

# PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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## OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Tuesday, May 29, 2012, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Boyle, Fosle, Gardner, Julsrud, Krause, Krug, Larson, Stauber and President Hartman -- 9

Absent: None -- 0

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## PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

12-0529-01 The following communications regarding the proposed ordinance concerning rental licensing (12-032-O): (a) Courtney Cochran; (b) John Devich; (c) Robert Evans; (d) Michael Hoffman; (e) Katie Krikorian; (f) Cheryl Lemien; (g) Denette Lynch; (h) Pete Mattson; (i) Barbara Montee; (j) John Peterson; (k) Blake Shippee; (l) Lawrence J. Skoglund; (m) Liz Vandersteen. -- Received

12-0529-22 The following communications regarding the proposed rezoning of 1102 Maple Grove Road (12-033-O): (a) Brenda Anderson; (b) ZMC Hotels. -- Received

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## REPORTS FROM THE ADMINISTRATION

Chief Administrative Officer David Montgomery reported that with the heavy rains this past weekend, there was no overflowing in the storm sewer system.

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## REPORTS OF BOARDS AND COMMISSIONS

12-0529-02 Duluth parking commission resolutions, pursuant to Section 33-78 of the Duluth City Code:

- (a) Designating uses for parking spaces around City Hall (2012-1);
- (b) Shortening the bus stop at 108 East Second Street, creating one new on street parking space (2012-2);
- (c) Creating a loading zone at 109 East Michigan Street and to allow additional metered parking on East Michigan Street (2012-3);
- (d) Eliminating the alternate side parking system and prohibit parking on the even side of Main Street between Grand Avenue and 63rd Avenue West (2012-4);
- (e) Expanding the handicapped accessible and the ten minute parking zones and to restore a bus/van parking area in front of the Downtown YMCA (2012-5);
- (f) Converting five metered parking spaces on the east side of Third Avenue West back to a time limit of one hour and 20 minutes (2012-6);
- (g) Adding two metered parking spaces on the west side of Fourth Avenue West just above the intersection with Superior Street (2012-7);
- (h) Creating a drop off zone at 2029 East Third Street in front of Lakeview Montessori School (2012-8);
- (i) Allowing parking on both sides of 13th Avenue East between London Road and First Street (2012-9). -- Received

12-0529-04 Duluth public utilities commission minutes of April 17, 2012, meeting. -- Received

12-0529-05 Duluth Seaway Port authority minutes of: (a) December 15, 2011; (b) January 31; (c) March 23, 2012, meetings. -- Received

**PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012**

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12-0529-06 Housing and redevelopment authority minutes of: (a) February 28;  
(b) March 27, 2012, meetings. -- Received  
12-0529-03 Library board minutes of March 27, 2012, meeting. -- Received

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**OPPORTUNITY FOR CITIZENS TO BE HEARD**

Loren Martel commented on the history of the state overpaying school districts and then they started to withhold ten percent of their payments until the enrollment numbers were known. He further noted how the past governor cut aid to schools and districts had to borrow and what affect this has had on the school district.

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**MOTION FOR RECONSIDERATION**

Councilor Julsrud moved to reconsider Resolution 12-0252, regarding the establishment of a higher education overlay district, which motion was seconded and failed upon the following vote:

Yeas: Councilors Fosle, Julsrud, Krug and Larson -- 4  
Nays: Councilors Boyle, Gardner, Krause, Stauber and President Hartman -- 5

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**MOTIONS AND RESOLUTIONS**

**CONSENT AGENDA**

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

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

RESOLVED, that the assessment roll levied to defray the assessable portion of demolitions at the following locations be confirmed.

411 South 71st Avenue West	0370-04070	15,780.24
2917 West Third Street	4440-00320	23,269.96
25 North 58th Avenue West	4480-04260	17,351.04
8721 Vinland Street	0240-00160	15,212.92
2224 West 11th Street	2110-07445	27,230.16
1017 East Sixth Street	3850-01620	2,217.36
1130 East Sixth Street	3850-00120	5,250.00

The total assessable amount of the project (Contract #5443 - Fund 110) is \$106,311.68.

Resolution 12-0266 was unanimously adopted.

Approved May 29, 2012

DON NESS, Mayor

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WHEREAS, the city council authorized Contract 21609 with Hovland, Inc., for construction of the Enger Tower gazebo in the amount of \$138,000 through passage of Resolution 12-0192 on April 9, 2012; and

WHEREAS, city officials have since found that additional work and materials are required as a result of unknown allowable costs, such as having to move the site back due to

**PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012**

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the large amount of exposed bedrock, and as further itemized in the e-mail on file with the city clerk as Public Document No. 12-0529-07.

NOW, THEREFORE, BE IT RESOLVED, that the proper city officials are hereby authorized to implement Change Order No. 1 to the Contract 21609 with Hovland, Inc., for an increase of \$109,110, and a total contract amount of \$247,110, payable from Capital Improvements Fund 450, Department/Agency 030 (finance), Object 5520 (buildings and structures), Project No. Cpmisc-engtr).

Resolution 12-0229 was unanimously adopted.

Approved May 29, 2012

DON NESS, Mayor

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RESOLVED, that city officials are hereby authorized to contract with Northland Constructors of Duluth, LLC, for the purchase of hot mix (fine) as needed during year 2012 for street maintenance in accordance with city-approved bid specifications, the vendor's bid of \$46 per ton, and an estimated tonnage of 10,608, for a total cost of \$487,968 plus \$33,547.80 sales tax, for a total combined amount of \$521,515.80, payable from General Fund 110, Department/Agency 121 (public administration), Division 1217 (maintenance operations), Cost Center 2140 (street maintenance), Object 5222 (blacktop).

Resolution 12-0251 was unanimously adopted.

Approved May 29, 2012

DON NESS, Mayor

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BE IT RESOLVED, that the city council of the city of Duluth hereby approves the temporary expansion of the designated serving area of the following on sale intoxicating liquor license, subject to departmental approvals, with any specific restrictions:

Alpine Bar & Lounge, Inc. (Alpine Bar & Lounge), 1308 Commonwealth Avenue, for June 22, from 7:00 p.m. to midnight, June 23, 2012, from 7:00 p.m. to 12:30 a.m., and June 24, 2012, 10:00 a.m. to 4:00 p.m.

Resolution 12-0253 was unanimously adopted.

Approved May 29, 2012

DON NESS, Mayor

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

Twin Ports Miracle League (Minnesota State Police and Fire Softball Tournament), Wheeler Field, for July 28-29, 2012, with Matt McShane, manager.

Resolution 12-0262 was unanimously adopted.

Approved May 29, 2012

DON NESS, Mayor

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RESOLVED, that city officials are hereby authorized to contract with Ulland Brothers, Inc., for the purchase of hot mix (fine) as needed during year 2012 for street maintenance in accordance with city approved bid specifications, the vendor's bid of \$45.93 per ton, and an estimated tonnage of 7,000, for a total cost of \$321,510 plus \$22,103.81 sales tax, for a total combined amount of \$343,613.81, payable from General Fund 110, Department/Agency 121

**PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012**

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(public administration), Division 1217 (maintenance operations), Cost Center 2140 (street maintenance), Object 5222 (blacktop).

Resolution 12-0281 was unanimously adopted.

Approved May 29, 2012

DON NESS, Mayor

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RESOLVED, that the job specifications for the appointed department head position of director of business and economic development, which is filed with the city clerk as Public Document No. 12-0529-08, is approved; that said appointed position shall be subject to the city's collective bargaining agreement with its supervisory unit employees; and that the pay range for said appointed position shall be ranges 1135-1170.

FURTHER RESOLVED, the proper city officials are authorized to execute and implement an agreement with the supervisory association to provide for employing a unit member consistent with this resolution.

Resolution 12-0279 was unanimously adopted.

Approved May 29, 2012

DON NESS, Mayor

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WHEREAS, the chief administrative officer upon the direction of the mayor has recommended the appointment of Christopher Eng to the position of director of business and economic development; and

WHEREAS, the City Charter requires the city council confirm this appointment.

THEREFORE, BE IT RESOLVED, that the city council hereby confirms the appointment of Christopher Eng to the position of director of business and economic development for the city of Duluth.

Resolution 12-0280 was unanimously adopted.

Approved May 29, 2012

DON NESS, Mayor

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RESOLVED, that the city council makes the following findings:

(a) The city council adopted the Duluth comprehensive land use plan on June 26, 2006, via Resolution 06-0491, which outlined the desired arrangement of land uses for the next 20 years; and

(b) The city planning division, which is implementing the comprehensive land use plan by developing new zoning regulations, looked at how zoning could encourage the new and appropriate development in locations in and near existing commercial centers, along major transit lines; and

(c) The city planning division held a public meeting on April 25, 2012, on the proposed amendment to the comprehensive land use plan - future land use map, to discuss the opportunities for the Fourth Street corridor and to gather feedback from the community; and

(d) Based on public comments received and the review of the area completed by the city planning division, recommended to the city planning commission that the future land use map be amended for the Fourth Street corridor, from Mesaba to Fourth Avenue East between the alley above and the alley below Fourth Street, from urban residential to neighborhood mixed-use; and

**PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012**

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(e) The city planning commission has reviewed this future land use amendment, conducted a public hearing on May 8, 2012, at their regular planning commission meeting, and recommends adoption of the proposed future land use map amendment; and

(f) The city council action shall be by resolution, with the affirmative votes of at least 2/3's of those members constituting a quorum required to take action.

IT IS FURTHER RESOLVED, that the adopted comprehensive land use plan - future land use map is amended as identified in Public Document No. 12-0529-09.

Resolution 12-0261 was unanimously adopted.

Approved May 29, 2012

DON NESS, Mayor

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RESOLVED, that the city council makes the following findings:

(a) The city council adopted the Duluth comprehensive land use plan on June 26, 2006, via Resolution 06-0491, which outlined the desired arrangement of land uses for the next 20 years; and

(b) Independent School District 709 closed Central High School in 2011 as part of its long range facilities plan; and

(c) The Central High School site will no longer be used for school purposes and therefore the future land use map designation as Institutional is no longer necessary; and

(d) The city community development division held three public meetings on November 16, 2011, December 14, 2011, and April 26, 2012, on the proposed amendment to the comprehensive land use plan - future land use map, to discuss the opportunities for the Central High School site and to gather feedback from the community; and

(e) Based on public comments received and the review of the area completed by community development staff, the city planning division recommended to the city planning commission that the future land use map be amended for the Central High School site from Institutional to business park, urban residential and recreation; and

(f) The city planning commission has reviewed the future land use amendment, conducted a public hearing on May 8, 2012, at their regular planning commission meeting, and recommends adoption of the proposed future land use map amendment; and

(g) The city council action shall be by resolution, with the affirmative votes of at least 2/3's of those members constituting a quorum required to take action.

IS IT FURTHER RESOLVED, that the adopted comprehensive land use plan - future land use map is amended as identified in Public Document No. 12-0529-10.

Resolution 12-0263 was unanimously adopted.

Approved May 29, 2012

DON NESS, Mayor

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RESOLVED, that:

(a) The city council finds a sufficient petition was filed with the city requesting the vacation of the easement described below in (d) and rededication of the easement described in (e) below; and

(b) Pursuant to Section 100 of the City Charter and Section 50-37.6 of Chapter 50 of the Duluth City Code, as amended, such petition was duly referred to the city planning commission and such commission gave due notice of public hearing and did consider same in public hearing and the city planning commission found that the petitioned easement is useless for vehicular, utility and pedestrian purposes; and

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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(c) The city planning commission, at its Tuesday, May 8, 2012, regular meeting, recommended approval of the vacation and rededication petition; and

(d) The city council of the city of Duluth approves the vacation of the following described utility easement described below and as described and depicted on Public Document No. 12-0529-11:

The northerly 12.00 feet of Lot 2, Block 2, VILLAGE MALL, according to the recorded plat thereof, St. Louis County, Minnesota;

(e) The city council of the city of Duluth approves the dedication of the following described utility easement and as described and depicted on Public Document No. 12-0529-11:

The southerly 10.00 feet of the northerly 22.00 feet of Lot 2, Block 2, VILLAGE MALL, according to the recorded plat thereof, St. Louis County, Minnesota;

(f) That the city clerk is, pursuant to Section 100(b)(7) of the Home Rule Charter of the city of Duluth, 1912, as amended, authorized to record, with the register of deeds and/or the registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution and public document showing the utility easement to be vacated and rededicated.

Resolution 12-0267 was unanimously adopted.

Approved May 29, 2012

DON NESS, Mayor

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RESOLVED, that:

(a) The city council finds a sufficient petition was filed with the city requesting the vacation of the platted alley described below in (d) and alley easement described in (e); and

(b) Pursuant to Section 100 of the City Charter and Section 50-37.6 of Chapter 50 of the Duluth City Code, as amended, such petition was duly referred to the city planning commission and such commission gave due notice of public hearing and did consider same in public hearing and the city planning commission found that the petitioned portions of platted alleys and alley easement are useless for all purposes; and

(c) The city planning commission, at its Tuesday, May 8, 2012, regular meeting, recommended approval of the vacation petition; and

(d) The city council of the city of Duluth approves the vacation of the following described portions of platted alley described below and as described and depicted on Public Document No. 12-0529-12:

That portion of the alley within Block 121, Duluth Proper Second Division, extending from the extended common easterly line of Lots 391 and 392 of Block 121, Duluth Proper Second Division to 24th Avenue West;

(e) The city council of the city of Duluth approves the vacation of the following described alley easement and as described and depicted on Public Document No. 12-0529-12:

The alley lying within the easterly 20 feet of Lot 389, Block 121, Duluth Proper Second Division, as the same is evidenced by resolution of the common council of the city of Duluth recorded at Book C of Miscellaneous, Page 598;

(f) That the city clerk is, pursuant to Section 100(b)(7) of the Home Rule Charter of the city of Duluth, 1912, as amended, authorized to record, with the register of deeds and/or the registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution and public document showing the platted alley and alley easement to be vacated.

Resolution 12-0268 was unanimously adopted.

Approved May 29, 2012

DON NESS, Mayor

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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RESOLVED, that the city council of the city of Duluth does hereby approve the conditional grant agreement on file in the office of the city clerk as Public Document No. 12-0529-13, between the Duluth economic development authority (DEDA) and A&L Duluth Renaissance, LLC, related to the renovation of commercial building space in Old Downtown for lease to Enbridge Energy Limited Partnership in an amount not to exceed \$350,000.

Resolution 12-0276 was unanimously adopted.

