2006, meeting. -- Received
- 06-0814-14 Spirit Mountain recreation area authority minutes of June 7, 2006, meeting. -- Received

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**OPPORTUNITY FOR CITIZENS TO BE HEARD**

Rick Adams, Minnesota Towers, representing Cellular One, commented on issues related to a cellular tower permit in Piedmont Heights. He stated that his company feels that the city has acted fraudulently in the producing of its case to the federal court. He felt that there were documents introduced that were not part of the public record when the council made its decision; that there was false testimony and affidavits produced; that city employees changed their testimony and that their company has been greatly damaged by these actions. In conclusion, he noted that: the immediate neighbors do not oppose the project; the city council should review the allegations noted and that they only wish to receive their permit.

James Beckthold presented a text of the court briefs (Public Document No. 06-0814-21) relative to the litigation on the cellular tower permit in Piedmont Heights. He stated that a third party ordered by the courts established that city staff fabricated an extension document. He requested the city council to investigate the matter, act appropriately and hire another municipality to issue the permits.

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Jon Donahue expressed his opinions relative to retiree healthcare costs and that the general public does not feel supportive of having to pay for this expense.

- - -

K.L. Lewis commented on the issue of the Beacon Point development relative to the current owner complying with the comprehensive plan.

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**RESOLUTIONS TABLED**

Councilor Gilbert moved to remove Resolution 06-0532, denying a rezoning petition to provide for the reclassification from R-3, Apartment Residential, to C-1, Commercial District, property located at 1225 East First Street (Lake Superior Dental Associates), from the table, which motion was seconded and unanimously carried.

Councilor Gilbert moved to suspend the rules to consider companion Ordinance 06-024 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 second time:

BY COUNCILOR GILBERT

06-024 (9786) - 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-1, COMMERCIAL DISTRICT, PROPERTY LOCATED AT 1225 EAST FIRST STREET (LAKE SUPERIOR DENTAL ASSOCIATES).

- - -

Resolution 06-0532 failed upon the following vote (Public Document No. 06-0814-15):

Yeas: President Reinert -- 1

Nays: Councilors Gilbert, Johnson, Krause, Little, Ness, Stauber, Stewart and Stover -- 8

- - -

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

- - -

Councilor Gilbert moved to remove Resolution 06-0541, transferring funds in the amount of \$40,000 in the 2005 HUD home investment partnerships (HOME) program and approving a first amendment to the tenant-based rental assistance program contract, 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.

Rick Ball, Housing and Redevelopment Authority executive director, and Steve O'Neil, St. Louis County commissioner, supported the resolution citing reasons of: the need for tenant-based rental housing because the funding for this program ran out; the average annual income of these clients is \$4,100 per year; these people are at risk of being homeless and there is approximately a 12 to 18 month wait for Section 8 housing.

Resolution 06-0541 was adopted as follows:

BY COUNCILOR GILBERT:

RESOLVED, that the proper city officials are authorized to make the following transfer of funds in the Federal Fund 260-020-5434, Project CD05HM, 2005 HUD-funded community development accounts as set forth below:

Project #	Project	Budget amount	New amount	Amount of increase or decrease
GN05-1736	Tenant-based rental assistance	\$70,000	\$110,000	\$40,000
GN05-2239	Homebuyer down payment assistance	\$40,000	-0-	(\$40,000)

Also, approving an extension of time from September 30, 2006, to March 31, 2007, and increasing the contract from \$70,000 to \$110,000.

Resolution 06-0541 was unanimously adopted.

Approved August 14, 2006

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

BY COUNCILOR KRAUSE:

RESOLVED, that Erling R. Hansen General Contractors, Inc., be and hereby is awarded a construction contract for ADA compliant restrooms and site accessibility at Central Hillside Community Center in accordance with plans and specifications as prepared by the city architect on its low bid of \$108,600, payable out of Capital Fund 100, Agency 700, Organization 1420, Object 5530, CM100-OT0611.

Resolution 06-0554 was unanimously adopted.

Approved August 14, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

RESOLVED, that the proper city officers are hereby authorized to amend Contract #20143 with EPC Engineering and Testing, Inc., in an amount of not to exceed \$3,726, from HSEM 04 Grant 215-200-2272, for providing additional geotechnical services to the city of Duluth in connection with City Center West Police Station addition, 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. 06-0814-16.

Resolution 06-0559 was unanimously adopted.

Approved August 14, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

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, 2006, subject to departmental approvals, with any specific restrictions:

Va Bene Café, Inc. (Va Bene Caffè), 734 East Superior Street.

Resolution 06-0567 was unanimously adopted.

Approved August 14, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

BE IT RESOLVED, that the city council of the city of Duluth approves the transfer of stock of the following on sale intoxicating liquor license and on sale Sunday license for the period ending August 31, 2006, subject to departmental approvals and the payment of sales and property taxes:

CW Chips Bar/Grill, Inc. (Twin's Bar), 501 East Fourth Street, with Mark Glad, president and 29 percent stockholder, Lori Glad, secretary and 1 percent stockholder, Michael

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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Lemon, vice president and 19 percent stockholder, and Charles Lemon, treasurer and 51 percent stockholder.

Resolution 06-0568 was unanimously adopted.

Approved August 14, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

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

Duluth Softball Players Association, Wheeler Field, for August 19 and 20, 2006, with John Vaydich, manager.

Waltman-Tessier Memorial Fund (Waltman-Tessier Memorial Tournament), Wheeler Field, for August 25, 26 and 27, 2006, with John McAdamis, manager.

Resolution 06-0569 was unanimously adopted.

Approved August 14, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

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, 2007, subject to departmental approvals and payment of sales and property taxes:

North Pole Bar and Grill, LLC (North Pole Bar and Ray's Grill), 5606-5610 Raleigh Street, with Larry Cramer, 100 percent owner, transferred from Ray's B&G, Inc. (North Pole Bar and Ray's Grill), same address.

Resolution 06-0570 was unanimously adopted.

Approved August 14, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the temporary expansion of the designated serving area of the following on sale intoxicating liquor license, subject to departmental approvals, with any specific restrictions:

Historic Union Depot (SLC Heritage and Arts Center), 506 West Michigan Street, for August 31, 2006, from 6:00 p.m. to 9:00 p.m.

Resolution 06-0571 was unanimously adopted.

Approved August 14, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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Duluth Superior GLBT Pride, Inc. ((Duluth-Superior GLBT Pride Festival), Bayfront Park, for September 2, 2006, from 10:00 a.m. to 7:00 p.m., with Carolyn Reisberg, manager.

Resolution 06-0573 was unanimously adopted.

Approved August 14, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

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.

<b>Licensee</b>	<b>Gambling Site</b>
Duluth Curling Club	Copasetic Lounge, 323 East Central Entrance
Climb Theatre	Incline Station, 601 West Superior Street

Resolution 06-0575 was unanimously adopted.

Approved August 14, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

BE IT RESOLVED, that the city council of the city of Duluth hereby issues the following off sale 3.2 percent malt liquor licenses for the period ending April 30, 2007, subject to departmental approvals and the payment of sales and property taxes:

Miner's, Inc. (Jubilee Foods), 5928 East Superior Street, with James Miner, president.

Miner's, Inc. (Jubilee Foods), 15 South 13th Avenue East, with James Miner, president.

Miner's, Inc. (Jubilee Foods), 1316 West Arrowhead Road, with James Miner, president.

Resolution 06-0576 was unanimously adopted.

Approved August 14, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointment by Mayor Bergson of Charles H. Andresen to the special board of review for a term expiring on July 31, 2009, replacing Neal Hessen, is confirmed.

Resolution 06-0553 was unanimously adopted.

Approved August 14, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

WHEREAS, the Duluth City Council adopted Resolution No. 03-0731 which authorized the Arrowhead Regional Development Commission to act as job opportunity building zone (JOBZ) zone sponsor and administrator and to make program commitments on behalf of the city of Duluth; and

WHEREAS, the Minnesota department of employment and economic development (DEED) approved the Northeast Minnesota regional JOBZ application for 4,031 acres, including 351.12 acres within the city of Duluth; and

WHEREAS, the Duluth City Council adopted Resolution No. 04-0236 designating those 351.12 acres within the city of Duluth into 11 subzones, including 95.78 acres in Airpark Subzone Number 97; and

WHEREAS, the Duluth Seaway Port authority wishes to reallocate 1.6 acres from Lot 1, Block 4, Second Rearrangement of Part of Airpark Division, and 2.1 acres from Lot 1, Block 8, Second Rearrangement of Part of Airpark Division, for a total reallocation of 3.7 acres to a 3.34 acre project site (resulting in a net reduction in Airpark Subzone Number 97 of 0.36 acres) described as Lot 23, Block 4, Rearrangement of Part of Airpark Division (PID #143-230); and

WHEREAS, the JOBZ program created in Minnesota Session Laws 2003, First Special Session, Chapter 21, Article 1, allows for the formation of tax free zones and for subzone boundaries to be amended with the approval of all taxing authorities; and

WHEREAS, the Duluth Seaway Port authority wishes to provide JOBZ benefits to a business whose expansion shall occur on the 3.34 acre project site.

NOW THEREFORE, BE IT RESOLVED, that the city of Duluth approves an amendment to Airpark Subzone Number 97 as follows:

(a) Remove a total of 3.7 acres from Lot 1, Block 4, and Lot 1, Block 8, Second Rearrangement of Part of Airpark Division;

(b) Add 3.34 acres to Lot 23, Block 4, Rearrangement of Part of Airpark Division (PID #143-230).

Resolution 06-0577 was unanimously adopted.

Approved August 14, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

BE IT RESOLVED, that the city of Duluth (the city) act as the legal sponsor for project(s) contained in the redevelopment grant program submitted on August 1, 2006, and that the mayor and the city clerk are hereby authorized to apply to the department of employment and economic development for a grant in the amount of \$662,325 for funding of this project on behalf of the Duluth Heritage Sports Center.

BE IT FURTHER RESOLVED, that the city has the legal authority to apply for financial assistance, and the institutional, managerial and financial capability to ensure adequate project administration.

BE IT FURTHER RESOLVED, that the city hereby commits to provide up to \$662,325 in matching funds for the project if said grant is awarded by the state and accepted by the city, which funds are anticipated to be provided by Duluth Heritage Sports Center Corporation and Clyde Industrial Park, Inc., pursuant to a development agreement.

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

BE IT FURTHER RESOLVED, that upon approval of its application by the state, the acceptance thereof shall be subject to further resolution of the council authorizing such acceptance pursuant to ratification of the above-referenced development agreement.

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

Resolution 06-0586 was unanimously adopted.

Approved August 14, 2006

HERB W. BERGSON, Mayor

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BY PRESIDENT REINERT:

RESOLVED, that pursuant to Minnesota Statutes 204B.21, the following persons are hereby appointed as election judges in the respective precincts for the September 12, 2006, state primary election and the November 7, 2006, state general election, as listed in Public Document No. 06-0814-17.

RESOLVED FURTHER, that pursuant to Minnesota Statute, 204B.31(d), election judges shall be compensated at the rate of \$7 per hour and chairman election judges shall be also compensated \$15 for election day hours. In addition, election judges carrying supply returns shall be compensated for mileage at the rate of \$.445 per mile; payable from General Fund 015-1512-5441.

RESOLVED FURTHER, if any person who is name on the list as a judge is unable to serve, the clerk is empowered to substitute the name of a qualified legal voter for the one who is unable to serve.

Resolution 06-0581 was unanimously adopted.

Approved August 14, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Resolution 03-0416 to LHB Engineers and Architects for the engineering services required for the rehabilitation of Bridge No. L8477 and approaches located on West Tenth Street (MSAS 203) from 500 feet east of the intersection with 26th Avenue West to the intersection with 24th Avenue West, be amended to increase the amount by \$102,825 for a new total of \$195,825, payable from Permanent Improvement Fund 0411, Department/Agency 035, Object 5530, City Project No. 0102TR, S.P. 118-203-002, Minnesota Project No. BH6906(108).

Resolution 06-0555 was unanimously adopted.

Approved August 14, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Carlson Media, Inc., be and hereby is awarded a contract for furnishing strategic and tactical services to develop messages to effectively promote public awareness of the Duluth public works and utilities department's services and product safety, and provide media purchasing services for the natural gas utility in accordance with specifications on its qualifications and proposal dated June 15, 2006; total funding for 2006, 2007 and 2008 would not exceed \$254,900 and would be payable out of Gas Fund 520, Agency 500, Organization 1940-2430, Object 5340, and the public works and utilities website budget.

Resolution 06-0556 was unanimously adopted.

Approved August 14, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Northland Constructors of Duluth, LLC, be and hereby is awarded a contract for the rehabilitation of Bridge No. L8477 and approaches located on Tenth Street (MSAS 203) from 500 feet east of the intersection with 26th Avenue West to the intersection with 24th Avenue West for the engineering division in accordance with specifications on its low specification bid of \$1,495,792.90, terms net 30, FOB job site, payable out of Fund 0411, Department/Agency 035, Object 5530; City Project Number 0102TR, S.P. 118-203-002, Minnesota Project No. BH6906(108).

Resolution 06-0562 was unanimously adopted.

Approved August 14, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that KGM Contractors, Inc., be and hereby is awarded a contract for construction of the Airport Road parking lot in accordance with specifications on its low combined bid of \$862,824, terms net 30, FOB destination, payable out of the Permanent Improvement Fund 411, Department/Agency 035, Object 5530; Project P10561TR - Cirrus parking lot.

Resolution 06-0563 was unanimously adopted.

Approved August 14, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are authorized to purchase 0.36 acres of banked wetlands credits from the Terry Anderson Wetland Bank No. 1063 for the sum of \$18,720, payable from Permanent Improvement Fund 411; Project P10526TR.

Resolution 06-0588 was unanimously adopted.

Approved August 14, 2006

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 West Michigan Street, Fifth and Sixth avenues West, on August 31, 2006, from 6:00 p.m. to 9:00 p.m. in conjunction with the Duluth Superior GLBT Pride Festival, 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 06-0572 was unanimously adopted.

Approved August 14, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

RESOLVED, that the proper city officials are authorized to accept a grant from the state of Minnesota, office of traffic safety, in the amount of \$42,000, for the grant period beginning October 1, 2006, and ending September 30, 2007, act as the fiscal agent for the grant and execute the documents necessary to accept the grant including any grant agreement; grant funds to be deposited in Fund 215, Agency 200, Organization 2265, Revenue Source 4220-02.

Resolution 06-0578 was unanimously adopted.

Approved August 14, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

RESOLVED, that the proper city officials are authorized to buy back from Officer Dean Symens 218 hours of vacation to be paid at the 2004 hourly rate, for an amount not to exceed \$5,826.23; payment to be made from 100-200-1620-5117.

Resolution 06-0579 was unanimously adopted.

Approved August 14, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

The city council finds as follows:

(a) By Resolution No. 40-05, as amended by Resolutions No. 16-06 and 34-06, the Seaway Port authority of Duluth has given preliminary approval to the issuance of revenue bonds, pursuant to authority granted by Minnesota Statutes, Sections 469.048 to 469.068, for the purpose of financing the costs of a project described as the development and construction of a facility of approximately 20,000 square feet for the manufacture of airplane components, to be leased to Northstar Machine and Tool Company, Inc.; and

(b) The authority has conducted a public hearing on the issuance of the bonds, after publication of notice thereof in the official newspaper of the authority not less than 14 days prior to the date thereof, as required by Section 147(f) of the Internal Revenue Code of 1986, as amended, as a condition to the tax exemption of interest on the bonds; and

(c) Section 147(f) of the code further requires approval of the bonds by the city council of the city of Duluth; and

(d) The bonds will be payable solely from the revenues of the project and other projects and revenues specifically pledged to the payment thereof, and the bonds will not constitute or give rise to a pecuniary liability of the authority or the city or a charge against its general credit or taxing power.

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth, Minnesota, hereby approves the issuance of the bonds by the authority.

Resolution 06-0587 was unanimously adopted.

Approved August 14, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILORS STAUBER, STEWART AND STOVER:

The city council finds as follows:

(a) By way of Resolution 06-0495 and Public Document No. 06-0626-14, the areas for the 2006 deer hunt were designated;

(b) Map 7 of Public Document No. 06-0626-14 excluded a 50 acre private property parcel which is to now be included;

(c) Map 10 of Public Document No. 06-0626-14 contained an error.

THEREFORE, BE IT RESOLVED, that Public Document No. 06-0626-14, maps 7 and 10, are repealed and new maps 7 and 10 on file with the city clerk as Public Document No. 06-0814-18, are substituted therefore.

Resolution 06-0585 was unanimously adopted.

Approved August 14, 2006

HERB W. BERGSON, Mayor

- - -

The following resolutions were also considered:

BY COUNCILOR KRAUSE:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves issuance of the following on sale wine license by the liquor control commissioner and issues the following on sale 3.2 percent malt liquor license for the period ending August 31, 2007, and April 30, 2007, respectively, subject to departmental approvals and the payment of sales and property taxes:

Torke, Inc. (Torke), 37 East Superior Street, with Wayne Torke, president and John Elliott, secretary.

Resolution 06-0574 was adopted upon the following vote:

Yeas: Councilors Johnson, Krause, Little, Ness, Stauber, Stewart, Stover and President Reinert -- 8

Nays: None -- 0

Abstention: Councilor Gilbert -- 1

Approved August 14, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0583, authorizing execution of a supplemental labor agreement with the City of Duluth Supervisory Association; and Resolution 06-0584, approving a collective bargaining agreement between city of Duluth and the City of Duluth Supervisory Association for years 2007-2009, by Councilor Stewart, were introduced for discussion.

Mayor Bergson expressed his support for the 2007-2009 bargaining agreement, noting that if the terms of this agreement were adopted by all of the bargaining units it would significantly reduce the retiree unfunded liability.

Councilor Krause moved to table the resolutions because he felt that there should be a cost-out analysis of any union contracts; individuals who will be going into vacancies in this union will already be city employees and that the actuary study the council has is not updated and there will not be another one until all the contracts have been approved.

The motion was seconded and failed upon the following vote:

Yeas: Councilors Krause and Stauber -- 2

Nays: Councilors Gilbert, Johnson, Little, Ness, Stewart, Stover and President Reinert -- 7

Councilor Little stated that it was difficult to vote on this issue if not all of the information and documentation has been supplied as of yet.

Resolutions 06-0583 and 06-0584 were adopted as follows:

BY COUNCILOR STEWART:

RESOLVED, that the proper city officials are hereby authorized to execute a supplemental labor agreement with the City of Duluth Supervisory Association, which is on file in the office of the city clerk as Public Document No. 06-0814-19, which, beginning January 1, 2006, modifies the collective bargaining agreement language requiring employees hired on or after January 1, 2006, to pay the entire cost of their retiree health insurance and requiring the city to deposit the sum of \$12,000 for these new hires into a health care savings plan account after 36 months of employment.

Resolution 06-0583 was adopted upon the following vote:

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

Nays: Councilor Little -- 1

Approved August 14, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

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 typographic or insubstantial corrections) as the contract on file with the city clerk as Public Document No. 06-0814-20, covering the years 2007-2009.

Resolution 06-0584 was adopted upon the following vote:

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

Nays: Councilor Little -- 1

Approved August 14, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0580, by President Reinert, designating polling places for the September 12, 2006, state primary election and the November 7, 2006, state general election, was introduced for discussion.

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

Kim McKay, commission on disabilities chairperson, expressed the commission's concerns relative to the polling site for Precinct 19. She felt that the access to the existing polling site is a safety issue, due to the steep hill adjacent to the access off the avenue. Relative to the limited parking at the prior polling site, she suggested temporary parking on the avenue be established for voters.

Councilor Stewart noted that this whole precinct is on a steep part of the Central Hillside.

Resolution 06-0580 was adopted as follows:

BY PRESIDENT REINERT:

BE IT RESOLVED, that pursuant to Minnesota Statutes 204B.16, the following locations are designated as polling places for the September 12, 2006, state primary election and November 7, 2006, for the state general election:

**POLLING PLACE LIST**

<b>POLLING PLACE</b>	<b>ADDRESS</b>
1. St. Michael's Catholic Church (lower level)	4901 East Superior Street
2. Lakeside Presbyterian Church (lower level)	4430 McCulloch Street
3. Lutheran Church of the Good Shepherd (lower level)	1325 North 45th Avenue East
4. Faith Lutheran Church (lower level)	1814 North 51st Avenue East
5. Lakeview Covenant Church (lower level)	1001 Jean Duluth Road
6. Woodland Community Club	3211 Allendale Avenue
7. Glen Avon Presbyterian Church	2105 Woodland Avenue
8. Duluth Congregational Church	3833 East Superior Street
9. Pilgrim Congregational Church	2310 East Fourth Street
10. U.M.D. Kirby Student Center	1120 Kirby Drive
11. Kenwood Lutheran Church	324 West Cleveland Street
12. Chester Park United Methodist Church (lower level)	819 North 18th Avenue East
13. Mt. Olive Lutheran Church (lower level)	2010 East Superior Street
14. Temple Israel	1602 East Second Street
15. Trinity Lutheran Church	1108 East Eight Street
16. Peace Church (Tenth Avenue entrance)	1015 East 11th Street
17. First United Methodist Church (Lakeview social hall)	230 East Skyline Parkway
18. Central Hillside Community Center	12 East Fourth Street
19. First Presbyterian Church (avenue entrance)	300 East Second Street
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

**POLLING PLACE LIST**

<b>POLLING PLACE</b>	<b>ADDRESS</b>
26. Piedmont Elementary School (gym - rear entrance)	2827 Chambersburg Avenue
27. St. Lawrence Church	2410 Morris Thomas Road
28. Holy Family Catholic Church	2430 West Third Street
29. Harrison Community Club	3002 West Third Street
30. City Center West	5830 Grand Avenue
31. Faith Haven (recreation room)	4901 Grand Avenue
32. Elim Lutheran Church (social hall)	6101 Cody Street
33. Bayview Heights School (gym)	8702 Vinland Street
34. Bethany Baptist Church (social hall)	6700 Grand Avenue
35. Goodfellowship Community Center (warming area)	1242-88th Avenue West
36. Stowe School (Room 27)	715-101st Avenue West

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 12, 2006, and November 7, 2006, elections.

BE IT FURTHER RESOLVED, that the proper city officials are hereby authorized to establish and post temporary handicapped parking zones for the September 12, 2006, and November 7, 2006, 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 06-0580 was unanimously adopted.

Approved August 14, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0582, by President Reinert, in support of an amendment to the Minnesota Constitution pertaining to transportation funding, was introduced for discussion.

Councilor Little expressed concerns that more information is needed on this resolution.

Resolution 06-0582 was adopted as follows:

BY PRESIDENT REINERT:

The city council finds as follows:

- (a) Minnesota's transportation infrastructure forms the backbone of the state's economy and has a direct impact on future economic development;
- (b) Too many Minnesotans are being killed in traffic crashes on dangerous roadways;

(c) Funding for highway and transit systems in Minnesota has remained stagnant and is failing to keep pace with growing population and growing demands;

(d) Local governments throughout the state are struggling to maintain local transportation systems while the state's gas tax has not been increased since 1988 and transit budgets have been cut in recent years;

(e) The Minnesota Legislature has repeatedly turned to revenue from the motor vehicle sales tax, which has been viewed as user fee revenue, in order to fund both highway and transit systems including the current dedication of 54 percent of motor vehicle sales tax for transportation purposes;

(f) The legislature passed a proposed constitutional amendment during the 2005 legislative session that would appear on the ballot November 7, 2006, asking voters if the remaining 46 percent of motor vehicle sales tax revenue currently used for other purposes should be used for highways and transit systems;

(g) Passage of this amendment would mean an increase in stable revenue for highway and transit systems throughout the state that would rise to approximately \$300 million per year once the transfer of revenue is fully phased in by 2011.

NOW, THEREFORE, BE IT RESOLVED, that the city of Duluth strongly supports passage of the proposed amendment to the Minnesota Constitution dedicating all of the motor vehicle sales tax revenue to transportation with at least 40 percent of the revenue for public transit assistance and not more than 60 percent of the revenue for highway purposes.

Resolution 06-0582 was adopted upon the following vote:

Yeas: Councilors Johnson, Krause, Ness, Stauber, Stewart, Stover and President Reinert -- 7

Nays: Councilors Gilbert and Little -- 2

Approved August 14, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0564, by Councilor Little, to remove the one-way designation from East First Street between 12th and 24th avenues East, was introduced for discussion.

Councilor Little moved to table the resolution for more citizen input, which motion was seconded and carried as follows:

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

Nays: President Reinert -- 1

- - -

Resolution 06-0565, by Councilor Little, to establish no parking on various streets, was introduced for discussion.

Councilor Little moved to table the resolution for more citizen input, which motion was seconded and carried as follows:

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

Nays: President Reinert -- 1

- - -

Resolution 06-0566, by Councilor Stauber, authorizing payment for veterinary services by Dr. Mary Victor in an amount not to exceed \$15,050 for the period ending October 19, 2006, was introduced for discussion.

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

Mary Wictor expressed concerns that the resolution does not have a sufficient amount of funds to cover the term of the contract and that she has not been paid since May. She stated that originally the contract called for 20 hours a week, which was barely enough and the eight hours a week stated in this amended contract will not be in accordance with the healthcare standards of the United States department of agriculture for zoo animals.

Councilor Ness stated that he would not support any tabling motion, because this individual should be paid now for work that she had already completed and the council should not be in the position to determine how many hours is appropriate for a veterinarian to work.

Councilor Stauber moved to table the resolution for further information, which was seconded and carried upon the following vote:

Yeas: Councilors Gilbert, Johnson, Krause, Little, Stauber, Stewart, Stover and President Reinert -- 8

Nays: Councilor Ness -- 1

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### **INTRODUCTION AND CONSIDERATION OF ORDINANCES**

The following entitled ordinances were read for the second time:

BY COUNCILOR STOVER

06-025 (9787) - AN ORDINANCE DEDICATING AN EASEMENT FOR STREET RIGHT-OF-WAY PURPOSES FOR WEST TENTH STREET, BETWEEN 24TH AVENUE WEST AND 26TH AVENUE WEST.

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

- - -

BY COUNCILOR STOVER

06-027 (9788) - AN ORDINANCE AUTHORIZING GRANTING OF STREET EASEMENTS OVER CITY-OWNED PROPERTY AT DIAP.

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

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

JEFFREY J. COX, City Clerk

- - -

### **ORDINANCE NO. 9786**

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-1, COMMERCIAL DISTRICT, PROPERTY LOCATED AT 1225 EAST FIRST STREET (LAKE SUPERIOR DENTAL ASSOCIATES).

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)

(Reference File No. 06067)

*[see map at end of meeting]*

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: September 24, 2006)

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

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

Nays: None -- 0

Passed August 14, 2006

Approved August 14, 2006

ATTEST:

JEFFREY J. COX, City Clerk

HERB W. BERGSON, Mayor

- - -

**ORDINANCE NO. 9787**

BY COUNCILOR STOVER:

AN ORDINANCE DEDICATING AN EASEMENT FOR STREET  
RIGHT-OF-WAY PURPOSES FOR WEST TENTH STREET,  
BETWEEN 24TH AVENUE WEST AND 26TH AVENUE WEST.

The city of Duluth does ordain:

Section 1. That the city of Duluth does hereby dedicate to the general public a perpetual easement for street right-of-way purposes over, under and upon the following-described property in St. Louis County, Minnesota:

All of Lots One (1) through Twenty-Five (25), Block Five (5), Spaldings Addition, together with the alley located in said Block Five (5), lying between the northwesterly right-of-way of 25th Avenue West and a line connecting the southeasterly corner of Lot Twenty-Five (25) and the northeasterly corner of Lot Eight (8), Spaldings Addition.

And, that portion of Block Twelve (12), Spaldings Addition, beginning at the easterly corner of Lot One (1), Block Twelve (12), Spaldings Addition, thence northwesterly along the northeasterly line of said Lot One (1), a distance of 123.32 feet; thence, southwesterly to the southerly corner of Lot Eleven (11), Block Twelve (12), Spaldings Addition; thence northeasterly along the northwest right-of-way of Tenth Street to the point of beginning.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: September 24, 2006)

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

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

Nays: None -- 0

Passed August 14, 2006

Approved August 14, 2006

ATTEST:

JEFFREY J. COX, City Clerk

HERB W. BERGSON, Mayor

- - -

**ORDINANCE NO. 9788**

BY COUNCILOR STOVER:

AN ORDINANCE AUTHORIZING GRANTING OF STREET  
EASEMENTS OVER CITY-OWNED PROPERTY AT DIAP.

The city of Duluth does ordain:

Section 1. That the proper city officials are hereby authorized to grant easements for road and utility purposes to the general public over and across the property in St. Louis County, Minnesota, described below and to accept on behalf of the public the dedication of such easements if and when offered by the Duluth Airport Authority pursuant to Laws, 1969, Chapter 577, Section 5 Subd. 2(e):

Parcel 1.

That part of the Southwest Quarter of the Southeast Quarter of Section 2, Township 50 North, Range 15 West of the Fourth Principal Meridian lying south of Airport Road, lying west of Lot 5, Block 3, Airport Division, and easterly of the following described line A.

Line A is described as follows: Commencing at the southwest corner of the Southwest Quarter of the Southeast Quarter of said Section 2; thence easterly for a distance of 378.96 feet along the south line of said Section 2 to the POINT OF BEGINNING of Line A; thence northerly deflecting 90 degrees 11 minutes 54 seconds for 304.50 feet more or less to the southerly right-of-way line of Airport Road and there terminating.

And lying northerly of Line B.

Line B is described as follows: Commencing at the terminus of line A; thence southerly along line A for a distance of 55.00 feet to the POINT OF BEGINNING of line B; thence northeasterly to a point that lies 10 feet south of the southerly right-of-way line of Airport Road and 45.00 feet easterly of the above-described line A; thence easterly parallel with and 10 feet south of the southerly right-of-way line of Airport Road to the west line of said Lot 5, Block 3, Airport Division and there terminating.

Parcel 2.

The northerly 10.00 feet of Lots 4 and 5, Block 3, Airport Division.

Parcel 3.

That part of the Southwest Quarter of the Southeast Quarter of Section 2, Township 50 North Range 15 West of the Fourth Principal Meridian lying south of the south right of way line of Airport Road, and lying easterly of Line A and westerly of a line 66.00 feet easterly of and parallel to said Line A:

Line A is described as follows: Commencing at the southwest corner of the Southwest Quarter of the Southeast Quarter of said Section 2; thence easterly for a distance of 312.96 Feet along the south line of said Section 2 to the POINT OF BEGINNING of Line A; thence northerly deflecting 90 degrees 11 minutes 54 seconds for a distance of 304.50 feet more or less to the south line of Airport Road.

Section 2. That this ordinance shall take effect 30 days after its passage and publication.  
(Effective date: September 24, 2006)

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

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

Nays: None -- 0

ATTEST:  
JEFFREY J. COX, City Clerk

Passed August 14, 2006  
Approved August 14, 2006  
HERB W. BERGSON, Mayor

- - -



**OFFICIAL PROCEEDINGS**

Special meeting of the Duluth City Council held on Monday, August 24, 2006, 5:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Johnson, Krause, Little, Stauber, Stewart, Stover and President Reinert -- 7

Absent: Councilors Gilbert and Ness -- 2

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**PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS**

06-0824-01 The PFM Group: (a) Presale analysis; (b) Official statement; (c) Bid results; regarding the proposed sale of \$895,000 GO capital improvement bonds, Series 2006A, \$1,705,000 GO stormwater utility revenue bonds, Series 2006B, \$3,355,000 GO street improvement bonds, Series 2006C and \$1,985,000 GO improvement bonds, Series 2006D. -- Received

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**MOTIONS AND RESOLUTIONS**

Resolution 06-0557, providing for the issuance, sale and delivery of \$895,000 general obligation capital improvement bonds, Series 2006A; establishing the terms and form thereof; creating a debt service fund therefor; and awarding the sale thereof; Resolution 06-0558, providing for the issuance, sale and delivery of \$1,705,000 general obligation stormwater utility revenue bonds, Series 2006B; establishing the terms and form thereof; and awarding the sale thereof; Resolution 06-0560, providing for the issuance, sale and delivery of \$3,355,000 general obligation street improvement bonds, Series 2006C, of the city of Duluth, Minnesota; establishing the terms and form thereof; creating a bond fund therefor; and awarding the sale thereof; and Resolution 06-0561, providing for the issuance, sale and delivery of \$1,985,000 general obligation improvement bonds, Series 2006D, of the city of Duluth, Minnesota; establishing the terms and form thereof; creating a debt service account therefor; and awarding the sale thereof, by Councilor Stewart, were introduced for discussion.

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

Jessica Cameron, representing The PFM Group, reviewed the results of the sales and recommended the council accept the bids.

To concerns from Councilor Stauber, Finance Department Director Stark stated that these bond sales are the most inexpensive way for the city to finance these projects and improvements.

Resolutions 06-0557, 06-0558, 06-0560 and 06-0561 were adopted as follows:

BY COUNCILOR STEWART:

BE IT RESOLVED by the city council (the "City Council") of the city of Duluth, St. Louis County, Minnesota (the "City"), as follows:

Section 1. Purpose and Authorization.

1.01 Under and pursuant to the provisions of Minnesota Statutes, Section 475.521 (the "Act") and Chapter 475, the City is authorized to issue its general obligation bonds to fund capital improvements pursuant to an approved capital improvement plan.

1.02 A. Pursuant to the Act, the City Council has authorized preparation of a capital improvement plan for the years 2006 through 2010 (the "Plan").

B. The City Council held a public hearing on the proposed Plan and approved the Plan on December 19, 2005.

1.03 A. On March 13, 2006, the City Council held a public hearing on the issuance of bonds in an amount not to exceed \$915,000 to provide funds for continuation of the restoration of the granite and brick facades of City Hall; roofing projects at Fire Station No. 2 and the Public Works Maintenance facility; remodeling of city offices in City Hall; Fire Department facilities repairs and maintenance including driveways, window and brick repairs and overhead door replacements; initial financing for replacing the Public Works Lakeside Toolhouse with a new maintenance facility; upgrading an existing Public Works garage to comply with OSHA and code standards for the storage of "cold" asphalt and completion of the West Duluth Police Station; all 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 March 13, 2006, the City Council has determined that it is necessary and expedient to issue general obligation capital improvement bonds in an amount not to exceed \$915,000 of the City to provide funds to finance the Project and for payment of the costs of issuing such bonds.

C. A notice of intent to issue such bonds was published in accordance with the Act on March 16, 2006.

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

E. The City Council has determined that it is necessary and expedient to issue \$895,000 General Obligation Capital Improvement Bonds, Series 2006A, of the City (the "Bonds") pursuant to the above-described authority, to provide funds to finance the Project and for payment of the costs of issuing the Bonds.

F. The maximum amount of principal and interest to become due in any year on the Bonds and all the outstanding bonds issued by the City pursuant to Section 475.521, subd. 4 of the Act will not exceed \$8,045,407.36, which is an amount equal to 0.16 percent of taxable market value of property in the City for taxes payable in 2006.

G. Public Financial Management, Inc., financial consultant to the City, has given notification by mail, facsimile, electronic data transmission or other form of communication common to the municipal bond trade to at least five firms determined by Public Financial Management, Inc. to be prospective bidders on the Bonds at least two days (omitting Saturdays, Sundays and legal holidays) before the date set for receipt of bids on the Bonds. 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 Wells Fargo Brokerage Services LLC of Minneapolis, Minnesota (the "Purchaser"), to purchase the Bonds at a cash price of \$896,790, 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 the date of delivery, as the date of original issue, shall be issued in the denomination of \$5,000 each, or any integral multiple thereof, in fully registered form and lettered and numbered R-1 and upward. The Bonds shall mature on February 1 in the respective years and amounts and shall bear interest at the annual rates stated as follows:

Year	Amount	Interest Rate
2008	\$ 85,000	4.00%
2009	85,000	4.00%
2010	90,000	4.00%
2011	95,000	4.00%
2012	100,000	4.00%
2013	105,000	4.00%
2014	110,000	4.00%
2015	110,000	4.00%
2016	115,000	4.00%

2.02 The Bonds are not subject to optional redemption and prepayment before maturity.

2.03 Interest on the Bonds shall be payable semiannually on February 1 and August 1 in each year (each referred to herein as an "Interest Payment Date"), commencing February 1, 2007. 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 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 2006A

R-\_\_ \$\_\_\_\_\_

Rate	Maturity	Date of Original Issue	CUSIP
%	February 1, ____	September __, 2006	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: DOLLARS

The City of Duluth, in St. Louis County, Minnesota (the "City"), for value received, promises to pay to the registered owner specified above, or registered assigns, the principal amount specified above on the maturity date specified above, and to pay interest on said principal amount to the registered owner hereof from the Date of Original Issue, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, until the principal amount is paid or discharged, said interest being at the rate per annum specified above. Interest is payable semiannually on February 1 and August 1 of each year (each referred to herein as an "Interest Payment Date") commencing on February 1, 2007. 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 \$895,000, all of like date and tenor, except as to number, amount, maturity date, redemption privilege and interest rate, pursuant to the authority contained in

Minnesota Statutes, Section 475.521 and Chapter 475, the City's approved Capital Improvement Plan for the years 2006 through 2010 (the "Plan") and all other laws thereunto enabling, and pursuant to an authorizing resolution adopted by the governing body of the City on August 24, 2006 (the "Resolution"). This Bond is issued for the purpose of providing funds for capital improvement projects designated by the City Council and pursuant to the Plan and the costs of issuing the Bonds, as more fully set forth in the Plan and the Resolution and for the payment of part of the interest cost of the Bonds. The City has levied a direct, annual ad valorem tax upon all taxable property within the City which shall be extended upon the tax rolls for the years and in the amounts sufficient to produce sums not less than five percent in excess of the amounts of principal and interest on the Bonds, as such principal and interest respectively come due.

The Bonds are not subject to optional redemption and prepayment before maturity.

The Bonds of this series are issued as fully registered bonds without coupons, in the denomination of \$5,000 or any integral multiple thereof. Subject to limitations set forth in the Resolution, this Bond is transferable by the registered owner hereof upon surrender of this Bond for transfer at the principal corporate office of the Bond Registrar, duly endorsed or accompanied by a written instrument of transfer in form satisfactory to the Bond Registrar and executed by the registered owner hereof or the owner's attorney duly authorized in writing. Thereupon the City shall execute and the Bond Registrar shall authenticate, if required by law and 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:

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Mayor

Date of Authentication: \_\_\_\_\_

**BOND REGISTRAR'S AUTHENTICATION CERTIFICATE**

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

WELLS FARGO BANK, NATIONAL ASSOCIATION  
Minneapolis, Minnesota

By \_\_\_\_\_  
Authorized Representative

**REGISTRATION CERTIFICATE**

This Bond must be registered as to both principal and interest in the name of the owner on the books to be kept by Wells Fargo Bank, National Association of Minneapolis, Minnesota, as Bond Registrar. No transfer of this Bond shall be valid unless made on said books by the registered owner or the owner's attorney thereunto duly authorized and similarly noted on the registration books. The ownership of the unpaid principal balance of this Bond and the interest accruing thereon is registered on the books of the City in the name of the registered owner last noted below.

Date	Registered Owner	Signature of Bond Registrar
__/__/06	Cede & Co. c/o The Depository Trust Company 55 Water Street New York, NY 10041 Federal Taxpayer I.D. No.: 13-2555119	_____

**ASSIGNMENT**

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

---

\_\_\_\_\_  
(Name and Address of Assignee)

\_\_\_\_\_  
Social Security or other  
Identifying Number of  
\_\_\_\_\_  
Assignee

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
NOTICE: The signature of this assignment must correspond with the name of the registered owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

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

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City or its agent for registration of transfer, exchange, or payment, and any bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL, inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

(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 2006A, 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 2006 Capital Improvement Bonds Construction Account (the "Construction Account") within its Capital Improvement Project Fund 0450, Agency 015, Org. C223, to which there shall be credited \$886,000 of the proceeds of the Bonds, together with any additional funds, which may be available and are appropriated for the Project. This account shall be used to pay, or reimburse, expenses duly approved and allowed, which, under generally accepted accounting principles, constitute capital expenditures for the Project and to pay the costs of issuance for the Bonds.

3.02 A separate debt service account is hereby created and designated as the "2006 Capital Improvement Bonds Debt Service Account" (the "Debt Service Fund") within the City's Debt Service Fund, to which there shall be credited \$10,790 of the proceeds of the Bonds, which represents unused discount and the rounding amount. The money in the Debt Service Fund shall be used for no purpose other than the payment of principal and interest on the Bonds; provided, however, that if any payment of principal or interest shall become due when there is not sufficient money in the Debt Service Fund, the treasurer shall pay the same from any other funds of the City and said funds shall be reimbursed for such advance out of the proceeds of the taxes hereinafter levied when collected. Into the Debt Service Fund shall be credited the 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	Tax Levy
2005	2006	* \$28,720
2006	2007	126,840
2007	2008	123,270
2008	2009	124,950
2009	2010	126,420
2010	2011	127,680
2011	2012	128,730
2012	2013	129,570
2013	2014	124,950
2014	2015	125,580

\*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.

4.04 In addition to the Bonds, the City is selling, pursuant to a single offering document and on the same date, the following obligations: General Obligation Stormwater Utility Revenue Bonds, Series 2006B (the "Series 2006B Bonds"), General Obligation Street Improvement Bonds, Series 2006C (the "Series 2006C Bonds"), and General Obligation Improvement Bonds, Series 2006D (the "Series 2006D Bonds"). The City has pledged its full faith and credit and taxing powers for each series of the bonds. Pursuant to Treasury Regulation Section 1.150-1(c)(4)(iii), the City elects to treat the Bonds, the Series 2006B Bonds, the Series 2006C Bonds and the Series 2006D Bonds as part of the same issue.

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 06-0557 was adopted upon the following vote:

Yeas: Councilors Johnson, Krause, Stauber, Stewart, Stover and President Reinert -- 6

Nays: None -- 0

Abstention: Councilor Little -- 1

Absent: Councilors Gilbert and Ness -- 2

Approved August 24, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

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, Section 444.075 and Chapter 475, and other pertinent provisions of said Charter and Statutes, the City is authorized to issue its general obligation bonds to provide funds for the payment of costs of improvements to the municipal stormwater utility plant (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 stormwater utility and are payable primarily from net revenues to be derived from the operation of the municipal stormwater utility and pledged for their payment.

1.02 The city council has, by Ordinance No. 9779 adopted June 26, 2006, ordered the issuance, sale and delivery of general obligation stormwater utility revenue bonds in the maximum amount of \$1,725,000 of the City, for the payment of the costs of improvements to the municipal stormwater 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 such bonds and hereby authorizes and directs the issuance of \$1,705,000 General Obligation Stormwater Utility Revenue Bonds, Series 2006B (the "Bonds"), pursuant to Ordinance No. 9779.

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.

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 Piper Jaffray of Minneapolis, Minnesota (the "Purchaser"), to purchase the Bonds at a cash price of \$1,691,889, upon condition that the Bonds mature and bear interest at the times and annual rates set forth in Section 2. The City, after due consideration, finds such offer reasonable and proper and the offer of the Purchaser is hereby accepted. The mayor and the city clerk are authorized and directed to execute on the part of the City a contract for the sale of the Bonds in accordance with the Purchaser's bid. The city treasurer is directed to deposit the good faith check of the successful bidder.

Section 2. Terms of Bonds.

2.01 The Bonds to be issued hereunder shall be dated as the date of delivery, as the date of original issue, shall be issued in the denomination of \$5,000 each, or any integral multiple thereof, in fully registered form, and lettered and numbered R-1 and upward. The Bonds shall mature on February 1 in the respective years and amounts stated and shall bear interest as follows:

Year	Amount	Interest Rate	Year	Amount	Interest Rate
2008	\$ 85,000	4.00%	2016	\$115,000	4.00%
2009	85,000	4.00%	2017	120,000	4.00%
2010	90,000	4.00%	2018	125,000	4.00%
2011	95,000	4.00%	2019	135,000	4.00%
2012	100,000	4.00%	2020	140,000	4.00%
2013	100,000	4.00%	2021	145,000	4.00%
2014	105,000	4.00%	2022	155,000	4.00%
2015	110,000	4.00%			

2.02 A. The Bonds maturing in the years 2008 through 2015 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 2016 and in subsequent years shall each be subject to redemption and prepayment at the option of the City on February 1, 2015, 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, 2007. 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

GENERAL OBLIGATION STORMWATER UTILITY REVENUE BOND, SERIES  
2006B

R-\_\_\_\_ \$\_\_\_\_\_

Interest Rate	Maturity Date	Date of Original Issue	CUSIP
	February 1, ____	September __, 2006	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT:

The City of Duluth, in St. Louis County, Minnesota (the "City"), for value received, promises to pay to the registered owner specified above, or registered

assigns, the principal amount specified above on the maturity date specified above, and to pay interest on said principal amount to the registered owner hereof from the Date of Original Issue, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, until the principal amount is paid or discharged, said interest being at the rate per annum specified above. Interest is payable semiannually on February 1 and August 1 of each year (each referred to herein as an "Interest Payment Date") commencing on February 1, 2007. Both principal and interest are payable in lawful money of the United States of America by check or draft at the office of Wells Fargo Bank, National Association, in Minneapolis, Minnesota, as the registrar, paying agent, transfer agent and authenticating agent (the "Bond Registrar"), or at the office of such successor bond registrar as may be designated by the city council. The Bond Registrar shall make the interest payment with respect to this Bond directly to the registered owner hereof shown on the bond registration records maintained on behalf of the City by the Bond Registrar at the close of business on the 15th day of the month next preceding the Interest Payment Date (whether or not a business day), at such owner's address shown on said bond registration records, without, except for payment of principal on the Bond, the presentation or surrender of this Bond, and all such payments shall discharge the obligations of the City to the extent of the payments so made. Payment of principal shall be made upon presentation and surrender of this Bond to the Bond Registrar when due. For the prompt and full payment of such principal and interest as they become due, the full faith and credit of the City are irrevocably pledged.

This Bond is one of a series issued by the City in the aggregate amount of \$1,705,000, all of like date and tenor, except for number, denomination, maturity date and interest rate, pursuant to a resolution adopted on August 24, 2006, by the governing body of the City (the "Resolution"). The Bonds are issued for improvements to the municipal stormwater utility 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. 9779 adopted June 26, 2006, for the purpose of providing funds for improvements to such municipal stormwater utility plant 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 stormwater utility of the City, as set forth in the Resolution to which reference is made for a full statement of rights and powers thereby conferred. In the Resolution, the City has pledged and appropriated the net revenues to be derived from the operation of the municipal stormwater utility in excess of normal, reasonable and current costs of the operation and maintenance of the utility, for the payment of the principal and interest when due on the 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 stormwater utility at the times and in the amounts required to pay the normal, reasonable and current expenses of operating and maintaining such facilities, and also to produce net revenues at least adequate at all times to pay the principal and interest due on the Bonds.

The Bonds of this series maturing in the years 2008 through 2015 are not subject to redemption before maturity, but those maturing in the year 2016 and in subsequent years are each subject to redemption and prepayment at the option of the City on February 1, 2015, 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, Minnesota, by its city council, has caused this Bond to be executed in its name by the facsimile signatures of the mayor and the city clerk.

Attest:

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Mayor

Date of Authentication: \_\_\_\_\_

#### BOND REGISTRAR'S AUTHENTICATION CERTIFICATE

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

WELLS FARGO BANK, NATIONAL ASSOCIATION  
Bond Registrar

By \_\_\_\_\_  
Authorized Representative

#### REGISTRATION CERTIFICATE

This Bond must be registered as to both principal and interest in the name of the owner on the books to be kept by Wells Fargo Bank, National Association, of Minneapolis, Minnesota, as Bond Registrar. No transfer of this Bond shall be valid unless made on said books by the registered owner or the owner's attorney thereunto duly authorized and similarly noted on the registration books. The ownership of the unpaid principal balance of this Bond and the interest accruing thereon is registered on the books of Wells Fargo Bank, National Association as Bond Registrar, in the name of the registered owner last noted below.

Date	Registered Owner	Signature of Bond Registrar
___/___/06	Cede & Co. c/o The Depository Trust Company 55 Water Street New York, NY 10041 Federal Taxpayer I.D. No.: 13-2555119	_____

BOND COUNSEL OPINION

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

\_\_\_\_\_  
Clerk

ASSIGNMENT

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

\_\_\_\_\_  
\_\_\_\_\_  
(Name and Address of Assignee)

\_\_\_\_\_ Social Security or Other  
\_\_\_\_\_ Identifying Number of Assignee

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

NOTICE: The signature to this assignment must correspond with the name of the registered owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

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

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City or its agent for registration of transfer, exchange, or payment, and any bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL, inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

Section 3. Revenues, Accounts and Covenants.

3.01 A. The city council covenants and agrees with the holders of the Bonds and with its taxpayers that it will impose and collect just and equitable charges for all use and for the availability of all facilities of the municipal stormwater utility at the times and in the amounts required to pay the normal, reasonable and current expenses of operating and maintaining such facilities, and also to produce net revenues at least adequate at all times to pay the principal and interest due on the Bonds and on all other bonds heretofore or hereafter issued and made payable from said net revenues, and will operate the municipal stormwater utility and segregate and account for the revenues thereof as provided in this section.

The City will place all such charges, when collected, and all money received from the sale of any facilities or equipment of the municipal stormwater utility in a separate Stormwater Utility Operating Account within the Public Utility Stormwater Fund maintained under Section 54 of the City Charter. Except as provided in this section, this account shall be used only to pay claims duly approved and allowed for payment of expenses which, under generally accepted accounting principles, constitute normal, reasonable and current expenses of operating and maintaining the municipal stormwater utility, and to maintain such reasonable reserves for such expenses as the director of finance shall determine to be necessary from time to time in accordance with policies established by the city council. Sums from time to time on hand in this account, in excess of sums required to make such payments and maintain such reserves, constitute the net revenues which are herein pledged and appropriated first to pay the principal of and interest on all stormwater utility bonds when due.

B. The City has created a separate construction account within the Public Utility Stormwater Fund to which there shall be credited \$1,684,000 from the proceeds of the Bonds, together with any additional funds which may be available and are appropriated for improvements to the utility. This account shall be used only to pay expenses duly approved and allowed which, under generally accepted accounting principles, constitute capital expenditures for the completion of improvements to the stormwater 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 Stormwater Fund to be used solely for the payment of the principal and interest, as such principal and interest become due and payable, on the Bonds and

on any other bonds which have been or may be issued and made payable from said net revenues of the stormwater utility. The treasurer shall credit to the Debt Service Fund the amount of accrued interest on the Bonds and \$7,889 of the proceeds of the Bonds, which represents unused discount and the rounding amount. The treasurer shall transfer from the Stormwater 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 Stormwater Utility Operating Account, in excess of payments due from and reserves required to be maintained in the Stormwater Utility Operating Account and in the Debt Service Fund, may be used for necessary capital expenditures for the improvement of the municipal stormwater utility, for the prepayment and redemption of bonds constituting a lien on the municipal stormwater utility, and for any other proper municipal purpose consistent with policies established by resolutions of the city council.

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% 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% of the gross proceeds of the Bonds will be allocated to expenditures for the governmental purpose of the Bonds within six months of the date of issue of the Bonds; (ii) at least 60% of such proceeds will be allocated for such purposes within the one-year period of such date; and (iii) 100% of such proceeds will be allocated for such purposes within the 18-month period beginning on such date; subject to an exception for reasonable retainage of 5% of the available proceeds of the Bonds, and that 100% of the available proceeds of the Bonds will be allocated within 30 months from the date of issue of the Bonds.

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

4.04 In addition to the Bonds, the City is selling, pursuant to a single offering document and on the same date, the following obligations: General Obligation Capital Improvement Bonds, Series 2006A (the "Series 2006A Bonds"), General Obligation Street Improvement Bonds, Series 2006C (the "Series 2006C Bonds"), and General Obligation Improvement Bonds, Series 2006D (the "Series 2006D Bonds"). The City has pledged its full faith and credit and taxing powers for each series of the bonds. Pursuant to Treasury Regulation Section 1.150-1(c)(4)(iii), the City elects to treat the Bonds, the Series 2006A Bonds, the Series 2006C Bonds and the Series 2006D Bonds as part of the same issue.

Section 5. 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 06-0558 was unanimously adopted.

Approved August 24, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

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 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 "2006 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
05-0198R	3/28/05	\$ 91,912	Cody Southwest 2
		193,688	Duluth Heights
		329,839	Lakeside Central West
		60,675	Morgan Park 3
		78,777	Norton Park
		31,241	Vernon Street
		12,018	Third Street Overlay

C. The city council hereby determines to finance \$3,355,000, through the issuance of general obligation street improvement bonds, for payment of costs of the 2006 Street Improvement Program.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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1.02 Pursuant to the authority herein recited, the City authorizes and directs the issuance and sale of \$3,355,000 General Obligation Street Improvement Bonds, Series 2006C, to be dated as of the date of delivery as the date of original issue (the "Bonds") for financing the 2006 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 Piper Jaffray of Minneapolis, Minnesota (the "Purchaser"), to purchase the Bonds at a cash price of \$3,342,679.25, 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 the date of delivery, as the date of original issue, shall be issued in the denomination of \$5,000 each, or any integral multiple thereof, in fully registered form and lettered and numbered R-1 and upward. The Bonds shall mature on February 1 in the respective years and amounts stated and shall bear interest as follows:

<b>Year</b>	<b>Amount</b>	<b>Interest Rate</b>
2008	\$150,000	4.00%
2009	170,000	4.00%
2010	180,000	4.00%
2011	185,000	4.00%
2012	190,000	4.00%
2013	200,000	4.00%
2014	210,000	4.00%
2015	220,000	4.00%
2016	230,000	4.00%
2017	240,000	4.00%
2018	255,000	4.00%
2019	260,000	4.00%
2020	275,000	4.00%
2021	285,000	4.00%

Year	Amount	Interest Rate
2022	305,000	4.00%

2.02 A. The Bonds maturing in the years 2008 through 2015 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 2016 and in subsequent years shall each be subject to redemption and prepayment at the option of the City on February 1, 2015, 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, 2007. 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 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 2006C

R-\_\_ \$\_\_\_\_\_

Interest Rate	Maturity Date	Date of Original Issue	CUSIP
	February 1, ____	September __, 2006	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT:

The City of Duluth, in St. Louis County, Minnesota (the "City"), for value received, promises to pay to the registered owner specified above, or registered assigns, the principal amount specified above on the maturity date specified above, and to pay interest on said principal amount to the registered owner hereof from the Date of Original Issue, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, until the principal amount is paid or discharged, said interest being at the rate per annum specified above. Interest is payable semiannually on February 1 and August 1 of each year (each referred to herein as an "Interest Payment Date") commencing on February 1, 2007. 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 \$3,355,000, 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 24, 2006 (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 2008 through 2015 are not subject to redemption before maturity, but those maturing in the year 2016 and in subsequent years are each subject to redemption and prepayment at the option of the City on February 1, 2015, 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

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
___/___/06	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.

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 \$3,321,604 into the 2006 street improvement account (the "2006 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 2006 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 2006 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

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for the 2006 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% 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 "2006 Improvement Bond Account." The money in such account 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 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 2006 Improvement Bond Account shall be paid from the proceeds of the Bonds unused discount and the rounding amount in the amount of \$21,075.25, plus the amount of accrued interest on the Bonds, if any, 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:

<b>Levy Year</b>	<b>Collection Year</b>	<b>Gross Tax Levy</b>	<b>Estimated Special Assessment Revenue</b>	<b>Net Tax Levy</b>
2005	2006	\$ 55,818	\$ 55,818	\$ 0
2006	2007	298,411	183,200	115,211
2007	2008	313,111	62,200	250,911
2008	2009	316,471	65,800	250,671
2009	2010	314,161	64,200	249,961
2010	2011	311,641	62,600	249,041
2011	2012	314,161	61,000	253,161
2012	2013	316,261	64,400	251,861
2013	2014	317,941	62,600	255,341
2014	2015	319,201	65,800	253,401
2015	2016	320,041	63,800	256,241
2016	2017	325,711	66,800	258,911
2017	2018	320,251	64,600	255,651
2018	2019	325,081	67,400	257,681
2019	2020	324,031	65,000	259,031

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Levy Year	Collection Year	Gross Tax Levy	Estimated Special Assessment Revenue	Net Tax Levy
2020	2021	333,060	67,600	265,460

Said levies 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% 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 2006 Improvement Bond Account within the special assessment debt service fund. If the balance in the 2006 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 2006 Improvement Bond Account when the balance therein is sufficient.

3.05 Proceeds of the Bonds on deposit in the 2006 Street Account and 2006 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% of the gross proceeds of the Bonds will be allocated to expenditures for the governmental purpose of the Bonds within six months of the date of issue of the Bonds; (ii) at least 60% of such proceeds will be allocated for such purposes within the one-year period of such date; and (iii) 100% of such proceeds will be allocated for such purposes within the 18-month period beginning on such date; subject to an exception for reasonable retainage of 5% of the available proceeds of the Bonds, and that 100% of the available proceeds of the Bonds will be allocated within 30 months from the date of issue of the Bonds.

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

4.04 In addition to the Bonds, the City is selling, pursuant to a single offering document and on the same date, the following obligations: General Obligation Capital Improvement Bonds, Series 2006A (the "Series 2006A Bonds"), General Obligation Stormwater Utility Revenue Bonds, Series 2006B (the "Series 2006B Bonds"), and General Obligation Improvement Bonds, Series 2006D (the "Series 2006D Bonds"). The City has pledged its full faith and credit and taxing powers for each series of the bonds. Pursuant to Treasury Regulation Section 1.150-1(c)(4)(iii), the City elects to treat the Bonds, the Series 2006A Bonds, the Series 2006B Bonds and the Series 2006D Bonds as part of the same issue.

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 06-0560 was unanimously adopted.

Approved August 24, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

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 said Statutes and the home rule charter of the City, the City is authorized to issue its general obligation 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 the following local public improvements, as more fully described in reports filed with the city clerk by the Special Assessment Board pursuant to and in accordance with Chapter IX of the City Charter (the "Public Improvements"); and the Council determined to defray the following portions of the cost of the improvements set forth below to be assessed against benefitted property:

Order in Resolution No.	Date Resolution Passed	Assessable Cost	Project Description
04-0575	08/23/04	\$ 45,000	Sanitary sewer of 400' in Trinity Road
04-0759	11/22/04	115,000	Sanitary sewer and water main east from Trinity Road
05-0131	02/28/05	14,000	Bayview Alley between Piedmont and Diamond
05-0267	04/25/05	270,000	Surrey (90th East) Avenue eight inch water-main
05-0277	05/09/05	10,110	Minneapolis Alley - Wadena to Osakis
05-0441	06/27/05	106,535	44th Avenue West street construction
06-0013	01/09/06	20,000	2005 sidewalk patch
05-0411	06/27/05	52,465	East 14th Street - Central Entrance to 3rd Avenue East

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Order in Resolution No.	Date Resolution Passed	Assessable Cost	Project Description
05-0534	08/08/05	512,200	Bristolwood First Addition (Chinook Drive) construction
		20,000	2006 sidewalk patch
05-0456	07/11/05	55,000	Superior Street extension - 38th to 40th Avenue West
05-0621	09/12/05	58,350	Osage Avenue water main
05-0715	10/24/05	63,660	Lawn Street water main - Portal Avenue to 383' easterly
05-0665	10/11/05	283,488	Denim Drive construction - Denim Street to 780' south
06-0158	02/27/06	94,000	Central Avenue alley construction between Bristol & Ramsey
06-0002	01/09/06	23,750	Central Avenue alley - 125' sewer near Albion Street
06-0425	06/12/06	37,500	East Skyline Parkway Alley SS
06-0392	05/22/06	8,000	Grand Avenue shared lines
05-0198	03/28/05	152,890	Duluth Heights SE 3 2005 project - Lambert assessment

C. Pursuant to the authority herein recited, the City authorizes and directs the issuance and sale of \$1,985,000 General Obligation Improvement Bonds, Series 2006D, to be dated the date of delivery, as the date of original issue (the "Bonds").

D. Public Financial Management, Inc., financial consultant to the City, has given notification by mail, facsimile, electronic data transmission or other form of communication common to the municipal bond trade to at least five firms determined by Public Financial Management, Inc. to be prospective bidders on the Bonds at least two days (omitting Saturdays, Sundays and legal holidays) before the date set for receipt of bids on the Bonds. All actions of the mayor, the clerk and Public Financial Management, Inc. taken with regard to the sale of the Bonds are hereby ratified and approved.

1.02 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 Piper Jaffray of Minneapolis, Minnesota (the "Purchaser"), to purchase the Bonds at a cash price of \$1,973,818.90, 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.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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Section 2. Terms of Bonds.

2.01 A. The Bonds to be issued hereunder shall be dated June 1, 2006, 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	Year	Amount	Interest Rate
2008	\$105,000	4.00%	2015	\$140,000	4.00%
2009	110,000	4.00%	2016	150,000	4.00%
2010	115,000	4.00%	2017	155,000	4.00%
2011	120,000	4.00%	2018	165,000	4.00%
2012	125,000	4.00%	2021	535,000	4.00%
2013	130,000	4.00%			
2014	135,000	4.00%			

B. The Bonds maturing on February 1 in the year 2021 shall be subject to mandatory redemption prior to maturity pursuant to the requirements of this Section 2.01B at a redemption price equal to the stated principal amount, as hereinafter provided, plus interest accrued thereon to the redemption date, without premium. The Bond Registrar, as designated below, shall select for redemption, by lot or other manner deemed fair, on February 1 in each of the following years, the following stated principal amounts:

- (1) For Bonds maturing on February 1, 2021(the “2021 Term Bonds”):

Year	Principal Amount
2019	\$170,000
2020	\$180,000

The remaining \$185,000 stated principal amount of the 2021 Term Bond shall be paid at maturity on February 1, 2021.

If less than such amount of the Term Bonds is outstanding on such payment date, the City shall pay the remaining balance of the Term Bonds then outstanding. The Bond Registrar shall select and call for redemption, in accordance with Section 2.02 hereof, from the Term Bonds the amounts specified above and the Term Bond selected by the Bond Registrar shall become due and payable on such date.

2.02 A. The Bonds maturing in the years 2008 through 2015 shall not be subject to optional redemption and prepayment before maturity, but those maturing or subject to mandatory redemption pursuant to Section 2.01A, in the year 2016 and in subsequent years shall each be subject to redemption and prepayment at the option of the City on February 1, 2015, 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, 2007. 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 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 IMPROVEMENT BOND  
SERIES 2006D

R-\_\_\_\_ \$\_\_\_\_\_

Interest Rate	Maturity Date	Date of Original Issue	CUSIP
	February 1, ____	September __, 2006	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT:

The City of Duluth, in St. Louis County, Minnesota (the "City"), for value received, promises to pay to the registered owner specified above, or registered assigns, the principal amount specified above on the maturity date specified above, and to pay interest on said principal amount to the registered owner hereof from the Date of Original Issue, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, until the principal amount is paid or discharged, said interest being at the rate per annum specified above. Interest is payable semiannually on February 1 and August 1 of each year (each referred to herein as an "Interest Payment Date") commencing on February 1, 2007. Both principal and interest are payable in lawful money of the United States of America by check or draft at the office of Wells Fargo Bank, National Association, in Minneapolis, Minnesota, as the registrar, paying agent, transfer agent and authenticating agent (the "Bond Registrar"), or at the office of such successor bond registrar as may be designated by the city council. The Bond Registrar shall make the interest payment with respect to this Bond directly to the registered owner hereof shown on the bond registration records maintained on behalf of the City by the Bond Registrar at the close of business on the 15th day of the month next preceding the Interest Payment Date (whether or not a business day), at such owner's address shown on said bond registration records, without, except for payment of principal on the Bond, the presentation or surrender of this Bond, and all such payments shall discharge the obligations of the City to the extent of the payments so made. Payment of principal shall be made upon presentation and surrender of this Bond to the Bond Registrar when due. For the prompt and full payment of such principal and interest as they become due, the full faith and credit of the City are irrevocably pledged.

This Bond is one of a series issued by the City in the aggregate amount of \$1,985,000, all of like date and tenor, except for number, denomination, maturity date and interest rate, pursuant to Minnesota Statutes, Chapter 475, the City

Charter and other pertinent provisions of said statutes and a resolution adopted by the governing body of the City on August 24, 2006 (the "Resolution"), for the purpose of financing local public improvements, which obligations and interest thereon will be payable from special assessments levied or to be levied against property specially benefitted by local improvements.

The Bonds maturing in the year 2021 shall be subject to mandatory redemption and redeemed in installments as provided in the Resolution, at par plus accrued interest to the date of redemption.

The Bonds of this series maturing in the years 2008 through 2015 are not subject to optional redemption before maturity, but those maturing, or subject to mandatory redemption, in the year 2016 and in subsequent years are each subject to redemption and prepayment at the option of the City on February 1, 2015, 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**

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
_/_/06	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: \_\_\_\_\_.

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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:

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

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City or its agent for registration of transfer, exchange, or payment, and any bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL, inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

Section 3. Revenues, Accounts and Covenants.

3.01 The city 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 Public Improvements in an amount which is not less than 20% of the costs of such projects financed by the proceeds of the Bonds allocable to the Public Improvements. 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.

3.02 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 \$1,960,948 to a separate construction account (the "2006 Projects Account") within the Special Assessment Capital Projects Fund for the Public Improvements. The proper City officers are authorized and directed to pay out of such construction 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 described in Section 1.01 and the costs of issuance of the Bonds.

3.03 A separate account within the Special Assessment Debt Service Fund maintained by the City is hereby created and is designated the "2006 Improvement Bond Account." The money in such account 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 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 2006 Improvement Bond Account shall be paid from the proceeds of the Bonds unused discount and the rounding amount of \$12,870.90, 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, if any, 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. It is estimated that the special assessments levied and appropriated to the 2006 Improvement Bond Account will be received at the times and in amounts not less than 5% in excess of the amounts needed to meet when due the principal and interest payments thereon; however, there is hereby levied as additional security for the Bonds, 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
2006	2007	\$193,620
2007	2008	194,460
2008	2009	195,090
2009	2010	195,510
2010	2011	195,720
2011	2012	195,720
2012	2013	195,510
2013	2014	195,090
2014	2015	199,710
2015	2016	198,660
2016	2017	202,650
2017	2018	200,970
2018	2019	204,330
2019	2020	202,020

Except for the interest payment due on February 1, 2007, for which special assessments and the unused discount are sufficient to make such payment, 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.

As such tax levies are additional security for payment of principal and interest on the Bonds, such 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 (i) anticipated special assessments to be collected in the next following calendar year, or (ii) 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.

3.05 Proceeds of the Bonds on deposit in the 2006 Projects Account and the 2006 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 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% of the gross proceeds of the Bonds will be allocated to expenditures for the governmental purpose of the Bonds within six months of the date of issue of the Bonds; (ii) at least 60% of such proceeds will be allocated for such purposes within the one-year period of such date; and (iii) 100% of such proceeds will be allocated for such purposes within the 18-month period beginning on such date; subject to an exception for

reasonable retainage of 5% of the available proceeds of the Bonds, and that 100% of the available proceeds of the Bonds will be allocated within 30 months from the date of issue of the Bonds.

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

4.04 In addition to the Bonds, the City is selling, pursuant to a single offering document and on the same date, the following obligations: General Obligation Capital Improvement Bonds, Series 2006A (the "Series 2006A Bonds"), General Obligation Stormwater Utility Revenue Bonds, Series 2006B (the "Series 2006B Bonds"), and General Obligation Street Improvement Bonds, Series 2006C (the "Series 2006C Bonds"). The City has pledged its full faith and credit and taxing powers for each series of the bonds. Pursuant to Treasury Regulation Section 1.150-1(c)(4)(iii), the City elects to treat the Bonds, the Series 2006A Bonds, the Series 2006B Bonds and the Series 2006C Bonds as part of the same issue.

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 06-0561 was unanimously adopted.

Approved August 24, 2006

HERB W. BERGSON, Mayor

- - -

The meeting was adjourned at 5:25 p.m.

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

**OFFICIAL PROCEEDINGS**

Duluth City Council meeting held on Monday, August 28, 2006, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Gilbert, Krause, Ness, Stauber, Stewart, Stover and President Reinert -- 7

Absent: Councilors Johnson and Little -- 2

- - -

The minutes of council meetings held on July 6, 10 and 24, 2006, were approved upon a unanimous vote.

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**PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS**

06-0828-01 A&L Properties:

(a) Concurrent use permit application to use the entire right-of-way of 15th Avenue East from the southerly right-of-way of London Road to the northerly right-of-way of South Street; and the entire right-of-way of South Street from the prolongation of the westerly right-of-way of 15th Avenue East to the prolongation of the shared lot line of Lots 12 and 13, Block 19, Endion Division, for the purpose of creating additional parking (16 spaces) and to construct a pedestrian walkway between the parking levels of the two Lakewalk buildings, on property located at 1500 London Road. -- Planning commission

(b) Petition to vacate the existing utility easement in Lots 1, 2, 3, 4, 13, 14, 15 and 16, Block 19, Endion Division, lying northeasterly of the northeast right-of-way of 15th Avenue East and southwesterly of a line parallel with and ten feet southwesterly of the northeast line of Lots 4 and 13, Block 19, Endion Division. -- Assessor

06-0828-02 DM&IR Railway Company petition to vacate Helm Avenue, O'Hara's Division, from the corner of Lots 10 and 11, Block 22, to the corner of Lots 6 and 7, Block 22; and Michigan Street, O'Hara's Division, from the corner of Lots 3 and 4, Block 20, to the intersection of Helm Avenue. -- Assessor

06-0828-03 Ralph Johnson, et al. (three signatures), petition to vacate the easterly three feet of 50th Avenue East adjacent to Lot 13, Morris Park Division. -- Assessor

06-0828-12 Susan Peters, by CF Design, Ltd., petition to vacate eight feet of the southeast side of 29th Street between Minnesota Avenue and Lake Street. -- Assessor

06-0828-04 Steven Pitschka, et al. (three signatures), petition to vacate the northerly 15 by 100 feet adjacent to Lot 39, Lake Avenue, and the northerly 15 by 100 feet adjacent to Lot 120, Minnesota Avenue, and 15 by 100 feet adjacent to Lot 121, Lake Avenue, and 15 by 100 feet adjacent to Lot 122, Minnesota Avenue. -- Assessor

06-0828-13 Neighborhood District No. 7, by Alison Clarke, communication regarding the proposed designation of two-way traffic on a portion of First Street (06-0564R). -- Received

06-0828-14 The following communications regarding proposed increases in utility rates (06-0613R, 06-0614R, 06-0616R, 06-0617R): (a) Jim Aird; (b) Center City Housing, by Rick Klun; (c) Scott Miller; (d) Yvonne Patterson; (e) Vlassie Solon; (f) Phil Sutula. -- Received.

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**REPORTS FROM OTHER OFFICERS**

06-0828-05 Assessor:

(a) For confirmation the assessment roll levied to defray the assessable portion of the following contracts: Contract 5424, Central Avenue Alley sanitary sewer extension (assessable: \$24,981.64); Contract 5429, sanitary sewer extension for 4502 and 4508 Grand Avenue (assessable: \$10,557); Contract 5428, sanitary sewer extension for 4302, 4304, 4306 and 4308 Grand Avenue (assessable: \$10,457.58);

(b) Letters of sufficiency of petitions to:

(1) Reclassify from:

(A) M-1 to C-1 property described as Lot 14 and the southerly 58 feet of Lots 15 and 16, Block 23, Endion Division of Duluth;

(B) R-3 to R-2 property described as Lots 7-9, Block 55, and Lots 10-12, Block 79, Duluth Proper Third Division;

(2) Vacate:

(A) The easterly three feet of 50th Avenue East adjacent to Lot 13, Morris Park Division;

(B) The existing utility easement in Lots 1, 2, 3, 4, 13, 14, 15 and 16, Block 19, Endion Division, lying northeasterly of the northeast right-of-way of 15th Avenue East and southwesterly of a line parallel with and ten feet southwesterly of the northeast line of Lots 4 and 13, Block 19, Endion Division;

(C) The northerly 15 by 100 feet adjacent to Lot 39, Lake Avenue and the northerly 15 by 100 feet adjacent to Lot 120, Minnesota Avenue, and 15 by 100 feet adjacent to Lot 121, Lake Avenue, and 15 by 100 feet adjacent to Lot 122, Minnesota Avenue. -- Received

06-0828-06 Clerk applications to the Minnesota gambling control board for exemption from lawful gambling (raffles) from: (a) Animal Allies Humane Society on December 4, 2006; (b) Muskies, Inc., Lake Superior Chapter, on February 22, 2007. -- Received

06-0828-07 Treasurer annual report of gifts received by the city for \$5,000 or less during the period of August 1, 2005, through July 31, 2006, pursuant to Resolution 97-0594. -- Received

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**REPORTS OF BOARDS AND COMMISSIONS**

06-0828-08 Duluth airport authority: (a) Balance sheets for: (1) May 31; (2) June 30, 2006; (b) Minutes of: (1) July 24; (2) August 11, 2006, meetings. -- Received

06-0828-09 Duluth/North Shore Sanitary District minutes of July 12, 2006, meeting. -- Received

06-0828-10 Duluth human rights commission minutes of July 12, 2006, meeting. -- Received

06-0828-11 Planning commission minutes of July 26, 2006, meeting. -- Received

- - -

**OPPORTUNITY FOR CITIZENS TO BE HEARD**

Jon Donahue expressed frustration that some councilors have taken endorsements and now they are paying back the groups that helped them get into office. He also stated that the public should not be part of the negotiating between the city and bargaining unions.

