

# PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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## OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, March 12, 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

12-0312-07 Dennis P. and Rosemarie Mitchell communication regarding the proposed issuance of an on sale theater liquor license to Duluth Cinema (12-0132R). - Received

12-0312-01 Carolyn Sheets communication regarding the proposed ordinances relating to civil service (11-060-O and 12-010-O). -- Received

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## REPORTS OF BOARDS AND COMMISSIONS

12-0312-02 Civil service board minutes of January 3, 2012, meeting. -- Received

12-0312-03 Duluth airport authority minutes of January 24, 2012, meeting. -- Received

12-0312-04 Duluth public utilities commission: (a) Minutes of January 25, 2012, meeting; (b) Resolution No. 12PUC-001 regarding membership terms. -- Received

12-0312-05 Duluth transit authority minutes of December 28, 2011, meeting. -- Received

12-0312-06 Housing and redevelopment authority of Duluth minutes of January 31, 2012: (a) Annual; (b) Regular, meetings. -- Received

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## OPPORTUNITY FOR CITIZENS TO BE HEARD

Jerry Schlaefer stated that the value of the dollar is going down as increased wages do not buy anything more since prices go up along with wages.

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Tom Karas alerted the council that a new nonprofit has formed, called Minnesota Point Preservation Society, and they are putting together a new board of directors and invited the council or anyone else who could help create the foundation for this new organization. He continued saying that this organization could help serve as a liaison between the residents of Park Point and the city.

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Loren Martell stated he cannot understand how the school district can finance the additional \$19.3 million for the red plan and their claim that it will not impact the citizens. He voiced concern over the bonds that will be issued to pay for the red plan and the accrual of interest by the time the bonds start to be paid off.

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Jesse Peterson urged the council to pass a resolution of support for the bill in the state legislature to stop home foreclosures and prevent the citizens of Duluth from becoming homeless, and also urged the council to take action locally to help the homeless families in Duluth.

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Tyler Nord requested the council support the bill in the state legislature to put a moratorium on foreclosures in Minnesota because if the foreclosures do not stop, the demand for rentals will increase along with the price if people are forced out of their homes.

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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 city officials are hereby authorized to contract with Engle Fabrication, LLC, d.b.a. Centerline Tank and Trailer Manufacturing, for the retrofit of Street Flusher Truck Unit 3857 to include the removal of an old and installation of a new 2,000 water tank and sheet metal in the amount of \$48,865 plus \$3,359.47 sales tax (6.875 percent) for a total amount of \$52,224.47, payable from Capital Equipment Fund 250, Department/Agency 015 (administrative services), Division 2012 (fiscal year), Object 5580 (capital equipment), Project No. CE250-V1203.

Resolution 12-0118 was unanimously adopted.

Approved March 12, 2012

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to contract with J-Craft, Inc., for the purchase of parts and labor needed for the complete outfitting of two new tandem cab and chassis units with dump bodies and hydraulics in accordance with Minnesota State Contract 39243, Release T-863(5), specifications and pricing in the amount of \$50,970 plus \$3,504.19 sales tax (6.875 percent) for a combined total amount of \$54,474.19, terms net 30, payable from the Capital Equipment Fund 250, Department/Agency 015 (administrative services), Division 2012 (fiscal year), Object 5580 (capital equipment), Project CE250-V1203.

Resolution 12-0124 was unanimously adopted.

Approved March 12, 2012

DON NESS, Mayor

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BE IT RESOLVED, that the city council of the city of Duluth hereby approves the transfer of the following on sale intoxicating liquor license and on sale Sunday license and application for a 2:00 a.m. beverage license for the period ending August 31, 2012, subject to departmental approvals and the payment of sales and property taxes:

Scott Sutherland, LLC (North Pole Bar), 5606-10 Raleigh Street, with Scott Sutherland, 100 percent owner, transferred from Ray's B&G (North Pole Bar), same address.

Resolution 12-0126 was unanimously adopted.