Approved May 29, 2012

DON NESS, Mayor

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RESOLVED, that Contract C21268 with Ayres Associates, Inc., for professional services for design and construction of the Riverside community utility and street improvements project be amended to include additional engineering design and construction services at the direction of city staff for the addition of a second entrance, bridge over Munger Trail, BNSF Railroad and Munger Trail crossings, Phase II environmental health hazard investigation, and a second bid package for storm sewer construction, and an increase in construction time from 1-1/2 years to 2-1/2 years. This amendment is in the amount of \$235,600 for a new total of \$829,036, with \$56,473 payable from Street Improvement Fund 440, Department 038 (special assessment contract), Object 5530 (improvements other than buildings); with \$50,000 payable from Sanitary Sewer Fund 530, Department 500 (public works and utilities), Division 1905 (capital), Object 5536 (utility infrastructure replacement); with \$30,000 payable from Water Fund 510, Department 500 (public works and utilities), Division 1905 (capital), Object 5536 (utility infrastructure replacement); with \$76,716 payable from Storm Water Fund 535, Department 500 (public works and utilities), Division 1905 (capital), Object 5533 (capital improvement - revenue); and with \$22,411 payable from Gas Fund 520, Department 500 (public works and utilities), Division 1905 (capital), Object 5533 (capital improvement - revenue), City Project No. 0699SN/TR.

Resolution 12-0232 was unanimously adopted.

Approved May 29, 2012

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to entire into a license agreement, a copy of which is on file in the office of the city clerk as Public Document No. 12-0529-14, with the Duluth Seaway Port authority for the installation of an electric service on authority property for use in conjunction with Sanitary Sewer Lift Station No. 40, and the relocation of a power supply to an existing authority building, at no cost to the city.

Resolution 12-0259 was unanimously adopted.

Approved May 29, 2012

DON NESS, Mayor

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RESOLVED, that for recorded agreement reasons and by resolution of intent numbered 12-0217 the council did request the administration to prepare plans and specifications for the construction of approximately 265 feet of sanitary sewer in Livingston Avenue and Spear Avenue (City Project No. 0439TR). It is hereby ordered that said sanitary sewer be improved.

FURTHER RESOLVED, that said work be done by contract, and that the estimated total of said improvement as estimated by the city engineer is \$25,404, assessable to benefitting properties and payable from Special Assessment Fund 410, Agency 038 (special assessment contracts), Object 5530 (improvements other than buildings), City Project No. 0439TR.

**PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012**

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FURTHER RESOLVED, that assessments shall be levied upon lands benefitting per the preliminary assessment roll and may be paid in 15 annual installments at the municipal bond index plus 1.50 percent.

Resolution 12-0260 was unanimously adopted.

Approved May 29, 2012

DON NESS, Mayor

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RESOLVED, that City Council Resolution No. 11-0153 authorizing advanced home energy audits under the advance home energy audit program is hereby amended by increasing the number of audits authorized under the program from 400 to 600 and by increasing the authorized cost thereof from \$80,000 to \$120,000, the increased amount to be payable from Fund No. 555-500-5441 (home energy conservation, public works and utilities, other services and charges).

Resolution 12-0264 was unanimously adopted.

Approved May 29, 2012

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into a contract with A-1 Excavating, Inc., for the reconstruction of Oxford Street, Livingston Avenue and Glenwood Street from Woodland Avenue to Snively Road in the amount of \$3,799,505, payable out of Permanent Improvement Fund 411, Department 038 (special assessment contracts), Object 5530 (improvements other than buildings), City Project No. 0439TR.

Resolution 12-0273 was unanimously adopted.

Approved May 29, 2012

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with ISD No. 709 to provide law enforcement officers in the public schools, said agreement to be substantially in the form of that on file in the office of the city clerk as Public Document No. 12-0529-15; payments from the school district to be deposited in Fund No. 110-160-1610-4261 (general, police, administration and investigation).

Resolution 12-0250 was unanimously adopted.

Approved May 29, 2012

DON NESS, Mayor

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RESOLVED, that the proper city officials are authorized to execute and implement a three-year agreement with St. James Home of Duluth, Inc. dba Neighborhood Youth Services (NYS) to provide summer youth programming in the city's Morgan Park neighborhood, substantially the same as that on file with the city clerk as Public Document No. 12-0529-16, and providing for the payment of \$40,000 for the first year, and \$20,000 thereafter, payments to be made from Fund 205-130-1219-5310 (parks, community resources, parks operating, contract services).

Resolution 12-0265 was unanimously adopted.

Approved May 29, 2012

DON NESS, Mayor

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**PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012**

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RESOLVED, that the proper city officials are hereby authorized to enter into a five-year agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 12-0529-18, with the state of Minnesota through the Minnesota office of higher education (the "state") related to Minnesota Library Information Network ("MnLINK"), payments to the city payable into Fund No. 110-121-1218-4220-02 (general, public administration, library services, state of Minnesota operating).

Resolution 12-0274 was unanimously adopted.

Approved May 29, 2012

DON NESS, Mayor

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The following resolutions were also considered:

BE IT RESOLVED, that pursuant to Section 8-22(b) of the Duluth City Code, the Duluth City Council hereby authorizes consumption of alcoholic beverages in public places on the 1300 Block of Commonwealth Avenue on June 22-24, 2012, to coincide with the Far West Fest special events license, provided that all alcoholic beverages consumed outside of the designated serving areas of licensed establishments be consumed only from paper or plastic cups.

BE IT FURTHER RESOLVED, that the dates of this authority may be amended, in the case of inclement weather, if requested in writing by the licensee and approved by the administration.

Resolution 12-0256 was adopted upon the following vote:

Yeas: Councilors Boyle, Gardner, Julsrud, Krause, Krug, Larson, Stauber and President Hartman -- 8

Nays: Councilor Fosle -- 1

Approved May 29, 2012

DON NESS, Mayor

- - -

BE IT RESOLVED, that pursuant to Section 8-22(b) of the Duluth City Code, the Duluth City Council hereby authorizes consumption of alcoholic beverages in public places in 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.

July 11, 2012	Superior Street from Third Avenue East to Fifth Avenue West	4:00 p.m. to 8:00 p.m.
July 12, 2012	Superior Street from Sixth Avenue East to Eight Avenue East	3:00 p.m. to 8:00 p.m.
July 13, 2012	First Street between First Avenue West and Second Avenue West	6:00 p.m. to midnight
July 13, 2012	First Street between Third Avenue West and Fourth Avenue West	6:00 p.m. to midnight
July 14, 2012	Superior Street from First Avenue West to Second Avenue West	5:00 p.m. to midnight

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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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 12-0257 was adopted upon the following vote:

Yeas: Councilors Boyle, Gardner, Julsrud, Krause, Krug, Larson, Stauber and President Hartman -- 8

Nays: None -- 0

Abstention: Councilor Fosle -- 1

Approved May 29, 2012

DON NESS, Mayor

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Resolution 12-0269, authorizing a three year agreement with Grant Community School Collaborative to provide summer youth programming in the city's East Hillside neighborhood at an annual cost of \$20,000, was introduced by Councilor Larson for discussion.

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

Katherine Bogen thanked the administration and council for this funding opportunity to provide for a safe place for the youth to be this summer.

Councilor Krause felt that this and the other similar resolutions should have gone out for proposals.

Resolution 12-0269 was adopted as follows:

RESOLVED, that the proper city officials are authorized to execute and implement a three-year agreement with Grant Community School Collaborative (GCSC) to provide summer youth programming in the city's East Hillside neighborhood, substantially the same as that on file with the city clerk as Public Document No. 12-0529-19, and providing for the payment of \$20,000 per year, payments to be made from Fund 205-130-1219-5310 (parks, community resources, parks operating, contract services).

Resolution 12-0269 was adopted upon the following vote:

Yeas: Councilors Boyle, Fosle, Gardner, Julsrud, Krug, Larson, Stauber and President Hartman -- 8

Nays: Councilor Krause -- 1

Approved May 29, 2012

DON NESS, Mayor

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RESOLVED, that the proper city officials are authorized to execute and implement a three-year agreement with Welsh Center, Inc., dba Copeland Valley Youth Centers (CVYC), to provide summer youth programming in the city's West Duluth neighborhood, substantially the same as that on file with the city clerk as Public Document No. 12-0529-20, and providing for the payment of \$20,000 per year, payments to be made from Fund 205-130-1219-5310 (parks, community resources, parks operating, contract services).

Resolution 12-0270 was adopted upon the following vote:

Yeas: Councilors Boyle, Fosle, Gardner, Julsrud, Krug, Larson, Stauber and President Hartman -- 8

Nays: Councilor Krause -- 1

Approved May 29, 2012

DON NESS, Mayor

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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RESOLVED, that the proper city officials are authorized to execute and implement a three-year agreement with Boys and Girls Club of the Northland (B&GCN) to provide summer youth programming in the city's Lincoln Park neighborhood, substantially the same as that on file with the city clerk as Public Document No. 12-0529-17, and providing for the payment of \$20,000 per year, payments to be made from Fund 205-130-1219-5310 (parks, community resources, parks operating, contract services).

Resolution 12-0271 was adopted upon the following vote:

Yeas: Councilors Boyle, Fosle, Gardner, Julsrud, Krug, Larson, Stauber and President Hartman -- 8

Nays: Councilor Krause -- 1

Approved May 29, 2012

DON NESS, Mayor

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RESOLVED, that the proper city officials are authorized to execute and implement a three year agreement with St. James Home of Duluth, Inc., dba Neighborhood Youth Services (NYS), to provide summer youth programming in the city's Central Hillside neighborhood, substantially the same as that on file with the city clerk as Public Document No. 12-0259-21, and providing for the payment of \$20,000 per year, payments to be made from Fund 205-130-1219-5310 (parks, community resources, parks operating, contract services).

Resolution 12-0272 was adopted upon the following vote:

Yeas: Councilors Boyle, Fosle, Gardner, Julsrud, Krug, Larson, Stauber and President Hartman -- 8

Nays: Councilor Krause -- 1

Approved May 29, 2012

DON NESS, Mayor

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### INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

BY COUNCILOR BOYLE

12-032 - AN ORDINANCE AMENDING CHAPTER 29A-32 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO THE CITY HOUSING, PROPERTY MAINTENANCE AND RENTAL CODE.

Councilor Gardner moved to amend subsection 29A-32(h) of the ordinance to read as follows:

"(h) Except as provided in this Section 29A-32(h), the maximum number of bedrooms in a multi-tenant rental unit that can be occupied by any tenant under new rental licenses, short-term licenses, and rental license renewals shall be based on the number of bedrooms on record in the city assessor's office on the date of rental application;

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

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

(3) If the multi-tenant rental unit is a one-family or two-family dwelling, the maximum number of bedrooms that can be occupied by any tenant shall be based on the lesser of the number of bedrooms on record in the city assessor's office on the date of the

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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rental application or four bedrooms. The four bedroom limitation shall not apply to multi-tenant one-family or two-family dwellings licensed on *[Note: insert effective date of ordinance]* or containing more than four original bedrooms in existence prior to the last sale of the house; instead, the number of bedrooms that may be occupied shall be the greater of the number of bedrooms authorized by the license in effect on *[Note: insert effective date of ordinance]*, the number of original bedrooms in existence prior to the last sale of the house, or four bedrooms;" which motion was seconded and discussed.

Councilor Gardner commented that her intent was to allow for houses that are being sold with over five original bedrooms and have the required parking to be licensed, but that the new owner cannot make more bedrooms.

Councilors discussed the amendment at length, noting issues of: getting accurate information about these larger homes to determine what the original number of bedrooms were; determine what was "original" lacking those original floor plans; how to enforce it; that there is a distinct difference between "original" and "legal" bedrooms; this is an attempt to avoid a mass density issue; this amendment needs more work and what realtors call a bedroom differs from what the city considers a bedroom.

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

Yeas: Councilors Boyle, Julsrud, Krause, Krug, Larson, Stauber and President Hartman -- 7

Nays: Councilors Fosle and Gardner -- 2

Councilor Fosle expressed concern that if this ordinance passes it will affect the whole city and suggested that it only apply to the new "overlay" area.

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

John Glendenning spoke of his concerns that taxpaying neighbors have with this proposed change. He reviewed the changes in his neighborhood with the increase of rentals. He further noted that the definition of "resident" has never been stated.

Joe Deters expressed his concerns of how this will: help the students; increase the cost of student housing and affect new rental housing that is developed.

Kristie DuCharm, former student and now Duluth landlord of six units, felt that while the ordinance has a point to be made, that a decision should be delayed in order to talk to realtors, neighbors, investors, landlords and students. She also suggested that parking permits should be allowed for each house in the densely populated areas and that the large lots of St. Mary's and St. Luke's could be for permit parking.

Barbara Monte, landlord, president of Duluth Landlord Association and resident in the campus area, expressed concerns of the grandfathering in of existing locations. She felt that: this issue could better be addressed by being based on square footage; that the whole parking issue be looked at by the Duluth parking commission; that there are different standards for families and unrelated individuals and that there are so many blight houses.

Greg Schmaedeke, real estate agent, stated that in 1982 when he started to buy property, they were derelict and no one was standing in line to buy these houses. He further commented that: investors purchased these houses, fixed them up and put people into these houses; these folks all contribute to the economic base and jobs come out of these tenants and with the shortage of housing and high costs, this ordinance will have an adverse affect.

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**PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012**

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INTRODUCED BY COUNCILOR STAUBER

12-033 - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM RESIDENTIAL-TRADITIONAL (R-1) TO MIXED USE-NEIGHBORHOOD (MU-N) THE PROPERTY LOCATED AT 1102 MAPLE GROVE ROAD (ZMC HOTELS).

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

Mike Kruger and Sharon Mosiniak opposed the ordinance for reasons of: this property was residential property and should remain that way; that a restaurant is being talked about for this property, which is more than the hotel that has been mentioned; just west of Joshua is all commercial property which is for sale, so this is not needed in the residential neighborhood; realtors have stated that residents will have difficulty selling their houses for what they are worth and individuals purchased their houses never thinking that they were going to be living across the street from a hotel and restaurant.

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INTRODUCED BY COUNCILOR STAUBER

12-034 - AN ORDINANCE AUTHORIZING THE SALE OF THE SOUTHERLY TEN FEET OF LOTS 31-34, NEW YORK PIER, ONEOTA, TO ZENITH INVESTMENT AND MANAGEMENT CORPORATION FOR \$2,000.

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INTRODUCED BY COUNCILOR STAUBER

12-035 - AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN PROPERTY IN THE WEST DULUTH AREA TO ROBERT M. AND LEANNE E. LIND FOR \$7,500.

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INTRODUCED BY COUNCILOR STAUBER

12-036 - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM RESIDENTIAL-TRADITIONAL (R-1) TO RESIDENTIAL-RURAL 1 (RR-1) THE PROPERTY LOCATED AT 415 WEST NINTH STREET (KBJR, INC., AND STATE OF WISCONSIN EDUCATIONAL COMMUNICATIONS BOARD).