- - -

Jacqueline Falk, representing several citizens, voiced concern that city staff from the board of zoning appeals, building appeal board and planning commission have notified her that the appeal regarding the Beacon Point development will not be heard by the various boards. She questioned why the staff person is making this decision instead of the boards and requested the council expedite the appeal to the boards.

- - -

Greg Price presented his findings on the Lake Superior barrel issue and requested the council to move forward with an investigation.

- - -

Bevan Schraw stated that he has reviewed the findings of the retiree healthcare task force and questioned why the council is focusing mainly on raising the utility rates instead of the rest of the recommendations.

- - -

KL Lewis questioned if the construction of the Beacon Point Townhomes has been legal.

- - -

At this time, 7:30 p.m., the council meeting was recessed for the public hearing on business subsidy criteria amendments.

Heidi Timm-Bujold, city planner, explained that the public hearing is being held to take public input on the city's recommendation amending the city's business subsidy criteria to bring local regulations into alignment with the state's criteria along with housekeeping changes to the current criteria.

No one appeared who wished to be heard and the public hearing closed at 7:35 p.m.

- - -

At this time, 7:35 p.m., the public hearing regarding the JOBZ business subsidy agreement with American Engineering Testing was called to order.

Ms. Timm-Bujold reviewed the JOBZ business subsidy application with American Engineering Testing in expanding their business in Duluth.

Robert Wahlstrom and Robert Krogsgaard, representing American Engineering Testing, urged support of the application.

The public hearing was closed at 7:44 p.m. and the regular order of business was resumed.

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### **RESOLUTION TABLED**

Councilor Stauber moved to remove Resolution 06-0566, authorizing payment for veterinary services by Dr. Mary Wictor in an amount not to exceed \$15,050 for the period ending October 19, 2006, 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.

Mary Wictor reviewed that the amount stated in the resolution does not entitle her to paid for more than two more weeks under the terms of her contract.

Resolution 06-0566 was adopted as follows:

BY COUNCILOR STAUBER:

RESOLVED, that the proper city officials are authorized to extend veterinary services with Dr. Mary Wictor, Contract No. 19932, through October 19, 2006, at a cost not to exceed an

additional \$15,050 above the original \$40,000 authorized by Resolution 05-0486, payable from Fund 100-400-1814-5310.

Resolution 06-0566 was adopted upon the following vote:

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

Nays: Councilor Krause -- 1

Absent: Councilors Johnson and Little -- 2

Approved August 28, 2006

HERB W. BERGSON, Mayor

- - -

### **MOTIONS AND RESOLUTIONS**

The following entitled resolution was read for the first time:

BY COUNCILOR GILBERT

06-0606 - RESOLUTION AUTHORIZING A JOB OPPORTUNITY BUILDING ZONE (JOBZ) BUSINESS SUBSIDY AGREEMENT WITH AMERICAN ENGINEERING TESTING, INC.

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

BY COUNCILOR STEWART:

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

(a) Central Avenue sanitary sewer extension (Contract #5424; assessable amount - \$24,981.64);

(b) 4502 and 4508 Grand Avenue sanitary sewer extension (Contract #5429; assessable amount - \$10,557); and

(c) 4302, 4304, 4306 and 4308 Grand Avenue sanitary sewer extension (Contract #5428; assessable amount - \$10,457.58),

to be deposited in Fund 325, are hereby confirmed.

Resolution 06-0607 was unanimously adopted.

Approved August 28, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the renewal and issuance of 78 on sale intoxicating liquor, 84 on sale Sunday intoxicating liquor, six additional bar, 15 on sale dancing, two late hour entertainment licenses and 30 2:00 a.m. beverage licenses, for the period beginning September 1, 2006, and ending August 31, 2007, 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. 06-0828-15.

Resolution 06-0600 was unanimously adopted.

Approved August 28, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

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, 2006, and ending August 31, 2007, 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. 06-0828-16.

Resolution 06-0601 was unanimously adopted.

Approved August 28, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

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, 2006, and ending August 31, 2007, 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. 06-0828-17.

Resolution 06-0602 was unanimously adopted.

Approved August 28, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

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, 2006, and ending August 31, 2007, 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. 06-0828-18.

Resolution 06-0603 was unanimously adopted.

Approved August 28, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves renewal of two brewery malt liquor off sale intoxicating liquor licenses for the period beginning September 1, 2006, and ending August 31, 2007, 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. 06-0828-19.

Resolution 06-0604 was unanimously adopted.

Approved August 28, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the renewal of the following on sale intoxicating liquor license, on sale Sunday license and 2:00 a.m. beverage license for the period beginning September 1, 2006, and ending August 31, 2007, subject to departmental approvals, payment of sales and property taxes, and pursuant to Minnesota Statute 340A.412, subd.13, and Duluth City Code, Section 8-42(b), the occurrence of sales under the auspices of the current license prior to September 1, 2006:

J&J Miller, Inc. (Copasetic Lounge), 322 East Central Entrance.

Resolution 06-0609 was unanimously adopted.

Approved August 28, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

RESOLVED, that the proper city officers are authorized to enter into an agreement with Minnesota Counties Information Systems, a Minnesota joint powers organization, providing for software conversion services, in an amount not to exceed \$9,183, said agreement to be substantially in the form of Public Document No. 06-0828-20 on file in the office of the city clerk; payments to be made from Fund 250-015-2005-5580.

Resolution 06-0615 was unanimously adopted.

Approved August 28, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that the city council makes the following findings:

(a) Section 45-4.1 of the Duluth City Code, 1959, as amended, allows the city council, by resolution, to allow the placement of objects or material on the public sidewalks or boulevard areas where the city council finds that such objects will not substantially interfere with pedestrian traffic and that the placement of such objects is beneficial to the public welfare;

(b) Pizza Lucé III, Inc., and A&L Properties, 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;

(c) Pursuant to Section 45-4.1, the city planning commission, at its regular meeting on August 8, 2006, 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. 06073).

RESOLVED FURTHER, based upon the above-noted findings, that Pizza Lucé III, Inc., and A&L Properties, Inc., are hereby permitted to place certain exterior furnishings, described below, on or within the sidewalk area of the right-of-way of East Superior Street of the city of Duluth and the exterior furnishings be limited to that area immediately adjacent to the Pizza Luce restaurant, subject to the following conditions:

(a) The exterior furnishings permitted by this resolution are limited to the following: no more than 11 tables, 40 chairs, server station and decorative fencing for boundary delineation;

(b) The table and seating area and server station area shall be delineated from the public pedestrian way by a decorative fence. This decorative fence shall be removed during all times that tables and chairs are not in place as well as when the restaurant is not open for business;

(c) All exterior furnishings to be placed on the sidewalk shall be approved in writing by the city architect, whose approval shall not be unreasonably withheld. The purpose of this review and approval is to ensure that the exterior furnishings are complimentary to the design character of the area and to protect the public's safety;

(d) The exterior furnishings permitted shall be located such that a public pedestrian walkway be maintained that is not less than six feet in width as measured from any permanent or temporary obstructions including, but not limited to fire hydrants, lamp posts, flower planters and newspaper stands;

(e) That the placement of exterior furnishings shall be located according to the criteria above only during the hours of operation of Pizza Lucé III, Inc., and shall be removed from the sidewalk when the business is closed;

(f) That the applicant shall be responsible for policing refuse in the immediate area, which includes removing all food and beverage spills from the sidewalk surface;

(g) No amplified music shall be used in the sidewalk obstruction area;

(h) That the applicant be on notice that this permit is not exclusive and that the city may require the permittee to remove the exterior furnishings for specific events conducted in the East Superior Street area; the areas described above shall be open to the general public, the general public shall have the right to occupy tables and chairs in the area subject to this permit without making a purchase from the permittee, so long as said members of the general public are orderly and violate no provisions of the law;

(i) This permit shall be in effect until the lease currently held by Pizza Lucé III, Inc., is terminated or transferred to another party, at which time renewal may be requested;

(j) This permit is subject to revocation by a resolution of the city council and 14 days notice to the permittee for failure to maintain the terms and conditions of this permit or at the discretion of the city.

RESOLVED FURTHER, that before this resolution shall be effective for any purpose whatsoever, the aforesaid permittee shall file with the city clerk: a duly executed and acknowledged written acceptance of the terms of this resolution; a certificate of insurance approved as to form by the city attorney evidencing that the permittee has in force insurance meeting the following requirements:

(a) A comprehensive general liability insurance policy shall be maintained in force by permittee in an amount not less than \$1,000,000 for bodily injuries and in an amount not less than \$300,000 for property damage or \$1,000,000 single limit coverage. Such coverage shall include all permittee activities occurring on the permitted premise whether said activities are performed by employees or agents under contract to permittee. Such policy of insurance shall be approved by the city attorney and shall contain a condition that it may not be cancelled without 30 days written notice to the city of Duluth. The city of Duluth shall be named as an additional insured on said policy of insurance required by this paragraph. Current ISO additional insured endorsement CG 20 10 is not acceptable. If the ISO 20 10 is used, it must be a pre-2004 edition.

RESOLVED FURTHER, that this permit shall expire on January 1, 2008, for any purpose whatsoever, unless prior to such date, permittee files with the city clerk certificates of insurance evidencing that permittee has in force insurance meeting the following requirements:

(a) Comprehensive general liability insurance policy shall be maintained in force by permittee in an amount not less than \$1,200,000 for bodily injuries and in an amount not less than \$400,000 for property damage or \$1,200,000 single limit coverage. Such coverage shall include all permittee activities occurring on the permitted premise whether said activities are performed by employees or agents under contract to permittee. Such policy of insurance shall be approved

by the city attorney and shall contain a condition that it may not be cancelled without 30 days written notice to the city of Duluth. The city of Duluth shall be named as an additional insured on said policy of insurance required by this paragraph. Current ISO additional insured endorsement CG 20 10 is not acceptable. If the ISO 20 10 is used, it must be a pre-2004 edition.

RESOLVED FURTHER, that this permit shall expire on July 1, 2009, for any purpose whatsoever, unless prior to such date, permittee files with the city clerk certificates of insurance evidencing that permittee has in force insurance meeting the following requirements:

(a) Comprehensive general liability insurance policy shall be maintained in force by permittee in an amount not less than \$1,500,000 for bodily injuries and in an amount not less than \$500,000 for property damage or \$1,500,000 single limit coverage. Such coverage shall include all permittee activities occurring on the permitted premise whether said activities are performed by employees or agents under contract to permittee. Such policy of insurance shall be approved by the city attorney and shall contain a condition that it may not be cancelled without 30 days written notice to the city of Duluth. The city of Duluth shall be named as an additional insured on said policy of insurance required by this paragraph. Current ISO additional insured endorsement CG 20 10 is not acceptable. If the ISO 20 10 is used, it must be a pre-2004 edition.

RESOLVED FURTHER, the approval was made because of the city planning commission's findings that 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 06-0591 was unanimously adopted.

Approved August 28, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that the proper city officials are authorized to execute the first amendment to agreement, a copy of which is on file in the office of the city clerk as Public Document No. 06-0828-21, with Duluth Building Limited Liability Company, amending the Lincoln Park redevelopment agreement, City Contract No. 18154, to modify the terms on options to purchase property and formalizing the terms and conditions related to disposal of problem soils on option property.

Resolution 06-0595 was unanimously adopted.

Approved August 28, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that the state of Minnesota historical society (MNHS) administers United States department of interior funds, for use by certified local governments (CLG), for qualifying historic preservation purposes; and

WHEREAS, the city of Duluth has applied for financial assistance from the MNHS's CLG grant program, for the purposes of securing professional services to conduct an intensive survey of the city's east end residential area.

RESOLVED, that the proper city officials are hereby authorized to accept a CLG grant from the MNHS, in the amount of \$4,000 for said professional services.

BE IT FURTHER RESOLVED, that the proper city officials are authorized to act as legal sponsor of said grant, to execute any documents required to be executed to accept such grant and to accept a donation of \$3,000 from the Duluth Preservation Alliance (DPA). The grant and

donation will be accounted for in Fund 210, Agency 030, Organization 3150, revenue sources 4210-02 and 4660.

Resolution 06-0599 was unanimously adopted.

Approved August 28, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the city of Duluth does hereby accept the conveyance, at no cost to the city, of an easement for utility purposes, over and across the below-described property from Accessible Space, Inc., which easement is described and shown on Public Document No. 06-0828-22 on file in the offices of the city clerk.

A 20 foot wide utility easement over that portion of the West Half of the Northeast Quarter of the Northwest Quarter (W 1/2 of NE 1/4 of NW 1/4) of Section 20, Township 50 North, Range 14 West, of the Fourth Principal Meridian lying northerly of a line 513 feet south of and parallel to the north line of said Section 20, said easement being more particularly described as lying ten feet either side of the following-described line in so far as it lies within the above described property:

Commencing at the southeast corner of the West Half of the Northeast Quarter of the Northwest Quarter (W 1/2 of NE 1/4 of NW 1/4) of said Section 20; then north along the east line of said West Half of the Northeast Quarter of the Northwest Quarter (W 1/2 of NE 1/4 of NW 1/4) of Section 20 a distance of 391.43 feet to the POINT OF BEGINNING; then deflecting to the left 44 degrees 23 minutes 41 seconds a distance of 522.73 feet to a point; then deflecting to the right 44 degrees 54 minutes 28 seconds a distance of 183 feet and there terminating. The sidelines of the easement shall be prolonged or shortened to terminate at the east line of West Half of the Northeast Quarter of the Northwest Quarter (W 1/2 of NE 1/4 of NW 1/4) of said Section 20.

Resolution 06-0589 was unanimously adopted.

Approved August 28, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the city of Duluth does hereby accept the conveyance, at no cost to the city, of an easement for utility purposes over and across the below-described property from Duluth Retirement, LLC, for sanitary sewer purposes, which easement is described and shown on Public Document No. 06-0828-23 on file in the offices of the city clerk.

A 20 foot wide utility easement over that portion of the West Half of the Northeast Quarter of the Northwest Quarter (W 1/2 of NE 1/4 of NW 1/4) of Section 20, Township 50 North Range 14 Range 14 West of the Fourth Principal Meridian lying southerly of a line 513 feet south of and parallel to the north line of said Section 20, said easement being more particularly described as lying ten feet either side of the following-described line in so far as it lies within the above-described property:

Commencing at the southeast corner of the West Half of the Northeast Quarter of the Northwest Quarter (W 1/2 of NE 1/4 of NW 1/4) of said Section 20; then north along the east line of said West Half of the Northeast Quarter of the Northwest Quarter (W 1/2 of NE 1/4 of NW 1/4) of Section 20 a distance of 391.43 feet to the POINT OF BEGINNING; then deflecting to the left 44 degrees 23 minutes 41 seconds a distance of 522.73 feet to a point; then deflecting to the right 44 degrees 54 minutes 28 seconds a distance of 183.00 feet and there terminating.

The sidelines of the easement shall be prolonged or shortened to terminate at the east line of West Half of the Northwest Quarter (W 1/2 of NE 1/4 of NW 1/4) of said Section 20.

Resolution 06-0590 was unanimously adopted.

Approved August 28, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, aQity, Inc./Duncan Technologies be and hereby is awarded a contract for furnishing and delivering parking meters and parts for the public works department in accordance with specifications on its low bid \$63,300 plus sales tax of \$4,114.50, for a total \$67,414.50, terms net 30, FOB destination, payable out of General Fund 100 (incremental meter account), Department/Agency 700, Organization 1407, Object 5406.

Resolution 06-0597 was unanimously adopted.

Approved August 28, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Merit Chevrolet be and hereby is awarded a contract for furnishing and delivering a step van for the utility operations division in accordance with specifications on its bid of \$41,835 plus sales tax of \$2,510.10 for a total of \$44,345.10, terms net 30, FOB destination, payable out of Water Fund 0510, Department/Agency 500, Organization 1905, Object 5580, 20 percent (\$8,869.02); and Gas Fund 0520, Department/Agency 500, Organization 1905, Object 5580, 80 percent (\$35,476.08).

Resolution 06-0598 was unanimously adopted.

Approved August 28, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Resolution 05-0571 be and hereby is amended to authorize the proper city officials to extend the 2005 contract with Holiday Stationstores, Inc., for fuel as needed for a period of two months, beginning September 1, 2006, and ending October 31, 2006, at an estimated amount of \$200,000, terms net 30, FOB destination, payable out of Fleet Services Fund 660, Department/Agency 015, Object 5212.

Resolution 06-0620 was unanimously adopted.

Approved August 28, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

RESOLVED, that the proper city officers are authorized to accept a grant in the amount of \$990 from the Minnesota department of public safety and to execute the grant agreement, said agreement to be substantially in the form of Public Document No. 06-0828-24 on file in the office of the city clerk; such funds to be deposited in Fund 215, Agency 200, Organization 2255, Revenue Source 4220-02.

Resolution 06-0611 was unanimously adopted.

Approved August 28, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, that the proper city officials are authorized to execute and implement the agreement on file with the city clerk as Public Document No. 06-0828-25 between the city and the Duluth Airport Authority for repairs to Runway 3-21 in the amount of \$21,760, payment from Fund 510-500-1915-5441.

Resolution 06-0612 was unanimously adopted.

Approved August 28, 2006

HERB W. BERGSON, Mayor

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The following resolutions were also considered:

Resolutions 06-0608 and 06-0621, denying and approving, respectively, the renewal of the on sale intoxicating liquor license, on sale Sunday license and 2:00 a.m. beverage license of Darrel Fredrickson (Horseshoe Billiards), 2415 West Superior Street, by Councilor Krause, were introduced for discussion.

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

Jeremy Downs, representing Horseshoe Billiards, requested that the council approve the renewal of the liquor license contingent on a 60 day window to allow for the liquor license to be transferred from the current holder of the license to Lucky Break, Inc.

Councilor Ness moved to amend Resolution 06-0621 to insert the phrase "and that the licenses be transferred within 60 days" after the phrase "subject to departmental approvals," which motion was seconded and unanimously carried.

Resolution 06-0608, denying the renewal, failed upon a unanimous vote (Public Document No. 06-0828-27).

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Resolution 06-0621, as amended, was adopted as follows:

BY COUNCILOR KRAUSE:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the renewal of the following on sale intoxicating liquor license, on sale Sunday license and 2:00 a.m. beverage license for the period beginning September 1, 2006, and ending August 31, 2007, subject to departmental approvals and that the licenses be transferred within 60 days:

Darrel Fredrickson (Horseshoe Billiards), 2415 West Superior Street.

Resolution 06-0621, as amended, was unanimously adopted.

Approved August 28, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0610, by Councilor Krause, approving the renewal of the on sale intoxicating liquor license, on sale Sunday license and 2:00 a.m. beverage license to Black River Mills, Inc. (Norshor Theatre), 211 East Superior Street, subject to certain conditions, was introduced for discussion.

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

Dr. Ringsred, licensee, stated that he is aware that he needs to abide by the rules and understands that his employees of Black River Mills, Inc., need to be serving the alcohol instead of the Norshor Experience, Inc.

Councilor Gilbert voiced concern that the corporation structure of Black River Mills, Inc., holding the liquor license and Norshor Experience, Inc., managing the premises is a ruse and urged the council not to support the license renewals.

Resolution 06-0610 was adopted as follows:

BY COUNCILOR KRAUSE:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the renewal of the following on sale intoxicating liquor license, on sale Sunday license and 2:00 a.m. beverage license for the period beginning September 1, 2006, and ending August 31, 2007, subject to departmental approvals, payment of sales and property taxes, and subject to the following conditions:

(a) Black River Mills, Inc. (Norshor Theatre), 322 East Superior Street shall:

(1) Exercise exclusive management responsibility for all alcoholic beverage service operations, including, without limitation, the hiring, firing, training and supervision of all persons who serve alcoholic beverages within the Norshor Theater as permitted by the license;

(2) Be the employer of all persons who serve alcoholic beverages at the licensed location;

(3) Prohibit James Gradishar, Norshor Experience, Inc., and any other persons who are not employees of Black River Mills, Inc., from serving alcoholic beverages or otherwise engage in the activities of ordering, stocking or distributing alcoholic beverages at the licensed location;

(b) No alcoholic beverage shall be served at the licensed location unless an employee of Black River Mills, Inc., having management authority is present at the licensed location and exercising supervision over the service of alcoholic beverages;

(c) Black River Mills, Inc., shall continuously post in a conspicuous location within the area where alcoholic beverages are served a sign, containing the following message:

*"Alcoholic Beverage License issued to Black River Mills, Inc.*

*XYZ, Manager*

*218/\*\*\*-\*\*\*#*

All such information shall be current;

(d) Prior to issuance of License No. 54093 for the period September 1, 2006-August 31, 2007, Black River Mills, Inc., shall file with the city clerk a legible copy of the Minnesota new hire reporting form filed with the state of Minnesota as required by Minnesota Statutes, Section 256.998, for each employee employed by Black River Mills, Inc. The social security number of the employee may be redacted;

(e) Within 21 days of hire or rehire date, Black River Mills, Inc., shall file with the city clerk a legible copy of the Minnesota new hire reporting form filed with the state of Minnesota as required by Minnesota Statutes, Section 256.998, for each employee hired by Black River Mills, Inc. The social security number of the employee may be redacted.

Resolution 06-0610 was adopted upon the following vote:

Yeas: Councilors Krause, Ness, Stauber, Stewart, Stover and President Reinert -- 6

Nays: Councilor Gilbert - 1

Absent: Councilors Johnson and Little -- 2

Approved August 28, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0594, by Councilor Stewart, authorizing reassessment of previously canceled demolition assessments, was introduced for discussion.

Councilor Krause stated that land should be reused as much as possible and this resolution makes it harder to buy a piece of dilapidated property.

Resolution 06-0594 was adopted as follows:

BY COUNCILOR STEWART:

WHEREAS, the Duluth City Council has confirmed assessments for the properties and amounts and dates listed in Public Document No. 06-0828-26; 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 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 below and that this reassessment role is hereby confirmed:

- (a) Demolition of buildings, Contract No. 5293, assessable amount - \$5,529;
- (b) Demolition of buildings, Contract No. 4949, assessable amount - \$1,550.54;
- (c) Demolition of buildings, Contract No. 5272, assessable amount - \$749;
- (d) Demolition of buildings, Contract No. 4900, assessable amount - \$3,288.57.

Resolution 06-0594 was upon the following vote:

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

Nays: Councilor Krause -- 1

Absent: Councilors Johnson and Little -- 2

Approved August 28, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointment by Mayor Bergson of Mindy Granley to the planning commission for a term expiring on December 31, 2010, replacing Carol Thomson who resigned, is confirmed.

Resolution 06-0593 was unanimously adopted.

Approved August 28, 2006

HERB W. BERGSON, Mayor

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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 2007 allocation of LIHTCs is estimated at \$254,899; 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 2007 setting forth criteria governing the award of the city;s LIHTCs; and

WHEREAS, the city received two applications for projects requesting allocation of 2007 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 the projects to receive 2007 low income housing tax credits as set forth below:

First priority - Harbor View Phase III

Second priority - Gimaajii-Mino-Bimaadiziyaan

Resolution 06-0596 was unanimously adopted.

Approved August 28, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

RESOLVED, by the city council of the city of Duluth that it hereby amends its business subsidy resolution, Resolution No. 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, Resolution 03-0735 adopted on October 27, 2003, and Resolution 04-0339 adopted on June 14, 2004, to amend criteria and business subsidy requirements related to job opportunity building zones, said business subsidy policy and criteria on file in the office of the city clerk as Public Document No. 06-0828-28.

Resolution 06-0605 was unanimously adopted.

Approved August 28, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0613, establishing the customer charge and user charges for the city's wastewater facilities effective with meter readings after November 1, 2006; rescinding all prior inconsistent or conflicting resolutions with respect to such rates; Resolution 06-0614, establishing water rates effective with meter readings after November 1, 2006; rescinding all prior inconsistent or conflicting resolutions with respect to such rates; Resolution 06-0616, establishing a stormwater utility user charge effective November 1, 2006; rescinding all prior inconsistent or conflicting resolutions with respect to such user charge; and Resolution 06-0617, establishing revised natural gas rates effective with meter readings after November 1, 2006, and rescinding all prior inconsistent or conflicting resolutions with respect to such rates, by Councilor Stover, were introduced for discussion.

Councilor Stover moved to table the resolutions for a September 11 committee meeting, 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 GILBERT

06-028 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, ZONING DISTRICT MAP NOS. 26 AND 27 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM I-T, INDUSTRIAL-

TECHNOLOGY DISTRICT, TO C-5, PLANNED COMMERCIAL DISTRICT, THE PROPERTY LOCATED AT THE NORTHEAST CORNER OF HAINES ROAD AND ARROWHEAD ROAD (HOLAPPA/NORTHERN CITY BAPTIST CHURCH).

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BY COUNCILOR STOVER

06-029 - AN ORDINANCE AUTHORIZING GRANTING OF STORMWATER UTILITY EASEMENTS OVER CITY-OWNED PROPERTY AT DIAP.

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BY COUNCILOR STOVER

06-030 - AN ORDINANCE AUTHORIZING SALE OF THE LAKESIDE TOOL HOUSE TO RTW HOLDINGS, LLC, FOR \$81,000.

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

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The meeting was adjourned at 8:25 p.m.

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

**OFFICIAL PROCEEDINGS**

Duluth City Council meeting held on Monday, September 11, 2006, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: None -- 0

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**PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS**

06-0911-10 Dan O'Hearon communication regarding the proposed amendment to taxicab regulations (06-034-O). -- Received

06-0911-11 The following communications regarding the proposed 2007 budget (06-0627R, 06-0628R, 06-0629R): (a) Roberta Cich; (b) Maria Stalzer Wyant Cuzzo; (c) Jan Karon; (d) Jane Ellen Maddy; (e) Phil Sutula. -- Received

06-0911-12 The following communications regarding funding for the extension of the Lakewalk (06-0657R): (a) Marilyn and Joel Bamford; (b) Terry Brown; (c) Alison Clarke; (d) Patricia Clure; (e) Diane Desotelle; (f) Andrew Falk; (g) Dennis Falk; (h) Tom Hollenhorst; (i) Sharon Johnson; (j) Jan Karon; (k) Patty McNulty; (l) Geiger Yount; (m) SHERALYN Zlonis. -- Received

06-0911-01 The following communications regarding the proposed designation of two-way traffic on a portion of First Street (06-0564R): (a) Aero Design and Manufacturing Company, Inc.; (b) Greater Downtown Council. -- Received

06-0911-02 The following communications regarding proposed increases in utility rates (06-0513R, 06-0514R, 06-0516R, 06-0517R): (a) Paul, Carol and Paul M. Anderson; (b) City of Proctor; (c) John M. Glendenning, Jr.; (d) Deni Mendrick; (e) Mike Morrissey; (f) Richard Paulson; (g) Sally Spellerberg. -- Received

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**REPORTS FROM THE ADMINISTRATION**

06-0911-09 Mayor Bergson: (a) 2007 proposed budget; (b) 2007 budget address. -- Received

06-0911-23 Chief Administrative Officer report on the status of the labor contract negotiations and the retiree healthcare issue. -- Received

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**REPORTS FROM OTHER OFFICERS**

06-0911-03 Assessor:

(a) Affidavits of mailing of notices of:

(1) Ordering in of a local improvement and the levying of an assessment or assessments against the property specially benefitted for unpaid delinquent stormwater utility bills. -- Received

(2) Public hearing by the special assessment board on Tuesday, September 12, 2006, at 3:30 p.m. in Room 106A, City Hall, regarding reassessment of canceled assessments. -- Clerk

(b) Letters of sufficiency of petitions to vacate:

(1) Eight feet of the southeast side of 29th Street between Minnesota Avenue and Lake Street;

(2) Helm Avenue, O'Hara's Division, from the corner of Lots 10 and 11, Block 22, to the corner of Lots 6 and 7, Block 22; and Michigan Street, O'Hara's Division, from the corner of Lots 3 and 4, Block 20, to the intersection of Helm Avenue;

(c) For confirmation the assessment rolls levied to defray the assessable portions of Trinity Road sewer extensions (Contract No. 5400, assessable amount: \$12,562.15; Contract No. 5394, assessable amount: \$116,421.39). -- Received

06-0911-04 Clerk application to the Minnesota gambling control board for exemption from lawful gambling from March of Dimes on October 26, 2006 (raffle). -- Received

06-0911-05 Community development division manager requests for 2007 CDBG funding. -- Received

06-0911-06 Parks and recreation associate director rental agreement with Pam Carter for residential dwelling unit located at Irving Community Center, pursuant to Section 2-35, Duluth City Code. -- Mayor for execution

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### **REPORTS OF BOARDS AND COMMISSIONS**

06-0911-07 Duluth transit authority: (a) Income statement for April 2006; (b) Minutes of May 31, 2006, meeting. -- Received

06-0911-08 Library board minutes of: (a) June 27; (b) August 22, 2006, meetings. -- Received

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### **OPPORTUNITY FOR CITIZENS TO BE HEARD**

Jon Donahue requested that the council table any actions on increased utility rates to cover retiree healthcare because: his children's future is at stake; small business owners support his request and individuals have asked him what this is about and when did it start. He felt that the taxpayers should be brought to the table as a "bargaining unit" to have a say in the solution and that this was known before and something should have been done earlier.

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KL Lewis commented on the following issues: the dangers of the Coast Guard test firing ranges; that legislation insures that future labor contracts do not create more problems like the current situation and that there be an update on the issues that she previously raised regarding the Beacon Point development.

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George Hanson noted that the population in the city has declined since the early 1970's, while other smaller cities have increased in population. He felt that the cause for this is that the economic climate discourages business development. In conclusion, Mr. Hanson felt that in times like this, the city should not be supplying services which are not necessary.

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### **RESOLUTIONS TABLED**

Councilor Stover moved to remove Resolution 06-0613, establishing the customer charge and user charges for the city's wastewater facilities effective with meter readings after November 1, 2006; rescinding all prior inconsistent or conflicting resolutions with respect to such

rates; Resolution 06-0614, establishing water rates effective with meter readings after November 1, 2006; rescinding all prior inconsistent or conflicting resolutions with respect to such rates; Resolution 06-0616, establishing a stormwater utility user charge effective November 1, 2006; rescinding all prior inconsistent or conflicting resolutions with respect to such user charge; and Resolution 06-0617, establishing revised natural gas rates effective with meter readings after November 1, 2006, and rescinding all prior inconsistent or conflicting resolutions with respect to such rates, 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.

Mike Akervik supported that these resolutions be split into two parts, where one part would reflect the amount needed for utility maintenance/operations and the other the amount needed for the unfunded retiree healthcare aspect. He also felt that both components of these resolutions that he advocated should be tabled until contract negotiations are completed.

Councilor Stover noted that the increases are quite small and the majority of the small increases are for maintenance and operations, not the retirees healthcare component.

Councilors discussed at length the merits of the original resolutions versus the replacement resolutions. In addition, they discussed the issue of splitting the resolutions where one would address the amount needed to cover the cost of supplying the service and one to reflect the amount needed to cover the unfunded retirees healthcare aspect.

Councilors Krause, Little and Stauber opposed the resolutions or supported tabling because: the replacement resolutions were just presented to the council tonight; this an extremely detailed issue; there needs to be time to digest the information presented earlier tonight at the committee meeting; there is no immediate need to resolve this at this meeting; these increases should be gradually phased in and labor contracts should be negotiated first and then the aspect of raising the utility rates to cover the retirees healthcare could be addressed.

President Reinert noted that, based on the city attorney's opinion and that the replacement resolutions were not requested by a councilor, that the original resolutions are the ones before the council at this time.

Councilor Stauber moved to table all the resolutions, which motion was seconded and failed upon the following vote:

Yeas: Councilors Krause, Little, Stauber and President Reinert -- 4

Nays: Councilors Gilbert, Johnson, Ness, Stewart and Stover -- 5

Councilor Stauber moved to split all four original resolutions into two parts, one part addressing the operations funding and the other part addressing the funding for retirees healthcare, which motion was seconded and carried.

Councilor Stover moved to table the split resolutions, which motion was seconded and failed upon the following vote:

Yeas: Councilors Krause, Stauber, Stover and President Reinert -- 4

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

Councilor Stewart moved to return the split resolutions to the original resolutions, which motion was seconded and carried as follows:

Yeas: Councilors Gilbert, Johnson, Krause, Little, Ness, Stauber and Stover -- 7

Nays: Councilor Stewart and President Reinert -- 2

Councilor Stewart moved to call the question, which motion was seconded and carried as follows:

Yeas: Councilors Gilbert, Johnson, Little, Ness, Stauber, Stewart and Stover -- 7

Nays: Councilor Krause and President Reinert -- 2

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

Resolutions 06-0613, 06-0614, 06-0616 and 06-0617 were adopted as follows:  
 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 November 1, 2006, and thereafter, a customer charge and user charges, based upon the volume of wastewater discharged to the city's wastewater facilities system and determined as in Section 43-7 of the Duluth City Code, as follows:

	<b>effective November 1, 2006</b>	<b>effective January 1, 2006</b>
Customer charge	\$ 5.89 per month	<del>\$ 5.89 per month</del>
User charge - Class I	\$ 4.21/ccf	<del>\$ 4.04/ccf</del>
User charge - Class II	\$ 5.86/ccf	<del>\$ 5.62/ccf</del>
User charge - Class III	\$ 7.22/ccf	<del>\$ 6.93/ccf</del>
Tate and Lyle	\$11.54/ccf	<del>\$11.25/ccf</del>

BE IT FURTHER RESOLVED, that any prior rate regulations inconsistent or conflicting with this resolution are hereby rescinded.

Resolution 06-0613 was adopted upon the following vote:

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

Nays: Councilors Krause, Little and Stauber -- 3

Approved September 11, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, effective with the water meter readings after November 1, 2006, 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:

<b>MONTHLY METERED VOLUME</b>		
	<b>effective November 1, 2006, rate \$/CCF</b>	<b>effective August 1, 2005, rate \$/CCF</b>
first 4,000 cubic feet, per 100 cubic feet	\$2.41	<del>\$2.01</del>
next 96,000 cubic feet, per 100 cubic feet	\$1.57	<del>\$1.31</del>
next 900,000 cubic feet, per 100 cubic feet	\$1.31	<del>\$1.09</del>
over 1,000,000 cubic feet, per 100 cubic feet	\$1.08	<del>\$0.90</del>

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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 November 1, 2006, \$1.57 per 100 cubic feet.

<b>FIXED CHARGES ARE AS FOLLOWS</b>		
Meter size	effective November 1, 2006	
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 - \$3.65, effective November 1, 2006.

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 November 1, 2006	Hermantown		Proctor		Rice Lake	
first 100,000 cubic feet, per 100 cubic feet	\$3.04	<del>\$2.53</del>	\$3.40	<del>\$2.83</del>	\$2.70	<del>\$2.25</del>
next 200,000 cubic feet, per 100 cubic feet	\$2.71	<del>\$2.26</del>	\$3.00	<del>\$2.50</del>	\$2.40	<del>\$2.00</del>
over 300,000 cubic feet, per 100 cubic feet	\$2.44	<del>\$2.03</del>	\$2.71	<del>\$2.26</del>	\$2.16	<del>\$1.80</del>

RESOLVED FURTHER, any prior rate resolutions inconsistent or conflicting with this resolution are hereby rescinded.

Resolution 06-0614 was adopted upon the following vote:

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

Nays: Councilors Krause, Little and Stauber -- 3

Approved September 11, 2006

HERB W. BERGSON, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

BY COUNCILOR STOVER:

RESOLVED, that, pursuant to Section 43-66 of the Duluth City Code, 1959, as amended, for the purpose of increasing the revenue of the stormwater utility, there is established a user charge as provided in said ordinance effective November 1, 2006. The user charge rate shall be \$5.20 per equivalent residential unit (ERU = 1,708 impervious square feet) per month.

RESOLVED FURTHER, that any prior rate resolutions inconsistent or conflicting with this resolution are hereby rescinded.

Resolution 06-0616 was adopted upon the following vote:

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

Nays: Councilors Krause, Little and Stauber -- 3

Approved September 11, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, effective with the natural gas readings after November 1, 2006, all customers of the natural gas utility of the public works and utilities department of the city of Duluth, whose natural gas supply is measured by meter, shall be charged for such natural gas in accordance with the schedule of rates established by this resolution as follows:

<b>CUSTOMER RATE SCHEDULE BASED UPON MONTHLY METERED VOLUME</b>					
		<b>Fixed monthly charge</b>		<b>Per 100 cubic feet</b>	
		<b>Effective November 1, 2006, rate</b>	<b>Effective November 1, 2005, rate</b>	<b>Effective November 1, 2006, rate</b>	<b>Effective November 1, 2005 rate</b>
Firm sales service	Residential small volume	\$7.50	\$6.00	\$1.241	\$0.548
	Residential large volume	\$200.00	N/A	\$1.140	N/A
	Commercial/indus-trial small volume	\$40.00	\$25.00	\$1.157	\$0.453
	Commercial/indus-trial large volume	\$200.00	\$250.00	\$1.127	\$0.395
Interruptible sales service	Commercial/indus-trial large volume	\$450.00	\$275.00	\$1.005	\$0.304
Firm transport service	Commercial/indus-trial small volume	\$40.00	\$50.00	\$0.100	\$0.095
	Commercial/indus-trial large volume	\$200.00	\$275.00	\$0.080	\$0.057

<b>CUSTOMER RATE SCHEDULE BASED UPON MONTHLY METERED VOLUME</b>				
	<b>Fixed monthly charge</b>		<b>Per 100 cubic feet</b>	
	<b>Effective November 1, 2006, rate</b>	<b>Effective November 1, 2005, rate</b>	<b>Effective November 1, 2006, rate</b>	<b>Effective November 1, 2005 rate</b>
Purchased gas adjustment (PGA)	If the wholesale price of gas purchased by the city of Duluth is increased or decreased as compared to the 2006 base gas cost rate of \$0.920 per CCF, and any such change results in an average unit cost of gas in excess, or less than the 2006 base gas costs, the unit commodity charge (\$ per CCF) for gas sold under the applicable rate schedule shall be increased or decreased on the customer's monthly bill in the same amount as the unit cost of gas has been increased or decreased. The PGA will include a proportional charge or credit for the payment in lieu of taxes (PILOT) transfer.			

RESOLVED FURTHER, that effective November 1, 2006, the fixed monthly charge and variable rate for interruptible sales service for commercial/industrial small volume customers shall be \$175 per month and \$1.035 per CCF respectively for gas customers currently billed in that customer classification. This rate shall be effective until July 1, 2008, whereupon that date all customers in this classification shall be reclassified to the firm sales service for commercial/industrial small volume customer classification rates in effect at that time.

RESOLVED FURTHER, that effective immediately upon approval of this resolution the interruptible sales service for commercial/industrial small volume customer rate classification shall not be available to any new gas utility customers.

RESOLVED FURTHER, that effective immediately upon approval of this resolution the interruptible transport service rate classification for both large volume and small volume commercial/industrial customers shall be eliminated from the rate schedule and not offered to gas customers.

RESOLVED FURTHER, that any prior rate resolutions inconsistent or conflicting with this resolution are hereby rescinded.

Resolution 06-0617 was adopted upon the following vote:

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

Nays: Councilors Krause, Little and Stauber -- 3

Approved September 11, 2006

HERB W. BERGSON, Mayor

- - -

**UNFINISHED BUSINESS**

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. 06-0911-13 with American Engineering Testing, Inc., (qualified business) related to property located at 38th Avenue West and Superior Street.

Resolution 06-0606 was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Krause, Little, Ness, Stauber, Stover and President Reinert -- 8

Nays: Councilor Stewart -- 1

Approved September 11, 2006

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

BY COUNCILOR STEWART:

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

(a) Trinity Road sewer extension for Northstar Baptist Church (Contract #5400; assessable amount - \$12,562.15);

(b) Trinity Road sewer extension from Keystone Bluff to 2,200 feet northeasterly (Contract #5394; assessable amount - \$116,421.39); to be deposited in Fund 325; are hereby confirmed.

Resolution 06-0624 was unanimously adopted.

Approved September 11, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

RESOLVED, that pursuant to the requirements of Minnesota Statutes, Section 275.065, subdivision 6, the city council hereby sets the following date and time for the public hearing to review the city's final budget of 2007 and final city property tax levy for taxes payable in 2007: December 4, 2006, at 7:00 p.m. in the Duluth City Council Chamber.

Resolution 06-0626 was unanimously adopted.

Approved September 11, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

RESOLVED, that Resolution 06-0176 be amended to increase the contract with Inter-City Oil Company, Inc., by \$30,000, for delivering fuel to various city locations, for a new total of \$80,000, terms net 30, FOB destination, payable out of various funds, departments/agencies, organizations, objects.

Resolution 06-0638 was unanimously adopted.

Approved September 11, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves issuance of the following 2:00 a.m. beverage licenses for the period ending August 31, 2007, by the liquor

control commissioner and subject to departmental approvals:

S&D Enterprises, Inc. (Gopher Restaurant and Lounge), 402 North Central Avenue.

T-Bonz Enterprises, Inc. (T-Bonz Bar), 2531 West Superior Street.

Resolution 06-0646 was unanimously adopted.

Approved September 11, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

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:

Lakeside/Lester Park Business Association (Lester River Festival), Lester Park, for September 23, 2006, with Darlene Marshall, manager.

Resolution 06-0647 was unanimously adopted.

Approved September 11, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the temporary expansion of the designated serving area of the following on sale intoxicating liquor licenses, subject to departmental approvals with any specific restrictions:

Fond Du Lac Management, Inc. (Fond Du Luth Casino), 129 East Superior Street, for September 27, 2006, from 5:00 p.m. to 9:00 p.m.

Resolution 06-0648 was unanimously adopted.

Approved September 11, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

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

Lake Superior Brewing Company, LLC (Lake Superior Brewing Company), 2711 West Superior Street, for September 30, 2006.

Resolution 06-0649 was unanimously adopted.

Approved September 11, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

WHEREAS, the city of Duluth presently has two available on sale intoxicating liquor licenses that are not issued to any operating business; and

WHEREAS, in Resolution 92-0244 the Duluth City Council directed the alcoholic beverage board to develop policy guidelines concerning under what circumstances available on sale liquor licenses could be issued; and

WHEREAS, in Resolution 94-0094 the city council adopted policy guidelines concerning under what circumstances available on sale intoxicating liquor licenses should be issued; and

WHEREAS, at its September 6, 2006, meeting the alcohol, gambling and tobacco commission approved of the amended license issuing criteria set forth herein and determined that it is now appropriate to issue available licenses.

NOW, THEREFORE, BE IT RESOLVED, that the Duluth City Council hereby adopts the criteria set forth in the document entitled "policy guidelines for the issuance of unissued on sale intoxicating liquor licenses, as amended" (Public Document No. 06-0911-14) as the criteria for the issuance of available but presently unissued on sale intoxicating liquor licenses in the city of Duluth.

Resolution 06-0652 was unanimously adopted.

Approved September 11, 2006

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 to accept a CLG grant from the MNHS, in the amount of \$625 for travel expenses of members of the Duluth HPC to attend the 2006 Annual Minnesota Statewide Historic Preservation Conference to be held in Redwing, Minnesota, said agreement to be substantially in the form of Public Document No. 06-0911-15 on file in the office of the city clerk; payment will be entered into Fund 210, Agency 030, Organization 3150, Revenue Source 4210-02.

Resolution 06-0633 was unanimously adopted.

Approved September 11, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

BE IT RESOLVED, that the city of Duluth (city) act as the legal sponsor for the project contained in the business and community development application to be submitted on September 12, 2006, and that the mayor of the city is hereby authorized to apply to the Minnesota department of trade and economic development for funding of this project on behalf of the city.

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

FURTHER RESOLVED, that the city has not incurred any costs and has not entered into any written agreements to purchase property.

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

FURTHER RESOLVED, that upon approval of its application by the state, the city may enter into an agreement with the state of Minnesota for the above-referenced project and that the city certifies that it will comply with all applicable laws and regulations as stated in all contract agreements and described on the compliance section (S-7) of the business and community development application.

FURTHER RESOLVED, that the city has obtained credit reports and credit information from Northstar Machine and Tool Company, Inc. (Northstar Aerospace). The city and its city attorney will review the reports and information to ensure that no adverse findings or concerns regarding, but not limited to, tax liens, judgments, court actions and filings with state, federal and other regulatory agencies are identified. Failure to disclose any such adverse information could result in revocation or other legal action.

FURTHER RESOLVED, that the proper city officials are hereby authorized to execute such

agreements, and amendments thereto, as are necessary to implement the project on behalf of the city.

Resolution 06-0639 was unanimously adopted.

Approved September 11, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR NESS:

RESOLVED, that proper city officials are hereby authorized to amend Contract No. 20632, in substantially the form of the amendment on file with the clerk as Public Document No. 06-0911-16, with St. Louis County to provide food support employment and training (FSET) services at costs not to exceed \$46,359 for the period October 1, 2005, through September 30, 2006, and to extend the support services grant from July 1, 2006, through June 30, 2007, with a maximum allocation of \$1,430.50. Said monies under this agreement shall be received from Funding Source 4260 (St. Louis County) and deposited in Fund 268, Agency 031, Organization 6237 (FSET).

FURTHER RESOLVED, that at the time the city implements its system by which each city program is charged an amount to fund retiree health insurance, which amount is transferred to a fund or trust, the programs funded by this contract will be charged at the same rate and the funds will be transferred and used in the same manner.

Resolution 06-0618 was unanimously adopted.

Approved September 11, 2006

HERB W. BERGSON, Mayor

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BY PRESIDENT REINERT:

RESOLVED, that the proper city officials are authorized to execute and implement a loan agreement, on file with the city clerk as Public Document No. 06-0911-17(a), and a promissory note, on file with the city clerk as Public Document No. 06-0911-17(b), with Greater Minnesota Housing Fund, each in the amount of \$200,000 for the purpose of establishing a revolving maintenance fund to be used for the city's tenant remedies action to help attain compliance with applicable housing and safety codes for affordable housing; terms - no interest, ten year term.

Resolution 06-0642 was unanimously adopted.

Approved September 11, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are authorized to accept the donation of a permanent roadway easement from Canal Park Lodge LLC at no cost to the city over the following-described property in St. Louis County, Minnesota:

Lot 19, except the southerly 12 feet thereof, Lots 20, 21, 22, 23 and 24, Block 1, Industrial Division of Duluth, according to the recorded plat thereof on file and of record in the St. Louis County, Minnesota county recorder's office, and that part of Block 1, Industrial Division of Duluth, lying within the following four boundary lines, to wit:

- (a) The centerline of St. Croix Avenue (South First Avenue East);
- (b) The extended southerly line of Lot 25, Block 1;
- (c) The extended northerly line of the south 1/2 of Lot 29, Block 1;
- (d) The United States Harbor Line.

An easement for a public street over, under and across the above-described property commencing at the southwesterly corner of the above-described parcel thence on an assigned bearing of north 15 degrees 55 minutes 35 seconds west along the easterly right-of-way of Canal Park Drive 75 feet to the point of beginning, thence continuing north 15 degrees 55 minutes 35 seconds west along the easterly right-of-way of Canal Park Drive 150 feet, thence south 63 degrees 04 minutes 58 seconds east 150 feet, thence south 50 degrees 29 minutes 44 seconds west 120 feet to the point of beginning and there terminating. Said easement contains 8,249 square feet or .189 acres more or less.

Resolution 06-0619 was unanimously adopted.

Approved September 11, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that the city of Duluth has identified certain property as being surplus to the city's future needs and hereby declares its intention to alienate its interest in Lots 24, 26 and 28, Block 128, DULUTH PROPER THIRD DIVISION; and authorizes the proper city officers to take those steps necessary to combine said property with adjoining state of Minnesota tax forfeit property; and authorize the St. Louis County land department to sell said property to the highest responsible bidder at public auction on October 12, 2006, or as soon thereafter as possible should the auction be postponed or continued. Minimum acceptable bid shall be \$20,757 for the city-owned portion of this parcel.

Resolution 06-0634 was unanimously adopted.

Approved September 11, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Construction Services, Inc., (CSI) be and hereby is awarded a contract for the replacement of 176 feet of 18 inch failed storm sewer pipe below Skyline Parkway at Chester Park for the engineering division in accordance with its low specification bid of \$77,700, payable out of Storm Sewer Fund 535, Agency 500, Organization 1905, Object 5533; City Project Number 0615ST.

Resolution 06-0635 was unanimously adopted.

Approved September 11, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that KGM Contractors, Inc., be and hereby is awarded a contract for the final closure and remediation of Dumpsite No. 1 (formerly Stanley A. Lepak property), located at 4206 Rice Lake Road in accordance with its low specification bid of \$273,071, terms net 30, FOB destination, payable out of the Self-Insurance-Liabilities Fund 0610, Department/Agency 0036, Organization 1651, Object 5319.

Resolution 06-0636 was unanimously adopted.

Approved September 11, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Advanced Engineering and Environmental Services, Inc., be and hereby is awarded a contract for professional services to conduct a cost of service and rate design on the city's public works and utilities water utility in accordance with specifications in its proposal dated August 24, 2006, in the estimated amount of \$24,888, payable from Water Fund 510, Agency 500, Organization 1915, Object 5310.

Resolution 06-0637 was unanimously adopted.

Approved September 11, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

BE IT RESOLVED, that the proper city officials are authorized to execute and implement two contracts, substantially in the form of those on file with the clerk as Public Document Nos. 06-0911-18(a) and 06-0911-18(b), between the city and Johnson Controls, Inc., and Duluth Steam Cooperative, in the net amount of \$3,198,360, for purchase and operation of improvements to the Duluth steam plant, payment from Fund 540, Agency 920, Organization 1499, Object 5530.

Resolution 06-0641 was unanimously adopted.

Approved September 11, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

RESOLVED, that the proper city officials are authorized to enter into Amendment No. 2, a copy of which is on file in the office of the city clerk as Public Document No. 06-0911-19, to grant Contract No. 2000-9748 with the state of Minnesota department of public safety, division of homeland security and emergency management, for terrorism prevention exercise, equipment and training for the police department, extending the term thereof through September 30, 2006.

Resolution 06-0625 was unanimously adopted.

Approved September 11, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, that the proper city officers are authorized to enter into an agreement with Adventure Duluth, LLC, providing a permit for the Adventure Duluth Racing Adventure Event to be held at various park and recreation venues on September 23, 2006; said agreement to be substantially in the form of Public Document No. 06-0911-20 on file in the office of the city clerk, and providing for the payment of \$450, funds to be deposited in 100-400-1812-4170.

Resolution 06-0643 was unanimously adopted.

Approved September 11, 2006

HERB W. BERGSON, Mayor

- - -

The following resolutions were also considered:

Resolution 06-0627, setting a proposed budget for the fiscal year 2007; Resolution 06-0628, proposing the sum to be raised by taxation for general purposes for the year 2007; Resolution 06-0629, proposing the sum to be raised by taxation for general purposes for funding other post employment benefits (OPEB) for the year 2007; Resolution 06-0630, proposing the sum to be raised by taxation for the special taxing district, housing and redevelopment authority, for the year 2007; Resolution 06-0631, proposing the sum to be raised by taxation for the special taxing

district, Duluth transit authority, for the year 2007; and Resolution 06-0632, proposing the sum to be raised by taxation for the special taxing district, Seaway Port authority, for the year 2007, by Councilor Stewart, were introduced for discussion.

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

Dr. Robert Powless, Sr. Edith Bogue, Bridget Riversmith, Jennifer Lancour and Brad Ganagon supported funding the Duluth human rights office in next year's budget, citing reasons of: in the four years that it has been in operation, 597 people have made inquiries, and of the 96 formal complaints, 42 percent for those were handled prior to the stage of "probably cause"; it costs less than \$.02 a day per household to have this office in the city; maybe this office should be looked at for cutbacks not elimination; the loss of funding for this program means a loss of expertise that unlikely would be able to be accomplished by others; to not fund this office would require a rescinding of the ordinance; the creation of the ordinance and this office was an acknowledgment by our community that we need to safeguard and promote our rights; this office has been an important link and liaison from the commission on disabilities to the administration and city council; it took 22 years for the human rights ordinance to be finally adopted from the first time it was proposed and the value of a human rights commission needs to be respected.

Sharla Gardner expressed concern relative to the drop in essential city services with the drop in aid to the city from the state, while the city is trying to keep any property tax increases to a minimum.

Councilor Ness moved to amend Resolution 06-0629 by changing "\$1,251,700" to "\$600,000," which motion was seconded and discussed.

Councilor Stauber opposed the amendment because he felt that the city is sufficiently flush due to a return on investments and the tourism tax and thus would support a greater contribution to the retirees health insurance at this time.

The amendment failed as follows:

Yeas: Councilor Ness -- 1

Nays: Councilors Gilbert, Johnson, Krause, Little, Stauber, Stewart, Stover and President Reinert -- 8

Council Krause stated that until he receives information and adequate time to study the information and receive answers to questions relative to Resolution 06-0629, he is not ready to vote on these resolutions.

Councilor Gilbert moved to amend Resolution 06-0627 by replacing the amount in the line labeled "Total fire," with the amount of "\$192,000" and by replacing the amount in the line labeled "Total police," with the amount of "\$192,000," which motion was seconded for discussion.

Councilor Gilbert further moved to amend Resolution 06-0628 by changing the amount in Section 1, from "\$11,824,400" to "\$12,208,400" and in Section 2, changing "\$6,802,300" to "\$7,186,300," which motion was seconded and discussed.

Councilor Gilbert stated that these amendments would fund three positions in the fire department and in the police department that were funded in the 2006 budget but not proposed to be funded in 2007.

Councilor Stauber expressed concern that the taxpayers would be paying additional for this, while other efficiencies, such as reducing overtime, could pay for these positions instead.

The amendments to resolutions 06-0627 and 06-0628 carried as follows:

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

Nays: Councilor Stauber -- 1

Councilor Stauber moved to amend Resolution 06-0627 as follows:

(a) Under general fund:

- (1) Decrease the amount of Total administrative services from "\$7,532,200" to \$7,185,900";
- (2) Decrease the amount of Total planning and development from \$590,400" to \$587,500";
- (3) Decrease the amount of Total finance from "\$2,884,000" to "\$2,802,900";
- (4) Decrease the amount of Total fire from "\$16,543,800" to \$15,006,700";
- (5) Decrease the amount of Total police from "\$16,108,800" to "\$15,916,800";
- (6) Decrease the amount of Total library from "\$4,159,900" to "\$4,063,500";
- (7) Decrease the amount of Total parks and recreation from "\$2,654,600" to "\$2,564,200";
- (8) Decrease the amount of Total transfers from "\$16,153,200" to "\$15,303,200";
- (9) Delete the line entitled "General fund total" with an amount of "\$78,385,700" and add a line entitled "Total by department" with an amount of "\$75,189,500";
- (10) Add a line entitled "OPEB general fund investment" with an amount of "\$1,750,000";
- (11) Add a line entitled "Total budget" with an amount of "\$76,939,500";

(b) Under public enterprise fund:

- (1) Decrease "Golf fund - total" from "\$2,206,700" to "-\$200,000";
- (2) Decrease "Water fund - total" from "\$15,057,400" to "\$13,661,900";
- (3) Decrease "Gas fund - total" from "\$57,172,800" to "\$55,449,500";
- (4) Decrease "Sewer fund - total" from "\$19,875,700" to "\$17,746,200";

which motion was seconded and discussed.

Councilor Stauber noted that his amendment keeps the 2007 budget at 2006 status quo and covers a contribution to OPEB from the general fund.

The amendment failed as follows:

Yeas: Councilors Little and Stauber -- 2

Nays: Councilors Gilbert, Johnson, Krause, Ness, Stewart, Stover and President Reinert -- 7

Councilor Stauber moved to amend Resolution 06-0628 as follows:

Insert the following language at the beginning of the resolution:

"WHEREAS, leasing of the two golf courses could generate an annual revenue instead of a net loss each year; and

WHEREAS, the city could reduce premium pay, including overtime and compensation time, from its current level to no more than \$250,000 per year; and

WHEREAS, the city could fund other efficiencies to help defray costs to taxpayers by working diligently with staff, department heads and employees, including eliminating planning capital expenditures on items like rock climbing walls and new washroom/laundry facilities at campgrounds; and

WHEREAS, the city of Duluth estimates increases to other sources of revenue, such as increased earnings on investments of \$950,000, local government aid and tax relief increases of \$1,100,000 (LGA), sales taxes of \$200,000, and tourism tax of \$386,000; and

WHEREAS, the retiree healthcare task force has recommended an eight to nine percent levy increase in city property tax (approximately \$1,000,000) and that these costs could be absorbed by adjustments including, but no limited to, those noted above without increasing the tax burden on citizens.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

BE IT RESOLVED, that the Duluth City Council hereby approves a zero percent increase in the amount levied from 2006 to 2007 and that \$1,750,000 from the general fund be applied directly to OPEB, using Special Fund Revenue 280 to deposit this amount until such time as an irrevocable trust is established,"

which motion was seconded and discussed.

Councilor Stauber noted that this would have a zero percent levy increase and that with investments and an increase in local governmental aid the city is "flush" financially.

The amendment failed as follows:

Yeas: Councilor Stauber -- 1

Nays: Councilors Gilbert, Johnson, Krause, Little, Ness, Stewart, Stover and President Reinert -- 8

Resolutions 06-0627 and 06-0628, as amended, were adopted as follows:

BY COUNCILOR STEWART:

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, 2007.

GENERAL		
010	Total legislative and executive	2,168,400
015	Total administrative services	7,532,200
020	Total planning and development	590,400
030	Total finance	2,884,000
100	Total fire	16,543,800
200	Total police	16,108,800
300	Total library	4,159,900
400	Total parks and recreation	2,654,600
500	Total public works	9,590,400
700	Total transfers	16,153,200
100	General fund total	78,385,700
PUBLIC ENTERPRISE		
503	Golf fund - total	2,206,700
510	Water fund - total	15,057,400
520	Gas fund - total	57,172,800
530	Sewer fund - total	19,875,700
535	Stormwater fund - total	4,210,600

Resolution 06-0627, as amended, was adopted upon the following vote:

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

Nays: Councilor Stauber -- 1

Approved September 11, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

RESOLVED, that pursuant to Minnesota Statutes, Section 275.065, the city council adopts the following proposed tax levy:

Section 1. The sum to be raised by taxation for the year 2007 for general operations is hereby determined to be the sum of \$12,208,400 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 \$7,186,300.

Section 3. For the payment of debt, there will be levied for the general obligation debt fund the sum of \$4,500,000.

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 \$522,100.

Resolution 06-0628, as amended, was adopted upon the following vote:

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

Nays: Councilors Little and Stauber -- 2

Approved September 11, 2006

HERB W. BERGSON, Mayor

- - -

Councilor Ness moved to amend Resolution 06-0629 again by changing the "\$1,251,700" to "\$600,000," in both parts of the resolution, which motion was seconded and discussed.

Councilor Ness stated that \$600,000 is what was recommended by the task force and to use the higher proposed amount would create an unnecessary alarm with the public.

The amendment carried as follows:

Yeas: Councilors Little, Ness, Stauber, Stover and President Reinert -- 5

Nays: Councilors Gilbert, Johnson and Stewart -- 3

Abstention: Councilor Krause -- 1

Resolution 06-0629, as amended, was adopted as follows:

BY COUNCILOR STEWART:

RESOLVED, that pursuant to Minnesota Statutes, Section 275.065, the city council adopts the following proposed tax levy:

Section 1. The sum to be raised by taxation for the year 2007 for general operations for other post employment benefits (OPEB) is hereby determined to be the sum of \$600,000 which sum is levied against the taxable property of the city of Duluth and appropriated to the account of the city, as set forth in the following section, viz:

Section 2. There will be levied for the support of the general fund the sum of \$600,000 for the purposes of funding the expense of other post employment benefits - retiree insurance.

Resolution 06-0629, as amended, was adopted upon the following vote:

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

Nays: Councilor Little -- 1

Abstention: Councilor Krause -- 1

Approved September 11, 2006

HERB W. BERGSON, Mayor

- - -

Councilor Stewart moved to amend Resolution 06-0630 by changing the amount "\$740,400" to "\$614,900," which motion was seconded and discussed.

Councilor Stewart stated that this would keep their levy at the same level it was last year.

Councilors Ness and Johnson stated that this amount was kept the same last year and that this is just a proposed increase that could be reduced prior to the final levy being established.

The amendment carried as follows:

Yeas: Councilors Krause, Little, Stauber, Stewart and President Reinert -- 5

Nays: Councilors Gilbert, Johnson, Ness and Stover -- 4

Resolution 06-0630, as amended, was adopted as follows:

BY COUNCILOR STEWART:

RESOLVED, that pursuant to Minnesota Statutes, Section 469.033, subdivision 6, the city council adopts the following proposed property tax levy:

Section 1. The sum to be raised by taxation for the year 2007 for the housing and redevelopment authority taxing district's operations is hereby determined to be the sum of \$614,900 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, subdivision 6, there will be levied for the purpose of providing for the housing and redevelopment authority special taxing district the sum of \$614,900.

Resolution 06-0630, as amended, was unanimously adopted.

Approved September 11, 2006

HERB W. BERGSON, Mayor

- - -

Resolutions 06-0631 and 06-0632 were adopted as follows:

BY COUNCILOR STEWART:

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 2007 for Duluth transit authority special taxing district's operations is hereby determined to be the sum of \$1,316,900 which sum is levied against the taxable property of the city of Duluth and appropriated to the various accounts as set forth in the following section, viz:

Section 2. That pursuant to Minnesota Statutes, Sec. 485A.31, Subd. 1, there will be levied for transit operations the sum of \$1,316,900.

Resolution 06-0631 was unanimously adopted.

Approved September 11, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

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 2007 for Seaway Port authority taxing district's operations is hereby determined to be the sum of \$932,200 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 \$932,200.

Resolution 06-0632 was adopted upon the following vote:

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

Nays: Councilor Krause -- 1

Approved September 11, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

BE IT RESOLVED that the city council requests the Charter commission to recommend adoption of an ordinance amending sections 23, 31, 33, 34, 54 and 55 of the City Charter, which proposed ordinance is on file with the city clerk as Public Document No. 06-0911-21.

Resolution 06-0645 was adopted upon the following vote:

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

Nays: Councilor Krause -- 1

Approved September 11, 2006

HERB W. BERGSON, Mayor

- - -

Resolutions 06-0650 and 06-0654, by Councilor Krause, approving and denying, respectively, the transfer of the on sale intoxicating liquor license, on sale Sunday license, and 2:00 a.m. beverage license from Darrel Fredrickson (Horseshoe Billiards), 2415 West Superior Street, to Lucky Break, Inc. (Horseshoe Billiards), same address, were introduced for discussion.

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

Jerry Fredrickson expressed support for Resolution 06-0650, noting that he is requesting to take back the license that is being held by his son, who currently is in some serious trouble with the federal drug enforcement agency. He stated that it is his intent to keep the current staff employed and continue the business.

Resolution 06-0650 was adopted as follows:

BY COUNCILOR KRAUSE:

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, 2007, subject to fire and health departmental approvals and the payment of sales and property taxes:

Lucky Break, Inc. (Horseshoe Billiards), 2415 West Superior Street, with Elfriede Fredrickson, president and 90 percent stockholder, Jerry Fredrickson, treasurer, and 5 percent stockholder, and Chris Waltz, vice president and 5 percent stockholder, transferred from Darrel

Fredrickson (Horsheshoe Billiards), same address.

Resolution 06-0650 was adopted upon the following vote:

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

Nays: Councilor Krause -- 1

Approved September 11, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0654 failed upon the following vote (Public Document No. 06-0911-22):

Yeas: Councilor Krause -- 1

Nays: Councilors Gilbert, Johnson, Little, Ness, Stauber, Stewart, Stover and President Reinert -- 8

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Resolution 06-0657, by Councilor Gilbert, dedicating revenues, was introduced for discussion.

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

Jackie Falk and Alison Clarke expressed support for the resolution, citing reasons of: this would complete the Lakewalk along the shore from 19th Avenue East to 26th Avenue East; this is a "signature" as much as the Aerial Lift Bridge; Neighborhood District No. 7 supports this and erosion is evident and this needs to be done now.

The council discussed at length with Planning and Development Department Director Bruce the details of this issue.

Councilor Stauber moved to table the resolution for further improvements to the resolution, which motion was seconded and failed upon the following vote:

Yeas: Councilor Stauber -- 1

Nays: Councilors Gilbert, Johnson, Krause, Little, Ness, Stewart, Stover and President Reinert -- 8

Resolution 06-0657 was adopted as follows:

BY COUNCILOR GILBERT:

RESOLVED, that property tax increment resulting from the property development project known as Beacon Point shall be first used to pay for construction of a continuation of Lakewalk from its end point near 20th Avenue East to a new end point near 26th Avenue East, and thereafter for general government purposes.

Resolution 06-0657 was unanimously adopted.

Approved September 11, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0656, by Councilor Ness, declaring policy for actions to fund post-retirement benefits, was introduced for discussion.

Councilor Ness requested that his resolution be pulled from the agenda, which motion was approved without objection.

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BY PRESIDENT REINERT:

WHEREAS, in 1988 the city of Duluth entered into City Contract #15515 with Neighborhood Housing Services of Duluth, Minnesota, (NHS) pursuant to which NHS agreed to administer and operate a housing rehabilitation program; and

WHEREAS, pursuant to the rehabilitation program guidelines, NHS entered into an

agreement dated June 20, 1988, (the agreement), with Martin J. Tezak (owner) pursuant to which NHS advanced a rehabilitation loan in the amount of \$7,500; and

WHEREAS, pursuant to the agreement, the owner agreed to repay NHS the full amount of the loan in the event owner sold, transferred or otherwise conveyed the rehabilitated property; and

WHEREAS, the owner lived on the owner-occupied rehabilitated duplex property for five years.

NOW, THEREFORE, the city council of the city of Duluth hereby authorizes a partial forgiveness by NHS of the repayment of the loan in the amount of \$2,500, which is equal to 33.3 percent of the total loan amount of \$7,500.

Resolution 06-0644 was adopted upon the following vote:

Yeas: Councilors Johnson, Little, Ness, Stauber and Stover -- 5

Nays: Councilors Krause and Stewart -- 2

Abstention: Councilor Gilbert and President Reinert -- 2

Approved September 11, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

BE IT RESOLVED, that the proper city officials are authorized to accept from SMDC a donation of nine automated external defibrillators.

BE IT FURTHER RESOLVED, that all donated items shall be reported to the city auditor for fixed asset reporting and accounting purposes and a list of all items received and the fair market value shall be reported to the council.

Resolution 06-0623 was adopted upon the following vote:

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

Nays: None -- 0

Abstention: President Reinert -- 1

Approved September 11, 2006

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 STEWART

06-033 - 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 \$4,525,000 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.

- - -

BY COUNCILOR LITTLE

06-032 - AN ORDINANCE REGULATING SMOKING NEAR MEDICAL FACILITIES; AMENDING DULUTH CITY CODE, 1959, AS AMENDED, BY ADDING A NEW SECTION 28-72.

- - -

BY COUNCILOR STAUBER

06-034 - AN ORDINANCE AMENDING CHAPTER 47, ARTICLE III OF THE DULUTH CITY CODE, REGULATING TAXICABS.

- - -

BY COUNCILOR STAUBER AND PRESIDENT REINERT

06-031 - AN ORDINANCE REGULATING THE SALE OF CITY PARK LAND AND THE USE OF PROCEEDS OF SUCH SALE; ADDING A NEW SECTION 2-179 TO THE DULUTH CITY CODE, 1959, AS AMENDED.

- - -

The following entitled ordinances were read for the second time:

BY COUNCILOR GILBERT

06-028 (9789) - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, ZONING DISTRICT MAP NOS. 26 AND 27 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM I-T, INDUSTRIAL-TECHNOLOGY DISTRICT, TO C-5, PLANNED COMMERCIAL DISTRICT, THE PROPERTY LOCATED AT THE NORTHEAST CORNER OF HAINES ROAD AND ARROWHEAD ROAD (HOLAPPA/NORTHERN CITY BAPTIST CHURCH).

Councilor Krause opposed the ordinance because he felt that there is a vast difference between the potential for retail and a business district, noting the high traffic flows that would be created between two neighborhoods. In addition, he stated the concern by the neighbors over the tax forfeited land to the east of this area that could be added to this project in the future.

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

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

Nays: Councilor Krause -- 1

- - -

BY COUNCILOR STOVER

06-029 (9790) - AN ORDINANCE AUTHORIZING GRANTING OF STORMWATER UTILITY EASEMENTS OVER CITY-OWNED PROPERTY AT DIAP.

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

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The meeting was adjourned at 10:07 p.m.

JEFFREY J. COX, City Clerk

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**ORDINANCE NO. 9789**

BY COUNCILOR GILBERT:

AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, ZONING DISTRICT MAP NOS. 26 AND 27 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM I-T, INDUSTRIAL-TECHNOLOGY DISTRICT, TO C-5, PLANNED COMMERCIAL DISTRICT, THE PROPERTY LOCATED AT THE NORTHEAST CORNER OF HAINES ROAD AND ARROWHEAD ROAD (HOLAPPA/NORTHERN CITY BAPTIST CHURCH).

The city of Duluth does ordain:

Section 1. That Plate Nos. 26 and 27 of the zoning district map as contained in the Appendix to Chapter 50 of the Duluth City Code, 1959, is amended to read as follows:

(MAPS)

(Reference File No. 06072)

*[see maps at end of meeting]*

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: December 31, 2006)

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

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

Nays: Councilor Krause -- 1

Passed September 11, 2006

Approved September 11, 2006

HERB W. BERGSON, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

- - -

**ORDINANCE NO. 9790**

BY COUNCILOR STOVER:

AN ORDINANCE AUTHORIZING GRANTING OF STORMWATER  
UTILITY EASEMENTS OVER CITY-OWNED PROPERTY AT DIAP.

The city of Duluth does ordain:

Section 1. That the proper city officials are hereby authorized to grant easements for stormwater utility purposes to the general public over and across the property in St. Louis county, Minnesota, described below and to accept on behalf of the public the dedication of such easements if and when offered by the Duluth Airport Authority pursuant to Laws, 1969, Chapter 577, Section 5, subd. 2(e):

An easement for stormwater utilities lying between a line 33 feet left of and 53 feet left of the following described centerline:

Commencing at the south quarter corner of Section 2, Township 50 N, Range 15 W, of the Fourth Principal Meridian; thence on an assigned bearing of N 1° 14' 38" E along the north-south quarter line of said Section 2 for a distance of 270.02 feet to the centerline of Airport Road; thence northeasterly along a non-tangential curve for 140.70 feet, said curve having a radius of 763.94 feet, a central angle of 10° 33' 07", a chord bearing of N 72° 08' 36" E, and a chord distance of 140.50 feet to the POINT OF BEGINNING of the centerline to be described; thence continuing on a tangential curve a distance of 20.00 feet, said curve having a radius of 763.94 feet, a central angle of 1° 30' 01", a chord bearing N 78° 10' 10" E, and a chord distance of 20.00 feet and there terminating.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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Section 2. That this ordinance shall take effect 30 days after its passage and publication.  
(Effective date: October 22, 2006)

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

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

Nays: None -- 0

ATTEST:  
JEFFREY J. COX, City Clerk

Passed September 11, 2006  
Approved September 11, 2006  
HERB W. BERGSON, Mayor

- - -

Map No. 26

Map No. 27

**OFFICIAL PROCEEDINGS**

Special meeting of the Duluth City Council held on Thursday, September 21, 2006, 5:15 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Johnson, Krause, Ness, Stauber, Stewart, Stover and President Reinert -- 7

Absent: Councilors Gilbert and Little -- 2

- - -

**MOTIONS AND RESOLUTIONS**

BY COUNCILOR NESS:

RESOLVED, that the proper city officials are authorized to execute and implement an amended agreement, substantially the same as that on file with the city clerk as Public Document No. 06-0921-01 between the city and the U.S. department of housing and urban development providing for enforcement of federal civil rights laws and processing of related complaints by the city human rights office and other related matters, which is a revision of the agreement authorized by Resolution 06-0399, passed by the city council on May 22, 2006, to include a new paragraph no. 6 of Section V(B) entitled Reactivation.