Approved March 12, 2012

DON NESS, Mayor

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BE IT RESOLVED, that the city council of the city of Duluth hereby issues the following on sale brewery malt liquor license for the period ending August 31, 2012, subject to departmental approvals and the payment of sales and property taxes:

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Lake Superior Brewing Company, LLC (Lake Superior Brewing Company), 2711 West Superior Street, with Donald and Jo Ann Hoag, 59.1 percent owner, John Judd and Karen Olesen, 25.5 percent owner, Dale Kleinschmidt, 15.4 percent owner.

Resolution 12-0127 was unanimously adopted.

Approved March 12, 2012

DON NESS, Mayor

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RESOLVED, that the Minnesota department of commerce has determined that the city of Duluth, the Duluth airport authority, the Duluth entertainment convention center and the Duluth housing and redevelopment authority operate a joint enterprise for health insurance, including a joint self-insurance pool, referred to as the Duluth joint powers enterprise trust, a political subdivision self-insurance pool established pursuant to Minnesota Statutes Section 471.69 and Minnesota Rules Chapter 2785.

FURTHER RESOLVED, that the proper city officials are hereby authorized to execute the agreement for professional services with the Duluth joint powers enterprise trust, together with supporting documents, substantially in the form of that on file in the office of the city clerk as Public Document No. 12-0312-08, to provide professional services to the Duluth joint powers enterprise trust, which includes the city's group health insurance plan.

FURTHER RESOLVED, that the proper city officials are hereby authorized to accept \$255,000 annually for the years 2012 and 2013 for professional services further described in those documents referenced above, said funds payable to Fund No. 110-125-1214-4315-12 (general fund, finance department, auditor, cost allocation charges group health).

Resolution 12-0101 was unanimously adopted.

Approved March 12, 2012

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into a lease agreement, substantially in the form of that agreement on file in the office of the city clerk as Public Document No. 12-0312-09, with the Services by Bill, Inc., for the operation of "Crabby Ol' Bill's" vending operation in Canal Park for a term of five years in return for ten percent of vendor's gross receipts, payable to Fund 110 (general fund), Agency 121 (public administration), Organization 1217 (maintenance operations), Sub-organization 2120 (architecture), Revenue Source 4627 (facilities management).

Resolution 12-0128 was unanimously adopted.

Approved March 12, 2012

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to execute and implement a contract, in substantially the form and containing substantially the terms of that contract on file in the office of the city clerk as Public Document No. 12-0312-10, with, and accept funds from St. Louis County to provide Minnesota family investment program and diversionary work program employment and training services in an amount not less than \$863,636 for the period January 1, 2012, through December 31, 2012. Monies received under this agreement will be deposited in and paid from Fund 268 (workforce development), Agency 031 (grants division), Organization 6235 (MFIP) and 6236 (DWP).

Resolution 12-0106 was unanimously adopted.

Approved March 12, 2012

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to execute and implement a contract, in substantially the form and containing substantially the terms of that contract on file in the office of the city clerk as Public Document No. 12-0312-11, with, and accept funds from St. Louis County to provide Minnesota innovation fund 2012 transportation in an amount not less than \$13,125.80 for the period January 1, 2012, through December 31, 2012. Monies received under this agreement will be deposited in and paid from Fund 268 (workforce development), Agency 031 (grants division), Organization 6228 (miscellaneous workforce development grants).

Resolution 12-0107 was unanimously adopted.

Approved March 12, 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 1,000 tons of fine cold mix during year 2012 in accordance with approved specifications of the St. Louis County contract and the vendor's bid of \$54.85 per ton for \$54,850.00 plus \$3,770.94 sales tax, for a total estimated amount of \$58,620.94, payable as follows:

Amount	Fund	Dept./Agency (Public Works & Utilities)	Organization (Utility Operations)	Object (Blacktop)
\$23,448.38	Water Fund 510	500	1945	5222
\$11,724.19	Gas Fund 520	500	1945	5222
\$11,724.19	Sewer Fund 530	500	1945	5222
\$11,724.18	Stormwater 535	500	1945	5222

Resolution 12-0121 was unanimously adopted.