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The following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR KRUG

12-029 (10155) - AN ORDINANCE MODIFYING VARIOUS FEE LANGUAGE, PROVIDING FOR FINES, PENALTIES, CITATIONS AND VIOLATIONS TO BE SET BY RESOLUTION, AMENDING SECTIONS 1-7, 6-78, 8-9, 10-3, 10A-7, 11-5, 12-14, 12-16, 24-17.1, 24-26, 29B-7, 33-46, 33-237, 34-17, 34-23, 35-30, 36-7, 36-20, 42A-48, 43-33.4, 43-50.7, 43-66, 45-82, 45-82.1, 45-108, 48-15, 48-210, 50-37.1, 50-39.2 AND 50-39.3 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

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

Yeas: Councilors Boyle, Fosle, Gardner, Julsrud, Krug, Larson, Stauber and President Hartman -- 8

Nays: Councilor Krause -- 1

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**PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012**

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BY COUNCILOR GARDNER

12-030 - AN ORDINANCE CREATING ARTICLE XII OF CHAPTER 2 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE ESTABLISHMENT OF A CITIZEN REVIEW BOARD.

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

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**COUNCILOR QUESTIONS AND COMMENTS**

Councilors discussed the need for a closed session for further information on the casino litigation and also an open session to discuss the history and other aspects of the casino litigation as much as legally possible.

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The meeting was adjourned at 8:22 p.m.  
JEFFREY J. COX, City Clerk

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**ORDINANCE NO. 10155**

AN ORDINANCE MODIFYING VARIOUS FEE LANGUAGE, PROVIDING FOR FINES, PENALTIES, CITATIONS AND VIOLATIONS TO BE SET BY RESOLUTION, AMENDING SECTIONS 1-7, 6-78, 8-9, 10-3, 10A-7, 11-5, 12-14, 12-16, 24-17.1, 24-26, 29B-7, 33-46, 33-237, 34-17, 34-23, 35-30, 36-7, 36-20, 42A-48, 43-33.4, 43-50.7, 43-66, 45-82, 45-82.1, 45-108, 48-15, 48-210, 50-37.1, 50-39.2 AND 50-39.3 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

The city of Duluth does ordain:

Section 1. That Section 1-7 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 1-7. General penalty; continuing violations.

Whenever in this Code or in any other ordinance of the city any act is prohibited or is made or declared to be unlawful or an offense, or the doing of any act is required or the failure to do any act is declared to be unlawful or a misdemeanor, where no specific penalty is provided therefor, the violation of any such provision of this Code or any other ordinance of the city shall be punished by a fine not to exceed an amount which shall be set in accordance with Section 31-8 of this Code.

Every day any violation of this Code or any other ordinance of the city shall continue shall constitute a separate offense.

Section 2. 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

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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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 set in accordance with Section 31-8 of this Code.

Section 3. That Section 8-9 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 8-9. Suspension and revocation of licenses; civil penalty; presumptive penalties.

(a) When it comes to the attention of the alcohol, gambling and tobacco commission that any establishment licensed pursuant to this Chapter may have violated the provisions of this Chapter or any other law relating to the operation of a liquor establishment, or that such establishment may be engaging in other conduct that may constitute good cause for the suspension or revocation of its liquor license, the alcohol, gambling and tobacco commission may call for a hearing to determine the validity of the allegations and to determine what, if any, disciplinary measures shall be recommended to the city council for their implementation against the licensee;

(1) Any hearing called pursuant to the provisions of this Section shall be held before the alcohol, gambling and tobacco commission and shall be held pursuant to the procedural and evidentiary provisions of Minnesota Statutes, sections 14.57 to 14.69, and rules promulgated thereunder. At such hearing, the commission shall hear all relevant evidence and arguments from all parties. After due deliberation, the commission shall determine the validity of the allegations and what, if any, corrective or punitive measures will be recommended to the city council;

(2) At the completion of the hearing and deliberations, the commission shall direct the city clerk to prepare a report to the city council which shall consist of the commission's findings of fact, conclusions and recommendation to the city council. The report shall be filed with the city council and served personally or by first class mail upon the parties to the hearing. The council shall also receive a copy of the transcript of the commission's hearing and any exhibits introduced as evidence;

(3) The city council shall not render a decision on the matter until at least ten days after it has received the report of the alcohol, gambling and tobacco commission. During this ten day period, either party to the hearing may present written exceptions to the report of the alcohol, gambling and tobacco commission or make arrangements to be placed on the agenda of the city council to present oral argument to the city council concerning the matter;

(4) The city council's decision on the matter shall be in the form of a written resolution which shall contain findings of fact and conclusions on all material issues and shall set forth any punitive action taken against the license.

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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A copy of the resolution shall be served upon the licensee personally or by first class mail;

(b) Without limiting other grounds for suspension or revocation, the following shall be deemed to be good cause for suspension or revocation of a liquor license:

(1) Violation of any law relating to the operation of a liquor establishment, including, but not limited to, state, federal and local laws on liquor, gambling, prostitution, health and fire safety;

(2) The establishment is operated in such a way as to constitute a public nuisance;

(3) The establishment has failed to pay license fees or city or state sales tax or that property taxes on the building have not been paid;

(4) The establishment has failed to file or maintain any insurance or bond required by law;

(5) The establishment is insolvent, bankrupt or otherwise financially unable to continue business;

(6) Refusal to cooperate with the board or the police in any investigation and the refusal to admit police officers into the establishment at any time when people are in the establishment;

(7) Failure to follow the procedures set forth in this Chapter with respect to change of ownership, change of location or changes in serving area of the establishment;

(8) Nonuse of the license;

(9) The filing of a license application containing information or statements known by the applicant to be false;

(10) The failure to follow the procedures applicable to the use of a caterer's permit issued by the state;

(c) The city council may, for the causes enumerated above, revoke a license, suspend a license for up to 60 days, or impose a civil penalty, not to exceed an amount set in accordance with Section 31-8 of this Code for each violation, or any combination of these sanctions. No portion of the payment of a civil penalty or period of suspension may be stayed or excused. All civil penalties are due and payable within 30 days of council action. The council shall determine the dates any suspension shall be served, but in no event may the suspension period commence earlier than ten days after council action. Absent aggravating or mitigating circumstances, the presumptive penalties for violations shall be as follows:

(1) First offense - a civil penalty set in accordance with Section 31-8 of this Code;

(2) Second offense within one year of the occurrence of the first offense - a civil penalty set in accordance with Section 31-8 of this Code and one day license suspension;

(3) Third offense within two years of the occurrence of the first offense - a civil penalty set in accordance with Section 31-8 of this Code and five day license suspension;

(4) Fourth offense within three years of the occurrence of the first offense - a civil penalty set in accordance with Section 31-8 of this Code and 30 day license suspension;

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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(5) Fifth offense within four years of the occurrence of the first offense - license revocation;

(d) The city council may request that the alcohol, gambling and tobacco commission conduct a hearing concerning the operation of any establishment licensed pursuant to this Chapter. The commission shall conduct any hearings so requested.

Section 4. That Section 10-3 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 10-3. Demolition procedure.

(a) General. Whenever it comes to the notice of the building official that any building or structure is in a damaged, dilapidated or dangerous condition, it shall be his or her duty to make an inspection of such building or structure. It shall be unlawful to repair or alter any building or structure located in the city if, in the opinion of the building official based upon information documented in the official file and records, such building or structure has been damaged or deteriorated from any cause to the extent that the building official's good faith, reasonable estimate of the cost of repairing and restoring the building is more than 60 percent of the current fair market value of the building, as shown in the records of the city assessor or as adjusted by the assessor for accuracy, and all such buildings or structures so damaged or deteriorated shall be torn down and removed when so ordered by the building official; provided, however, that the building official, or the building appeal board in cases appealed to it, may allow such a damaged or deteriorated building to be repaired, for good cause shown related to the use, location or unique characteristics of the building, when the owner shows that he or she has dedicated sufficient funds to pay for the repair, have entered into a valid contract to have the repair completed, and will complete all the repair and restoration work within a reasonable time, not to exceed 18 months;

(b) Orders for demolition and assessment of costs. All orders for the demolition of a dangerous, defective or deteriorated building, or for repairs to the same, shall be in writing, signed by the building official, and shall allow not less than 30 days in which to comply with said order. Each order shall identify the structure, state the legal basis of the order, the date of the order, the fair market value of the building, the building official's good faith, reasonable estimate of the cost of repairs, the calculation that forms the basis for the opinion that the damage requires that the building be demolished, the time and procedure for appeal, and other information deemed relevant by the building official. Should any such order not be complied with within the time allowed therefor or, should the structure constitute an immediate threat of bodily harm to the public, or the appeal provided for in Section 10-5 of this Chapter not be taken, the building official shall, in writing, communicate such information to the city council. The city council may direct the building official to proceed with the work ordered, or to contract to have the work done. In case of the demolition of a building, should the sale of the salvage from such building exceed the cost of the demolition, the balance in excess of the cost shall be paid to the owner of said building or to such other persons as may by law be entitled thereto. A statement of the cost of such work shall be transmitted to the city council which may cause the same to be charged against the land on which the building existed as a municipal lien,

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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which lien shall be recorded with the register of deeds or registrar of titles as a lien against such land, or to be recovered in a suit at law against the owner, or to cause any or all of such costs to be assessed against the property from which such removal takes place. If the city council decides to assess the cost of demolition against the affected property, such assessment shall be made by resolution of the council, and such resolution shall state a time by which such assessment shall be payable, which time shall be not less than 30 days after publication of such resolution and service of notice of the assessment upon the property owner. Notice of such assessment and the time within which it shall be paid, shall be served on the owner of such property in the manner provided in Subsection (c) of this Section below, except that it shall not be necessary to post such notice on the affected property or to publish such notice other than to publish in the regular manner the resolution by which such assessment is made. Delinquent assessments shall be certified to the county auditor of St. Louis County for collection in the same manner as other assessments, pursuant to Section 70 of the Duluth City Charter;

(c) Notice to owner. Except as otherwise provided for in Subsection (b) above, service of all orders provided for in this Section shall be made as follows:

(1) Upon an individual owner, residing within the city of Duluth, by delivering a copy to him or her personally or by leaving a copy at his or her usual place of abode with some person of suitable age and discretion then residing therein. If the owner does not reside within the city of Duluth, by sending a copy of such order by registered mail to his or her last known address, and in addition a copy of such order shall be posted in a conspicuous place in the building to which it relates. Such mailing and posting shall be deemed adequate service. If it should come to the attention of the building official that the owner, as shown by the land records of the register of deeds or the registrar of titles of the county of St. Louis, Minnesota, is deceased, such order shall be sent by registered mail to the known heirs of the deceased owner if the building official is reasonably able to ascertain such heirs. In addition, a copy of the said order shall be posted in a conspicuous place on the building to which it relates, and said order shall be published in the official newspaper of the city of Duluth for one day in each of two consecutive weeks during the period to which the order relates. Such mailing, posting and publication shall be deemed adequate service;

(2) If the owner is confined to a state institution, by serving also the chief executive officer of the institution;

(3) If the owner be an infant under the age of 14 years, by serving a resident guardian, and if he or she has none, then by serving the person having control of such infant or with whom he or she resides;

(4) If the owner be a partnership or association, by delivering the order to a member or the managing agent of the partnership or association;

(5) If the owner be a domestic or foreign corporation, by delivering the order to an officer or managing agent. If such corporation be a foreign corporation and has no such agent in the city of Duluth, then service may be made upon any such agent of the corporation within the state;

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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(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

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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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;

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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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 set in accordance with Section 31-8 of this Code 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;

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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(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 5. That Section 10A-7 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 10A-7. Gambling tax imposed.

(a) Pursuant to Minnesota Statutes, Section 349.212, Subdivision 5, the city of Duluth hereby imposes a tax, set in accordance with Section 31-8 of this Code, of the gross receipts, less prizes actually paid out, of all lawful gambling revenues from the sale of pull-tabs in the city of Duluth. The tax shall be collected, utilized and reported in the manner provided in Minnesota Statutes, Section 349.212, Subdivision 5. To implement this tax, the city council may, by resolution, promulgate and establish any rules, regulations or forms it deems necessary. The tax due hereunder shall be paid monthly to the administrator of sales tax. The tax imposed by this Section shall take effect on January 1, 1989;

(b) Any person who violates any of the rules and regulations promulgated pursuant to this Section shall be guilty of a misdemeanor;

(c) If any tax imposed by this Section is not paid within the time specified for payment, there shall be added thereto a specific penalty equal to that set in accordance with Section 31-8 of this Code, of the amount remaining unpaid;

(d) The amount of the tax not timely paid, together with any penalty provided by this Section, shall bear interest at the rate set in accordance with Section 31-8 of this Code per annum from the time the tax should have been paid until the tax is paid. Any interest and penalty shall be added to the tax and collected as a part thereof.

Section 6. That Section 11-5 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 11-5. Same--Revocation or suspension, administrative penalties.

(a) Every license issued under this Chapter may be suspended up to 60 days or revoked by the alcohol, gambling and tobacco commission for any cause set forth in paragraph (b) of this Section after a public hearing held for such purpose, notice of which shall be mailed to the licensee at his or her place of business ten days before the holding of such hearing. Any decision to suspend or revoke a license shall be made in writing. Any licensee aggrieved by a decision of the alcohol, gambling and tobacco commission may appeal such decision to district court as provided in Minnesota Statutes, Section 461.12, Subd. 7;

(b) The following shall be good cause to revoke or suspend a tobacco license:

(1) That the applicant, its managers or employees violated any ordinance or state or federal statute or regulation which relates to the sale or possession of tobacco or tobacco related devices;

(2) That the applicant, its managers or employees were convicted of a crime that directly relates to the sale of tobacco or tobacco related devices and have not been rehabilitated within the meaning of Minnesota Statutes, Chapter 364;

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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(3) That the applicant made material misstatements of fact or omissions of fact on its present or past applications;

(4) A refusal by the applicant or its managers or employees to cooperate with the police in any investigation of unlawful tobacco sales;

(c) If a licensee or employee of a licensee sells tobacco to a person under the age of 18 years, or violates any other provision of this Chapter, the licensee shall be charged an administrative penalty set in accordance with Section 31-8 of this Code. An administrative penalty set in accordance with Section 31-8 of this Code must be imposed for a second violation at the same location within 24 months after the initial violation. For a third violation at the same location within 24 months after the initial violation, an administrative penalty set in accordance with Section 31-8 of this Code must be imposed, and the licensee's authority to sell tobacco at that location must be suspended for not less than seven days. No penalty or suspension under this paragraph shall be imposed until the licensee has been served personally by mail with notice of the alleged violation and been given an opportunity for a hearing as provided in paragraph (a) of this Section;

(d) If it appears that a licensee or the licensee's employees acting under the scope of the license have sold tobacco to persons under 18 years of age or otherwise violated this Chapter on four separate occasions during any 24 month period, the alcohol, gambling and tobacco commission must set a disciplinary hearing for the licensee. If, at the hearing, it is shown that the licensee or licensee's employees did sell tobacco to persons under 18 years of age or otherwise violated this Chapter on four separate occasions in a 24 month period, the alcohol, gambling and tobacco commission must revoke the license. In addition, the licensee shall be ineligible to apply for a cigarette license in the next succeeding license year;

(e) An individual who sells tobacco to a person under the age of 18 years must be charged an administrative penalty set in accordance with Section 31-8 of this Code. No penalty may be imposed until the individual has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing as provided in paragraph (a) of this Section.