Resolution 06-0685 was unanimously adopted.

Approved September 21, 2006

HERB W. BERGSON, Mayor

- - -

The meeting was adjourned at 5:22 p.m.

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

**OFFICIAL PROCEEDINGS**

Duluth City Council meeting held on Monday, September 25, 2006, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: None -- 0

- - -

**PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS**

06-0925-01 Marguerite Acheson, by Sessler Contracting, Inc., application for concurrent use permit for an eyebrow awning at 4631 47th Avenue East. -- Planning commission

06-0925-02 Minnesota state auditor:

(a) Comprehensive annual financial report for the year ended December 31, 2005, for Western Lake Superior Sanitary District;

(b) Management and compliance report for the year ended December 31, 2005, for Western Lake Superior Sanitary District. -- Received

06-0925-03 Mags David communication regarding proposed reclassification from M-1 to C-1 the property located at 1901 South Street (Joseph and Rose Kleiman) (06-0661R and 06-035-O). -- Received

06-0925-12 Bridget Friday communication regarding the proposed establishment of parking meter zones on First Street and Third and Fourth avenues East (06-0668R). -- Received

06-0925-13 Lois Janson communication regarding the proposed removal of one way designation from East First Street between 12th and 24th avenues East. (06-0564R). -- Received

06-0925-11 The following communications regarding the proposed amendment to the regulation of taxicabs (06-034-O): (a) Allied Taxi; (b) Courtesy Cab Company, Inc. -- Received

- - -

**REPORTS FROM OTHER OFFICERS**

06-0925-04 Assessor for confirmation the assessment roll for reassessment of a permanent street and utility assessment (Contract #5263; Assessable amount: \$3,000). -- Received

06-0925-05 Clerk application to the Minnesota gambling control board for exemption from lawful gambling licenses from Lincoln Park Business Group on November 16, 2006 (bingo and raffle). -- Received

06-0925-06 Parks and recreation associate director lease agreement with YWCA for Rooms 118 and 118A located in Washington Center for the purpose of operating the YWCA Girl-Power Program, pursuant to Section 2-35, Duluth City Code. -- Mayor for execution

- - -

**REPORTS OF BOARDS AND COMMISSIONS**

06-0925-07 Commission on disabilities minutes of August 2, 2006, meeting. -- Received

06-0925-08 Duluth human rights commission minutes of August 9, 2006, meeting. -- Received

06-0925-09 Duluth/North Shore Sanitary District minutes of August 9, 2006, meeting. -- Received

06-0925-10 Planning commission minutes of August 8, 2006, meeting. -- Received

- - -

**OPPORTUNITY FOR CITIZENS TO BE HEARD**

Lyn Clark Pegg, Maria Cuzzo, Brad Gangnon, Sonia Bonilla, Joyce Blodgett and Mike Conlan urged the council to keep the human rights office in the 2007 budget for the following reasons: the office has worked hard to make the city care about human rights; it would be a negative message to the public if the office is closed; the office is still in the infancy stage; this office helps protect human rights and shows respect for human beings and there needs to be a place locally where people can go for help.

- - -

Tony LaDeaux, representing the American Indian commission, reviewed that the council had requested further information about an independent review board which he now has available to share with the council as the review board will bring more trust with the police.

- - -

Matt Holte requested that signs be put on the streets telling residents when they can park on the street to avoid getting tickets.

- - -

KL Lewis expressed support for the Lakewalk extension and the Heritage Hockey Center and suggested a nonprofit foundation to support the human rights commission so the city would not have fund the office.

- - -

Alison Clarke urged the council to keep the planning districts going as they are an effective network for citizen participation in city government and a good communication tool.

- - -

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

BY COUNCILOR STEWART:

RESOLVED, that the assessment roll levied for reassessment of a canceled permanent street and utility assessment for Spirit Cove Homeowners Association (Spirit Cove Division, Lot 1, Block 3, Plat/Parcel 4055-0170) (Contract #5263; assessable amount - \$3,000); to be deposited in Fund 330, is hereby confirmed.

Resolution 06-0673 was unanimously adopted.

Approved September 25, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

RESOLVED, that Resolution 06-0176 be amended (Change #2) to increase the contract with Inter-City Oil Company, Inc., by \$41,000, for delivering fuel to various city locations, for a new

total of \$121,000, terms net 30, FOB destination, payable out of various funds, departments/agencies, organizations, objects.

Resolution 06-0664 was unanimously adopted.

Approved September 25, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the proposed amendments to the specifications for the civil service classification of employee benefits specialist, which were approved by the civil service board on September 5, 2006, and which are filed with the city clerk as Public Document No. 06-0925-14, are approved; that said classification shall remain subject to the city's collective bargaining agreement with its basic unit employees, that the pay range will change from Pay Range 131 to Pay Range 136. The proper city officials are authorized to execute and implement an agreement with the union to provide for employing one or more unit members consistent with this resolution.

Resolution 06-0640 was unanimously adopted.

Approved September 25, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the proposed amendments to the specifications for the civil service classification of police officer, which were approved by the civil service board on September 5, 2006, and which are filed with the city clerk as Public Document No. 06-0925-15, are approved. This classification shall remain subject to the city's collective bargaining agreement with its police unit employees and compensated at Pay Range 326, \$3,309 to \$4,383 per month.

Resolution 06-0653 was unanimously adopted.

Approved September 25, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the city council hereby reappoints Thomas A. Clure to the Seaway Port authority of Duluth for a term expiring October 10, 2012.

Resolution 06-0658 was unanimously adopted.

Approved September 25, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

St. Louis County has submitted to the city council a request for a special use permit for a heated storage building (Zoning Code Section 50-35(t)) on property described as W1/2, NW1/4, Section 16, T50N, R14W, and located at 2501 Rice Lake Road; and said permit application was duly referred to the city planning commission for a study, report and public hearing held September 14, 2006, and the city planning commission has subsequently reported its approval to the city council; and

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 St. Louis County to allow for the construction of a heated storage building at 2501 Rice Lake

Road, on the condition that the development be consistent with plans submitted by Stanius Johnson entitled "St. Louis County Storage Building," dated 8/12/06, Sheets A100, A 110, A 200, and A 300, identified as Public Document No. 06-0925-16.

Resolution 06-0660 was unanimously adopted.

Approved September 25, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

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. 06-0926-17, with Larson Fisher Associates, Inc., for preparation of an intensive level survey of historic properties in the amount of not to exceed \$7,000, payable from Fund 210, Agency 030, Organization 3150, Object 5441.

Resolution 06-0674 was unanimously adopted.

Approved September 25, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

RESOLVED, that the proper city officers are hereby authorized to execute an agreement (Public Document No. 06-0925-18) with Dahlen, Dwyer and Foley, Inc., for land appraisal services relating to Spirit Mountain LAWCON conversion payment not to exceed \$5,000, payable from Fund 100, Agency 700, Organization 1407, Object 5441.

Resolution 06-0676 was unanimously adopted.

Approved September 25, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

RESOLVED, that the proper city officers are hereby authorized to execute an agreement (Public Document No. 06-0925-19) with Walker Appraisals for review land appraisal service relating to Spirit Mountain LAWCON conversion payment not to exceed \$1,800, payable from Fund 100, Agency 700, Organization 1407, Object 5441.

Resolution 06-0677 was unanimously adopted.

Approved September 25, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

RESOLVED:

(a) The city council finds a sufficient petition was filed with the city clerk requesting the vacation of that part of 50th Avenue East that is within three feet of the west line of Lot 13, Morris Park Division of Duluth (Parcel ID: 010-3430-00130); and

(b) The city council also finds a sufficient petition with the city clerk offering to dedicate to the public for pedestrian purposes the westerly four feet of Lot 13, Morris Park Division of Duluth (Parcel ID: 010-3430-00130); and

(c) Pursuant to Section 100 of the City Charter and Article IV of Chapter 45 of the Duluth City Code, 1959, as amended, such petition was duly referred to the city planning commission and such commission gave due notice of public hearing and did consider same in public hearing; and

the city planning commission found that said portion of the street is useless for the purpose of a roadway, based on the following finding:

(1) Vacating this three foot wide section of the street will narrow the right-of-way to 63 feet, which could still accommodate the construction of a roadway in the future, though the likelihood seems remote given the presence of 50th Avenue East Creek which occupies much of the ravine; and

(d) The planning commission found that it is necessary to retain a pedestrian and utility easement over that section of street proposed for vacation due to the location of a public sidewalk through that vacation area; and

(e) The planning commission, at its September 12, 2006, regular meeting, did approve, unanimously, the street vacation petition while retaining a pedestrian and utility easement over that entire vacation area; and

(f) That the planning commission, at its September 12, 2006, regular meeting, did approve, unanimously, the dedication of the pedestrian easement over the westerly four feet of Lot 13, Morris Park Division of Duluth (Parcel ID: 010-3430-00130); and

(g) That the city council of the city of Duluth approves the vacation of the that part of 50th Avenue East that is within three feet of the west line of Lot 13, Morris Park Division of Duluth (Parcel ID: 010-3430-00130), and as more particularly described on Public Document No. 06-0925-20, retaining for the public a pedestrian and utility easement over the entire vacation area; and

(h) That the city council of the city of Duluth also approves the dedication of the pedestrian easement over the westerly four feet of Lot 13, Morris Park Division of Duluth (Parcel ID: 010-3430-00130); and

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

Resolution 06-0681 was unanimously adopted.

Approved September 25, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

A sufficient petition was filed with the city clerk requesting the vacation of a utility easement legally described as that easement located along the rear ten feet of Lots 1-4 and 13-16, inclusive, except the easterly ten feet, Block 19, Endion Division of Duluth; and

Pursuant to Section 100 of the City Charter and Article IV of Chapter 45 of the Duluth City Code, 1959, as amended, such petition was duly referred to the city planning commission and such commission gave due notice of public hearing and did consider same in public hearing; and

The city planning commission approved unanimously the vacation petition at its September 12, 2006, meeting;

NOW THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approve the vacation of the utility easement described above and as more particularly described on Public Document No. 06-0925-21.

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 portion of the utility easement to be vacated.

Resolution 06-0682 was unanimously adopted.

Approved September 25, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

RESOLVED, that the proper city officers are hereby authorized to enter into a professional service agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 06-0925-22 with Range Credit Bureau, Inc., (service provider) pursuant to which it will provide for the collection of a past due, outstanding balance plus interest on a forgivable loan promissory note executed by Invision of Duluth, Inc., d/b/a Connecting Point, (Connecting Point) running in favor of the city, said service provider to retain a 33 percent fee on amounts collected except where:

(a) Legal action is to be taken; or

(b) The account is sent to another out-of-state agency for collection in which event the service provider will retain a 50 percent fee; the balance of all said amounts collected to be remitted to the city, payable into Fund 255.

Resolution 06-0683 was unanimously adopted.

Approved September 25, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

RESOLVED:

(a) The city council finds a sufficient petition was filed with the city planning commission dedicating to the public street and utility easements in Tracts A and B in Registered Land Survey #65 and Lots 15 and 16, Block 152, Duluth Proper Third Division; and

(b) That the planning commission, at its September 12, 2006, regular meeting, did approve, unanimously, the dedication of the street and utility easements; and

(c) That the city council of the city of Duluth approves the dedication to the public street and utility easements in Tracts A and B in Registered Land Survey #65 and Lots 15 and 16, Block 152, Duluth Proper Third Division, more particularly described on Public Document No. 06-0925-23; and

(d) That the city clerk is hereby directed to record, with the register of deeds and/or the registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution together with a plat showing those easements dedicated.

Resolution 06-0686 was unanimously adopted.

Approved September 25, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR NESS:

RESOLVED, that the city of Duluth is hereby authorized to execute the grant agreement filed as Public Document No. 06-0925-24 for the state fiscal year 2007 with the Minnesota department of public safety, office of justice programs, crime victim services, for a \$1,500 grant for a program entitled "Emergency Fund for Crime Victims."

RESOLVED FURTHER, that funds received by the city under such grant agreement shall be deposited in Fund 210, Agency 030, Organization 3126, Revenue Source 4220.

Resolution 06-0672 was unanimously adopted.

Approved September 25, 2006

HERB W. BERGSON, Mayor

- - -

BY PRESIDENT REINERT:

RESOLVED, that the proper city officials are authorized to execute and implement an employment contract with John E. Hall for the position of chief administrative officer, which contract is on file with the city clerk as Public Document No. 06-0925-25.

Resolution 06-0691 was unanimously adopted.

Approved September 25, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Ziegler Cat be and hereby is awarded a contract for furnishing and delivering grader blades for the fleet division in accordance with specifications on its low bid of \$31,473 plus sales tax of \$2,045.75, for a total of \$33,518.75, terms net 30, FOB destination, payable out of the Fleet Services Fund 660, Department/Agency 015, Object 5221.

Resolution 06-0665 was unanimously adopted.

Approved September 25, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that the city of Duluth has applied to the commissioner of transportation for a grant from the Minnesota state transportation fund for the rehabilitation of Bridge No. L8477 over Miller Creek/Lincoln Park Drive on Tenth Street (MSAS 203), S.P. 118-203-002, Minnesota Project No. BH6906(108).

The grant has been approved and the amount of the grant has been determined to be \$236,322.40.

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 upon the final audit, shall be returned to the Minnesota state transportation fund.

FURTHER RESOLVED, grant monies received hereunder shall be deposited into the Permanent Improvement Fund 0411, Agency 035, Object 5530; City Project Number 0102TR.

Resolution 06-0667 was unanimously adopted.

Approved September 25, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that SYSTECH Engineering, Inc., be and hereby is awarded a contract for professional services to review, analyze and model surface waters in the city of Duluth to comply with the MS4 nondegradation requirements mandated in the June 1, 2006, revisions of the city's MS4 stormwater NPDES permit in accordance with its proposal in the estimated amount of

\$150,000, payable from Sewer Fund 535, Agency 500, Organization 1930, Object 5303; City Project Number 0530ST.

Resolution 06-0670 was unanimously adopted.

Approved September 25, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that St. Joseph Equipment, Inc., be and hereby is awarded a contract for one Case model 420 skid steer loader for the street maintenance division in accordance with State of Minnesota Contract Release No. T-631-(5) for \$31,985 plus sales tax of \$2,079.03, for a total of \$34,064.03, terms net 30, FOB destination prepaid and added, payable out of Capital Equipment Fund 0250, Department/Agency 015, Organization 2006; Object 5580-CE250-V608.

Resolution 06-0678 was unanimously adopted.

Approved September 25, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that J.R. Jensen Construction Company be and hereby is awarded a contract for construction of a cold storage building for the utilities operations division on its low bid of \$63,500 terms net 30, FOB destination, payable as follows:

(a) \$15,875 from Water Fund 0510, Department/Agency 500, Organization 1905, Object 5535 (25 percent);

(b) \$15,875 from Gas Fund 0520, Department/Agency 500, Organization 1905, Object 5535 (25 percent);

(c) \$15,875 from the sewer fund, Department/Agency 500, Organization 1905, Object 5535 (25 percent);

(d) \$15,875 from the stormwater fund; Department/Agency 500, Organization 1905, Object 5535 (25 percent).

Resolution 06-0679 was unanimously adopted.

Approved September 25, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Utility Systems of America, Inc., be and hereby is awarded a contract for sliplining of a 30 inch watermain in London Road from 15th Avenue East to 26th Avenue East in accordance with specifications on its low specification bid of \$1,074,457.50, terms net 30, FOB job site, payable out of Water Construction Bond Fund 511, Department/Agency 500, Object 5532; City Project No. 0436WA.

Resolution 06-0684 was unanimously adopted.

Approved September 25, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Northland Materials, LLC, dba Northland Bituminous, be and hereby is awarded a contract for furnishing and delivering 1,040 tons of cold mix (3/4 inch minus) as needed for year 2006 for the street-park maintenance division in accordance with specifications on its low

bid of \$56,784.00 plus sales tax of \$3,690.96 for a total of \$60,474.96, terms net 30, FOB picked up, payable as follows:

(a) \$34,889.40 from the General Fund, 0100, Department/Agency 500, Organization 1920, Object 5222;

(b) \$17,909.88 from the Water Fund 0510, Department/Agency 500, Organization 1945, Object 5222;

(c) \$2,558.56 from the Gas Fund 0520, Department/Agency 500, Organization 1945, Object 5222;

(d) \$2,558.56 from the Sewer Fund 0530, Department/Agency 500, Organization 1945, Object 5222;

(e) \$2,558.56 from the Stormwater Fund 0535, Department/Agency 500, Organization, 1945, Object 5222.

Resolution 06-0687 was unanimously adopted.

Approved September 25, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Higgins Industrial Supply Company be and hereby is awarded a contract for furnishing and delivering flat truck plow blades and wing edges for the fleet services division in accordance with specifications on its bid of \$31,525.96 plus sales tax of \$2,049.19, for a total amount of \$33,575.15, terms net 30, FOB destination prepaid and added, payable from the Fleet Services Fund 0660, Department/Agency 015, Object 5221.

Resolution 06-0688 was unanimously adopted.

Approved September 25, 2006

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 Superior Street between First Avenue East and Second Avenue East on September 27, 2006, from 3:00 p.m. to 10:00 p.m. in conjunction with the Little River Band Concert 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 06-0651 was unanimously adopted.

Approved September 25, 2006

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: in front of 322 South 17th Avenue East.

Resolution 06-0662 was unanimously adopted.

Approved September 25, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

RESOLVED, that the proper city officers are authorized to accept grant money in an amount not to exceed \$1,095.74 from the Midwest Economic Crime Foundation and to execute any documents required to be executed to accept such grant money; such funds to be deposited in Fund 215-200-2264-4805.

Resolution 06-0671 was unanimously adopted.

Approved September 25, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

WHEREAS, the building official of the city of Duluth duly issued condemnation orders against the following parcels of property, grounds of condemnation being the buildings are structurally unsound, open to trespass, and a menace to the neighborhood, and the criteria of City Code 10-3 was met in each case and evidence thereof has been placed in the file; and

WHEREAS, the cost to the city for the demolition of the following parcels of property has been estimated not to exceed \$39,000, and there is a current not obligated balance in Account 100-100-1505-5453 of \$45,000; and

WHEREAS, notices of condemnation were served as follows:

Parcel 1. 2718 West Second Street, legally described as east 1/2 Lot 80, Block 080, Duluth Proper Second Division, by certified mail on James Johnson, 2718 West Second Street, Duluth, Minnesota 55806, signed by Heather Daugherty, 5601 Grand Avenue, June 19, 2006; and

Parcel 2. 144 West Central Entrance, legally described as: Lots 13 and 14, Block 004, Duluth Heights, Fifth Division, by certified mail on Patrick Murphy, 2601 East Superior Street, Duluth, Minnesota 55812, signed by Patrick Murphy, 2601 East Superior Street, June 23, 2006; and

Parcel 3. 608 North 59th Avenue West, legally described as Lot 13, Block 167, West Duluth Fifth Division, on Chris Fisher, 416 North 51st Avenue West, Duluth, Minnesota 55807, returned marked "unclaimed" on July 3, 2006, and by legal notice in the Duluth News Tribune on July 21 and July 22, 2006; and

Parcel 4. 409 North 58th Avenue West, legally described as Lot 12, Block 143, West Duluth Fifth Division, by certified mail on Beverly Torgerson, 409 North 58th Avenue West, Duluth, Minnesota 55807, and by posting the notice on the property June 14, 2006.

Parcel 5. 2012 West Fourth Street, legally described as west 1/2 Lot 326, Block 109, Duluth Proper Second Division, by certified mail on Ronald D. Foucault, 123 North 23rd Avenue West, Duluth, Minnesota 55806, signed by Ronald Foucault, June 16, 2006.

NOW, THEREFORE, BE IT RESOLVED, that the building official is hereby authorized and directed, forthwith, to take whatever means may be necessary to abate or cause the abatement of the nuisance now existing on the above-named.

Resolution 06-0689 was unanimously adopted.

Approved September 25, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, that the proper city officials are hereby authorized to enter into a purchase agreement, a copy of which is on file in the office of the city clerk as Public Document No. 06-0925-26, with the Burlington Northern Santa Fe Railway Company for the purchase of the

following described property on Grassy Point in St. Louis County, Minnesota, for the sum of \$14,000, payable from Fund 450, Agency 030, Object 5510; Project CP2005-C0503:

A strip of land or land covered with water, described as follows to wit:

Beginning at a point on the south line of the right-of-way of the Duluth Short Line Railway Company seven hundred and thirty-nine and seventeen one hundredths (739.17) feet east of and measured along the said south line of said right-of-way from the intersection of the same with the centre line of Fourth Avenue East in West Duluth, Third Division, prolonged south, thence in a southeasterly direction at an angle of thirty-four degrees and thirty minutes (34°30') to the right, with said south line of said right-of-way, for a distance of three hundred and twenty-nine and six one hundredths (329.06) feet, thence to the right, at an angle of the thirteen degrees and thirteen minutes (13° 13'), in a direct line, and except for a short distance at the commencement being ninety-two and one half (92-1/2) feet distant, measured at right angles and on the southwesterly side of the centre line of the railroad of the said party of the second part, as now located and constructed, to the established dock line in the Bay of St. Louis, thence in a northeasterly direction, along the said dock line, to a point one hundred (100) feet distant from and measured at right angles from the last above described direct line, thence, in a northwesterly direction parallel to and one hundred (100) feet distant from the said above described direct line, to the south line of the right-of-way of the said Duluth Short Line Railway Company, thence westerly, along said south line, one hundred and seventy-six and fifty-four hundredths (176.54) feet to the place of beginning, the same being part and parcel of Government Lot One (1) in Section Seventeen (17), and Lots Two (2) and Three (3) in Section Eighteen (18), in Township Forty-nine (49) North, of Range Fourteen (14) West of the Fourth Principal Meridian, reserving the right to the said party of the first part to lay and dedicate a highway, forty feet in width across the northerly end of said tract.

EXCEPT the northerly one hundred (100) feet of the above described property.

RESOLVED, that the proper city officials are hereby authorized to execute such documents as are necessary to complete said transaction.

RESOLVED, that in order to comply with the Department of Natural Resources Remediation Fund Grant Program Agreement Number RM06-402 the city of Duluth does hereby impose the following restrictions on the property:

(a) The property shall be managed and maintained consistent with the purpose and type of property acquired using appropriate management and protection practices to protect the natural resources;

(b) The city of Duluth shall not at any time convert any portion of the acquired property to uses other than permitted in this agreement without the prior written approval of the state;

(c) This interest in real property shall be administered in accordance with the terms, conditions, and purposes of the grant agreement controlling the acquisition of the property. The interest in real property, or any portion of the interest in real property, shall not be sold, transferred, pledged or otherwise disposed of or further encumbered without obtaining the prior written approval of the commissioner of natural resources.

Resolution 06-0655 was unanimously adopted.

Approved September 25, 2006

HERB W. BERGSON, Mayor

- - -

The following resolutions were also considered:

BY COUNCILOR STOVER:

RESOLVED, that Salo Engineering, Inc., be and hereby is awarded a contract for the

Garfield Service Center paved parking lot/storage site in accordance with specifications on its proposal of \$10,299.01, terms net 30, FOB destination, payable as follows:

- (a) \$3,089.70 from Water Fund 0510, Department/Agency 0500, Organization 1915, Object 5441 (30 percent);
- (b) \$1,029.90 from Gas Fund 0520, Department/Agency 0500, Organization 1915, Object 5441 (ten percent);
- (c) \$3,089.71 from Sewer Fund 0530, Department/Agency 0500, Organization 1915, Object 5441 (30 percent);
- (d) \$3,089.70 from the Stormwater Fund, Department/Agency 0500, Organization 1915, Object 5441 (30 percent).

Resolution 06-0663 was adopted upon the following vote:

Yeas: Councilors Johnson, Krause, Little, Ness, Stauber, Stewart, Stover and President Reinert -- 8

Nays: None -- 0

Abstention: Councilor Gilbert -- 1

Approved September 25, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

BE IT RESOLVED, that the city council of the city of Duluth hereby approves the permanent expansion of the designated serving area of the following on sale intoxicating liquor license for the period ending August 31, 2007, subject to departmental approvals:

Duluth Elk's Lodge #133, 4250 Haines Road.

Resolution 06-0680 was adopted upon the following vote:

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

Nays: None -- 0

Abstention: Councilor Krause -- 1

Approved September 25, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0661, by Councilor Gilbert, denying a rezoning petition to provide for the reclassification from M-1, Manufacturing, to C-1, Commercial District, property located at 1901 South Street (Joseph and Rose Kleiman), was introduced for discussion.

Councilor Johnson moved to table the resolution so that it can be considered with Ordinance 06-035 on October 10, which motion was seconded and unanimously carried.

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Resolution 06-0675, by Councilor Gilbert, vacating the southeasterly eight feet of 29th Street, between Lake Avenue and Minnesota Avenue on Park Point (Susan Peters), was introduced for discussion.

Councilor Stewart urged councilors to vote against this vacation as it allows for much larger homes on smaller lots on Park Point and diminishes public access to Lake Superior and the bay. He reviewed that this vacation is opposed by the community club and the council should establish a policy on this issue.

Resolution 06-0675 failed upon the following vote (Public Document No. 06-0925-27):

Yeas: Councilor Little -- 1

Nays: Councilors Gilbert, Johnson, Krause, Ness, Stauber, Stewart, Stover and President Reinert -- 8

- - -

Resolution 06-0692, by Councilor Gilbert, rescinding Resolution 05-0088 in its entirety and conditionally committing funding sources for acquisition of a completed public parking lot and payment for future public recreational use and programming at a new facility to replace Peterson Hockey Arena, was introduced for discussion.

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

Dick Loraas spoke in support of the heritage center, but he voiced concern on the proposed amendment as the proposed timetable makes financing and donation commitments nearly impossible. He suggested that the resolution be tabled to allow enough time for the development agreement to get done and be brought before the council for their review.

Dean Holm, president of Duluth Amateur Hockey Association, reviewed that the city needs a new arena and this project is being proposed by a reputable organization that will make this project great.

Councilor Stauber explained that there needs to be a replacement for Peterson Arena, but the project has shifted to include other sports and brought delays that will cost more money.

Councilor Ness urged councilors to pass the resolution without the amendment as this new hockey center will hold more opportunity for the city and the council should not micro manage the grassroots effort of this group who are raising substantial money for a city project.

Councilor Stewart reviewed that he had voted against the project because the source of funding is coming from the community investment trust fund and now the project has gone beyond its original scope. He continued by saying the council signed on for a publicly owned hockey arena and now the only thing the city will own will be a parking lot.

Councilor Stauber moved to table resolution for a committee meeting on October 10, which motion was seconded and carried upon the following vote:

Yeas: Councilors Gilbert, Johnson, Krause, Little, Stauber and President Reinert -- 6

Nays: Councilors Ness, Stewart and Stover -- 3

- - -

BY COUNCILOR GILBERT:

RESOLVED, that the proper city officials are hereby authorized to enter into a third amendment substantially in the form of the copy on file in the office of the city clerk as Public Document No. 06-0925-28 to the HOME program housing development projects purchase/rehabilitation/resale agreement with Neighborhood Housing Services (NHS) in order to release the \$30,000 mortgage lien by NHS in favor of the city, to require that two new mortgage liens in the amount of \$15,000 be executed on two separate condominium units in favor of the city; and upon sale to a homebuyer, to allow the condominium mortgage liens to be executed by the homebuyer in favor of the city.

Resolution 06-0695 was unanimously adopted.

Approved September 25, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0668, by Councilor Little, to establish parking meter zones on both sides of First Street between Third Avenue East and Fourth Avenue East, on the north side of First Street between Fourth Avenue East and Sixth Avenue East, on the south side of First Street from 125 feet west of Sixth Avenue East to Sixth Avenue East, on the west side of Third Avenue East between Second Street Alley and Second Street, and on the west side of Fourth Avenue East

between Superior Street and Second Street, and rates and time limits therefor, was introduced for discussion.

Several councilors stated that this is a low income area and this would be a hardship for these residents that live on the street to have to pay for meters or parking permits.

Councilor Gilbert stated that landlords have a responsibility to provide off street parking for their tenants.

Resolution 06-0668 failed upon the following vote (Public Document No. 06-0925-29):

Yeas: Councilors Gilbert, Johnson and Stover -- 3

Nays: Councilors Krause, Little, Ness, Stauber and Stewart -- 5

Abstention: President Reinert -- 1

- - -

Resolution 06-0669, by Councilor Little, to establish no parking on various streets, was introduced for discussion.

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

Harvey Anderson, representing St. Mary's Medical Center (SMDC), reviewed that there has been no parking on parts of First Street for three years because of the construction and SMDC is requesting a continuation of the no parking because of the large volume of cars that will be using the parking ramps and pedestrians entering their facilities.

Councilor Krause suggested that any change for parking on First Street should wait until the construction is done to see what the traffic counts are for the area.

Resolution 06-0669 was adopted as follows:

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 the following street: the south side of East First Street between Fourth Avenue East and 125 feet west of Sixth Avenue East.

Resolution 06-0669 was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Little, Ness, Stauber, Stewart and Stover -- 7

Nays: Councilor Krause -- 1

Abstention: President Reinert -- 1

Approved September 25, 2006

HERB W. BERGSON, Mayor

- - -

At this time, 8:40 p.m., Councilor Gilbert left his seat.

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### **INTRODUCTION AND CONSIDERATION OF ORDINANCES**

The following entitled ordinances were read for the first time:

BY COUNCILOR STEWART

06-038 - AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF \$1,225,000 GENERAL OBLIGATION REVENUE BONDS OF THE CITY OF DULUTH FOR THE IMPROVEMENT OF THE MUNICIPAL GAS 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 STEWART

06-039 - AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF

\$1,000,000 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 STEWART

06-040 - AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF \$1,150,000 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 GILBERT

06-035 - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NO. 38 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM M-1, MANUFACTURING DISTRICT, TO C-1, COMMERCIAL DISTRICT, PROPERTY LOCATED AT 1901 SOUTH STREET (JOSEPH AND ROSE KLEIMAN).

- - -

BY COUNCILOR GILBERT

06-036 - 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-3, APARTMENT RESIDENTIAL, TO R-2, TWO FAMILY 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 from speakers on the ordinance.

Diana Hunter, Deb Anderson and Mark Borak reviewed the history of the rezoning of the property and that the neighborhood was opposed to the R-3 zoning when it first came before the council in 2004. The concern raised is that the developer has not done any work on the project and the city land that was rezoned from R-2 to R-3 as a condition of the project could potentially be sold and a new development could take place that would be adverse to the neighborhood. Ms. Hunter urged support of this ordinance as it would change the zoning of the city land back to its original status.

- - -

The following entitled ordinances were read for the second time:

BY COUNCILOR STEWART

06-033 (9791) - 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 \$4,525,000 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 Stewart moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Johnson, Krause, Little, Ness, Stewart, Stover and President Reinert -- 7

Nays: Councilor Stauber -- 1

Absent: Councilor Gilbert -- 1

- - -

BY COUNCILOR LITTLE

06-032 (9792) - AN ORDINANCE REGULATING SMOKING NEAR MEDICAL FACILITIES; AMENDING DULUTH CITY CODE, 1959, AS AMENDED, BY ADDING A NEW SECTION 28-72.

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

Jim Taylor, Ron Franzen, John Kangas, Marla Halvorson and Terry Clarke spoke in favor of the ordinance for the following reasons: the lung association and the hospitals' goal is to prevent and promote lung health; tobacco use is the most harmful for lungs; a smoker has a responsibility not to expose the harmful effect of secondhand smoke to others; as corporate citizens, the healthcare community supports the ordinance; the ordinance makes a statement to the employees and patients that they want a clean and safe working environment; the hospitals will be responsible for enforcement; this would only apply to public property 100 feet from the hospital; the hospitals need the city as a partner to help make this public safety policy a success and smoke free environments have evolved during the years and having a smoke free hospital campus is the next step.

Councilor Stewart stated that this ordinance would also apply to residential buildings that are next to the hospitals which would make the homeowner violate City Code by smoking outside their building. He continued by saying that there should be another way of handling this problem without an ordinance change.

Councilor Krause voiced concern with the spot zoning for these areas which would allow other businesses to request the same ordinance change for them.

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

Yeas: Councilors Johnson, Little, Ness, Stauber and President Reinert -- 5

Nays: Councilors Krause, Stewart and Stover -- 3

Absent: Councilor Gilbert -- 1

- - -

BY COUNCILOR STAUBER

06-034 - AN ORDINANCE AMENDING CHAPTER 47, ARTICLE III OF THE DULUTH CITY CODE, REGULATING TAXICABS.

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

Ray Krahl, Kim McKay, Dennis Mitchell, Mary Mishler, Tony Mitchell, Bill Thompson and John Ramos spoke in opposition to the ordinance for the following reasons: this would start a cab war in town; it would increase their operating costs; the public likes to know what the fees are; without meters there would be no standards; the drivers could charge whatever they wanted to and it would be a disservice to the public, especially the elderly.

Dan O'Hearon urged councilors to support the ordinance as: it would make the taxi business a free enterprise; he would be able to allow discounts to customers and place ads in the newspaper that are not currently allowed by the Code and this change would help create better cab companies.

Councilor Stauber reviewed that the council deregulated the number of licensed taxicabs and opened the doors to competition, but the city continues to set the rates when the taxicab companies should set the rates when it is their business.

Councilor Ness stated that the taxicab companies who have been in business for several years deserve to have stability in their business without fear of being undercut by any new company coming into town.

Councilor Little moved to amend the ordinance to retain the current insurance rate requirements, which motion was seconded and carried upon the following vote:

Yeas: Councilors Johnson, Little, Ness, Stauber and Stewart -- 5

Nays: Councilors Krause, Stover and President Reinert -- 3

Absent: Councilor Gilbert -- 1

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

Yeas: Councilors Johnson and Krause -- 2

Nays: Councilors Little, Ness, Stauber, Stewart, Stover and President Reinert -- 6

Absent: Councilor Gilbert -- 1

President Reinert stated that although he was not going to support this ordinance, he would be willing to work on ordinance changes to allow more flexibility in the Code.

Councilor Stauber moved passage of the ordinance and the same failed upon the following vote (Public Document No. 06-0925-30):

Yeas: Councilors Little, Stauber and Stewart -- 3

Nays: Councilors Johnson, Krause, Ness, Stover and President Reinert -- 5

Absent: Councilor Gilbert -- 1

- - -

BY COUNCILOR STAUBER AND PRESIDENT REINERT

06-031 - AN ORDINANCE REGULATING THE SALE OF CITY PARK LAND AND THE USE OF PROCEEDS OF SUCH SALE; ADDING A NEW SECTION 2-179 TO THE DULUTH CITY CODE, 1959, AS AMENDED.

Councilor Stauber reviewed that the council currently has the authority to sell park land, but this ordinance would designate where the proceeds would go. He also stated that the parks and recreation commission is recommending approval of this ordinance.

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

Rob Morohn spoke against selling the city's park land and regulating where the money would be spent to help fix financial problems for the city.

Councilor Stewart stated that dedicating funds from the sale of park land is not fair to future councils and city officials when financial needs may be different in the future.

Councilor Little expressed concern that the city would consider selling park lands in order to fund a deficit in the parks and recreation department.

Councilor Stauber moved passage of the ordinance and the same failed upon the following vote (Public Document No. 06-0925-31):

Yeas: Councilors Krause, Stauber, Stover and President Reinert -- 4

Nays: Councilors Johnson, Little, Ness and Stewart -- 4

Absent: Councilor Gilbert -- 1

- - -

The meeting was adjourned at 10:00 p.m.

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

- - -

**ORDINANCE NO. 9791**

BY COUNCILOR STEWART:

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 \$4,525,000 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:

(a) Improvements to and equipment for the Duluth Steam Plant for energy savings and operating efficiencies through, or associated with, the guaranteed energy savings contract with Johnson Controls, Inc., which provide for the following:

- (1) Reinsulating approximately 5,950 feet of steam distribution lines;
- (2) Installing approximately 128 insulating valve blankets in the distribution system;
- (3) Installing a water softening system for four boilers;
- (4) Modifying three coal pulverizers to increase boiler efficiency;
- (5) Installing a combustion control system for the operation of four boilers;

(b) Improvements to and equipment for the Duluth Steam Plant for replacement of the coal conveyor system, repairs to the stack, replacement of the coal pulverizer for boiler number three and funding for the short fall for costs to construct facilities to transport heat and chilled water and related improvements to the Duluth Entertainment Convention Center for use in heating and cooling the DECC;

and determines that it is necessary to issue general obligation revenue bonds in an amount not exceeding \$4,525,000 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 \$105,000; dated December 1, 2000, now outstanding in the amount of \$185,000; dated February 1, 2002, now outstanding in the amount of \$230,000; dated September 1, 2003, now outstanding in the amount of \$2,115,000; and dated June 1, 2005, now outstanding in the amount of \$1,250,000. 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, September 1, 2003, and June 1, 2005.

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 \$4,525,000 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: November 5, 2006)

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

Yeas: Councilors Johnson, Krause, Little, Ness, Stewart, Stover and President Reinert -- 7

Nays: Councilor Stauber -- 1

Absent: Councilor Gilbert -- 1

ATTEST:

JEFFREY J. COX, City Clerk

Passed September 25, 2006

Approved September 25, 2006

HERB W. BERGSON, Mayor

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**ORDINANCE NO. 9792**

BY COUNCILOR LITTLE:

AN ORDINANCE REGULATING SMOKING NEAR MEDICAL FACILITIES; AMENDING DULUTH CITY CODE, 1959, AS AMENDED, BY ADDING A NEW SECTION 28-72.

The city of Duluth does ordain:

Section 1. That the Duluth City Code, 1959, as amended, be amended by adding to Article VII a new Section 28-72 to read as follows:

Sec. 28-72. Smoking outdoors--near medical facilities.

(a) Medical facility means any medical hospital, medical or dental clinic;

(b) Public place means any public street, public sidewalk, public easement, publicly owned property, public park, publicly owned or operated parking lot or parking facility.

(c) Smoke or smoking means the use or possession of a lighted cigar, cigarette, pipe, tobacco smoking device or any other lighted smoking equipment.

(d) No person shall smoke in any public place within 100 feet of the nearest property line of a medical facility, said 100 feet measured in a straight line of constant elevation.

(e) The prohibition of (d), above, does not apply to a person inside an enclosed motor vehicle in motion on a public street or alley.

Section 2. That this ordinance shall take effect July 1, 2007. (Effective date: July 1, 2007)

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

Yeas: Councilors Johnson, Little, Ness, Stauber and President Reinert -- 5

Nays: Councilors Krause, Stewart and Stover -- 3

Absent: Councilor Gilbert -- 1

ATTEST:

JEFFREY J. COX, City Clerk

Passed September 25, 2006

Approved September 25, 2006

HERB W. BERGSON, Mayor

**OFFICIAL PROCEEDINGS**

Duluth City Council meeting held on Tuesday, October 10, 2006, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: None -- 0

- - -

The minutes of council meetings held on August 14, 24 and 28, 2006, were approved upon a unanimous vote.

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**PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS**

06-1010-01 Duluth Teacher's Credit Union, et al. (three signatures), petition to vacate alley in Lots 1, 2, 3, 4, 5 and 6, Blocks 2 and 11, Whipple's Addition; and Lots 6 and 7 and the north 11 feet of Lot 8, along the south six feet of Lot 5, Block 1, Whipple's Addition; the east facing side of Lot 1, Block 1, Whipple's Addition; and the northerly 12 feet of Lot 1, Block 1, facing the northerly 12 feet of Lot 1, Block 2, Whipple's addition. -- Assessor

06-1010-02 Seth Oliver application for concurrent use permit to construct two balconies above 414 West First Street. -- Planning commission

06-1010-03 SVCNDA petition to vacate a ten foot alley between Lots 1, 2, 3, 4, 4-1/2 and 5, Block 186, from 50th Avenue West to existing 16 foot alley, West Duluth Seventh Division. -- Assessor

06-1010-04 Minnesota state auditor management and compliance report for the city of Duluth for the year ended December 31, 2005. -- Received

06-1010-15 Robert Finnigan, by Mark Pilon, attorney, communication regarding the proposed reclassification from R-3 to R-2 property located northwest of Mesaba Avenue Between Second Avenue West and West Cascade Street (06-036-O). -- Received

06-1010-05 The following communications regarding the proposed reclassification from M-1 to C-1 property located at 1901 South Street (06-0661R and 06-035-O): (a) Mags David; (b) Joseph Kleiman -- Received

06-1010-06 The following communications regarding the proposed Heritage Sports facility (06-0692R): (a) Ed Allan; (b) Brian Amundson; (c) Brenda Anderson; (d) Kurt and Rachel Anderson; (e) Lance Autio; (f) Terri Balaich; (g) Cory Bates; (h) Steve Bauer; (i) Dorian Beaulieu; (j) Brian and Sandy Bergerson; (k) Kristin and Steve Bergerson; (l) Patrick Bergquist; (m) Tim Bradshaw; (n) Margie Brady; (o) Shane Bubacz; (p) Tom Budisalovich; (q) Patrick J. Burke; (r) Greg Carlson; (s) Andrea Cartier Black; (t) Matt Cartier; (u) Luke Clough; (v) Ryan Coole; (w) Pauline M. Davies; (x) Dan and Darcie Defrang; (y) Jeffrey Doig; (z) Jill A. Eichenwald Cornwell; (aa) Julie Erickson; (bb) Pat Fairchild; (cc) Mike Farrell; (dd) Noah and Angie Finch; (ee) Bryce and Edie Fontaine; (ff) Jason Francisco; (gg) Bridget Friday; (hh) Kelly and Kent Fugere; (ii) Donald W. Gabbert; (jj) Joe Golcz; (kk) Donn Groth; (ll) Corry Gruwell; (mm) Branden Hakala; (nn) Nicole Hautajarvi; (oo) Jeff Heikkila; (pp) Natalie Hoff; (qq) Frank Holappa; (rr) Carla Holm; (ss) Dean Holm; (tt) Donald Holm; (uu) Duane Holm; (vv) Jeff, Michelle, Brenna, Colin, Kelsey and Ryan Humphreys; (ww) David Ierino; (xx) Jamar Company; (yy) Joe Jeannette; (zz) Linda Jeannette; (aaa) Jeffrey Jensen; (bbb) Jodie Johnson; (ccc) Karl Johnson; (ddd) Kurt Johnson; (eee) David A. Jones; (fff) Jason Ketola; (ggg) Cindy Kerr; (hhh) Christian Koelling; (iii) Angie LaFlamme; (jjj) Paul Laskowski; (kkk) Mike Lebsack; (lll) Steve Lent;

(mmm) Cindy Lieftring; (nnn) Deb Logergren; (ooo) Patti Logergren; (ppp) Elizabeth Lundgren; (qqq) Mary Magnuson; (rrr) Darrin and Jen Mass; (sss) Matt Mathias; (ttt) Jodi McShane; (uuu) Steve Meyer; (vvv) Steve Miller (2); (www) Adam C. Nelson; (xxx) Charles H. Nelson, Jr.; (yyy) Brant Nicklin; (zzz) Randy Norton; (aaaa) Angela L. O'Connell; (bbbb) Pat O'Connell; (cccc) James A. Olson; (dddd) Heather Opsahl; (eeee) Scott Patten; (ffff) John Paulson; (gggg) Steve Payette; (hhhh) Michael R. Pennington; (iiii) Michelle Peterson; (jjjj) Katie Pfeffer; (kkkk) Bob Pratt; (llll) Anders Priley; (mmmm) Ginny Randolph; (nnnn) Kari Rengo; (oooo) Shawn Roed; (pppp) Ben Ross; (qqqq) John and Chris Ross; (rrrr) Travis Rybchinski; (ssss) Steve Samuelson; (tttt) Greg Schendel; (uuuu) Dave Schuman; (vvvv) Terri Schuman; (wwww) Adam Shadiow; (xxxx) Shane Simonette; (yyyy) Laura Simonson; (zzzz) Steve Sutherland; (aaaaa) Tracey Tellor; (bbbbb) Jim Thole; (ccccc) Chad and Erica Thompson; (ddddd) Pam Tomassoni; (eeeeee) Pokey and Cathie Trachsel; (fffff) Chris Trapp; (ggggg) Karen Turnboom; (hhhhh) Mark Udd; (iiiiii) Carol Valentini; (jjjjj) Jason Watt; (kkkkk) Leah Wrazidlo. -- Received  
06-1010-16 The following communications regarding the proposed ordinance providing for labor union organization procedures for certain city projects (06-042-O): (a) Wayne C. Anderson; (b) Roni Budde; (c) Todd Fedora; (d) Robert Fryberger; (e) Jim Gustafson; (f) Jim Jarocki; (g) Jack Kuriger; (h) Seth Oliver; (i) Mark Signorelli; (j) Dan Stocke. -- Received

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#### **REPORTS FROM THE ADMINISTRATION**

06-1010-28 Chief Administrative Officer report on the status of labor contract negotiations. -- Received

Chief Administrative Officer Hall reported that in light of AFSCME local deciding to hold a press conference today relative to negotiations a written report from the administration relative to this issue is being presented this evening.

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#### **REPORTS FROM OTHER OFFICERS**

06-1010-07 Assessor:

(a) For confirmation the assessment roll of delinquent stormwater utility fees during the period of January 1, 2004, and December 31, 2005;

(b) Letter of sufficiency of petition to vacate a ten foot alley between Lots 1, 2, 3, 4, 4-1/2 and 5, Block 186, from 50th Avenue West to existing 16 foot alley, West Duluth Seventh Division. -- Received

06-1010-08 Clerk application to the Minnesota gambling control board for exemption from lawful gambling license from Duluth Amateur Hockey Association on January 12, 2007 (raffle). -- Received

06-1010-09 Parks and recreation department director Lake Superior zoological society: (a) Education and executive reports for September 2006; (b) Minutes of July 19, 2006, meeting. -- Received

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#### **REPORTS OF BOARDS AND COMMISSIONS**

06-1010-10 Board of zoning appeals minutes of July 25, 2006, meeting. -- Received

06-1010-11 Duluth airport authority unaudited balance sheet of July 31, 2006. -- Received

06-1010-12 Duluth transit authority minutes of June 28, 2006, meeting. -- Received

06-1010-13 Library board minutes of August 22, 2006, meeting. -- Received

06-1010-14 Planning commission minutes of September 12, 2006, meeting. -- Received  
06-1010-17 Tree commission 2005 annual report. -- Received

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### **OPPORTUNITY FOR CITIZENS TO BE HEARD**

KL Lewis felt that support for police, fire and snow removal be given a priority in the budget process and that she has never seen a parking ramp produce as much light as the new parking ramp on First Street does. She also felt that there does not need to be additional street lighting by this parking ramp and that in the later evening hours half of the lights could be off and only become activated by a motion detector.

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Dave Barsdorf commented on the retirees healthcare issue by suggesting that the city secure more funds from the casino and that if the city raises property and/or utility rates that many individuals would be forced out of their homes.

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### **RESOLUTION FOR RECONSIDERATION**

Councilor Stauber moved to reconsider Resolution 06-0675, vacating the southeasterly eight feet of 29th Street, between Lake Avenue and Minnesota Avenue on Park Point (Susan Peters), which motion was seconded and failed as follows:

Yeas: Councilors Little, Ness and Stauber – 3

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

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### **RESOLUTIONS TABLED**

Councilor Gilbert moved to remove Resolution 06-0661, denying a rezoning petition to provide for the reclassification from M-1, Manufacturing, to C-1, Commercial District, property located at 1901 South Street (Joseph and Rose Kleiman), from the table, which motion was seconded and unanimously carried.

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### **INTRODUCTION AND CONSIDERATION OF ORDINANCES**

BY COUNCILOR GILBERT

06-035 (9796) - AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NO. 38 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM M-1, MANUFACTURING DISTRICT, TO C-1, COMMERCIAL DISTRICT, PROPERTY LOCATED AT 1901 SOUTH STREET (JOSEPH AND ROSE KLEIMAN).

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 from a speaker on the issue.

Joe Kleiman expressed support for the ordinance, noting that in addition to the commercial aspect this would be an opportunity to provide some residential apartments on the upper level.

Resolution 06-0661 failed upon a unanimous vote (Public Document No. 06-1010-18).

- - -

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

- - -

Councilor Little moved to remove Resolution 06-0564, to remove the one-way designation from East First Street between 12th and 24th avenues East, from the table, which motion was seconded and unanimously carried.

Councilor Little moved to remove the resolution from the agenda and refer it back to the administration, which motion was seconded and unanimously carried.

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Councilor Little moved to remove Resolution 06-0565, to establish no parking on various streets, from the table, which motion was seconded and unanimously carried.

Councilor Little move to remove the resolution from the agenda and refer it 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 Reinert moved passage of the consent agenda, which motion was seconded and unanimously carried.

BY COUNCILOR KRAUSE:

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 06-0697 was unanimously adopted.

Approved October 10, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointment of Charles Andresen, replacing Howard Martz, by Mayor Bergson to the board of zoning appeals for the term expiring on July 31, 2010, is confirmed.

Resolution 06-0708 was unanimously adopted.

Approved October 10, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the reappointments of Dennis Lamkin and Jonathan Lee by Mayor Bergson to the Duluth public arts commission for terms expiring on September 30, 2009, are confirmed..

Resolution 06-0709 was unanimously adopted.

Approved October 10, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointment of Cynthia Hagley (environmental), replacing David J.

Smith, who resigned, by Mayor Bergson to the environmental advisory council for a term expiring on January 5, 2008, is confirmed..

Resolution 06-0710 was unanimously adopted.

Approved October 10, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the reappointment of Brian Allen (professional) and the appointment of Charles Korsch replacing Therese Vaughn by Mayor Bergson to the tree commission for terms expiring on August 31, 2009, are confirmed.

Resolution 06-0711 was unanimously adopted.

Approved October 10, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointments by Mayor Bergson of Cheryl Graham and Cherie Sawinski to the sister city commission for terms expiring on March 30, 2008, and 2009, respectively, are confirmed.

RESOLVED FURTHER, that the appointment by Mayor Bergson of Randal Zimmermann to the sister city commission for a term expiring on March 30, 2009, replacing Isobel Rapaich who resigned, is confirmed.

Resolution 06-0715 was unanimously adopted.

Approved October 10, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

The city council finds a sufficient petition was filed with the city clerk requesting the vacation of Helm Avenue and Michigan Street in O'Hara's Division legally described as: Helm Avenue from the corner of Lots 10 and 11 in Block 22, to the corner of Lots 6 and 7 in Block 22, and vacating Michigan Street from the corner of Lots 3 and 4, Block 20, to the intersection of Helm Avenue, O'Hara's Division of Duluth; and

Pursuant to Section 100 of the City Charter and Article IV of Chapter 45 of the Duluth City Code, 1959, as amended, such petition was duly referred to the city planning commission and such commission gave due notice of public hearing and did consider same in public hearing; and

The city planning commission unanimously approved the vacation of Helm Avenue and Michigan Street retaining a 30 foot easement at its September 12, 2006, meeting.

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation of those above-described portions of the street easements for Helm Avenue and Michigan Street, more particularly described on Public Document No. 06-1010-19, retaining thereon and thereover a 30 foot wide utility easement lying 30 feet northwesterly of the following described line:

Commencing at the northwest corner of Lot 7 of Block 22 of O'Hara's Division of Duluth, being the point of beginning; thence northeast along the southerly right-of-way line of Helm Street to the extension of the southeast right-of-way line of Michigan Street; thence northeast along the southeast right-of-way line of Michigan Street to a point 50 feet southwest from the northeast corner of Lot 1 of Block 20 of O'Hara's Division of Duluth and there terminating.

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 06-0659 was unanimously adopted.

Approved October 10, 2006

HERB W. BERGSON, Mayor

- - -

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 parcels for street and utility purposes:

That part of the Southwest Quarter of Southwest Quarter of Section 13, Township 49 North, Range 15 West of the Fourth Principal Meridian lying within parcel beginning on west line of Section 24, 1,177.03 feet south of northwest corner; thence northeasterly along a line parallel with and 44.50 feet southeasterly at right angles from centerline of Fond du Lac branch main track to a point on south line of Pulaski Street; thence east along south line 90.00 feet to east line of Southwest Quarter of Southwest Quarter, Section 13; thence southwesterly to a point on south line of Southwest Quarter of Southwest Quarter 383.20 feet west of the southeast 1/16 corner of Forty; thence West along south line of Forty 29.80 feet; thence southwesterly along a line parallel with and distant 194.50 feet easterly at right angles to track centerline to west line of Section 24; thence north along west line to point of beginning.

Except:

That part of the Southwest Quarter of Southwest Quarter of Section 13, Township 49 North, Range 15 West of the Fourth Principal Meridian, St. Louis County, Minnesota, lying southeasterly of a line described as follows:

Commencing at the intersection of the south line of said Southwest Quarter of the Southwest Quarter with the southeasterly right-of-way line of the Burlington Northern, Inc. (formerly the Duluth Transfer Track of the Pacific Railway) as located; thence on an assumed bearing of north 89 degrees 38 minutes 10 seconds east, along said south line, a distance of 115.91 feet to the point of beginning of the line to be described; thence north 32 degrees 43 minutes 19 seconds east, a distance of 389.84 feet; thence north 43 degrees 56 minutes 11 seconds east, a distance of 347.41 feet to the south line of Pulaski Street as located and there terminating.

Resolution 06-0720 was unanimously adopted.

Approved October 10, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR NESS:

RESOLVED, the proper city officers are hereby authorized and directed to execute an amendment to an agreement between the city of Duluth and the St. Louis County board for the furnishing of home delivered meals for senior citizens for the period of October 1, 2006, through December 31, 2006, to increase the payment for elderly waiver meals from \$5.94 to \$6.08. Said agreement is filed as Public Document No. 06-1010-20. Monies collected under said agreement shall be deposited in Federal Program Fund 272, Department 031, Revenue Source 4654-02.

Resolution 06-0690 was unanimously adopted.

Approved October 10, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR NESS:

RESOLVED, that proper city officials are hereby authorized to enter into an agreement, substantially in the form of that on file with the office of the city clerk as Public Document No. 06-1010-21, with Job Service for the provision of dislocated worker services pursuant to the Workforce Investment Act and Minnesota Statutes, Chapter 268, at costs not to exceed \$97,259 for the federal program (for the period July 1, 2006 - June 30, 2007), \$161,584 for state program (for the period July 1, 2006 - June 30, 2007), and \$76,000 for the state airline worker program (for the period July 1, 2006 - December 31, 2006); funds will be payable from Fund 268, Agency 031, Organization 6211 (federal program), 6210 (state program) and 6212 (airline workers).

Resolution 06-0694 was unanimously adopted.

Approved October 10, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR NESS:

RESOLVED, that proper city officials are hereby authorized to enter into an agreement, substantially in the form of that on file with the office of the city clerk as Public Document No. 06-1010-22, with Senior Service America, Inc., (SSAI) to serve Duluth residents age 55 and over with work experience training and services pursuant to the Laws of Minnesota, 1967, Chapter 374, in the amount of \$196,105 for the period of October 1, 2006, to June 30, 2007. Program funds will be accepted upon receipt of notices of funds available. Monies received shall be deposited in Fund 270, Agency 031, Organization 6330.

FURTHER RESOLVED, that at the time the city implements its system by which each city program is charged an amount to fund retiree health insurance, which amount is transferred to a fund or trust, the programs funded by this contract will be charged at the same rate and the funds will be transferred and used in the same manner.

Resolution 06-0698 was unanimously adopted.

Approved October 10, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the contract with United Electric Company for motor control equipment and switchgear is amended by \$13,890.80 (\$13,043 plus sales tax of \$847.80), for a new total of \$66,533.75 (\$62,473 plus sales tax of \$4,060.75) payable out of the Water Fund 0510, Department/Agency 500, Organization 1955 and Object 5404.

Resolution 06-0696 was unanimously adopted.

Approved October 10, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that KTM Paving, Inc., be and hereby is awarded a contract for the snow plowing of municipal parking lots and ramps as needed during the 2006-2007 winter season for the facilities management division in accordance with its low bid of \$1,104 per one-time plowing of lots, for a total estimated amount of \$25,000, terms net 30, FOB job sites, payable from General Fund 0100, Department/Agency 015, Organization 1515-2500, Object 5402.

Resolution 06-0701 was unanimously adopted.

Approved October 10, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the property city officials are hereby authorized to enter into a cooperative agreement, a copy of which is on file in the office of the city clerk as Public Document No. 06-1010-23, with the St. Louis County land department for the combined sale of adjoining city-owned property and tax forfeited property near the intersection of Mesaba Avenue and Central Entrance.

Resolution 06-0704 was unanimously adopted.

Approved October 10, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Resolution 06-0620 be and hereby is amended to increase the contract with Holiday Stationstores, Inc., for fuel as needed through December 31, 2006, by \$200,000, for a new total of \$650,358, terms net 30, FOB destination, payable out of the Fleet Services Fund 660, Department/Agency 015, Object 5212.

Resolution 06-0717 was unanimously adopted.

Approved October 10, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Stout Mechanical, Inc., be and hereby is awarded a contract for the installation of hot water supply and return lines to Canal Park Inn - Lodge on Lake Superior in accordance with specifications on its low specification bid of \$186,000, terms net 30, FOB job site, payable out of Steam Fund 540, Department/Agency 920, Organization 1499, Object 5530; Requisition No. 2006-00000-665.

Resolution 06-0725 was unanimously adopted.

Approved October 10, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Apex Mechanical be and hereby is awarded a contract for the New San Marco Apartments steam line installation in accordance with specifications on its low specification bid of \$80,700, terms net 30, FOB job site, payable out of Steam Fund 540, Department/Agency 920, Organization 1499, Object 5530; Requisition No. 2006-00000-667.

Resolution 06-0726 was unanimously adopted.

Approved October 10, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

RESOLVED, that the St. Louis County sheriff be and hereby is authorized to provide identification services for the city of Duluth police department during year 2006 for an estimated cost of \$13,495, payable out of General Fund 0100, Department/Agency 200, Organization 1610, Object 5319.

Resolution 06-0702 was unanimously adopted.

Approved October 10, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

RESOLVED, that the proper city officials are hereby authorized to execute a maintenance agreement with St. Louis County for computer hardware and software associated with participation in a shared integrated criminal justice system known as NEMESIS (Northeastern Minnesota Enforcement and Safety Information System), for \$27,500.28, terms net 30, FOB destination, payable from General Fund 100, Department/Agency 200, Organization 1610, Object 5404.

Resolution 06-0703 was unanimously adopted.

Approved October 10, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

RESOLVED, that the proper city officials are hereby authorized to annually close those portions of Lincoln Park Drive specified below between the dates specified with regard thereto:

ROAD SEGMENTS CLOSED	CLOSURE DATES
Lincoln Park Drive from 0.3 miles north of Third Street to the access road from Lincoln Parkway.	November 1 through April 15 of the following year.

Resolution 06-0705 was unanimously adopted.

Approved October 10, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STAUBER:

RESOLVED, that the proper city officers are authorized to enter into an agreement with the Lake Superior Zoological Society, Inc., amending in part the current agreement, said agreement to be substantially in the form of Public Document No. 06-1010-24 on file in the office of the city clerk.

Resolution 06-0693 was unanimously adopted.

Approved October 10, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STAUBER:

RESOLVED, that the city of Duluth accepts the gift of up to \$50,000 from the Duluth Public Library Foundation and conditions thereon, for use for the Duluth public library to purchase library materials, and, on behalf of the city, thanks the Duluth Library Foundation for their generous gift; gift to be deposited in Fund 100-300-1702-4660.

Resolution 06-0707 was unanimously adopted.

Approved October 10, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, that the proper city officers are authorized to execute and implement an agreement with William Starks providing for his use of the Washington Recreation Center for his basketball league activities for a seasonal period beginning on the first Sunday of November and

ending on the last Sunday in March during the years 2006-2009; said agreement to be substantially in the form of Public Document No. 06-1010-25 on file in the office of the city clerk; said monies to be deposited into Fund 210-030-3190-4644.

Resolution 06-0713 was unanimously adopted.

Approved October 10, 2006

HERB W. BERGSON, Mayor

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The following resolutions were also considered:

Resolution 06-0699, by Councilor Stewart, confirming the assessment roll of delinquent stormwater utility fees during the period of January 1, 2004, to December 31, 2005, as provided for in Article XI of Chapter 43 of the Duluth City Code, was introduced for discussion.

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

Kenneth Anderson commented on: the legality of putting this fee onto his and others taxes; he and his neighbors are not on any storm or sanitary system; they keep their own culvert cleaned; the city is not supplying any utilities to them and they are not going to pay this until they receive some city services.

Councilors Ness, Stauber and Stewart opposed the resolution because: you pay a fee when there is a service provided and there is no service being provided here; property taxes should be increased to cover this amount, if necessary; it is not justifiable to charge this to the rural residents and a fair mechanism needs to be created to address this issue.

Mr. Hall reviewed how the residents in this area do benefit through such items as city ditching and culvert repair.

City Attorney Brown reviewed the legalities of this issue.

Resolution 06-0699 was adopted as follows:

BY COUNCILOR STEWART:

RESOLVED, that the assessment roll on file in the office of the city clerk as Public Document No. 06-1010-07(a), which is levied to collect delinquent stormwater utility fees payable during the period of January 1, 2004, to December 31, 2005, as provided for in Article XI of Chapter 43 of the Duluth City Code, and to be deposited in Fund 535, is hereby confirmed.

Resolution 06-0699 was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Krause, Stover and President Reinert -- 5

Nays: Councilors Little, Ness, Stauber and Stewart -- 4

Approved October 10, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that the city of Duluth does hereby authorize acceptance of reimbursement from the Duluth economic development authority (DEDA) for certain Baywalk construction expenses related to a Baywalk over property owned by Marine Iron and Shipbuilding Company (Marine Iron) in the amount of \$225,000, said funds to be deposited into Fund 255.

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. 06-1010-27(a), with Marine Iron, in the amount of \$65,000, payable from Fund 255, reimbursement by Marine Iron for certain construction costs in the amount of \$65,000, payable into Fund 255.

FURTHER RESOLVED, that the proper city officials are hereby authorized to enter into a license agreement substantially in the form of that on file in the office of the city clerk as Public Document No. 06-1010-27(b) with Marine Iron.

Resolution 06-0714 was adopted upon the following vote:

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

Nays: Councilor Little -- 1

Approved October 10, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

RESOLVED, that Letourneau and Sons, Inc., be and hereby is awarded a contract for construction of Baywalk extension Phase V in accordance with its low bid of \$225,000, terms net 30, FOB destination, payable out of the Economic Development Fund 0255, Department/Agency 020, Object 5330.

Resolution 06-0716 was adopted upon the following vote:

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

Nays: Councilor Little -- 1

Approved October 10, 2006

HERB W. BERGSON, Mayor

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Resolution 06-0718, by Councilor Gilbert, amending Resolution 05-0641 to authorize a housing investment fund (HIF) loan agreement in the amount of \$150,000 with Matterhorn Apartments, LLC, for the Village at Matterhorn project and authorizing execution of documents related thereto, was introduced for discussion.

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

Mark Pilon, counsel to the developer, stated the only changes to the prior resolution are: the name of the developer and that the mortgage received as collateral for the loan is going to be a mortgage of a long term ground lease hold in the property.

Councilors Stewart and Krause opposed the resolution for reasons of: taxpayers should not be funding developments for private developers; there are rental vacancy rates of seven percent; the city should not be subsidizing more rental housing with the current vacancy rate; this development is located next to the mall, with no real location for children to go other than the mall and in the future there will be an arterial road by it, making it worse for children.

Resolution 06-0718 was adopted as follows:

BY COUNCILOR GILBERT:

BE IT RESOLVED, that Resolution 05-0641 is hereby amended to authorize an HIF loan agreement in the amount of \$150,000, substituting Matterhorn Apartments, LLC in place of The Communities Group as the contracting agency for the Village at Matterhorn project and providing for a leasehold mortgage in favor of the city as security, said agreement substantially in the form of that on file in the office of the city clerk as Public Document No. 06-1010-26(a), payable from Fund 266.

FURTHER RESOLVED, that the proper city officials are hereby authorized to enter into a mortgage loan rider substantially in the form of that on file in the office of the city clerk as Public

Document No. 06-1010-26(b) and to execute such other documents which may be required for the project, subject to review by the city attorney.

Resolution 06-0718 was adopted upon the following vote:

Yeas: Councilors Johnson, Ness, Stauber, Stover and President Reinert -- 5

Nays: Councilors Gilbert, Krause, Little and Stewart -- 4

Approved October 10, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0719, by Councilor Gilbert, authorizing agreement to acquire Lakewalk easement from Judson Hatfield trust for \$40,000, was introduced for discussion.

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

Alison Clarke expressed concern that there is no map for the proposed trail and that the agreement has just been made available.

Councilor Gilbert moved to table the resolution for a map and time to review the agreement, 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 GILBERT

06-041 - AN ORDINANCE GRANTING A CONCURRENT USE PERMIT TO MARGUERITE P. ACHESON FOR A FIXED AWNING TO PROJECT INTO AND OVER THE RIGHT-OF-WAY OF EAST SUPERIOR STREET, 47TH AVENUE EAST AND MCCULLOCH STREET FOR PROPERTY LOCATED AT 4631 EAST SUPERIOR STREET.

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BY COUNCILOR STOVER

06-042 - AN ORDINANCE PROVIDING FOR LABOR UNION ORGANIZATION PROCEDURES FOR CERTAIN CITY PROJECTS; ADDING A NEW SECTION 2-28 TO THE DULUTH CITY CODE, 1959, AS AMENDED.

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

Todd Erickson, president of Local 99, and Marlene Hart, president of Minnesota Senior Federation Northeast, supported the ordinance, citing reasons of: something needs to be done as far as fairness for nonunion workers; the current system (NLRA) to organize workers is broken; developers who want to build here, with the beautiful view, will build here; card check is the new way to organize workers; by being organized you have respect and dignity on the job; young workers are leaving the area because there are not enough living wage jobs and there is plenty of money coming into town from the tourism dollars, the problem is with how those dollars are distributed.

Andy Peterson, Duluth Chamber of Commerce, and John Rathe opposed the ordinance, citing: you cannot sector out one industry over another; you have the controls over developers with the development agreement, without a union organizing effort; card check neutrality agreements takes out the secret ballot right for employees, which is against the American right to vote privately, as with the voting booth in November; if this spreads, Duluth will be seen as more anti-business and development and with less businesses coming in, the remaining will pay more taxes and this will push businesses to Hermantown, Superior and Proctor.

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The following entitled ordinances were read for the second time:

BY COUNCILOR STEWART

06-038 (9793) - AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF \$1,225,000 GENERAL OBLIGATION REVENUE BONDS OF THE CITY OF DULUTH FOR THE IMPROVEMENT OF THE MUNICIPAL GAS UTILITY UPON TERMS AND CONDITIONS TO BE PROVIDED BY RESOLUTION OF THE CITY COUNCIL AND PLEDGING REVENUES FOR THE PAYMENT THEREOF.

- - -

BY COUNCILOR STEWART

06-039 (9794) - AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF \$1,000,000 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 STEWART

06-040 (9795) - AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF \$1,150,000 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.

Councilors Stauber and Little opposed the ordinances for reasons of: the city is borrowing more and it will catch up with the city and spending is getting out of control.

The ordinances were adopted upon the following vote:

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

Nays: Councilors Little and Stauber -- 2

- - -

BY COUNCILOR GILBERT

06-036 - 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-3, APARTMENT RESIDENTIAL, TO R-2, TWO FAMILY 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 from speakers on the ordinance.

Rita Molitur, Dianna Hunter, Mark Borak and Deb Anderson supported the ordinance for reasons of: three years ago the planning commission voted against the original rezoning, which the council approved; there was presented three years ago, an urgency for the original rezoning, to allow for this development; the concern is that if Mr. Finnigan does not develop it, he would sell it and the new owner would build to different specifications and adversely affect the neighborhood; the property is quite messy and rat infested; the planning commission has looked at the current issue and has recommended that the land be returned to R-2 zoning; the original townhouse plan was acceptable to the neighbors, but Mr. Finnigan has never signed the development agreement; R-3 zoning has no height limit and thus without the signed development agreement, anything could be built there; the applicant did not do his part of the agreement as part of the rezoning; the neighbors are scared about the fact that Mr. Finnigan has not done what he said he would do; the

applicant needs to be held accountable and the protection to the neighbors through the development agreement is not in place.

Mark Pilon, counsel for the Finnigans, spoke in opposition to the ordinance for reasons of: there have been discussions on how to keep the agreement in place that addresses the city's and neighbors' concerns; there is no city subsidy and the city is just selling the property for a fair price; his client agrees to indexing the purchase price to cover any increases of valuation; no developer would agree to a "hard set" specified completion date; the project has not changed at all; thousands of dollars have been spent on this already; since this original rezoning the market has been flooded with condominiums; the property was vacant when Mr. Finnigan purchased it; the fire and police departments have used the building as a training exercise; construction and building material prices are coming down and given the applicant's existing investment, he has no intention of walking away from it.

Planning and Development Department Director Bruce stated that: the development agreement was drafted shortly after passage of the original rezoning and has been awaiting Mr. Finnigan's signature; Mr. Finnigan has not responded to contacts from city staff to either sign the development agreement or recraft it; of the six lots involved, four are owned by the city and the issue has been an "open ended" aspect with Mr. Finnigan not signing the development agreement.

In anticipation of a tabling motion, Councilor Stewart felt that the real problem is with the existing antiquated zoning code, which needs to be changed to protect the neighbors and still allow this type of development.

Councilor Ness moved to table the ordinance so the developer and city could work out concerns, which motion was seconded and carried upon the following vote:

Yeas: Councilors Johnson, Little, Ness, Stauber and President Reinert -- 5

Nays: Councilors Gilbert, Krause, Stewart and Stover -- 4

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The meeting was adjourned at 9:03 p.m.

JEFFREY J. COX, City Clerk

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### **ORDINANCE NO. 9796**

BY COUNCILOR GILBERT:

AN ORDINANCE AMENDING CHAPTER 50 OF THE DULUTH CITY CODE 1959, AS AMENDED, ZONING DISTRICT MAP NO. 38 AS CONTAINED IN THE APPENDIX TO CHAPTER 50, TO PROVIDE FOR THE RECLASSIFICATION FROM M-1, MANUFACTURING DISTRICT, TO C-1, COMMERCIAL DISTRICT, PROPERTY LOCATED AT 1901 SOUTH STREET (JOSEPH AND ROSE KLEIMAN).

The city of Duluth does ordain:

Section 1. That Plate No. 38 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)

(Reference File No. 06083)

*[see map at end of meeting]*

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: November 22, 2006)

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

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

Nays: None -- 0

ATTEST:  
JEFFREY J. COX, City Clerk

Passed October 10 2006  
Approved October 10, 2006  
HERB W. BERGSON, Mayor

- - -

**ORDINANCE NO. 9793**

BY COUNCILOR STEWART:

AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF \$1,225,000 GENERAL OBLIGATION REVENUE BONDS OF THE CITY OF DULUTH FOR THE IMPROVEMENT OF THE MUNICIPAL GAS 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 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 gas 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 gas utility pledged for their payment. The improvement program for the municipal gas utility includes the gas main extension to the Lakewood Water Treatment Plant and gas main improvements at various locations throughout the city.

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 gas utility, and determines it is necessary to issue General Obligation Gas Utility Revenue Bonds in the maximum amount of \$1,225,000 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 gas and sewer utilities revenue bonds dated December 1, 2001, the gas utility portion of such bonds now outstanding in the amount of \$4,195,000; general obligation utilities facility bonds dated September 1, 2002, the gas utility portion of such bonds now outstanding in the amount of \$1,795,000; general obligation utilities revenue bonds dated December 1, 2002, the gas utility portion of such bonds now outstanding in the amount of \$1,205,000; and general obligation gas utility revenue bonds dated December 1, 2003, now outstanding in the amount of \$5,480,000. Under the provisions of the ordinance authorizing said bonds, the city reserved the privilege of issuing additional bonds payable from said net revenues on a parity with the bonds dated December 1, 2001, September 1, 2002, December 1, 2002, and December 1, 2003.