Approved March 12, 2012

DON NESS, Mayor

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RESOLVED, that the proper city officials are authorized to accept a grant from the state of Minnesota, commissioner of public safety, bureau of criminal apprehension, in the amount of \$70,000 for the purpose of supporting the Duluth police department's participation in the Minnesota financial crimes task force, and to execute the grant agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 12-0312-12, grant funds to be deposited in Fund No. 215-200-2259-4220-02 (Duluth police grant programs, police, Minnesota financial crimes task force).

Resolution 12-0104 was unanimously adopted.

Approved March 12, 2012

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to renew a proprietary annual contract with Polaris Library Systems for the tax-exempt purchase and delivery of software and hardware maintenance of the Polaris Integrated Library System for the period from March 14, 2012, through March 13, 2013, in the amount of \$31,168.25, terms net 30, and

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payable from General Fund 110, Department/Agency 121 (public administration), Organization 1218 (library services), Object 5404 (equipment/machinery repair and maintenance).

Resolution 12-0119 was unanimously adopted.

Approved March 12, 2012

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with SAS & Associates, substantially in the form of that on file in the office of the city clerk as Public Document No. 12-0312-13, for professional services for the development of a master plan for four city parks (Lower Chester, Brighton Beach, Chester Bowl and Washington) for an amount not to exceed \$45,500, payable from Fund 205-130-1220-5530 (parks fund, community resources, parks capital, improvements other than buildings).

Resolution 12-0122 was unanimously adopted.

Approved March 12, 2012

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to execute a three-year license agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. 12-0312-14, with the Lake Superior Center authority (LSCA), to allow the city to use LSCA-owned property adjacent to Bayfront Festival Park (park) for park-related purposes, at no cost to the city.

Resolution 12-0123 was unanimously adopted.

Approved March 12, 2012

DON NESS, Mayor

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The following resolutions were also considered:

RESOLVED, that the proper city officials are hereby authorized to contract with Maney International, Inc., for the purchase and delivery of two 2013 International Model 7600 tandem axle cab and chassis units for the fleet services division in accordance with Minnesota State Contract 31624, Release T-647(5), specifications and pricing in the amount of \$212,907.44 plus \$13,838.98 state motor vehicle tax (6-1/2%) plus \$250 license, registration and tax exempt plates, for a combined total amount of \$226,996.42, terms net 30, FOB destination, payable from the Capital Equipment Fund 250, Department/Agency 015 (administrative services), Division 2012 (fiscal year), Object 5580 (capital equipment), Project CE250-V1203.

Resolution 12-0117 was adopted upon the following vote:

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

Nays: Councilor Stauber -- 1

Approved March 12, 2012

DON NESS, Mayor

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Resolution 12-0132, issuing an on sale theater liquor license to Family Entertainment, LLC (Duluth Cinema), 300 Harbor Drive, was introduced by Councilor Krause for discussion.

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Councilor Krause voiced concern that the alcohol would be allowed in all of the theaters where families and children would be watching movies.

Councilor Gardner questioned why certain theaters could not be alcohol free for families and expressed concern that the alcohol, gambling and tobacco commission (AGTC) did not review the issue thoroughly. She requested the AGTC examine the issue again, put conditions on the license, and to do a site study of Marcus-owned theaters that currently serve alcohol.

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

Deputy Police Chief Michael Tusken stated that the police department wants to make sure that the theater management has an enforcement and security plan in place so alcohol does not fall into the hands of underage people.

Jeff Tomachek, representing Marcus Theaters, reviewed that they are creating a separate lounge area for patrons to purchase an alcoholic beverage and to either sit there or take their drink into the theater. He explained that the theater that a certain movie plays at is often determined by the producers of the movies which would prevent having one theater being alcohol free all the time. He stated they have training in place for the bartenders and a monitoring plan for the ushers in the theaters.