Section 7. That Section 12-14 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 12-14. Late payment charge.

There shall be added to any penalty not paid within the times prescribed for payment thereof in sections 12-9 or 12-13(a) above an amount equal to an amount set in accordance with Section 31-8 of this Code as a late payment charge.

Section 8. That Section 12-16 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 12-16. Assessment.

In addition to the remedies provided for above, in the event that any violator fails to pay any amount owed to the city under this Chapter with regard to any property violation, the city shall have the right to assess the amount owed against the property with regard to which the property violation arose in the manner set forth in this Section, which property shall be deemed to have been benefitted thereby;

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

---

(a) On or before June 1 of each year, the administrator shall transmit to the city assessor a list of properties upon which property violations have occurred and with regard to which property violations there is outstanding any moneys pursuant to this Chapter in the immediately preceding 15 months, together with the amount due with respect to each such property. For each such property, a collection fee in the amount set by city council resolution shall be added to reimburse the city its administrative costs;

(b) Upon the receipt of such list, the city assessor shall make an assessment roll containing, in columns, the name of the owner of each lot or parcel of land separately assessed, if known to him or her, together with a description of each such lot or parcel of land and the amount of such assessment. The assessment roll shall include the collection fee set forth in paragraph (a) above;

(c) On or before July 1 of each year, the city assessor shall certify the assessment roll to the city council. The assessor shall recommend that the city council by resolution confirm such assessment. To each assessment a collection fee shall be added in an amount set by council resolution to reimburse the city its administrative assessment costs. Immediately thereafter notice of the confirmed assessment and its amount, including the collection fees, shall be sent by the city treasurer by mail to the apparent owner of each lot or parcel of land assessed. Such notice shall indicate that the assessment is due and payable on or before October 1 of the year when confirmed and that failure to make payment by such date shall render the assessment delinquent. After any appeals are heard and determined, the city council shall confirm the entire assessment roll by resolution;

(d) After the city council confirms the assessment roll, the city treasurer shall file with the county auditor, during the time set by law for such filings, a certified statement of all assessments delinquent under this Chapter, describing the land affected and giving the amount of the assessment, with a penalty added, which penalty amount shall be set in accordance with Section 31-8 of this Code, after which the assessment shall follow the provisions of Article IX of the City Charter.

Section 9. That Section 24-17.1 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 24-17.1. Items to be segregated from and not included with solid waste for collection.

(a) No person shall place any yard waste, motor oil, motor vehicle batteries, tires, hospital waste, pathological waste, infectious waste, medical sharps, hazardous substances, household hazardous wastes or unacceptable waste with solid waste that is placed in containers for collection by a licensed collector. These items shall be disposed of by the owner or occupant of the property in accordance with this Chapter or WLSSD regulations;

(b) No person shall place any recyclable materials with solid waste that is placed in containers for collection by a licensed collector. Recyclable materials shall be placed in separate containers for monthly collection by licensed collectors or brought to recycling facilities for processing. Nothing in this Section or Chapter shall be construed to require owners or managers of buildings or areas frequented by the general public to sort recyclable materials from solid waste placed by the general public in containers placed in such buildings or

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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areas by the owners or managers for the convenience of the general public (this Subsection takes effect on 1-1-92);

(c) Presence of any of the above-mentioned prohibited articles in solid waste containers serving any property shall constitute prima facie evidence that the prohibited articles in the containers were placed there by the occupant of the property;

(d) When any licensed collector finds any of the above-mentioned prohibited articles in solid waste containers to be collected, the licensed collector may, at the licensed collector's option, refuse to empty the container into his or her vehicle. The licensed collector shall leave a written notice affixed to the solid waste container informing the occupant what prohibited articles are in the container. The notice shall be made in duplicate and the collector shall retain a copy. If, after notice is given to the customer, the same type of improper articles are found in solid waste containers at that address on future collections, the licensed collector may impose a penalty, set in accordance with Section 31-8 of this Code, on any container that he or she empties into his or her vehicle which contains the type of prohibited article mentioned in the former notice. Penalties shall be included in regular billings for solid waste collection. The licensed collector shall submit a list of penalties charged to the solid waste compliance officer on or before June 1 each year.

Section 10. That Section 24-26 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 24-26. Same--Certification of delinquent assessments.

After the city council confirms the assessment roll, the city treasurer shall file with the county auditor, during the time set by law for such filings, a certified statement of all assessments delinquent under this Chapter, describing the land affected and giving the amount of the assessment, with a penalty added, which penalty amount is set in accordance with Section 31-8 of this Code, after which the assessment shall follow the provisions of Section 70 of the City Charter.

Annually, the city treasurer shall remit to the licensed collectors, or their designated agents, all sums together with the interest thereon collected with regard to delinquent accounts submitted to the city treasurer pursuant to Section 24-22 of this Chapter. Any penalty collected by the city treasurer on such accounts shall be retained by the city. All accounts, including interest and penalty thereon, collected by the city treasurer for services rendered and paid for by the city under Section 24-36 of this Chapter, shall be retained by the city.

Section 11. That Section 29B-7 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 29B-7. Assessment for any violation of this Chapter.

(a) On or before June 1 of each year, the department head of the police department or designee, may transmit to the city assessor a list of the properties, which have outstanding fees for violation(s) under this Chapter, including the amount due. Such list shall be accompanied by a verified statement that the amounts indicated are in fact due and owing, and that the police department has made a reasonable attempt to collect such amounts. For each account transmitted, a collection fee in the amount set by city council resolution shall be added to reimburse the city its administrative costs;

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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(b) Upon the receipt of such list, the city assessor shall make an assessment roll containing, in columns, the name of the owner of each lot or parcel of land separately assessed. The assessment roll shall include the collection fee set forth in Section 29B-7(a);

(c) On or before July 1 of each year, the city assessor shall certify the assessment roll to the city council. The assessor shall give 20 days notice by first class mail to the apparent owner of each lot or parcel of land and any other party known to have a legal interest in said land stating the amount of the assessment, including the collection fee, the description of the property, that the assessment roll is on file in the assessor's office and that any party aggrieved by the assessment may appeal the assessment to the city assessor by filing a written notice of appeal with the assessor within 20 days after the notice of assessment. Such notice shall indicate that the assessment, including the collection fee, is due and payable to the city on or before October 1 of the current year. Failure to make payment by such date shall render the assessment delinquent;

(d) Any party aggrieved by an assessment made pursuant to this Chapter may appeal such assessment by filing a written notice of appeal with the city assessor. The notice shall state the precise grounds upon which the appeal is taken. The city assessor shall notify the appellant of the time and place of the hearing. At the hearing, the city assessor shall hear and determine all objections made to the regularity of the proceedings or to the correctness of the amount of such assessment or of the amount levied upon a particular lot or parcel of land. If the proceedings are found to be regular and the amounts claimed had been properly billed to the occupant of the premises, the assessor shall correct any errors which may have been found in the assessment and shall thereupon recommend that the city council by resolution confirm such assessment. To each assessment a collection fee shall be added in an amount set by council resolution to reimburse the city its administrative assessment costs. Immediately thereafter notice of the confirmed assessment and its amount, including the collection fees, shall be sent by the city treasurer by mail to the apparent owner of each lot or parcel of land assessed. Such notice shall indicate that the assessment is due and payable on or before October 1 of the year when confirmed and that failure to make payment by such date shall render the assessment delinquent. After all appeals are heard and determined, the city council shall confirm the entire assessment roll by resolution;

(e) After the city council confirms the assessment roll, the city treasurer shall file with the county auditor, during the time set by law for such filings, a certified statement of all assessments delinquent under this Chapter, describing the land affected and giving the amount of the assessment, with a penalty added, which penalty amount is set in accordance with Section 31-8 of this Code, after which the assessment shall follow the provisions of Section 70 of the City Charter.

Annually, the city treasurer shall remit to the police department all sums together with the interest thereon collected with regard to delinquent accounts submitted to the city treasurer. Any penalty collected by the city treasurer on such accounts shall be retained by the city treasurer;

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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(f) The provisions of sections 64, 65, 66 and 67 of the City Charter with reference to appeals to the district court shall apply to the provisions of this Chapter in reference to the confirmation of assessments.

Section 12. That Section 33-46 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 33-46. Penalties.

(a) Violations of the provisions of Articles VII and VIII of this Chapter shall be punished as set forth in this Section;

(b) Violations of the following Sections or subsections shall be punishable by a fine of not less than that set in accordance with Section 31-8 of this Code:

(1) Section 33-84, time limit parking;

(c) Violations of the following Sections or subsections shall be punishable by a fine of not less than that set in accordance with Section 31-8 of this Code:

(1) Section 33-82(a)(4), parking too close to a fire hydrant;

(2) Section 33-111(g), aggravated parking meter violation;

(3) Section 33-95, government area parking violations except meters;

(4) Section 33-97(a), no parking zone violations;

(5) Section 33-97.8, alternate side parking violations;

(6) Section 33-87(a), truck zone violations;

(7) Section 33-87(b), loading zone violations;

(8) Section 33-82(a)(1), parking on a sidewalk;

(9) Section 33-82(a)(2), parking in front of a driveway;

(10) Section 33-82(a)(3), parking within an intersection;

(11) Section 33-82(a)(5), parking on a crosswalk;

(12) Section 33-82(a)(6), parking within 20 feet of an intersection crosswalk;

(13) Section 33-82(a)(7), parking within 30 feet of a stop sign or traffic control device;

(14) Section 33-82(a)(8), parking within seven feet of an alley or driveway;

(15) Section 33-82(a)(9), parking within 50 feet of a railroad crossing;

(16) Section 33-82(a)(10), illegal parking near a fire station;

(17) Section 33-82(a)(11), illegal parking near street obstruction;

(18) Section 33-82(a)(12), double parking;

(19) Section 33-82(a)(13), parking on a bridge or in a tunnel;

(20) Section 33-82(a)(14), no stopping zones;

(21) Section 33-82(a)(15), parking on boulevards;

(22) Section 33-83, illegal alley parking;

(23) Section 33-85, 24 hour parking limit;

(24) Section 33-93, facing wrong way;

(25) Section 33-93, parking parallel to curb;

(26) Section 33-90, parked with for sale sign;

(27) Section 33-92, failure to set parking brake or turn wheels to the curb;

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

---

- (28) Section 33-94, angle parking violation;
  - (29) Sections 33-124 through 33-130, dealing with residential permit parking;
  - (30) Any other parking offense in violation of any section contained in Article VII of Chapter 33;
  - (31) Section 33-109, overtime parking at a parking meter;
  - (32) Section 33-106(a), improper parking at a single meter;
  - (33) Section 33-106(b), improper parking at a tandem meter;
- (d) Violations of the following Sections or subsections shall be punishable by a fine of not less than that set in accordance with Section 31-8 of this Code:
- (1) Section 33-88, parking in a taxi stand;
  - (2) Section 33-82(a)(16), parking in a fire lane;
  - (3) Sections 33-97.1 through 33-97.7, snow emergency violations;
  - (4) Section 33-91, leaving keys in the ignition;
  - (5) Section 33-87(d), unattached semi trailer parked on street;
- (e) Violations of the following sections or subsections shall be punishable by a fine of not less than that set in accordance with Section 31-8 of this Code:
- (1) Section 33-88, parking in a bus stop;
- (f) Violations of the following sections or subsections shall be punishable by a fine of not less than that set in accordance with Section 31-8 of this Code:
- (1) Section 33-89, improper roadway clearance.

Section 13. That Section 33-237 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 33-237. Owner's responsibility.

A person registered as owner of a snowmobile may be fined an amount not to exceed that set in accordance with Section 31-8 of this Code if a snowmobile bearing his or her registration number is operated contrary to the provisions of this Code. The registered owner may not be so fined if:

- (a) The snowmobile was reported as stolen to the Duluth police department at the time of the alleged unlawful act; or if
- (b) The registered owner demonstrates that the snowmobile either was stolen or was not in use at the time of the alleged unlawful act; or if
- (c) The registered owner furnishes to law enforcement officers, upon request, the identity of the person in actual physical control of the snowmobile at the time of such violation.

The provisions of this Section do not apply to any person who rents or leases a snowmobile if such person keeps a record of the name and address of the person or persons renting or leasing such snowmobile, the registration number thereof, the departure date and time, and the expected time of return thereof. Such record shall be preserved for at least six months, and shall be prima facie evidence that the person named therein was the operator thereof at the time it was operated contrary to the provisions of this Code. The provisions of this Section do not prohibit or limit the prosecution of a snowmobile operator for violating any of the provisions of this Code.

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

---

Section 14. That Section 34-17 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 34-17. Predatory offenders residency--prohibited conduct.

(a) Findings and intent:

(1) Repeat predatory offenders present an extreme threat to the public safety. Predatory offenders are likely to use physical violence and to repeat their offenses, and most predatory offenders commit many offenses, have many more victims than are ever reported, and are prosecuted for only a fraction of their crimes. This makes the cost of predatory offender victimization to society at large, while incalculable, unmistakably steep;

(2) It is the intent of this Section to serve the city's compelling interest to promote, protect and improve the health, safety, and welfare of Duluth citizens by creating areas around locations where children regularly congregate in concentrated numbers wherein certain predatory offenders are prohibited from establishing temporary or permanent residence;

(b) Definitions. The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning;

(1) Designated predatory offender. Any person who has been categorized as a Level III predatory offender under Minnesota Statutes Section 244.052, a successor statute, or a similar statute from another state in which that person's risk assessment indicates a high risk of reoffense;

(2) Permanent residence. A place where a person abides, lodges, or resides for 14 or more consecutive days;

(3) Temporary residence. A place where a person abides, lodges, or resides for a period of 14 or more days in the aggregate during any calendar year and which is not the person's permanent address, or a place where the person routinely abides, lodges, or resides for a period of four or more consecutive or non-consecutive days in any month and which is not the person's permanent residence;

(4) School. A public or nonpublic elementary or secondary school;

(5) Licensed child care center. A group child care center currently licensed by the St. Louis County, Minnesota, public health and human services department;

(6) Public playground. A city-owned, improved outdoor area designed, equipped, and set aside for children's play and includes in that area such facilities as play equipment, surfacing, fencing, signs, internal pathways, internal land forms, vegetation and related structures;

(c) Predatory offenders prohibition; penalties; exceptions.