1.04 Pursuant to the authority herein recited, the city council hereby authorizes and directs the issuance and sale of general obligation gas utility revenue bonds of the city of Duluth in the maximum amount of \$1,225,000, 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 gas utility. Net revenues are defined as sums from time to time within the gas utility operating account within the gas 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 gas 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 gas utility for the payment thereof, when authorized in accordance with law and the City Charter and determined by the city council to be necessary for the improvement of the municipal gas utility or for the refunding of indebtedness payable from said net revenues, provided that no such pledge shall constitute a lien upon the net revenues superior to the pledge thereof for the payment of the bonds issued hereunder.

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 gas utility at the times and amounts required to pay the normal, and current operating expenses and to maintain the municipal gas utility and also to produce net revenues at least adequate at all times to pay the principal and interest due on the bonds issued hereunder and on all other bonds heretofore and hereafter issued and made payable from said net revenues.

3.02 The city council shall, by further resolution or resolutions, establish appropriate accounts and credit monies from the proceeds of the bonds herein authorized to accounts, all in accordance with Section 54 of the City Charter and Chapter 475 of Minnesota Statutes.

Section 4. CERTIFICATION OF PROCEEDINGS.

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

4.02 The officers of the city and the county auditor are authorized and directed to prepare and furnish to the purchasers of the bonds, and to bond counsel, certified copies of all proceedings and records of the city relating to the authorization and issuance of the bonds and such other affidavits and certificates as may reasonably be required to show the facts relating to the legality and marketability of the bonds, as such facts appear from the official books and records in the officers' custody and are otherwise known to them. All such certified copies, certificates, and affidavits, including any heretofore furnished, constitute representations of the city as to the correctness of the facts recited therein and the action stated therein to have been taken.

Section 5. EFFECTIVE DATE.

5.01 This ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: November 19, 2006)

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

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

Nays: Councilors Little and Stauber -- 2

Passed October 10, 2006

Approved October 10, 2006

ATTEST:

JEFFREY J. COX, City Clerk

HERB W. BERGSON, Mayor

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**ORDINANCE NO. 9794**

BY COUNCILOR STEWART:

AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF \$1,000,000 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. The improvement program for the municipal sewer utility includes (i) London Road sewer line replacement; (ii) construction and equipping of Lift Station No. 7; (iii) Third Street sewer line improvements, Phase 2; and (iv) Grand Avenue sewer line improvements, Phase 2.

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 \$1,000,000 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 \$150,000; 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 \$375,000; general obligation sewer utility revenue bonds dated December 1, 1999, now outstanding in the amount of \$1,200,000; 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 \$430,000; 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 \$1,050,000; general obligation improvement note dated August 8, 2002, authorized in the amount of \$364,195;

general obligation utilities facility bonds dated September 1, 2002, the sewer utility portion of such bonds now outstanding in the amount of \$1,686,000; general obligation utilities revenue bonds dated December 1, 2002, the sewer utility portion of such bonds now outstanding in the amount of \$1,540,000; 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 \$740,000; general obligation sewer utility revenue note dated December 12, 2003, authorized in the amount of \$1,179,115; general obligation sewer utility revenue bonds dated December 1, 2004, now outstanding in the amount of \$3,850,000; and general obligation sewer utility revenue bonds dated December 19, 2005, now outstanding in the amount of \$3,515,000. Under the provisions of the ordinances authorizing said bonds, the city reserved the privilege of issuing additional bonds payable from said net revenues on a parity with the bonds and notes dated May 1, 1998, December 1, 1998, December 1, 1999, December 1, 2000, December 1, 2001, August 8, 2002, September 1, 2002, December 1, 2002, March 1, 2003, December 12, 2003, December 1, 2004, and December 19, 2005.

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 \$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, and also pledges and appropriates irrevocably, to the amounts required for the payment of the principal of and interest on the bonds and the maintenance of a reserve, any and all net revenues to be derived from time to time from the operation of the municipal sewer utility. Net revenues are defined as sums from time to time within the sewer utility operating account within the sewer utility fund maintained under Section 54 of the City Charter, in excess of sums required to pay claims duly approved and allowed for payment of expenses which, under generally accepted accounting principles, constitute normal, reasonable, and current expenses of operating and maintaining the municipal sewer utility and to maintain such reasonable reserves for such expenses as the director of public works and utilities shall determine to be necessary from time to time in accordance with the policies established by the city council.

1.05 The city reserves the right and privilege of issuing additional bonds and of pledging and appropriating the net revenues of the municipal sewer utility for the payment thereof, when authorized in accordance with law and the City Charter and determined by the city council to be necessary for the improvement of the municipal sewer utility or for the refunding of indebtedness payable from said net revenues, provided that no such pledge shall constitute a lien upon the net revenues superior to the pledge thereof for the payment of the bonds issued hereunder.

Section 2. TERMS OF BONDS.

2.01 The city council shall, by resolution or resolutions, provide for the issuance and sale of such bonds in one or more series and shall fix the precise maturities, interest rates, redemption provisions, and other terms and conditions of such bonds, and prescribe the form thereof, and offer to sell such bonds in such manner and at such time or times as shall be deemed in the public interest, all in accordance with the provisions of Minnesota Statutes, chapter 475, and other applicable laws.

Section 3. REVENUES AND ACCOUNTS.

3.01 The city council shall, by resolution or resolutions, provide for the method of imposing and collecting just and equitable charges for all use and for the availability of all facilities of the municipal sewer utility at the times and amounts required to pay the normal, and current operating expenses and to maintain the municipal sewer utility and also to produce net revenues

at least adequate at all times to pay the principal and interest due on the bonds issued hereunder and on all other bonds heretofore and hereafter issued and made payable from said net revenues.

3.02 The city council shall, by further resolution or resolutions, establish appropriate accounts and credit monies from the proceeds of the bonds herein authorized to accounts, all in accordance with Section 54 of the City Charter and Chapter 475 of Minnesota Statutes.

Section 4. CERTIFICATION OF PROCEEDINGS.

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

4.02 The officers of the city and the county auditor are authorized and directed to prepare and furnish to the purchasers of the bonds, and to bond counsel, certified copies of all proceedings and records of the city relating to the authorization and issuance of the bonds and such other affidavits and certificates as may reasonably be required to show the facts relating to the legality and marketability of the bonds, as such facts appear from the official books and records in the officers' custody and are otherwise known to them. All such certified copies, certificates, and affidavits, including any heretofore furnished, constitute representations of the city as to the correctness of the facts recited therein and the action stated therein to have been taken.

Section 5. EFFECTIVE DATE.

5.01 This ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: November 19, 2006)

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

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

Nays: Councilors Little and Stauber -- 2

Passed October 10, 2006

Approved October 10, 2006

HERB W. BERGSON, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

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**ORDINANCE NO. 9795**

BY COUNCILOR STEWART:

AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF \$1,150,000 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 improvement program for the municipal water utility includes the relining of water mains in London Road (the "Project").

1.02 The city council hereby determines that it is in the best interest of the city and it is necessary to improve the municipal water utility, and determines that it is necessary to issue general obligation water utility revenue bonds in the maximum amount of \$1,150,000 for the purpose of paying costs of the Project, and paying for a portion of the interest cost of the issue, as allowed by Minnesota Statutes, Section 475.56.

1.03 The city has heretofore issued and sold the following: general obligation water utility refunding bonds dated September 1, 1997, now outstanding in the amount of \$575,000; general obligation water and sewer refunding bonds dated May 1, 1998, the water utility portion of such bonds now outstanding in the amount of \$355,000; 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 \$1,145,000; general obligation utilities facility bonds dated September 1, 2002, the water utility portion of such bonds now outstanding in the amount of \$1,424,000; general obligation utilities revenue bonds dated December 1, 2002, the water utility portion of such bonds now outstanding in the amount of \$1,165,000; 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 \$370,000; general obligation utilities revenue note dated August 25, 2003, authorized in the amount of \$970,000; and general obligation water utility revenue note dated July 23, 2004, authorized in the amount of \$2,485,231. Under the provisions of the ordinances authorizing said bonds and notes, the city reserved the privilege of issuing additional bonds payable from said net revenues on a parity with the bonds and notes dated September 1, 1997, May 1, 1998, December 1, 2000, September 1, 2002, December 1, 2002, March 1, 2003, August 25, 2003, and July 23, 2004.

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 of the city of Duluth in the maximum amount of \$1,150,000, 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.

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 19, 2006)

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

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

Nays: Councilors Little and Stauber -- 2

ATTEST:  
JEFFREY J. COX, City Clerk

Passed October 10, 2006  
Approved October 10, 2006  
HERB W. BERGSON, Mayor

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Map No. 38

**OFFICIAL PROCEEDINGS**

Duluth City Council meeting held on Monday, October 23, 2006, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: None -- 0

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**PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS**

06-1023-01 A&L Properties:

(a) Application for concurrent use permit for skywalk over 15th Avenue East between London Road and South Street. -- Planning commission

(b) Petition to vacate dedicated skywalk system area on the second floor of the Livingston Building located at 222 West Superior Street (Lot 44, Block 6, Central Division of Duluth). -- Assessor

06-1023-02 Richard LeBeau, et al. (six signatures), petition to reclassify from R-1-a to C-5 the westerly 550 feet of the southerly 433 feet of the easterly 1,858.11 feet of the south 1/2 of the southeast 1/4, Section 8, Township 50, Range 14. -- Assessor

06-1023-03 Ray Wood petition to vacate that portion of 14th Street Alley adjoining Lots 1 through 4, Block 35, Harrison's Brookdale Division of Duluth, lying between Piedmont Avenue and U.S. Highway 53. -- Assessor

06-1023-12 Allen Richardson communication regarding proposed resolution requesting protection for wild rice (06-0733R). -- Received

06-1023-04 Duluth Teacher's Credit Union withdrawing petition to vacate alley in Lots 1, 2, 3, 4, 5 and 6, Blocks 2 and 11, Whipple's Addition; and Lots 6 and 7 and the north 11 feet of Lot 8, along the south six feet of Lot 5, Block 1, Whipple's Addition; the east facing side of Lot 1, Block 1, Whipple's Addition; and the northerly 12 feet of Lot 1, Block 1, facing the northerly 12 feet of Lot 1, Block 2, Whipple's Addition. -- Received

06-1023-05 The following communications regarding the proposed Heritage Sports facility (06-0692R): (a) Randy Norton; (b) Shawn Roed. -- Received

06-1023-06 The following communications regarding the proposed ordinance providing for labor union organization procedures for certain city projects (06-042-O): (a) Jeff Borling; (b) Barbara Gay; (c) Dave Holappa; (d) Hotel Employees Restaurant Employees Local Union 99 (supported by 131 signatures); (e) Ron Kope; (f) Jack G. Liljegren; (g) Jim Listerud; (h) Judith Munson; (i) Ed Newman; (j) David Pederson; (k) Aaron Peterson; (l) Elizabeth Sandwick; (m) Erica Sivertson; (n) Karen Young. -- Received

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**REPORTS FROM OTHER OFFICERS**

06-1023-07 Assessor for confirmation the assessment roll levied to defray the assessable portion of Contract #5423, construction of Central Avenue Alley from Bristol street to Ramsey Street (assessable amount: \$92,675.97). -- Received

06-1023-08 Clerk application to the Minnesota gambling control board for exemption from lawful gambling license from Minnesota Program Development on December 7, 2006 (raffle). -- Received

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### REPORTS OF BOARDS AND COMMISSIONS

06-1023-09 Commission on disabilities minutes of September 6, 2006, meeting. -- Received

06-1023-10 Duluth/North Shore Sanitary District minutes of September 13, 2006, meeting. -- Received

06-1023-11 Parks and recreation minutes of July 12, 2006, meeting. -- Received

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At this time, 7:02 p.m., the public hearing regarding the proposed Denfeld resident permit parking zone amendment (06-0706R) was called to order.

Paul Scanlan, engineering division, reviewed that the residents of 44th Avenue West between Seventh Street and Eighth Street have petitioned the city to expand this residential parking zone and their application to the city has been reviewed by the parking commission, who have approved the application.

Kathy Henderson, Kevin Haburt, Jack Smith and Robert Grassinger urged the council to pass the resolution for the following reasons: high school students are speeding up the avenue; they are dumping their garbage from lunch; there is illegal drug activity going on; they are rude to the residents; they play their music loud; they ignore the alternate side parking which makes it hard for large vehicles such as school busses and snow plows to get through the avenue.

At this time, 7:12 p.m., the public hearing was closed and the regular order of business was resumed.

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### OPPORTUNITY FOR CITIZENS TO BE HEARD

Bridget Riversmith urged the councilors to support keeping the human rights office, which would amount to one cent per household. She urged the people in the audience to contribute to the penny jar she provided at the meeting for the extra funds needed to keep the office open.

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KL Lewis suggested the council review and create a policy for solar rights of homeowners.

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Jon Donahue thanked some councilors for trying to help lessen the burden of the taxpayers to fund the retirees' health insurance fund and questioned if the council needs to apply the rules of civility to their own behavior.

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### RESOLUTION TABLED

Councilor Gilbert moved to remove Resolution 06-0719, authorizing agreement to acquire Lakewalk easement from Judson Hatfield Trust for \$40,000, 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.

Daniel Hatfield expressed his disappointment with the planning department and their lack of follow through with the project. He reviewed that they purchased the property to be close to the Lakewalk, however the city is moving ahead with the project without filing the easement and acquiring the rights to do so.

Brad Anderson explained that the city has no legal easement to use the property and the city should take the offer by the Hatfield's and work on the safety issues that have been suggested by them.

Gary Black suggested the city needs a safety study done on this section of the Lakewalk to avoid taking on liability because of the path of the Lakewalk.

Resolution 06-0719 was adopted as follows:

BY COUNCILOR GILBERT:

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. 06-1023-13, with the Judson Hatfield Trust to acquire an easement over the below-described property in St. Louis County, Minnesota, for the sum of \$40,000, payable from Fund 450, Agency 030, Object 5520, Project No. CP-2005-C0502:

Portions of Lots 14, 15 and 16, Block 38, REARRANGEMENT OF PART OF EAST DULUTH and of FIRST ADDITION TO EAST DULUTH.

Resolution 06-0719 was unanimously adopted.

Approved October 23, 2006

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

BY COUNCILOR STEWART:

RESOLVED, that the assessment roll levied to defray the assessable portion of permanent alley improvements for Central Avenue from Bristol Street to Ramsey Street (Contract #5423; assessable amount - \$92,675.97); to be deposited in Fund 325; is hereby confirmed.

Resolution 06-0734 was unanimously adopted.

Approved October 23, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

WHEREAS, the city of Duluth presently has two available on sale intoxicating liquor licenses that are not issued to any operating business; and

WHEREAS, in Resolution 06-0652 the Duluth City Council has adopted the alcohol, gambling and tobacco commission's amended policy guidelines concerning under what circumstances available on sale liquor licenses should be issued;

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves of the alcohol, gambling and tobacco commission's recommendations of the following and hereby issues said licenses for the period ending August 31, 2007, subject to departmental approvals and the payment of sales and property taxes, to:

(a) J&J Miller, Inc. (Copasetic Lounge), 322 East Central Entrance, with Joel Miller, 50 percent stockholder, and Gerald Miller, 50 percent stockholder, on sale intoxicating liquor, on sale Sunday and 2:00 A.M. beverage licenses;

(b) Lido of Duluth, Inc. (Lido), 600 East Superior Street, with Randy Stolan, 100 percent stockholder, on sale intoxicating liquor, on sale Sunday, dancing and 2:00 A.M. beverage licenses, effective April 1, 2007.

FURTHER RESOLVED, that said licenses shall be nontransferable to another location or another person or entity for a period of ten years.

Resolution 06-0729 was unanimously adopted.

Approved October 23, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the reappointment by Mayor Bergson of Lynn Beechler (real estate broker) to the special board of review for a term expiring on July 31, 2010, is confirmed.

Resolution 06-0722 was unanimously adopted.

Approved October 23, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the appointment by Mayor Bergson of Don O'Connor (building materials supply representative) to the building appeal board for a term expiring on February 1, 2010, replacing Jim Schwerdt who resigned, is confirmed.

Resolution 06-0723 was unanimously adopted.

Approved October 23, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the appointment by Mayor Bergson of Scott M. Wallschlaeger (Planning District 3) to the community development committee for a term expiring on March 1, 2008, replacing Scott Lundberg who resigned, is confirmed.

Resolution 06-0724 was unanimously adopted.

Approved October 23, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that the city of Duluth has approved the contamination cleanup grant application to be submitted to the department of employment and economic development (DEED) on November 1, 2006, by the city of Duluth for the Garfield Site-Outlot A site.

BE IT FURTHER RESOLVED, that the city of Duluth act as the legal sponsor for project contained in the Garfield Site-Outlot A contamination cleanup grant program submitted on November 1, 2006, and that the mayor is hereby authorized to apply to the department of employment and economic development for funding of this project on behalf of the city of Duluth.

BE IT FURTHER RESOLVED, that the city of Duluth has the legal authority to apply for financial assistance, and the institutional, managerial and financial capability to ensure adequate project administration.

BE IT FURTHER RESOLVED, that the sources and amounts of the local match identified in the application are committed to the project identified, which shall be the developer, Sherman Associates, d/b/a Garfield Business Park II, LLC, and which amount shall be no less than 25 percent of total project costs which are currently estimated at \$572,285.

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

BE IT FURTHER RESOLVED, that upon approval of its application by the state, the city of Duluth may enter into an agreement with the state of Minnesota for the above-referenced project(s), and that the city of Duluth certifies that it will comply with all applicable laws and regulation as stated in all contract agreements. Grant proceeds will be accounted for in Fund 255, Agency 020, Source 4220-2.

BE IT FURTHER RESOLVED, that the mayor and the city clerk are hereby authorized to execute such agreements as are necessary to implement the project on behalf of the applicant.

Resolution 06-0739 was unanimously adopted.

Approved October 23, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are hereby authorized to execute an agreement with the city of Proctor and St. Louis County authorizing the joint implementation of Phase 2 of the Duluth-Superior metropolitan area bikeways plan in Duluth, Proctor and St. Louis County for an estimated cost to Duluth of \$13,000 to be paid from the Permanent Improvement Fund 0411, Department/Agency 035, Object 5530.

Resolution 06-0721 was unanimously adopted.

Approved October 23, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Apex Mechanical Plumbing, Heating and Utilities be and hereby is awarded a contract for the installation of a high pressure steam piping system to First Lutheran Church in accordance with its low specification bid of \$72,100, terms net 30, FOB job site, payable out of Steam Fund 0540, Department/Agency 920, Organization 1499, Object 5530; Requisition No. 06-0360.

Resolution 06-0727 was unanimously adopted.

Approved October 23, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Erling R. Hansen General Contractor, Inc., be and hereby is awarded a contract for building improvements to the Lakewood Pump Station, 8130 Congdon Boulevard, on its low bid of \$34,750, terms net 30, FOB destination, payable out of the Water Fund 0510, Department/Agency 500, Organization 1955, Object 5401; Requisition No. 06-0661; Project No. OT-0530.

Resolution 06-0731 was unanimously adopted.

Approved October 23, 2006

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 light pole bases for the Downtown and Canal Park areas in

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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accordance with specifications on its bid of \$21,300 plus sales tax of \$1,384.50, for a total of \$22,684.50, terms net 30, FOB destination, payable from General Fund 100, Department/Agency 0700, Organization 1420, Object 5540-500; Requisition No. 06-0681.

Resolution 06-0732 was unanimously adopted.

Approved October 23, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the proper city officers are authorized to execute a pipeline license agreement substantially in the form of the agreement, filed as Public Document No. 06-1023-14, between the city of Duluth and Burlington Northern and Santa Fe Railway Company wherein the city is granted a license to construct a pipeline in the railroad right-of-way near Garfield Avenue and Birch Street for a consideration of \$1,500; said money to be paid from Fund 535, Agency 500, Organization 1905, Object 5533.

Resolution 06-0735 was unanimously adopted.

Approved October 23, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Resolution 05-0423, to Ayres Associates, Inc., for furnishing professional engineering services, be amended to increase the amount by \$108,275 for a new total of \$257,275, payable out of Street Improvement Fund 0440, Department/Agency 038, Object 5530.

Resolution 06-0736 was unanimously adopted.

Approved October 23, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the city of Duluth has applied to the department of natural resources for a grant from the regional trails program for the construction of the Lakewalk East Trail Extension Phase I, from the end of the existing trail to approximately 36th Avenue East, SP 118-090-12, City Project No. 0480TR.

The grant has been approved and the amount of the grant has been determined to be \$175,000. The DNR requires the city of Duluth to provide matching funds equal to the grant amount.

The city of Duluth does hereby accept said grant and agrees to maintain the facilities, trail and equipment for no less than 20 years.

FURTHER RESOLVED, grant monies received hereunder shall be deposited into the Capital Improvement Fund 0450, Agency 030, Object 5530, City Project No. 0480TR (Capital Project No. C0502).

Resolution 06-0737 was unanimously adopted.

Approved October 23, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, the city of Duluth must construct a sanitary sewer storage basin upstream of the Endion pumping station to eliminate sanitary sewer overflow from the Lakeside interceptor.

The city of Duluth desires to develop plans and specifications for the construction of a facility to store sanitary sewer overflows along the Lakeside interceptor.

The city desires to hire a consulting engineer to provide the engineering services required for the design and construction administration for the facility.

MSA Professional Services, Inc., in conjunction with Brown and Caldwell, Inc., has submitted a proposal for engineering services in connection with this project.

FURTHER RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with MSA Professional Services, Inc., to provide the city with such engineering services, and that the cost of said engineering services, estimated at \$482,609, is payable from the Sewer Construction Bond Fund 0531, Department/Agency 500, Object 5532; City Job No. 0558SN.

Resolution 06-0738 was unanimously adopted.

Approved October 23, 2006

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. 06-1023-15, with the township of Rice Lake authorizing the township to use two city-leased road graders during the summer months in exchange for providing year-around, in-door storage for said equipment.

Resolution 06-0740 was unanimously adopted.

Approved October 23, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

RESOLVED, that the original purchase order to Advantage Systems Group for installation of the new additional closed circuit television (CCTV) system equipment at the City Center West police station and emergency operations center (EOC) be increased by \$9,248.46 (\$8,684 plus sales tax of \$564.46), for a new total of \$25,138.95 (\$23,604.65 plus sales tax of \$1,534.30), terms net 30, FOB job site, payable as follows:

(a) \$13,575.03 from Duluth Police Grant Programs Fund 0215, Department/Agency 200, Organization 2272, Object 5580;

(b) \$11,563.92 from Capital Improvements Fund 0450, Department/Agency 030, Object 5520;

Project OT-0650-CP2006.

Resolution 06-0700 was unanimously adopted.

Approved October 23, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

RESOLVED, that Resolution 01-0704, creating a resident permit parking zone in the vicinity of Denfeld High School, is hereby amended by deleting therefrom Public Document No. 01-1009-13 and by substituting therefore Public Document No. 06-1023-16.

Resolution 06-0706 was unanimously adopted.

Approved October 23, 2006

HERB W. BERGSON, Mayor

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The following resolutions were also considered:

Resolution 06-0733, by Councilor Ness, requesting governmental action for protection of wild rice, was introduced for discussion.

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

KL Lewis voiced her support of the resolution.

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

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Resolution 06-0741, by Councilor Ness, declaring policy for actions to fund post retirement benefits, was introduced for discussion.

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

Mary Theurer reviewed that this is already a very tough negotiating process and this resolution would make any settlement almost impossible by putting a time frame on it and bringing the council into the mix as a third party. She also stated that this resolution is not financially responsible for the citizens of the Duluth, and stated that mediation has been scheduled and requested that the council let the negotiation process take its course.

Councilor Ness reviewed that the intent of this resolution is to not ask the taxpayers to pay for a portion of the retirees' health insurance until the contracts are approved by the council, which would coincide with the finalizing of the 2007 budget.

Councilor Gilbert stated that the council needs to let the parties do their work and resist the temptation to get involved with the day-to-day negotiating which would make a budgeting nightmare for the residents and administration.

Councilor Stauber stated that the message needs to come from the council that the contracts need to be settled before the end of the year before they are vote on the budget.

Councilor Ness reviewed that because he brought this resolution forward so late and the need to talk to councilors about why he is doing this, he would like to table the resolution for two weeks.

Resolution 06-0741 failed upon the following vote (Public Document No. 06-1023-17):

Yeas: Councilors Little, Ness, Stauber and President Reinert -- 4

Nays: Councilors Gilbert, Johnson, Krause, Stewart and Stover -- 5

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Resolution 06-0742, by Councilor Ness, authorizing agreement with U.S. department of HUD for fair housing program implementation - human rights office, in amount of \$120,000 for year 2007, was introduced for discussion.

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

David Backstrand, Joyce Blodgett, Claire Jasper, Ben Small and Stan Kaiffors voiced their support for the human rights office for the following reasons: the office is invaluable to the Duluth

community because it is a local office and a citizen can contact the human rights officer in person; the office offers education to the employer and employee; this money will help continue to investigate cases of discrimination; if the city rejects this money it would be stating that discrimination does not occur in Duluth; the human rights office can help prevent lawsuits that will cost the city money and the number of discrimination suits will increase if the office is discontinued with no one to investigate the claims.

Resolution 06-0742 was adopted as follows:

BY COUNCILOR NESS:

RESOLVED, that the proper city officials are authorized to execute and implement a cooperative agreement between the city and U.S. department of housing and urban development, in substantially the form of the agreement on file with the city clerk as Public Document No. 06-1023-18, for furnishing of services in matters related to fair housing laws in year 2007; in the amount of \$120,000, to be deposited in Fund 100, Agency 010, Organization 1105, Revenue Source 4209-2.

Resolution 06-0742 was unanimously adopted.

Approved October 23, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

RESOLVED, that Arrowhead Radio and Security, Inc., be and hereby is awarded a contract for furnishing and delivering seven Master III P25 VHF (very high frequency) repeaters, hardware and related manuals for \$89,420 plus sales tax of \$5,812.30, for a total of \$95,232.30, terms net 30, FOB destination, payable from the Duluth Police Grant Programs Fund 215, Department/ Agency 200, Organization 2276, Object 5580; Requisition No. 06-0656.

Resolution 06-0730 was unanimously adopted.

Approved October 23, 2006

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

06-043 - AN ORDINANCE GRANTING TO DULUTH LAKEWALK OFFICES, LLC, A CONCURRENT USE PERMIT TO CONSTRUCT AND MAINTAIN PARKING SPACES, FOR PRIVATE USE, IN THE RIGHTS-OF-WAY OF 15TH AVENUE EAST AND SOUTH STREET.

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BY COUNCILOR STOVER

06-044 - AN ORDINANCE ALIENATING CERTAIN PROPERTY IN WEST DULUTH AND AUTHORIZING SALE OF SAME TO DALE E. AND DEBRA K. DIERYCK FOR \$25,769.

- - -

The following entitled ordinances were read of the second time:

BY COUNCILOR GILBERT

06-041 (9797) - AN ORDINANCE GRANTING A CONCURRENT USE PERMIT TO MARGUERITE P. ACHESON FOR A FIXED AWNING TO PROJECT INTO AND OVER THE RIGHT-OF-WAY OF EAST SUPERIOR STREET, 47TH AVENUE EAST AND MCCULLOCH STREET FOR PROPERTY LOCATED AT 4631 EAST SUPERIOR STREET.

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

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BY COUNCILOR STOVER

06-042 (9798) - AN ORDINANCE PROVIDING FOR LABOR UNION ORGANIZATION PROCEDURES FOR CERTAIN CITY PROJECTS; ADDING A NEW SECTION 2-28 TO THE DULUTH CITY CODE, 1959, AS AMENDED.

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

Marsh Steneson, Eric Lehto, Ronald Miller, Al Healy, David Backstrand, Sharla Gardner, Larry Anderson, Joel Sipress, Yvonne Harvey, Irene Holcomb, Stan Kaiffors, Al Netland, Todd Erickson and Laurie Johnson spoke in favor of this ordinance for the following reasons: a card check agreement is a reasonable alternative to the National Labor Relations Board (NLRB) election process; it requires that if a business accepts large taxpayer subsidies, they cannot use those dollars to stop the right of the workers to organize a union; if city money is used for a private hotel or restaurant it is reasonable to ask the employer to respect the employee's right to join a union; tourism jobs need to make it possible for people to earn a living in the tourism industry in Duluth; the NLRB election process has become a sham; it would provide a streamlined process that efficiently determines whether or not a majority of workers want a union with a neutral third party overseeing the process; several councilors endorsed this agenda item when screened by the unions when running for office and if the employer does not provide health insurance, the taxpayers also end up subsidizing the workers.

Dale Lewis reviewed that several large companies have come into Duluth over the past years, but would not have come to Duluth with this proposed ordinance in place and the city has a living wage ordinance that addresses the issue of good paying jobs.

Jon Donahue suggested this important matter be tabled for more information instead of forcing this issue upon the citizens of Duluth not knowing what kind of impact this will have on future development. He questioned if passing this ordinance was payback to special interest groups that helped the councilors get into office.

John Rathe stated that this ordinance does not allow a fair process as it would bypass a secret ballot and it's main purpose is to allow unions to be formed.

Andy Peterson, representing the Duluth Area Chamber of Commerce, stated that they agree with the council and unions that companies should be accountable when taking city subsidies, workers should be paid as much as a business can bear while making a reasonable profit and workers should get health insurance whenever possible. He stated that organizing without the right to a private vote violates democratic principal and passing this ordinance will send a signal around the area that Duluth is a tough place to do business.

Councilor Little voiced concern that, if this ordinance passes, what is to prevent future ordinances coming forth that would be applied to all existing hotels and restaurants even if they do not ask for a city subsidy.

Councilor Stauber stated that Duluth loses new businesses to the surrounding communities because of the additional hurdles that are required by the city which then impacts the city's budget with the loss of tourism tax revenue.

Councilor Ness stated he supports the idea that if the city subsidizes a project, then the city should expect that the jobs that are created are good jobs that pay a decent wage which falls under the guidelines of the living wage ordinance. He continued by saying that although he supports the right of the hotel and restaurant employees to organize, he cannot support the

ordinance because the strategy of using the City Code to promote the card check to organize workers and stated the secret ballot is the best way to determine the true intent and wishes of the workers to organize.

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

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

Nays: Councilors Little, Ness and Stauber -- 3

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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

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**ORDINANCE NO. 9797**

BY COUNCILOR GILBERT:

AN ORDINANCE GRANTING A CONCURRENT USE PERMIT TO MARGUERITE P. ACHESON FOR A FIXED AWNING TO PROJECT INTO AND OVER THE RIGHT-OF-WAY OF EAST SUPERIOR STREET, 47TH AVENUE EAST AND MCCULLOCH STREET FOR PROPERTY LOCATED AT 4631 EAST SUPERIOR STREET.

The city of Duluth does ordain:

Section 1. Under the authority of Section 100 of the 1912 Home Rule Charter of the city of Duluth, as amended, and subject to the conditions, limitations and restrictions hereinafter set forth, permission is hereby granted to Marguerite P. Acheson, her successors and interests, referred to herein as the permittee, to occupy, erect and maintain a fixed awning into and over that part of East Superior Street, 47th Avenue East, and McCulloch Street adjoining Lot 8, Block 45, London Addition to Duluth, as the same was dedicated to the use of the public and the Plat of London Addition to Duluth, on file and of record in the office of the register of deeds in and for St. Louis County, Minnesota, described as follows:

Beginning at the northeast corner of Lot 8, Block 45, London Addition to Duluth. Then south on the east line of Lot 8, 20.97 feet to the northwest line of East Superior Street. Then south 51 degrees 32' west, 13.50 feet on the northwest line of East Superior Street. Then south 38 degrees 28' east, perpendicular to the northwest line of East Superior Street, 1.25 feet. Then north 51 degrees 32' east, 14.10 feet parallel with the northwest line of East Superior Street. Then north, parallel with the east line of Lot 8, Block 45, London Addition 22.82 feet. Then west, parallel with the north line of Lot 8, Block 45, London Addition, 6.75 feet. Then south, 1.25 feet to the north line of Lot 8, Block 45, London Addition. Then east 5.50 feet to the place of beginning.

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

(a) A comprehensive general liability insurance policy shall be maintained in force by permittee in an amount not less than \$1,000,000 for bodily injuries and in an amount not less than \$300,000 for property damage or \$1,000,000 single limit coverage. Such coverage shall include all permittee activities occurring on the permitted premise whether said activities are performed by employees or agents under contract to permittee. Such policy of insurance shall be approved by the city attorney and shall contain a condition that it may not be cancelled without 30 days written notice to the city of Duluth. The city of Duluth shall be named as an additional insured on said policy of insurance required by this paragraph. Current ISO additional insured endorsement CG 20 10 is not acceptable. If the ISO 20 10 is used, it must be a pre-2004 edition.

Section 4. That this permit shall expire on January 1, 2008, for any purpose whatsoever, unless prior to such date, permittee files with the city clerk certificates of insurance evidencing that permittee has in force insurance meeting the following requirements:

(a) Comprehensive general liability insurance policy shall be maintained in force by permittee in an amount not less than \$1,200,000 for bodily injuries and in an amount not less than \$400,000 for property damage or \$1,200,000 single limit coverage. Such coverage shall include all permittee activities occurring on the permitted premise whether said activities are performed by employees or agents under contract to permittee. Such policy of insurance shall be approved by the city attorney and shall contain a condition that it may not be cancelled without 30 days written notice to the city of Duluth. The city of Duluth shall be named as an additional insured on said policy of insurance required by this paragraph. Current ISO additional insured endorsement CG 20 10 is not acceptable. If the ISO 20 10 is used, it must be a pre-2004 edition.

Section 5. That this permit shall expire on July 1, 2009 for any purpose whatsoever, unless prior to such date, permittee files with the city clerk certificates of insurance evidencing that permittee has in force insurance meeting the following requirements:

(a) Comprehensive general liability insurance policy shall be maintained in force by permittee in an amount not less than \$1,500,000 for bodily injuries and in an amount not less than \$500,000 for property damage or \$1,500,000 single limit coverage. Such coverage shall include all permittee activities occurring on the permitted premise whether said activities are performed by employees or agents under contract to permittee. Such policy of insurance shall be approved by the city attorney and shall contain a condition that it may not be cancelled without 30 days written notice to the city of Duluth. The city of Duluth shall be named as an additional insured on said policy of insurance required by this paragraph. Current ISO additional insured endorsement CG 20 10 is not acceptable. If the ISO 20 10 is used, it must be a pre-2004 edition.

Section 6. That upon the giving of the notice of termination as aforesaid, the permittees shall remove said awning 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 7. 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 awnings 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 East Superior Street, 47th Avenue East and McCulloch Street 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 of Duluth all extra costs of installation of any such sewers, gas mains, watermains, pipes, conduits or other public utilities made necessary by the presence of such fixed awning in said East Superior Street, 47th Avenue East and McCulloch Street.

Section 8. That the permittee shall further observe the following conditions:

- (a) All required building permits shall be obtained for said awning;
- (b) Written approval must be secured from city engineering prior to construction.

Section 9. That this ordinance shall not be valid if the above cited permits in Section 8 are not issued and improvements completed within 12 months from the effective date of this ordinance.

Section 10. The term of this permit shall expire with the sale of the property by the permittee and said awning and all fixtures of every kind whatsoever attached thereto shall be removed from the tract of land described above within 60 days, unless the new property owner applies for and received a replacement ordinance within 60 days.

Section 11. 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.

Section 12. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: December 3, 2006)

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

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

Nays: None -- 0

Passed October 23, 2006

Approved October 23, 2006

ATTEST:  
JEFFREY J. COX, City Clerk

HERB W. BERGSON, Mayor

- - -

**ORDINANCE NO. 9798**

BY COUNCILOR STOVER:

AN ORDINANCE PROVIDING FOR LABOR UNION ORGANIZATION PROCEDURES FOR CERTAIN CITY PROJECTS; ADDING A NEW SECTION 2-28 TO THE DULUTH CITY CODE, 1959, AS AMENDED.

The city of Duluth does ordain:

Section 1. That Duluth City Code, 1959, as amended, be amended by adding a new Section 2-28 to read as follows:

Sec. 2-28. Labor agreements in hotel/restaurant development projects.

(a) The city council finds that when the city involves itself as an owner, lessor, guarantor, pledger, investor or contributor to a development project that involves construction or operation of a hotel or restaurant business the city has an ongoing proprietary interest in the development and therefore has a direct interest in its financial performance. In such situations, the city must make precedent management decisions to protect the project. One of those decisions is whether and how to protect against conflict between management and organized labor. This Section sets forth the city's policy in that regard. Because the tourism industry is vital to the city's economic state, and because some labor organizing campaigns can disrupt or delay development and construction and obstruct normal business operation, it is for the protection of the industry and the city's proprietary interests that this Section is enacted. The purpose of this Section is to protect the city's proprietary interests in certain narrowly prescribed circumstances where the city commits its economic resources and its proprietary interests are put at risk by the potential for some types of labor-management conflict;

(b) This Section is subject to any applicable federal or state regulation. If any part of this Section is affected by state, federal or judicial action, the remainder of it shall continue in full force and effect;

(c) Definitions.

(1) Hotel/restaurant development project means a business development which includes, or is planned to include, construction or operation of a hotel or restaurant, and in which project the city has an ongoing proprietary interest, as set out herein;

(2) City protection agreement means a written agreement between an employer and a labor organization that provides, at a minimum, the following:

(A) Employee preference regarding whether to be represented by a labor organization for collective bargaining, and if so, by which labor organization shall be determined based on signed authorization cards in a card check procedure conducted by a neutral third party in lieu of a formal election;

(B) The employer and the labor organization shall at all times refrain from the use of intimidation, reprisal or threats of reprisal, or other conduct designed to intimidate or coerce employees to influence the decision by employees whether to join or be represented by any labor organization;

(C) Signatory labor organizations shall forbear from taking economic action, such as striking or picketing, against the signatory employer at the worksite of an organizing drive covered by this Section, so long as the employer complies with the terms of the agreement. The employer and labor organization may incorporate additional consistent provisions to protect the city's/agency's proprietary interest if they so agree;

(3) Proprietary interest means an interest in a hotel/restaurant development project where the city administration determines, on a case-by-case basis, that one or more of the following conditions are met:

(A) That the city, as property owner, receives ongoing revenue such as rent payments under a lease of real property owned by the city for the development of a project, excluding government fees or tax or assessment revenues, or the like, except for tax revenues exempted herein;

(B) That the city receives ongoing revenue from a project to repay loans provided by the city to assist the development of said project, including incremental tax revenues generated by the project and used, directly or indirectly, to repay the loan by the city where the proceeds are used for development of that project;

(C) That the city receives ongoing revenue from a project to pay debt service on bonds provided by the city to assist the development of said project, including incremental tax revenues generated by the project and used, directly or indirectly, to pay debt service on bonds by the city where the proceeds are used for development of the project;

(D) That the city has significant assets at risk because it has agreed to underwrite or guarantee the development of a project, or loans related thereto;

(E) That the city has a significant ongoing economic and nonregulatory interest at risk in the financial service of a project which is likely to be adversely affected by labor/management conflict resulting from a union organizing campaign, except that no interest shall be considered "economic and nonregulatory" if it arises from the exercise of regulatory or police powers such as taxation (except as set forth above), zoning or the issuance of permits or licenses;

(4) Employer means any person, corporation, company, association, limited or general partnership, joint venture, contractor, subcontractor or other entity who employs individuals at the site of a development project, and whose ongoing economic performance and potential for labor/management conflict can affect the city's proprietary interest, including, but not limited to commercial, retail, hospitality or services enterprises in a development project;

(5) Contract means a lease, management agreement, service agreement, development agreement, loan, bond, guarantee or similar agreement to which the city is a party and in which the city has a proprietary interest;

(6) City means the city of Duluth, Minnesota;

(d) Regulation.

(1) Duty of city. On any hotel/restaurant development project in which the city participates or has a financial interest, the city administration shall determine, whether employers on the project are required to enter into a proprietary interest protection agreement (hereinafter "agreement"). All such determinations shall be made on a case-by-case basis pursuant to the standards articulated in the definition in this Section, subject to the exemptions set forth below. Such determination shall be made in all cases as a necessary precondition of the city's participation in a development project;

(2) When agreements required. A proprietary interest protection agreement shall be required where the city determines that the city has a proprietary interest at risk in a hotel/restaurant development project pursuant to the definition set forth in this Section;

(3) Contracts. Where the city determines that a proprietary interest protection agreement is required on a development project, any city contract must include a provision requiring any employer on said project to enter into said agreement as essential consideration for the city entering into the contract;

(4) Requests for proposal. Any request for proposal or invitation to bid or similar document regarding a city development project must include in such document a reference to the policy and requirements of this ordinance [Section]. Failure to include reference to this ordinance [Section] in a request for proposal or similar document shall not exempt any employer otherwise subject to the requirements of this ordinance [Section];

(5) Scope. The requirements of this Section apply only to the procedures for determining employee preference regarding whether to be represented by a labor organization for purposes of collective bargaining and/or by which labor organization to be represented. Nothing in this ordinance [Section] requires an employer to recognize a particular labor organization. Nor does any provision of this ordinance [Section] require that an employer enter into a collective bargaining agreement establishing the substantive terms and conditions of employment;

(e) Exemptions. The requirements of this Section shall not apply to:

(1) Employers employing fewer than the equivalent of eight full-time or part-time employees at the site of the development project;

(2) Any employer signatory to a valid and binding collective bargaining agreement covering the terms and conditions of employment for its employees at that development project, or which has entered into an agreement with a labor organization regarding such employees which agreement provides for a procedure for determining collective bargaining units;

(3) Any development project where the city administration determines that the risk to the city's financial or other nonregulatory interest resulting from labor/management conflict is so minimal or speculative as not to warrant concern for the city's investment or other nonregulatory interest;

(4) Any development project that receives less than \$50,000 of assistance from the city;

(5) Any residential development project;

(6) Any multi-tenanted development project that is built on a speculative basis;

(7) Any development project that receives only conduit bond financing from the city;

(8) Any development project in which the city, by contract approved by the council, became a participant before November 15, 2006.

Section 2. That this ordinance shall take effect 30 days after its passage and publication.

(Effective date: December 3, 2006)

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

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

Nays: Councilors Little, Ness and Stauber -- 3

ATTEST:  
JEFFREY J. COX, City Clerk

Passed October 23, 2006  
Approved October 23, 2006  
HERB W. BERGSON, Mayor

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**OFFICIAL PROCEEDINGS**

Special meeting of the Duluth City Council held on Monday, November 6, 2006, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Gilbert, Johnson, Krause, Little, Stauber, Stewart and President Reinert -- 7

Absent: Councilors Ness and Stover -- 2

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**MOTIONS AND RESOLUTIONS**

BY COUNCILOR LITTLE:

RESOLVED, that the proper city officials are authorized to purchase two Centracom Elite communications consuls from Motorola, Inc., through St. Louis County, for an amount not to exceed \$78,684.65, payable from the 2005 Port Security Grant 215-200-2276.

Resolution 06-0757 was unanimously adopted.

Approved November 6, 2006

HERB W. BERGSON, Mayor

- - -

The meeting was adjourned at 7:05 p.m.

JEFFREY J. COX, City Clerk

**OFFICIAL PROCEEDINGS**

Duluth City Council meeting held on Monday, November 13, 2006, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: Councilor Stewart -- 1

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**PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS**

06-1113-01 Bryan and Jenny Bjonskaas, et al. (ten signatures), petition to vacate the alley easement adjacent to Lots 1 through 30, Block 32, Gary First Division. -- Assessor

06-1113-02 Minnesota state auditor audit report for Duluth/North Shore Sanitary District for the year ended December 31, 2005. -- Received

06-1113-13 Jen Huntley communication regarding funding of the Heritage Sports Center (06-0773R). -- Received

06-1113-12 The PFM Group presale analysis regarding sale of \$4,525,000 G.O. steam utility revenue bonds, Series 2006E; \$3,255,000 G.O. utilities revenue bonds, Series 2006F; \$1,785,000 G.O. equipment certificates of indebtedness, Series 2006G; \$2,465,000 G.O. improvement refunding bonds, Series 2006H; \$3,540,000 G.O. street improvement refunding bonds, Series 2006I; \$3,265,000 G.O. street improvement refunding bonds, Series 2006J. -- Received

06-1113-14 The following communications regarding protection of wild rice (06-0733R): (a) Kate Barthel; (b) Jill Holmen; (c) Colleen Kelly; (d) Sharon Murphy; (e) Miki Saladin. -- Received

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**REPORTS FROM THE ADMINISTRATION**

Chief Administrative Officer Hall reported that the city is preparing their final position papers for the binding arbitration hearing with the firefighters union.

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**REPORTS FROM OTHER OFFICERS**

06-1113-03 Assessor:

(a) Confirmation of assessment roll to be levied to defray in full the expense of solid waste collection during the period March 1, 2005, to June 1, 2006, for which the collector has not been reimbursed;

(b) Letters of sufficiency of petitions to vacate:

(1) Alley easement adjacent to Lots 1 through 30, Block 32, Gary First Division;

(2) Dedicated skywalk system area on the second floor of the Livingston Building located at 222 West Superior Street (Lot 44, Block 6, Central Division of Duluth);

(3) 14th Street Alley adjoining Lots 1 through 4, Block 35, Harrison's Brookdale Division of Duluth, lying between Piedmont Avenue and U.S. Highway 53. -- Received

06-1113-04 Clerk application to the Minnesota gambling control board for exemption from lawful gambling license from Rotary Club of Duluth on March 8, 2007 (raffle). -- Received

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**REPORTS OF BOARDS AND COMMISSIONS**

- 06-1113-05 Commission on disabilities minutes of October 4, 2006, meeting. -- Received  
06-1113-08 Duluth airport authority balance sheet for month ending of August 31, 2006. --  
Received  
06-1113-06 Duluth human rights commission minutes of October 11, 2006, meeting. --  
Received  
06-1113-07 Duluth transit authority: (a) Income statement for June 2006; (b) Minutes of  
August 30, 2006, meeting. -- Received  
06-1113-09 Housing and redevelopment authority of Duluth minutes of: (a) June 27;  
(b) July 25, 2006, meetings. -- Received  
06-1113-10 Library board minutes of September 26, 2006, meeting. -- Received  
06-1113-11 Planning commission minutes of September 27, 2006, meeting. -- Received

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**OPPORTUNITY FOR CITIZENS TO BE HEARD**

John Holmes expressed his concerns relative to the lack of a safety fence around the William A. Irving ore boat.

- - -

KL Lewis commented on: why is not the Coast Guard willing to use the Navy training ranges when they are not using them; the lack of road striping on some parts of Skyline Parkway; that the water reservoirs are quite old and that there may not be an adequate amount of them and that the parking meter spots across from the new parking ramp on First Street be clearly painted.

- - -

Greg Price expressed his concern relative to the crime rate in the city and that there were individuals attempting to break into his 83 year old father's home at 4:30 p.m. in Piedmont Heights.

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John Donahue felt that, if need be, the cost for retiree healthcare should be on property taxes versus utility rates.

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At this time, 7:10 p.m., the public hearing regarding the Minnesota investment fund loan agreement of Northstar Machine and Tool Company, Inc., d/b/a Northstar Aerospace, began. No one appeared who wished to be heard and the public hearing was closed.

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**RESOLUTIONS TABLED**

Councilor Gilbert moved to remove Resolution 06-0692, rescinding Resolution 05-0088 in its entirety and conditionally committing funding sources for acquisition of a completed public parking lot and payment for future public recreational use and programming at a new facility to replace Peterson Hockey Arena, from the table, which motion was seconded and unanimously carried.

Councilor Gilbert moved to remove this resolution from the agenda and refer it back to the administration, which motion was seconded and unanimously carried.

- - -

Councilor Ness moved to remove Resolution 06-0733, requesting governmental action for protection of wild rice, 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.

Bob Powless, John Day, Ricky Defoe, Thomas Howes and KL Lewis spoke in support of the resolution, citing reasons of: in Oregon long grain white rice was messed up through genetic engineering; this region is only one of two locations in the world where wild rice grows; the integrity of this natural crop needs to be protected; if the wild rice crop is contaminated, it would be wiped out forever; the paddy rice created by the University of Minnesota is inferior to the naturally grown rice; naturally grown rice is a specialty crop; wild rice is sacred to the Native Indian community; the Fond du Lac Band passed a resolution supporting this issue; wild rice is a benefit to everyone; about 40 years ago, the United States almost lost the total corn crop and the government realized that you must have a reservoir of the original wild species.

Councilors Little and Stauber expressed opposition to the resolution for reasons of: this is not appropriately before the city council; the council does not have the full ramifications of this resolution; the council does not have the information that was requested; there are positive aspects of genetic engineering and 40,000 children are dying each day due to governments of the world not allowing genetic engineering.

Resolution 06-0733 was adopted as follows:

BY COUNCILOR NESS:

The city council finds as follows:

- (a) Natural wild rice is a significant part of our state's identity and agricultural heritage and has been designated as the official state grain; and
- (b) Natural wild rice, or Manoomin, is sacred to the religion of the Anishinaabeg people, important to the subsistence economy of the seven sovereign Ojibwe bands of Minnesota, and protected in many of the treaties the bands have with the United States government; and
- (c) Natural rice is of great ecological importance to Minnesota lakes, rivers, and wildlife, providing important habitat and sustenance for migrating waterfowl and aquatic life; and
- (d) It is in the interest of the state and its flagship research university to proceed in partnership with the Ojibwe bands of Minnesota to better understand the issues, challenges, and opportunities associated with natural wild rice and the role this crop plays in the spiritual, economic, cultural and environmental identity of this state; and
- (e) The introduction of genetically engineered wild rice into Minnesota could result in cross pollination and irreversible changes both to Minnesota lakes and the genetic integrity of natural wild rice. Studies performed on test plots of other genetically engineered beach grasses have documented cross pollination with natural stands.

NOW, THEREFORE, BE IT RESOLVED, that, in the interest of protecting the genetic integrity of this unique natural resource, the city of Duluth recommends that the state of Minnesota should take reasonable precautionary measures in the event of an application for a test plot of genetically engineered wild rice, including enacting a temporary, two-year moratorium that prohibits the release, planting, cultivation, harvest, importation, or sale of any genetically engineered wild rice in Minnesota until the environmental, social and economic impacts can be fully assessed and understood in cooperation with interested parties.

BE IT FURTHER RESOLVED, that the city of Duluth recommends that the University of Minnesota sign an agreement with the Ojibwe bands of Minnesota agreeing to work collaboratively with the bands to protect natural wild rice for future generations.

BE IT FURTHER RESOLVED, that copies of this resolution be transmitted to the commissioners of the Minnesota departments of agricultural and natural resources, Governor Tim Pawlenty, University of Minnesota President Robert Bruininks, and the leadership of the majority and minority caucuses in both the House and Senate.

Resolution 06-0733 was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Ness, Stover and President Reinert -- 5  
Nays: Councilors Krause, Little and Stauber -- 3  
Absent: Councilor Stewart -- 1  
Approved November 13, 2006  
HERB W. BERGSON, Mayor

- - -

### MOTIONS AND RESOLUTIONS

The following entitled resolutions were read for the first time:

BY COUNCILOR GILBERT

06-0760 - RESOLUTION AUTHORIZING AN AGREEMENT WITH NORTHSTAR MACHINE AND TOOL COMPANY, INC., D/B/A NORTHSTAR AEROSPACE, IN AN AMOUNT NOT TO EXCEED \$500,000, CONTINGENT UPON RECEIPT OF A MINNESOTA INVESTMENT FUND GRANT FROM THE MINNESOTA DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT.

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BY COUNCILORS GILBERT AND JOHNSON

06-0758 - RESOLUTION ADOPTING A NEW STANDING RULE OF THE CITY COUNCIL PERTAINING TO NOMINATION OF OFFICERS.

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

BY COUNCILOR STEWART:

RESOLVED, that the assessment roll on file in the office of the city clerk as Public Document No. 06-1113-03(a), which is levied to defray in full the expense of solid waste collecting during the period of March 1, 2005, to June 1, 2006, for which the licensed collector has not been reimbursed as provided for in Chapter 24 of the Duluth City Code, is hereby confirmed.

Resolution 06-0749 was unanimously adopted.

Approved November 13, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

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) \$4,525,000 general obligation steam utility revenue bonds, Series 2006E, are hereby authorized and shall be issued pursuant to Ordinance No. 9791, adopted September 25, 2006, Minnesota Statutes, Chapter 475, Minnesota Statutes, Section 444.075 and Section 55 of the Home Rule Charter of the city for the payment of the costs of construction of improvements to the central steam utility located in the Downtown area of Duluth;

(2) \$3,255,000 general obligation utilities revenue bonds, Series 2006F, are hereby authorized and shall be issued pursuant to ordinance Nos. 9793, 9794 and 9795, adopted October 10, 2006, Minnesota Statutes, Chapter 475, and Section 115.46 and 444.075, and Section 55 of the Home Rule Charter of the city for the payment of the costs of improvements to the municipal water, sewer and gas utilities;

(3) \$1,785,000 general obligation equipment certificates of indebtedness, Series 2006G (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;

(4) General obligation improvement refunding bonds, Series 2006H (the "Series 2006H bonds"), in the approximate amount of \$2,465,000 are hereby authorized and shall be issued, pursuant to Minnesota Statutes, Chapter 475 and the City Charter, for the purpose of refunding the city's general obligation improvement bonds, Series 1996A, dated July 15, 1996;

(5) General obligation street improvement refunding bonds, Series 2006I (the "Series 2006I bonds"), in the approximate amount of \$3,540,000 are hereby authorized and shall be issued, pursuant to Minnesota Statutes, Chapter 475 and the City Charter, for the purpose of refunding the city's general obligation street improvement bonds, Series 1998C, dated August 1, 1998; and

(6) General obligation street improvement refunding bonds, Series 2006J (the "Series 2006J bonds"), in the approximate amount of \$3,265,000 are hereby authorized and shall be issued, pursuant to Minnesota Statutes, Chapter 475 and the City Charter, for the purpose of refunding the city's general obligation street improvement bonds, Series 2000A, dated September 1, 2000.

(The Series 2006E bonds, the Series 2006F bonds, the Series 2006H bonds, the Series 2006I bonds and the Series 2006J bonds are collectively referred to as the "bonds.")

(b) Issuance and sale of bonds and certificates. The terms and conditions of each series of the bonds and the certificates and the sales thereof are set forth in the official terms of offerings for each series on file with the city clerk as Public Document No. 06-1113-15. 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 sale for each series of the bonds and the 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 06-0765 was unanimously adopted.

Approved November 13, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

RESOLVED, that Northern Business Products, Inc., be and hereby is awarded a contract for delivering and installing Herman Miller furnishings for the city auditor's office in accordance with

the city architect's specifications and its quote of \$91,709.94 plus sales tax of \$5,961.14, for a total of \$97,671.08, terms net 30, FOB destination, payable as follows: \$32,927 from the Capital Equipment Fund 250, Department/Agency 015, Organization 2003, Object 5580, Project No. CE250-E303; and \$64,744.08 from the Capital Improvements Fund 450, Department/Agency 030, Object 5520, Project No. OT-0603.

Resolution 06-0767 was unanimously adopted.

Approved November 13, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

RESOLVED, that Nylund Electric, Inc., be and hereby is awarded a contract for electrical rewiring services in conjunction with the city auditor's renovation project for the finance department in accordance with its low bid of \$28,258 and the city architect's specifications, terms net 30, FOB destination, payable out of the Capital Improvements Fund 450, Department/Agency 030, Object 5520, Project No. OT-0603.

Resolution 06-0768 was unanimously adopted.

Approved November 13, 2006

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 traffic maintenance person, including a title change to traffic maintenance worker, which were approved by the civil service board on October 3, 2006, and which are filed with the city clerk as Public Document No. 06-1113-16, are approved. This classification shall be subject to the city's collective bargaining unit with its basic employees; and that pay range for said classification shall be Range 27. 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 06-0728 was unanimously adopted.

Approved November 13, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the appointments by Mayor Bergson of Sandra Graff and Yolande Jenny to the animal humane board for terms expiring on October 31, 2011, replacing Marcia Opie and Mary Jane Smythe, are confirmed.

Resolution 06-0747 was unanimously adopted.

Approved November 13, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the proposed specifications for the revised civil service classification of manager, human resources, including a title change to manager, human resources, healthcare and safety, which were approved by the civil service board on October 3, 2006, and which are filed

with the city clerk as Public Document No. 06-1113-17, are approved; and that said classification shall remain subject to the city's collective bargaining unit with its confidential employees.

BE IT FURTHER RESOLVED, that pay range for said classification shall be the new ranges 13 and 14. The proper city officials are authorized to execute and implement the agreements or other documents necessary to carry out this resolution.

Resolution 06-0753 was unanimously adopted.

Approved November 13, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that Contract No. 19951 with the University of Minnesota is amended, as set out in Public Document No. 06-1113-18 on file with the city clerk, adding four tasks and increasing the contract amount by \$1,800 for a new total of \$7,350, payable from Fund 100-020-1202-5319, for work related to final form and publication of comprehensive plan provisions concerning creeks and streams.

Resolution 06-0759 was unanimously adopted.

Approved November 13, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR NESS:

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. 06-1113-19, with St. Louis County to provide services under food support employment and training (FSET) services at a total cost not to exceed \$32,329 for the period October 1, 2006, through September 30, 2007. Monies received under this agreement shall be received from Funding Source 4260 (St. Louis County), deposited in Fund 268, Agency 031, Organization 6237.

FURTHER RESOLVED, that at the time the city implements its system by which each city program is charged an amount to fund retiree health insurance, which amount is transferred to a fund or trust, the programs funded by this contract will be charged at the same rate and the funds will be transferred and used in the same manner.

Resolution 06-0752 was unanimously adopted.

Approved November 13, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Construction Services, Inc., be and hereby is awarded a construction contract for the replacement of two pedestrian bridges in Lester Park based on its low bid of \$81,349, terms net 30, FOB job site, payable from the General Fund 100, Department/Agency 700, Organization 1420, Object 5530; Project No. CM100-OT0613; Requisition No. 06-0668.

Resolution 06-0745 was unanimously adopted.

Approved November 13, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Bedrock-Flint, Inc., be and hereby is awarded a contract for masonry restoration of Fire Station #4 at 425 West College Street based on its low bid of \$45,896, terms

net 30, FOB job site, payable from Capital Improvements Fund 450, Department/Agency 030, Object 5520; Project CP2006 OT-0606; Requisition No. 06-0673.

Resolution 06-0746 was unanimously adopted.

Approved November 13, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the proper city officers are hereby authorized to accept the dedication on behalf of the general public, an easement for street and utility purposes, from Robert Allen Bauers over the following described property in St. Louis County, Minnesota, and to execute all documents necessary thereto:

Lot 30, Block 6, DULUTH HEIGHTS FIFTH DIVISION; said easement being more particularly described as follows to-wit:

Westerly 17 feet of Lot 30, Block 6, DULUTH HEIGHTS FIFTH DIVISION.

RESOLVED, that the city of Duluth hereby expresses its appreciation and gratitude to Robert Allen Bauers for said easement.

Resolution 06-0748 was unanimously adopted.

Approved November 13, 2006

HERB W. BERGSON, Mayor

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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. 06-1113-20; payment by the city will be made from the General Fund 0100, Agency 700, Organization 1407, Object 5407.

Resolution 06-0763 was unanimously adopted.

Approved November 13, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are hereby authorized to purchase the below-described property in St. Louis County, Minnesota, from Tischer Creek, LLC, for the amount of \$64,000, payable from Sewer Fund 0531, Agency 500, Object 5510, for a sanitary sewer overflow storage facility:

Lots 14, 15 and 16, Block 39, Rearrangement of Part of East Duluth and of First Addition to East Duluth.

Resolution 06-0764 was unanimously adopted.

Approved November 13, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the facility plan approved pursuant to Resolution 06-0309 is hereby amended to provide for constructing a sanitary sewer overflow (SSO) basin near Endion pump

station (18th Avenue East and the Lakewalk) first, and then if required at 32nd Avenue East and London Road.

Resolution 06-0766 was unanimously adopted.

Approved November 13, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Vine Body Shop be and hereby is awarded a contract for furnishing vehicle body repairs as needed from December 1, 2006, through November 30, 2007, for all light-duty vehicles for the fleet division in accordance with specifications at an estimated first-year amount of \$30,000, terms net 30, FOB destination, payable as follows:

(a) \$15,000 from the Fleet Services Fund 660, Department/Agency 015, Object 5221 (50 percent); and

(b) \$15,000 from the Fleet Services Fund 660, Department/Agency 015, Object 5404 (50 percent).

Resolution 06-0771 was unanimously adopted.

Approved November 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STOVER:

RESOLVED, that Resolution 06-0472 be and hereby is amended to increase the dollar amount by \$35,000, for a new total of \$160,273, for storm sewer extensions to construct 330 feet of 12 inch storm sewer extension between Tioga Street and Colorado Street above 41st Avenue East. The new total of \$160,273 is payable from Storm Sewer Fund 535, Agency 500, Organization 1905, Object 5533.

Resolution 06-0775 was unanimously adopted.

Approved November 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

RESOLVED, that the proper city officers are authorized to execute and implement a grant contract, substantially in the form of Public Document No. 06-1113-21 on file in the office of the city clerk, between the city and Minnesota department of public safety for a grant for training and preparedness for influenza pandemic in the amount of \$21,299. Such funds to be deposited in Fund 210, Agency 030, Organization 3164, Revenue Source 4210-02.

Resolution 06-0755 was unanimously adopted.

Approved November 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

RESOLVED, that both Twin Ports Excavating and Construction Services, Inc., (CSI) of Duluth be and hereby are awarded contracts for the demolition of four structures for the building safety division in accordance with specifications on their low bids of \$37,807 and \$10,900,

respectively, for a total of \$48,707, terms net 30, FOB job sites, payable out of General Fund 100, Department/Agency 100, Organization 1504, Object 5453; Requisition 06-0655.

Resolution 06-0769 was unanimously adopted.

Approved November 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR LITTLE:

RESOLVED, that the proper city officials are authorized to enter into Amendment No. 3, a copy of which is on file in the office of the city clerk as Public Document No. 06-1113-22, to grant Contract No. 2000-9748 with the state of Minnesota department of public safety, division of homeland security and emergency management, for terrorism prevention exercise, equipment and training for the police department, extending the term thereof through November 30, 2006.

Resolution 06-0772 was unanimously adopted.

Approved November 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, that the Minnesota Army National Guard be and hereby is awarded a contract for volleyball court rental during the 2005-2006 season for the parks and recreation department in accordance with its quote of \$9,180, terms net 30, FOB destination, payable out of Special Projects Fund 0210, Department/Agency 030, Organization 3190, Object 5412.

Resolution 06-0743 was unanimously adopted.

Approved November 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, that the Minnesota Army National Guard be and hereby is awarded a contract for volleyball court rental during the 2006-2007 season for the parks and recreation department in accordance with its quote of \$9,900, terms net 30, FOB destination, payable out of Special Projects Fund 0210, Department/Agency 030, Organization 3190, Object 5412.

Resolution 06-0744 was unanimously adopted.

Approved November 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, that the city hereby accepts a monetary gift of \$25,000 from the Friends of the Duluth Public Library to the Duluth public library, which monies shall be deposited in Fund 240, Agency 300, Organization SG50, Revenue Source 4660.

Resolution 06-0754 was unanimously adopted.

Approved November 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

The city council acknowledges the following:

(a) The U.S. department of transportation and the Minnesota department of transportation have made capital and operating funds available to the Duluth transit authority; and

(b) The Duluth transit authority has requested and the city of Duluth has committed the necessary local funding for the projects via the DTA's levy; and

(c) The DTA has completed the necessary state and federal requirements.

NOW, THEREFORE, BE IT RESOLVED, that the Duluth City Council hereby approves the DTA request to accept operating grants and capital grants from the state of Minnesota and the federal government as per grants submitted for the years 2006 and 2007 and apply for state and federal funds in 2007.

Resolution 06-0761 was unanimously adopted.

Approved November 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, that, pursuant to Laws of Minnesota, 1969, Chapter 720, the Duluth transit authority is hereby authorized to execute an agreement with First Transit, Inc., providing for the management of the transit system for a five year period commencing November 1, 2006, which agreement is on file in the office of the city clerk as Public Document No. 06-1113-23.

Resolution 06-0762 was unanimously adopted.

Approved November 13, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, that API Electric Company be and hereby is awarded a contract to replace, repair and restore the electrical system for Wade Stadium ballfields 6 and 7 in accordance with the city requirements and its low bid of \$46,829, terms net 30, FOB job sites, payable out of General Fund 100, Department/Agency 700, Organization 1420, Object 5530; Project No. CM100-OT-0616; Requisition No. 06-0701.

Resolution 06-0770 was unanimously adopted.

Approved November 13, 2006

HERB W. BERGSON, Mayor

- - -

The following resolutions were also considered:

Resolution 06-0750, by Councilor Little, awarding contract to Custom Fire Apparatus, Inc., for a triple combination pumper fire truck in the amount of \$316,558, was introduced for discussion.

Councilor Little expressed his concerns about the amount of dollars being expended for this unit when the dollars could be better spent to assist in the fight against crime.

Resolution 06-0750 was adopted as follows:

BY COUNCILOR LITTLE:

RESOLVED, that Custom Fire Apparatus, Inc., be and hereby is awarded a contract for furnishing and delivering a triple combination fire truck in the amount of \$316,558, terms net 30,

FOB destination, payable out of the Capital Equipment Fund 0250, Department/Agency 015, Organization 2006, Object 5580, CE250-V603.

Resolution 06-0750 was adopted upon the following vote:

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

Nays: Councilors Little and Stauber -- 2

Absent: Councilor Stewart -- 1

Approved November 13, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0751, by Councilor Gilbert, amending Resolution 05-0458 granting a special use permit to Don Proulx for an assisted living facility for property located at the southeast corner of Haines Road and Morris Thomas Road to permit an expansion, was introduced for discussion.

Councilor Krause expressed concerns that residents in this neighborhood have not been adequately informed.

Resolution 06-0751 was adopted as follows:

BY COUNCILOR GILBERT:

WHEREAS, Don Proulx has submitted to the city council a request to amend a previous special use permit for an expansion of a ten unit assisted living facility to a 30 unit facility on property described as the W1/2, NW1/4, NW1/4, NW1/4, Section 31, T50, R14, and located at the southeast corner of Haines Road and Morris Thomas Road; 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 Planning Commission File No. 06100).

NOW, THEREFORE, BE IT RESOLVED, that a special use permit is hereby granted to Don Proulx for the operation of a 30 unit assisted living facility at the corner of Haines Road and Morris Thomas Road, on the condition that project be constructed and maintained in accordance with plans submitted by Don Proulx, entitled "Assisted Living Home, Morris Thomas Road," dated 09/12/05, as identified as Public Document No. 06-1113-24.

Resolution 06-0751 was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Little, Ness, Stauber, Stover and President Reinert -- 7

Nays: Councilor Krause -- 1

Absent: Councilor Stewart -- 1

Approved November 13, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0773, by Councilor Gilbert, committing funding sources for the heritage program account and authorizing a development agreement with Clyde Industrial Park, Inc., (Clyde) and Duluth Heritage Sports Center (heritage) and a program agreement with heritage related to the Heritage Sports Center project, superseding Resolution 05-0088, was introduced for discussion.

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

David Ross, Pete Weidman, Dick Lorass and Pam Kramer spoke in support of the resolution for reasons of: the Duluth Area Chamber of Commerce supports the project because this is what the community investment trust fund was intended for; this is a highly visible area

which has been neglected for years; the project will be a source of energy, strength, optimism and activity for this area; it is a clear winner for the city of Duluth; this creates ice time and an opportunity for kids to have hockey practice; this will be a gem of a first impression to visitors that come into the city; a huge collaboration of citizen volunteers have come together to do this; this will transform a distressed neighborhood; it will create new opportunities for youth and stimulate new jobs.

Resolution 06-0773 was adopted as follows:

BY COUNCILOR GILBERT:

RESOLVED, that the proper city officials are hereby authorized to enter into a program agreement with heritage substantially in the form of that on file in the office of the city clerk as Public Document No. 06-1113-25(a) that defines the use of the DHSC facility upon its completion by the city for its parks and recreation programming from the city's provision of a program fee from the heritage program account payable as follows: \$500,000 from the proceeds of any insurance policy paid for by the city covering the Peterson Hockey Arena for its loss by the fire and explosion, payable from Fund 450; up to \$100,000 from the capital improvement program general fund which had been dedicated to heat, ventilation and air conditioning improvements at Peterson Hockey Arena, payable from Fund 450; up to \$1,200,000 from the community investment trust fund, currently in Fund 256, to be transferred to Fund 450 upon proof of project financing, for a total of up to \$1,800,000 less monies previously expended and currently encumbered and less monies paid pursuant to the terms of the development agreement.

BE IT FURTHER RESOLVED, that the proper city Officials are hereby authorized to enter into a development agreement with Clyde and heritage substantially in the form of that on file in the office of the city clerk as Public Document No. 06-1113-25(b) that defines the responsible parties for each portion of the project, time lines and conditions necessary for the release of both the state DEED grant monies secured by the city on behalf of the project and of the city's heritage program account, as defined above.

BE IT FURTHER RESOLVED, that this resolution supersedes and replaces Resolution 05-0088.

Resolution 06-0773 was adopted upon the following vote:

Yeas: Councilors Johnson, Krause, Little, Ness, Stauber, Stover and President Reinert -- 7

Nays: None -- 0

Abstention: Councilor Gilbert -- 1

Absent: Councilor Stewart -- 1

Approved November 13, 2006

HERB W. BERGSON, Mayor

- - -

## **INTRODUCTION AND CONSIDERATION OF ORDINANCES**

### **ORDINANCE TABLED**

BY COUNCILOR GILBERT

06-036 (9799) - 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-3, APARTMENT RESIDENTIAL, TO R-2, TWO FAMILY 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 tabke, which motion was seconded and unanimously carried.

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

Robert Finnigan spoke in opposition to the ordinance because: he owns the land; this not about the project anymore - it is about the regulatory taking and the subsequent damages; there was an agreed upon deal; hundreds of thousands of dollars have been spent on the project; he has every intention on doing the project and with this zoning change he would not be able to do the project.

Dianna Hunter spoke in support of the ordinance because: three years ago the planning commission recommended not to create the existing zoning; the council voted to reclassify the property based on Mr. Finnigan's promise to immediately get into the ground to develop his project; to date Mr. Finnigan has not signed the agreement or purchased the city-owned land; Mr. Finnigan has not followed through will the arrangements; the neighbors are concerned that the existing zoning will allow some other person to develop the land which would adversely affect the neighborhood; the planning commission has reviewed the issue and supports returning the zoning classification to R-2.

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

Yeas: Councilors Gilbert, Johnson, Krause, Ness, Stauber, Stover and President Reinert -- 7

Nays: Councilor Little -- 1

Absent: Councilor Stewart -- 1

- - -

The following entitled ordinances were read for the first time:

BY COUNCILOR GILBERT

06-037 - AN ORDINANCE AMENDING SECTIONS 50-35 AND 50-80 OF THE DULUTH CITY CODE, 1959, AS AMENDED RELATING TO CLINICS IN RESIDENTIAL AND COMMERCIAL ZONES.

- - -

BY COUNCILOR GILBERT

06-049 - AN ORDINANCE GRANTING A CONCURRENT USE PERMIT TO SETH OLIVER FOR TWO BALCONIES TO PROJECT INTO AND OVER THE RIGHT-OF-WAY OF WEST FIRST STREET LOCATED ADJACENT TO 414 WEST FIRST STREET.

- - -

BY COUNCILOR STOVER

06-045 - AN ORDINANCE ALIENATING CERTAIN PROPERTY IN DULUTH HEIGHTS AND AUTHORIZING CONVEYANCE OF SAME TO THE HOUSING AND REDEVELOPMENT AUTHORITY OF DULUTH AT NO COST, AND ACCEPTING A LAND EXCHANGE FROM THE HRA IN THE HAWK RIDGE AREA AND DEDICATING SAID EXCHANGED PROPERTY FOR PARK PURPOSES.

- - -

BY COUNCILOR STOVER

06-046 - AN ORDINANCE ALIENATING CERTAIN PROPERTY NEAR THE INTERSECTION OF PECAN AVENUE AND RICE LAKE ROAD AND AUTHORIZING SALE AND CONVEYANCE OF SAME TO JOHN W. PATRICK FOR \$6,220.