Councilor Gardner moved to table the resolution for further review by the AGTC, which motion was seconded and failed upon the following vote:

Yeas: Councilors Boyle, Gardner, Krause and Larson -- 4

Nays: Councilors Fosle, Julsrud, Krug, Stauber and President Hartman -- 5

Resolution 12-0132 was adopted as follows:

BE IT RESOLVED, that the city council of the city of Duluth hereby issues the following on sale theater liquor license for the period ending August 31, 2012, subject to departmental approvals and the payment of sales and property taxes:

Family Entertainment, LLC (Duluth Cinema), 300 Harbor Drive, with Marcus Theaters Corporation sole member of Family Entertainment, with Douglas A. Neis, president and treasurer and Thomas F. Kissinger, vice president and secretary.

Resolution 12-00132 was adopted upon the following vote:

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

Nays: Councilors Gardner and Krause -- 2

Approved March 12, 2012

DON NESS, Mayor

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BY COUNCILOR GARDNER:

WHEREAS, Chapter V of the Duluth Home Rule Charter, 1912, as amended, provides for the establishment of a civil service board; and

WHEREAS, the council has conferred further rights and duties to the civil service board through the provisions of Chapter 13 of the Duluth City Code, 1959, as amended; and

WHEREAS, it is universally recognized that the city needs to modernize Chapter 13 and improve city hiring processes and procedures; and

WHEREAS, the city council is currently reviewing several proposals for revising Chapter 13 and although the council may adopt a proposal, it is appropriate that the civil service board be directly involved in the ongoing discussions and/or review related to this process.

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THEREFORE, BE IT RESOLVED, that the city council hereby establishes a working group to include the civil service board and a minimum of two city councilors, who shall be appointed by the city council president, to participate in any review of adopted proposals and to make additional recommendations for improving and modernizing the civil service process and city hiring practices and procedures.

Resolution 12-0130 was unanimously adopted.

Approved March 12, 2012

DON NESS, Mayor

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Resolution 12-0108, establishing city of Duluth election precincts, was introduced by President Hartman for discussion.

Councilor Fosle introduced an amendment to keep the dividing line between council districts 4 and 5 at 40th Avenue West instead of moving it to 39th Avenue West, which motion was seconded for discussion.

Councilor Krause stated he could support the amendment if the shift on the eastern side of the fourth district goes back to what it was to keep the numbers equal.

To questioning from Councilor Krause, Assistant City Clerk Martha Oswald replied that there may be changes to the precinct lines because St. Louis County may need to adjust its lines, but that it may not include any changes to the eastern boundary of District 4 and any future changes to precinct lines would need to be an amendment by a city councilor.

Councilor Fosle's amendment failed upon the following vote:

Yeas: Councilors Boyle, Fosle, Larson and Stauber -- 4

Nays: Councilors Gardner, Julsrud, Krause, Krug and President Hartman -- 5

Resolution 12-0108 was adopted as follows:

RESOLVED, that pursuant to Minnesota Statutes 204B.14, subd. 3(d), the election precincts as shown on Public Document No. 12-0312-15, on file in the office of the city clerk, are hereby established in the city of Duluth.

Resolution 12-0108 was unanimously adopted.

Approved March 12, 2012

DON NESS, Mayor

*[Editor's Note: Resolution 12-0108 was reconsidered at the March 26, 2012, council meeting.]*

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BY PRESIDENT HARTMAN:

RESOLVED, that the forest area located between the St. Louis River and Becks Road containing approximately 2,000 acres as delineated on the map on file in the office of the city clerk as Public Document No. 12-0312-16(a), shall hereafter be referred to as the Frederick Rodney Paine Forest Preserve.

FURTHER RESOLVED, that the forest area located to the west of Spirit Mountain between Beck Road and 100th Avenue West containing approximately 1,700 acres as delineated on the map on file in the office of the city clerk as Public Document No. 12-0312-16(b), shall hereafter be referred to as the Magney-Snively Forest Preserve.

Resolution 12-0129 was unanimously adopted.