(1) Prohibited location of residence. It is unlawful for any designated predatory offender to establish a permanent residence or temporary residence within 2,000 feet of any school, licensed child care center or public playground;

(2) Measurement of distance. For purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the outer property line of the permanent residence or temporary

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

---

residence to the nearest outer property line of the school, licensed child care center, or public playground;

(3) Penalties. A person who violates this Section shall be punished by a fine of an amount not exceeding that set in accordance with Section 31-8 of this Code or confinement for a term not exceeding 90 days, or be both such fine and confinement. Each day a person maintains a residence in violation of this ordinance constitutes a separate violation;

(4) Exceptions. A designated predatory offender residing within a prohibited area as described in Section 34-17(c)(1)-(2) does not commit a violation of this Section if any of the following apply:

(A) The person established the permanent residence or temporary residence and reported and registered the residence pursuant to Minnesota Statutes sections 243.166 and 243.167, or a successor statute, prior to June 10, 2010;

(B) The person was a minor when he/she committed the offense and was not convicted as an adult;

(C) The person is a minor;

(D) The school, licensed child care center or public playground within 2,000 feet of the person's permanent residence was opened after the person established the permanent residence or temporary residence and reported and registered the residence pursuant to Minnesota Statutes sections 243.166 and 243.167, or a successor statute;

(E) The residence is also the primary residence of the person's parents, grandparents, siblings or spouse;

(F) The residence is a property purchased, leased, or contracted with and licensed by the Minnesota department of corrections prior to June 10, 2010.

Section 15. That Section 34-23 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 34-23. Vehicle noise limits for electronically amplified sound.

(a) No motor vehicle, as defined in Section 33-1 of this Code, shall emit any electronically amplified sounds that are plainly audible at a distance of 50 feet from the vehicle, provided that this Section shall not apply to:

(1) Sirens, horns or other signaling devices used by an authorized emergency vehicle as defined in Minnesota Statutes Section 169.01;

(2) Vehicles in parades or other civic celebrations duly authorized by the city;

(3) Motor vehicle horns when actually used as a warning of danger;

(4) Anti-theft devices installed on motor vehicles;

(b) Violations of this Section are punishable by fines of not to exceed those set in accordance with Section 31-8 of this Code for the first and second offenses and a fine as provided in Section 1-7 of this Code for all subsequent offenses.

Section 16. That Section 35-30 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 35-30. Regulations relating to trees, shrubs and plants on private property.

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

---

(a) The tree inspector shall have the authority, and it shall be his or her duty to order the trimming, treatment or removal of trees, shrubs or plants upon private property when he or she shall find such action necessary to public safety or to prevent the spread of disease or insects to trees, shrubs or plants located on public property;

(b) Any tree or shrub situated upon private property, but so situated as to extend its branches over the improved portion of a public street or highway easement, shall be so trimmed by the owner of the real property upon which the same is located that there is a clear height of 14 feet over that portion of such easement that is used for vehicular traffic, and a clear height of ten feet over that portion of such easement used for pedestrian travel, unobstructed by branches, and such persons shall remove the dead or diseased branches or stubs of such trees which are or may become a hazard to the public use of such easement;

(c) All orders to trim, remove or treat trees, shrubs or plants given pursuant to this Section shall be in writing and shall be served personally or by mail upon the owner of the property where such trees, shrubs or plants are located. Such orders shall give the owner of the property not less than ten days from the date of delivery or mailing of such notice to comply with such order. It shall be unlawful for an owner of property receiving such an order to fail to comply with such order within the specified time;

(d) If the required action is not taken by the property owner within the specified time, the tree inspector may cause the trees, shrubs or plants concerned to be trimmed, removed or treated, with the costs being borne by the property owner. If not voluntarily paid to the city by such owner, the costs of such trimming, removal or treatment may be recovered by the city by special assessment upon the property of said owner. On or before July 1 of each year, the tree inspector shall send to the city assessor a list of all unpaid charges under this Section and the assessor shall prepare and transmit to the city council an assessment roll spreading such charges against the appropriate properties. The council, after a public hearing upon at least ten days' notice by certified mail to all affected property owners, and after making whatever corrections in such assessment roll that are deemed appropriate, may confirm such assessment roll by resolution. Immediately thereafter, notice of the confirmed assessment and its amounts shall be sent by the city clerk by certified mail to the owner of each lot or parcel of land assessed. Such notice shall indicate that the assessment is due and payable on or before October 1 of the year when confirmed and that failure to make payment by such date will render the assessment delinquent. On or before the tenth of October of each year, the city assessor shall file with the county auditor a certified statement of all assessments delinquent under this Article, describing the land affected and giving the amount of the assessment, with a penalty added, which penalty shall be set in accordance with Section 31-8 of this Code, after which the assessment shall follow the provisions of Section 70 of the City Charter. The provisions of sections 64 through 67 of the City Charter shall apply to assessments made under this Article.

Section 17. That Section 36-7 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 36-7. Daily reports to chief of police.

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

---

Every pawnbroker shall make available to the chief of police every day, before the hour of 12:00 noon, a complete, legible and correct copy of the records required by Section 36-6 and Minnesota Statutes Chapter 325J or its successor, for all transactions occurring on the previous day. If the chief of police requires computerized record keeping for pawnbroker records, the chief shall also set and enforce specifications for each licensee's transmittal of those records to local and statewide authorities or data systems.

(a) Effective no later than 60 days after the police department provides licensees with the current version of the Automated Pawn System Interchange File Specification or similar automated record system as may be specified by the city, licensees must submit every reportable transaction to the police department daily in the following manner:

(1) Licensees must provide to the police department all reportable transaction information by transferring it from their computer to the Automated Pawn System via modem using the current version of the Automated Pawn System Interchange File Specification. All required records must be transmitted completely and accurately after the close of business each day in accordance with standards and procedures established by the issuing authority. Any transaction that does not meet the Automated Pawn System Interchange File Specification must be corrected and resubmitted the next business day. The licensee must display a sign of sufficient size, in a conspicuous place in the premises, which informs patrons that all transactions are reported to the police department daily;

(b) Billable transaction fees. Licensees will be charged for each billable transaction reported to the police department;

(1) If a licensee is unable to successfully transfer the required reports by modem, the licensee must provide the police department, upon request, printed copies of all reportable transactions along with the video tape(s) for that date, by noon the next business day;

(2) If the problem is determined to be in the licensee's system and is not corrected by the close of the first business day following the failure, the licensee must continue to provide the required reports as detailed in Section 36-6(a) of this Code, and must be charged a reporting failure penalty, daily, until the error is corrected, which penalty shall be set in accordance with Section 31-8 of this Code;

(3) If the problem is determined to be outside the licensee's system, the licensee must continue to provide the required reports in Section 36-6(a) of this Code, and resubmit all such transactions via modem when the error is corrected;

(4) Regardless of the cause or origin of the technical problems that prevented the licensee from uploading their reportable transactions, upon correction of the problem, the licensee shall upload every reportable transaction from every business day the problem had existed;

(5) Section 36-7(b)(1) through (3) notwithstanding, the police department may, upon presentation of extenuating circumstances, delay the implementation of the daily reporting penalty.

Section 18. That Section 36-20 of the Duluth City Code, 1959, as amended, is amended to read as follows:

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

---

Sec. 36-20. Daily reports to chief of police.

Every precious metal dealer shall make available to the chief of police every day, before the hour of 12:00 noon, a complete, legible and correct copy of the records required by Section 36-19 and Minnesota Statutes Chapter 325F or its successor, for all transactions occurring on the previous day. If the chief of police requires computerized recordkeeping for these records, the chief shall also set and enforce specifications for each licensee's transmittal of those records to local and statewide authorities or data systems.

(a) Effective no later than 60 days after the police department provides licensees with the current version of the Automated Pawn System Interchange File Specification or similar automated record system as may be specified by the city, licensees must submit every reportable transaction, except transactions involving coins exclusively, to the police department daily in the following manner:

(1) Licensees must provide to the police department all reportable transaction information by transferring it from their computer to the Automated Pawn System via modem using the current version of the Automated Pawn System Interchange File Specification. All required records must be transmitted completely and accurately after the close of business each day in accordance with standards and procedures established by the issuing authority. Any transaction that does not meet the Automated Pawn System Interchange File Specification must be corrected and resubmitted the next business day. The licensee must display a sign of sufficient size, in a conspicuous place in the premises, which informs patrons that all transactions are reported to the police department daily;

(b) Billable transaction fees. Licensees will be charged for each billable transaction reported to the police department;

(1) If a licensee is unable to successfully transfer the required reports by modem, the licensee must provide the police department, upon request, printed copies of all reportable transactions along with the video tape(s) for that date, by noon the next business day;

(2) If the problem is determined to be in the licensee's system and is not corrected by the close of the first business day following the failure, the licensee must continue to provide the required reports as detailed in Section 36-19(a) of this Code, and must be charged a reporting failure penalty, daily, until the error is corrected, which penalty shall be set in accordance with Section 31-8 of this Code;

(3) If the problem is determined to be outside the licensee's system, the licensee must continue to provide the required reports in Section 36-19(a) of this Code, and resubmit all such transactions via modem when the error is corrected;

(4) Regardless of the cause or origin of the technical problems that prevented the licensee from uploading their reportable transactions, upon correction of the problem, the licensee shall upload every reportable transaction from every business day the problem had existed;

(5) Section 36-20(b)(1) through (3) notwithstanding, the police department may, upon presentation of extenuating circumstances, delay the implementation of the daily reporting penalty.

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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Section 19. That Section 42A-48 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 42A-48. Penalties.

(a) If any tax imposed by this Chapter or by Section 54(d) of the Duluth City Charter or any portion of such tax is not paid within the time specified for the payment, or an extension thereof, or within 30 days after final determination of an appeal to the board of review relating thereto, there shall be added thereto a specific penalty, which amount shall be set in accordance with Section 31-8 of this Code, of the amount remaining unpaid;

(b) In case of any failure to make and file a return within the time prescribed by this Chapter or by rules and regulations promulgated pursuant to Section 54(d) of the Duluth City Charter or an extension of such prescribed time, unless it is shown that such failure is not due to wilful neglect, there shall be added to the tax, in lieu of the specific penalty provided in subsection (a) of this Section, an amount which shall be set in accordance with Section 31-8 of this Code if the failure is for not more than 30 days with an additional penalty which shall be set in accordance with Section 31-8 of this Code for each additional 30 days or fraction thereof during which such failure continues, not exceeding an amount which shall be set in accordance with Section 31-8 of this Code in the aggregate. If the penalty as computed does not exceed an amount which shall be set in accordance with Section 31-8 of this Code, a minimum penalty shall be assessed, which shall be set in accordance with Section 31-8 of this Code. The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the negligence, in which case the amount so added shall be collected in the same manner as the tax;

(c) If any person wilfully fails to file any return or make any payment required by this Chapter or by Section 54(d) of the Duluth City Charter or rules and regulations promulgated pursuant thereto, or wilfully files a false or fraudulent return, or wilfully attempts in any manner to evade or defeat any such tax or payment thereof, there shall also be imposed on him or her as a penalty an amount equal to an amount which shall be set in accordance with Section 31-8 of this Code of any tax (less any amounts paid by him or her on the basis of such false or fraudulent return) found due from him or her for the period to which such return related. The penalty imposed by this subsection shall be collected as part of the tax, and shall be in addition to any other penalties, civil and criminal, provided by this Section;

(d) In addition to the penalties hereinbefore prescribed, any person who wilfully fails to make a return or wilfully makes a false return or wilfully fails to pay over taxes collected for or on behalf of the city, with intent to evade any tax imposed by this Chapter, shall be guilty of a misdemeanor, punishable by a fine of up to that amount which shall be set in accordance with Section 31-8 of this Code or imprisonment for 90 days or both. The term "person," as used in this subsection includes any officer or employee of a corporation or a member or employee of a partnership who as such officer, member or employee is under a duty to perform the act in respect to which the violation occurs;

(e) All payments received shall be credited first to penalties next to interest, and then to the tax due;

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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(f) The administrator shall have power to abate penalties or interest when in his or her opinion their enforcement would be unjust and inequitable. The exercise of this power shall be subject to the approval of the city attorney if the abatement exceeds an amount which shall be set in accordance with Section 31-8 of this Code;

(g) The amount of tax not timely paid, together with any penalty provided by this Section, shall bear interest at the rate of 18 percent per annum from the time such tax should have been paid until paid. Any interest and penalty shall be added to the tax and be collected as a part thereof.

Section 20. That Section 43-33.4 of the Duluth City Code, 1959, as amended, is amended to read as follows:

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

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

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

(c) If a building sewer contains a house trap and the footing drains are active, the trap shall be removed. If the property requires footing drain disconnections and sump pump installation, it shall be done. The required repairs shall be completed within 90 days of the date of the inspection referred to in subparagraph (b) above. If they are satisfactorily completed, the director shall issue a POS certificate with regard to footing drain contribution only but such

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

---

POS certificate shall not evidence total compliance with all of the requirements of Section 43-31(a) above. If the required repairs are not satisfactorily completed within said 90 day period, the owner or customer shall be charged a monthly surcharge each month until the repairs are satisfactorily completed, which surcharge shall be set in accordance with Section 31-6(a) of this Code;

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

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

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

(g) On or before June 1 of each year, the director shall transmit to the city assessor a list of properties upon which inspections have been performed and with regard to which the payment therefore has not been made in the immediately preceding 15 months, together with the amount due with respect to each such property. For each such property, a collection fee in the amount set by city council resolution shall be added to reimburse the city its administrative costs;

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

---

(h) Upon the receipt of such list, the city assessor shall make an assessment roll containing, in columns, the name of the owner of each lot or parcel of land separately assessed, if known to him or her, together with a description of each such lot or parcel of land and the amount of such assessment. The assessment roll shall include the collection fee set forth in paragraph (g) above;

(i) On or before July 1 of each year, the city assessor shall certify the assessment roll to the city council. The assessor shall recommend that the city council by resolution confirm such assessment. To each assessment a collection fee shall be added in an amount set by council resolution to reimburse the city its administrative assessment costs. Immediately thereafter notice of the confirmed assessment and its amount, including the collection fees, shall be sent by the city treasurer by mail to the apparent owner of each lot or parcel of land assessed. Such notice shall indicate that the assessment is due and payable on or before October 1 of the year when confirmed and that failure to make payment by such date shall render the assessment delinquent. After any appeals are heard and determined, the city council shall confirm the entire assessment roll by resolution;

(j) After the city council confirms the assessment roll, the city treasurer shall file with the county auditor, during the time set by law for such filings, a certified statement of all assessments delinquent under this Chapter, describing the land affected and giving the amount of the assessment, with penalty added, which shall be set in accordance with Section 31-8 of this Code, which the assessment shall follow the provisions of Article IX of the City Charter.