- - -

BY COUNCILOR STOVER

06-047 - AN ORDINANCE AUTHORIZING SALE OF CERTAIN PROPERTY NEAR THE INTERSECTION OF GARFIELD AVENUE AND SUPERIOR STREET TO MINNESOTA POWER FOR \$35,000.

- - -

BY COUNCILOR STOVER

06-048 - AN ORDINANCE ALIENATING CERTAIN PROPERTY IN WEST DULUTH AND AUTHORIZING SALE OF SAME TO JACK P. AND BONNIE J. SYLVESTER FOR \$19,625.

Councilor Stauber moved to amend the ordinance to insert the following language after the phrase "Section 3.":

"That proceeds of the sale shall be deposited in a fund to be used only for improvement or maintenance of park lands.

Section 4,"

which motion was seconded and unanimously carried.

- - -

The following ordinances were read for the second time:

BY COUNCILOR GILBERT

06-043 (9800) - AN ORDINANCE GRANTING TO DULUTH LAKEWALK OFFICES, LLC, A CONCURRENT USE PERMIT TO CONSTRUCT AND MAINTAIN PARKING SPACES, FOR PRIVATE USE, IN THE RIGHTS-OF-WAY OF 15TH AVENUE EAST AND SOUTH STREET.

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

Yeas: Councilors Gilbert, Johnson, Krause, Little, Stauber, Stover and President Reinert -- 7

Nays: Councilor Ness -- 1

Absent: Councilor Stewart -- 1

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BY COUNCILOR STOVER

06-044 (9801) - AN ORDINANCE ALIENATING CERTAIN PROPERTY IN WEST DULUTH AND AUTHORIZING SALE OF SAME TO DALE E. AND DEBRA K. DIERYCK FOR \$25,769.

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

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The meeting was adjourned at 8:12 p.m.

JEFFREY J. COX, City Clerk

- - -

**ORDINANCE NO. 9799**

BY COUNCILOR GILBERT:

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-3, APARTMENT RESIDENTIAL, TO R-2, TWO FAMILY 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, is amended to read as follows:

(MAP)

(Reference File No. 06075)

*[see map at end of meeting]*

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: December 22, 2006)

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

Yeas: Councilors Gilbert, Johnson, Krause, Ness, Stauber, Stover and President Reinert -- 7

Nays: Councilor Little -- 1

Absent: Councilor Stewart -- 1

Passed November 13, 2006

Approved November 13, 2006

HERB W. BERGSON, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

- - -

**ORDINANCE NO. 9800**

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 RIGHTS-OF-WAY OF 15TH AVENUE EAST AND SOUTH STREET.

The city of Duluth does ordain:

Section 1. Under the authority of Section 100 of the 1912 Home Rule Charter of the city of Duluth, as amended, and subject to the conditions, limitations and restrictions hereinafter set forth, permission is hereby granted to Duluth Lakewalk Offices, LLC, their successors and interests, referred to herein as the permittees, to occupy, construct and maintain a pedestrian structure and private parking spaces in that part of 15th Avenue East right-of-way between London Road and South Street, and South Street to a point 200 feet east of the east right-of-way of 15th Avenue East 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:

15th Avenue East right-of-way adjoining Block 18, Lots 8 and 9, Block 19, Lots 1 and 16, Endion Division of Duluth; and, that portion of South Street adjoining Block 19, Lots 13-16, Endion Division of Duluth.

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

(a) A comprehensive general liability insurance policy shall be maintained in force by permittee in an amount not less than \$1,000,000 for bodily injuries and in an amount not less than \$300,000 for property damage or \$1,000,000 single limit coverage. Such coverage shall include all permittee activities occurring on the permitted premise whether said activities are performed by employees or agents under contract to permittee. Such policy of insurance shall be approved by the city attorney and shall contain a condition that it may not be cancelled without 30 days written notice to the city of Duluth. The city of Duluth shall be named as an additional insured on said policy of insurance required by this paragraph. Current ISO additional insured endorsement CG 20 10 is not acceptable. If the ISO 20 10 is used, it must be a pre-2004 edition.

Section 3. That this permit shall expire on January 1, 2008, for any purpose whatsoever, unless prior to such date, permittee files with the city clerk certificates of insurance evidencing that permittee has in force insurance meeting the following requirements:

(a) Comprehensive general liability insurance policy shall be maintained in force by permittee in an amount not less than \$1,200,000 for bodily injuries and in an amount not less than \$400,000 for property damage or \$1,200,000 single limit coverage. Such coverage shall include all permittee activities occurring on the permitted premise whether said activities are performed by employees or agents under contract to permittee. Such policy of insurance shall be approved by the city attorney and shall contain a condition that it may not be cancelled without 30 days written notice to the city of Duluth. The city of Duluth shall be named as an additional insured on said policy of insurance required by this paragraph. Current ISO additional insured endorsement CG 20 10 is not acceptable. If the ISO 20 10 is used, it must be a pre-2004 edition.

Section 4. That this permit shall expire on July 1, 2009, for any purpose whatsoever, unless prior to such date, permittee files with the city clerk certificates of insurance evidencing that permittee has in force insurance meeting the following requirements:

(a) Comprehensive general liability insurance policy shall be maintained in force by permittee in an amount not less than \$1,500,000 for bodily injuries and in an amount not less than \$500,000 for property damage or \$1,500,000 single limit coverage. Such coverage shall include all permittee activities occurring on the permitted premise whether said activities are performed by employees or agents under contract to permittee. Such policy of insurance shall be approved by the city attorney and shall contain a condition that it may not be cancelled without 30 days written notice to the city of Duluth. The city of Duluth shall be named as an additional insured on said policy of insurance required by this paragraph. Current ISO additional insured endorsement CG 20 10 is not acceptable. If the ISO 20 10 is used, it must be a pre-2004 edition.

Section 5. 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 6. That upon the giving of the notice of termination as aforesaid, the permittees shall remove said parking spaces and all fixtures and pertinences 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 7. 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 15th Avenue East right-of-way and South 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, watermains, pipes, conduits or other public utilities made necessary by the presence of such parking spaces in said 14th Avenue East right-of-way.

Section 8. 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 9. The permittee shall further observe the following conditions:

(a) That all city building codes will be observed in the construction of structures and parking areas;

(b) The type and location of the improvements shall be limited to and maintained in accordance with the site plan entitled "LAKEWALK II, DULUTH, MN, dated September 27, 2006, and on record as Public Document No. 06-1113-26;

(c) The permittee shall maintain all structures and parking areas (surfacing, sealing, striping, plowing, etc.) being created and permitted by this ordinance;

(d) The permittee shall not prohibit public use of the several spaces being created within the rights-of-way.

Section 10. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: December 22, 2006)

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

Yeas: Councilors Gilbert, Johnson, Krause, Little, Stauber, Stover and President Reinert -- 7

Nays: Councilor Ness -- 1

Absent: Councilor Stewart -- 1

ATTEST:  
JEFFREY J. COX, City Clerk

Passed November 13, 2006  
Approved November 13, 2006  
HERB W. BERGSON, Mayor

- - -

**ORDINANCE NO. 9801**

BY COUNCILOR STOVER:

AN ORDINANCE ALIENATING CERTAIN PROPERTY IN WEST  
DULUTH AND AUTHORIZING SALE OF SAME TO DALE E. AND  
DEBRA K. DIERYCK FOR \$25,769.

The city of Duluth does ordain:

Section 1. That the city has identified certain property as being surplus to the city's future needs and hereby declares its intention to alienate its interest in Lot 2 (southerly 20 feet), Lot 3, Lot 4 and Lot 5, Block 150, WEST DULUTH FIFTH DIVISION.

Section 2. 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 Dale E. and Debra K. Dieryck for \$25,769 to be deposited in General Fund 0100-700-1407-4640 and to execute all documents necessary with regard to said conveyance: Lot 2 (southerly 20 feet), Lot 3, Lot 4 and Lot 5, Block 150, WEST DULUTH FIFTH DIVISION.

Section 3. That this ordinance shall take effect 30 days from and after its passage and publication. (Effective date: December 22, 2006)

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

Yeas: Councilors Gilbert, Johnson, Krause, Little, Ness, Stauber, Stover and President Reinert -- 8

Nays: None -- 0

Absent: Councilor Stewart -- 1

ATTEST:

JEFFREY J. COX, City Clerk

Passed November 13, 2006  
Approved November 13, 2006  
HERB W. BERGSON, Mayor

- - -

Map No. 29

**OFFICIAL PROCEEDINGS**

Duluth City Council meeting held on Monday, November 27, 2006, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: None -- 0

- - -

**PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS**

06-1127-01 Minnesota state auditor audit report for Spirit Mountain recreation area authority for the years ended April 30, 2006 and 2005. -- Received

06-1127-02 The following communications regarding the proposed construction and development and use agreement of the proposed Kroc Center (06-0785R): (a) Janet Karon; (b) Pat Mast; (c) Laura Puckett; (d) William van Druten. -- Received

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**REPORTS FROM OTHER OFFICERS**

06-1127-03 Clerk applications to the Minnesota gambling control board for exemption from lawful gambling licenses (raffles) from:

(a) Greater Downtown Council on January 17, 2007;

(b) Regents of the University of Minnesota on February 11, 2007. -- Received

06-1127-04 Parks and recreation department director minutes of Lake Superior zoological society meeting of September 20, 2006. -- Received

- - -

**REPORTS OF BOARDS AND COMMISSIONS**

06-1127-05 American Indian commission minutes of October 16, 2006, meeting. -- Received

06-1127-06 Duluth airport authority minutes of October 17, 2006, meeting. -- Received

06-1127-07 Duluth/North Shore Sanitary District board minutes of October 11, 2006, meeting. -- Received

06-1127-08 Parks and recreation commission minutes of October 11, 2006, meeting. -- Received

06-1127-09 Planning commission minutes of October 25, 2006, meeting. -- Received

06-1127-10 Spirit Mountain recreation area authority minutes of: (a) April 20; (b) July 20; (c) August 17; (d) September 21, 2006, meetings. -- Received

- - -

**OPPORTUNITY FOR CITIZENS TO BE HEARD**

KL Lewis reported on the lighting of the new parking ramp on First Street, suggested that the construction workers park on the top level of the casino ramp and exit off First Street to get them off the street and stated that snow plowing would be tough on First Street if it is turned into a two way street.

- - -

**UNFINISHED BUSINESS**

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. 06-1127-11, with Northstar Machine and Tool Company, Inc., d/b/a Northstar Aerospace, in an amount not to exceed \$500,000, payable from Duluth Recovery Loan Program Fund 235-020-5458, contingent upon receipt of a Minnesota investment fund grant from the Minnesota department of employment and economic development.

Resolution 06-0760 was unanimously adopted.

Approved November 27, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILORS GILBERT AND JOHNSON:

RESOLVED, that Rule 3 of the standing rules of the city council be amended to read as follows:

Rule 3. NOMINATION OF OFFICERS - TERM OF OFFICE.

No later than the end of the last scheduled regular council meeting of the year, every nomination of a councilor for a position as officer of the council for the following year shall be made known to the council by the nominator.

Each councilor elected as an officer of the council shall hold office for a term of one year or until his or her successor is elected.

An officer of the council may be removed from office by resolution passed by two-thirds vote of the council, but only after there has been a showing of just cause for such removal. If a resolution of removal is passed, then the next order of business at that meeting shall be the election of a councilor to serve in place of the removed officer for the remainder of the removed officer's unexpired term.

Resolution 06-0758 was unanimously adopted.

Approved November 27, 2006

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

BY COUNCILOR STEWART:

RESOLVED, that the proper city officers are hereby authorized to enter into an agreement, substantially in the form of the agreement filed as Public Document No. 06-1127-12 with the Minnesota state department of revenue pursuant to which the state will administer the city's sales tax system, compensating itself from sales tax collections.

Resolution 06-0777 was unanimously adopted.

Approved November 27, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

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

College of St. Scholastica, 1200 Kenwood Avenue, for December 1, 2006, with Awah Foncha, manager.

Resolution 06-0780 was unanimously adopted.

Approved November 27, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

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 2007, in accordance with the provisions of Section 125 of the Internal Revenue Code, which agreement shall be substantially in the form of Public Document No. 06-1127-13 on file with the city clerk, at an estimated cost of \$11,250, which shall be paid from the General Fund 100, Department 700, Division 1431.

Resolution 06-0782 was unanimously adopted.

Approved November 27, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

RESOLVED, that the proper city officials are hereby authorized to execute an agreement with Johnson Insurance Consultants for professional consulting services relating to city's group health insurance program during the year 2007, which agreement shall be substantially in the form of Public Document No. 06-1127-14 on file in the office of the city clerk, at a cost to the city of not to exceed \$13,200, which shall be payable from the Group Health Fund 630-036-1650-5441.

Resolution 06-0783 was unanimously adopted.

Approved November 27, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

RESOLVED, that Mercer Health and Benefits, LLC, be and hereby is awarded a contract for a dependent eligibility audit of the city's health insurance medical plan for the human resources division in accordance with its proposal of \$25,000, net 30, FOB destination, payable out of the Medical Health Fund 630, Department/Agency 036, Organization 1650, Object 5808, and Requisition 06-0662.

Resolution 06-0795 was unanimously adopted.

Approved November 27, 2006

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 chief gas controller, which were approved by the civil service board on November 7, 2006, and which are filed with the city clerk as Public Document No. 06-1127-15, are approved. This classification shall remain subject to the city's collective bargaining agreement

with its supervisory unit employees and compensated at Pay Range 1075, \$4,341 to \$5,273 per month.

Resolution 06-0778 was unanimously adopted.

Approved November 27, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

Resolved, that the proposed specifications for the new civil service classification of assistant city treasurer, which were approved by the civil service board on November 7, 2006, and which are filed with the city clerk as Public Document No. 06-1127-16, are approved; that said classification shall be subject to the city's collective bargaining unit with its supervisory unit employees; and that pay range for said classification shall be Range 1085. The proper city officials are authorized to execute and implement an agreement with the union to provide for employing one or more unit members consistent with this resolution.

Resolution 06-0779 was unanimously adopted.

Approved November 27, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR JOHNSON:

RESOLVED, that the appointment by Mayor Bergson of Jennifer Murphy (commission on disabilities representative) to the parks and recreation commission for a term expiring on February 13, 2008, replacing Nettie R. Bothwell who resigned, is confirmed.

Resolution 06-0781 was unanimously adopted.

Approved November 27, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that:

(a) The city council finds a sufficient petition was filed with the city clerk requesting the vacation of the alley between Lots 1-11 and 20-30, Block 32, Gary First Division;

(b) Pursuant to Section 100 of the City Charter and Article IV of Chapter 45 of the Duluth City Code, 1959, as amended, such petition was duly referred to the city planning commission and such commission gave due notice of public hearing and did consider same in public hearing and the city planning commission found that said portion of the alley is useless for the purpose of a roadway, based on the following finding:

(1) This alley exists only on paper and is not used by other property owners to access garages or rear yards;

(c) The planning commission found that it is necessary to retain a utility easement over the full width and length of the alley proposed for vacation due to the existence of a power line in this alley;

(d) The planning commission, at its November 14, 2006, regular meeting, did approve, unanimously, the alley vacation petition while retaining a utility easement over the full width and length of the alley proposed for vacation;

(e) The city council of the city of Duluth approves the vacation of the alley between Lots 1-11 and 20-30, Block 32, Gary First Division, and as more particularly described on Public Document No. 06-1127-17, retaining for the public a utility easement over the entire vacation area;

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

Resolution 06-0799 was unanimously adopted.

Approved November 27, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

Resolution 02-0216 was unanimously adopted on May 13, 2002, and said resolution vacated several descriptions of easements which had been previously vacated.

A sufficient petition was filed with the city clerk requesting the vacation of the following street, alley, pedestrian and utility easements legally described as:

Worth Street adjoining Lots 6-12, Blocks 19 and 22, Oakland Park Addition;

Alley adjoining Blocks 14 and 19, Oakland Park Addition;

Northerly 1/2 of Lyons Street adjoining Lot 27, Block 10, Superior View Addition;

Alley in Block 12 and Block 19, Superior View Addition, Second Division retaining the full right-of-way as a utility easement;

Utility easement in the westerly 33 feet of Junction Avenue between Blocks 11 and 12, Superior View Addition, Second Division;

Utility easement along that portion of vacated Lyons Street, between Blocks 2 and 9, lying west of a line drawn ten feet east of and parallel to the east line of Brainerd Avenue, and lying south of a line drawn ten feet north of and parallel to the south line of Lyons Street in Superior View Addition;

Jackson Street adjoining Block 6 and Block 7, Clover Hill Division;

Alley adjoining a portion of Lots 1 and 2, Block 14, and Lots 6-9, Block 15, Motor Line Division;

Montrose Avenue adjoining Blocks 9 and 10 and the intersection of Gold Street and Montrose Avenue, Motor Line Park Division, retaining the east 33 feet of the requested area and the entire intersection of Gold and Montrose as a utility easement;

Utility easement on southerly 20 feet of Gold Street and easterly 25 feet of Gold Street lying between Blocks 7 and 10 in Motor Line Park Division;

Alley adjoining Lots 1, 3, 5, 7, 9, Block 1, Superior View Addition;

Alley adjoining Lots 1-27 (odd only), Block 10, Superior View Addition.

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.

The city planning commission unanimously approved the vacation petition at its March 27, 2002, meeting (FN 01156).

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the vacations described above and as more particularly described on Public Document No. 02-0513-24.

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 portion of the rights-of-way and easements to be vacated and the easements being retained.

BE IT FURTHER RESOLVED, that the city council approves, and the proper city officials are authorized to accept and record documents, for the following rights-of-way:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

Replacement easement over the easterly 33 feet of Junction Avenue between Blocks 11 and 12, Superior View Addition, Second Division;

That portion of as built Junction Avenue and Buffalo Street extension through Lots 1-29 (odd numbered lots), Block 11, Superior View Addition, Second Division, and certain parts of University Circle Addition (using 1975 city plat sketch for legal descriptions) quit claim deed to be issued;

Dedication of 50 foot wide alleyway easement (extension of Carver Avenue) into vacated Nortondale Development Second Division, adjacent to the west side of Blocks 1, 2 and 12, Motor Line Division, with reverter clause;

A 16 foot strip along the northerly side of Nortondale Development, First Division (the southerly 16 feet of St. Marie Street).

Resolution 06-0800 was unanimously adopted.

Approved November 27, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

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

Parcel ID and legal description	Location	Reason
010-0132-00080 Auditors Plat No. 19 Lots 8-13 (all of Tract #1)	south side of Morgan Park Entrance near Arbor Street (Morgan Park)	stream and storm water drainage protection, stream flows through the property
010-0230-05240 Bayview Addition No. 2 Southerly 340 feet of parcel described as Proprietor Reservation, reserved for RR ROW (part of Tract #15)	east of Irwin Avenue south of Godolphin Street (Bayview Heights)	to be conveyed to the city for extension of Irwin Avenue
010-0350-00270 Bryant Addition Third Division Block 3, Lots 10-15 (all of Tract #17)	west end of Vernon Street on the north side (Lincoln Park)	stream protection, stream flows through the property
010-0880-05790 Duluth Heights Fifth Division Block 21, Lots 1-32 (All of Tract #19)	west side of Hugo Avenue between Lemon Street and Quince Street (Duluth Heights)	stream protection, stream flows through the property

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

Parcel ID and legal description	Location	Reason
010-1620-01140 010-1620-01160 010-1620-01190 010-1620-01200 010-1620-01250 010-1620-01260 010-1620-01290 010-1620-01320 Fond du Lac Fourth Street Div. Lots 28, 32, 38, 40-66 even numbered lots (All of Tract #21)	north side of Fourth Street between 132nd and 134th avenues West (Fond du Lac)	steep slopes, erodible soils on the banks of Mission Creek; future addition to Fond du Lac Park
010-2010-03770 010-2010-03780 Greysolon Farms First Division Block 14, Lots 23 and 24 (All of Tract #24)	south end of Whittier Street west of Vermilion Road (Morley Heights)	state snowmobile trail crosses the property; possible future park corridor to Amity Creek
010-2110-04210 010-2110-04240 Harrisons Brookdale Division Block 42, Lots 32 and 33 and 34-37 lying south of the dividing line between the N1/2 and S1/2 of NE1/4 of Section 32, T 50N, R 14W (All of Tract #25)	end of West 13th Street on the south side (Lincoln Park)	trail preservation, Superior Hiking Trail crosses the property
010-2420-00900 010-2420-00910 010-2420-00920 010-2420-00930 010-2420-00940 Hunter/Markell's Grassy Point Addition Block 6, Lots 7-11 (All of Tract #27)	west side of 72nd Avenue West between Waseca Street and Fremont Street (Fairmount)	possible zoo expansion area

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

<b>Parcel ID and legal description</b>	<b>Location</b>	<b>Reason</b>
010-2420-01340 010-2420-01390 010-2420-01400 Hunter/Markell's Grassy Point Addition Block 7, Lots 19, 24, and 25 (All of Tract #28)	east side of 72nd Avenue West between Waseca Street and Fremont Street (Fairmount)	possible zoo expansion area
010-2550-00170 Ironton Fourth Division Block 1, Lot 17 except part taken for highway (All of Tract #29)	south side of Clyde Avenue between Grand Avenue and 93rd Avenue West (Smithville)	sanitary sewer crosses the property
010-2550-00460 010-2550-00470 010-2550-00480 Ironton Fourth Division Block 2, Lots 26-28 except part taken for highway (All of Tract #32)	west side of 92nd Avenue West south of Clyde Avenue (Smithville)	sanitary sewer and Stewart Creek crosses the property
010-2550-01850 010-2550-01900 Ironton Fourth Division Block 8, Lots 3-8 (All of Tract #33)	east side of 92nd Avenue West south of Clyde Avenue (Smithville)	stream preservation, Steward Creek crosses the property
010-2550-02120 010-2550-02130 010-2550-02150 Ironton Fourth Division Block 8, Lots 29-32, 34 and 35 (All Tract #34)	west side of 91st Avenue West south of Clyde Avenue (Smithville)	sanitary sewer crosses the property, in flood plain
010-2550-02290 Ironton Fourth Division Block 6, Lot 9 (All of Tract #35)	east side of 91st Avenue West south of Clyde Avenue (Smithville)	sanitary sewer crosses the property

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

<b>Parcel ID and legal description</b>	<b>Location</b>	<b>Reason</b>
<p>010-2710-6110                      In Sec. 21, T 50N, R 14W                      All of the S1/2 of SE1/4 of SE1/4 of SW1/4 except that part commencing at a point on the south line of said section 660.62 feet west of S1/4 corner of said section, thence north 295.16 feet at right angles to said section line, thence east 295.16 feet, thence south 295.16 feet to place of beginning, also except easterly 33 feet.                      (All of Tract #37)</p>	<p>between East Orange Street and Blackman Avenue at the south end of Blackman Avenue (Duluth Heights)</p>	<p>existing road and possible road realignment</p>
<p>010-2710-06160                      In Sec. 21, T 50N, R 14W                      S1/2 of SW1/4 of SW1/4 of SE1/4 except east 125.26 feet.                      (All of Tract #38)</p>	<p>south end of Blackman Avenue on the east side (Duluth Heights)</p>	<p>possible future school facility</p>
<p>010-2710-06170                      In Sec. 21, T 50N, R 14W                      East 125.26 feet of S1/2 of SW1/4 of SW1/4 of SE1/4.                      (All of Tract #39)</p>	<p>south end of Blackman Avenue on the east side (Duluth Heights)</p>	<p>possible future school facility</p>
<p>010-2720-00270                      In Sec. 35, T 51N, R 14W                      SE1/4 of NE1/4 of SE1/4                      (All of Tract #40)</p>	<p>south of Pleasantview Road west of Vermilion Road (Woodland)</p>	<p>Amity Creek, Superior Hiking Trail, state snowmobile trail cross the property</p>
<p>010-2720-00320                      In Sec. 35, T 51N, R 14W                      SE1/4 of NW1/4 of SE1/4                      (All of Tract #41)</p>	<p>north of Vassar Street and east of Woodland Avenue (Woodland)</p>	<p>land packaging for future coordinated development</p>
<p>010-2720-00240                      In Sec. 35, T 51N, R 14W                      NE1/4 of NE1/4 of SE1/4                      (All of Tract #42)</p>	<p>south side of Pleasantview Road west of Vermilion Road (Woodland)</p>	<p>Amity Creek, Superior Hiking Trail, state snowmobile trail cross the property</p>

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

<b>Parcel ID and legal description</b>	<b>Location</b>	<b>Reason</b>
010-2720-00250 In Sec. 35, T 51N, R 14W NW1/4 of NE1/4 of SE1/4 (All of Tract #43)	south side of Pleasantview Road west of Vermilion Road (Woodland)	Amity Creek, Superior Hiking Trail, state snowmobile trail cross the property
010-2720-00330 In Sec. 35, T 51N, R 14W NE1/4 of SE1/4 of SE1/4 (All of Tract #44)	west of Vermilion Road south of Pleasantview Road (Woodland)	Amity Creek, Superior Hiking Trail, state snowmobile trail cross the property
010-2720-00360 In Sec. 35, T 51N, R 14W SE1/4 of SE1/4 of SE1/4 (All of Tract #45)	east of Trail Drive cul du sac (Woodland)	Amity Creek, state snowmobile trail cross the property
010-3380-00060 Mount Royal Division Block 3, Lot 1 (All of Tract #46)	north side of Hawthorne Road between Wallace Avenue and Vermilion Road (Congdon Park)	steep slope, possible future park
010-3410-04680 010-3410-04740 Myers and Whipples Addition Block 29, Lots 1-9 (All of Tract #47)	northwest corner of West Toledo Street and Myers Avenue (Kenwood)	east branch of Chester Creek flows through the property
010-3470-00810 Nortons Acre Outlots Lot 74 (All of Tract #48)	east end of Middle Road on the north side (Kenwood)	wetland and floodplain preservation for Tischer Creek
010-3470-00820 Nortons Acre Outlots Lot 75 (Part of Tract #49)	east end of Middle Road on the north side (Kenwood)	wetland and floodplain preservation for Tischer Creek
010-4540-01150 010-4540-01160 010-4540-01170 West End Addition Block 7, Lots 5-7 (All of Tract #52)	northeast corner of intersection of Grand Avenue and North 62nd Avenue West (Fairmount)	road crosses the property

Resolution 06-0808 was unanimously adopted.  
Approved November 27, 2006  
HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the proper city officials, acting as fiscal agent for the regional stormwater protection team (RSPT), are hereby authorized to apply for and to accept, if offered, a Minnesota's Lake Superior coastal program grant administered through the Minnesota department of natural resources in the amount of \$15,000 for the purposes of working with the South St. Louis soil and water conservation district to develop best management practice workshops and information for small businesses and volunteer groups demonstrating practices for protecting Lake Superior and for continuing general public outreach, which funds shall be paid into Fund 535, Organization 1915, Activity 5439.

BE IT FURTHER RESOLVED, that the proper city officials are authorized to act as legal sponsor of said grant, to execute any documents required to be executed to accept such grant and to obligate up to \$3,000 in match provided as in-kind services from RSPT members and \$2,000 in cash, materials and room rental from RSPT partner organizations, which funds shall be paid from Fund 535, Organization 1915, Activity 5439.

Resolution 06-0787 was unanimously adopted.

Approved November 27, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Ziegler/Caterpillar, Inc., be and hereby are awarded a contract for rental/lease of 16 Caterpillar Model 143H motor graders to the street maintenance division for four additional six-month periods (four snow seasons) at an annual amount of \$365,270.80, terms net 30, FOB destination, payable from General Fund 100, Department/Agency 500, Organization 1920-2550, Object 5415.

Resolution 06-0794 was unanimously adopted.

Approved November 27, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that, in accordance with Minnesota Rules Chapter 8820.3300, the city of Duluth requests that the Minnesota commissioner of transportation grant to the city a variance from Chapter 8820, vertical clearance for underpass urban design standards for Minnesota Bridge No. 69676 at Lake Avenue, MSAS 140 (pedestrian skywalk over Lake Avenue, City Job No. 0457TR), reducing the urban design state aid vertical clearance standards from 15'6" to 14'6" in order to accommodate practical limitations related to floor and structural support elevations at the Technology Village parking structure.

Resolution 06-0804 was unanimously adopted.

Approved November 27, 2006

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 accessible parking zone is established: in front of 2302 West Second Street.

Resolution 06-0776 was unanimously adopted.

Approved November 27, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

RESOLVED, that the proper city officers are authorized to execute and implement an agreement, substantially in the form of Public Document No. 06-1127-19 on file in the office of the city clerk, with Arrowhead Regional Corrections, a multi-county government agency formed pursuant to the Community Corrections Act, providing for the participation of the city and Arrowhead Regional Corrections in a probation partnership to be funded with grant monies.

Resolution 06-0797 was unanimously adopted.

Approved November 27, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

RESOLVED, that pursuant to Section 33-97 (a) of the Duluth City Code, 1959, as amended, the designation of the following-described portion of the following-described street as a no parking zone is hereby rescinded: the south side of Fourth Street between Second Avenue West and Third Avenue West.

Resolution 06-0805 was unanimously adopted.

Approved November 27, 2006

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 accessible parking zone is hereby established: on Tenth Street in front of 816 East Tenth Street.

Resolution 06-0806 was unanimously adopted.

Approved November 27, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, that pursuant to the provisions of Laws of Minnesota, 1973, Chapter 327, Section 5(f), the first amendment to Mountain Villas Lease, a copy of which is on file in the office of the city clerk as Public Document No. 06-1127-20, between the Spirit Mountain recreation area authority and the Mountain Villas Owners' Association is hereby approved.

Resolution 06-0786 was unanimously adopted.

Approved November 27, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, that the proper city officials are authorized to settle its claim against Damberg, Scott, Gerzina, Wagner Architects, Inc. (DSGW) for a total amount of \$19,032.50, arising out of the construction of the animal care facility at the Lake Superior Zoo and resulting in an action filed in St. Louis County district court and entitled *Billman Construction, Inc. v. City of Duluth and City*

of *Duluth v. Damberg, Scott, Gerzina, Wagner Architects, Inc.*, St. Louis County File No. C6-05-600392; said payment subject to the following terms and conditions:

(a) The city acknowledges the prior partial repair of the animal care center by DSGW at a cost of \$5,357, which sum shall be deducted from the total settlement amount;

(b) DSGW agrees to pay the remaining balance of \$13,675.50 within 90 days of district court approval pursuant to Minnesota Statute Section 466.08;

(c) DSGW agrees to provide testimony at any trial of the claim between Billman Construction, Inc., and the city at no cost to the city;

(d) Each party to be responsible for its costs, disbursements and attorney fees.

Funds to be deposited in Fund 450, Agency 030, Revenue Source 4654-02, Project CP2003.

Resolution 06-0796 was unanimously adopted.

Approved November 27, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, that the proper city officials are authorized to settle its claim against Billman Construction, Inc. (Billman) for a total amount of \$12,413.99 arising out of the construction of the animal care facility at the Lake Superior Zoo and resulting in an action filed in St. Louis County District Court entitled *Billman Construction, Inc. v City of Duluth and City of Duluth v Damberg Scott Gerzina Wagner Architects, Inc.*, St. Louis County File No. C6-05-600392, said payment subject to the following terms and conditions:

(a) The City shall keep the contract retainage in the amount of \$8,482.99 and shall apply said amount to the total settlement of \$12,413.99;

(b) Billman shall pay the remaining balance of \$3,931.00 within 90 days of district court approval pursuant to Minnesota Statute Section 466.08; and

(c) Each party is responsible for its own costs, disbursements and attorney fees.

Funds to be deposited in Fund 450, Agency 030, Source 4654-02, Project CP2003-C813.

Resolution 06-0816 was unanimously adopted.

Approved November 27, 2006

HERB W. BERGSON, Mayor

- - -

The following resolutions were also considered:

Resolution 06-0798, by Councilor Stewart, adopting license, permit and fee charges for 2007 and establishing the council's intent for future license, permit and fee charges, was introduced for discussion.

Councilor Stewart moved to table the resolution for a public hearing on December 4, which motion was seconded and unanimously carried.

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Resolution 06-0774, by Councilor Johnson, approving proposed specifications for the new civil service classification of human rights enforcement officer and specifying contract benefits for same, was introduced for discussion.

President Reinert ordered the resolution sent back to the administration per their request.

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Resolution 06-0801, by Councilor Gilbert, vacating and granting portions of easement within the Skywalk system on the second floor of the "Minnesota National Bank (Livingston) Building" at 222 West Superior Street (A&L), was introduced for discussion.

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

Bill Burns reviewed the history of the elevator which was installed to be a private elevator for the business and its customers.

Resolution 06-0801 was adopted as follows:

BY COUNCILOR GILBERT:

The city council finds as follows:

(a) A sufficient petition was filed with the city clerk on October 17, 2006, requesting the vacation of portions of the Duluth skywalk system within the second floor of what is known as the "Minnesota National Bank Building" or "Livingston Building" and legally described as:

That portion of the second floor of the MN National Bank Building at 222 West Superior Street to be vacated, cross hatched and easement to be granted to the city shaded black, on Exhibit A of Lot Forty-four (44), Block (6), Central Division of Duluth, according to the recorded plat thereof;

(b) Pursuant to Section 100 of the City Charter and Article IV of Chapter 45 of the Duluth City Code, 1959, as amended, such petition was duly referred to the city planning commission and such commission gave due notice of public hearing and did consider same in public hearing;

(c) The city planning commission unanimously approved the vacation petition at its November 14, 2006, meeting (FN 06115).

NOW, THEREFORE, BE IT RESOLVED, that the city council of the city of Duluth approves the vacation and granting of easements of those portions of the skywalk across the property described above and as more particularly described on Public Document No. 06-1127-21; and

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 the plats showing the portion of the skywalk easements to be vacated and granted per Exhibit A.

Resolution 06-0801 was adopted upon the following vote:

Yeas: Councilors Johnson, Krause, Ness, Stauber, Stewart, Stover and President Reinert -- 7

Nays: Councilor Gilbert -- 1

Abstention: Councilor Little -- 1

Approved November 27, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0802, authorizing amendments to the 2005 community development program Northern Communities Land Trust: deconstruction-reconstruction project agreement and to the 2005 northern city homes Phase IV agreement extending the terms of these agreements and Resolution 06-0803, authorizing second amendment to the 2004 community development program Northern Communities Land Trust: city homes Phase III - infrastructure agreement extending the term of the agreement, by Councilor Gilbert, were introduced for discussion.

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

Jeff Corey, representing Northern Communities Land Trust, requested the council allow them the extra time to finish the homes during the winter and will hopefully be sold next spring.

Regarding Resolution 06-0802, Councilor Krause stated that the residents of Lincoln Park are frustrated that although they want to revitalize their neighborhood, these new houses were squeezed into the neighborhood and built on nonconforming lots.

Resolution 06-0802 was adopted as follows:

BY COUNCILOR GILBERT:

RESOLVED, that the proper city officials are hereby authorized to enter into amendments, substantially in the form of that on file in the office of the city clerk as Public Document No. 06-1127-22(a) to the 2005 community development program Northern Communities Land Trust: deconstruction-reconstruction project agreement and as Public Document No. 06-1127-22(b) to the 2005 Northern Communities Land Trust city homes Phase IV agreement which extends the terms of the agreements to June 30, 2007, with no change in compensation under the agreements.

Resolution 06-0802 was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Little, Ness, Stauber, Stover and President Reinert -- 7

Nays: Councilors Krause and Stewart -- 2

Approved November 27, 2006

HERB W. BERGSON, Mayor

- - -

Regarding Resolution 06-0803, Councilor Krause stated that a developer needs to anticipate expenses and make that part of the operating costs, and it is not appropriate for the city to subsidize road improvements and assessment fees for this development.

Resolution 06-0803 was adopted as follows:

BY COUNCILOR GILBERT:

RESOLVED, that the proper city officials are hereby authorized to enter into a second amendment, substantially in the form of that on file in the office of the city clerk as Public Document No. 06-1127-23 to the 2004 community development program Northern Communities Land Trust: city homes Phase III - infrastructure agreement which extends the term of the agreement to June 30, 2007, with no change in compensation under the agreement.

Resolution 06-0803 was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Little, Ness, Stauber, Stover and President Reinert -- 7

Nays: Councilors Krause and Stewart -- 2

Approved November 27, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0807, by Councilor Gilbert, granting a special use permit to Mark and Patti Stenhammer to construct and operate a ten resident assisted living home on property located at the southeast corner of McCuen Street and 98th Avenue West, was introduced for discussion.

Councilor Krause voiced concern that this special use permit would create too much traffic for the neighborhood.

Resolution 06-0807 was adopted as follows:

BY COUNCILOR GILBERT:

The city council finds as follows:

(a) The city council finds a sufficient petition was filed with the city clerk by Mark and Patti Stenhammer requesting a special use permit, in accordance with sections 50-35(v) and 50-56(e), to construct and operate a ten-resident residential care facility on property described as:

Lots 25-32, Block 5, New Duluth First Division and located at the southeast corner of McCuen Street and 98th Avenue West; 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, with the conditions listed below;

(b) 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 Mark and Patti Stenhammer and their successors, to allow for the construction and operation of a ten-resident residential care facility on the condition that the project be developed consistent with the building elevation plan, lighting details and site plan dated October 10, 2006, with conditions (a), (b) and (c) listed below, and on file in the planning department as File Number 06113 as identified as Public Document No. 06-1127-24:

(a) That the north driveway intersection with 98th Avenue West be relocated so that there is a minimum of 30 feet between it and the south right-of-way line of McCuen Street;

(b) That the applicant be allowed to adjust the location of the primary building on the site up to ten feet to the south of the location shown to accommodate condition (a);

(c) That a parking stall be added to the single stall shown north of the building canopy and that another parking stall be added to the three stalls shown south of the canopy.

Resolution 06-0807 was adopted upon the following vote:

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

Nays: Councilor Krause -- 1

Approved November 27, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

RESOLVED, that the proper city officials are hereby authorized to enter into the second amendment to pedestrian passageway agreement pertaining to the Livingston's Building, a copy of which is on file in the office of the city clerk as Public Document No. 06-1127-25, with IRET Properties for the modification of the pedestrian passageway through the building.

Resolution 06-0815 was adopted upon the following vote:

Yeas: Councilors Johnson, Krause, Ness, Stauber, Stewart, Stover and President Reinert -- 7

Nays: Councilor Gilbert -- 1

Abstention: Councilor Little -- 1

Approved November 27, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0817, by Councilor Stover, setting salary and fringe benefits of the mayor, was introduced for discussion.

Councilor Stover stated the mayor's salary has not been raised since 2001 and this is a good time to do it before the mayor's election next year.

Councilor Little reviewed that the mayor's salary is less than most of the department heads and the five percent raise is not that large since it has been five years since the last raise.

Councilor Krause stated that a person who wants to be mayor should be doing it as a public service and to help the community, and this salary is sufficient for Duluth.

Councilor Stewart stated that there is interest in the community for a possible change with the city government form and in pursuing different options, so it may be best to let that discussion take place and base compensation on whatever form emerges from that.

Resolution 06-0817 failed upon the following vote (Public Document No. 06-1127-18):

Yeas: Councilors Gilbert, Little, Stauber and Stover -- 4

Nays: Councilors Johnson, Krause, Ness, Stewart and President Reinert -- 5

- - -

Resolution 06-0784, declaring certain land to be available for sale and determining to sell it without bids and Resolution 06-0785, approving contract with Salvation Army for development and use of a recreational facility at Wheeler Field in the amount of \$7,200,000 from the community investment trust fund and not to exceed \$300,000 from the Duluth public facility and program fund, by Councilor Stauber, were introduced for discussion.

Councilor Stauber moved to table the resolutions until December 4 to be considered with companion Ordinance 06-051, which motion was seconded and unanimously carried.

- - -

BY COUNCILOR JOHNSON AND PRESIDENT REINERT:

RESOLVED, that the appointments by Mayor Bergson of Peter Handberg, Will Kellogg, Anne Krafthefer, Heather Rand and John Vigen to the commission on higher education for terms expiring on October 28, 2009, are confirmed.

Resolution 06-0826 was unanimously adopted.

Approved November 27, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0825, by President Reinert, requesting that the special assessment board establish a policy for improvements on Minnesota state aid roads of assessing real property owned by not for profit organizations at a reduced rate, was introduced for discussion.

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

- - -

Resolution 06-0756, by Councilor Little, to establish parking meter zones on both sides of First Street between Third Avenue East and Fourth Avenue East, on the north side of First Street between Fourth Avenue East and Sixth Avenue East, on the south side of First Street from 125 feet west of Sixth Avenue East to Seventh Avenue East, on the south side of First Street between Eighth Avenue East and Ninth Avenue East, on both sides of Second Street between Sixth Avenue East and Seventh Avenue East, on the north side of Third Street between Third Avenue East and Fourth Avenue East, on the west side of Third Avenue East between Second Street Alley and Second Street, and on the west side of Fourth Avenue east between Superior Street and Second Street, was introduced for discussion.

Councilor Stauber moved to amend the resolution by deleting the language "12 hour limit" and inserting "two hour limit," which motion was seconded and carried upon the following vote:

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

Nays: Councilor Little -- 1

Resolution 06-0756 was adopted as follows:

BY COUNCILOR LITTLE:

RESOLVED, that in accordance with the provisions of Section 33-108 of the Duluth City Code, 1959, as amended, the following parking meter zones are hereby established:

On both sides of First Street between Third Avenue East and Fourth Avenue East;  
On the north side of First Street between Fourth Avenue East and Sixth Avenue East;

East;  
On the south side of First Street from 125 feet west of Sixth Avenue East to Seventh Avenue East;

East;  
On the south side of First Street Between Eighth Avenue East and Ninth Avenue East;

East;  
On both sides of Second Street between Sixth Avenue East and Seventh Avenue East;

East;  
On the north side of Third Street between Third Avenue East and Fourth Avenue East;

Street;  
On the west side of Third Avenue East between Second Street Alley and Second Street.

On the west side of Fourth Avenue East between Superior Street and Second Street.

Proposed rate to be one quarter for 30 minutes with a two hour limit.

Metered parking shall be applicable between 8:30 AM and 5:30 PM.

This meter zone will take effect upon installation of the parking meters.

Resolution 06-0756, as amended, was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Ness, Stewart and Stover -- 5

Nays: Councilors Krause, Little and Stauber -- 3

Abstention: President Reinert -- 1

Approved November 27, 2006

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 KRAUSE

06-053 - AN ORDINANCE AMENDING SECTION 41-23 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO AUTHORIZE ADVERTISING FOR BIDS ON THE CITY'S WEBSITE.

- - -

BY COUNCILOR GILBERT

06-052 - AN ORDINANCE TO RENAME MIDDLE ROAD WEST OF HOWARD GNESEN ROAD AND MIDDLE LANE IN THE PLAT OF CEDAR RIDGE ESTATES AS GREENBRIAR LANE (LORAAS, ET AL.).

- - -

BY COUNCILOR STAUBER

06-051 - AN ORDINANCE SELLING PARK PROPERTY TO THE SALVATION ARMY.

- - -

The following entitled ordinances were read for the second time:

BY COUNCILOR GILBERT

06-037 (9802) - AN ORDINANCE AMENDING SECTIONS 50-35 AND 50-80 OF THE DULUTH CITY CODE, 1959, AS AMENDED RELATING TO CLINICS IN RESIDENTIAL AND COMMERCIAL ZONES.

Councilors Gilbert and Johnson voiced concern that this zoning change is increasing square footage on C-1 property to 20,000 feet and the homeowners in the neighborhood would not be notified if there is to be a change to the commercial property.

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

Yeas: Councilors Little, Ness, Stauber, Stewart and President Reinert -- 5

Nays: Councilors Gilbert, Johnson, Krause and Stover -- 4

- - -

BY COUNCILOR GILBERT

06-049 (9803) - AN ORDINANCE GRANTING A CONCURRENT USE PERMIT TO SETH OLIVER FOR TWO BALCONIES TO PROJECT INTO AND OVER THE RIGHT-OF-WAY OF WEST FIRST STREET LOCATED ADJACENT TO 414 WEST FIRST STREET.

President Reinert explained that it was his understanding that this project would keep the store front as is but this ordinance would change the front of the building with the decks.

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

Yeas: Councilors Little, Ness, Stauber, Stewart and Stover -- 5

Nays: Councilors Gilbert, Johnson, Krause and President Reinert -- 4

- - -

BY COUNCILOR STOVER

06-045 - AN ORDINANCE ALIENATING CERTAIN PROPERTY IN DULUTH HEIGHTS AND AUTHORIZING CONVEYANCE OF SAME TO THE HOUSING AND REDEVELOPMENT AUTHORITY OF DULUTH AT NO COST, AND ACCEPTING A LAND EXCHANGE FROM THE HRA IN THE HAWK RIDGE AREA AND DEDICATING SAID EXCHANGED PROPERTY FOR PARK PURPOSES.

Councilor Stewart explained that the city is being requested to give three city parcels to the Housing and Redevelopment Authority (HRA) in exchange for this park land when the city cannot maintain the current parks. He added that the city should not be subsidizing more housing when the current housing market is falling.

Councilor Krause expressed concern that the land the city is giving away is for a duplex that does not fit into the neighborhood.

Councilor Ness spoke in favor of the ordinance because it is an investment in the city's housing market and protecting a resource along East Skyline Parkway.

Ordinance 06-045 failed upon the following vote (Public Document No. 06-1127-26):

Yeas: Councilors Gilbert, Johnson, Ness and Stover -- 4

Nays: Councilors Krause, Little, Stauber, Stewart and President Reinert -- 5

*[Editor's Note: This ordinance was reconsidered and adopted at the December 4, 2006, city council meeting.]*

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BY COUNCILOR STOVER

06-046 (9804) - AN ORDINANCE ALIENATING CERTAIN PROPERTY NEAR THE INTERSECTION OF PECAN AVENUE AND RICE LAKE ROAD AND AUTHORIZING SALE AND CONVEYANCE OF SAME TO JOHN W. PATRICK FOR \$6,220.

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

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BY COUNCILOR STOVER

06-047 (9805) - AN ORDINANCE AUTHORIZING SALE OF CERTAIN PROPERTY NEAR THE INTERSECTION OF GARFIELD AVENUE AND SUPERIOR STREET TO MINNESOTA POWER FOR \$35,000.

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

- - -

BY COUNCILOR STOVER

06-048 (9806) - AN ORDINANCE ALIENATING CERTAIN PROPERTY IN WEST DULUTH AND AUTHORIZING SALE OF SAME TO JACK P. AND BONNIE J. SYLVESTER FOR \$19,625.

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

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

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

- - -

**ORDINANCE NO. 9802**

BY COUNCILOR GILBERT:

AN ORDINANCE AMENDING SECTIONS 50-35 AND 50-80 OF THE DULUTH CITY CODE, 1959, AS AMENDED RELATING TO CLINICS IN RESIDENTIAL AND COMMERCIAL ZONES.

The city of Duluth does ordain:

Section 1. That Section 50-35 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 50-35. Enumerated.

The following are the special uses for which the city council may issue a special permit, as provided in Section 50-32:

(a) Airport, landing field or landing strip for all forms of aircraft, auto race track and drag strip;

(b) Amusement park, but not within 300 feet of any R district;

(c) Beauty salon in an R district, subject to the following restrictions and conditions:

(1) Such use shall be incidental and subordinate to the principal residential use conducted within a dwelling and not in an accessory building;

(2) At least 120 square feet but not more than 1/4 of the floor area of one story of the building shall be devoted solely to such use and to no other use;

(3) Only one person shall work in the beauty salon and such person shall reside on the premises;

(4) There shall be no separate entrance to the beauty salon from the front of the building, and the applicant shall provide evidence of inspection and compliance with all applicable fire and building codes;

(5) No signs or displays advertising the salon shall be permitted on the premises;

(6) At least two off street parking spaces shall be available on the premises for use by patrons of the salon, such parking space requirement to be in addition to the parking space requirements otherwise applicable to the premises;

(7) Applicant shall, prior to issuance of a special use permit pursuant to this Section, provide proof that applicant has all required licenses for operation of a beauty salon;

(8) Notice and publication as required by Section 50-32.2 of this Code shall, in the case of permits under this paragraph, include mailed notice to all property owners and occupants of property within 200 feet of the building;

(9) No permit shall be granted pursuant to this paragraph if a beauty salon already exists within 1,000 feet of the premises;

(d) The city council recognizes that bed and breakfasts are an asset to the community and help the preservation of historic homes and neighborhoods and help the economy of the region as small businesses. Bed and breakfast inns and country inns; in districts where they are permitted as special uses and only as provided herein;

(1) This special use permit shall be granted only to those properties, which meet or exceed the criteria outlined herein. A bed and breakfast inn must be a residential building that has no greater impact on the uses of the public areas or infrastructure or natural resources of the neighborhood than, or be apparent to an observer to be other than, the existing property used as a fully occupied private home with house guests. The principal building must appear outwardly to be a single family dwelling, giving no appearance of a business use other than allowed signs.

No permit shall be considered or issued for a bed and breakfast facility located closer than 450 feet to an existing bed and breakfast facility. This limitation may be waived by the city council for properties which are locally designated heritage preservation landmarks;

(2) An application for this special use permit shall include the following:

- (A) A site plan as defined in Section 50-1.60;
- (B) A landscape plan as defined in Section 50-1.40;
- (C) A set of detailed floor plans indicating the traditional uses of all rooms and the intended uses in the bed and breakfast operation;
- (D) Sign drawings showing location, dimensions and detail;
- (E) For a waiver of the 450 foot separation, a copy of the resolution designating the properties as a heritage preservation landmark;

(3) Bed and breakfast inns and country inns may be granted special use permits subject to the following standards and conditions:

(A) The property must be comprised of a minimum of 0.6 acre;

(B) The main residential building must contain a minimum of 1,500 square feet of area on the first floor;

(C) For an inn, the proprietor shall be the owner and occupant of the property;

(D) Off street parking for the uses of the property shall be provided on site as required in Section 50-26. Scattered off site parking shall not be allowed;

(E) All parking areas shall be hard-surfaced and visually screened by vegetation and/or fencing (consistent with the architecture of the structure) as required by the city in order to maintain the apparent single family use of the property;

(F) Dining areas shall not exceed three seats per habitable unit in bed and breakfast inns. In bed and breakfast country inns, allowed under this Section, dining areas shall not exceed five seats per habitable unit. In addition to resident guests, only guests of resident guests shall be permitted to dine in bed and breakfast inns, or guests participating in meetings or other private events hosted by the facility when other overnight guests are not present, not to exceed the approved seating capacity of the facility. For profit events on the premises which involve a total number of participants in excess of the approved dining area seating capacity shall be limited to: six days per year and shall be restricted to the period of October 15 through June 15;

(G) Any construction to restore buildings to historic condition, any construction of new buildings and any exterior alterations to the building must be authorized by the city council through this special use permit process;

(H) There shall be a limitation on the number of guest rooms permitted based on the size of the building, building code or fire code;

(I) Total signage on the property shall not exceed 12 square feet in size. Such signage shall complement the architecture of the structure;

(J) Guests' stays shall be limited to 21 consecutive days;

(K) A bed and breakfast establishment must comply with all building and fire code requirements. Inspections shall be conducted before special use permits or licenses are issued;

(L) The owner/operator shall present inspection reports from the city fire marshal and St. Louis County health department to the city clerk prior to the issuance of any licenses;

(M) Such other conditions deemed necessary by the planning commission and/or city council to ensure the use complies with the purpose of this Subsection;

(e) Cemetery, crematorium or mausoleum;

(f) Child care facility. A state licensed residential facility for care and treatment of children located within 100 feet of an existing state licensed residential program that has an administrative organization and structure approved under state law for providing shelter, food, training, treatment and other aspects of care of not more than six children, and is an extension of an existing facility licensed under state law.

Any such facility shall meet all other state licensing requirements for such facilities, be contiguous to or located not more than 100 feet from the existing licensed facility charged with operation of the facility, and must not present any external image other than that of a single family residence;

(g) Circus or carnival grounds, but not within 300 feet of any R district;

(h) Clinic of less than 10,000 square feet in floor area;

- (i) Commercial, recreational or amusement development for temporary or seasonal periods;
- (j) Commercial rooming house, but only in those districts where permitted as special use;
- (k) Commercial services and recreational uses in the IP industrial park district, as further defined in Section 50-123 of this Chapter;
- (l) Day care facility, but only in those districts where permitted as a special use;
- (m) Elderly congregate housing facility, but only in those districts where permitted as a special use;
- (n) Marina;
- (o) Mini storage facilities; subject to compliance with the following criteria:
  - (1) Located in a S zone;
  - (2) On a parcel not less than 7-1/2 acres in size with no less than 500 feet of frontage on a publicly maintained right-of-way;
  - (3) Development shall not increase the peak stormwater runoff from the site from its existing condition based upon a storm of 100 year frequency and 24 hour duration (5.25 inches of rainfall);
  - (4) Signage shall be limited to one 40 square foot illuminated pole and 20 square feet of non-illuminated wall signage. Signs shall not be located closer than ten feet to the front property line and no closer than 50 feet to any side property line;
  - (5) There shall be maintained a minimum of 50 feet of landscaped or naturally vegetated buffer from all property lines;
  - (6) There shall be a minimum structure setback of 100 feet from any property line;
  - (7) Storage area unit shall not exceed a 12 foot wall height and a floor area of 300 square feet;
  - (8) Lighting shall be limited so as not to illuminate beyond property lines;
- (p) Office building of a civic, religious or charitable organization, conducting activities primarily by mail and not handling merchandise or rendering services on the premises, but only within the R-4 district;
- (q) Petroleum soil treatment;
  - (1) Petroleum soil treatment in the form of land treatment (soil farming) shall be located in S-suburban zones and shall comply with the following criteria:
    - (A) That the pollution control agency (PCA) shall have reported to the planning department regarding the individual site and the possibility of any problems relative to issuance of PCA authorization for use of the site;
    - (B) The natural topography, drainage character, vegetation and use of the site shall not be altered beyond site preparation required for any listed permitted land use within the S-suburban zone. Specifically:
      - 1. No vegetation shall be cut or removed from within state required setbacks except as required for installation of temporary roads;
      - 2. Vegetation removal shall be minimal. Vegetation greater than six inches caliper shall not be removed except as determined neces-

sary to accommodate minimal equipment clearances, and there shall be minimal preparation of the soil on the treatment area. Such preparation shall minimize disturbance of the topsoil and does not preclude the return of the site to listed permitted S-suburban zone land uses;

(C) All treatment areas must be planted to pasture grasses during treatment and replanted to the original vegetation after the treatment process has been completed;

(D) No sites shall be located within wetland, shore land or flood zones as defined by Chapter 51 of the Code;

(E) That the applicant shall maintain the treatment site in strict compliance with all conditions of this permit and associated state or federal permits;

(2) Petroleum soil treatments using biodegradation such as composting or aerobic treatment cells or other technologies as may be developed and approved by the PCA from time to time, shall be only permitted in M-1 and M-2 zones, and shall be subject to the standards (A), (B), (D) and (E) cited above;

(r) Power transmission line, review and approval to be provided for separately in each of two steps:

(1) A general corridor special use permit;

(2) A final design special use permit, under the following conditions and procedures:

(A) Submittal information for general corridor special use permits. In addition to other information required by the special use permit process, the applicant shall provide the following information with applications for general corridors:

1. A statement demonstrating the need for the proposed line;

2. Drawings showing the approximate location of a preferred route (having a width of less than 1,000 feet) and at least one alternative route. Included within each route shall be an intended center line and subject site and adjacent area information, the form of which shall be determined by the planning commission on existing topography, land uses, soils, vegetation, water courses, wetlands, major drainage ways, flood plains, rock outcroppings and scenic views. Drawings shall also indicate proposed general types, heights and ranges of spacing of supporting structures and related equipment such as pumping stations, although the specific type of line shall not be approved until the final design review;

3. A statement identifying potential locations of conflict such as adjacent scenic and residential areas and describing general proposed methods of dealing with such conflicts;

4. A statement addressing each applicable standard of Section 50-35(r)(4) below in regard to the preferred route and alternative routes;

(3) Submittal information for final design special use permits. In addition to information otherwise required by the special use permit process, the applicant shall provide the following for final design special use permits:

(A) Plans and profiles, the form of which shall be determined by the planning commission, showing the exact location of the center line and the exact location and design of supporting structures and related equipment as

proposed by the applicant. Alternative potential designs of supporting structures shall also be presented;

(B) A landscaping plan and subject site and adjacent area information on existing topography, land uses, soils, vegetation, water courses, wetlands, major drainage ways, flood plains, rock outcroppings and scenic views in a form which shall be determined by the city planning commission;

(C) A statement addressing each applicable standard of Section 50-35(r)(4) below;

(4) Standards for approval. No special use permit shall be granted unless the following standards and conditions are met in addition to normal requirements of the special use permit process:

(A) For general corridor special use permits:

1. The public need for the route and facility as specifically proposed shall be demonstrated;

2. Where possible, lines shall avoid existing and potential urban density residential neighborhoods;

3. The applicant shall provide an evaluation of the future needs for additional transmission lines in the same general area as the proposed route and the advisability of utilizing structures capable of expansion of transmission capacity through multiple circuiting or design modification;

(B) For final design special use permits:

1. Where it is determined that a proposal would unduly harm adjacent property or property values, it shall be determined that no other feasible alternative to the proposal exists. Such consideration of alternatives shall include the underground placement of the line. Any consideration of feasibility of such underground lines shall include economic, technological or land characteristic factors. Economic considerations alone shall not render underground placement not feasible;

2. All structures shall be located and designed in such a way that they are compatible with surrounding land uses, scenic views and existing transmission structures with regard to height, scale, material, color and design;

3. Lines shall meet or exceed the National Electric Safety Code;

4. Electro-magnetic noise and interference with radio and television reception, as well as audible hum outside the line right-of-way, shall be minimized;

5. The cleared portion of the right-of-way shall be kept to a minimum and where vegetation will be removed, new vegetation consisting of native grasses, shrubs and low growing trees shall be planted and maintained. Vegetative screening shall be utilized to the maximum extent consistent with safety requirements;

(C) For both general corridor and final design special use permits. The following standards shall apply in addition to those required above under general corridor and final design special use permits:

1. When routing transmission lines, the following shall be avoided unless no reasonable alternative exists: slopes of 20 percent grade

or greater; intrusions into scenic areas such as streams, open water, valleys, overviews, ridge crests and high points; wetlands; forests, by running along the fringe rather than through the forests, and by utilizing open areas in order to minimize cutting, although leaving a strip at the outside for screening purposes; soils susceptible to erosion which would create sedimentation and pollution problems; areas of unstable soils which would be subject to extensive slippages; areas with high water tables, especially if construction requires excavation; open space recreation areas, including parks, golf courses, etc.; long views of lines parallel to highways and trails; airports; and parkways;

2. Routes shall utilize or parallel existing railroads and highway rights-of-way if possible. If such highway rights-of-way are developed the line and structures shall be sufficiently set back and screened in order to minimize view of the line and structures from the highway;

(5) Alteration of final design special use permit. Once the final design special use permit is issued, the applicant may change the height and location of structures for engineering purposes provided no structure height is increased or decreased by more than 20 percent of its approved height or moved more than 25 feet from its approved location. Should it be necessary to alter the height or location more than the amounts set forth herein, applicant must obtain the approval of the city planning commission after the commission has conducted its normal public hearing and notice procedures. The decision of the planning commission on any alterations shall be final unless appealed to the city council within ten days;

(s) Privately operated community building or recreation field;

(t) Any public or government owned or leased building not permitted in a particular district; provided that such permit shall run for a full period of the lease and that both lease and permit shall run for not less than ten years from date of permit;

(u) Radio or television broadcasting tower or station;

(v) Residential care facility, only in those districts where permitted as a special use;

(w) Residential rooming house, only in those districts where permitted as a special use;

(x) Riding stable;

(y) Solid waste disposal facility;

(1) Special use permits for solid waste disposal facilities and yard waste compost facilities shall be granted only under certain circumstances and under certain conditions;

(2) An application for this special use permit shall include the following:

(A) A complete legal description of the property and the specific site within the property description;

(B) A site plan as defined in Section 50-1.64;

(C) A landscape plan as defined in Section 50-1.65.7;

(D) A detailed plan schedule for excavation, grading, dumping, filling, covering, landscaping and closure of the facility;

(E) Engineering certification, signed by the project engineer, which must certify (with any exceptions listed) that the design for construction is in accordance with standards as set out in these regulations and state statutes and rules relating to the specific type of requested facility;

(F) Signage plans showing location, dimensions and detail;

(G) Drainage plan that provides for diversion of surface water around and away from the disposal area and does not increase the rate of runoff, from the predevelopment condition, from the site onto adjoining properties;

(H) Ground water monitoring plan as and if required by state statutes or rules;

(I) A detailed dust control plan for the facility and for roadways in and leading to and from the facility;

(3) Standards and conditions. Solid waste disposal facilities and yard waste composting facilities may be granted special use permits in S, M-1 and M-2 zones subject to the following:

(A) Setbacks, in M-2 zones, all aspects of the solid waste disposal operation shall be setback from all property lines a minimum of 150 feet. In S and M-1 zones the setback shall be 300 feet from all properties zoned other than M-2. Such setbacks shall be bermed and/or landscaped so as to be visually screened from adjacent properties and roadways. Natural vegetation shall be retained in such setbacks where practical. All aspects of yard waste composting facilities shall be set back 100 feet from all property lines;

(B) Licensing for all solid waste disposal operations and facilities as well as yard waste composting facilities shall comply with all state and Western Lake Superior Sanitary District requirements in accordance with Minnesota Statutes and agency rules;

(C) Solid waste disposal facilities for industrial waste shall only be allowed in M-2 zones. Such facilities shall be approved in the special use permit only for specified types of industrial waste;

(D) Solid waste disposal facilities for construction debris shall only be allowed in M-2 zones;

(E) Facilities for composting of yard waste shall not accept materials other than yard waste;

(F) No solid waste disposal facilities, except composting facilities, shall be permitted in a designated shoreland or flood plain zone nor in an identified wetland as these are defined in Chapter 51 of this Code;

(G) All filled areas shall be covered and vegetated in accordance with an approved schedule for filling, covering and vegetating. Further, there shall be an approved plan as part of the special use permit for the vegetation and dust control of stockpiled cover material;

(H) There shall be no burning of materials;

(I) Facility locations shall have direct access to an arterial street and shall not access through a neighborhood. Increased traffic generated by the facility shall not have an adverse effect on the neighborhood. All roads leading to and from and within facilities located in S and M-1 zones shall be constructed with an approved, as part of the special use permit, dust free material;

(J) All vehicles transporting materials to or from the facility shall be covered;

(K) For sites in S and M-1 zones, there shall be no dumping or operations outside of buildings, nor delivery or removal of materials to or from the site occurring between the hours of 10:00 p.m. and 7:00 a.m.;

(L) Except for yard waste composting facilities there shall be no processing (separating or sorting) of materials outside of covered structures;

(M) Noise emanating from a building in which dumping, separating or other processing of material is performed shall not exceed 55db at any property line which abuts property zoned other than M-2;

(N) In S and M-1 zones there shall be no exterior lighting permitted except to provide security for buildings and parking areas. Where such lighting is permitted it shall be directed so no light source is visible from any property line;

(O) Compliance funding: in the absence of other compliance funding required by state permitting agencies, there shall be a bond, letter of credit or other security (including an account to accept deposits of tipping fees) acceptable to the city, prior to the issuance of a permit to ensure compliance with the terms of the permit and to ensure proper closure of the facility. Such bond, letter of credit or other surety shall provide for the amount of the closure costs estimated and certified by the project engineer for each phase of operation and final closure;

(z) Strobe lights, as defined in Section 10-36 of this Code, may be used on radio and television broadcasting towers exceeding 400 feet in height located in that area of the city commonly known as the tower farm within Section 28, Township 50, Range 14, subject to the following restrictions and conditions:

(1) Strobe lights may be used only when the north sky illumination on a vertical surface at the base of the tower is greater than five footcandles. Red obstruction lights must be used at all other times;

(2) Strobe installations shall be shielded so as not to be visible from ground elevation for a radius of two miles from the antenna base;

(3) Strobe installations will be allowed only on towers which are required by federal aviation administration regulations to be painted orange and white;

(aa) Drive-in theater in the S suburban district;

(bb) Tourist or trailer camp; provided, that such tourist or trailer camp shall comply with the applicable provisions of this Code and the laws of the state;

(cc) Essential municipal or public utility use, facility or building, other than a business office or production facility; provided that such use, facility or building shall be located in a S district only if its specific function requires that it be so located in order to serve the immediate neighborhood, as opposed to serving a major portion of the community. Provided, that a substation which serves more than the immediate neighborhood may be granted a special use permit in S districts if such substation is located in such a manner that it is visually screened from adjacent properties and is located on a site of at least five acres;

(dd) Veterinarian or animal hospital; provided, that practice is limited to the treatment of small animals (household pets, i.e. dogs, cats, birds, which are ordinarily permitted in the house and kept for company or pleasure) and that all

aspects of the facility are totally contained (including kennel runs and exercise areas) within a sound-proof building with adequate ventilation;

(ee) Wind energy conversion systems. WECS shall be permitted, provided that the existing or future uses permitted within adjacent properties are not adversely affected by: noise, radio or television signal interference, or safety conditions. Further provided, that such WECS be set back from all property lines a distance equal to or greater than the tower height as measured from the base of the tower and in no case shall tower height exceed 200 feet. Further provided, that satisfactory visual screen buffers be provided at the edges of the property in order to mitigate aesthetic impacts upon the neighborhood;

(ff) Personal wireless communications service towers. These towers shall include all towers and poles over 50 feet high used to provide "personal wireless services" as defined in 47 USCS §332(c)(7)(C)(I), including those commonly known as cellular telephone towers or personal communications services (PCS) towers. The following standards shall apply to the considerations of special use permits for these towers:

(1) No permit decision shall unreasonably discriminate among providers of functionally equivalent services;

(2) No permit decision shall have the effect of prohibiting personal wireless services in an area;

(3) No permit decision shall be based on the environmental effects of radio frequency emissions if the proposed tower complies with all applicable federal communications commission regulations;

(4) Any decision to deny a permit for these towers must be made in writing and supported by substantial evidence contained in a written record;

(5) The construction of new towers shall, where possible, be avoided when there are existing high buildings or other structures in the area that can reasonably be used to house the telecommunications facilities;

(6) Whenever possible, new towers shall be built in zones for manufacturing or commercial uses as opposed to zones for residential uses;

(7) New towers shall, where possible, be constructed to accommodate multiple telecommunications users and thus minimize the proliferation of the towers, if such multiple use capacity can be attained using reasonable height limitations;

(8) New towers shall, where reasonably possible, be designed to blend into the proposed site so as to minimize its visual impact on the surrounding area;

(9) Telecommunications facilities and equipment used in conjunction with the tower shall not create unacceptable noise levels for the surrounding area;

(10) New towers shall comply with all applicable laws, including, but not limited to, the state building code and federal communications and aeronautics statutes, rules and regulations;

Section 2. That Section 50-80 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 50-80. Permitted uses.

A building or premises in the C-1 commercial district shall be used only for the following purposes:

- (a) Any use permitted in the R-4 apartment residential district;
- (b) Automobile parking lot or parking garage;
- (c) Bank;
- (d) Display room for merchandise to be sold at wholesale, where merchandise sold is stored elsewhere;
- (e) Clinic, medical and dental only occupying 20,000 square feet or less in total floor area;
- (f) Dressmaking, tailoring, shoe repairing, repair of household appliances and bicycles, dry cleaning and pressing, catering and bakery with sale of bakery products on the premises and other uses of a similar character; provided, that no use permitted in this paragraph shall employ more than five persons in a single shift on the premises, not including employees whose principal duties are off the premises or temporary seasonal employees;
- (g) Filling station;
- (h) Offices and office building;
- (i) Personal service uses, including barbershops, beauty parlors, photographic or art studios, messenger, taxicab, newspaper or telegraphic branch service stations, dry cleaning receiving stations, restaurants and other uses of a similar character;
- (j) Private school;
- (k) Retail store. In connection with such store there shall be no slaughtering of animals or poultry, nor commercial fish cleaning and processing on the premises;
- (l) Theater, not including drive-in theaters;
- (m) Laundromat;
- (n) Florist shop or greenhouse;
- (o) Accessory buildings and uses; provided, that any such accessory building shall be erected at the same time or after the construction of the principal building and subject to the following restrictions:

(1) One wind energy conversion system shall be permitted as an accessory use, provided that the tower shall be set back from all property lines a distance equal to or greater than the tower height as measured from the base of the tower, but in no case shall tower height exceed 130 feet;

(2) Except for truckload or trailerload retail sales lasting less than 30 days, no accessory use shall be conducted in or out of a trailer or truck. Storage of trailers and trucks or storage of goods within trailers and trucks shall not be a permitted use unless the primary use of the lot is a parking lot, parking garage or filling station or unless the truck or trailer is used on a regular basis for deliveries or the hauling of supplies to or from a business.

Section 3. That this ordinance shall take effect 30 days after its passage and publication.  
(Effective date: January 14, 2007)

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

Yeas: Councilors Little, Ness, Stauber, Stewart and President Reinert -- 5

Nays: Councilors Gilbert, Johnson, Krause and Stover -- 4

Passed November 27, 2006

Approved November 27, 2006

HERB W. BERGSON, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

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**ORDINANCE NO. 9803**

BY COUNCILOR GILBERT:

AN ORDINANCE GRANTING A CONCURRENT USE PERMIT TO  
SETH OLIVER FOR TWO BALCONIES TO PROJECT INTO AND  
OVER THE RIGHT-OF-WAY OF WEST FIRST STREET LOCATED  
ADJACENT TO 414 WEST FIRST STREET.

The city of Duluth does ordain:

Section 1. Under the authority of Section 100 of the 1912 Home Rule Charter of the city of Duluth, as amended, and subject to the conditions, limitations and restrictions hereinafter set forth, permission is hereby granted to Seth Oliver, his successors and interests, referred to herein as the permittees, to occupy, erect and maintain two balconies into and over that part of West First Street adjacent to 414 West First Street as the same was dedicated to the use of the public on the plat of Duluth Proper First Division, on file and of record in the office of the register of deeds in and for the St. Louis County, Minnesota, described as follows:

the southerly four feet of West First Street and at a height of not less than 23 feet above said street adjacent to (Lot 72, Duluth Proper First Division West First Street).

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 meeting the following minimum requirements:

(a) A commercial general liability insurance policy maintained in by permittee in an amount not less than \$1,000,000 for bodily injuries and in an amount not less than \$300,000 for property damage or \$1,000,000 single limited coverage protecting the permittee and the city of Duluth against liability for injuries or damages resulting from the placement of such objects or materials within the West First Street right-of-way as authorized by this ordinance;

(b) On or before January 1, 2008, a commercial general liability insurance policy shall be maintained in force by permittee in an amount not less than \$1,200,000 for bodily injuries and in an amount not less than \$400,000 for property damage or \$1,200,000 single limit coverage;

(c) On or before July 1, 2009, a commercial general liability insurance policy shall be maintained in force by permittee in an amount not less than \$1,500,000 for bodily injuries and in an amount not less than \$500,000 for property damage or \$1,500,000 single limit coverage;

(d) All required policies of insurance shall contain a condition that it may not be cancelled without 30 days written notice to the city of Duluth. The city of Duluth shall be named as an additional insured on all required policies of insurance. Current ISO additional insured endorsement CG 20 10 is not acceptable. If the ISO 20 10 is used, it must be a pre-2004 edition.

Section 3. That said permit granted under this ordinance may be terminated at any time when and if the city of Duluth determines to use the area occupied by said permittees for any purpose in accordance with the duly dedicated public easement or other lawful use. Giving the permittees 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 balconies 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 agrees to save harmless and defend and indemnify the city of Duluth against any claims or demand which may arise against the city of Duluth by reason of any act or omission of the permittees, and agree that such balconies 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 West 1<sup>st</sup> Street and agree that the city of Duluth shall not be liable for damage caused to such balconies while the city is engaged in making repairs to public utilities, and agrees 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 balconies in said West First Street.