Approved March 12, 2012

DON NESS, Mayor

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## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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Resolution 12-0109, authorizing an agreement with Foth Infrastructure and Environment, LLC, for professional engineering services in the preparation of an operations and maintenance manual for the city's utilities services for an amount not to exceed \$49,000, was introduced by Councilor Julsrud for discussion.

Councilor Julsrud stated the administration has requested this resolution be removed from the agenda.

Without any objections, President Hartman withdrew the resolution from the agenda.

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The city council finds:

(a) That the city of Duluth desires to hire professional consulting firms for field and laboratory testing services required to support the construction, operation and maintenance of city systems for fiscal year 2012;

(b) That EPC Engineering & Testing has submitted a fee schedule for field and laboratory testing services in connection with this work;

(c) That the council previously authorized a one-year extension and increase in year 2011, and that the city desires to continue this arrangement for year 2012.

RESOLVED, that the council hereby approves a one-year extension and an estimated \$30,000 increase for Agreement 20595 with EPC Engineering & Testing for such field and laboratory services, for a total estimated contract amount of \$40,000, and that the cost of said services for fiscal year 2012 will be paid from various appropriate funds, departments, agencies and objects.

Resolution 12-0111 was unanimously adopted.

Approved March 12, 2012

DON NESS, Mayor

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The city council finds:

(a) That the city of Duluth desires to hire professional consulting firms for survey and field data collection services required to support the construction, operation and maintenance of city systems for fiscal year 2012;

(b) That Salo Engineering, Inc., has submitted a fee schedule for survey and field data collection services in connection with this work;

(c) That city officials previously authorized a one-year extension only in year 2011, and that the city desires to continue this arrangement with an increase for year 2012.

RESOLVED, that the council hereby approves a one year extension and an estimated \$25,000 increase for Agreement 20596 with Salo Engineering, Inc., for such survey and field data collection services, for a total estimated contract amount of \$40,000, and that the cost of said services for fiscal year 2012 will be paid from various appropriate funds, departments, agencies and objects.

Resolution 12-0112 was unanimously adopted.

Approved March 12, 2012

DON NESS, Mayor

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The city council finds:

(a) That the city of Duluth desires to hire professional consulting firms for survey and field data collection services required to support the construction, operation and maintenance of city systems for fiscal year 2012;

(b) That LHB, Inc., has submitted a fee schedule for survey and field data collection services in connection with this work;

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(c) That city officials previously authorized a one-year extension only in year 2011, and that the city desires to continue this arrangement with an increase for year 2012.

RESOLVED, that the council hereby approves a one year extension and an estimated \$25,000 increase for Agreement 20598 with LHB, Inc., for such survey and field data collection services, for a total estimated contract amount of \$40,000, and that the cost of said services for fiscal year 2012 will be paid from various appropriate funds, departments, agencies and objects.

Resolution 12-0113 was unanimously adopted.

Approved March 13, 2012

DON NESS, Mayor

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The city council finds:

(a) That the city of Duluth desires to hire professional consulting firms for survey and field data collection services required to support the construction, operation and maintenance of city systems for fiscal year 2012;

(b) That Ayres Associates, Inc., has submitted a fee schedule for survey and field data collection services in connection with this work;

(c) That city officials previously authorized a one-year extension only in year 2011, and that the city desires to continue this arrangement with an increase for year 2012.

RESOLVED, that the council hereby approves a one year extension and an estimated \$25,000 increase for Agreement 20599 with Ayres Associates, Inc., for such survey and field data collection services, for a total estimated contract amount of \$40,000, and that the cost of said services for fiscal year 2012 will be paid from various appropriate funds, departments, agencies and objects.

Resolution 12-0114 was unanimously adopted.

Approved March 12, 2012

DON NESS, Mayor

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The city council finds:

(a) That the city of Duluth desires to hire professional consulting firms for field and laboratory testing services required to support the construction, operation and maintenance of city systems for fiscal year 2012;

(b) That Golder Associates, Inc., has submitted a fee schedule for field and laboratory testing services in connection with this work;

(C) That city officials previously authorized a one-year extension only in year 2011, and that the city desires to continue this arrangement with an increase for year 2012.