Section 21. That Section 43-50.7 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 43-50.7. Penalties and assessments for FOG program noncompliance.

In the event that the owner of an FSF or the owner of any structure in which an FSF is located is found to have failed to comply with the provisions of this division, the following penalties or assessments or both may be applied:

(a) For introduction of FOG into any wastewater facility resulting in obstruction to said facility or in an SSO:

(1) The city may disconnect water and sewer service to the FSF and to the structure in which the FSF is located;

(2) City may impose a fine of not more than that amount set in accordance with Section 31-8 of this Code per month until such owner demonstrates that the subject FSF or structure is in compliance with the requirements of this Division;

(b) For failure to maintain records as required by the BMP program for any FSF, or failing or refusing to timely comply with any request for records required to be provided to the director, a fine of up to that amount set in accordance with Section 31-8 of this Code per day until such records are provided;

(c) For failure to pass the FOG inspection due to lack of or ineffective FOG equipment the director may:

(1) Require the subject FSF to install additional FOG equipment as necessary to resolve the problem;

(2) Change the sewer rate class of the FSF to reflect the presence of the excessive FOG contribution by the FSF.

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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Section 22. That Section 43-66 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 43-66. Rates and charges.

(a) The stormwater utility shall charge utility fees as provided in this Article to recover from property benefitting from the system the capital costs, debt service, operation and maintenance costs of stormwater facilities in the city. Subject to the limitations contained in this Section, this Article shall apply to all property in the city of Duluth;

(b) Utility fees shall be based upon the amount of impervious area on the benefitting property and shall be computed as provided in this Article. Each parcel of property within the city shall be categorized as residential, nonresidential, or undisturbed property. The utility fees for each type of property shall be as follows:

(1) The utility fee for residential property shall be the ERU rate multiplied by the number of dwelling units existing on the property;

(2) The utility fee for nonresidential property shall be the ERU rate multiplied by the numerical factor obtained by dividing the total impervious area for a nonresidential property by one ERU. The minimum utility fee for any nonresidential property shall be equal to one ERU rate;

(3) Undisturbed parcels of land shall be exempt from the utility fee;

(c) The Duluth public utilities commission shall, by resolution, adopt a schedule of utility fees sufficient to produce revenue equal to the budget of the stormwater utility. The resolution shall state the utility fee rate per ERU;

(d) The director shall gather impervious area data on residential property within the city and calculate an ERU value. The utility fees shall be based on this ERU value. In determining the ERU value, the director shall not be required to measure and consider all residential property in the city, but shall consider a reasonable sample representing areas throughout the city. The director shall further investigate nonresidential properties within the city to determine the impervious area on each property. The determination of impervious area made by the director shall be conclusive unless modified by the adjustment procedure set forth in this Article. The director shall endeavor to investigate and reestablish an ERU value for the city every five years after the effective date of this ordinance;

(e) Public rights-of-way and airport runways and taxiways shall be exempt from utility fees;

(f) The utility fees established by this Article are the joint and several responsibility of the owner, lessee and the occupant of each lot or parcel subject to the fee. The director shall cause monthly bills to be sent for each lot or parcel and shall develop a billing and collection system for said fees. Bills may be combined with other city utility bills. The Duluth public utilities commission may provide for penalties and interest for late payments in the resolution establishing the utility fee rate;

(g) Delinquent utility fees shall be collected as provided in Minnesota Statutes 444.075, Subd. 3, in the same manner as taxes against the property and may also be collected in an action at law against the owner, lessee or the occupant of the parcel. On or before July 1 of each year, the director shall

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

---

transmit to the city assessor a list of all delinquent stormwater utility fees for the preceding calendar year and the parcels which each delinquent fee relates to. Upon receipt of such list, the city assessor shall prepare a delinquent utility fee roll containing, in columns, the name of the owner, if known, of each lot or parcel where utility fees are delinquent, a description of each lot or parcel and the amount of delinquent utility fees from the previous year. On or before August 1 of each year, the city assessor shall certify the delinquent utility fee roll to the city council. The city clerk shall send notice by first class mail to the apparent owner of each lot or parcel of land and any other party known to have a legal interest in the property stating the amount of the utility fee due, a description of the property, that the utility fees are due and payable before October 1 of that year and that the delinquent utility fee roll is on file in the office of the city clerk. If the city council finds the roll to be proper and correct, it shall by resolution confirm the roll on or before October 1. The confirming resolution shall contain a collection fee added to each amount due to reimburse the city for its administrative costs of collection. On or before the tenth day of October each year, the city treasurer shall file with the county auditor a certified statement of all delinquent utility fees under this Article, describing the land affected and giving the amount of the fee, with a penalty added, set in accordance with Section 31-8 of this Code, after which the delinquent fee shall be processed in the same manner as an assessment under the provisions of Chapter 70 of the City Charter.

Section 23. That Section 45-82 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 45-82. Certification and approval of assessment roll; publication of assessments; manner of paying assessments.

(a) Approval of assessment roll. After local improvement as provided in this Chapter shall have been completed and accepted by the city, the city engineer shall compute and certify to the city council the cost thereof, including any incidental expenses of publication, mailing, etc., and the city assessor shall certify to the city council an assessment roll. At the next regular meeting thereafter, the city council shall consider and adopt said assessment roll, or return said assessment roll to the city assessor with instructions as to any corrections or modifications required. In the event that said assessment is so returned, the city assessor shall make said corrections and return said assessment roll as corrected to the council prior to its next regular meeting, at which time it shall be considered and approved with or without further amendment and correction by the council;

(b) Hearing; time for payment. Within ten days after such approval, the council shall have published in the official paper of the city and shall have mailed to each person whose name appears on said assessment roll a notice briefly describing the improvement for which the assessment is made, and stating that the assessment is payable at the treasurer's office at any time within 90 days subsequent to the publication of said notice in the case of assessments which are not eligible for payment in installments, and within 40 days subsequent to the publication of said notice in the case of assessments which are eligible for payment in installments, and that unless the same is so paid within said period, or in the case of assessments eligible for payment in installments, an application

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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is made to the city treasurer for an extension of time of payment as herein provided within such 40 day period after the publication of notice, a penalty, set in accordance with Section 31-8 of this Code, will be added to such assessment. Assessments shall be eligible for payment in installments when so determined by the council, except that an assessment against an owner of property which is less than that amount which shall be set in accordance with Section 31-8 of this Code for any single description of land as shown on the records of the city assessor shall not be so eligible;

(c) Installment payment. Within the 40 days after the publication of the notice of assessment, upon application in writing to the city treasurer by any owner of real estate against which an assessment which is eligible for payment in installments is made, the treasurer shall extend the time for paying such assessment in installments extended in the manner determined by the council not to exceed the estimated useful life of the improvement and, in any event, not exceeding 15 in number, payable yearly from 40 days after the date of the approval by the council of said assessment. Each of said installments of extended assessments shall be payable annually from the date the entire assessment would be payable, without penalty, and shall bear interest at a rate which shall be from time to time by resolution of the city council. Such installments of extended assessments, together with the accrued interest thereon, from the first Monday in January following, shall be considered to be delinquent under Section 45-82.1 below when they shall severally become due and payable, but not before. Any such installments may be paid prior to its maturity with interest to the date of payment only. Installment payment of assessments as authorized herein shall be computed in such a way that the minimum installment payment for any single parcel of land as shown on the records of the city assessor shall be that amount which shall be set in accordance with Section 31-8 of this Code, except for the final payment;

(d) Default. In the event of default in timely payment of an installment assessment levied upon a tract or parcel of land, the council may, at its option, declare all subsequent installment assessments at once due and payable;

(e) Modification by the board. Within 18 months after an assessment is confirmed by the city council, the special assessment board is authorized to withdraw such assessment and either extend the time during which the property owner may elect to pay such assessment in installments in those cases where the board is satisfied that good cause exists for such extension, or correct a mathematical error made in the computation of such assessment; provided, however, that whenever such correction results in an increase of the assessment, the affected party shall be given notice by mail of such increased assessment, and such party may, within 14 days after such notice is given, request the special assessment board to submit such increased assessment to the city council for its approval. Upon receipt of such request, the special assessment board shall submit such increased assessment to the city council and the council may approve or disapprove such assessment or make such adjustment to such assessment as it deems appropriate. If the city council approves all or any part of the modified assessment roll, the affected party may appeal such assessment within 30 days of the date of the city council's action on the matter, such appeal to be governed by the provisions of Section 67 of the

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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Charter. Action by the special assessment board pursuant to this paragraph shall be approved by at least three members thereof and a copy of the minutes of the board relating to such action shall be attacheded to the assessment roll affected by such action.

Section 24. That Section 45-82.1 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 45-82.1. Delinquencies in payments of assessments--penalties; assessments to be lien upon real estate.

Each assessment not paid on or before 40 days after the publication of the notice directing payment shall be deemed delinquent except as hereinafter provided for, and a penalty, which shall be set in accordance with Section 31-8 of this Code, shall thereupon be added, unless an extension of the assessment shall have been made by the council, as provided for in the next preceding Section. All installments of extended assessments shall be deemed delinquent if not paid at the time fixed for payment in the extension, and when delinquent a ten percent penalty shall in each case be added except as hereinafter provided for; provided, however, that no penalty or interest shall accrue or be charged against any property which is assessed during such time as it is owned by the state of Minnesota pursuant to forfeiture for nonpayment of real estate taxes until said property is redeemed pursuant to Minnesota Statutes, Chapter 281, or any successor statute. Every assessment shall be a lien upon the property against which the assessment is made, from the time such assessment is confirmed by the council.

Section 25. That Section 45-108 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 45-108. Utility fees and charges.

(a) The utility shall charge utility fees established from time to time by the council by resolution to recover from property benefitting from the system the debt service, operation and maintenance costs of street lighting system facilities in the city. Subject to the limitations contained in this Section, this Article shall apply to all property in the city of Duluth. The council may establish differing rates for residential property and non-residential property based on its determination of the reasonable benefits accruing to each such classification of property;

(b) The fees charged under this Article shall be charged along with and in the same manner as stormwater utility fees pursuant to Article XI of Chapter 43 of this Code. The utility fees established by this Article are the joint and several responsibility of the owner, lessee and the occupant of each lot or parcel subject to the fee. The city council may provide for penalties and interest for late payments in the resolution establishing the utility fee rate;

(c) In the event that any utility fees under this Article are not paid when due, the payment thereof may be enforced in the same manner as any other unpaid utility fee owed to the city including those owed with regard to water, gas or sewer service, which enforcement may include but shall not be limited to the right to discontinue any or all such water, gas or sewer service being provided to the benefitted property;

(d) In addition, delinquent utility fees shall be collected in the same manner as taxes against the property and may also be collected in an action at

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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law against the owner, lessee or the occupant of the parcel. On or before July 1 of each year, the director shall transmit to the city assessor a list of all delinquent street lighting system utility fees for the preceding calendar year and the parcels which each delinquent fee relates to. Upon receipt of such list, the city assessor shall prepare a delinquent utility fee roll containing, in columns, the name of the owner, if known, of each lot or parcel where utility fees are delinquent, a description of each lot or parcel and the amount of delinquent utility fees from the previous year. On or before August 1 of each year, the city assessor shall certify the delinquent utility fee roll to the city council. The city clerk shall send notice by first class mail to the apparent owner of each lot or parcel of land and any other party known to have a legal interest in the property stating the amount of the utility fee due, a description of the property, that the utility fees are due and payable before October 1 of that year and that the delinquent utility fee roll is on file in the office of the city clerk. If the city council finds the roll to be proper and correct, it shall by resolution confirm the roll on or before October 1. The confirming resolution shall contain a collection fee added to each amount due to reimburse the city for its administrative costs of collection. On or before the tenth day of October each year, the city treasurer shall file with the county auditor a certified statement of all delinquent utility fees under this Article, describing the land affected and giving the amount of the fee, with a penalty added, which shall be set in accordance with Section 31-8 of this Code, after which the delinquent fee shall be processed in the same manner as an assessment under the provisions of the City Charter.

Section 26. That Section 48-15 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 48-15. Same--To be paid monthly--meter reading requirements.

(a) Payment for the supply of water, gas and sewage shall be made monthly, on or before time for payment stated on the bill, but in no case shall such time be less than 20 days after the date of mailing of the bill. The department shall charge interest on delinquent bills for service charges and budget plan payments at the rate of the amount set in accordance with Section 31-8 of this Code per month. Interest on such delinquent bills shall be charged from the date of the mailing of the delinquent bill, but interest of less than \$1 accruing during a billing period shall be waived. The department shall waive interest on the delinquent bills of applicants who have been determined pursuant to the provisions of this Chapter to be unable to pay such bills immediately, and on budget plan payments between April 1 and August 31 of any year when the amount then actually owed the department for service for any billing period is less than said budget payment; but interest on unpaid delinquent bills for actual service shall be applicable during said time period;

(b) Except in unusual cases or when approval is obtained from the applicant, readings of all meters used for determining charges to applicants shall be made at least every other month unless otherwise authorized by resolution of the city council; provided, however, that in the case of premises not served by gas, the department shall not be required to read water meters more frequently than once every four months. The term, month, for meter reading and billing purposes is the period between successive meter reading dates which shall be as nearly as practicable to a 30 day interval.

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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The department shall read the meter when there is a change in applicants;

(c) When access to a meter cannot be gained an estimated bill may be rendered; provided that in cases of emergency, the department may render estimated bills without reading meters. Estimated bills shall be based on the applicant's normal consumption for a corresponding period during the preceding year or any other reasonable and accurate method;

(d) The department may render no more than two consecutive estimated bills to any applicant. When two consecutive bills have been issued, the department will send a letter to the applicant with the second bill, giving that applicant ten days to make arrangements with the department for reading the meter, either by making an appointment to grant the meter reader access to the meter or delivering a key to the department for access to the meter. The letter shall also state that if no such arrangements are made within ten days, the department will disconnect service.

Section 27. That Section 48-210 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 48-210. Charges.

The charges for shutting off and turning on the supply of water or gas, where it has been shut off for nonpayment of charges, to facilitate maintenance or repair of any service or for violation of the rules, shall be not less than that amount set in accordance with Section 31-8 of this Code and shall include compensation to the department for all expenses incurred in such shutting off and turning on the supply.