Section 6. That the permittee shall further observe the following conditions:

- (a) That all required building permits shall be obtained;
- (b) That current and all subsequent owners of the building units affected by this permit at 414 West First Street must comply with the terms of this permit as a condition of purchase;
- (c) That the sidewalk area below the balconies shall remain open to the general public use at all times unless closure is otherwise permitted;
- (d) That the use and maintenance of the balconies does not compromise or negatively impact the public use of the right-of-way beneath them, in any way, including but not limited to impacts of water runoff, snow, ice, litter or other obstructions;
- (e) That the attachment or hanging of anything from the structure of the balconies is prohibited;

Section 7. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: January 7, 2007)

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

Yeas: Councilors Little, Ness, Stauber, Stewart and Stover -- 5

Nays: Councilors Gilbert, Johnson, Krause and President Reinert -- 4

Passed November 27, 2006

Approved November 27, 2006

HERB W. BERGSON, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

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**ORDINANCE NO. 9804**

BY COUNCILOR STOVER:

AN ORDINANCE ALIENATING CERTAIN PROPERTY NEAR THE INTERSECTION OF PECAN AVENUE AND RICE LAKE ROAD AND AUTHORIZING SALE AND CONVEYANCE OF SAME TO JOHN W. PATRICK FOR \$6,220.

The city of Duluth does ordain:

Section 1. That the city hereby designates the property described in Section 2 below as being surplus to the city's future needs and hereby declares its intention to alienate its interest in same.

Section 2. 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 John W. Patrick for the total sum of \$6,220, payable to the General Fund 0100-700-1407-4640 and to execute all documents necessary with regard to said conveyance:

That part of Lots 18 and 20, Block 10, CLAGUE AND PRINDLE'S ADDITION TO DULUTH, which lies east of the following described line:

Commencing at the southeast corner of said Lot 20; thence westerly along the south line of said Lot 20 a distance of 70.0 feet to point of beginning; thence deflecting to the right and continuing in a straight line to a point on the north line of said Lot 18, said point being a distance of 30.0 feet westerly of the northeast corner of said Lot 18, and there terminating.

Section 3. That this ordinance shall take effect 30 days from and after its passage and publication. (Effective date: January 7, 2007)

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

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

Nays: None -- 0

Passed November 27, 2006  
Approved November 27, 2006  
HERB W. BERGSON, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

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**ORDINANCE NO. 9805**

BY COUNCILOR STOVER:

AN ORDINANCE AUTHORIZING SALE OF CERTAIN PROPERTY NEAR THE INTERSECTION OF GARFIELD AVENUE AND SUPERIOR STREET TO MINNESOTA POWER FOR \$35,000.

The city of Duluth does ordain:

Section 1. That the city hereby designates the property described in Section 3 below as being surplus to the city's future needs, and hereby declares its intention to alienate its interest in same.

Section 2. That, upon recommendation of the director of administration, the council has determined that it is appropriate to sell the below-described property to Minnesota Power at its fair market value but without competitive bidding pursuant to the authorization of Section 2-177 of the Code because the acquisition of the property by Minnesota Power is reasonably necessary to the

purchaser's ability to provide an adequate and continuous supply of electrical power to the citizens and users thereof in the city.

Section 3. 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 Minnesota Power, a division of Allete, Inc., a Minnesota Corporation, for the total sum of \$35,000, payable to the General Fund 0100-700-1407-4640 and to execute all documents necessary with regard to said conveyance:

Lots 254 and 256, Block 32, DULUTH PROPER SECOND ADDITION.

Section 4. That this ordinance shall take effect 30 days from and after its passage and publication. (Effective date: January 7, 2007)

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

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

Nays: None -- 0

Passed November 27, 2006  
Approved November 27, 2006  
HERB W. BERGSON, Mayor

ATTEST:  
JEFFREY J. COX, City Clerk

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**ORDINANCE NO. 9806**

BY COUNCILOR STOVER:

AN ORDINANCE ALIENATING CERTAIN PROPERTY IN WEST DULUTH AND AUTHORIZING SALE OF SAME TO JACK P. AND BONNIE J. SYLVESTER FOR \$19,625.

The city of Duluth does ordain:

Section 1. That the city hereby designates the property described in Section 2 below as being surplus to the city's future needs, and hereby declares its intention to alienate its interest in same.

Section 2. 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 Jack P. and Bonnie J. Sylvester for \$19,625 to be deposited in General Fund 0100-700-1407-4640, and to execute all documents necessary with regard to said conveyance:

Lots 3, 4, 5 and 6, Block 147, WEST DULUTH FIFTH DIVISION.

Section 3. That proceeds of the sale shall be deposited in a fund to be used only for improvement or maintenance of park lands.

Section 4. That this ordinance shall take effect 30 days from and after its passage and publication. (Effective date: January 7, 2007)

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

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

Nays: None -- 0

Passed November 27, 2006  
Approved November 27, 2006  
HERB W. BERGSON, Mayor

ATTEST:  
JEFFREY J. COX, City Clerk

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**OFFICIAL PROCEEDINGS**

Special meeting of the Duluth City Council held on Thursday, November 30, 2006, 5:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: Councilor Ness -- 1

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**PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS**

03-1130-01 The PFM Group: (a) Official statement; (b) Bid results, regarding the sale of \$4,525,000 G.O. steam utility revenue bonds, Series 2006E; \$3,255,000 G.O. utilities revenue bonds, Series 2006F; \$1,785,000 G.O. equipment certificates of indebtedness, Series 2006G; \$2,465,000 G.O. improvement refunding bonds, Series 2006H; \$3,540,000 G.O. street improvement refunding bonds, Series 2006I; \$3,265,000 G.O. street improvement refunding bonds, Series 2006J. -- Received

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**MOTIONS AND RESOLUTIONS**

Resolution 06-0788, providing for the issuance, sale and delivery of \$4,525,000 general obligation steam utility revenue bonds, Series 2006E; establishing the terms and form thereof; creating a debt service fund therefor; and awarding the sale thereof; Resolution 06-0789, providing for the issuance, sale and delivery of \$3,255,000 general obligation utilities revenue bonds, Series 2006F; establishing the terms and form thereof; and awarding the sale thereof; Resolution 06-0790, providing for the issuance, sale and delivery of \$1,785,000 general obligation equipment certificates of indebtedness, Series 2006G; establishing the terms and form thereof; creating a debt service fund therefor; and awarding the sale thereof; Resolution 06-0791, providing for the issuance, sale and delivery of \$2,465,000 general obligation improvement refunding bonds, Series 2006H; Establishing the terms and form thereof; creating a debt service fund therefor; and awarding the sale thereof, Resolution 06-0792, providing for the issuance, sale and delivery of \$3,540,000 general obligation street improvement refunding bonds, Series 2006I; Establishing the terms and form thereof; creating a debt service fund therefor; and awarding the sale thereof and Resolution 06-0793, Providing for the issuance, sale and delivery of \$3,265,000 general obligation street improvement refunding bonds, Series 2006J; establishing the terms and form thereof; creating a debt service fund therefor; and awarding the sale thereof, by Councilor Stewart, were introduced for discussion.

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

Jessica Cameron, representing The PFM Group, reviewed the results of the sales and recommended the council accept the bids.

Resolutions 06-0788, 06-0789, 06-0790, 06-0791, 06-0792 and 06-0793 were adopted as follows:

BY COUNCILOR STEWART:

BE IT RESOLVED by the city council (the "City Council") of the city of Duluth, St. Louis County, Minnesota (the "City"), as follows:

Section 1. Bond Purpose and Authorization.

1.01 Under and pursuant to the provisions of Section 55 of the City Charter, Minnesota Laws 1979, Chapter 113, and Minnesota Statutes, Section 475, as amended, 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 steam 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 utility and are payable primarily from net revenues to be derived from the operation of such municipal steam utility and pledged for their payment.

1.02 The city council has, by Ordinance No. 9791 adopted on September 25, 2006, authorized the issuance and sale of general obligation bonds of the City to finance improvements to the City's central steam utility located in the downtown area of Duluth (the "Duluth Steam Plant"), including the:

(i) improvements to and equipment for the Duluth Steam Plant for energy savings and operating efficiencies through, or associated with, the guaranteed energy savings contract with Johnson Controls, Inc., which provide for the following:

- (A) reinsulating approximately 5,950 feet of steam distribution lines;
- (B) installing approximately 128 insulating valve blankets in the distribution system;
- (C) installing a water softening system for four boilers;
- (D) modifying three coal pulverizers to increase boiler efficiency; and
- (E) installing a combustion control system for the operation of four boilers;

and

(ii) improvements to and equipment for the Duluth Steam Plant for replacement of the coal conveyor system, repairs to the stack, replacement of the coal pulverizer for boiler number three and funding for the short fall for costs to construct facilities to transport heat and chilled water and related improvements to the Duluth Entertainment Convention Center for use in heating and cooling the DECC;

(the "Project"), in an amount not to exceed \$4,525,000.

1.03 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 General Obligation Steam Utility Revenue Bonds, Series 2006E (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 Morgan Stanley DW Inc. of Purchase, New York (the "Purchaser"), to purchase the Bonds at a cash price of \$4,526,096.20, 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.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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2.01 The Bonds to be issued hereunder shall be dated the date of delivery, as the date of original issue, shall be issued in the denomination of \$5,000 each, or any integral multiple thereof, in fully registered form and lettered and numbered R-1 and upward. The Bonds shall mature on February 1 in the respective years and amounts and shall bear interest at the annual rates stated as follows:

Year	Amount	Interest Rate	Year	Amount	Interest Rate
2008	\$210,000	4.000%	2016	\$310,000	4.000%
2009	235,000	4.000%	2017	320,000	4.000%
2010	245,000	4.000%	2018	335,000	4.000%
2011	255,000	4.000%	2019	350,000	4.000%
2012	265,000	4.000%	2020	365,000	4.000%
2013	275,000	4.000%	2021	380,000	4.000%
2014	285,000	4.000%	2022	395,000	4.125%
2015	300,000	4.000%			

2.02 (a) The Bonds maturing in the years 2008 through 2015 shall not be subject to optional redemption and prepayment before maturity, but those maturing in the year 2016 and in subsequent years shall each be subject to redemption and prepayment at the option of the City on February 1, 2015, 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, 2007. 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 15<sup>th</sup> 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.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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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 STEAM UTILITY REVENUE BOND, SERIES 2006E

R-\_\_\_\_ \$\_\_\_\_\_

Interest Rate	Maturity Date	Date of Original Issue	CUSIP
	February 1, ____	December __, 2006	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT:

The City of Duluth, in St. Louis County, Minnesota (the "City"), for value received, promises to pay to the registered owner specified above, or registered

assigns, the principal amount specified above on the maturity date specified above, and to pay interest on said principal amount to the registered owner hereof from the Date of Original Issue, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, until the principal amount is paid or discharged, said interest being at the rate per annum specified above. Interest is payable semiannually on February 1 and August 1 of each year (each referred to herein as an "Interest Payment Date") commencing on August 1, 2007. 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 15<sup>th</sup> 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 \$4,525,000, all of like date and tenor, except as to number, amount, maturity date and interest rate, pursuant to the authority contained in Section 55 of the Home Rule Charter of the City, Minnesota Laws 1979, Chapter 113, and Minnesota Statutes, Section 475, as amended, and all other laws thereunto enabling, and pursuant to an authorizing resolution adopted by the governing body of the City on November 30, 2006 (the "Resolution"), and is issued for the purpose of providing funds to pay for improvements to the City's central municipal steam utility located in the downtown area of Duluth and for payment of part of the interest cost of said bond issue. The principal hereof and interest hereon are payable primarily from net revenues to be derived from the operation of the municipal steam utility located in the downtown area of Duluth as set forth in the Resolution to which reference is made for a full statement of rights and powers thereby conferred.

The Bonds of this series maturing in the years 2008 through 2015 are not subject to optional redemption before maturity, but those maturing in the year 2016 and in subsequent years are each subject to redemption and prepayment at the option of the City on February 1, 2015, 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**

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

WELLS FARGO BANK, NATIONAL ASSOCIATION  
Bond Registrar

By \_\_\_\_\_  
Authorized Representative

**REGISTRATION CERTIFICATE**

This Bond must be registered as to both principal and interest in the name of the owner on the books to be kept by Wells Fargo Bank, National Association, as Bond Registrar. No transfer of this Bond shall be valid unless made on said books by the registered owner or the owner's attorney thereunto duly authorized and similarly noted on the registration books. The ownership of the unpaid principal balance of this Bond and the interest accruing thereon is registered on the books of Wells Fargo Bank, National Association, in the name of the registered owner last noted below.

Date

Registered Owner

Signature of  
Bond Registrar

12/\_\_/06

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 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. Covenants, Accounts and Representations.

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 central municipal steam utility located in the downtown area of Duluth (the "Duluth Steam Plant") 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 Duluth Steam Plant 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 Duluth Steam Plant in a separate Steam Utility Operating Account within the Public Utility Steam District No. 1 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 Duluth Steam Plant, 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 Duluth Steam Plant bonds when due.

(b) The City has created a separate construction account within the Public Utility Steam District No. 1 Fund to which there shall be credited \$4,526,096.20 from the proceeds of the Bonds, together with any additional funds which may be available and are appropriated for improvements to the Duluth Steam Plant. 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 other improvements to the Duluth Steam Plant, and costs of the issuance of the Bonds.

(c) Until the Bonds issued hereunder are fully paid or otherwise discharged, the City will also maintain a separate debt service account (the "Steam Debt Service Fund") in the Public Utility Steam District No. 1 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 Duluth Steam Plant. The treasurer shall credit to the Steam Debt Service Fund \$-0-, the unused discount, plus the amount of accrued interest on the Bonds. The treasurer shall transfer from the Steam Utility Operating Account to the Steam 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 Steam Utility Operating Account, in excess of payments due from and reserves required to be maintained in the Steam Utility Operating Account and in the Steam Debt Service Fund, may be used for necessary capital expenditures for the improvement of the Duluth Steam Plant, for the prepayment and redemption of bonds constituting a lien on the Duluth Steam Plant, and for any other proper municipal purpose consistent with policies established by resolutions of the city council.

3.02 If the balances in either Debt Service Fund are ever insufficient to pay all principal and interest then due on the Bonds, the treasurer shall nevertheless provide sufficient money from any other funds of the City which are available for that purpose, and such other funds shall be reimbursed from the Debt Service Fund when the balances therein are sufficient. It is estimated that the net revenues herein pledged and appropriated to said Debt Service Fund will be received at the times and in amounts not less than 5% in excess of the amounts needed to meet when due the principal and interest payments thereon and, accordingly, no tax is presently levied for this purpose. It is recognized, however, that the City's liability on the Bonds is not limited to the revenues so pledged, and the City Council covenants and agrees that it will levy upon all taxable property within the City, and cause to be extended, levied and collected, any taxes found necessary for full payment of the principal of and interest on the Bonds, without limitation as to rate or amount.

Section 4. Tax Covenants; Miscellaneous.

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

4.02 (a) No portion of the proceeds of the Bonds shall be used directly or indirectly to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments, except (i) for a reasonable temporary period until such proceeds are needed for the purpose for which the Bonds were issued, and (ii) in addition to the above, in an amount not greater than the lesser of 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% 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.

6.04 In addition to the Bonds, the City is selling, pursuant to a single offering document and on the same date, the following obligations: General Obligation Utilities Revenue Bonds, Series 2006F (the "Series 2006F Bonds"), General Obligation Equipment Certificates of Indebtedness, Series 2006G (the "Certificates"), General Obligation Improvement Refunding Bonds, Series 2006H (the "Series 2006H Bonds"), General Obligation Street Improvement Refunding Bonds, Series 2006I (the "Series 2006I Bonds"), and General Obligation Street Improvement Refunding Bonds, Series 2006J (the "Series 2006J Bonds"). The City has pledged its full faith and credit and taxing powers for each series of such bonds. Pursuant to Treasury Regulation Section 1.150-1(c)(4)(iii), the City elects to treat the Bonds, the Certificates, the Series 2006F Bonds, the Series 2006H Bonds, the Series 2006I Bonds and the Series 2006J Bonds as part of the same issue.

Resolution 06-0788 was unanimously adopted.

Approved November 30, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

BE IT RESOLVED, by the city council (the "City Council") of the city of Duluth, St. Louis County, Minnesota (the "City"), as follows:

Section 1. Bond Purpose and Authorization.

1.01 Under and pursuant to the provisions of Section 55 of the City Charter, Minnesota Statutes, Section 444.075 and Chapter 475, and other pertinent provisions of said Charter and Statutes, the City is authorized to issue its general obligation bonds to provide funds for the payment of costs of improvements to the municipal water utility (including bonds representing part of the interest cost of the issue, within the limitations specified in Minnesota Statutes, Section 475.56), which bonds shall be a specific lien upon the water utility and are payable primarily from net revenues to be derived from the operation of the municipal water utility and pledged for their payment.

1.02 The city council has, by Ordinance No. 9795 adopted October 10, 2006, ordered the issuance, sale and delivery of general obligation water utility revenue bonds in the maximum amount of \$1,150,000 of the City (of which \$1,120,000 of such amount shall be issued), for the payment of the costs of improvements to the municipal water utility and for payment of part of the interest cost of the Bonds (the "Water Portion of the Bonds").

1.03 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.

1.04 The city council has, by Ordinance No. 9794 adopted October 10, 2006, ordered the issuance, sale and delivery of general obligation sewer utility revenue bonds in the maximum amount of \$1,000,000 of the City (of which \$945,000 of such amount shall be issued), for the payment of the costs of improvements to the municipal sewer utility and for payment of part of the interest cost of the Bonds (the "Sewer Portion of the Bonds").

1.05 Under and pursuant to the provisions of Section 55 of the City Charter, Minnesota Statutes, 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 gas 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 gas utility and are payable primarily from net revenues to be derived from the operation of the municipal gas utility and pledged for their payment.

1.06 The city council has, by Ordinance No. 9793 adopted October 10, 2006, ordered the issuance, sale and delivery of general obligation gas utility revenue bonds in the maximum amount of \$1,225,000 of the City (of which \$1,190,000 of such amount shall be issued), for the payment of the costs of improvements to the municipal gas utility and for payment of part of the interest cost of the Bonds (the "Gas Portion of the Bonds").

1.07 The city council has determined that it is necessary and expedient that the City issue such municipal utilities bonds in a single issuance of \$3,255,000 General Obligation Utilities Revenue Bonds, Series 2006F (the "Bonds").

1.08 Public Financial Management, Inc., financial consultant to the City, has given notification by mail, facsimile, electronic data transmission or other form of communication common to the municipal bond trade to at least five firms determined by Public Financial Management, Inc. to be prospective bidders on the Bonds at least two days (omitting Saturdays, Sundays and legal holidays) before the date set for receipt of bids on the Bonds. All actions of the mayor, the clerk and Public Financial Management, Inc. taken with regard to the sale of the Bonds are hereby ratified and approved.

1.09 Pursuant to such solicitation for bids for the sale of the Bonds, the city council has received and considered all bids presented pursuant to the official terms of offering and has determined that the most favorable bid is that of RBC Capital Markets of Minneapolis, Minnesota (the "Purchaser"), to purchase the Bonds at a cash price of \$3,227,604.55, upon condition that the Bonds mature and bear interest at the times and annual rates set forth in Section 2. The City, after due consideration, finds such offer reasonable and proper and the offer of the Purchaser is hereby accepted. The mayor and the city clerk are authorized and directed to execute on the part of the City a contract for the sale of the Bonds in accordance with the Purchaser's bid. The city treasurer is directed to deposit the good faith check of the successful bidder.

**Section 2. Terms of Bonds.**

2.01 The Bonds to be issued hereunder shall be dated the date of delivery, as the date of original issue, shall be issued in the denomination of \$5,000 each, or any integral multiple thereof, in fully registered form, and lettered and numbered R-1 and upward. The Bonds shall mature on February 1 in the respective years and amounts and shall bear interest at the annual rates stated as follows:

<b>Year</b>	<b>Water Portion of the Bonds</b>	<b>Sewer Portion of the Bonds</b>	<b>Gas Portion of the Bonds</b>	<b>Total</b>	<b>Interest Rate</b>
2008	\$50,000	\$45,000	\$ 55,000	\$150,000	3.625%
2009	60,000	50,000	60,000	170,000	3.625%
2010	60,000	50,000	65,000	175,000	3.625%

Year	Water Portion of the Bonds	Sewer Portion of the Bonds	Gas Portion of the Bonds	Total	Interest Rate
2011	65,000	55,000	65,000	185,000	3.625%
2012	65,000	55,000	70,000	190,000	3.625%
2013	70,000	60,000	75,000	205,000	3.625%
2014	70,000	60,000	75,000	205,000	3.625%
2015	75,000	60,000	80,000	215,000	3.625%
2016	75,000	65,000	80,000	220,000	3.700%
2017	80,000	65,000	85,000	230,000	3.800%
2018	85,000	70,000	90,000	245,000	3.900%
2019	85,000	75,000	90,000	250,000	4.000%
2020	90,000	75,000	95,000	260,000	4.100%
2021	95,000	80,000	100,000	275,000	4.150%
2022	95,000	80,000	105,000	280,000	4.200%

2.02 (a) The Bonds maturing in the years 2008 through 2015 shall not be subject to optional redemption and prepayment before maturity, but those maturing in the year 2016 and in subsequent years shall each be subject to redemption and prepayment at the option of the City on February 1, 2015, 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, 2007. 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 15<sup>th</sup> 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  
GENERAL OBLIGATION UTILITIES REVENUE BOND, SERIES 2006F

R-\_\_ \$\_\_\_\_\_

Interest Rate	Maturity Date	Date of Original Issue	CUSIP
	February 1, __	December __, 2006	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT:

The City of Duluth, in St. Louis County, Minnesota (the "City"), for value received, promises to pay to the registered owner specified above, or registered assigns, the principal amount specified above on the maturity date specified above, and to pay interest on said principal amount to the registered owner hereof from the Date of Original Issue, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, until the principal amount is paid or discharged, said interest being at the rate per annum specified above. Interest is payable semiannually on February 1 and August 1 of each year (each referred to herein as an "Interest Payment Date") commencing on August 1, 2007. 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 15<sup>th</sup> 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 \$3,255,000, all of like date and tenor, except for number, denomination, maturity date and interest rate, pursuant to a resolution adopted on November 30, 2006, by the governing body of the City (the "Resolution"). The Bonds consist of three issues:

(i) That portion of the Bonds (\$1,120,000) issued for improvements to the municipal water utility are issued pursuant to the authority contained in Minnesota Statutes, Chapter 475, and Section 444.075 and Section 55 of the Home Rule Charter of the City, and all other laws and charter provisions thereto enabling and pursuant to Ordinance No. 9795 adopted October 10, 2006, for the purpose of providing funds for improvements to such municipal water utility and for payment of part of the interest cost of such bond issue. That portion of the Bonds issued for the municipal water utility are payable from the net revenues to be derived from the operation of the municipal water utility of the City, as set forth in the Resolution to which reference is made for a full statement of rights and powers thereby conferred. In the Resolution, the City has pledged and appropriated the net revenues to be derived from the operation of the municipal water utility in excess of normal, reasonable and current costs of the operation and maintenance of the utility, for the payment of the principal and interest when due on the portion of the Bonds issued for the water utility, and has covenanted and agreed that it will impose and collect

just and equitable charges for all use and for the availability of all facilities of the municipal water utility at the times and in the amounts required to pay the normal, reasonable and current expenses of operating and maintaining such facilities, and also to produce net revenues at least adequate at all times to pay the principal and interest due on the portion of the Bonds issued for the water utility.

(ii) That portion of the Bonds (\$945,000) issued for improvements to the municipal sewer utility are issued pursuant to the authority contained in Minnesota Statutes, Chapter 475, and Sections 115.46 and 444.075 and Section 55 of the Home Rule Charter of the City, and all other laws and charter provisions thereto enabling and pursuant to Ordinance No. 9794 adopted October 10, 2006, for the purpose of providing funds for improvements to such municipal sewer utility and for payment of part of the interest cost of such bond issue. That portion of the Bonds issued for the municipal sewer utility are payable from the net revenues to be derived from the operation of the municipal sewer utility of the City, as set forth in the Resolution to which reference is made for a full statement of rights and powers thereby conferred. In the Resolution, the City has pledged and appropriated the net revenues to be derived from the operation of the municipal sewer utility in excess of normal, reasonable and current costs of the operation and maintenance of the utility, for the payment of the principal and interest when due on the portion of the Bonds issued for the sewer utility, and has covenanted and agreed that it will impose and collect just and equitable charges for all use and for the availability of all facilities of the municipal sewer utility at the times and in the amounts required to pay the normal, reasonable and current expenses of operating and maintaining such facilities, and also to produce net revenues at least adequate at all times to pay the principal and interest due on the portion of the Bonds issued for the sewer utility.

(iii) That portion of the Bonds (\$1,190,000) issued for improvements to the municipal gas utility are issued pursuant to the authority contained in Minnesota Statutes, Chapter 475 and Section 55 of the Home Rule Charter of the City, and all other laws and charter provisions thereunto enabling, and pursuant to Ordinance No. 9793 adopted on October 10, 2006, for the purpose of providing funds for improvements to the municipal gas utility and for payment of part of the interest cost of said bond issue. That portion of the Bonds issued for improvements to the municipal gas utility are payable primarily from the net revenues to be derived from the operation of the municipal gas utility of the City, as set forth in the Resolution to which reference is made for a full statement of rights and powers thereby conferred. In the Resolution, the City has pledged and appropriated the net revenues to be derived from the operation of the municipal gas utility in excess of normal, reasonable and current costs of the operation and maintenance of the utility, for the payment of the principal and interest when due on the portion of the Bonds issued for the gas utility, and has covenanted and agreed that it will impose and collect just and equitable charges for all use and for the availability of all facilities of the municipal gas utility at the times and in the amounts required to pay the normal, reasonable and current expenses of operating and maintaining such facilities, and also to produce net revenues at least adequate at all times to pay the principal and interest due on the portion of the Bonds issued for the gas utility.

The Bonds of this series maturing in the years 2008 through 2015 are not subject to redemption before maturity, but those maturing in the year 2016 and in subsequent years are each subject to redemption and prepayment at the option of the City on February 1, 2015, and on any date thereafter, in whole or in part, in such order of maturities as selected by the City and by lot as to Bonds maturing in the same year, at a price equal to the principal amount plus accrued interest to the redemption date.

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

If less than all the Bonds of a maturity are called for redemption while the Bonds are registered in the name of Cede & Co., the City or the Bond Registrar designated below will notify DTC of the particular amount of such maturity to be prepaid. DTC will determine by lot the amount of each participant's interest in such maturity to be redeemed and each participant will then select by lot the beneficial ownership interest in such maturity to be redeemed. If less than all the Bonds of a maturity are called for redemption and the Bonds are not registered in the name of Cede & Co., the Bond Registrar will determine by lot or other manner deemed fair, the amount of each maturity to be redeemed. All prepayments shall be at a price equal to the principal amount thereof plus accrued interest. If any Bond is redeemed in part, upon surrender of the Bond being redeemed, the City shall deliver or cause to be delivered to the registered owner of such Bond, a Bond in like form in the principal amount equal to that portion of the Bond so surrendered not being redeemed.

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

IT IS CERTIFIED AND RECITED that all acts and conditions required by the Charter of the City and by the laws and the Constitution of the State of Minnesota to be done and to exist precedent to and in the issuance of this Bond, in order to

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

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

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

Attest:

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Mayor

Date of Authentication: \_\_\_\_\_

**BOND REGISTRAR'S AUTHENTICATION CERTIFICATE**

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

WELLS FARGO BANK, NATIONAL ASSOCIATION  
Bond Registrar

By \_\_\_\_\_  
Authorized Representative

**REGISTRATION CERTIFICATE**

This Bond must be registered as to both principal and interest in the name of the owner on the books to be kept by Wells Fargo Bank, National Association, as Bond Registrar. No transfer of this Bond shall be valid unless made on said books by the registered owner or the owner's attorney thereunto duly authorized and similarly noted on the registration books. The ownership of the unpaid principal balance of this Bond and the interest accruing thereon is registered on the books of Wells Fargo Bank, National Association as Bond Registrar, in the name of the registered owner last noted below.

Date	Registered Owner	Signature of Bond Registrar
12/__/06	Cede & Co. c/o The Depository Trust Company 55 Water Street New York, NY 10041 Federal Taxpayer I.D. No.: 13-2555119	_____

BOND COUNSEL OPINION

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

\_\_\_\_\_  
Clerk

ASSIGNMENT

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

\_\_\_\_\_  
(Name and Address of Assignee)

\_\_\_\_\_  
Social Security or Other  
Identifying Number of Assignee

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
NOTICE: The signature to this assignment must correspond with the name of the registered owner as it appears upon the face of the within Bond in every

particular, without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

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

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City or its agent for registration of transfer, exchange, or payment, and any bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL, inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

Section 3. Revenues, Accounts and Covenants.

3.01 Water Portion of the Bonds.

(a) The city council covenants and agrees with the holders of the Bonds and with its taxpayers that it will impose and collect just and equitable charges for all use and for the availability of all facilities of the municipal water utility at the times and in the amounts required to pay the normal, reasonable and current expenses of operating and maintaining such facilities, and also to produce net revenues at least adequate at all times to pay the principal and interest due on the Water Portion of the Bonds and on all other bonds heretofore or hereafter issued and made payable from said net revenues, and will operate the utility and segregate and account for the revenues thereof as provided in this section.

The City will place all such charges, when collected, and all money received from the sale of any facilities or equipment of the municipal water utility in a separate Water Utility Operating Account within the Public Utility Water Fund maintained under Section 54 of the City Charter. Except as provided in this section, this account shall be used only to pay claims duly approved and allowed for payment of expenses which, under generally accepted accounting principles, constitute normal, reasonable and current expenses of operating and maintaining the municipal water utility, and to maintain such reasonable reserves for such expenses as the director of finance shall determine to be necessary from time to time in accordance with policies established by the city council. Sums from time to time on hand in this account, in excess of sums required to make such payments and maintain such reserves, constitute the net revenues which are herein pledged and appropriated first to pay the principal of and interest on all water utility bonds when due.

(b) The City has created a separate construction account within the Public Utility Water Fund to which there shall be credited \$1,109,920.00, together with any additional funds which may be available and are appropriated for improvements to the utility. This account shall be used only to pay expenses duly approved and allowed which, under generally accepted accounting principles, constitute capital expenditures for the completion of improvements to the water utility and costs of the issuance of the Water Portion of the Bonds.

(c) Until the Bonds issued hereunder are fully paid or duly called for redemption, or otherwise discharged, the City will also maintain a separate debt service account (the "Water Debt Service Fund") in the Public Utility Water Fund to be used solely for the payment of the principal and interest, as such principal and interest become due and payable, on the Water Portion of the Bonds and on any other bonds which have been or may be issued and made payable from said net revenues of the water utility. The treasurer shall credit to the Water Debt Service Fund \$655.23 of unused discount and the amount of accrued interest on the Water Portion of the Bonds. The treasurer shall transfer from the Water Utility Operating Account to the Water Debt Service Fund amounts of the net revenues sufficient for the payment of all interest and principal then due on the Water Portion of the Bonds, and a pro rata portion of all charges due to the Bond Registrar. Such transfers shall be made at the times and in the amounts determined by the treasurer, in accordance with policies established by resolutions of the city council.

(d) Surplus utility revenues from time to time received in the Water Utility Operating Account, in excess of payments due from and reserves required to be maintained in the Water Utility Operating Account and in the Water Debt Service Fund, may be used for necessary capital expenditures for the improvement of the municipal water utility, for the prepayment and redemption of bonds constituting a lien on the municipal water utility, and for any other proper municipal purpose consistent with policies established by resolutions of the city council.

### 3.02 Sewer Portion of the Bonds.

(a) The city council covenants and agrees with the holders of the Bonds and with its taxpayers that it will impose and collect just and equitable charges for all use and for the availability of all facilities of the municipal sewer utility at the times and in the amounts required to pay the normal, reasonable and current expenses of operating and maintaining such facilities, and also to produce net revenues at least adequate at all times to pay the principal and interest due on the Sewer Portion of the Bonds and on all other bonds heretofore or hereafter issued and made payable from said net revenues, and will operate the 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 \$936,495.00 from the proceeds of the Bonds, together with any additional funds which may be available and are appropriated for improvements to the utility. This account shall be used only to pay expenses duly approved and allowed which, under generally accepted accounting principles, constitute capital expenditures for the completion of improvements to the sewer utility and costs of the issuance of the Sewer Portion of the Bonds.

(c) Until the Bonds issued hereunder are fully paid or duly called for redemption, or otherwise discharged, the City will also maintain a separate debt service account (the "Sewer

Debt Service Fund”) in the Public Utility Sewer Fund to be used solely for the payment of the principal and interest, as such principal and interest become due and payable, on the Sewer Portion of the Bonds and on any other bonds which have been or may be issued and made payable from said net revenues of the sewer utility. The treasurer shall credit to the Sewer Debt Service Fund \$560.23 of unused discount and the amount of accrued interest on the Sewer Portion of the Bonds. The treasurer shall transfer from the Sewer Utility Operating Account to the Sewer Debt Service Fund amounts of the net revenues sufficient for the payment of all interest and principal then due on the Sewer Portion of the Bonds, and a pro rata portion of all charges due to the Bond Registrar. Such transfers shall be made at the times and in the amounts determined by the treasurer, in accordance with policies established by resolutions of the city council.

(d) Surplus utility revenues from time to time received in the Sewer Utility Operating Account, in excess of payments due from and reserves required to be maintained in the Sewer Utility Operating Account and in the Sewer Debt Service Fund, may be used for necessary capital expenditures for the improvement of the municipal sewer utility, for the prepayment and redemption of bonds constituting a lien on the municipal sewer utility, and for any other proper municipal purpose consistent with policies established by resolutions of the city council.

### 3.03 Gas Portion of the Bonds.

(a) The city council covenants and agrees with the holders of the Bonds and with its taxpayers that it will impose and collect just and equitable charges for all use and for the availability of all facilities of the municipal gas utility at the times and in the amounts required to pay the normal, reasonable and current expenses of operating and maintaining such facilities, and also to produce net revenues at least adequate at all times to pay the principal and interest due on the Gas Portion of the Bonds and on all other bonds heretofore or hereafter issued and made payable from said net revenues, and will operate the utility and segregate and account for the revenues thereof as provided in this section.

The City will place all such charges, when collected, and all money received from the sale of any facilities or equipment of the municipal gas utility in a separate Gas Utility Operating Account within the Public Utility Gas Fund maintained under Section 54 of the City Charter. Except as provided in this section, this account shall be used only to pay claims duly approved and allowed for payment of expenses which, under generally accepted accounting principles, constitute normal, reasonable and current expenses of operating and maintaining the municipal gas utility, and to maintain such reasonable reserves for such expenses as the director of finance shall determine to be necessary from time to time in accordance with policies established by the city council. Sums from time to time on hand in this account, in excess of sums required to make such payments and maintain such reserves, constitute the net revenues which are herein pledged and appropriated first to pay the principal of and interest on all gas utility bonds when due.

(b) The City has created a separate construction account within the Public Utility Gas Fund to which there shall be credited \$1,179,290.00 from the proceeds of the Bonds, together with any additional funds which may be available and are appropriated for improvements to the utility. This account shall be used only to pay expenses duly approved and allowed which, under generally accepted accounting principles, constitute capital expenditures for the completion of improvements to the gas utility and costs of the issuance of the Gas Portion of the Bonds.

(c) Until the Bonds issued hereunder are fully paid or duly called for redemption, or otherwise discharged, the City will also maintain a separate debt service account (the “Gas Debt Service Fund”) in the Public Utility Gas Fund to be used solely for the payment of the principal and interest, as such principal and interest become due and payable, on the Gas Portion of the Bonds and on any other bonds which have been or may be issued and made payable from

said net revenues of the gas utility. The treasurer shall credit to the Gas Debt Service Fund \$684.09 of unused discount and the amount of accrued interest on the Gas Portion of the Bonds. The treasurer shall transfer from the Gas Utility Operating Account to the Gas Debt Service Fund amounts of the net revenues sufficient for the payment of all interest and principal then due on the Gas Portion of the Bonds, and a pro rata portion of all charges due to the Bond Registrar. Such transfers shall be made at the times and in the amounts determined by the treasurer, in accordance with policies established by resolutions of the city council.

(d) Surplus utility revenues from time to time received in the Gas Utility Operating Account, in excess of payments due from and reserves required to be maintained in the Gas Utility Operating Account and in the Gas Debt Service Fund, may be used for necessary capital expenditures for the improvement of the municipal gas utility, for the prepayment and redemption of bonds constituting a lien on the municipal gas utility, and for any other proper municipal purpose consistent with policies established by resolutions of the city council.

3.04 If the balances in either the Water Debt Service Fund, the Sewer Debt Service Fund or the Gas Debt Service Fund are ever insufficient to pay all principal and interest then due on the Bonds, the treasurer shall nevertheless provide sufficient money from any other funds of the City which are available for that purpose, and such other funds shall be reimbursed from the Debt Service Funds when the balances therein are sufficient. It is estimated that the net revenues herein pledged and appropriated to said Debt Service Funds will be received at the times and in amounts not less than 5% in excess of the amounts needed to meet when due the principal and interest payments thereon and, accordingly, no tax is presently levied for this purpose. It is recognized, however, that the City's liability on the Bonds is not limited to the revenues so pledged, and the city council covenants and agrees that it will levy upon all taxable property within the City, and cause to be extended, levied and collected, any taxes found necessary for full payment of the principal of and interest on the Bonds, without limitation as to rate or amount.

Section 4. Tax Covenants; Miscellaneous.

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

4.02 (a) No portion of the proceeds of the Bonds shall be used directly or indirectly to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments, except (i) for a reasonable temporary period until such proceeds are needed for the purpose for which the Bonds were issued, and (ii) in addition to the above, in an amount not greater than the lesser of 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% 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.

6.04 In addition to the Bonds, the City is selling, pursuant to a single offering document and on the same date, the following obligations: General Obligation Steam Utility Revenue Bonds, Series 2006E (the "Series 2006E Bonds"), General Obligation Equipment Certificates of Indebtedness, Series 2006G (the "Certificates"), General Obligation Improvement Refunding Bonds, Series 2006H (the "Series 2006H Bonds"), General Obligation Street Improvement Refunding Bonds, Series 2006I (the "Series 2006I Bonds"), and General Obligation Street Improvement Refunding Bonds, Series 2006J (the "Series 2006J Bonds"). The City has pledged its full faith and credit and taxing powers for each series of such bonds. Pursuant to Treasury Regulation Section 1.150-1(c)(4)(iii), the City elects to treat the Bonds, the Certificates, the Series 2006E Bonds, the Series 2006H Bonds, the Series 2006I Bonds and the Series 2006J Bonds as part of the same issue.

Resolution 06-0789 was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Krause, Little, Stewart, Stover and President Reinert -- 7

Nays: Councilor Stauber -- 1

Absent: Councilor Ness -- 1

Approved November 30, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

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. 05-0835 on December 5, 2005, declaring the intention of the City to issue such certificates of indebtedness in the amount of approximately \$1,785,000 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 \$1,785,000 General Obligation Equipment Certificates of Indebtedness, Series 2006G, 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 Wells Fargo Brokerage Services, LLC of Salt Lake City, Utah (the "Purchaser"), to purchase the Certificates at a cash price of \$1,784,314, upon condition that the Certificates mature and bear interest at the times and annual rates set forth in Section 2. The City, after due consideration, finds such bid reasonable and proper and the bid of the Purchaser is hereby accepted. 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 the date of delivery, as the date of original issue, shall be issued in the denomination of \$5,000 each, or any integral multiple thereof, in fully registered form and lettered and numbered R-1 and upward. The Certificates shall mature on February 1 in the respective years and amounts stated and shall bear interest as follows:

Year	Amount	Interest Rate
2008	\$325,000	3.625%
2009	345,000	3.625%
2010	360,000	3.625%
2011	370,000	3.625%
2012	385,000	3.625%

2.02 The Certificates are not subject to redemption and prepayment before maturity.

2.03 The interest shall be payable semiannually on February 1 and August 1 and in each year (each referred to herein as an "Interest Payment Date"), commencing August 1, 2007. 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 2006G

R-\_\_ \$\_\_\_\_\_

Interest Rate	Maturity Date	Date of Original Issue	CUSIP
	February 1, ____	December __, 2006	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT:

The City of Duluth, in St. Louis County, Minnesota (the "City"), for value received, promises to pay to the registered owner specified above, or registered assigns, the principal amount specified above on the maturity date specified above, and to pay interest on said principal amount to the registered owner hereof from the Date of Original Issue, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, until the principal amount is paid or discharged, said interest being at the rate per annum specified above. Interest is payable semiannually on February 1 and August 1 of each year (each referred to herein as an "Interest Payment Date") commencing on August 1, 2007. 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 \$1,785,000, all of like date and tenor, except as to number, amount, maturity date and interest rate, pursuant to the authority contained in Minnesota Statutes, Sections 410.32 and 412.301 and Chapter 475, the City Charter and all other laws thereunto enabling, and pursuant to an authorizing resolution adopted by the governing body of the City on November 30, 2006 (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

**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.

Date	Registered Owner	Signature of Bond Registrar
12/___/06	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.

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

**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 \$1,767,900 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% 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
2006	2007	410,414*
2007	2008	417,822
2008	2009	420,440
2009	2010	417,238
2010	2011	418,905

\*anticipatory tax levy of \$393,100 plus \$17,314 of unused discount deposited in Debt Service Fund.

(b) A separate debt service account is hereby created and designated as the "2006 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 proceeds of the Certificates in the amount of \$17,314, representing unused discount, plus the amount of accrued interest, if any, 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 irrevocable 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 equipment purchases 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% 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% 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 Certificates, and that 100% 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.

6.05 In addition to the Certificates, the City is selling, pursuant to a single offering document and on the same date, the following obligations: General Obligation Steam Utility Revenue Bonds, Series 2006E (the "Series 2006E Bonds"), General Obligation Utilities Revenue Bonds, Series 2006F (the "Series 2006F Bonds"), General Obligation Improvement Refunding

Bonds, Series 2006H (the "Series 2006H Bonds"), General Obligation Street Improvement Refunding Bonds, Series 2006I (the "Series 2006I Bonds"), and General Obligation Street Improvement Refunding Bonds, Series 2006J (the "Series 2006J Bonds"). The City has pledged its full faith and credit and taxing powers for each series of such bonds. Pursuant to Treasury Regulation Section 1.150-1(c)(4)(iii), the City elects to treat the Certificates, the Series 2006E Bonds, the Series 2006F Bonds, the Series 2006H Bonds, the Series 2006I Bonds and the Series 2006J Bonds as part of the same issue.

Resolution 06-0790 was adopted upon the following vote:

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

Nays: Councilor Stauber -- 1

Abstention: Councilor Little -- 1

Absent: Councilor Ness -- 1

Approved November 30, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

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 The City has previously issued its \$5,650,000 General Obligation Improvement Bonds, Series 1996A, dated July 15, 1996 (the "1996 Bonds"). The 1996 Bonds were authorized and issued pursuant to the City Charter and Minnesota Statutes, Chapter 475.

1.02 Under and pursuant to the provisions of Minnesota Statutes, Chapter 475 (the "Act") and Section 475.67, Subdivisions 1 through 4 of the Act, the City is authorized to issue and sell its general obligation bonds to refund obligations and the interest thereon six months or less before the due date or the redemption date of the obligations, if consistent with covenants made with the holders thereof, when determined by the City to be necessary or desirable for the reduction of debt service cost to the City or for the extension or adjustment of maturities in relation to the resources available for their payment.

1.03 It is necessary and desirable that in order to reduce debt service costs the City issue \$2,395,000 General Obligation Improvement Refunding Bonds, Series 2006H (the "Bonds"), to refund that portion of the 1996 Bonds maturing on and after February 1, 2008 (the "Refunded Bonds"), of which \$2,415,000 in principal amount is prepayable on February 1, 2007 (the "Redemption Date").

1.04 Public Financial Management, Inc., financial consultant to the City, has given notification by mail, facsimile or electronic data transmission to at least five firms determined by Public Financial Management, Inc. to be prospective bidders on the Bonds at least two days (omitting Saturdays, Sundays and legal holidays) before the date set for receipt of bids on the Bonds, pursuant to and in accordance with Minnesota Statutes, Section 475.60, Subd. 3. All actions of the mayor, the clerk and Public Financial Management, Inc. taken with regard to the sale of the Bonds are hereby ratified and approved.

1.05 Pursuant to such solicitation for bids for the sale of the Bonds, the city council has received and considered all bids presented pursuant to the official terms of offering and has determined that the most favorable bid is that of Piper Jaffray of Minneapolis, Minnesota (the "Purchaser"), to purchase the Bonds at a cash price of \$2,420,325.79, upon condition that the Bonds mature and bear interest at the times and annual rates set forth in Section 2. The City, after due consideration, finds such offer reasonable and proper and the offer of the Purchaser is hereby accepted. The mayor and the city clerk are authorized and directed to execute on the part

of the City a contract for the sale of the Bonds in accordance with the Purchaser's bid. The city treasurer is directed to deposit the good faith check of the successful bidder.

Section 2. Terms of Bonds.

2.01 The Bonds to be issued hereunder shall be dated as of the date of delivery, as the date of original issue, shall be issued in the denomination of \$5,000 each, or any integral multiple thereof, in fully registered form and lettered and numbered R-1 and upward. The Bonds shall mature on February 1 in the respective years and amounts stated and shall bear interest as follows:

Year	Amount	Interest Rate
2008	\$430,000	4.00%
2009	460,000	4.00%
2010	480,000	4.00%
2011	500,000	4.00%
2012	525,000	4.00%

2.02 The Bonds are not subject to redemption prior to maturity.

2.03 Interest on the Bonds shall be payable semiannually on February 1 and August 1 in each year (each referred to herein as an "Interest Payment Date"), commencing August 1, 2007. 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 15<sup>th</sup> day (whether or not a business day) of the month next preceding the Interest Payment Date at such owners' addresses shown on such bond registration records.

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

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

2.05 The City hereby appoints Wells Fargo Bank, National Association, in Minneapolis, Minnesota, as registrar, authenticating agent, paying agent and transfer agent for the Bonds (such bank or its successor is herein referred to as the "Bond Registrar"). To provide for the Bond Registrar services, the mayor and the clerk are authorized and directed to execute a bond

registrar/paying agent agreement substantially in the form of the agreement currently on file in the office of the city clerk as Public Document No. 04-0219-02. No Bond shall be valid or obligatory for any purpose until the Bond Registrar's authentication certificate on such Bond, substantially set forth in Section 2.11 hereof, shall have been duly executed by an authorized representative of the Bond Registrar. Authentication certificates on different Bonds need not be signed by the same representative. The manual signature of one officer of the City or the executed authentication certificate on each Bond shall be conclusive evidence that it has been authenticated and delivered under this resolution.

2.06 (a) In order to make the Bonds eligible for the services provided by The Depository Trust Company, New York, New York ("DTC"), the City has previously agreed to the applicable provisions set forth in the blanket issuer letter of representations which has been executed by the City and DTC (the "Representation Letter").

(b) 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  
GENERAL OBLIGATION IMPROVEMENT REFUNDING BOND, SERIES 2006H

R-\_\_\_\_\_ \$\_\_\_\_\_

Interest Rate	Maturity Date	Date of Original Issue	CUSIP
	February 1, _____	December __, 2006	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT:

The City of Duluth, in St. Louis County, Minnesota (the "City"), for value received, promises to pay to the registered owner specified above, or registered assigns, the principal amount specified above on the maturity date specified above, and to pay interest on said principal amount to the registered owner hereof from the Date of Original Issue, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, until the principal amount is paid or discharged, said interest being at the rate per annum specified above. Interest is payable semiannually on February 1 and August 1 of each year (each referred to herein as an "Interest Payment Date") commencing on August 1, 2007. 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 15<sup>th</sup> day of the month next preceding the Interest Payment Date (whether or not a business day), at such owner's address shown on said bond registration records, without, except for payment of principal on the Bond, the presentation or surrender of this Bond, and all such payments shall discharge the obligations of the City to the extent of the payments so made. Payment of principal shall be made upon presentation and surrender of this Bond to the Bond Registrar when due. For the prompt and full payment of such principal and interest as they become due, the full faith and credit of the City are irrevocably pledged.

This Bond is one of a series issued by the City in the aggregate amount of \$2,395,000, all of like date and tenor, except as to number, amount, maturity date and interest rate, pursuant to the authority contained in Minnesota Statutes, Chapter 475 and all other laws thereunto enabling, and pursuant to an authorizing resolution

adopted by the governing body of the City on November 30, 2006 (the "Resolution"), and is issued for the purpose of providing money to refund the outstanding principal amount of the \$5,650,000 General Obligation Improvement Bonds, Series 1996A, dated July 15, 1996. The principal hereof and interest hereon are payable in part from special assessments levied against properties specially benefitted by local improvements and in part from ad valorem taxes. The principal and interest on the Bonds will be payable from a special fund of the City entitled "2006H Improvement Refunding Bond Account" in the Special Assessment Debt Service Fund.

The Bonds are not subject to redemption prior to maturity.

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

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

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

IN WITNESS WHEREOF, the City of Duluth, Minnesota, by its City Council, has caused this Bond to be executed in its name by the facsimile signatures of the Mayor and the City Clerk.

Attest:

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Mayor

Date of Authentication: \_\_\_\_\_

**BOND REGISTRAR'S AUTHENTICATION CERTIFICATE**

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

WELLS FARGO BANK, NATIONAL ASSOCIATION  
Bond Registrar

By \_\_\_\_\_  
Authorized Representative

**REGISTRATION CERTIFICATE**

This Bond must be registered as to both principal and interest in the name of the owner on the books to be kept by Wells Fargo Bank, National Association, of Minneapolis, Minnesota, as Bond Registrar. No transfer of this Bond shall be valid unless made on said books by the registered owner or the owner's attorney thereunto duly authorized and similarly noted on the registration books. The ownership of the unpaid principal balance of this Bond and the interest accruing thereon is registered on the books of Wells Fargo Bank, National Association as Bond Registrar, in the name of the registered owner last noted below.

Date	Registered Owner	Signature of Bond Registrar
12/__/06	Cede & Co. c/o The Depository Trust Company 55 Water Street New York, NY 10041 Federal Taxpayer I.D. No.: 13-2555119	_____

**ASSIGNMENT**

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Name and Address of Assignee)

\_\_\_\_\_  
\_\_\_\_\_  
Social Security or Other  
Identifying Number of Assignee

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

NOTICE: The signature to this assignment must correspond with the name of the registered owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

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

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City or its agent for registration of transfer, exchange, or payment, and any bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL, inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

#### BOND COUNSEL OPINION

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

\_\_\_\_\_  
Clerk

Section 3. Escrow Agreement; Escrow Agent.

3.01 Wells Fargo Bank, National Association of Minneapolis, Minnesota, which is a suitable financial institution within the State of Minnesota whose deposits are insured by the Federal Deposit Insurance Corporation whose combined capital and surplus is not less than \$500,000, is hereby designated escrow agent (the "Escrow Agent") with respect to the outstanding 1996 Bonds.

3.02 On or prior to the delivery of the Bonds, the mayor and the clerk are hereby authorized and directed to execute on behalf of the City an escrow agreement (the "Escrow Agreement") with the Escrow Agent in substantially the form now on file with the clerk as Public Document No. 06-1130-02. The execution and delivery of the Escrow Agreement by the mayor and the clerk, in the form presented to the City Council with such changes, omissions, insertions and revisions as the mayor and the clerk deem advisable is hereby approved, and the execution by such officers shall be conclusive evidence of such approval. All essential terms and conditions of the Escrow Agreement, including payment by the City of reasonable charges for the services of the Escrow Agent, are hereby approved and adopted and made a part of this Resolution, and the City covenants that it will promptly enforce all provisions thereof in the event of default thereunder by the Escrow Agent.

Section 4. Covenants, Accounts and Representations.

4.01 (a) The Bonds are payable from the 2006H Improvement Refunding Bond Account (the "Debt Service Fund") hereby created within the City's Special Assessment Debt Service Fund. The Debt Service Fund shall be maintained in the manner herein specified until all of the Bonds and interest thereon have been fully paid. To the Debt Service Fund there is hereby pledged and irrevocably appropriated and there shall be credited: (i) any balance remitted to the City upon termination of the Escrow Agreement attributable to the 1996 Bonds; (ii) any balance remaining on the Redemption Date in the debt service accounts created in the City's resolution authorizing the issuance and sale of the 1996 Bonds (Resolution No. 96-0673)(the "Prior Resolution") after payment of principal and interest on the Refunded Bonds on the Redemption Date; (iii) any collections of the proceeds of special assessments levied for the projects listed in Section 1.02 of the Prior Resolution and the ad valorem taxes hereafter levied for the payment of a portion of the Bonds and interest thereon; (iv) all investment earnings on funds in the Debt Service Fund; (v) accrued interest, if any, received from the Purchaser upon delivery of the Bonds to the extent not required to fund the Escrow Account (the "Accrued Interest"); (vi) any amount of additional interest permitted by Section 475.56 of the Act paid by the Purchaser (the "Additional Interest"), to the extent not required to fund the Escrow Account; (vii) all taxes or other funds pledged to repayment of the Refunded Bonds in the Prior Resolution hereafter collected pursuant to levies made in the Prior Resolution; and (viii) any and all other monies which are properly available and are appropriated by the City to the Debt Service Fund including taxes levied in Section 5.02 hereof. The amount of any surplus remaining in the Debt Service Fund when the Bonds and interest thereon are paid shall be used as provided in Section 475.61, Subdivision 4 of the Act.

(b) Escrow account.

(i) To the Escrow Account there is hereby pledged and irrevocably appropriated and there shall be credited: (a) the proceeds of the Bonds received from the Purchaser which are not appropriated to the Debt Service Fund or are not to be used for payment of costs of issuance of the Bonds; (b) Accrued Interest; (c) Additional Interest [amounts referenced in clauses (a), (b) and (c) are herein referred to as the "Proceeds"]; (d) funds of the City in an amount sufficient to meet the requirements of the Escrow Account (the "Funds"); and (e)

investment earnings on such monies referenced in clauses (a), (b), (c) and (d), for the payment of principal and interest due on the 1996 Bonds on the Redemption Date and for the Refunded Bonds called for redemption on the Redemption Date.

(ii) The Escrow Account shall be maintained with the Escrow Agent pursuant to the Escrow Agreement and this Resolution. The Escrow Account shall be invested in accordance with the Act, the Escrow Agreement and this Section, in securities specified in Section 475.67, Subdivision 8(a) of the Act, which investments will provide sufficient funds together with any cash or other funds retained in the Escrow Account for the payment of the principal and interest due on the 1996 Bonds to and including the Redemption Date and the principal of the Refunded Bonds called for redemption and prepayment on the Redemption Date.

(iii) From the Escrow Account there shall be paid: (a) all principal of and interest to be paid on the 1996 Bonds to and including the Redemption Date; and (b) the principal of the Refunded Bonds due by reason of redemption on the Redemption Date.

(iv) The Escrow Account for the 1996 Bonds is irrevocably appropriated to the payment of the principal of and interest on the 1996 Bonds to and including the Redemption Date and to prepayment of the Refunded Bonds due by reason of redemption on the Redemption Date. The monies to be deposited in the Escrow Account for the 1996 Bonds shall be used solely for the purposes herein set forth and for no other purpose, except that any surplus in the Escrow Account may be remitted to the City all in accordance with the Escrow Agreement. Any monies remitted to the City upon termination of the Escrow Agreement shall be deposited in the Debt Service Fund.

(v) Securities purchased for the Escrow Account shall be purchased simultaneously with the delivery of and payment for the Bonds. The mayor and clerk or their designee are authorized and directed to purchase such securities.

(c) The construction funds created for the 1996 Bonds have previously been terminated and all bond proceeds therein have been expended.

4.02 The city council hereby declares that it has assessed against benefitted property not less than 20 percent of the cost of the projects financed by the 1996 Bonds. The City further declares that it has completed the special assessment process, including any and all supplemental assessments or reassessments that were required to lawfully assess the benefitted property.

4.03 It is hereby determined that upon the receipt of proceeds of the Bonds (the "Proceeds") for payment of the 1996 Bonds that an irrevocable appropriation to the Escrow Account shall have been made within the meaning of Section 475.61, Subdivision 3 of the Act and the clerk is hereby authorized and directed to certify such fact to and request the county auditor to cancel any and all tax levies made by the Prior Resolution for collection year 2008 and thereafter.

4.04 (a) The full faith and credit and taxing power of the City are hereby irrevocably pledged for the prompt and full payment of the principal of and interest on the Bonds, as such principal and interest respectively become due. 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
2006	2007	\$586,843*
2007	2008	542,513
2008	2009	567,210
2009	2010	568,050
2010	2011	573,300

\*Amount levied and estimated special assessments in the Prior Resolution for the levy year 2006 for the 1996 Bonds, which will be available for payment of the principal and interest on the Bonds on August 1, 2007 and February 1, 2008.

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

Such tax levies shall be irrevocable as long as any of the Bonds issued hereunder are outstanding and unpaid; provided, however, that in each year while any Bonds issued hereunder remain outstanding, the city council may reduce or cancel the above levies (i) to the extent of funds expected to be received from special assessments from the projects described in Section 1.02 of the Prior Resolution upon benefitted properties, and (ii) to the extent of an irrevocable appropriation to said debt service account of monies actually on hand for payment of the portion of such principal and interest payable from ad valorem taxes (and not special assessments), and may direct the county auditor to reduce the levy for such calendar year by that amount.

(b) All proceeds of said special assessments and said taxes are hereby appropriated and shall be paid when collected into the 2006H Improvement Refunding Bond Account within the Special Assessment Debt Service Fund. If the balances in the 2006H Improvement Refunding Bond Account are ever insufficient to pay all principal and interest then due on the Bonds, the treasurer shall nevertheless provide sufficient money from any other funds of the City which are available for that purpose, and such other funds shall be reimbursed from the 2006H Improvement Refunding Bond Account when the balances therein are sufficient.

**Section 5. Refunding, Findings, Prepayment of Refunded Bonds.**

5.01 It is hereby found and determined that based upon information presently available from the City's financial advisers, the issuance of the Bonds is consistent with covenants in the Prior Resolution and is necessary and desirable for the reduction of debt service cost to the City.

5.02 It is hereby found and determined that the Proceeds and other available funds appropriated to the Escrow Account will be sufficient, together with the permitted earnings on investments of the Escrow Account, to pay all of the principal of and interest on the 1996 Bonds due on February 1, 2007, and the principal of the Refunded Bonds on the Redemption Date.

5.03 The Refunded Bonds shall be redeemed and prepaid in accordance with their terms and in accordance with the terms and conditions set forth in the form of notice of call for redemption attached to the Escrow Agreement, which terms and conditions are hereby approved and incorporated herein by reference. The clerk or his designee is hereby authorized and directed to forthwith, no later than 30 days prior to the Redemption Date, to send written notice of call to the registered owners and paying agent and to the bond insurance company of the Refunded Bonds.

5.04 When the principal of the 1996 Bonds and all interest thereon have been discharged as provided in this section, all pledges, covenants and other rights granted by the Prior Resolution to the holders of the 1996 Bonds shall cease, except that the pledge of the full faith and credit of the City for the prompt and full payment of the principal and interest on the 1996 Bonds shall remain in full force and effect.

Section 6. Continuing Disclosure. The City acknowledges that the Bonds are subject to the continuing disclosure requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (17 C.F.R. § 240.15c2-12) (the "Rule"). The Rule governs the obligations of certain underwriters to require that issuers of municipal bonds enter into agreements for the benefit of the bondholders to provide continuing disclosure with respect to the Bonds. To provide for the public availability of certain information relating to the Bonds and the security therefor and to permit underwriters of the Bonds to comply with the Rule, which will enhance the marketability of the Bonds, the mayor and the clerk are hereby authorized and directed to execute a continuing disclosure certificate substantially in the form of the certificate currently on file in the office of the city clerk as Public Document No. 04-0219-02.

Section 7. Tax Covenants.

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

7.02 (a) The proceeds of the 1996 Bonds have been totally expended for the governmental purpose for which issued; the gross proceeds of the Bonds will, within 90 days of the date of issuance of the Bonds, have been totally expended for the purpose of refunding the outstanding principal amount of the Refunded Bonds and interest thereon and paying costs of issuance of the Bonds. Therefore, no rebate of arbitrage profit is required under the Internal Revenue Code of 1986, as amended (the "Code").

(b) In addition, the proceeds of the Bonds and money in the Debt Service 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 Code.

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

(d) The City expects that all proceeds of the Bonds will be expended within six months of the date of issue of the Bonds.

7.03 In addition to the Bonds, the City is selling, pursuant to a single offering document and on the same date, the following obligations: General Obligation Steam Utility Revenue Bonds, Series 2006E (the "Series 2006E Bonds"), General Obligation Utilities Revenue Bonds, Series 2006F (the "Series 2006F Bonds"), General Obligation Equipment Certificates of Indebtedness, Series 2006G (the "Certificates"), General Obligation Street Improvement Refunding Bonds, Series 2006I (the "Series 2006I Bonds"), and General Obligation Street Improvement Refunding

Bonds, Series 2006J (the "Series 2006J Bonds"). The City has pledged its full faith and credit and taxing powers for each series of such bonds. Pursuant to Treasury Regulation Section 1.150-1(c)(4)(iii), the City elects to treat the Bonds, the Certificates, the Series 2006E Bonds, the Series 2006F Bonds, the Series 2006I Bonds and the Series 2006J Bonds as part of the same issue.

Resolution 06-0791 was unanimously adopted.

Approved November 30, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

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 The City has previously issued its \$6,790,000 General Obligation Street Improvement Bonds, Series 1998C, dated August 1, 1998 (the "1998 Bonds"). The 1998 Bonds were authorized and issued pursuant to the City Charter and Minnesota Statutes, Chapter 475.

1.02 Under and pursuant to the provisions of Minnesota Statutes, Chapter 475 (the "Act") and Section 475.67, Subdivisions 1 through 4 of the Act, the City is authorized to issue and sell its general obligation bonds to refund obligations and the interest thereon six months or less before the due date or the redemption date of the obligations, if consistent with covenants made with the holders thereof, when determined by the City to be necessary or desirable for the reduction of debt service cost to the City or for the extension or adjustment of maturities in relation to the resources available for their payment.

1.03 It is necessary and desirable that in order to reduce debt service costs the City issue \$3,445,000 General Obligation Street Improvement Refunding Bonds, Series 2006I (the "Bonds"), to refund that portion of the 1998 Bonds maturing on and after February 1, 2008 (the "Refunded Bonds"), of which \$3,485,000 in principal amount is prepayable on February 1, 2007 (the "Redemption Date").

1.04 Public Financial Management, Inc., financial consultant to the City, has given notification by mail, facsimile or electronic data transmission to at least five firms determined by Public Financial Management, Inc. to be prospective bidders on the Bonds at least two days (omitting Saturdays, Sundays and legal holidays) before the date set for receipt of bids on the Bonds, pursuant to and in accordance with Minnesota Statutes, Section 475.60, Subd. 3. All actions of the mayor, the clerk and Public Financial Management, Inc. taken with regard to the sale of the Bonds are hereby ratified and approved.

1.05 Pursuant to such solicitation for bids for the sale of the Bonds, the city council has received and considered all bids presented pursuant to the official terms of offering and has determined that the most favorable bid is that of Piper Jaffray of Minneapolis, Minnesota (the "Purchaser"), to purchase the Bonds at a cash price of \$3,485,340.67, upon condition that the Bonds mature and bear interest at the times and annual rates set forth in Section 2. The City, after due consideration, finds such offer reasonable and proper and the offer of the Purchaser is hereby accepted. The mayor and the city clerk are authorized and directed to execute on the part of the City a contract for the sale of the Bonds in accordance with the Purchaser's bid. The city treasurer is directed to deposit the good faith check of the successful bidder.

Section 2. Terms of Bonds.

2.01 The Bonds to be issued hereunder shall be dated as of the date of delivery, as the date of original issue, shall be issued in the denomination of \$5,000 each, or any integral multiple thereof, in fully registered form and lettered and numbered R-1 and upward. The Bonds shall

mature on February 1 in the respective years and amounts stated and shall bear interest as follows:

Year	Amount	Interest Rate
2008	\$420,000	3.75%
2009	455,000	3.75%
2010	475,000	3.75%
2011	490,000	4.00%
2012	515,000	4.00%
2013	535,000	4.00%
2014	555,000	4.00%

2.02 The Bonds are not subject to redemption prior to maturity.

2.03 Interest on the Bonds shall be payable semiannually on February 1 and August 1 in each year (each referred to herein as an "Interest Payment Date"), commencing August 1, 2007. 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 15<sup>th</sup> day (whether or not a business day) of the month next preceding the Interest Payment Date at such owners' addresses shown on such bond registration records.

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

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

2.05 The City hereby appoints Wells Fargo Bank, National Association, in Minneapolis, Minnesota, as registrar, authenticating agent, paying agent and transfer agent for the Bonds (such bank or its successor is herein referred to as the "Bond Registrar"). To provide for the Bond Registrar services, the mayor and the clerk are authorized and directed to execute a bond registrar/paying agent agreement substantially in the form of the agreement currently on file in the office of the city clerk as Public Document No. 04-0219-02. No Bond shall be valid or obligatory for any purpose until the Bond Registrar's authentication certificate on such Bond, substantially

set forth in Section 2.11 hereof, shall have been duly executed by an authorized representative of the Bond Registrar. Authentication certificates on different Bonds need not be signed by the same representative. The manual signature of one officer of the City or the executed authentication certificate on each Bond shall be conclusive evidence that it has been authenticated and delivered under this resolution.

2.06 (a) In order to make the Bonds eligible for the services provided by The Depository Trust Company, New York, New York ("DTC"), the City has previously agreed to the applicable provisions set forth in the blanket issuer letter of representations which has been executed by the City and DTC (the "Representation Letter").

(b) 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  
GENERAL OBLIGATION STREET IMPROVEMENT REFUNDING BOND,  
SERIES 2006I

R-\_\_ \$\_\_\_\_\_

Interest Rate	Maturity Date	Date of Original Issue	CUSIP
	February 1, ____	December __, 2006	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT:

The City of Duluth, in St. Louis County, Minnesota (the "City"), for value received, promises to pay to the registered owner specified above, or registered assigns, the principal amount specified above on the maturity date specified above, and to pay interest on said principal amount to the registered owner hereof from the Date of Original Issue, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, until the principal amount is paid or discharged, said interest being at the rate per annum specified above. Interest is payable semiannually on February 1 and August 1 of each year (each referred to herein as an "Interest Payment Date") commencing on August 1, 2007. 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 15<sup>th</sup> 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 \$3,445,000, all of like date and tenor, except as to number, amount, maturity date and interest rate, pursuant to the authority contained in Minnesota Statutes, Chapter 475 and all other laws thereunto enabling, and pursuant to an authorizing resolution adopted by the governing body of the City on November 30, 2006 (the "Resolution"), and is issued for the purpose of providing money to refund the outstanding principal amount of the \$6,790,000 General Obligation Street Improvement Bonds, Series

1998C, dated August 1, 1998. The principal hereof and interest hereon are payable in part from special assessments levied against properties specially benefitted by local improvements and in part from ad valorem taxes. The principal and interest on the Bonds will be payable from a special fund of the City entitled "2006I Street Improvement Refunding Bond Account" in the Special Assessment Debt Service Fund.

The Bonds are not subject to redemption prior to maturity.

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

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

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

IN WITNESS WHEREOF, the City of Duluth, Minnesota, by its City Council, has caused this Bond to be executed in its name by the facsimile signatures of the Mayor and the City Clerk.

Attest:

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Mayor

Date of Authentication: \_\_\_\_\_

BOND REGISTRAR'S AUTHENTICATION CERTIFICATE

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

WELLS FARGO BANK, NATIONAL ASSOCIATION  
Bond Registrar

By \_\_\_\_\_  
Authorized Representative

REGISTRATION CERTIFICATE

This Bond must be registered as to both principal and interest in the name of the owner on the books to be kept by Wells Fargo Bank, National Association, of Minneapolis, Minnesota, as Bond Registrar. No transfer of this Bond shall be valid unless made on said books by the registered owner or the owner's attorney thereunto duly authorized and similarly noted on the registration books. The ownership of the unpaid principal balance of this Bond and the interest accruing thereon is registered on the books of Wells Fargo Bank, National Association as Bond Registrar, in the name of the registered owner last noted below.

Date	Registered Owner	Signature of Bond Registrar
12/__/06	Cede & Co. c/o The Depository Trust Company 55 Water Street New York, NY 10041 Federal Taxpayer I.D. No.: 13-2555119	_____

ASSIGNMENT

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Name and Address of Assignee)

\_\_\_\_\_  
\_\_\_\_\_ Social Security or Other  
Identifying Number of Assignee

the within Bond and all rights thereunder and does hereby irrevocably constitute and appoint \_\_\_\_\_

\_\_\_\_\_ attorney to transfer the said Bond on the books kept for registration thereof with full power of substitution in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

NOTICE: The signature to this assignment must correspond with the name of the registered owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

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

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City or its agent for registration of transfer, exchange, or payment, and any bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL, inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

#### BOND COUNSEL OPINION

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

\_\_\_\_\_  
Clerk

Section 3. Escrow Agreement; Escrow Agent.

3.01 Wells Fargo Bank, National Association of Minneapolis, Minnesota, which is a suitable financial institution within the State of Minnesota whose deposits are insured by the Federal Deposit Insurance Corporation whose combined capital and surplus is not less than

\$500,000, is hereby designated escrow agent (the "Escrow Agent") with respect to the outstanding 1998 Bonds.

3.02 On or prior to the delivery of the Bonds, the mayor and the clerk are hereby authorized and directed to execute on behalf of the City an escrow agreement (the "Escrow Agreement") with the Escrow Agent in substantially the form now on file with the clerk as Public Document No. 06-1130-02. The execution and delivery of the Escrow Agreement by the mayor and the clerk, in the form presented to the City Council with such changes, omissions, insertions and revisions as the mayor and the clerk deem advisable is hereby approved, and the execution by such officers shall be conclusive evidence of such approval. All essential terms and conditions of the Escrow Agreement, including payment by the City of reasonable charges for the services of the Escrow Agent, are hereby approved and adopted and made a part of this Resolution, and the City covenants that it will promptly enforce all provisions thereof in the event of default thereunder by the Escrow Agent.

Section 4. Covenants, Accounts and Representations.

4.01 (a) The Bonds are payable from the 2006I Street Improvement Refunding Bond Account (the "Debt Service Fund") hereby created within the City's Special Assessment Debt Service Fund. The Debt Service Fund shall be maintained in the manner herein specified until all of the Bonds and interest thereon have been fully paid. To the Debt Service Fund there is hereby pledged and irrevocably appropriated and there shall be credited: (i) any balance remitted to the City upon termination of the Escrow Agreement attributable to the 1998 Bonds; (ii) any balance remaining on the Redemption Date in the debt service accounts created in the City's resolution authorizing the issuance and sale of the 1998 Bonds (Resolution No. 98-0691)(the "Prior Resolution") after payment of principal and interest on the Refunded Bonds on the Redemption Date; (iii) any collections of the proceeds of special assessments levied for the projects listed in Section 1.02 of the Prior Resolution and the ad valorem taxes hereafter levied for the payment of a portion of the Bonds and interest thereon; (iv) all investment earnings on funds in the Debt Service Fund; (v) accrued interest, if any, received from the Purchaser upon delivery of the Bonds to the extent not required to fund the Escrow Account (the "Accrued Interest"); (vi) any amount of additional interest permitted by Section 475.56 of the Act paid by the Purchaser (the "Additional Interest"), to the extent not required to fund the Escrow Account; (vii) all taxes or other funds pledged to repayment of the Refunded Bonds in the Prior Resolution hereafter collected pursuant to levies made in the Prior Resolution; and (viii) any and all other monies which are properly available and are appropriated by the City to the Debt Service Fund including taxes levied in Section 5.02 hereof. The amount of any surplus remaining in the Debt Service Fund when the Bonds and interest thereon are paid shall be used as provided in Section 475.61, Subdivision 4 of the Act.

(b) Escrow account.

(i) To the Escrow Account there is hereby pledged and irrevocably appropriated and there shall be credited: (a) the proceeds of the Bonds received from the Purchaser which are not appropriated to the Debt Service Fund or are not to be used for payment of costs of issuance of the Bonds; (b) Accrued Interest; (c) Additional Interest [amounts referenced in clauses (a), (b) and (c) are herein referred to as the "Proceeds"]; (d) funds of the City in an amount sufficient to meet the requirements of the Escrow Account; and (e) investment earnings on such monies referenced in clauses (a), (b), (c) and (d), for the payment of principal and interest due on the 1998 Bonds on the Redemption Date and for the Refunded Bonds called for redemption on the Redemption Date.