RESOLVED, that the council hereby approves a one-year extension and an estimated increase \$25,000 for Agreement 20706 with Golder Associates, Inc., for such field and laboratory services, for a total estimated contract amount of \$40,000, and that the cost of said services for fiscal year 2012 will be paid from various appropriate funds, departments, agencies and objects.

Resolution 12-0115 was unanimously adopted.

Approved March 12, 2012

DON NESS, Mayor

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## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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The city council finds:

(a) That the city of Duluth desires to hire professional consulting firms for field and laboratory testing services required to support the construction, operation and maintenance of city systems for fiscal year 2012;

(b) That American Engineering Testing, Inc., has submitted a fee schedule for field and laboratory testing services in connection with this work;

(c) That the council previously authorized a one-year extension and increase in year 2011, and that the city desires to continue this arrangement for year 2012.

RESOLVED, that the council hereby approves a one-year extension and an estimated \$25,000 increase for Agreement 20716 with American Engineering Testing, Inc., for such field and laboratory services, for a total estimated contract amount of \$40,000, and that the cost of said services for fiscal year 2012 will be paid from various appropriate funds, departments, agencies and objects.

Resolution 12-0116 was adopted upon the following vote:

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

Nays: None -- 0

Abstention: Councilor Julsrud -- 1

Approved March 12, 2012

DON NESS, Mayor

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Resolution 12-0091, authorizing an agreement with Spirit Lake Development, LLC, dba Spirit Lake Marina & RV Park for the lease and operation of the city's Indian Point Campground, was introduced by Councilor Larson for discussion.

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

Barb Hegg stated the bidding process was flawed and unfair and added that Willard Munger has operated the campground with concern for the environment and the neighbors.

Drew Digby urged the council to reject the contract and redo the whole process.

Charlie Studahar stated that, as the new operators, they are anxious to work with the city, and the work being done to clean up St. Louis River will be carried through to the campground and the surrounding area.

Councilor Julsrud encouraged councilors to oppose the resolution if they are concerned about the process used in this contract.

Councilor Gardner questioned if the language in the contract is sufficient for environmental protection of the area. She moved to amend the resolution by requesting administration to add standard environmental language to the contract, which motion was seconded and failed upon the following vote:

Yeas: Councilors Boyle, Gardner, Larson and President Hartman -- 4

Nays: Councilors Fosle, Julsrud, Krause, Krug and Stauber -- 5

Resolution 12-0091 was adopted as follows:

RESOLVED, that the proper city officials are hereby authorized to execute and implement an agreement with Spirit Lake Development, LLC, d.b.a. Spirit Lake Marina & RV Park, substantially the same as that on file with the city clerk as Public Document No. 12-0312-18, for the lease and operation of Indian Point Campground, located at 7000

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Pulaski Street, with all payments to the city to be deposited into General Fund 110, 121 (public administration), 1219 (parks and recreation), 4626 (Indian Point Campground fees).

Resolution 12-0091 was adopted upon the following vote:

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

Nays: Councilor Julsrud -- 1

Approved March 12, 2012

DON NESS, Mayor

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### INTRODUCTION AND CONSIDERATION OF ORDINANCES

#### ORDINANCES TABLED

INTRODUCED BY COUNCILOR BOYLE

11-060 (10138) - AN ORDINANCE AMENDING CHAPTER 13 OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO CIVIL SERVICE.

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

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

Marsh Stenerson, Robert Zallar, Tom Maida, Erik Simonson, Michele Hooey, Al Netland and Pete Johnson requested the council not to approve this ordinance for the following reasons: changes to the ordinance should be made incrementally; reviews of the ordinance could be done at the next civil service board (CSB) meeting; moving forward with a new code should be done correctly; follow the process and put the review committee to work with councilors and the CSB and then make changes; there are reasons why the CSB was created and those reasons are still valid today to ensure there is no political favoritism; the CSB speaks for the public who the council never hears from and for the people trying to get into public service who deserve to have someone represent them; there needs to be a fair process to get into civil service; while some parts of the Civil Service Code need to be fixed, not all the parts need fixing and there are no other groups or individuals who think the changes to the code are a good idea other than the administration.