Section 28. That Section 50-37.1 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 50-37.1. Common procedures and requirements.

A. Pre-application meetings.

A pre-application meeting is an informal discussion between a potential applicant, interested citizen, city staff and the historic preservation commission (if applicable) regarding a possible project subject to this Chapter. The purpose of the pre-application meeting is to assist the applicant by identifying the types of approval needed to complete the project, application material and impact studies required, applicable comprehensive plan provisions and applicable review criteria. A pre-application meeting may include a site visit at the request of the city. Pre-application meetings are required for the following types of applications:

1. UDC zoning map amendment;
2. District plan adoption or amendment;
3. Subdivision concept plan;
4. Vacation of street;
5. Concurrent use of streets permit.
6. Historic resource designation;
7. Special use or interim use permit;

B. Authority to file applications.

1. A property owner or a contract purchaser may apply for any type of permit or approval unless a more specific application is stated in this Section 50-37.1.B or in sections 50-37.2 through 16 below. In the event of a conflict between the provisions of this Section 50-37.1.B and the provisions of

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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sections 50-37.2 through 16, the provisions of sections 50-37.2 through 16 shall govern;

2. An agent of the property owner, or a resident of the property, may apply for any type of permit or approval provided the agent or resident has written authority of the property owner to do so;

3. Applications for designation of a historic resource are governed by Section 50-37.8;

4. Any person may request an interpretation of this Chapter, and the land use supervisor may issue interpretations of this Chapter as needed and shall post issued interpretations on the city web site;

C. Application materials and fees.

1. Each application for a permit or approval, or for a modification of a permit or approval, pursuant to this Chapter, shall include all those application materials listed for that type of application or modification listed in the UDC application manual for this Chapter and a fee in the amount listed for that type of application or modification shown in the latest schedule of fees approved by council;

2. The city may reject applications not meeting the requirements of this Chapter, the UDC application manual, or as required or authorized by MSA 15.99;

3. Any and all representations made by the applicant to the city on the record during the application process, whether written or verbal, shall be deemed a part of the application and may be relied upon in good faith by the city;

4. The schedule of fees shall be adopted from time to time by the council by resolution, pursuant to Section 31-6 of the Code, to defray estimated staff costs and expenses of processing applications;

5. The schedule of fees may provide for additional fees if an applicant submits more than two applications that are incomplete, pursuant to Section D below, for the same proposed development;

6. All fees are non-refundable regardless of whether the applicant withdraws the application prior to a decision or whether the application is approved, approved with conditions or denied;

D. Determination of completeness.

A determination of completeness shall be made for each application pursuant to MSA 15.99;

E. Inactive complete applications.

If an application has been determined to be complete, but review of the application reveals possible additional impacts on the surrounding area, any request by the city for additional materials necessary to evaluate those impacts shall comply with the provisions of MSA 15.99;

F. Withdrawal of applications.

An applicant may withdraw an application at any time prior to a decision by the city by filing a written request to withdraw the application with the city. Any resubmission is subject to the provisions of subsection G below. If the application is later resubmitted, it shall be treated as a new application for purposes of review and scheduling. Any fees paid for a withdrawn application shall not be refunded;

G. Successive applications.

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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If an application pursuant to this Chapter has been denied by the city, an application requesting the same or essentially the same approval shall not be accepted during the next 12 months;

H. Public notice.

1. Types of notice.

The city uses one or more of the following methods to notify the public about pending applications where there is an opportunity for public comment on the application. The type(s) of notice provided for different types of applications are shown in Table 50-35-1.

(a) Newspaper notice means the publication of one notice in a newspaper of general circulation within the city at least ten days before the date of the public hearing, except in the case of amendments to the text of this Chapter or zoning map, in which case the notice shall be published at least once each week for three successive weeks before the date of the public hearing;

(b) Mailed notice means a letter mailed by first class mail to property owners within 350 feet of the applicant's parcel at least ten days prior to the date of the public hearing. In the case of an application for vacation of a street, the notice shall be mailed to the owners of all properties abutting (a) the portion of the street proposed to be vacated, and (b) the portion of that street extending 350 feet from the ends of the portion proposed to be vacated. In the case of an application for rezoning an area of five acres or less, the notice shall be mailed to each property owner in the area to be rezoned and each owner of property located partly or entirely within 350 feet of the area to be rezoned. Failure to give mailed notice as required by this Section or any defect in the notice given shall not invalidate any action of the planning commission or council, provided that a bona fide attempt to comply with this Section has been made;

(c) Sign notice means a sign with minimum dimensions of 24 inches by 30 inches posted as close as reasonably possible to each street frontage on the applicant's property with the text between three and five feet above grade level, with a title line reading "Zoning Notice" in letters at least three inches tall, and with the remainder of the text in letters at least 1/2 inch tall. Each sign must be posted at least two weeks before the date of the public hearing, and must remain in place and legible through the date of the public hearing as shown on the sign. If the sign will not be legible at the stated height due to snow accumulations it may be placed higher, but at the lowest elevation that will be legible to the public. If snow obscures the sign during the posting period, the snow shall be removed and/or the sign shall be relocated so as to be legible within 24 hours after snowfall ends. Evidence produced at or before the public hearing that one or more of the required signs were not in place or legible throughout that period shall be grounds for postponement of the public hearing and a requirement to repost the property. Required signs may not be posted in any portion of the public right-of-way;

2. Content of notice.

Each required notice shall include the following information:

- (a) The name of the applicant;
- (b) The address of the property;

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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(c) A narrative description of the project including the proposed land uses, size (in square feet) and height (in feet and stories) of any proposed buildings or building expansions;

(d) The type of permit or approval being sought;

(e) Contact information where additional information can be obtained from the applicant (which may be an address, telephone number, web site, or e-mail address or other electronic site or method);

(f) Contact information for the assigned city staff member;

(g) The date, time and place of the public hearing;

3. Special notice provision for appeals.

In the case of an appeal to the planning commission or council pursuant to Section 50-37.1.O, mailed notice shall be provided to any interested parties that were notified of the original application and the right to receive notice of any appeal, and who have notified the city in writing that they would like to receive notice of the appeal;

I. Public hearings.

1. Public hearings before the planning commission and public hearings before the council on matters related to this Chapter shall be conducted pursuant to rules and practices established by each of those bodies and in compliance with state law;

2. Attendance shall be open to the public;

3. All hearing and decision timeframes shall comply with MSA 15.99;

J. Review criteria.

1. The planning commission shall approve or recommend approval of an application if it makes a written finding that:

(a) The application is consistent with the adopted comprehensive land use plan, as that plan may have been amended after adoption;

(b) The application complies with all applicable requirements of this Chapter, as those requirements may have been varied through a variance approved pursuant to Section 50-37.9;

(c) The application complies with all additional approval criteria listed in Section 50-37.2 below;

2. If the planning commission determines that the criteria in subsection 1 have not been met, the commission shall deny or recommend denial of the application or approve it with conditions to bring the application into conformance with the above criteria;

3. The council is encouraged, but not required, to make decisions on applications under this Chapter pursuant to the criteria listed in subsection 1. In no case may the city's final action result in the approval of a use variance;

4. The applicant bears the burden of proof that an application complies with all applicable standards and criteria in this Chapter;

K. Conditions on approval.

1. As an alternative to denying an application, the building official and the land use supervisor are authorized to approve applications with

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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conditions necessary to bring them into compliance with the requirements of this Chapter or with any previously approved district plan for the property;

2. As an alternative to denying an application, the planning commission is authorized to recommend or impose conditions on approvals that it determines are necessary to (a) bring the application into compliance with the requirements of this Chapter, the purposes of the zone district where the property is located or any previously approved district plan for the property, or (b) prevent or minimize adverse effects upon surrounding areas or upon public facilities and services;

3. All conditions imposed on approved applications shall be reasonably related to the anticipated impacts of the proposed development or land use and to the purposes of this Chapter;

4. In the case of decisions made by the planning commission or council, where mitigation of the impacts of a proposed plan or development requires an applicant to dedicate land or pay money to a public entity in an amount that is not calculated according to a formula applicable to a broad class of applicants, any condition imposed shall be roughly proportional both in nature and extent to the anticipated impacts of the proposed development, as shown through an individualized determination of impacts;

5. Any conditions on approved applications shall be listed in or attached to the approval document, and violation of any approved condition shall be a violation of this Chapter;

### L. Administrative adjustments.

Where an application concerns development or redevelopment of an existing platted lot and the applicant demonstrates practical difficulty in designing the redevelopment to comply with all requirements of this Chapter, the land use supervisor is authorized to approve applications that diverge from the requirements of this Chapter in up to two of the following ways:

1. The front, side or rear setbacks of a new structure or modified building are no more than one foot smaller than the minimum setbacks required by this Chapter;

2. The height of a new or modified structure is no more than two feet taller than the maximum required by this Chapter;

3. For properties where Section 50-24 requires more than three off street parking spaces, and the property does not contain a single-family residential structure (regardless of the use of that structure) the site contains one less parking space than is required;

4. Accessibility structures can encroach into the yard setbacks;

5. For properties where subsection 50-21.2 requires improved street frontage, exceptions limiting the street improvement to no more than 50 feet in length may be granted if the land use supervisor determines that further extension of the street is not anticipated due to topography, comprehensive land use plan or utility availability;

### M. Modifications of approvals.

#### 1. Application.

An applicant who has received a permit or approval from the city pursuant to this Chapter may apply to modify that approval pursuant to this Section 50-37.1. An application for a modification shall be made to the building

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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official, who shall determine whether it requests a minor or major modification pursuant to the criteria in subsections 2 or 3, as applicable;

2. Minor modifications.

Minor modifications are those that (a) relate to redevelopment of a single building on one or more existing platted lot(s), (b) qualify as administrative adjustments pursuant to subsection 50-37.1.L or (c) that the city determines are otherwise consistent with any district plan approved for the zone district where the property is located. Applications for minor modifications may be approved by the city if it determines that the applicant would have practical difficulties designing or constructing the project without the minor modification. However, the city may require that an application meeting the criteria for a minor modification be treated as an application for a major modification if it determines that the application raises a significant public controversy on which numerous parties other than the owner of the property may want to offer testimony;

3. Major modifications.

Major modifications are those that do not qualify as administrative adjustments pursuant to subsection 50-37.1.L or minor modifications pursuant to subsection 2 above. Applications for major modifications shall be treated as a new application for an approval of the same type being modified. However, if the city determines that an application for modification is not consistent with a district plan applicable to the property, and that the inconsistency may materially and adversely affect other property owners subject to the same district plan, the city may require that the applicant obtain approval of a revised district plan instead of a major modification. In the case of a major modification involving a natural resources permit, the city may require additional reports and data necessary to evaluate the impacts of the modification;

N. Lapsing of approvals.

Some permits and approvals issued pursuant to this Chapter shall lapse and be of no further force or effect if the action approved in the permit or approval does not begin within a specific period of time, as listed below:

1. Approved preliminary plats for subdivision shall lapse unless a complete application for a final plat of at least 50 percent of the land covered by the preliminary plat is submitted within five years of the preliminary plat approval;

2. Approved final subdivision plats shall lapse unless the approved final plat is recorded with the register of deeds within 90 days after approval;

3. Approved vacations of streets shall lapse unless a plat showing the vacation is recorded with the office of the county recorder within 90 days after final approval;

4. Approved planning reviews, zoning permits, special use permits, interim use permits, concurrent use of street permits, sidewalk use permits and variances shall lapse if the project or activity authorized by the permit or variance is not begun within one year of the permit date. The building official may extend this period one time for a period of up to one year if the property owner presents a written request showing the reasons for the delay was outside the owner's control;

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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5. Erosion and sediment control permits (ESCP) shall lapse one year after approval if all construction activities are not completed or the entire site is not fully stabilized with 70 percent successful establishment of vegetation. In case of a lapse of the ESCP, a new permit shall be obtained;

6. Approved building permits shall lapse one year after issuance unless construction has begun by that date;

7. The MS-4 statement of compliance and accompanying drainage report will be valid for two years from the date of approval. If permanent stormwater facilities (BMPs) are not fully constructed and operational within two years, and extension of one year may be granted if a written request is submitted and approved by the city engineer. The written request should document the reasons for the extension and the current state of completion of the project;

### O. Appeals.

This Section is intended to comply with the provisions of MSA 462.357 and MSA 360.068 as amended, and shall be interpreted to comply with those provisions wherever possible.

#### 1. General provisions for appeal to planning commission.

(a) Except as noted in subsection 2, any person aggrieved by, or any department of the city affected by, any decision of any city official engaged in the administration or enforcement of this Chapter may appeal that decision to the planning commission. The appeal must be filed within ten days after the decision by filing with the building official a written notice of appeal addressed to the commission and specifying the grounds of the appeal;

(b) If the appeal relates to a decision regarding the zoning of an airport or the Airport Overlay district, any person aggrieved by the decision, any taxpayer affected by the decision and any governing body of a municipality, county or airport zoning board, that believes the decision is an improper application of this Chapter as it concerns that governing body or board may appeal that decision to the airport board of adjustment. The appeal must be filed within ten days after the decision by filing with the building official a written notice of appeal addressed to the board and specifying the grounds of the appeal. If the appellant is a person aggrieved or a taxpayer affected by the decision regarding the zoning of an airport or the Airport Overlay district, the applicant shall submit an appeal to the city clerk in the manner set forth in Minnesota Statutes 360.068, Subdivision 2. All appeals shall be pursuant to and consistent with the procedures in the Duluth International Airport Zoning Ordinance adopted by the city and four other jurisdictions, and in the event of an inconsistency between that Airport Zoning Ordinance and this Chapter, the provisions of the Airport Zoning Ordinance shall govern;

(c) The building official shall promptly transmit to the commission, or to the airport board of adjustment, as applicable, the documents and records related to the decision being appealed;

(d) A timely appeal shall stay all proceedings involved in the appeal; and no appeal shall be deemed to permit the appellant to do or to continue doing, directly or indirectly, any act or thing prohibited by the decision being appealed. However, if the building official notifies the planning commission in writing that a stay would cause imminent peril to life or property, and provides

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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written reasons for that opinion, the planning commission may order that proceedings not be stayed pending appeal;

(e) The commission shall fix a time for a hearing on the appeal, shall provide notice of the hearing pursuant to Section 50-37.1.H, and shall hold a public hearing pursuant to Section 50-37.1.I;

(f) Any party may appear at the hearing in person, by agent or by attorney. Notice of the decision of the board shall be mailed to the appellant;

(g) If the appeal alleges that the boundaries of a wetlands or shorelands area on the Natural Resources Overlay map in Section 50-18.1 are in error, the appellant shall bear the burden of proving the map erroneous by the production of clear and convincing technical evidence;