(ii) The Escrow Account shall be maintained with the Escrow Agent pursuant to the Escrow Agreement and this Resolution. The Escrow Account shall be invested in accordance with the Act, the Escrow Agreement and this Section, in securities specified in Section 475.67, Subdivision 8(a) of the Act, which investments will provide sufficient funds together with any cash or other funds retained in the Escrow Account for the payment of the principal and interest due on the 1996 Bonds to and including the Redemption Date and the principal of the Refunded Bonds called for redemption and prepayment on the Redemption Date.

(iii) From the Escrow Account there shall be paid: (a) all principal of and interest to be paid on the 1998 Bonds to and including the Redemption Date; and (b) the principal of the Refunded Bonds due by reason of redemption on the Redemption Date.

(iv) The Escrow Account for the 1998 Bonds is irrevocably appropriated to the payment of the principal of and interest on the 1998 Bonds to and including the Redemption Date and to prepayment of the Refunded Bonds due by reason of redemption on the Redemption Date. The monies to be deposited in the Escrow Account for the 1998 Bonds shall be used solely for the purposes herein set forth and for no other purpose, except that any surplus in the Escrow Account may be remitted to the City all in accordance with the Escrow Agreement. Any monies remitted to the City upon termination of the Escrow Agreement shall be deposited in the Debt Service Fund.

(v) Securities purchased for the Escrow Account shall be purchased simultaneously with the delivery of and payment for the Bonds. The mayor and clerk or their designee are authorized and directed to purchase such securities.

(c) The construction funds created for the 1998 Bonds have previously been terminated and all bond proceeds therein have been expended.

4.02 The city council hereby declares that it has assessed against benefitted property not less than 20 percent of the cost of the projects financed by the 1998 Bonds. The City further declares that it has completed the special assessment process, including any and all supplemental assessments or reassessments that were required to lawfully assess the benefitted property.

4.03 It is hereby determined that upon the receipt of proceeds of the Bonds (the "Proceeds") for payment of the 1998 Bonds that an irrevocable appropriation to the Escrow Account shall have been made within the meaning of Section 475.61, Subdivision 3 of the Act and the clerk is hereby authorized and directed to certify such fact to and request the county auditor to cancel any and all tax levies made by the Prior Resolution for collection year 2008 and thereafter.

4.04 (a) The full faith and credit and taxing power of the City are hereby irrevocably pledged for the prompt and full payment of the principal of and interest on the Bonds, as such principal and interest respectively become due. 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
2006	2007	\$623,733*
2007	2008	577,240

Levy Year	Collection Year	Tax Levy
2008	2009	605,444
2009	2010	602,490
2010	2011	608,160
2011	2012	607,530
2012	2013	606,060

\*Amount levied and estimated special assessments in the Prior Resolution for the levy year 2006 for the 1998 Bonds, which will be available for payment of the principal and interest on the Bonds on August 1, 2007 and February 1, 2008.

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

Such tax levies shall be irrevocable as long as any of the Bonds issued hereunder are outstanding and unpaid; provided, however, that in each year while any Bonds issued hereunder remain outstanding, the city council may reduce or cancel the above levies (i) to the extent of funds expected to be received from special assessments from the projects described in Section 1.02 of the Prior Resolution upon benefitted properties, and (ii) to the extent of an irrevocable appropriation to said debt service account of monies actually on hand for payment of the portion of such principal and interest payable from ad valorem taxes (and not special assessments), and may direct the county auditor to reduce the levy for such calendar year by that amount.

(b) All proceeds of said special assessments and said taxes are hereby appropriated and shall be paid when collected into the 2006I Street Improvement Refunding Bond Account within the Special Assessment Debt Service Fund. If the balances in the 2006I Street Improvement Refunding Bond Account are ever insufficient to pay all principal and interest then due on the Bonds, the treasurer shall nevertheless provide sufficient money from any other funds of the City which are available for that purpose, and such other funds shall be reimbursed from the 2006I Street Improvement Refunding Bond Account when the balances therein are sufficient.

Section 5. Refunding, Findings, Prepayment of Refunded Bonds.

5.01 It is hereby found and determined that based upon information presently available from the City's financial advisers, the issuance of the Bonds is consistent with covenants in the Prior Resolution and is necessary and desirable for the reduction of debt service cost to the City.

5.02 It is hereby found and determined that the Proceeds and other available funds appropriated to the Escrow Account will be sufficient, together with the permitted earnings on investments of the Escrow Account, to pay all of the principal of and interest on the 1998 Bonds due on February 1, 2007, and the principal of the Refunded Bonds on the Redemption Date.

5.03 The Refunded Bonds shall be redeemed and prepaid in accordance with their terms and in accordance with the terms and conditions set forth in the form of notice of call for redemption attached to the Escrow Agreement, which terms and conditions are hereby approved and incorporated herein by reference. The clerk or his designee is hereby authorized and directed to forthwith, no later than 30 days prior to the Redemption Date, to send written notice of call to the registered owners and paying agent and to the bond insurance company of the Refunded Bonds.

5.04 When the principal of the 1998 Bonds and all interest thereon have been discharged as provided in this section, all pledges, covenants and other rights granted by the Prior Resolution to the holders of the 1998 Bonds shall cease, except that the pledge of the full faith and credit of the City for the prompt and full payment of the principal and interest on the 1998 Bonds shall remain in full force and effect.

Section 6. Continuing Disclosure. The City acknowledges that the Bonds are subject to the continuing disclosure requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (17 C.F.R. § 240.15c2-12) (the "Rule"). The Rule governs the obligations of certain underwriters to require that issuers of municipal bonds enter into agreements for the benefit of the bondholders to provide continuing disclosure with respect to the Bonds. To provide for the public availability of certain information relating to the Bonds and the security therefor and to permit underwriters of the Bonds to comply with the Rule, which will enhance the marketability of the Bonds, the mayor and the clerk are hereby authorized and directed to execute a continuing disclosure certificate substantially in the form of the certificate currently on file in the office of the city clerk as Public Document No. 04-0219-02.

Section 7. Tax Covenants.

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

7.02 (a) The proceeds of the 1998 Bonds have been totally expended for the governmental purpose for which issued; the gross proceeds of the Bonds will, within 90 days of the date of issuance of the Bonds, have been totally expended for the purpose of refunding the outstanding principal amount of the Refunded Bonds and interest thereon and paying costs of issuance of the Bonds. Therefore, no rebate of arbitrage profit is required under the Internal Revenue Code of 1986, as amended (the "Code").

(b) In addition, the proceeds of the Bonds and money in the Debt Service 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 Code.

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

(d) The City expects that all proceeds of the Bonds will be expended within six months of the date of issue of the Bonds.

7.03 In addition to the Bonds, the City is selling, pursuant to a single offering document and on the same date, the following obligations: General Obligation Steam Utility Revenue Bonds, Series 2006E (the "Series 2006E Bonds"), General Obligation Utilities Revenue Bonds, Series 2006F (the "Series 2006F Bonds"), General Obligation Equipment Certificates of Indebtedness, Series 2006G (the "Certificates"), General Obligation Improvement Refunding Bonds, Series 2006H (the "Series 2006H Bonds"), and General Obligation Street Improvement Refunding Bonds,

Series 2006J (the "Series 2006J Bonds"). The City has pledged its full faith and credit and taxing powers for each series of such bonds. Pursuant to Treasury Regulation Section 1.150-1(c)(4)(iii), the City elects to treat the Bonds, the Certificates, the Series 2006E Bonds, the Series 2006F Bonds, the Series 2006H Bonds and the Series 2006J Bonds as part of the same issue.

Resolution 06-0792 was unanimously adopted.

Approved November 30, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STEWART:

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 Pursuant to Chapter 475 of Minnesota Statutes and the home rule charter of the City, the City previously issued \$5,410,000 General Obligation Street Improvement Bonds, Series 2000A, dated September 1, 2000 (the "2000 Bonds"), for the purpose of financing the 2000 street improvement program.

1.02 Under and pursuant to the provisions of Minnesota Statutes, Chapter 475 (the "Act") and, specifically, Section 475.67, Subdivisions 1 through 12 of the Act, the City is authorized to issue and sell its general obligation bonds to refund certain maturities of the 2000 Bonds in advance of their scheduled maturities, if consistent with covenants made with the holders thereof, when determined by the City to be necessary or desirable for the reduction of debt service cost to the City or for the extension or adjustment of maturities in relation to the resources available for their payment.

1.03 The City Council hereby determines that it is necessary, expedient and in the best interest of the City's residents that the City issue, sell and deliver its \$3,190,000 General Obligation Street Improvement Refunding Bonds, Series 2006J (the "Bonds"), to refund the outstanding 2000 Bonds maturing on and after February 1, 2007, of which \$3,675,000 in principal amount is outstanding (the "Refunded Bonds"), in order to reduce debt service cost to the City. The Refunded Bonds maturing on and after February 1, 2009, are subject to prepayment and redemption on February 1, 2008. (February 1, 2008 is herein referred to as the "Redemption Date.")

1.04 Public Financial Management, Inc., financial consultant to the City, has given notification by mail, facsimile or electronic data transmission to at least five firms determined by Public Financial Management, Inc. to be prospective bidders on the Bonds at least two days (omitting Saturdays, Sundays and legal holidays) before the date set for receipt of bids on the Bonds. All actions of the mayor, the clerk and Public Financial Management, Inc. taken with regard to the sale of the Bonds are hereby ratified and approved.

1.05 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 Piper Jaffray of Minneapolis, Minnesota (the "Purchaser"), to purchase the Bonds at a cash price of \$3,234,980.75, upon condition that the Bonds mature and bear interest at the times and annual rates set forth in Section 2. The City, after due consideration, finds such offer reasonable and proper and the offer of the Purchaser is hereby accepted. The mayor and the city clerk are authorized and directed to execute on the part of the City a contract for the sale of the Bonds in accordance with the Purchaser's bid. The city treasurer is directed to deposit the good faith check of the successful bidder.

Section 2. Terms of the Bonds.

2.01 The Bonds shall be dated as of the date of delivery, as the date of original issue, shall be issued in the denomination of \$5,000, or any integral multiple thereof, in fully registered form and lettered and numbered R-1 and upward. The Bonds shall mature on February 1 in the respective years and amounts and shall bear interest at the annual rates stated as follows:

Year	Amount	Interest Rate
2008	\$300,000	4.00%
2009	320,000	4.00%
2010	330,000	4.00%
2011	340,000	4.00%
2012	355,000	4.00%
2013	365,000	4.00%
2014	380,000	4.00%
2015	395,000	4.00%
2016	405,000	4.00%

2.02 The Bonds are not subject to redemption prior to maturity.

2.03 The interest shall be payable semiannually on February 1 and August 1 in each year (each herein referred to as an "Interest Payment Date") commencing on August 1, 2007. Interest will be computed upon the basis of a 360-day year of twelve 30-day months and will be rounded pursuant to the rules of the Municipal Securities Rulemaking Board. The Bond Registrar appointed below shall make all interest payments with respect to the Bonds by check or draft mailed to the registered owners of the Bonds shown on the bond registration records maintained by the Bond Registrar at the close of business on the 15<sup>th</sup> day (whether or not on a business day) of the month next preceding the Interest Payment Date at such owners' addresses shown on such bond registration records.

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

(b) The clerk is authorized to obtain a copy of the proposed approving legal opinion of Fryberger, Buchanan, Smith & Frederick, P.A. of Duluth, Minnesota, which is to be complete and cause the opinion to be attached to each Bond, together with a certificate to be signed by the manual or facsimile signature of the clerk in substantially the form set forth in Section 3.01, but only if the opinion is not manually executed. The 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 3.01 hereof, shall have been duly executed by an authorized representative of the Bond Registrar. Authentication certificates on different Bonds need not be signed by the same representative. The manual signature of one officer of the City or the executed authentication certificate on each Bond shall be conclusive evidence that it has been authenticated and delivered under this resolution.

2.06 (a) In order to make the Bonds eligible for the services provided by 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 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 Delivery of the Bonds and payment of the purchase price shall be made at a place mutually satisfactory to the City and the Purchaser. Printed or typewritten and executed Bonds shall be furnished by the City without cost to the Purchaser. The Bonds, when prepared in accordance with this Resolution and executed, shall be delivered by or under the direction of the treasurer to the Purchaser upon receipt of the purchase price plus accrued interest.

Section 3. Form of the Bonds.

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

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

CITY OF DULUTH  
GENERAL OBLIGATION STREET IMPROVEMENT REFUNDING BOND,  
SERIES 2006J

R-\_\_ \$\_\_\_\_\_

Interest Rate	Maturity Date	Date of Original Issue	CUSIP
	February 1, ____	December __, 2006	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: DOLLARS

The City of Duluth, in St. Louis County, Minnesota (the "City"), for value received, promises to pay to the registered owner specified above, or registered assigns, the principal amount specified above, on the maturity date specified above, and to pay interest on said principal amount to the registered owner hereof from the Date of Original Issue, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, until the principal amount is paid or discharged, said interest being at the interest rate per annum specified above. Interest is payable semiannually on February 1 and August 1 of each year (each referred to herein as an "Interest Payment Date") commencing on August 1, 2007. Both principal hereof and interest hereon are payable in lawful money of the United States of America by check or draft at the main office of Wells Fargo Bank, National Association of Minneapolis, Minnesota, as registrar, paying agent, authenticating agent and transfer agent (the "Bond Registrar"), or at the office of such successor bond registrar as may be designated by the City. The Bond Registrar shall make all interest payments with respect to this Bond directly to the registered owner hereof shown on the bond registration records maintained on behalf of the City by the Bond Registrar at the close of business on the 15<sup>th</sup> 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 \$3,190,000, all of like original issue date and tenor, except as to number, maturity date, denomination and interest rate, pursuant to: (i) the authority contained in Minnesota Statutes, Chapter 475, Section 475.67, Subdivisions 1 through 12 and all other laws thereunto enabling; and (ii) an authorizing resolution adopted by the governing body of the City on November 30, 2006 (the "Resolution"), for the purpose of providing money to refund in advance of maturity the outstanding principal amount of the City's General Obligation Street Improvement Bonds, Series 2000A, dated September 1, 2000. The Bonds and interest thereon will be payable in part from special assessments levied against property specially benefitted by local public improvements and in part from ad valorem taxes, as described in the Resolution.

The Bonds are not subject to redemption prior to maturity.

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

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

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Bond Registrar's

Authentication Certificate hereon shall have been executed by the Bond Registrar by one of its authorized representatives.

IN WITNESS WHEREOF, the City of Duluth, in St. Louis County, Minnesota, by its City Council, has caused this Bond to be executed in its name by the facsimile signatures of the mayor and the clerk.

ATTEST:

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Mayor

Date of Authentication: \_\_\_\_\_

BOND REGISTRAR'S AUTHENTICATION CERTIFICATE

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

WELLS FARGO BANK, NATIONAL ASSOCIATION  
Bond Registrar

By \_\_\_\_\_  
Authorized Representative

REGISTRATION CERTIFICATE

This Bond must be registered as to both principal and interest in the name of the owner on the books to be kept by Wells Fargo Bank, National Association, of Minneapolis, Minnesota, as Bond Registrar. No transfer of this Bond shall be valid unless made on said books by the registered owner or the owner's attorney thereunto duly authorized and similarly noted on the registration books. The ownership of the unpaid principal balance of this Bond and the interest accruing thereon is registered on the books of Wells Fargo Bank, National Association as Bond Registrar, in the name of the registered owner last noted below.

Date	Registered Owner	Signature of Bond Registrar
12/___/06	Cede & Co. c/o The Depository Trust Company 55 Water Street New York, NY 10041 Federal Taxpayer I.D. No.: 13-2555119	_____

ASSIGNMENT

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

\_\_\_\_\_

\_\_\_\_\_  
(Name and Address of Assignee)

\_\_\_\_\_ Social Security or Other  
\_\_\_\_\_ Identifying Number of Assignee

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

NOTICE: The signature to this assignment must correspond with the name of the registered owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

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

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City or its agent for registration of transfer, exchange, or payment, and any bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL, inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

Bond Counsel Opinion

I certify that the attached 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 Bonds.

\_\_\_\_\_  
Clerk

Section 4. Escrow Agreement; Escrow Agent.

4.01 Wells Fargo Bank, National Association of Minneapolis, Minnesota, which is a suitable financial institution within the State of Minnesota whose deposits are insured by the Federal Deposit Insurance Corporation whose combined capital and surplus is not less than \$500,000, is hereby designated escrow agent (the "Escrow Agent") with respect to the Refunded Bonds.

4.02 On or prior to the delivery of the Bonds, the mayor and the clerk are hereby authorized and directed to execute on behalf of the City an escrow agreement (the "Escrow Agreement") with the Escrow Agent in substantially the form now on file with the clerk as Public Document No. 06-1130-03. The execution and delivery of the Escrow Agreement by the mayor and the clerk, in the form presented to the City Council with such changes, omissions, insertions and revisions as the mayor and the clerk deem advisable is hereby approved, and the execution by such officers shall be conclusive evidence of such approval. All essential terms and conditions of the Escrow Agreement, including payment by the City of reasonable charges for the services of the Escrow Agent, are hereby approved and adopted and made a part of this Resolution, and the City covenants that it will promptly enforce all provisions thereof in the event of default thereunder by the Escrow Agent.

Section 5. Covenants, revenues, accounts and tax levies.

5.01 (a) Debt service fund. For the convenience and proper administration of the monies to be borrowed and repaid on the Bonds and to provide adequate and specific security for the Purchaser and holders from time to time of the Bonds, there is hereby created a separate account within the special assessment debt service fund to be designated the 2006J Street Improvement Refunding Bonds Debt Service Account ("Debt Service Fund") to be administered and maintained by the Treasurer as a bookkeeping account, separate and apart from all other accounts maintained in the official financial records of the City. The Debt Service Fund shall be maintained in the manner herein specified until all of the Bonds and interest thereon have been fully paid. To the Debt Service Fund there is hereby pledged and irrevocably appropriated and there shall be credited: (i) any balance remitted to the City upon termination of the Escrow Agreement attributable to the Refunded Bonds; (ii) any balance remaining on the Redemption Date in the debt service account created in the City's resolution authorizing the issuance and sale of the 2000 Bonds (Resolution No. 00-0622R)(the "Prior Resolution") after payment of principal and interest on the Refunded Bonds on the Redemption Date; (iii) all special assessments levied for the projects listed in Section 1.01 of the Prior Resolution; (iv) any collections of ad valorem taxes hereafter levied for the payment of the Bonds and interest thereon; (v) all investment earnings on funds in the Debt Service Fund; (vi) accrued interest, if any, received from the Purchaser upon delivery of the Bonds to the extent not required to fund the Escrow Account (the "Accrued Interest"); (vii) any amount of additional interest permitted by Section 475.56 of the Act paid by the Purchaser (the "Additional Interest"), to the extent not required to fund the Escrow Account; (viii) all taxes pledged to repayment of the Refunded Bonds in the Prior Resolution hereafter collected pursuant to levies made in the Prior Resolution; and (ix) any and all other

monies which are properly available and are appropriated by the City to the Debt Service Fund including taxes levied in Section 5.02 hereof. The amount of any surplus remaining in the Debt Service Fund when the Bonds and interest thereon are paid shall be used as provided in Section 475.61, Subdivision 4 of the Act.

(b) Escrow account.

(i) To the Escrow Account there is hereby pledged and irrevocably appropriated and there shall be credited: (a) the proceeds of the Bonds received from the Purchaser which are not appropriated to the Debt Service Fund or are not to be used for payment of costs of issuance of the Bonds; (b) Accrued Interest; (c) Additional Interest [amounts referenced in clauses (a), (b) and (c) are herein referred to as the "Proceeds"]; (d) funds of the City in an amount sufficient to meet the requirements of the Escrow Account for the Refunding Bonds (the "Funds"); and (e) investment earnings on such monies referenced in clauses (a), (b), (c) and (d), for the payment of principal and interest due on the Refunded Bonds through the Redemption Date and the principal of the Refunded Bonds called for redemption and prepayment on the Redemption Date.

(ii) The Escrow Account shall be maintained with the Escrow Agent pursuant to the Escrow Agreement and this Resolution. The Escrow Account shall be invested in accordance with the Act, the Escrow Agreement and this Section, in securities specified in Section 475.67, Subdivision 8(a) of the Act, which investments will provide sufficient funds together with any cash or other funds retained in the Escrow Account for the Refunded Bonds for the payment of principal and interest due on the Refunded Bonds through the Redemption Date and the principal of the Refunded Bonds called for redemption and prepayment on the Redemption Date.

(iii) From the Escrow Account there shall be paid: (a) all principal of and interest to be paid on the Refunded Bonds to and including the Redemption Date; and (b) the principal of the Refunded Bonds due by reason of prepayment and redemption on the Redemption Date.

(iv) The Escrow Account for the Refunding Bonds is irrevocably appropriated to the payment of the principal of and interest on the Refunded Bonds to and including the Redemption Date and to prepayment and redemption of the Refunded Bonds due by reason of redemption on the Redemption Date. The monies in the Escrow Account for the Refunding Bonds shall be used solely for the purposes herein set forth and for no other purpose, except that any surplus in the Escrow Account may be remitted to the City all in accordance with the Escrow Agreement. Any monies remitted to the City upon termination of the Escrow Agreement shall be deposited in the Debt Service Fund.

(v) Securities purchased for the Escrow Account shall be purchased simultaneously with the delivery of and payment for the Bonds. The mayor and clerk or their designee are authorized and directed to purchase such securities.

(c) The construction funds created for the 2000 Bonds have previously been terminated and all bond proceeds therein have been expended.

5.02 The city council hereby declares that it has assessed against benefitted property not less than 20 percent of the cost of the projects financed by the 2000 Bonds. The City further declares that it has completed the special assessment process, including any and all supplemental assessments or reassessments that were required to lawfully assess the benefitted property.

5.03 It is hereby determined that upon the receipt of proceeds of the Bonds (the "Proceeds") for payment of the Refunded Bonds that an irrevocable appropriation to the Escrow Account shall have been made within the meaning of Section 475.61, Subdivision 3 of the Act and

the clerk is hereby authorized and directed to certify such fact to and request the county auditor to cancel any and all tax levies made by the Prior Resolution for collection year 2008 and thereafter.

5.04 (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 set forth as follows:

Levy Year	Collection Year	Tax Levy
2006	2007	\$508,711*
2007	2008	413,280
2008	2009	454,440
2009	2010	451,080
2010	2011	452,550
2011	2012	448,140
2012	2013	448,560
2013	2014	448,350
2014	2015	442,260

\*Amount levied and estimated special assessments in the Prior Resolution for the levy year 2006 for the Refunded Bonds, which will be available for payment of the principal and interest on the Bonds on August 1, 2007 and February 1, 2008.

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

Such tax levies shall be irrevocable as long as any of the Bonds issued hereunder are outstanding and unpaid; provided, however, that in each year while any Bonds issued hereunder remain outstanding, the city council may reduce or cancel the above levies (i) to the extent of funds expected to be received from special assessments from the projects described in Section 1.02 of the Prior Resolution upon benefitted properties, and (ii) to the extent of an irrevocable appropriation to said debt service fund of monies actually on hand for payment of the portion of such principal and interest payable from ad valorem taxes (and not special assessments), and may 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 of the Prior Resolution and said 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.

Section 6. Refunding; findings; redemption of Refunded Bonds.

6.01 (a) It is hereby found and determined, based upon information presently available from the City's financial advisers, that as of the date of issuance of the Bonds, the issuance of the Bonds will result in a reduction of debt service cost to the City. In accordance with Section 475.67, Subdivision 12 of the Act, as of the date of issuance of the Bonds, the present value of the dollar amount of the debt service on the Bonds, computed to their stated maturity dates, after deducting any premium, is lower by at least three percent than the present value of the dollar amount of debt service, on the Refunded Bonds, exclusive of any premium, computed to their stated maturity dates.

(b) It is hereby found and determined that the Proceeds and Funds available and appropriated to the Escrow Account for the Refunded Bonds will be sufficient, together with the permitted earnings on the investment of the Escrow Account, to pay the principal and interest on the Refunded Bonds to and including the Redemption Date and to prepayment of the Refunded Bonds due by reason of redemption on the Redemption Date.

6.02 The Refunded Bonds shall be redeemed and prepaid in accordance with their terms and in accordance with the terms and conditions set forth in the form of notice of call for redemption attached to the Escrow Agreement, which terms and conditions are hereby approved and incorporated herein by reference. The Escrow Agent is hereby authorized and directed to send written notice of the call for redemption to the paying agent or bond registrar, as the case may be, and bond insurance company (if any), for the Refunded Bonds in accordance with their terms and the Escrow Agreement.

6.03 The Escrow Agent is authorized and directed to cause to be provided a material event notice regarding the defeasance of the Refunded Bonds in accordance with the continuing disclosure certificate of the City dated August 14, 2000, and delivered in connection with the 2000 Bonds.

Section 7. Defeasance.

7.01 When all Bonds and all interest thereon have been discharged as provided in this paragraph, all pledges, covenants and other rights granted by this Resolution to the holders of the Bonds shall cease, except that the pledge of the full faith and credit of the City for the prompt and full payment of the principal of and interest on the Bonds shall remain in full force and effect. The City may discharge all Bonds which are due on any date by depositing with the Bond Registrar on or before that date a sum sufficient for the payment thereof in full. If any Bond should not be paid when due, it may nevertheless be discharged by depositing with the Bond Registrar designated in Section 2.05 hereof a sum sufficient for the payment thereof in full with interest accrued to the date of such deposit. The City may also at any time discharge and cause defeasance of the Bonds in their entirety by complying with the provisions of Section 475.67 of the Act, except that the funds deposited in escrow in accordance with said provisions may (to the extent permitted by law) but need not be, in whole or in part, proceeds of bonds as therein provided, without the consent of any bondholders.

Section 8. Certificate of proceedings.

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

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

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

Section 9. Tax covenants.

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

9.02 (a) No portion of the proceeds of the Bonds shall be used directly or indirectly to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments, except (i) for a reasonable temporary period until such proceeds are needed for the purpose for which the Bonds were issued, and (ii) in addition to the above, in an amount not greater than the lesser of five percent of the proceeds of the Bonds or \$100,000. To this effect, any proceeds of the Bonds and any sums from time to time held in the Debt Service Fund (or any other City account which will be used to pay principal and interest to become due on the Bonds) in excess of amounts which under the applicable federal arbitrage regulations may be invested without regard as to yield shall not be invested at a yield in excess of the applicable yield restrictions imposed by the arbitrage regulations on such investments after taking into account any applicable temporary periods or minor portion made available under the federal arbitrage regulations.

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

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

9.03 In addition to the Bonds, the City is selling, pursuant to a single offering document and on the same date, the following obligations: General Obligation Steam Utility Revenue Bonds, Series 2006E (the "Series 2006E Bonds"), General Obligation Utilities Revenue Bonds, Series 2006F (the "Series 2006F Bonds"), General Obligation Equipment Certificates of Indebtedness,

Series 2006G (the "Certificates"), General Obligation Improvement Refunding Bonds, Series 2006H (the "Series 2006H Bonds"), and General Obligation Street Improvement Refunding Bonds, Series 2006I (the "Series 2006I Bonds"). The City has pledged its full faith and credit and taxing powers for each series of the bonds. Pursuant to Treasury Regulation Section 1.150-1(c)(4)(iii), the City elects to treat the Bonds, the Certificates, the Series 2006E Bonds, the Series 2006F Bonds, the Series 2006H Bonds and the Series 2006I Bonds as part of the same issue.

9.04 (a) The City covenants and certifies to and for the benefit of the owners of the Bonds that no use will be made of the proceeds of the Bonds, which will cause the Bonds to be arbitrage bonds within the meaning of Section 148(a) of the Code and the Treasury Regulations promulgated thereunder. Pursuant to such covenant, the City hereby agrees to comply throughout the term of the issue of the Bonds with the requirements of Section 148 of the Code and any Treasury Regulations promulgated thereunder; to this end, the City shall:

(i) maintain records identifying all "gross proceeds" (as defined in Section 148(f)(6)(B) of the Code) attributable to the Bonds, the yield at which such gross proceeds are invested, any arbitrage profit derived therefrom (earnings in excess of the yield on the Bonds) and any earnings derived from the investment of such arbitrage profit;

(ii) make, or cause to be made as of the end of each Bond Year, the annual determinations of the amount, if any, of excess arbitrage required to be paid to the United States by the City (hereinafter, the "Rebate Amount");

(iii) pay, or cause to be paid, to the United States at least once every five Bond Years the amount, if any, which is required to be paid to the United States, including the last installment which shall be made no later than 60 days after the day on which the Bonds are paid in full;

(iv) not invest, or permit to be invested, "gross proceeds" in any acquired non-purpose obligations so as to deflect arbitrage otherwise payable to the United States as a "prohibited payment" to a third party;

(v) retain all records of the annual determinations of the foregoing amounts until six years after the Bonds have been fully paid; and

(vi) in order to comply with the foregoing paragraph, the City shall determine the Rebate Amount within 30 days after the close of each Bond Year and upon payment in full of the Bonds; upon each such determination, the City shall deposit in the Rebate Fund the Rebate Amount so determined; the City shall separately account for the earnings from the investment of the Rebate Amount and such earnings shall become part of the Rebate Amount.

(b) For purposes of this section, "Bond Year" shall mean the 12-month period beginning on the date of issuance of the Bonds or such other 12-month period designated by the Board which is permitted by the Code or any Treasury Regulation promulgated thereunder.

Section 10. Continuing disclosure. The City acknowledges that the Bonds are subject to the continuing disclosure requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (17 C.F.R. § 240.15c2-12) (the "Rule"). The Rule governs the obligations of certain underwriters to require that issuers of municipal bonds enter into agreements for the benefit of the bondholders to provide continuing disclosure with respect to the bonds. To provide for the public availability of certain information relating to the Bonds and the security therefor and to permit underwriters of the Bonds to comply with the Rule, which will enhance the marketability of the Bonds, the mayor and the clerk are hereby authorized and directed to execute a continuing disclosure certificate substantially in the

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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form of the certificate currently on file in the office of the city clerk as Public Document No. 04-0219-02.

Resolution 06-0793 was unanimously adopted.

Approved November 30, 2006

HERB W. BERGSON, Mayor

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

JEFFREY J. COX, City Clerk

**OFFICIAL PROCEEDINGS**

Duluth City Council meeting held on Monday, December 4, 2006, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: None -- 0

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**PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS**

06-1204-03 Tom Johns communication regarding determination of the sum to be raised by taxation for general purposes for the year 2007 (06-055-O). -- Received

06-1204-04 Lakeshore Celebration Church communication regarding assessment policy for property owned by not for profit organizations (06-0825R). -- Received

06-1204-05 The following communications regarding the proposed Kroc Community Center (06-0784, 06-0785, 06-051-O): (a) ACLU-MN; (b) Allan Beaulier; (c) Greg Benson; (d) Jerome Carlson (5); (e) Jodi Chambers; (f) Joyce Christiansen; (g) Carolyn Clark; (h) Mark Eckman; (i) Michael Ellingson; (j) Michael Gerlach; (k) Robert Goldish; (l) Marlys Hansen; (m) Webster and Janice Hansen; (n) Rick Heimbach; (o) Debra Hennessy; (p) Dave Holappa; (q) Dawn Johnson; (r) Steve Khalar; (s) Louise Lurye; (t) Laura Maki; (u) Jim Melander; (v) Dennis and Rosemarie Mitchell; (w) Hal Moore; (x) Jim Payne; (y) Amy Richard; (z) Charles Salmela; (aa) Brenda Schneuer; (bb) Judy Seliga-Punyko; (cc) Shannon Szymkowiak; (dd) Harvey Van Horn; (ee) Ken Waletzko. -- Received

06-1204-06 The following communications regarding regulation of lighted signs (06-058-O): (a) Linda Barber; (b) Jodie Johnson. -- Received

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**REPORTS OF BOARDS AND COMMISSIONS**

06-1204-01 Duluth transit authority: (a) August 2006 income statement; (b) Minutes of September 27, 2006, meeting. -- Received

06-1204-02 Housing and redevelopment authority of Duluth minutes of August 29, 2006, meeting. -- Received

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At this time, 7:03 p.m., President Reinert declared the public hearing on the 2007 budget and levy would begin. No appeared who wished to be heard and the public hearing was declared closed.

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At this time, 7:04 p.m., President Reinert declared the public hearing on the 2007 capital improvement bond plan would begin. No appeared who wished to be heard and the public hearing was declared closed.

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At this time, 7:05 p.m., President Reinert declared the public hearing on the 2007 alcoholic beverage license fees would begin.

Tony Bronson, Mark Rutka and Bill Berg commented that: off sale licensees are not seeing an increase; why this 32 percent increase is not being spread out equitably with others in the industry; their licenses were devalued when the cap came off on the number of licenses that could

be issued; a five percent increase is understandable, but this increase is way out of line and there are no increases in any other areas such as 3.2, off sale or clubs.

At this time, 7:12 p.m., the public hearing was declared closed and the regular order of business resumed.

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### **MOTIONS AND RESOLUTIONS**

Councilor Gilbert moved to suspend the rules to consider Resolution 06-0831, approving the appointment of Gordon Scott Ramsay as the chief of police for the city of Duluth, at this time, which motion was seconded and unanimously carried.

Officer Ramsey addressed the council relative to his goals for the police department.

Resolution 06-0831 was adopted as follows:

BY COUNCILOR JOHNSON:

WHEREAS, the chief administrative officer has appointed Gordon Scott Ramsay as chief of police effective December 1, 2006, 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 Gordon Scott Ramsay as chief of police.

Resolution 06-0831 was unanimously adopted.

Approved December 4, 2006

HERB W. BERGSON, Mayor

- - -

Officer Ramsey was sworn in as the chief of police.

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### **RESOLUTIONS TABLED**

Councilor Stauber moved to remove Resolution 06-0784, declaring certain land to be available for sale and determining to sell it without bids, and Resolution 06-0785, approving contract with Salvation Army for development and use of a recreational facility at Wheeler Field in the amount of \$7,200,000 from the community investment trust fund and not to exceed \$300,000 from the Duluth public facility and program fund, from the table, which motion was seconded and unanimously carried.

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### **INTRODUCTION AND CONSIDERATION OF ORDINANCE**

The following entitled ordinance was read for the second time:

BY COUNCILOR STAUBER

06-051 (9807) - AN ORDINANCE SELLING PROPERTY TO THE SALVATION ARMY.

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

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Councilors Stauber, Stover and President Reinert moved to amend the ordinance by inserting the following language after the words "Section 4":

"That proceeds of the sale shall be deposited in a fund to be used for the replacement of lost recreational services at Wheeler Field within 12 months of the sale by the following priorities:

(a) Construction of two public tennis courts and associated equipment including lights for evening play at a location near Wheeler Field;

- (b) Construction of a replacement bocce ball court at a location near Wheeler Field;
- (c) Construction of a playground similar to the one lost, on the Wheeler Field site;
- (d) As noted in paragraph H of the development agreement, parking for activities at the Wheeler site, up to 150 paved spots;
- (e) Any remaining funds will be made available for improvement or maintenance of park lands, including skateboard park consideration.

Section 5. That the city will make an earnest effort to seek a qualified party to take possession of the Wheeler Field House without charge to them and without charge to the city. The party selected must agree and assure to remove the structure prior to the beginning of construction of the Kroc Community Center or the building will not be transferred to them and subject to site demolition.

Section 6,”

which motion was seconded and unanimously carried.

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

Salvation Army Major Mark Welsh, Chamber of Commerce Executive Director David Ross, Richard Haney, president of the Duluth Building Trades, Craig Olson, Sally Sundeen and Ed Gleeson expressed support for the project for reasons of: the Salvation Army will be able to earn five percent interest on the investment from the city; a chamber of commerce survey expressed support by 81 percent of the responders and 72 percent of the responders supported the financing mechanism of the community investment trust fund; the advantages of this project far exceed any risks; the center will serve the wellness and recreation needs of individual of all ages and abilities; recreation programs add to quality of life and reduce the crime rate; in addition to the construction jobs, labor unions support the work of the Salvation Army; the swimmers in the community support this project and this center will provide opportunities and programs for those who are mentally challenged.

Ronald Miller, John Ramos and Hall Moore either opposed the resolutions and ordinance or addressed concerns for reasons of: these funds should be used to replace the deteriorating insulation of the Duluth Steam District's heat distribution pipes to reduce their contribution to global warming; in the future only public funds should be used to implement measures that honor the planning for sustainable community; the city is taking \$7 million from a fund that was originally intended to do street repairs; the city has a bi-polar disorder with having a dire financial situation and then hurling money at gigantic projects that are of a dubious benefit to the city; bond payments are piled upon old bond payments and basic city services are suffering; a reservation that this be a welcoming location for all, whether they be Moslems, Jews or Athiests and the placement of religious symbols, such as the cross, should be renegotiated for it to be for public recreation.

Councilor Krause moved to amend Resolution 06-0785 as follows:

- (a) In the title of the resolution, delete the words “AND NOT TO EXCEED \$300,000 FROM THE DULUTH PUBLIC FACILITY AND PROGRAM FUND”;
- (b) In the body of the resolution, delete the words “and net proceeds from charitable gambling not to exceed \$300,000 fro Duluth Public Facility and Program Fund 259, Agency 400, Object 5439”;
- (c) Amend Article I.B. of the agreement attached to the resolution to delete the following language: “In addition, city agrees to contribute the net proceeds received by it arising out of charitable gambling authorized under Section 8-24 of the Duluth City Code, 1959, as amended, from the date of the signing of this agreement through December 31, 2015, up to an amount of

not to exceed \$300,000; said proceeds shall be payable on December 31 of the year in which they are received by city and shall be payable from Public Facilities and Program Fund 259," which motion was seconded and discussed.

Councilor Stauber opposed the amendment because the application of the Salvation Army has included this component to the funding package from the beginning, those making the decision on approving this have considered this amount as part of the funding and he would not want to change it at this late date.

Councilors Ness and Johnson noted that: these funds come to the city parks and recreation department and are given as micro grants to community clubs and organizations across the city improve facilities and programs; the city council was not part of the decision making process to use these funds for this project and none of the other recreational facilities and organizations would suffer as a result of this.

Mayor Bergson stated that all councilors received copies of the application when the Salvation Army applied and the \$300,000 was listed there.

The amendment carried as follows:

Yeas: Councilors Johnson, Krause, Little, Ness, Stewart and President Reinert -- 6

Nays: Councilors Gilbert, Stauber and Stover -- 3

Councilor Stewart felt that the project has changed substantially since the initial presentation, noting: it has demanded more and more city resources while becoming smaller and smaller; there are now fewer recreational benefits to the city; the \$7.5 million commitment is not reflective of \$7.5 million of recreational use for the city; \$1.2 million per year is a huge amount of money, which is approximately ten percent of the city's tax levy; it is just too much money when the city is facing the city budget crisis of the retirees healthcare, which is still unresolved; no appraisal has been done on the property, so there is no knowledge of the fair market value and there are no plans to replace the facilities that will be lost by this project.

Mayor Bergson and councilors commented at length on their support, but also noted areas of concerns on various aspects of this project.

President Reinert moved to amend Resolution 06-0784 as follows:

(a) In the title of the resolution, add the language "FOR THE SALE PRICE OF \$377,580 AND REFERENCING RESOLUTION 06-0785";

(b) In the last paragraph of the resolution, before the words "without bids," inset the words "of \$377,580";

(c) Amend Article VI. of the agreement attached to Resolution 06-0785 to change the sum from "\$370,000" to "\$377,580,"

which motion was seconded and unanimously carried.

Resolutions 06-0784 and 06-0785, as amended, were adopted as follows:

BY COUNCILOR STAUBER:

RESOLVED, that the following described property at Wheeler Field Park is declared to be surplus to the city's needs and available for sale:

Commencing at the southeast corner of CENTREDALE ADDITION TO DULUTH, St. Louis County, Minnesota, said point being north 89 degrees 13 minutes 30 seconds east 2,625.61 feet (assumed bearing) from the west 1/4 corner of said Section 5; thence south 89 degrees 13 minutes 30 seconds west 345.75 feet along the east and west 1/4 line of said Section 5 to a point of intersection with the northwesterly right-of-way line of Grand Avenue; thence south 43 degrees 47 minutes 59 seconds west 214.82 feet along said right-of-way line to the point of beginning; thence continuing along said right-of-way line south 43 degrees 47 minutes 59 seconds west 660.00 feet; thence north 47 degrees 01 minutes 52 seconds west 330.00 feet; thence north

43 degrees 47 minutes 59 east 660.00 feet; thence south 47 degrees 01 minutes 52 seconds east 330.00 feet to said northwesterly right-of-way line of Grand Avenue and point of beginning. Being a part of the west 1/2 of said Section 5, T49N, R14W, St. Louis County, Minnesota, containing 5.00 acres of land, more or less. Being subject to an easement in favor of city of Duluth for streets, walkways and utilities over the westerly 40.00 feet and to easements and restrictions of record, if any.

BE IT FURTHER RESOLVED, that the above-described property is the location of a development known as the Kroc Center, which development is the subject of a development agreement to which the city is, or will be, a party, and which will be a part of the city's recreation program, and to facilitate the development the council has determined to sell the property, by quit claim deed, to Salvation Army, an Illinois corporation, for fair value of \$377,580, without bids.

Resolution 06-0784, as amended, was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Krause, Little, Ness, Stauber, Stover and President Reinert -- 8

Nays: Councilor Stewart -- 1

Approved December 4, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STAUBER:

RESOLVED, that proper city officials are authorized to execute and implement an agreement, in substantially the same form and having substantially the same terms and conditions as that agreement on file with the city clerk as Public Document No. 06-1204-07, between the city of Duluth and Salvation Army, a not for profit corporation under the laws of the state of Illinois, for the construction and use of a recreational facility at Wheeler Field Park in the amount of \$7,200,000 from the Community Investment Trust Fund 256, Agency 030, Object 5490.

Resolution 06-0785, as amended, was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Krause, Little, Ness, Stauber, Stover and President Reinert -- 8

Nays: Councilor Stewart -- 1

Approved December 4, 2006

HERB W. BERGSON, Mayor

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

Yeas: Councilors Gilbert, Johnson, Krause, Little, Ness, Stauber, Stover and President Reinert -- 8

Nays: Councilor Stewart -- 1

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At this time, councilors Johnson, Krause and Stover left the chambers.

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

BY COUNCILOR STEWART:

RESOLVED, that the operation budget for the fiscal year January 1, 2007, to December 31, 2007, in the amount of \$3,377,000 for the Duluth airport authority is hereby approved.

FURTHER RESOLVED, that the authority included in the resolution shall submit to the city council its proposed budget in a prescribed format on or before November 15 of each year.

Resolution 06-0810 was unanimously adopted.

Approved December 4, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

RESOLVED, that the operation budget for the fiscal year January 1, 2007, to December 31, 2007, for Duluth Steam District No. 2 in the amount of \$8,383,855 is hereby approved.

Resolution 06-0811 was unanimously adopted.

Approved December 4, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STEWART:

WHEREAS, there is available fund balance in the tourism tax fund of the city of Duluth; and WHEREAS, the city desires to repair the tiger observation deck at the zoo;

NOW, THEREFORE, BE IT RESOLVED, that \$120,000 be allocated to the capital improvement fund; this source coming from the reserve for capital improvements fund balance in the tourism tax fund.

FURTHER RESOLVED, that the 2007 tourism taxes of hotel-motel and food and beverage, as estimated, be distributed in the following manner:

	3% Hotel-Motel	1% Hotel-Motel	1.5% Food and Beverage	Additional 2.5% Hotel-Motel	TOTAL
Duluth public arts commission			\$29,000	\$10,000	\$39,000
Sister cities			\$48,000	\$12,000	\$60,000
DECC	\$917,000				\$917,000
Convention & Visitors Bureau	\$493,800	\$164,200	\$571,500	\$151,100	\$1,380,600
Historical Union Depot		\$88,200	\$57,600	\$14,200	\$160,000

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

	3% Hotel-Motel	1% Hotel-Motel	1.5% Food and Beverage	Additional 2.5% Hotel-Motel	TOTAL
Donations			\$50,000		\$50,000
To general fund	\$74,200	\$241,600	\$591,100	\$167,100	\$1,074,000
Spirit Mountain debt service			\$225,000		\$225,000
To debt service			\$905,800	\$681,600	\$1,587,400
Great Lakes Aquarium			\$100,000	\$100,000	\$200,000
<b>TOTALS</b>	<b>\$1,485,000</b>	<b>\$494,000</b>	<b>\$2,578,000</b>	<b>\$1,136,000</b>	<b>\$5,693,000</b>

Resolution 06-0812 was unanimously adopted.  
 Approved December 4, 2006  
 HERB W. BERGSON, Mayor

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BY COUNCILOR KRAUSE:

RESOLVED, that the proper city officials are authorized to settle the claim by Norshor Experience, Inc., and execute all documents required to implement such settlement, arising out of an action filed in the United States District Court-District of Minnesota and entitled *Northshor Experience, Inc. a Minnesota Corporation, et al. v The City of Duluth, et al.*, File No. 06cv2998, subject to the following terms and conditions:

(a) Norshor Experience, Inc., shall execute a dismissal of its claims against the city of Duluth said dismissal shall be with prejudice;

(b) City shall recognize Norshor Experience. Inc., as a legal nonconforming use at its current location at the Norshor Theater located at 322 East Superior Street, Duluth. The stage located in the mezzanine level shall not be considered an expansion of the nonconforming use. The mezzanine stage shall not be used until such time as the building is brought into compliance with the city building and fire code. Such compliance shall be certified by the city building official;

(c) Each party shall be responsible for its own costs, disbursements and attorney fees.  
 Resolution 06-0821 was unanimously adopted.

Approved December 4, 2006  
 HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that the proper city officials are hereby authorized to enter into a second amended and restated master subordination agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 06-1204-08, with Washington Studios Limited Partnership (Washington Partnership), Artspace Projects, Inc., TCF National Bank (TCF), Duluth

economic development authority (DEDA) and Housing and Redevelopment Authority of Duluth, Minnesota (HRA), regarding the Washington school project.

Resolution 06-0830 was unanimously adopted.

Approved December 4, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR NESS:

RESOLVED, that the city of Duluth does concur with the St. Louis County board in the proposed designation of Cirrus Drive as County State Aid Highway #1 for that portion located within the city limits of Duluth from the intersection of Airport Road running southerly to city limits.

Resolution 06-0819 was unanimously adopted.

Approved December 4, 2006

HERB W. BERGSON, Mayor

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BY PRESIDENT 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. 06-1204-09, 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 1414, Object 5441.

Resolution 06-0818 was unanimously adopted.

Approved December 4, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Resolution 05-0426 to Salo Engineering, for the engineering services required for the Carlton Street reconditioning project, be amended to increase the amount by \$25,377.22 for a new total of \$56,542.22, payable from the Public Improvement Fund 0411, Department/Agency 035, Object 5530, City Project No. 0132TR, S.P. 118-194-005 (MTB).

Resolution 06-0820 was unanimously adopted.

Approved December 4, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR LITTLE:

RESOLVED, that in accordance with the provisions of Section 33-97 of the Duluth City Code, 1959, as amended, the following two hour parking zone is hereby rescinded: east side of Eighth Avenue East from Fourth Street Alley to Fourth Street.

Resolution 06-0824 was unanimously adopted.

Approved December 4, 2006

HERB W. BERGSON, Mayor

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At this time, Councilor Stewart returned to his seat.

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The following resolutions were also considered:

BY COUNCILOR STEWART:

RESOLVED, that the operation budget for the fiscal year January 1, 2007, to December 31, 2007, in the amount of \$11,412,057 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 06-0809 was unanimously adopted.

Approved December 4, 2006

HERB W. BERGSON, Mayor

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At this time, councilors Johnson and Krause returned to their seats.

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Resolution 06-0813, by Councilor Stewart, approving capital improvement plan and calling for public hearing on intention to issue improvement bonds under Minnesota Statutes, Section 475.521, was introduced for discussion.

Councilor Stauber opposed the resolution, citing the expenditure of \$100,000 for the improvement of washrooms at Indian Point Campgrounds and the expenditure of funds for the street overlay program when what is needed is full reconstruction of streets and utilities.

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

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BY COUNCILOR STEWART:

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 2007 in the amount of approximately \$1,950,000 to finance the purchase of capital equipment authorized by the act, together with an additional amount to pay costs of issuance of the certificates of indebtedness and discount in an amount estimated to be not more than \$50,000.

Section 3. The capital equipment to be financed includes those items of equipment set forth on the list (Public Document No. 06-1204-10), which list of equipment is hereby approved for purchase in 2007.

Section 4. The terms and conditions of the certificates of indebtedness and the sale thereof shall be established by further resolution of the council.

Section 5. This resolution constitutes a declaration of official intent under Treasury

Regulations Section 1.150-2. The city reasonably expects to reimburse expenditures incurred with respect to such capital equipment purchase program.

Resolution 06-0814 was adopted upon the following vote:

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

Nays: Councilor Stauber -- 1

Approved December 4, 2006

HERB W. BERGSON, Mayor

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Resolution 06-0823, by Councilor Stewart, approving DEDA's operating, debt service, capital projects and storefront loan fund budgets for 2007, was introduced for discussion.

Councilor Krause stated that he would not be supporting this resolution because of his concerns of how Minnesota state aid funds are used.

Resolution 06-0823 was adopted as follows:

BY COUNCILOR STEWART:

RESOLVED, that the city council of the city of Duluth does hereby approve the operating 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 2007.

Resolution 06-0823 was adopted upon the following vote:

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

Nays: Councilor Krause -- 1

Approved December 4, 2006

HERB W. BERGSON, Mayor

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Resolution 06-0829, by councilors Ness and Gilbert, relating to safety of firearms, was introduced for discussion.

Councilor Ness requested that at this time the resolution be removed from the agenda. Without objections, seeing that Councilor Ness was a co-sponsor of the resolution, the resolution was removed from the agenda.

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## **INTRODUCTION AND CONSIDERATION OF ORDINANCES**

### **ORDINANCE RECONSIDERED**

BY PRESIDENT REINERT

06-045 (9808) - AN ORDINANCE ALIENATING CERTAIN PROPERTY IN DULUTH HEIGHTS AND AUTHORIZING CONVEYANCE OF SAME TO THE HOUSING AND REDEVELOPMENT AUTHORITY OF DULUTH AT NO COST, AND ACCEPTING A LAND EXCHANGE FROM THE HRA IN THE HAWK RIDGE AREA AND DEDICATING SAID EXCHANGED PROPERTY FOR PARK PURPOSES.

President Reinert moved to reconsider the ordinance, which motion was seconded and carried upon the following vote:

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

Nays: Councilor Krause -- 1

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

Rick Ball, executive director of the Housing and Redevelopment Authority of Duluth, (HRA) clarified issues previously addressed by the council, noting in particular how the HRA and city staff see this as a mutually beneficial transaction.

President Reinert moved passage of the ordinance and the same was adopted upon the following vote:

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

Nays: Councilors Krause -- 1

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The following ordinances were read for the first time:

BY COUNCILOR STEWART

06-054 - AN ORDINANCE SETTING THE BUDGET FOR THE FISCAL YEAR 2007 APPROPRIATION MONIES FOR THE SUPPORT OF THE CITY GOVERNMENT, PUBLIC UTILITIES, AND PUBLIC ENTERPRISE FUNDS AND FOR OTHER PURPOSES.

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BY COUNCILOR STEWART

06-055 - AN ORDINANCE DETERMINING THE SUM TO BE RAISED BY TAXATION FOR GENERAL PURPOSES FOR THE YEAR 2007.

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BY COUNCILOR STEWART

06-056 - AN ORDINANCE DETERMINING THE SUM TO BE RAISED BY TAXATION FOR THE SPECIAL TAXING DISTRICT, DULUTH TRANSIT AUTHORITY, FOR THE YEAR 2007.

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BY COUNCILOR STEWART

06-057 - AN ORDINANCE DETERMINING THE SUM TO BE RAISED BY TAXATION FOR THE SPECIAL TAXING DISTRICT, DULUTH SEAWAY PORT AUTHORITY, FOR THE YEAR 2007.

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BY COUNCILOR KRAUSE

06-058 - AN ORDINANCE AMENDING SECTIONS 44-1, 44-2, 44-5, 44-11, 44-14, 44-33 AND 44-34 OF THE DULUTH CITY CODE, 1959, AS AMENDED; REGULATING LIGHTED SIGNS.

Councilor Stauber moved to table the ordinance and refer it to the planning commission, which motion was seconded and unanimously carried.

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The following entitled ordinances were read for the second time:

BY COUNCILOR KRAUSE

06-053 (9809) - AN ORDINANCE AMENDING SECTION 41-23 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO AUTHORIZE ADVERTISING FOR BIDS ON THE CITY'S WEBSITE.

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

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BY COUNCILOR GILBERT

06-052 - AN ORDINANCE TO RENAME MIDDLE ROAD WEST OF HOWARD GNESEN ROAD AND MIDDLE LANE IN THE PLAT OF CEDAR RIDGE ESTATES AS GREENBRIAR LANE (LORAAS, ET AL.).

Councilors Little and Stauber questioned why the street name was being changed and noted the extent of agencies that are affected by this type of change.

Councilor Stewart moved to table the ordinance so more information could be received as to the rationale for this change, which motion was seconded and unanimously carried.

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The meeting was adjourned at 8:57 p.m.

JEFFREY J. COX, City Clerk

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**ORDINANCE NO. 9807**

BY COUNCILOR STAUBER:

AN ORDINANCE SELLING PROPERTY TO THE SALVATION ARMY.

The city of Duluth does ordain:

Section 1. That the city of Duluth does sell, by quit claim deed, for the total selling price of \$377,580 to be deposited in the Capital Improvement Fund 450 and used for improvement or replacement of park department property to Salvation Army, a not for profit corporation under the laws of Illinois, the following described real property:

commencing at the southeast corner of CENTREDALE ADDITION TO DULUTH, St. Louis County, Minnesota, said point being north 89 degrees 13 minutes 30 seconds east 2,625.61 feet (assumed bearing) from the west 1/4 corner of said Section 5; thence south 89 degrees 13 minutes 30 seconds west 345.75 feet along the east and west 1/4 line of said Section 5 to a point of intersection with the northwesterly right-of-way line of Grand Avenue; thence south 43 degrees 47 minutes 59 seconds west 214.82 feet along said right-of-way line to the point of beginning; thence continuing along said right-of-way line south 43 degrees 47 minutes 59 seconds west 660.00 feet; thence north 47 degrees 01 minutes 52 seconds west 330.00 feet; thence north 43 degrees 47 minutes 59 east 660.00 feet; thence south 47 degrees 01 minutes 52 seconds east 330.00 feet to said northwesterly right-of-way line of Grand Avenue and point of beginning. Being a part of the west 1/2 of said Section 5, T49N, R14W, St. Louis County, Minnesota, containing 5.00 acres of land, more or less. Being subject to an easement in favor of city of Duluth for streets, walkways, and utilities over the westerly 40.00 feet and to easements and restrictions of record, if any.

Section 2. That the proper city officials are authorized to execute any document required to accomplish the sale of the above-described property.

Section 3. That the city council finds that this sale is in conformance with the comprehensive plan and that all requirements of Article XXXIII of Chapter 2 of the Duluth City Code, 1959, as amended, and of Laws of Minnesota, 1955, Chapter 82, have been complied with.

Section 4. That proceeds of the sale shall be deposited in a fund to be used for the replacement of lost recreational services at Wheeler Field within 12 months of the sale by the following priorities:

- (a) Construction of two public tennis courts and associated equipment including lights for evening play at a location near Wheeler Field;
- (b) Construction of a replacement bocce ball court at a location near Wheeler Field;
- (c) Construction of a playground similar to the one lost, on the Wheeler Field site;
- (d) As noted in paragraph H of the development agreement, parking for activities at the Wheeler site, up to 150 paved spots;
- (e) Any remaining funds will be made available for improvement or maintenance of park lands, including skateboard park consideration.

Section 5. That the city will make an earnest effort to seek a qualified party to take possession of the Wheeler Field House without charge to them and without charge to the city. The party selected must agree and assure to remove the structure prior to the beginning of construction of the Kroc Community Center or the building will not be transferred to them and subject to site demolition.

Section 6. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: January 14, 2007)

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

Yeas: Councilors Gilbert, Johnson, Krause, Little, Ness, Stauber, Stover and President Reinert -- 8

Nays: Councilor Stewart -- 1

Passed December 4, 2006

Approved December 4, 2006

HERB W. BERGSON, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

- - -

**ORDINANCE NO. 9808**

BY PRESIDENT REINERT:

AN ORDINANCE ALIENATING CERTAIN PROPERTY IN DULUTH HEIGHTS AND AUTHORIZING CONVEYANCE OF SAME TO THE HOUSING AND REDEVELOPMENT AUTHORITY OF DULUTH AT NO COST, AND ACCEPTING A LAND EXCHANGE FROM THE HRA IN THE HAWK RIDGE AREA AND DEDICATING SAID EXCHANGED PROPERTY FOR PARK PURPOSES.

The city of Duluth does ordain:

Section 1. That the city hereby designates the property described in Section 2 below as being surplus to the city's future needs and hereby declares its intention to alienate its interest in same.

Section 2. 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, Minnesota, in exchange for the property described in Section 3 below and to execute all documents necessary with regard to said conveyance:

Lots 17, 18, and 19, Block 6, DULUTH HEIGHTS FIFTH DIVISION.

Section 3. That the proper city officials are hereby authorized to accept fee title to the following described property from the Housing and Redevelopment Authority of Duluth, which property is hereby dedicated for park purposes:

Outlots A and B, HAWK RIDGE ESTATES FIRST ADDITION.

Section 4. That this ordinance shall take effect 30 days from and after its passage and publication. (Effective date: January 14, 2007)

President Reinert moved passage of the ordinance and the same was adopted upon the following vote:

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

Nays: Councilors Krause -- 1

Passed December 4, 2006

Approved December 4, 2006

HERB W. BERGSON, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

- - -

**ORDINANCE NO. 9809**

BY COUNCILOR KRAUSE:

AN ORDINANCE AMENDING SECTION 41-23 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO AUTHORIZE ADVERTISING FOR BIDS ON THE CITY'S WEBSITE.

The city of Duluth does ordain:

Section 1. That Section 41-23 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 41-23. Contract procedure--contracts exceeding \$25,000.

Purchase of all supplies and contractual services exceeding an estimated cost of \$25,000 shall be made by the purchasing agent pursuant to the provisions of this Section either by formal written contract or upon a properly executed purchase order, whichever method such purchasing agent deems appropriate, from the lowest responsible bidder after due notice inviting proposals. All sales of personal property when the estimated value shall exceed \$25,000, shall be made by formal written contract or such other means of conveyance as the city attorney may prescribe to the highest responsible bidder after due notice inviting proposals.

(a) Notice inviting bids;

(1) Published notice. Notice inviting bids shall be published in at least two issues of the official newspaper of the city or shall be published on the city's Internet website. The time set for the opening of such bids shall be not less than ten days from the date of the last publication of such notice in said newspaper or not less than 11 days after its publication on said website. Such notice shall include a general description of the articles to be purchased or sold, shall state where bid blanks and specifications may be secured and the time and place of opening bids;

(2) Bidders list. The city purchasing agent shall also solicit sealed bids from all responsible prospective suppliers who have requested their names to be added to a "bidders list," which the purchasing agent shall maintain, by sending them a copy of such newspaper notice or such other notice as will acquaint them with the proposed purchase or sale. In any case, invitations sent to the vendors on the bidders list shall be limited to commodities that are similar in character and ordinarily handled by the trade group to which the invitations are sent;

(3) Bulletin board. The city purchasing agent shall also advertise all pending purchases or sales by a notice posted on the public bulletin board in the city hall;

(b) Bid deposits. When deemed necessary by the city purchasing agent, bid deposits shall be prescribed in the public notices inviting bids. Unsuccessful bidders shall be entitled to return of such deposits where the purchasing agent has required such. A successful bidder shall forfeit any such deposit required by the purchasing agent upon failure on his part to enter a contract within ten days after the award. For the purpose of this Subsection, the term "deposit" shall mean cash, cashier's check, certified check or corporate surety bond;

(c) Bid opening procedure;

(1) Sealed bids. Bids shall be submitted sealed to the purchasing agent and shall be identified as bids on the envelope;

(2) Opening. Bids shall be opened in public at the time and place stated in the public notices;

(3) Tabulation. A tabulation of all bids received shall be posted for public inspection;

(d) Rejection of bids. The city purchasing agent shall have the authority to reject all bids, parts of all bids or all bids for any one or more supplies or contractual services included in the proposed contract when the public interest will be served thereby. The purchasing agent may reject the bid of a contractor who is in default on the payment of taxes, licenses or other money due the city;

(e) Award of contract;

(1) Authorization by city council. Contracts within the purview of this Section shall be awarded only after authorization by resolution of the city council;

(2) Lowest responsible bidder. Contracts shall be awarded to the lowest responsible bidder. In determining lowest responsible bidder, in addition to price, the purchasing agent shall consider:

(A) The ability, capacity and skill of the bidder to perform the contract or provide the service required;

(B) Whether the bidder can perform the contract or provide the service promptly or within the time specified without delay or interference;

(C) The character, integrity, reputation, judgment, experience and efficiency of the bidder;

(D) The quality of performance of previous contracts or services;

(E) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;

(F) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;

(G) The quality, availability and adaptability of the supplies or contractual services to the particular use required;

(H) The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;

(I) The number and scope of conditions attached to the bid;

(3) Award to other than low bidder. When the award is not given to the lowest bidder, a full and complete statement of the reason for placing the order elsewhere shall be prepared by the purchasing agent and filed with the other papers relating to the transaction;

(4) Tie bids;

(A) Local vendors. If all bids received are for the same total amount or unit price, quality and service being equal, the contract shall be awarded to a local bidder. If two or more local bidders submit tie bids, the purchasing agent shall award the contract to one of the tie bidders by drawing lots in public;

(B) Outside vendors. Where tie bids are submitted by outside vendors, the purchasing agent shall award the contract to one of the tie bidders by drawing lots in public;

(5) Performance bonds. The city purchasing agent shall have the authority to require a performance bond, before entering a contract, in such amount as he shall find reasonably necessary to protect the best interests of the city. He shall require a performance bond in every case where a law specifically requires the furnishing of a bond as a condition precedent to the awarding of a contract for the doing of any public work or the making of any public improvement;

(f) Prohibition against subdivision. No contract or purchase shall be subdivided to avoid the requirements of this Section.

Section 2. For a period of six months from the effective date of this ordinance, all solicitations for bids published on the city's website as herein authorized shall also be published in full in the city's official newspaper along with a statement indicating that said solicitation for bids can be found on the city's website and giving its website address.

Section 3. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: January 14, 2007)

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

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

Nays: None -- 0

ATTEST:  
JEFFREY J. COX, City Clerk

Passed December 4, 2006  
Approved December 4, 2006  
HERB W. BERGSON, Mayor

- - -

**OFFICIAL PROCEEDINGS**

Duluth City Council meeting held on Monday, December 18, 2006, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: Councilor Gilbert -- 1

- - -

The minutes of council meetings held on September 11, 21, 25; October 10, 23; November 6, 13, 27 and 30, 2006, were unanimously approved.

- - -

**PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS**

06-1218-01 Marguerite P. Acheson acceptance of terms, conditions and provisions of concurrent use permit granted by Ordinance 9797 on October 23, 2006. -- Received

06-1218-10 Bill Mittlefehldt communication regarding the position of energy manager (06-0864R). -- Received

06-1218-02 The following communications regarding assessments for the West Third Street improvement (06-0825R): (a) Jeffrey Schenk; (b) Tony Wroblewski. -- Received

06-1218-11 The following communications regarding amendment of resolutions 06-0613, 06-0614, 06-0616, 06-0617 and directing recalculation of utility rates, setting a date for implementation (06-0877R): (a) Robert Collison; (b) Dave Gaddie; (c) Jim Gustafson; (d) Dave Holappa; (e) Jerry Kortesmaki; (f) Judy Sheriff; (g) Robert and Katherine Winkler. -- Received

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**REPORTS FROM THE ADMINISTRATION**

Chief Administrative Office John Hall stated that the administration has reached a tentative agreement with the confidential union and police union and are within the goals and limitations that the mayor wanted.

- - -

**REPORTS FROM OTHER OFFICERS**

06-1218-03 Assessor:

(a) Affidavit of mailing of notice of public hearing on December 19, 2006, regarding reassessment of canceled assessment for Plat 3080 Parcel 02680;

(b) For confirmation, the assessment rolls levied to defray the assessable portions of:

(1) Contract No. 5397, sanitary sewer extension 1,050 feet south of Mall Drive (assessable amount - \$22,295.50);

(2) Contract No. 5402, Trinity Road sanitary sewer and watermain extension (assessable amount - \$96,063.76). -- Received

06-1218-04 Clerk application to the Minnesota gambling control board for exemption from lawful gambling for Minnesota Citizens Federation - Northeast on April 28, 2007 (raffle). -- Received

- - -

**REPORTS OF BOARDS AND COMMISSIONS**

- 06-1218-05 Charter commission minutes of October 12, 2005, meeting. -- Received  
06-1218-06 Commission on disabilities minutes of November 1, 2006, meeting. --  
Received  
06-1218-07 Duluth airport authority balance sheet of September 30, 2006. -- Received  
06-1218-08 Library board minutes of October 24, 2006, meeting. -- Received  
06-1218-09 Seaway Port authority of Duluth financial statement of November 28, 2006. --  
Received

- - -

**OPPORTUNITY FOR CITIZENS TO BE HEARD**

Jon Donahue expressed frustration that the taxpayers have to pay for city employees' healthcare when the taxpayers are going through their own healthcare crisis and he stated that reasonable concessions by the unions are needed.

- - -

Greg Toon reviewed that his house is next to the construction of the convenience store on Trinity Road and that the dynamiting is within 40 feet of the house and is causing property damage to the structure. He stated that he has talked to the construction company and fire department but has not received any help and he is concerned about the safety of his family.

- - -

KL Lewis spoke on the new parking ramp on First Street and voiced concern that the lighting from the ramp is flooding into the homes of the neighborhood.

- - -

**RESOLUTIONS TABLED**

Councilor Stewart moved to remove Resolution 06-0798, adopting license, permit and fee charges for 2007, 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.

Bill Berg stated that the suggested alcoholic beverage fee increases are too high and if the fees are raised liquor establishments will have to raise their drink prices and then they will lose their customers to Superior, Wisconsin. He also read a letter objecting to the fee increase from the bar owner of RT Quinlan.

Mark Rutka asked the councilors to reconsider the fee increase as small bars do not take in a lot of money and suggested making the fee increase over several years.

Councilor Stauber moved to amend the resolution as follows:

- (a) Under the clerk, alcoholic beverage, 3.2 percent malt liquor, on sale section:
  - (1) Change the annual license fee from "\$450" to "\$400";
  - (2) Change the dancing annual license fee from "\$1,000" to "\$825";
- (b) Under the clerk, alcoholic beverage, intoxicating liquor, on sale section:
  - (1) Change the dancing additional bar license fee from "\$600" to "\$500";
  - (2) Change the dancing annual license fee from "\$1,300" to "\$950";
  - (3) Change the dancing seasonal license fee from "\$350" to "\$325";
  - (4) Change the annual special Sunday license fee from "\$175" to "\$150";
- (c) Under the clerk, alcoholic beverage, intoxicating liquor, wine, on sale section:
  - (1) Change the annual license fee from "\$900" to "\$750";
  - (2) Change the annual bed and breakfast license fee from "\$400" to "\$375";

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

- (3) Change the annual dancing license fee from "\$1,000" to "\$825";
  - (d) Under the clerk, alcoholic beverage section, change the annual late hours entertainment license fee from "\$250" to "\$225";
  - (e) Under the parks and recreation section:
    - (1) Change the building rental, alcohol permit fee from "\$100" to "\$90";
    - (2) Change the picnic/wedding, alcohol consumption fee from "\$50" to "\$45,"
- which motion was seconded for discussion.

- - -

At this time, 7:32 p.m., Councilor Gilbert took his seat.

- - -

Councilor Stauber's amendment passed unanimously.

Resolution 06-0798, as amended, was adopted as follows:

BY COUNCILOR STEWART:

RESOLVED, that pursuant to sections 2-15, 2-16, 2-17, 6-3, 6-12, 6-14, 6-39, 6-77, 6-82, 8-40, 18-4, 21-6, 24-22, 29A-30, 31-6(a), 33-126, 35-9.1, 35-11, 35-15, 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 2007 shall be adopted.