President Hartman explained that he is withdrawing his amendment because it is a major ordinance change that may need some changes once it becomes effective and that he is scheduling a review of the ordinance in six months to see what changes may need to occur to the ordinance at that time.

Councilor Boyle moved to amend Section 13-10(a) of the ordinance to delete the language, "excluding management classifications in the police department and fire prevention classifications in the fire department," which motion was seconded for discussion.

Councilor Boyle explained that this amendment would keep the same procedures in place for the hiring of mid level police and fire managers rather than the police and fire chiefs making mid level manager appointments.

Councilor Gardner reviewed that the fire department has a career ladder in their department and there has been no shortage of employees who work hard and take tests to qualify to move up the career ladder and this amendment would allow that to continue instead of allowing applicants from outside of the department to apply for a job.

Chief Administrative Officer David Montgomery reviewed that although the administration feels there are times when hiring from the outside is good for the department,

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they have agreed with the fire and police unions, and the current ordinance states that it is a promotional only path up through the entire fire operation side, and on the police side from patrolman to sergeant it would be strictly promotional. He continued explaining that would leave lieutenants and the fire prevention side which would then have the potential to bring additional candidates in if there were not enough in the pool to choose from or if the candidates were not meeting the criteria for that position.

Councilor Boyle's amendment failed upon the following vote:

Yeas: Councilors Boyle, Gardner and Stauber -- 3

Nays: Councilors Fosle, Julsrud, Krause, Krug, Larson and President Hartman -- 5

Councilor Gardner moved to amend the ordinance as follows:

(a) In Section 13-6, add the sentence, "All actions of the secretary may be appealed to the board, in accordance with this Chapter";

(b) Section 13-8, delete the language and replace it with the following:

"If after the evaluation of a position in which there are significant changes in duties, the secretary shall, with the approval of the chief administrative officer, after investigating actual and proposed duties, responsibilities and qualification requirements, refer the matter to the board with his/her recommendation. The board shall determine whether or not to reclassify the position. Upon reclassification of the position, taking into consideration the recommendation of the secretary, the board shall determine whether the reclassification shall be filled by the appointment of the incumbent employee(s) to the reclassified position, or by establishment of a new classification, subject to the approval of the city council. The secretary shall notify the affected employee(s) in writing, within ten calendar days of the initial evaluation decision by the secretary and the reclassification decision by the board, to allow for the appeals process to be utilized, as needed. New job classifications as a result of this process shall not be referred to the council until the appeal period has expired";

(c) In Section 13-10(a), delete the language, "excluding management classifications in the police department and fire prevention classifications in the fire department";

(d) Amend Section 13-29 to read as follows:

"(a) Right to appeal.

(1) An applicant who has been qualified by the secretary to participate in a selection process for a position within the classified service and any classified or eligible employee may appeal to the board as provided in this Section;

(2) An applicant who has been rejected under Section 13-13 of this Code or who was on a list canceled by the secretary pursuant to Section 13-21 of this Code may appeal to the board the basis for the rejection or cancellation as provided in this Section;

(b) Manner and time for appeal. An appeal is perfected by filing a notice of appeal within ten calendar days after the secretary's written notification of the action. The notice of appeal shall be in writing, shall contain a complete statement of the matter in controversy and the relief requested, and shall be signed and dated by the appellant. The notice shall be addressed to the board and filed with the office of the secretary. Filing may be accomplished by electronic submission, personal delivery or United States mail addressed to the secretary; however, filing shall not be timely unless the notice of appeal is received in the office of the secretary within the time fixed for appeal;

(c) Secretary's authority to reject appeals. The secretary shall reject any appeal received after the time limit provided by this Section;