### 2. Exceptions.

(a) An appeal from any decision regarding the interpretation or application of sign regulations in subsections 50-27.1.I, *No safety obstructions*, 50-27.1.L, *Attachment to buildings*, 50-27.1.M, *Wind pressure design*, 50-27.1.N, *Electrical wiring*, or 50-27.1, *Certification of structural engineer*, must be taken to the state building official as provided in the State Building Code;

(b) An appeal from a decision regarding a building permit must be taken to the building appeals board created in Article IV of Section 10 of the City Code or to the state building official;

(c) An appeal from any decision under the housing code provisions in Section 50-32 of this Chapter must be taken to the building appeals board;

(d) If an applicant believes that the decision of staff regarding compliance with the requirements of the SP-O zone district is incorrect or deprives the applicant of the reasonable use of his or her property, or is unreasonable given the size and shape of the property and its orientation to the protected views, the applicant may request review of the decision by the planning commission. The planning commission's review shall be based on the purpose and standards of this Section, but may authorize variations to those standards, in accordance with the procedures in Article V of this Chapter, if unusual site conditions not generally shared along Skyline Parkway make compliance with the standards unreasonable or ineffective to protect the intended views of Lake Superior, the St Louis River and the harbor;

### 3. Powers of planning commission on appeal.

(a) The planning commission shall consider the record of the application and any testimony presented at the hearing regarding the application of this Chapter to the application and shall affirm, modify or reverse the decision appealed, and may make any orders, requirements, decisions or determinations that the building official or land use supervisor could have made regarding the application;

(b) In hearing permitted appeals of decisions regarding the sign regulations in Section 50-27, the planning commission shall have only the power to affirm, reverse or modify the decision of the building official;

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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(c) In the case of an appeal regarding the application of the NR-O Natural Resources Overlay district, no relief shall be granted that violates the limitations on variances applicable to that district;

(d) The decision of the planning commission shall be final unless a further appeal is filed pursuant to subsection 4 below;

4. Appeals of planning commission decisions to council.

(a) Except as provided in subsection 5 below, any person aggrieved by, or any department of the city affected by, any decision of the planning commission on an appeal pursuant to subsection 1 above may appeal that decision to the council;

(b) Any appeal must be filed within ten days after the planning commission's decision by filing with the city clerk a written notice of appeal addressed to the council and specifying the grounds for the additional appeal;

(c) The filing of a notice of appeal shall stay all proceedings in furtherance of the decision appealed from. However, if the building official notifies the council in writing that a stay would cause imminent peril to life or property, and provides written reasons for that opinion, the council may order that proceedings not be stayed pending appeal;

(d) The council shall hear the appeal at the next scheduled meeting with time available, and may affirm, modify or reverse the board's decision, and may make any orders, requirements, decisions, or determinations it deems appropriate regarding the appeal;

(e) No decision on an appeal or variance shall have the effect of allowing a use that is not a permitted or special use in the zone district where the property is located;

(f) If the appeal is regarding an application in any district where the approval of a district plan is required or requested prior to development, the council shall only approve development plans if it finds that the requirements for the district plan in that district will be satisfied;

5. Appeal of planning commission decisions to the courts.

(a) In the case of an appeal regarding the zoning of an airport or an Airport Overlay district, the appeal shall proceed pursuant to applicable state law and shall be perfected within 60 days after the decision appealed from is filed in the office of the planning commission;

(b) In case of decisions appealable to the district court pursuant to MSA 462.361, the appeal shall be perfected in 60 days after the decision appealed from is filed in the office of the planning commission;

(c) All other appeals not otherwise provided for above shall be pursuant to MSA 606.01;

6. Appeals of historic preservation commission decisions to council.

Where applicable, subsection 50-37.1.O.4 shall apply of historic commissions decisions, when appealable to city council;

P. Security for improvements.

1. If the provisions of this Chapter or conditions attached to a permit or approval under this Chapter require the applicant to construct or make improvements to the property, to protect the city or adjacent property owners

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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from injury or damage, or to return the property to a stated condition following the completion of operations or construction, and those actions have not been completed, then the city shall require the applicant to post security to ensure that those improvements are made in a timely manner, and that if the applicant fails to make those improvements the city will have adequate funds on hand to complete the improvements at the applicant's expense;

2. Security shall be posted in a form acceptable to the city, which may include but are not limited to cash, a promissory note, a letter of credit issued by a financial institution acceptable to the city, or a performance bond issued by a financial institution acceptable to the city. The security shall be in an amount equal to 110 percent of the estimated cost for the city to complete the improvements;

3. The city shall release posted financial security upon confirmation by the building official that the required improvements have been constructed in accordance with all applicable design and construction standards. In the case of any improvements to be dedicated to the city, the city shall release posted financial security upon acceptance of the improvements by the city. At the discretion of the building official, partial releases of financial security may be made after construction or dedication of some but not all of the required improvements, but financial security equal to 110 percent of the estimated cost of for the city to complete the improvements shall be retained;

4. As an alternative to requiring the posting of financial security, the city may authorize the issuance of a temporary certificate of occupancy for the property, provided that the applicant signs a development agreement with the city agreeing to pay the city a specific financial penalty per month if the required improvements are not constructed by a certain date. The amount of the penalty shall be calculated so that if the applicant does not construct the improvements within one year after the required date the penalties will equal at least that amount set in accordance with Section 31-8 of this Code of the estimated cost for the city to complete the improvements.

Section 29. That Section 50-39.2 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 50-39.2. Enforcement.

A. Responsibility.

The building official is responsible for enforcing this Chapter. No permit or approval for the construction, alteration or demolition of any building, or for the use of land, shall be issued if the building as proposed to be constructed, altered or demolished would be a violation of this Chapter;

B. Authorization for inspections.

For the purposes of enforcing this Chapter, the building official is authorized to enter, examine and survey, between the hours of 8:00 a.m. and 5:00 p.m., any property subject to the regulations of this Chapter. Prior to making an inspection based on a possible violation, the building official shall inform the owner of the property to be inspected, or their agent, of the date and time of the inspection in writing at least four days prior to the inspection. Advance notice need not be given in the case of routine inspections. After written notice has been given, the owner or occupant of the property to be inspected, or the person in charge of that property, shall give the building official

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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free access to the property between 8:00 a.m. and 5:00 p.m., for the purpose of inspection. The inspection shall not have for its purpose the harassment of the owner or occupant and shall be made so as to cause the least amount of inconvenience to the owner or occupant of the property consistent with the efficient performance of the duties of the building official. Nothing in this Section 50-39.2.B shall be construed to prohibit the entry of the building official:

1. At any time when in the opinion of the building official an actual emergency tending to create an immediate danger to public health and safety exists;

2. At any time when an inspection is requested by the owner or occupant;

C. Enforcement tools.

The city may use any of the following tools and powers to enforce this Chapter, in any order, and the use of one tool or power shall not restrict the city from using an additional tool or power to remedy the same violation.

1. Order requiring compliance.

(a) The city may issue a written order identifying the violation(s) of this Chapter and requiring that the property owner or occupant bring the property into compliance with this Chapter, at the owner or occupant's expense, within a specified time. The notice shall state what actions are necessary to bring the property into compliance;

(b) The time allowed for correction shall be not less than 30 days, except that (i) if the order identifies a threat to public health or safety then a compliance shorter than 30 days may be required, and (ii) if the order involves a violation of the provisions of the Airport Overlay district or the sign regulations in Section 50-27, the time for compliance shall be ten days. In determining a reasonable time for performance the building official shall consider the nature and extent of the work involved, the season of the year, the existence of any immediate danger to public health and safety, and any other pertinent factors. The building official may extend the time for compliance in writing for good cause shown;

(c) The property may continue to be used for occupancy or habitation pending compliance with the order unless the notice identifies an imminent threat to public health or safety and requires that occupancy or habitation be limited or end by a certain date;

(d) When an order to correct a violation of this Chapter has been issued, the building official is authorized to enter and re-inspect the property subject to the order for the purpose of determining compliance with the order. The owner or occupant of the property, or the person in charge of the property, shall give free access to the property for the purpose of the inspection;

(e) Every occupant of property shall give the owner of the property, or his agent or employee, access to any part of the property at all reasonable times for the purpose of making repairs or alterations required to comply with the order;

(f) The city shall not charge a fee for inspections made in response to complaints or to confirm compliance with an order;

2. Enforcement of wireless telecommunications facility violations.

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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(a) If the city determines that the wireless telecommunication facility is a public nuisance, the building official shall notify the holder of the special use permit in writing and order the correction of the violation or removal of the facility;

(b) If the order requires removal of the wireless telecommunication facility the holder of the special use permit, or its successors or assigns, shall dismantle and remove such facility and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within the deadline provided for in the order to remove. If the owner of the property upon which the wireless telecommunications facilities are located wishes to retain any access roadway to the wireless telecommunications facilities, the owner may do so if the land use supervisor determines that the retention of those access roads would promote the purposes of this Chapter;

(c) Notwithstanding anything in this subsection to the contrary, the building official may approve a temporary extension of the order, for no more 90 days, during which time a suitable plan for the repair, sale, removal, conversion, or relocation of the affected wireless telecommunications facilities shall be developed by the holder of the special use permit, subject to the approval of the city, and an agreement to such plan shall be executed by the holder of the special use permit and the city. If such a plan is not developed, approved and executed within the 90 day time period, then the city may exercise all available legal rights;

(d) The holder of the special use permit for wireless telecommunications facilities may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with an order of the building official or any provision of Section 50-20.4.D;

(e) If compliance or substantial progress towards compliance with the order has not been made by the compliance deadline, the city may exercise any legal remedies available to secure compliance with the order at the sole expense of the owner or special use permit holder;

### 3. Withholding permits or approvals.

The city may refuse to process applications for permits and approvals under this Chapter if the application concerns a property where (a) the building official has determined to be in violation of the Chapter, (b) the city has issued an order requiring that the violation be corrected, and (c) the owner occupant has not remedied the violation within the time stated in that order, unless the application is for the purposes of remedying the existing violation;

### 4. Prevention of violation.

If the city becomes aware that a building, structure, sign or site feature is about to be constructed in violation of this Chapter, the city may take appropriate action to prevent the violation. The city's action may include but is not limited to withdrawal of any permits or approval related to the construction or activity that would constitute a violation;

### 5. Abatement.

(a) The city may take action to abate or remove the violation, and to charge the costs of the abatement or removal to the property owner if the property owner or occupant of a property fails to comply with an

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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order to correct a violation of this Chapter within the time specified in the order, as that time may be extended by the building official in writing for good cause shown, and the building official determines that the continuance of the violation creates a threat to public health or safety;

(b) Following the abatement or removal, the city shall issue an order that the owner of the land on which the violation occurred pay to the city the documented costs of the abatement or removal with 30 days;

(c) If the owner of the land does not pay the documented costs of abatement or removal to the city within 30 days, those costs may be assessed against the land on which the violation occurred, and the city shall provide the owner of the land written notice of the assessment. Unless the assessment is paid within 90 days from the service of notice on the property owner, the sum shall bear interest at the rate, set in accordance with Section 31-8 of this Code, per annum from the date the cost was incurred until paid, and shall be collected in the same manner as are general taxes;

(d) The city shall end the process of assessing abatement and removal costs against the land, or shall cancel the assessment if it has been finalized, upon receipt of payment in full of all costs documented in the order and all accrued interest on those costs;

6. Administrative citations.

The city may issue an administrative citation pursuant to Chapter 12 of the City Code and may take all actions authorized;

7. Court actions.

The city may enforce this Chapter by filing an action in law or equity in any court of competent jurisdiction, including without limitation a request for a declaratory judgment, a request for a restraining order or a temporary or permanent injunction, or a request for money damages based on the penalties for violation established in this Chapter or elsewhere in the City Code. The decision as to whether to seek enforcement in the courts, and what type of enforcement to seek, shall be at the discretion of the city;

8. Nuisance abatement.

If the building official determines that the violation constitutes a public nuisance under state law, the city may use all powers granted by state law to abate public nuisances;

9. Other enforcement powers.

The city may enforce this Chapter through any other powers granted to the city by state law;

D. Notices and orders.

1. Any notice and order under Section 50-39.2.C.1 shall be served upon the owner or the owner's agent and the occupant as the case may require. In the case of a notice involving the sign regulations in Section 50-27, the notice shall also be served on the owner of the sign or the person or entity that erected or caused the erection of the sign;

2. The notice shall be deemed to be properly served upon those individuals or entities identified in subsection 1 if a copy of the notice is:

(a) Served personally; or

(b) Sent by United States mail, postage prepaid, to the last known address of the owner, occupant or agent shows in the city records; or

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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(c) Posted in a conspicuous place in or about the property affected by the notice; or

(d) Served by any other method authorized or required by state law;

3. Any notice served pursuant to subsection 1 shall automatically become an order if a written petition for a hearing is not filed with the building official within 15 days after the notice is served. An order is final unless an appeal is filed pursuant to Section 50-37.1.O;

4. If the building official finds that an emergency exists that requires immediate action to protect the public health and safety, the building official may, without notice or hearing, issue an order declaring that emergency and requiring those actions that the building official deems necessary to meet the emergency notwithstanding the other provisions of this Chapter, and that order shall be effective immediately. Any person to whom the order is directed shall comply with the order immediately, but may file with the building official a request for a hearing following compliance with the order.

Section 30. That Section 50-39.3 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 50-39.3. Penalties.

A. The owner of any property where the violation of this Chapter occurs, and any person violating this Chapter, shall be guilty of a misdemeanor and may be fined as provided in Section 1-7 or Section 12-6 of the City Code;

B. In the case of violation of a stormwater permit, if the contractor or owner fails to install or correct deficiencies related to erosion or sediment control BMPs ordered by the city engineer, the city engineer may withhold payment from related work or levy a fine until adequate BMPs are installed by the contractor or owner. When the contractor or owner fails to conduct quality control or adequately inspect BMPs to ensure function, or fails to take action ordered by the city engineer to remedy erosion or sediment control problems, the city engineer will issue a written order to the contractor and owner. The contractor or owner shall respond within 24 hours with sufficient personnel, equipment, and materials and conduct the required remedial work or be subject to a per calendar day deduction or fine for noncompliance, which shall be set in accordance with Section 31-8 of this Code;

C. Penalties shall be waived if the violation is corrected within the time stated in any enforcement notice or order.

Section 31. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: June 29, 2012)

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

Yeas: Councilors Boyle, Fosle, Gardner, Julsrud, Krug, Larson, Stauber and President Hartman -- 8

Nays: Councilor Krause -- 1

ATTEST:  
JEFFREY J. COX, City Clerk

Passed May 29, 2012  
Approved May 29, 2012  
DON NESS, Mayor

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