<b>Assessor</b>	
<b>License, Permit, Fee Name</b>	<b>2007 Fee</b>
Abatement processing fee	
Homestead	\$25.00
Valuation	\$50.00
**Certificate of real estate value (CRV) duplicate	\$.25
CD data	\$155.00
Map	
**8.5 x 11; 8.5 x 14; 11 x 17	\$.25
11 x 17 copy of milar	\$2.00
**28 x 41	\$6.00
**Fax a map copy	\$.25
Member access to internet website	\$240.00
Ownership search	
Notification	\$25.00
Rezoning	\$25.00
**Property record - full page (free to property owner)	\$.25

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

<b>Assessor</b>	
<b>License, Permit, Fee Name</b>	<b>2007 Fee</b>
**Change in license, permit or fee	

<b>Attorney</b>	
<b>License, Permit, Fee Name</b>	<b>2007 Fee</b>
Research - after first 1/4 hour (per hour)	\$50.00

<b>Building Safety</b>	
<b>License, Permit, Fee Name</b>	<b>2007 Fee</b>
Board of zoning appeals filing fee	\$120.00
Building moving permit	
Over private property	\$5.00
Over public property	
1,000 square feet or under of area on first floor	\$30.00
Over 1,000 square feet of area on first floor	\$60.00
Certificate of occupancy	\$5.00
Demolition/razing/wrecking permit	
For every 100 cubic feet of volume	\$ .25
Minimum fee	\$15.00
**Housing Code books	\$9.99
Mobile home permit	
Inspection fee	\$25.00
Installation fee	\$50.00

<b>Building Safety</b>	
<b>License, Permit, Fee Name</b>	<b>2007 Fee</b>
Rental housing (three year licenses)	
* Correction orders, additional copy	\$10.00
Each bed in rooming unit	\$20.00
Each building - for a new license for an existing structure or renewal of an existing license (includes initial inspection and one reinspection)	\$200.00
Each dwelling or housekeeping unit	\$20.00
Each failure to appear for reinspection	\$75.00
Inspections made in response to citizen complaints	-0-
Per unit investigation fee for each occupied rental unit being operated as rental housing that is not licensed	\$200.00
Reinspection after license suspended/revoked	\$150.00
Reinstating 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	\$10.00
* Rental license, additional copy	\$10.00
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

<b>Building Safety</b>	
<b>License, Permit, Fee Name</b>	<b>2007 Fee</b>
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
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
* Vacant building registration	
Administrative fee	\$75.00
Annual fee	\$400.00

<b>Building Safety</b>	
<b>License, Permit, Fee Name</b>	<b>2007 Fee</b>
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	

<b>Citywide</b>	
<b>License, Permit, Fee Name</b>	<b>2007 Fee</b>
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

<b>Clerk</b>	
<b>License, permit, fee name</b>	<b>2007 Fee</b>
Adult bookstore - annual	\$30.00
Alcoholic beverage	
3.2 percent malt liquor	
Late penalty fee	
Off sale	\$25.00
On sale	\$50.00
Off sale - annual	\$130.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

<b>Clerk</b>	
License, permit, fee name	2007 Fee
On sale	
**Annual	\$400.00
Dancing	
**Annual	\$825.00
One day/evening - per day	\$100.00
Seasonal	\$300.00
Temporary - on sale	
First day/evening	\$100.00
Each additional day/evening	\$20.00
Transfer	\$100.00
Intoxicating liquor	
Bottle club - annual	\$300.00
Brewery malt liquor off sale - annual	\$200.00
Club - annual	
Less than 200 members	\$300.00
201-500 members	\$500.00
501-1,000 members	\$650.00
1,001-2,000 members	\$800.00
2,001-4,000 members	\$1,000.00
4,001-6,000 members	\$2,000.00
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

<b>Clerk</b>	
License, permit, fee name	2007 Fee
On sale	
Additional bar	\$500.00
**Annual	\$3,500.00
Dancing	
**Annual	\$950.00
One day/evening - per day	\$100.00
**Seasonal	\$325.00
**Special Sunday license - annual	\$150.00
Temporary - on sale	
First day/evening	\$250.00
Each additional day/evening	\$125.00
Transfer	\$300.00
Wine - on sale	
**Annual	\$750.00
**Bed and breakfast - annual	\$375.00
Dancing	
**Annual	\$825.00
One day/evening - per day	\$100.00
Seasonal	\$300.00
Investigations	
In state	\$500.00
Outside of state	\$10,000.00
**Late hours entertainment - annual	\$225.00
Permanent expansion	\$100.00
Special meeting request fee - per applicant	\$100.00
Temporary expansion	

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

<b>Clerk</b>		
License, permit, fee name		2007 Fee
	First day/evening	\$300.00
	Each additional day/evening	\$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
Garbage collector license - annual		\$250.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

<b>Clerk</b>		
<b>License, permit, fee name</b>		<b>2007 Fee</b>
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
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 2006

<b>Clerk</b>	
<b>License, permit, fee name</b>	<b>2007 Fee</b>
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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

<b>Clerk</b>	
<b>License, permit, fee name</b>	<b>2007 Fee</b>
Precinct finder	\$10.00
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

<b>Clerk</b>	
<b>License, permit, fee name</b>	<b>2007 Fee</b>
Vacation petition filing 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
**Change in license, permit or fee	

<b>Facilities Management</b>	
<b>License, permit, fee name</b>	<b>2007 Fee</b>
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

<b>Fire</b>	
<b>License, Permit, Fee Name</b>	<b>2007 Fee</b>
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 (the minimum amount shown, or, if the inspection is performed by the city under a contract with the state or any other governmental agency, any amount that does not exceed the fee for the same service charged by the party with which the city has contracted, whichever is greater)	
Assembly occupancy	\$100.00
Combustible storage occupancy	\$100.00
Factory occupancy	\$100.00
Fire sprinklers or alarms systems (not otherwise requiring a permit)	\$100.00
Hazardous occupancy	\$100.00
Residential occupancy	
R-1 (same as state fee)	\$100.00
Additional per unit (37-99 units)	\$7.00
Additional per unit (100 or more units)	\$8.00
R-3	\$100.00
Additional per unit	\$20.00
R-4	\$100.00
Additional per unit	\$20.00
Other fees	
Inspections made in response to citizen's complaint	-0-

<b>Fire</b>		
<b>License, Permit, Fee Name</b>		<b>2007 Fee</b>
	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	\$100.00
	Reinstating a suspended or revoked permit	\$100.00
	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	\$100.00
Fireworks/pyrotechnics display		\$200.00
Fuel tank inspection permit (per tank)		\$50.00
Sale of fireworks permit - annual		\$100.00

<b>Library</b>		
<b>License, Permit, Fee Name</b>		<b>2007 Fee</b>
Barcode/security label destruction service charge		\$3.00
Billing service charge		\$2.00
Card replacement		\$2.00
Computer lab rental		\$110.00
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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

<b>Library</b>		
<b>License, Permit, Fee Name</b>		<b>2007 Fee</b>
	Civil service books	\$1.00
	Juvenile items	\$ .10
	Toys	\$ .50
	Videos, story kits, Book Club in a Bag	\$2.00
Gold room rental		
	Commercial (per day)	\$150.00
	Noncommercial	
	Four hours or less	\$55.00
	Per day	\$70.00
Green room rental		
	Commercial (per day)	\$250.00
	Noncommercial	
	Four hours or less	\$95.00
	Per day	\$120.00
Lost/damaged materials fee		cost of replacement and processing
Non-Minnesota resident borrower's card		
	**First family member - annual	\$46.50
	Each additional family member - annual	\$10.00
Photocopies/printing (coin-operated machines) - per page		\$ .10
Research		
	After first 1/2 hour (per hour)	\$15.00
	Fax service (per page)	\$1.00
	Mailed photocopies (per page)	\$1.00
**Revenue recapture notice		\$10.00
Sale of used adult books - minimum		\$ .50
Sale of used children's books - minimum		\$ .50

<b>Library</b>	
<b>License, Permit, Fee Name</b>	<b>2007 Fee</b>
Sale of used magazines - minimum	\$ .50
Space/room rental equipment fee	\$10.00
**Change in license, permit or fee	

<b>MIS</b>	
<b>License, Permit, Fee Name</b>	<b>2007 Fee</b>
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	
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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

<b>MIS</b>		
<b>License, Permit, Fee Name</b>		<b>2007 Fee</b>
	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 2,000 or more (plus cost of labels)	\$250.00
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
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

<b>Parks and Recreation</b>		
<b>License, Permit, Fee Name</b>		<b>2007 Fee</b>
Adult special league - annual		

<b>Parks and Recreation</b>	
<b>License, Permit, Fee Name</b>	<b>2007 Fee</b>
<b>Sport</b>	
Adult softball (per team)	\$525.00
Basketball (per team)	\$565.00
**Bocce (per team)	\$35.00
Broomball (per team)	\$940.00
Classic softball (per team)	\$1,050.00
Flag football (per person)	
**With jersey	\$55.00
* Without jersey	\$45.00
No check hockey (per team)	\$1,300.00
Touch football (per team)	\$575.00
Volleyball (per team)	\$395.00
Team forfeit fee	\$20.00
Team roster late fee (per day)	\$5.00
<b>Athletic field rental</b>	
Lights (per hour/per field)	\$50.00
Per field/per day	\$50.00
Banner permit	\$10.00 up to a maximum of \$50.00
<b>Bayfront Festival Park</b>	
**Playfront parking lot - per vehicle during special events	\$5.00
<b>Use of entire park</b>	
* Bayfront Blues Festival - facilities charge per ticket	\$3.00
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

<b>Parks and Recreation</b>	
<b>License, Permit, Fee Name</b>	<b>2007 Fee</b>
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)	\$20.00
<b>**Use of Lois M. Paulucci Music Pavilion</b>	
Alcohol consumption permit	\$50.00
Damage deposit (refundable)	\$100.00
Per hour rental	
40-199 persons	\$50.00
200-499 persons	\$90.00
<b>Building rental</b>	
<b>**Alcohol permit</b>	\$90.00
Community recreation center conference room (per hour for meetings)	\$25.00
Damage/cleanup deposit (refundable if building left in acceptable condition)	
With alcohol	\$200.00
Without alcohol	\$100.00
Evenings/weekends/weekdays	
<b>**First hour</b>	\$60.00
Per hour, after first	\$25.00
Late Fee	\$25.00
<b>**Use of licensed kitchen</b>	\$60.00
Buskering permit	\$10.00
<b>General recreation</b>	
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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

<b>Parks and Recreation</b>		
<b>License, Permit, Fee Name</b>		<b>2007 Fee</b>
	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
	Youth dances (per person/per day)	\$5.00
Golf courses - Lester Park and Enger Park		
	Daily golf ticket - tax included	
	**18 hole	\$28.00
	**18 hole junior	\$15.00
	9 hole	\$16.00
	9 hole junior	\$10.00
	9 hole senior	\$13.00
	Fall special	\$16.00
	Twilight	\$13.00
	Golf cart rental - tax included	
	**18 hole	\$28.00
	9 hole	\$16.00
	Daily private	\$13.00
	Season private	\$200.00
	*Season restricted 5-day	\$540.00
	**Season unlimited	\$730.00
	**Season pass - tax included	
	Restricted	
	5 day	\$397.75

<b>Parks and Recreation</b>		
<b>License, Permit, Fee Name</b>		<b>2007 Fee</b>
	Collegiate	\$344.00
	Junior	\$193.50
	Family	\$967.50
	Junior family upgrade to limited	\$193.50
	Unlimited	\$602.00
	Junior	\$344.00
Lake Superior Zoological Gardens admission		
	Community celebrations	
	Bubba and Berlin's Birthday Bash	
	0-12 years old	-0-
	13 years and older	\$8.00
	Easter Egg Hunt	
	0-12 years old	-0-
	13 years and older	\$8.00
	Zoo Year's Eve - all ages	
	-0-	
	Group rates - groups of ten or more who have made prior arrangements and where one payment is made for the entire group	
	0-2 years old	-0-
	3-12 years old	\$2.50
	13 years or older	\$7.00
	School sponsored tours - per person	
	Grades 0-8	\$2.50
	Grades 9-12	\$7.00
	Chaperone	\$7.00
	Groups with bona fide special needs or disabilities	
	Per person	\$2.50
	Chaperone	\$7.00

<b>Parks and Recreation</b>	
<b>License, Permit, Fee Name</b>	<b>2007 Fee</b>
* Minnesota Zoo member	
Adult	\$3.50
Child	\$1.50
Regular rates	
0-2 years old	-0-
3-12 years old	\$3.00
13 years or older	\$8.00
<i>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.</i>	
Picnic/wedding	
**Alcohol consumption	\$45.00
**Permit	
1 to 150 persons (five hour time slot)	\$50.00
151 to 300 persons (five hour time slot)	\$90.00
301+ persons (five hour time slot)	\$105.00
**Rose Garden (per hour)	\$30.00
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
Recreational fire	\$15.00
Senior programs (per person)	
Billiards tournament	\$8.00
Citywide picnic	\$10.00
Educational seminars	\$7.00

<b>Parks and Recreation</b>		
<b>License, Permit, Fee Name</b>		<b>2007 Fee</b>
	Holiday banquet	\$14.00
	Special parties	\$4.00
**Sound amplification		\$20.00
Stage rental		\$350.00
**Van rides - one way		\$1.25
**Vendor space - parks (per day)		\$20.00
Washington Center		
	Gym rental (per hour)	\$30.00
	Lap swim (per person/per month)	\$25.00
	Pool rental (per hour/per group)	\$45.00
	Swimming lessons (per person)	\$20.00
* New license, permit or fee		
**Change in license, permit or fee		

<b>Planning and Development</b>		
<b>License, Permit, Fee Name</b>		<b>2007 Fee</b>
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
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

<b>Planning and Development</b>	
<b>License, Permit, Fee Name</b>	<b>2007 Fee</b>
Preliminary review	\$500.00
Tax forfeit reclassification	\$150.00
Zoning text change	\$250.00

<b>Police</b>	
<b>License, Permit, Fee Name</b>	<b>2007 Fee</b>
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
Crime scene unit audio and video recordings	
Per tape or CD	\$2.00
Staff time (per hour)	\$50.00
Criminal history	\$25.00
Deer hunting qualification certificate	\$20.00
Fingerprinting	
First card	\$10.00
Each additional card	\$5.00

<b>Police</b>	
<b>License, Permit, Fee Name</b>	<b>2007 Fee</b>
Intrusion detection device permit	\$25.00
No parking signs - for construction sites (per sign)	\$2.00
Pawnbroker transaction surcharge (per transaction)	\$2.00

<b>Public Works and Utilities</b>	
<b>License, Permit, Fee Name</b>	<b>2007 Fee</b>
Aerial photo	
2002	\$5.00
Pre-2002	\$3.00
Certificate of unpaid bills [ <i>Comfort Systems</i> ]	\$15.00
**Excavation permit	
Base Fee	\$20.00
Inspection Fee	\$50.00
Fire service application	varies from \$642-\$1,533
Gas furnace comfort policy fee - annual	
Electronic ignition	\$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

<b>Public Works and Utilities</b>		
<b>License, Permit, Fee Name</b>		<b>2007 Fee</b>
	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	
	First 3,000 square feet of building footprint	\$75.00
	Each additional 1,000 square feet of building footprint	\$25.00
	On parcels equal to or greater than 10,000 square feet	
	First 3,000 square feet of building footprint	\$75.00
	Each additional 1,000 square feet of building footprint	\$25.00
Miscellaneous Permits		
	Driveway crossing or sidewalk repair or replacement (private construction)	
	Base fee	\$20.00
	**Inspection fee	\$50.00
	Occupy or obstruct street or sidewalk	
	**Base fee	\$30.00
	Meter revenue loss charge - per meter	

<b>Public Works and Utilities</b>	
<b>License, Permit, Fee Name</b>	<b>2007 Fee</b>
Per day	
Per \$0.25/hour meter	\$1.25
Per \$0.25/15 minutes meter	\$5.00
Per \$0.50/hour meter	\$2.50
Per month	
Per \$0.25/hour meter	\$25.00
Per \$0.25/15 minutes meter	\$100.00
Per \$0.50/hour meter	\$50.00
Per week	
Per \$0.25/hour meter	\$6.25
Per \$0.25/15 minutes meter	\$25.00
Per \$0.50/hour meter	\$12.50
Per month, per square feet of area	\$0.07
Minimum fee	\$10.00
Yearly	\$200.00
* Utility work (franchise holders) - minimum fee	\$40.00
**Sewer connection - property not previously assessed (per foot of frontage; varies depending on lot size)	\$90.00
Transportation permit	
Regular	\$10.00
Seasonal contractor	\$50.00
**Violations/noncompliance service charge	
Dispatch of service vehicle	\$45.00

<b>Public Works and Utilities</b>		
<b>License, Permit, Fee Name</b>		<b>2007 Fee</b>
Restoration of service		
	Between 12:00 a.m.-8:00 a.m.	\$70.00
	Between 4:30 p.m.-12:00 a.m.	\$55.00
	Between 8:00 a.m.-4:30 p.m.	\$45.00
**Water connection - property not previously assessed (per foot of frontage; varies depending on lot size)		\$90.00
Water hydrant, use of		\$90.00
**Water service tapping fee (one inch or less)		\$380.00
Watercourse obstruction		\$50.00
* New license, permit or fee		
**Change in license, permit or fee		

<b>Treasurer</b>		
<b>License, Permit, Fee Name</b>		<b>2007 Fee</b>
Assessment search/certificate		
	First description	\$12.50
	Each additional description	\$12.50
Delinquent garbage accounts collection fee		\$30.00
Vehicle excise tax (per state authorization)		\$20.00

RESOLVED FURTHER, that the following fees are hereby eliminated:

<b>Eliminated Fees</b>		
<b>Dept./Div.</b>	<b>License, Permit, Fee Name</b>	<b>Current Fee</b>
Assessor	EOY microfiche	\$155.00
Building Safety	Rental housing (three year licenses)	
	Issuing new license in conjunction with certificate of occupancy	\$25.00
Clerk	Gambling manager - annual	\$50.00

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

Eliminated Fees		
Dept./Div.	License, Permit, Fee Name	Current Fee
	Jar operator	\$20.00
Library	Extended use fines (per day)	
	Art prints	\$1.00
	Final notice service charge	\$3.00
Parks and Recreation	Northland Senior Games - annual/per person <i>[these activities are no longer offered]</i>	
	Banquet	
	Guest	\$17.00
	Participant	\$12.00
	Bowling and tennis	
	Cards only	
	Early entry fee	
	Non-residents	\$30.00
	Residents	\$25.00
	Entry fee	
	Non-residents	\$35.00
	Residents	\$30.00
	Softball	
	Additional events for softball players only (per event)	\$6.00
	Team fee (t-shirt not included)	\$125.00
	T-shirt (additional)	\$10.00
	Washington Center	
	Pool rental	
	Per hour/per person	\$1.50

Eliminated Fees		
Dept./Div.	License, Permit, Fee Name	Current Fee
Public Works and Utilities	Land disturbance permit	
	Single family dwelling construction	
	On parcels less than 10,000 square feet where permit is required due to special conditions	
	Maximum charge	\$250.00
	On parcels equal to or greater than 10,000 square feet	
	Maximum charge	\$250.00

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 1,2007.

Resolution 06-0798, as amended, was unanimously adopted.

Approved December 18, 2006

HERB W. BERGSON, Mayor

- - -

Councilor Stewart moved to remove Resolution 06-0813, approving capital improvement plan and calling for public hearing on intention to issue improvement bonds under Minnesota Statutes, Section 475.521, from the table, which motion was seconded and unanimously carried.

Resolution 06-0813 was adopted as follows:

BY COUNCILOR STEWART:

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 2007 through 2011 which has been presented to the city council in a document entitled "Capital Improvement Budget and Five Year Plan 2007-2011," dated November 2006 (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 \$1,240,000 (the bonds), for the purpose of providing funds for the restoration of the retaining wall and stairs outside of City Hall; remodeling of city offices in City Hall; carpet replacement, energy modifications and ventilation upgrades at the main library; fire department facilities repairs and maintenance including driveways, and the remodeling or relocation of the Park Point firehall; replacing all emergency warning sirens located throughout the city; 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 \$1,240,000, pursuant to the plan, the act and Minnesota Statutes, Chapter 475;

(c) The city will issue the bonds if no petition requesting a vote on the issuance of the bonds signed by voters equal to five percent of the votes cast in the city in the last general election is filed with the city clerk within 30 days after the date of the public hearing described in Section 2.03 of this resolution.

2.02 The city council shall hold a public hearing on the issuance of the bonds at 7:00 p.m. on January 29, 2007. 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. 06-1228-24, to be published in the official newspaper of the city or a newspaper of general circulation in the jurisdiction of the city not less than 14 days nor more than 28 days prior to the date set for the public hearing.

2.03 The administrative staff of the city and its agents are hereby authorized to take such further action necessary to carry out the intent and purpose of this resolution and the requirements of the act.

Resolution 06-0813 was adopted upon the following vote:

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

Nays: Councilor Stauber -- 1

Approved December 18, 2006

HERB W. BERGSON, Mayor

- - -

President Reinert moved to remove Resolution 06-0825, setting special assessment for West Third Street improvement, City Job No. 0123TR, 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.

Father Tony Wroblewski, Holy Family Catholic Church, explained that his church is a member of the community as it is open to the neighborhood as a meeting place, besides the

church functions, and urged the councilors to support a change in the assessments for nonprofits on West Third Street.

President Reinert explained that the city could use Minnesota state aid (MSA) money from another project to subsidize the difference between the residential and commercial rate.

Councilor Johnson questioned if this resolution is specific to churches and nonprofits in this area because there are some nonprofits that can afford to pay street assessments.

City Attorney Brown replied to questioning from the council that this resolution addresses only properties that meet the definition of community facility or neighborhood facility as those definitions are used in housing and urban development (HUD) programs.

Councilor Krause questioned that if the city does this for one entity, how can it not be mandated to do it for another entity without discriminating against another nonprofit.

Mr. Brown replied that this resolution does not create any enforceable right from any other entity to demand the same treatment.

Councilor Stewart explained that if the city will not create a policy to do this type of thing because it would be a bad idea, then the council approving this incident is not a good thing as it will set a precedent in people's minds to come to the council and ask nicely for a favor. He also stated that if the city is going to change the way assessments are done, it should be across the board and not just to benefit a small group of people.

Councilor Little questioned how can the city not give the same treatment to other nonprofits and added that if this would apply just to churches he could support the resolution.

Resolution 06-0825 was adopted as follows:

BY PRESIDENT REINERT:

The city council finds as follows:

(a) The area of West Third Street that is being improved by state Project No. 118-126-016, City Job No. 0123TR, a Minnesota state aid road, is in census tracts 27 and 28; and

(b) This area has been classified as a low to moderate income community development target area and has been the site of community development program efforts; and

(c) In the target area are several properties that were formerly, or are now, used as churches. These properties provide open space, parking, public meeting areas and are the location of social service programs, polling places and meeting areas for government meetings. As such, they are neighborhood facilities and community facilities for purposes of the application of HUD community development programs; and

(d) Loss or degradation of these facilities would be detrimental to the development and redevelopment of this target area; and

(e) By City Charter Section 62(d), the council has authority to set the terms of any special assessment.

THEREFORE, BE IT RESOLVED, that the above identified neighborhood facilities and community facilities shall, for City Job No. 0123TR, be specially assessed at the same rate as homestead residential properties in the project area.

BE IT FURTHER RESOLVED, that this resolution supersedes any other resolution on the same subject and shall not be binding or precedential for any other improvement project.

Resolution 06-0825 was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Krause, Ness, Stauber, Stover and President Reinert -- 7

Nays: Councilors Little and Stewart -- 2

Approved December 18, 2006

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

BY COUNCILOR STEWART:

RESOLVED, that the assessment roll levied to defray the assessable portion of sanitary sewer extension 1,050 feet south of Mall Drive (Contract #5397; assessable amount - \$22,295.50), to be deposited in Fund 325, is hereby confirmed.

Resolution 06-0863 was unanimously adopted.

Approved December 18, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

RESOLVED, that Northern Business Products, Inc., be and hereby is awarded a contract for delivering and installing Herman Miller furnishings for the City Center West police station and emergency operations center (EOC) in accordance with the city architect's specifications and its quote of \$78,143.71 plus sales tax of \$5,079.34, for a combined total of \$83,223.05, terms net 30, FOB destination, payable from the Capital Improvements Fund 450, Department/Agency 030, Object 5520, Project No. CP2004-C409, Requisition No. 06-0752.

Resolution 06-0827 was unanimously adopted.

Approved December 18, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

RESOLVED, that the proper city officers hereby authorize Amendment #1 to Contract #19781 with SEH, Inc., for the sum of \$30,520, from Capital Fund 450, Agency 030, Organization 5520, CP 2005-CO502, for providing certain additional engineering services to the city of Duluth in connection with the Lakewalk East extension (26th to 36th), 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. 06-1218-12.

Resolution 06-0849 was unanimously adopted.

Approved December 18, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

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 license for the period ending April 30, 2007, subject to departmental approvals and the payment of sales and property taxes:

Docks of Duluth, Inc. (Expresstop), 4701 East Superior Street, with Robert James Dock, 100 percent stockholder, transferred from Harbor City Oil Company, Inc. (Kolquist Brothers Expresstop), same address.

Resolution 06-0873 was unanimously adopted.

Approved December 18, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointment by Mayor Bergson of Sarah L. Chambers (at large) to the Duluth transit authority for a term expiring on June 30, 2009, replacing Isobel Rapaich, is confirmed.

Resolution 06-0841 was unanimously adopted.

Approved December 18, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR JOHNSON:

RESOLVED, that the appointment by Mayor Bergson of Todd Torvinen to the Spirit Mountain recreation area authority for a term expiring on June 30, 2008, replacing Carol J. Bird, is confirmed.

Resolution 06-0842 was unanimously adopted.

Approved December 18, 2006

HERB W. BERGSON, Mayor

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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.

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

Kevin J. Bovee, of the town of Lakewood, Minnesota, whose term shall commence on the first business day of January 2007 and shall expire on the first business day of January 2010.

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

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

Resolution 06-0843 was unanimously adopted.

Approved December 18, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

RESOLVED, that the proper city officials are hereby authorized to enter into an amendment to Agreement 20195 with SHMC substantially in the form of that on file in the office of the city clerk as Public Document No. 06-1218-13, increasing the amount payable thereunder from \$91,016 to \$102,606 and payable from Fund 262 020-5434, Project CD06CD-PFAC-PF04; said additional funding being received from the contingency account.

Resolution 06-0848 was unanimously adopted.

Approved December 18, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that the proper city officials are hereby authorized to apply for and, if approved, accept from the state of Minnesota, through the Minnesota department of natural resources, division of waters, a grant in the amount of \$69,500, to be deposited into Fund 210-030-3154, to assist in development of parcel mapping and surveying control points in areas of the city lying east of the Lester River, in the Central Hillside, in the Downtown area, in the Canal Park area, on Rices Point and in the Lincoln Park area.

FURTHER RESOLVED, that said officials are hereby authorized to accept a contribution from St. Louis County in the amount of \$68,000 in cash, to be deposited in Fund 210-030-3154, and \$4,570 in the form of an in-kind donation.

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 \$20,630, \$20,630 of which shall be from the Fund 100-015-1513-5100 and cash matching funds in the amount of \$88,000, \$68,000 of which shall be payable from Fund 210-030-3154, \$5,000 of which shall be payable from the Water Utility Fund 510-500-1915-5310, \$5,000 of which shall be payable from the Gas Utility Fund 520-500-1915-5310, \$5,000 of which shall be payable from the Sewer Utility Fund 530-500-1915-5310 and \$5,000 of which shall be payable from the Stormwater Utility Fund 535-500-1915-5310.

Resolution 06-0866 was unanimously adopted.

Approved December 18, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR GILBERT:

RESOLVED, that the proper city officials, acting as fiscal agent for the planning and development department, are hereby authorized to apply for and to accept, if offered, a Minnesota's Lake Superior coastal program grant administered through the Minnesota department of natural resources in the amount of \$40,000 for the purposes of assisting in the creation of a unified development code, which funds shall be paid into Fund 100, Organization 1202, Revenue Source 4220.

BE IT FURTHER RESOLVED, that the proper city officials are authorized to act as legal sponsor of said grant, to execute any documents required to be executed to accept such grant and to obligate up to \$40,000 in match provided as in-kind services from the planning and development budget, which funds shall be paid from Fund 100, Organization 1202, Object 5310.

Resolution 06-0876 was unanimously adopted.

Approved December 18, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Nortrax Equipment Company, Inc., be and hereby is awarded a contract for the purchase of a John Deere 80C excavator with related attachments and maintenance agreement in accordance with its low bid of \$110,020 plus sales tax of \$7,151.30, for a combined total of \$117,171.30, terms net ten days, FOB destination, payable from the Sewer Fund 530, Department/Agency 500, Organization 1905, Object 5580 and Requisition No. 06-0729.

Resolution 06-0828 was unanimously adopted.

Approved December 18, 2006

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. 06-1218-14, with Michael and Melissa Jasper allowing them to connect their property located at 11804 123rd Avenue West to the Western Lake Superior Sanitary District's Division D interceptor and setting forth conditions therefore.

Resolution 06-0832 was unanimously adopted.

Approved December 18, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Resolution 06-0635 to Construction Services, Inc., (CSI) for replacement of an 18 inch storm sewer line at Chester Parkway below Skyline Parkway be amended to increase the amount by \$29,743.73, for a new total of \$107,443.73, payable out of Storm Sewer Fund 535, Agency 500, Organization 1903, Object 5533, City Project No. 0615ST.

Resolution 06-0844 was unanimously adopted.

Approved December 18, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Resolution 06-0098 to Short Elliott Hendrickson, Inc., (SEH) for professional engineering services for drainage evaluation, design and construction management of Denim Drive be amended to increase the amount by \$33,808.93 for a new total of \$75,808.93.

A total of \$61,808.93 is payable out of Special Assessment Fund 0410, Department 038, Object 5530.

A total of \$14,780.89 is payable out of Stormwater Fund 0535, Department 500, Object 5535, City Project 0500TR.

Resolution 06-0845 was unanimously adopted.

Approved December 18, 2006

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 the removal of bridge Nos. L8501 and 89451 and construction of bridge Nos. 69671 and 69672 located on Seven Bridges Road and Skyline Parkway over Amity Creek for the engineering division in accordance with specifications on its low specification bid of \$1,614,049.50, terms net 30, FOB job site, payable out of Fund 0411, Department/Agency 035, Object 5530; City Project Nos. 0159 TR and 0163 TR, S.P. 118-080-31 and S.P. 118-176-002; Bid No. 06-0732.

Resolution 06-0850 was unanimously adopted.

Approved December 18, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Resolution 03-0778 to LHB Engineers and Architects for the engineering services required for the replacement of Bridge No. 89451 over Amity Creek located on Skyline Parkway, be amended to increase the amount by \$52,584 for a new total of \$94,058, payable from the Permanent Improvement Fund 0411, Department/Agency 035, Object 5530, City Project 0163TR, S.P. 118-176-002.

Resolution 06-0852 was unanimously adopted.

Approved December 18, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Resolution 03-0779 to LHB Engineers and Architects for the engineering services required for the replacement of Bridge No. L8501 over Amity Creek located on Seven Bridges Road be amended to increase the amount by \$50,251 for a new total of \$90,930, payable from the Permanent Improvement Fund 0411, Department/Agency 035, Object 5530, City Project No. 0159TR, S.P. 118-080-31.

Resolution 06-0853 was unanimously adopted.

Approved December 18, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that MacQueen Equipment, Inc., be and hereby is awarded a contract for furnishing and delivering a 2007 Elgin Pelican Model SE street sweeper with related accessories and options for the public works department in accordance with its quote of \$141,954 plus sales tax of \$9,227.01, for a combined total of \$151,181.01, terms net 30, FOB destination, payable from the Stormwater Fund 535, Department/Agency 500, Organization 1905, Object 5580, Requisition No. 06-0761.

Resolution 06-0855 was unanimously adopted.

Approved December 18, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Boyer Trucks, Inc., be and hereby is awarded a contract for furnishing and delivering two 2007 Sterling sanding trucks with Caterpillar C13 engines for the fleet services division in accordance with its quote of \$171,412 plus sales tax of \$11,141.78 for a combined total of \$182,553.78, terms net 30, FOB destination, payable out of the Capital Equipment Fund 250, Department/Agency 015, Organization 2007, Object 5580, Project CE250-V712, Requisition 07-0039.

Resolution 06-0856 was unanimously adopted.

Approved December 18, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that Resolution 06-0430 awarding a contract to Letourneau and Sons, Inc., for the construction of the Carlton Street reconditioning project be amended to increase the amount by \$83,912.90 for a new total of \$337,000 payable out of Fund 0411, Department/Agency 035, Object 5530, S.P. 118-194-005 (MTB), City Project No. 0132TR.

Resolution 06-0861 was unanimously adopted.

Approved December 18, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STOVER:

RESOLVED, that the proper city officials are authorized to settle the claim by Stack Bros. Mechanical Contractors, Inc., and against city of Duluth, in the amount of \$28,109.50, and execute all documents required to implement such settlement, arising out of an action filed in the St. Louis County District Court and entitled *Stack Bros. Mechanical Contractors, Inc. v City of Duluth*, Court File No. 69DU-CV-06-1685, funds payable from City Project No. 03-0559-19553, subject to the following terms and conditions:

(a) Except as expressly provided in the settlement agreement as provided below, Stack Bros. Mechanical Contractors, Inc., waives any claim for additional compensation on City Project No. 03-0559-19553 and shall execute a dismissal of its claims against the City of Duluth; said dismissal shall be with prejudice;

(b) City of Duluth shall execute a dismissal of its counter-claim for liquidated damages against Stack Bros. Mechanical Contractors, Inc.; said dismissal shall be with prejudice;

(c) City of Duluth shall release the contract retainage on City Project No. 03-0559-19553; said amount is \$18,415.75;

(d) On City Project No. 03-0559-10553, city of Duluth shall pay the remaining balance of Change Order No. 3 in the amount of \$3,800; said funds to be paid from the project fund, Fund 540, Steam District No. 1;

(e) On City Project No. 03-0559-10553, city of Duluth shall process and pay Change Order No. 10 for costs associated with use of rock reamer in the amount of \$5,893.75; said funds to be paid from the project fund, Fund 540, Steam District No. 1;

(f) Each party shall be responsible for its own costs, disbursements and attorney fees. Resolution 06-0867 was unanimously adopted.

Approved December 18, 2006

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 5,650 gallons of yellow and white traffic marking paint for the maintenance operation division in accordance with its quote of \$32,319.50 plus sales tax of \$2,100.77, for a combined total of \$34,420.27, terms net 30, FOB destination, payable from General Fund 100, Department/Agency 500, Organization 1920-2570, Object 5226.

Resolution 06-0868 was unanimously adopted.

Approved December 18, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STAUBER:

RESOLVED, the proper city officers are hereby authorized to execute an agreement, on file in the office of the city clerk as Public Document No. 06-1218-15, with the Woodland Gardens Association, for the nonexclusive use of the recreation room of the Woodland Gardens Apartments, from January 1, 2007, through December 31, 2007, for the operation of the Duluth senior dining program.

Resolution 06-0834 was unanimously adopted.

Approved December 18, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STAUBER:

RESOLVED, that the proper city officers are hereby authorized to enter into an agreement, on file in the office of the city clerk as Public Document No. 06-1218-16, with the St. Louis County health and human services department for furnishing approximately 32,596 hot meals for eligible senior citizens and guests at two St. Louis County facilities located in Duluth from January 1, 2007, through December 31, 2007, for the Duluth senior dining program at a cost of \$5.01 per meal for eligible senior citizens, \$5.44 per meal for guests and an additional \$0.31 per meal for dining room management provided at Lincoln Park, or approximately \$168,212, payable out of Federal Program Fund 272, Agency 031, Project SN 2007 SD04, Object 5310.

Resolution 06-0835 was unanimously adopted.

Approved December 18, 2006

HERB W. BERGSON, Mayor

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BY COUNCILOR STAUBER:

RESOLVED, that the proper city officers are authorized and directed to execute a grant agreement amendment to Contract No. 20024, on file with the city clerk as Public Document No. 06-1218-17, between the city and the state of Minnesota department of natural resources, Lake Superior coastal program for land acquisition of Burlington Northern Railroad property on Grassy Point, extending the grant expiration date from December 29, 2006, to June 30, 2007.

Resolution 06-0846 was unanimously adopted.

Approved December 18, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, that the proper city officers are authorized and directed to execute a second grant agreement amendment to Contract No. 20025, on file with the city clerk as Public Document No. 06-1218-18, between the city and the state of Minnesota department of natural resources, remediation fund grant program for land acquisition of Burlington Northern Railroad property on Grassy Point, extending the grant expiration date from December 30, 2006, to June 30, 2007.

Resolution 06-0847 was unanimously adopted.

Approved December 18, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, that the proper city officials are authorized to accept a grant from SMDC corporate contributions in the amount of \$3,495.65 for the purchase of an automatic external defibrillator and supplies; funds to be deposited in Fund 100, Agency 400, Organization 1812, Revenue Source 4660.

Resolution 06-0857 was unanimously adopted.

Approved December 18, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

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. 06-1218-19, with the state of Minnesota, office of higher education, to allow the library to participate in the Minnesota Library Information Network (MnLink) as a Gateway server site with all sums received as a result thereof to be paid to Fund 100, Agency 300, Organization 1702, Revenue Source 4654.

Resolution 06-0862 was unanimously adopted.

Approved December 18, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

The city council of Duluth finds:

(a) Many years ago, the city of Duluth leased land to the U.S. department of defense (DoD) for the operation of a United States Air Force (USAF) base at the Duluth International Airport (DIAP); and

(b) In the early 1980's, the USAF ceased to operate an air base facility at DIAP and released portions of the previously leased premises to the city for operation by the Duluth airport authority (DAA); and

(c) Other portions of the leased premises, including the hanger 103 parcel, were retained by the DoD and provided for use to other federal and related agencies including the Minnesota Air National Guard; and

(d) The DAA desires to use the hanger 103 parcel to provide additional hanger and office space at the DIAP; and

(e) The hanger 103 parcel has been determined to be impacted by low level environmental contaminants which are subject to a long-term DoD clean-up program; and

(f) DoD is willing to amend the lease to exclude the hanger 103 parcel at this time if a responsible party will take upon itself any clean-up obligations in conformance with the requirements of MPCA; and

(g) DAA and DoD have each paid to have experts test the site for contamination; and

(h) The results of the two separate investigations indicate that the level of contamination existing on the hanger 103 parcel is within the amount allowed by MPCA and Minnesota department of health standards; and

(i) City has determined that it is of vital importance to the economic development of the aviation industry at the DIAP that the city take whatever steps are necessary to facilitate amendment of the lease to exclude the hanger 103 parcel at this time and return it to local control and use.

NOW, THEREFORE, BE IT RESOLVED, that the city of Duluth does hereby commit to accept future environmental response costs associated with the environmental conditions which existed prior to January 1, 2007, that are identified in the phase II environmental base line survey done in 2006 on the Hanger 103 parcel, which property is generally shown on that map on file in the office of the city clerk as Public Document No. 06-1218-20, subject to DoD amending the existing lease to release the hanger 103 parcel therefrom. The city reserves the right to pursue Minnesota Air National Guard, DoD or any other responsible party for environmental response costs if, in the future, new, previously unknown information provides evidence that significant environmental conditions existed on the Hanger 103 parcel prior to the Hanger 103 parcel being excluded from the DoD lease.

Resolution 06-0865 was unanimously adopted.

Approved December 18, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

The city council finds as follows:

(a) The regional public library systems in Minnesota have contributed to both improvements in library operation and efficiencies in providing services to the entire population of the state of Minnesota; and

(b) The state's contribution to regional library basic system support has not increased for more than a decade; and

(c) The funding for regional public library systems has increasingly fallen on local property tax dollars.

NOW, THEREFORE, BE IT RESOLVED, that the Duluth City Council hereby requests its legislative representatives and the governor to place a high priority on a substantial increase in the regional public library system basic support appropriation during the 2007 legislative session.

BE IT FURTHER RESOLVED, that the Duluth City Council hereby invites the league of Minnesota cities to join the Minnesota library association in lobbying the legislature for this increase during the 2007 legislative session.

BE IT FURTHER RESOLVED, that the clerk shall mail a copy of this resolution to the members of the northeastern Minnesota legislative delegation, the director of the Minnesota League of Cities and Governor Pawlenty.

Resolution 06-0872 was unanimously adopted.

Approved December 18, 2006

HERB W. BERGSON, Mayor

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The following resolutions were also considered:

Resolution 06-0875, by Councilor Stewart, confirming assessment roll levied to defray the assessable portion of 3400 Drive Trinity Road sanitary sewer and watermain extension, was introduced for discussion.

Councilor Stewart move to table the resolution for further information, which motion was seconded and unanimously carried.

- - -

At this time, 7:40 p.m., Councilor Stewart left his seat.

- - -

BY COUNCILOR KRAUSE:

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 and the application for an on sale dancing license for the period ending August 31, 2007, subject to departmental approvals, the payment of sales and property taxes and further subject to documentation of each employee hired by Norshor Experience, Inc.:

Norshor Experience, Inc. (Norshor Experience), 211 East Superior Street, with James Gradishar, 100 percent stockholder, transferred from Black River Mills, Inc. (Norshor Theatre), same address.

Resolution 06-0854 was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Little, Ness, Stauber, Stover and President Reinert -- 7

Nays: Councilor Krause -- 1

Absent: Councilor Stewart -- 1

Approved December 18, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

RESOLVED, that the proper city officials are hereby authorized to execute the amended Exhibit A and Exhibit F to service agreement with Blue Cross and Blue Shield of Minnesota, substantially in the form of that on file in the office of the city clerk as Public Document No. 06-1218-21, to provide administrative services, stop loss insurance and care support program to the city's group health insurance plans effective January 1, 2006; payable from the group health fund.

Resolution 06-0859 was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Little, Ness, Stauber, Stover and President Reinert -- 7

Nays: None -- 0

Abstention: Councilor Krause -- 1

Absent: Councilor Stewart -- 1

Approved December 18, 2006

HERB W. BERGSON, Mayor

- - -

At this time, 7:45 p.m., Councilor Stewart took his seat.

- - -

BY COUNCILOR KRAUSE:

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 2007 for an administrative fee of \$27.85 per single employee or per family per month and a fee for stop loss coverage of \$11.88 per single employee per month and \$31.73 per family per month, for an estimated cost of \$1,108,733, and under which that company will provide a Blue Print for Health-Care Support program for an estimated cost of \$173,600, for a total estimated cost of \$1,282,333, which all shall be paid from the group health fund.

Resolution 06-0860 was adopted upon the following vote:

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

Nays: None -- 0

Abstention: Councilor Krause -- 1

Approved December 18, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR KRAUSE:

The city council finds that:

(a) It is in the best interests of Duluth that its government be organized so as to most effectively provide services; and

(b) There are successful forms of government recommended by the League of Minnesota Cities; and

(c) A municipal election will be held in less than a year, and that event can be an opportunity for public consideration of a change in the form of government; and

(d) The Duluth Charter commission is charged, under Minnesota Laws, Chapter 410, with responsibility of studying and recommending changes in the Charter.

NOW, THEREFORE, BE IT RESOLVED, that the city council commends the Duluth Charter commission for its creation of a committee to review potential opportunities for Duluth's form of municipal government.

BE IT FURTHER RESOLVED that the city council requests the Charter commission to prepare a report for presentation to the council, including any recommendations for change that the commission may wish to make.

Resolution 06-0874 was unanimously adopted.

Approved December 18, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0837, by Councilor Gilbert, approving the 2007 action plan portion of the 2005-2009 consolidated plan and authorizing a request for HUD federal community development block grant (CDBG), home program and emergency shelter grant (ESG) program funds, was introduced for discussion.

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

Jeff Anderson thanked the council for their past support of the community development committee's (CDC) recommendations and reviewed that public services are capped at 15 percent of the CDBG funding which makes for difficult decisions, but stated that the committee has come up with sensible recommendations for funding. He went on to say that the committee does support the creation of a youth collaborative which falls into the public service category as a way to sustain organizations and programs for years to come. To Councilor Gilbert's questioning on funding for youth development programs, Keith Hamre, community development division manager, replied that the five agencies that are part of the youth collaborative proposal would receive about \$800 less than they received last year, and Neighborhood Youth Services is now under the administration category and they will receive a grant that is more than last year.

Councilor Stewart voiced concern that the recommendations do nothing to change the economic balance in the Lincoln Park and Hillside neighborhoods which are dominated by rental properties. He expressed disappointment that there is no funding for first time home buyer programs which would help stabilize the neighborhoods by changing the ratio of home ownership to rental properties.

Councilor Krause stated that the residents of Lincoln Park are frustrated that Northern Communities Land Trust buys up nonconforming lots and squeezes houses onto them, which creates a higher density in a poverty area. He continued by saying that since the council is voting on these recommendations as a package, he cannot support the resolution.

Councilor Stauber commended the CDC for doing a good job, but voiced concern that by creating a collaborative, it adds another bureaucratic level that takes another \$18 for every \$100 that is given to the city.

Resolution 06-0837 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, 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 2007 action plan portion of the FY 2005-2009 city of Duluth consolidated plan for housing and community development required by HUD federal legislation is hereby adopted and approved.

BE IT FURTHER RESOLVED, that the city of Duluth hereby makes a finding that expenditures as set forth in Resolution 06-0838 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 06-0839 and 06-0840 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

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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 06-0837 was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Little, Ness, Stauber, Stover and President Reinert -- 7

Nays: Councilors Krause and Stewart -- 2

Approved December 18, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

WHEREAS, City Council Resolution No. 06-0837, adopted December 18, 2006, approved the FY 2007 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

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:

2007 CITY OF DULUTH COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM-FUND 262 PROJECT CD07CD			
SUB PROJECT	ACTIVITY	AMOUNT	PROJECTS
HOUSING PROJECTS			
HOUS	1291	\$ 47,800	HOPE VI individual dev. account - Community Action Duluth
HOUS	1734	\$1,050,000	Duluth property rehabilitation program - HRA and/or NCLT
HOUS	1091	\$ 242,000	Duluth weatherization program - AEOA
ECONOMIC DEVELOPMENT PROJECT			
ECDV	1244	\$ 40,000	Lifecyclers, LLC
PUBLIC FACILITY IMPROVEMENT PROJECTS			
PFAC	PF01	\$ 154,900	Central Hillside accessibility - Phase IIV
PFAC	PF02	\$ 123,000	Parking lot accessibility - Damiano Center
PFAC	PF03	\$ 150,000	American Indian Center - AICHO

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

2007 CITY OF DULUTH COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM-FUND 262 PROJECT CD07CD			
SUB PROJECT	ACTIVITY	AMOUNT	PROJECTS
PFAC	PF04	\$ 180,000	Harbor Highlands homeowner infrastructure - TCG Harbor Homes, LLC
PFAC	PF05	\$ 46,825	Harrison Community Center parking
		\$ 73,359	Construction contingency
PUBLIC SERVICE PROJECTS			
PSVC	1244	\$ 72,000	Duluth hunger project - CHUM
PSVC	1929	\$ 65,000	Primary health care services - Lake Superior Community Health Center
PSVC	1348	\$ 20,000	Clothes That Work and social services - Damiano Center
PSVC	2511	\$ 35,000	Emergency heating assistance - Salvation Army
PSVC	1735	\$ 33,200	Landlord/tenant counseling - Housing Access Center
PSVC	1974	\$ 25,000	Youth Center - Life House
PSVC	2509	\$ 25,000	Battered women's shelter program - Safe Haven Shelter and/or AICHO
PSVC	251A	\$ 47,500	Transitional housing program - Salvation Army and/or WCDO
PSVC	1168	\$ 93,800	Youth development: Valley Youth Center, Grant Community School Collaborative, Boys & Girls Club, YMCA Mentor Duluth Collaborative, and/or YWCA girls & youth programs
PSVC	2412	\$ 20,000	Career development - Project SOAR
PLANNING/PROGRAM ADMINISTRATION			
ADMC	AD01	\$ 467,840	Program administration
ADMC	AD02	\$ 70,000	Neighborhood planning
ADMC	ADO3	\$ 33,000	Youth apprenticeship program - NYS
		\$3,114,324	Total

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

SOURCE OF FUNDING		
Year 2007	CDBG Grant - city	\$2,898,000
Year 2001	CDBG Grant - city	\$ 1,501
Year 2002	CDBG Grant - city	\$ 23,124

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

SOURCE OF FUNDING		
Year 2003	CDBG Grant - city	\$ 5,142
Year 2004	CDBG Grant - city	\$ 39,831
Year 2005	CDBG Grant - city	\$ 146,726
Total		\$3,114,324

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

		Original budget	Amount of change	Revised budget
2001 CD01CD				
PFAC-PFO9	Harrison Cmty Ctr improv	\$ 81,518	-\$ 1,501	\$ 80,017
2002 CD02CD				
Bal.Sh.2220	Grant Rec Ctr improv	\$ 23,002	-\$ 23,002	-0-
AD03	Harrison Cmty Ctr improv	\$ 95,000	-\$ 122	\$ 94,878
2003				
PFAC-PF07	Accessible parking improv	\$ 71,100	-\$ 5,142	\$ 65,958
2004				
PFAC-PF01	Acquisition and demolition	\$ 8,000	-\$ 4,941	\$ 3,059
PFAC-PF02	Damiano Ctr restroom renov	\$100,000	-\$ 9,120	\$ 90,880
PFAC-PF05	Morgan Park streets-Ph. I	\$150,000	-\$ 20,000	\$130,000
ECDV-1346	Opportunities Cooking	\$ 46,000	-\$ 3,066	\$ 42,934
ECDV-2264	NE Entrepreneur Fund	\$ 75,000	-\$ 416	\$ 74,584
HOUS-2239	NHS Affordable Housing Svcs	\$ 86,900	-\$ 1,250	\$ 85,650
Bal.Sh.2031	Life House	\$ 23,700	-\$ 1,038	\$ 22,662
2005				
PFAC-PF08	Morgan Park streets-Ph. II	\$ 88,000	-\$ 2,180	\$ 85,820
PSVC-1050	AICHO-transitional housing	\$ 4,740	-\$ 2,314	\$ 2,426
ECDV-1346	Opportunities Cooking	\$ 49,000	-\$ 711	\$ 48,289
ECDV-2804	Women in Construction	\$ 46,000	-\$ 500	\$ 45,500
PSVC-2755	Valley Youth Program	\$ 22,700	-\$ 218	\$ 22,700
Bal.Sh.2220	Lien repayments	\$140,803	-\$140,803	-0-
		\$216,324 - Total amount reprogrammed		

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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

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

Resolution 06-0838 was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Little, Ness, Stauber, Stover and President Reinert -- 7

Nays: Councilors Krause and Stewart -- 2

Approved December 18, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

WHEREAS, City Council Resolution No. 06-0837, adopted December 18, 2006, approved the FY 2007 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

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:

2007 HOME PROGRAM - FUND 260, PROJECT CD07HM			
SUB PROJECT	ACTIVITY	PROJECTS	AMOUNT
GN07	1734	Substantial housing rehab - HRA and/or NCLT	\$170,000
GN07	2271	City home decon/recon - NCLT	\$250,000
GN07	1735	Homeowner property rehab - HRA and/or NCLT	\$100,000
GN07	1736	Homeless rental asst. Program (TBRA)- HRA	\$ 68,000
GNO7	1737	TBRA administration - HRA	\$ 6,000
GN07	AD01	Program administration	\$ 76,000
CH07	2270	City Homes-Phase VII pre-development - NCLT	\$ 20,000
CH07	1050	Supportive housing - AICHO	\$ 75,000
CH07	1226	Memorial Park Apts. - CCHC	\$100,000
CH07	2805	Pre-development - WCDO	\$ 18,000
CH07	2806	Permanent rental housing - WCDO	\$ 56,768
Total			\$939,768

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

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

Year 2007	HOME grant	\$764,000
Year 2004	HOME grant	\$ 23,675
Year 2005	Program income	\$152,093
Total		\$939,768

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

		Original budget	Amount of change	Revised budget
2004 CD04HM				
CH04-2804	WCDO-pre-development	\$ 9,000	-\$ 675	\$ 8,325
CH04-2239	NHS Fourth Street project	\$ 23,000	-\$ 23,000	-0-
Bal. Sh. 2220	Lien repayments	\$152,093	-\$152,093	-0-
\$175,768 - Total amount reprogrammed				

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

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

Resolution 06-0839 was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Little, Ness, Stauber, Stover and President Reinert -- 7

Nays: Councilors Little and Stewart -- 2

Approved December 18, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR GILBERT:

WHEREAS, City Council Resolution No. 06-0840, adopted December 18, 2006, approved the FY 2007 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

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:

2007 ESG PROGRAM - FUND 262, PROJECT CD07ES		
SUB PROJECT	PROJECTS	AMOUNT
1244	CHUM Stabilization Services for Homeless	\$ 26,000
2509	Battered Women's Shelter Programs-Safe Haven and/or /AICHO	\$ 23,500
1974	Life House, Harbor House	\$ 15,000
2109	Minnesota Assist. Council for Veterans - Duluth	\$ 17,000
2511	Transitional Housing-Salvation Army and/or WCDO	\$ 42,500
	Total	\$124,000

BE IT FURTHER RESOLVED, that the following is hereby designated as the financial resource for the above program: Source of funding - 2007 ESGP grant - \$124,000.

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

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

Resolution 06-0840 was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Krause, Little, Ness, Stauber, Stover and President Reinert -- 8

Nays: Councilor Stewart -- 1

Approved December 18, 2006

HERB W. BERGSON, Mayor

- - -

Resolution 06-0877, by Councilor Ness, amending resolutions 06-0613, 06-0614, 06-0616, 06-0617 and directing recalculation of utility rates, setting a date for implementation, was introduced for discussion.

Councilor Ness removed the resolution from the agenda.

- - -

Resolution 06-0878, by Councilor Ness, setting legislative priorities for the year 2007 and 2008, was introduced for discussion.

Councilor Stewart moved to divide the resolution into ten resolutions so that each priority could be voted on separately, which motion was seconded and failed upon the following vote:

Yeas: Councilors Krause and Stewart -- 2

Nays: Councilors Gilbert, Johnson, Little, Ness, Stauber, Stover and President Reinert -- 7

Councilor Stewart moved to remove from Page 1 of the resolution:

(a) Priority (b) - Duluth Entertainment Convention Center improvements;

(b) Priority (c) - a .75 percent city food and beverage tax increase,

which motion failed for lack of a second.

Councilor Stewart moved to remove from Page 2 of the resolution:

(a) Priority (a) - increased funding for the local government aid formula;

- (b) Priority (b) - enactment of the Housing Solutions Act;
- (c) Priority (c) - funding requests to plan for the restoration of passenger rail service;
- (d) Priority (d) - enactment of the historic preservation tax credit.

Councilor Stauber offered a friendly amendment to remove Priority (a) from the amendment, which was accepted.

Councilor Stewart withdrew the amendment.

Councilor Stewart moved to amend the resolution by deleting Priority (b) on Page 2, which motion was seconded and carried upon the following vote:

Yeas: Councilors Krause, Little, Stauber, Stewart and President Reinert -- 5

Nays: Councilors Gilbert, Johnson, Ness and Stover -- 4

Councilor Stewart moved to amend the resolution by deleting Priority (c) on Page 1, was motion was seconded and failed upon the following vote:

Yeas: Councilors Little, Stauber and Stewart -- 3

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

Councilor Stewart moved to amend the resolution by deleting Priority (d) on Page 2, was motion was seconded and failed upon the following vote:

Yeas: Councilors Little, Stauber and Stewart -- 3

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

- - -

At this time, 8:45 p.m., Councilor Johnson left her seat.

- - -

Resolution 06-0878, as amended, was adopted as follows:

BY COUNCILOR NESS:

The city council finds as follows:

(a) The city administration and council wish to establish a clear set of priorities with respect to legislative initiatives which the city supports in the 2007 legislative session; and

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

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

NOW, THEREFORE, BE IT RESOLVED, that the city staff and elected officials will take the lead role in advancing the following legislative priorities for the 2007 legislative session:

(a) Seek statutory authorization for the city of Duluth to establish an irrevocable account to invest funds and generate investment earnings sufficient to meet post-retirement health insurance benefit obligations and a revocable account to invest funds and generate investment earnings sufficient to meet other city obligations from which city funds had been redirected to establish the irrevocable account. The Duluth-specific legislative proposal will establish the authority to create such accounts through the state board of investment. The city also supports initiatives which would grant this irrevocable account authority more broadly to local units of government;

(b) The city requests an allocation of state bond proceeds in the amount of \$37,931,000 for improvements to the Duluth Entertainment Convention Center including construction of a new arena facility. The bonding allocation will be matched by local funds generated by a .75 percent city food and beverage tax;

(c) The city seeks enactment of the .75 percent city food and beverage tax increase with revenues committed to making principal and interest payments on city bonds issued for construction of the improvements to the Duluth Entertainment Convention Center;

(d) The city seeks the repeal of statutory requirements relating to lease terms for Northwest Airline's lease of the Duluth aircraft maintenance facility. The repeal of those provisions, which relate to the maintenance of the lessee's corporate headquarters in Minnesota and of a workforce of at least 350 employees, will facilitate the search for a new tenant should NWA reject the current lease.

FURTHER RESOLVED, that the city will support the following legislative initiatives in the 2007 legislative session:

- (a) Support increased funding for the local government aid formula;
- (b) Support state funding requests to plan for the restoration of passenger rail service between Duluth and the Twin Cities;
- (c) Support enactment of the historic preservation tax credit to provide financial incentives to restore historic buildings for commercial or housing purposes.

The city council further finds as follows:

- (a) The city administration and council wish to provide guidance regarding legislative initiatives which may be considered during the 2008 legislative session; and
- (b) The city administration and council have had preliminary discussions on certain capital investment project priorities.

NOW, THEREFORE, BE IT RESOLVED, that the city staff and elected officials prepare language and seek the introduction of the following legislative proposals during the 2007 session - for consideration by the legislature during the 2008 legislative session:

- (a) The city seeks draft legislation seeking state bond proceeds for the construction of wastewater containment facilities in order to ensure that the city remains in compliance with federal environmental protection agency requirements with respect to nondischarge of wastewater into Lake Superior;
- (b) The city seeks draft language seeking state bond proceeds for improvements to Slip #2 on the Duluth Bayfront to provide docking facilities for passenger cruise line service which has been dislocated due to federal homeland security requirements.

Resolution 06-0878, as amended, was unanimously adopted.

Approved December 18, 2006

HERB W. BERGSON, Mayor

- - -

At this time, 8:48 p.m., Councilor Johnson took her seat.

- - -

BY PRESIDENT REINERT AND COUNCILOR NESS:

The city council finds:

- (a) The city of Duluth has had an ongoing concern for securing a sustainable environment for its citizens; and
- (b) The city participated in the international council for local environmental initiatives, cities for climate protect initiative in 2001, adopted sustainable city resolutions, and is currently in a program to reduce the rate of carbon emissions at its steam plant; and
- (c) These, and other actions to secure a safe and sustainable environment for our community have benefitted from the work of the city energy manager.

NOW, THEREFORE, BE IT RESOLVED, that the city council requests that the mayor and his administration take actions that are necessary to continue into the future the role and function of the city's energy manager, and continue that function as a component of the city's workforce organization.

Resolution 06-0864 was unanimously adopted.

Approved December 18, 2006  
HERB W. BERGSON, Mayor

- - -

Resolution 06-0851, by Councilor Stover, amending Resolution 04-0542 authorizing the proper city officials to enter into a joint contract with the Minnesota department of transportation [Mn/DOT], St. Louis County, the city of Duluth and Short Elliott Hendrickson, Inc., for detail design engineering services relating to the reconstruction of Trunk Highway 53 (Miller Trunk Highway) and adjacent frontage roads, county roads and city streets, at an estimated cost to the city of \$336,982.15 to increase the amount by \$73,361.71 for a new total of \$410,343.96, was introduced for discussion.

Councilor Krause voiced concern that with the project as proposed, Mn/DOT is taking away a homeowner's driveway on Maple Grove Road, which is the primary entrance to their house. He stated that it is not a responsible project to take and extend Joshua Avenue into a residential neighborhood.

Resolution 06-0851 was adopted as follows:

BY COUNCILOR STOVER:

RESOLVED, that Resolution 04-0542 to Short Elliott Hendrickson, Inc., for the engineering services required for the Trunk Highway 53 (Miller Trunk Highway) project, be amended to increase the amount by \$73,361.81 for a new total of \$410,343.96, payable from the Public Improvement Fund 0411, Department/Agency 035, Object 5530, City Project No. 0391-TR, S.P. 6915-129, and would be reimbursed by the city's municipal state aid construction account.

Resolution 06-0851 was adopted upon the following vote:

Yeas: Councilors Gilbert, Johnson, Little, Stauber, Stewart, Stover and President Reinert -- 7

Nays: Councilors Krause and Ness -- 2

Approved December 18, 2006  
HERB W. BERGSON, Mayor

- - -

Resolution 06-0858, by Councilor Stover, supporting safe climate act, was introduced for discussion.

Councilor Little explained that he cannot support the resolution as written because it states that the council knows a lot of scientific facts regarding global warming when in fact the council does not know the facts.

Resolution 06-0858 was adopted as follows:

BY COUNCILOR STOVER:

The city council finds:

- (a) Science has concluded that we face the risk of irreversible and devastating global warming if global average temperature increases by more than 3.6°F; and
- (b) Global average temperature is directly related to the amount of greenhouse gasses, especially carbon dioxide, emitted into the atmosphere; and
- (c) The Safe Climate Act (H.R. 5642) seeks to protect the earth by regulating and decreasing the amount of greenhouse gas emissions.

NOW, THEREFORE, BE IT RESOLVED, that the city of Duluth endorses the Safe Climate Act (H.R. 5642) and recommends to congress that it be passed and implemented.

BE IT FURTHER RESOLVED, that the city clerk is directed to send a copy of this resolution to Minnesota's two senators, Congressman Oberstar and the other congressmen from Minnesota.

Resolution 06-0858 was adopted upon the following vote:

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

Nays: Councilor Little -- 1

Approved December 18, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, that the proper city officers are authorized to enter into an agreement for five years with Duluth economic development authority, Lake Superior Center authority and Secret Service Entertainment providing for the production, promotion and management of special events at Bayfront Festival Park, said agreement to be substantially in the form of Public Document No. 06-1218-22 on file in the office of the city clerk, and providing for the payment of \$48,500 per year; payments to be made from the Special Projects and Events Account 0100-700-1410.

Resolution 06-0822 was adopted upon the following vote:

Yeas: Councilors Johnson, Krause, Ness, Stauber, Stewart, Stover and President Reinert -- 7

Nays: Councilor Little -- 1

Abstention: Councilor Gilbert -- 1

Approved December 18, 2006

HERB W. BERGSON, Mayor

- - -

BY COUNCILOR STAUBER:

RESOLVED, the proper city officers are hereby authorized and directed to execute an agreement, on file in the office of the city clerk as Public Document No. 06-1218-23, with the Holy Cross Lutheran Church of Duluth Heights, for the nonexclusive use of the basement of the Holy Cross Lutheran Church of Duluth Heights, from January 1, 2007, through December 31, 2007, for the operation of the Duluth senior dining program at a cost of \$7,632, payable at \$636 per month. All funds expended by the city pursuant to this agreement shall be drawn upon Fund 272, Agency 031, Project SN 2007 SD04/SD05, Object 5412.

Resolution 06-0833 was adopted upon the following vote:

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

Nays: None -- 0

Abstention: Councilor Krause -- 1

Approved December 18, 2006

HERB W. BERGSON, Mayor

- - -

## INTRODUCTION AND CONSIDERATION OF ORDINANCES

### ORDINANCE TABLED

BY COUNCILOR GILBERT

06-052 - AN ORDINANCE TO RENAME MIDDLE ROAD WEST OF HOWARD GNESEN ROAD AND MIDDLE LANE IN THE PLAT OF CEDAR RIDGE ESTATES AS GREENBRIAR LANE (LORAAS, ET AL.).

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

Councilor Little reviewed that the petitioners of the name change are requesting the name change to make it easier to locate the lots in Cedar Ridge Estates, however, it is not good policy to change street names at will and there has been no one at the council meetings to present this request to the council.

Councilor Gilbert moved passage of the ordinance and the same failed upon the following vote (Public Document No. 06-1218-25):

Yeas: Councilors Gilbert, Ness, Stewart and President Reinert -- 4

Nays: Councilors Johnson, Krause, Little, Stauber and Stover -- 5

- - -

The following entitled ordinance was read for the first time:

BY COUNCILOR STEWART

06-059 - AN ORDINANCE AMENDING SECTIONS 2-16 AND 31-6 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO FEES AND CHARGES.

- - -

The following entitled ordinances were read for the second time:

BY COUNCILOR STEWART

06-054 (9810) - AN ORDINANCE SETTING THE BUDGET FOR THE FISCAL YEAR 2007 APPROPRIATION MONIES FOR THE SUPPORT OF THE CITY GOVERNMENT, PUBLIC UTILITIES, AND PUBLIC ENTERPRISE FUNDS AND FOR OTHER PURPOSES.

Councilor Stauber moved to amend the ordinance, under Fund 700 - transfers and other functions, to remove the \$100,000 Indian Point Campground improvements for 2007 (07-100-002) as well as monies allocated for 2006 (06-100-004) and use those amounts for the Minnesota Slip pedestrian bridge improvement in Canal Park, which motion was seconded for discussion.

Councilor Ness cautioned that the councilors should not get involved with capital improvement projects this late in the budget process.

Councilor Stauber's amendment was approved upon the following vote:

Yeas: Councilors Gilbert, Johnson, Krause, Little, Stauber, Stewart, Stover and President Reinert -- 8

Nays: Councilor Ness -- 1

Councilor Stauber moved to amend the ordinance, under the street improvement program, to eliminate \$600,000 for street preservation and add that amount to the Norwood Street project, which motion was seconded for discussion.

Councilor Stewart stated that while maintaining new streets is important, the funding source for this should come from the general fund instead of the community investment trust fund that is being treated as a slush fund.

Councilor Stauber's amendment failed upon the following vote:

Yeas: Councilors Little, Stauber and Stewart -- 3

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

Councilor Stauber moved to amend the ordinance by inserting the following language after the phase "Section 10.":

"Any amendments to the capital improvement plan, including capital improvements and capital equipment for 2007 as presented to the council on November 9, 2006, capital

improvement budget and five year plan 2007 - 2011, using bonding, current revenue or community investment trust monies will require council approval after public hearing.

Section 11.,”

which motion was seconded and unanimously carried.

Councilor Ness moved to amend the ordinance, under Fund 700 - transfers and other functions, replacing “\$16,753,200” with “\$16,153,200,” which would reduce the tax levy by \$600,000, which motion was seconded for discussion.

Councilor Stewart credited Councilor Ness for taking a leadership role in the issue of retiree healthcare, but stated that the liability exists no matter what the outcome of the union labor contract negotiations are and that both sides will work hard to settle on contracts.

Councilor Ness’ amendment failed upon the following vote:

Yeas: Councilors Little and Ness -- 2

Nays: Councilors Gilbert, Johnson, Krause, Stauber, Stewart, Stover and President Reinert -- 7

Councilor Stauber stated that there are too many things that the city should not be funding when the city is short on essential services.

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

Yeas: Councilors Gilbert, Johnson, Stewart, Stover and President Reinert -- 5

Nays: Councilors Krause, Little, Ness and Stauber -- 4

*[EDITOR’S NOTE: Pursuant to Section 12 of the Duluth City Charter, the Fund 700 - transfers and other functions, section of the ordinance was line item vetoed by Mayor Bergson, reducing the amount by \$600,000.]*

- - -

BY COUNCILOR STEWART

06-055 (9811) - AN ORDINANCE DETERMINING THE SUM TO BE RAISED BY TAXATION FOR GENERAL PURPOSES FOR THE YEAR 2007.

Councilor Krause stated he could not support the ordinance as the increase needs to match the income of the residents and if the city’s rate increase is bigger than the consumer price index, the city is making them go backwards.

Councilor Stauber reviewed that local government aid is going up this year, the city’s return on investments has increased, the sales and tourism taxes are well over the rate of inflation and with a lot of money coming into the city there is no need to add an additional 15 percent to property taxes. He added that the money is enough to pay for services and retiree healthcare.

Councilor Ness explained that it is important for the council to take on the responsibility of recognizing the cost of operations of the city and to have the revenue necessary for those operations. He added that, by approving this ordinance, the council is making a significant policy decision with this budget and levy by asking property owners to contribute to city government, which has not been done in the past.

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

Yeas: Councilors Gilbert, Johnson, Stewart, Stover and President Reinert -- 5

Nays: Councilors Krause, Little, Ness and Stauber -- 4

*[EDITOR’S NOTE: Pursuant to Section 12 of the Duluth City Charter, sections 1 and 2 of the ordinance were line item vetoed by Mayor Bergson, reducing the total levy in each section by \$600,000.]*

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BY COUNCILOR STEWART

06-056 (9812) - AN ORDINANCE DETERMINING THE SUM TO BE RAISED BY TAXATION FOR THE SPECIAL TAXING DISTRICT, DULUTH TRANSIT AUTHORITY, FOR THE YEAR 2007.

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

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BY COUNCILOR STEWART

06-057 (9813) - AN ORDINANCE DETERMINING THE SUM TO BE RAISED BY TAXATION FOR THE SPECIAL TAXING DISTRICT, DULUTH SEAWAY PORT AUTHORITY, FOR THE YEAR 2007.

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

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

Nays: Councilor Krause -- 1

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President Reinert opened the floor for nominations for 2007 president and vice president. Councilor Stewart nominated Councilor Reinert for president and Councilor Little for vice president.

Councilor Gilbert nominated Councilor Stover for president and Councilor Johnson for vice president.

Councilor Krause nominated himself for vice president.

President Reinert closed nominations.

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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. 9810**

BY COUNCILOR STEWART:

AN ORDINANCE SETTING THE BUDGET FOR THE FISCAL YEAR  
2007 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, 2007, 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 \$3,942,400 from the gas and steam public utility funds to the general fund for administrative services; comprised of \$3,852,400 or seven percent of the gross revenues of the gas utility fund to the general fund; and \$90,000 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 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 2007.

<b>010 - LEGISLATIVE AND EXECUTIVE</b>		
1101	City council - total	\$ 148,500
1102	Mayor's office - total	262,400
1103	Administrative assistant	386,700

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

<b>010 - LEGISLATIVE AND EXECUTIVE</b>		
1104	Attorney's office - total	1,370,800
1105	Human rights office - total	153,000
	Total legislative and executive	\$2,321,400

<b>015 - ADMINISTRATIVE SERVICES</b>		
1510	Human resources - total	\$ 655,900
1512	City clerk - total	546,200
1514	Management information systems - total	1,540,300
1515	Facilities management - total	4,580,300
1516	Architect's office	209,500
	Total administrative services	\$7,532,200

<b>020 - PLANNING AND DEVELOPMENT DEPARTMENT</b>		
	Urban development - total	\$590,400
	Total planning department	\$590,400

<b>030 - FINANCE</b>		
1321	Finance administration - total	\$318,400
1322	City assessor's office - total	803,000
1324	City auditor's office - total	1,133,800
1325	Purchasing office - total	235,000
1327	City treasurer's office - total	393,800
	Total finance and records	\$2,884,000

<b>100 - FIRE DEPARTMENT</b>		
1501	Fire administration - total	\$444,700
1502	Firefighting operations - total	13,848,700
1503	Fire prevention and training - total	392,600
1504	Building safety - total	1,857,800

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

<b>100 - FIRE DEPARTMENT</b>		
	Total fire department	\$16,543,800

<b>200 - POLICE DEPARTMENT</b>		
1610	Police administration - total	\$2,053,600
1620	Police patrol division - total	10,973,200
1630	Police investigation - total	3,082,000
	Total police department	\$16,108,800

<b>300 - LIBRARY</b>		
1702	Library services - total	\$3,912,100
1703	Buildings and equipment - total	247,800
	Total library	\$4,159,900

<b>400 - PARKS AND RECREATION</b>		
1812	Recreation and senior services - total	\$1,566,300
1814	Zoo - total	1,088,300
	Total parks and recreation	\$2,654,600

<b>500 - PUBLIC WORKS</b>		
1900	Director's office - total	\$45,400
1920	Maintenance - total	7,175,700
1930	Transportation engineering services - total	2,369,300
	Total public works	\$9,590,400

<b>700 - TRANSFERS AND OTHER FUNCTIONS</b>		
	Total transfers and other functions	\$16,153,200

<b>PUBLIC ENTERPRISE</b>		
503	Golf fund - total	\$2,206,700

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2006

PUBLIC UTILITIES		
510	Water fund - total	\$15,057,400
520	Gas fund - total	57,172,800
530	Sewer fund - total	19,875,700
535	Stormwater fund - total	4,210,600
540	Steam fund - total	4,950,600

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. Any amendments to the capital improvement plan, including capital improvements and capital equipment for 2007 as presented to the council on November 9, 2006, capital improvement budget and five year plan 2007 - 2011, using bonding, current revenue or community investment trust monies will require council approval after public hearing.

Section 11. That this ordinance shall take effect January 1, 2007. (Effective date: January 1, 2007)

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

Yeas: Councilors Gilbert, Johnson, Stewart, Stover and President Reinert -- 5

Nays: Councilors Krause, Little, Ness and Stauber -- 4

ATTEST:  
JEFFREY J. COX, City Clerk

Passed December 18, 2006  
Approved December 28, 2006  
HERB W. BERGSON, Mayor

*[EDITOR'S NOTE: Pursuant to Section 12 of the Duluth City Charter, the Fund 700 - transfers and other functions, section of the ordinance was line item vetoed by Mayor Bergson, reducing the amount by \$600,000.]*

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**ORDINANCE NO. 9811**

BY COUNCILOR STEWART:

AN ORDINANCE DETERMINING THE SUM TO BE RAISED BY  
TAXATION FOR GENERAL PURPOSES FOR THE YEAR 2007.

The city of Duluth does ordain:

Section 1. The sum to be raised by taxation for the year 2007 for general operations is hereby determined to be the sum of \$12,208,400 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 \$7,186,300.

Section 3. For the pay of debt, there will be levied for the general obligation debt fund the sum of \$4,342,200.

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 \$522,100.

Section 6. That this ordinance shall take effect January 1, 2007.

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

Yeas: Councilors Gilbert, Johnson, Stewart, Stover and President Reinert -- 5

Nays: Councilors Krause, Little, Ness and Stauber -- 4

Passed December 18, 2006

Approved December 28, 2006

ATTEST:

JEFFREY J. COX, City Clerk

HERB W. BERGSON, Mayor

*[EDITOR'S NOTE: Pursuant to Section 12 of the Duluth City Charter, sections 1 and 2 of the ordinance were line item vetoed by Mayor Bergson, reducing the total levy in each section by \$600,000.]*

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**ORDINANCE NO. 9812**

BY COUNCILOR STEWART:

AN ORDINANCE DETERMINING THE SUM TO BE RAISED BY  
TAXATION FOR THE SPECIAL TAXING DISTRICT, DULUTH  
TRANSIT AUTHORITY, FOR THE YEAR 2007.

The city of Duluth does ordain:

Section 1. The sum to be raised by taxation for the year 2007 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, 2007.

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

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

Nays: None -- 0

ATTEST:  
JEFFREY J. COX, City Clerk

Passed December 18, 2006  
Approved December 18, 2006  
HERB W. BERGSON, Mayor

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**ORDINANCE NO. 9813**

BY COUNCILOR STEWART:

AN ORDINANCE DETERMINING THE SUM TO BE RAISED BY  
TAXATION FOR THE SPECIAL TAXING DISTRICT, DULUTH  
SEAWAY PORT AUTHORITY, FOR THE YEAR 2007.

The city of Duluth does ordain:

Section 1. The sum to be raised by taxation for the year 2007 for Duluth Seaway Port authority taxing district's operations is hereby determined to be the sum of \$932,200 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 Duluth Seaway Port authority special taxing district the sum of \$932,200.

Section 3. That this ordinance shall take effect January 1, 2007. (Effective date: January 1, 2007)

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

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

Nays: Councilor Krause -- 1

ATTEST:  
JEFFREY J. COX, City Clerk

Passed December 18, 2006  
Approved December 18, 2006  
HERB W. BERGSON, Mayor

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