(d) Board scope of authority. Unless otherwise provided by this Chapter, state or federal law, or required by a collective bargaining agreement, the board's jurisdiction shall be to hear and render a decision on:

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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- (1) Appeals challenging the fairness or scoring of a test, including the number of veteran's preference points allotted to an applicant;
  - (2) Appeals from applicants that have been rejected under Section 13-13 of this Code;
  - (3) Appeals of the secretary's action related to placement on a re-appointment list;
  - (4) Appeals of the secretary's action that have any effect on the civil service status of a classified employee or eligible employee;
  - (5) Appeals from qualified applicants that were on an eligible list canceled by the Secretary pursuant to Section 13-21 of this Code;
  - (6) In rendering its decision the board shall not modify or waive any of the qualifications, skills, abilities or experience requirements provided for in the classification description,"
- which motion was seconded for discussion.

Councilor Gardner stated that her amendment deals with the reclassification of positions and bringing the CSB back into the appeal process, which allows some protection for the employees.

Councilor Gardner's amendment failed upon the following vote:

Yeas: Councilors Boyle, Gardner and Stauber -- 3

Nays: Councilors Fosle, Julsrud, Krause, Krug, Larson and President Hartman -- 6

Councilor Fosle urged the council to vote no on the ordinance as the original charge for the task force was to look at the hiring process to make it easier, but now this ordinance makes changes that have nothing to do with the hiring process.

Councilor Stauber explained that it is very clear in the City Charter that any changes to the Civil Service Code should be coming from the CSB, and all along the CSB has been stating they have not been involved in the process and there should be small changes to the code first instead of an entire overhaul. He went on to say that since the CSB is not making any recommendations to the council, he will not be supporting the ordinance.

Councilor Gardner stated that passing this ordinance is disrespectful to the CSB and to the implementation of good government and good process. She went on to say that people who work in government should not be influenced by the people who are elected and civil service provides the public employees stability because administrations and city councils come and go.

City Attorney Gunnar Johnson stated that the administration is comfortable with the proposed ordinance and that it is in compliance with the City Charter.

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

Yeas: Councilors Julsrud, Krause, Krug, Larson and President Hartman -- 5

Nays: Councilors Boyle, Fosle, Gardner and Stauber -- 4

- - -

**BY COUNCILOR BOYLE**

12-010 - AN ORDINANCE AMENDING SECTIONS 13-1, 13-2, 13-3, 13-5.5, 13-6, 13-11, 13-19, 13-22, 13-24.1, 13-28, 13-29, 13-30, 13-36, 13-38, 13-39, 13-41, 13-42, 13-43, 13-45, 13-47, 13-48, 13-53, 13-54, 13-57.5, 13-60, 13-64.5, 13-65, 13-66, 13-69, 13-80, 13-85, 13-106 AND 13-125, ADDING A NEW SECTION 13-42.1, AND REPEALING SECTIONS 13-4, 13-7, 13-8, 13-9, 13-10, 13-12, 13-16, 13-18, 13-21, 13-27, 13-34, 13-37, 13-37.5, 13-39.1, 13-46, 13-49, 13-50, 13-51, 13-52, 13-55, 13-56, 13-58, 13-59, 13-60.5, 13-61, 13-61.5, 13-62, 13-63,

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13-64, 13-67, 13-114, 13-115, 13-116 AND 13-124 OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO CIVIL SERVICE.

Councilor Boyle withdrew his ordinance from the agenda.

- - -

The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR STAUBER

12-013 - AN ORDINANCE AUTHORIZING THE RECONVEYANCE OF CERTAIN PROPERTY IN THE UPPER RIVERSIDE AREA TO THE DULUTH ECONOMIC DEVELOPMENT AUTHORITY (DEDA) AT NO COST.

- - -

INTRODUCED BY PRESIDENT HARTMAN

12-012 - AN ORDINANCE AMENDING SECTION 2-42 OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO ASSIGNMENT OF ELECTION PRECINCTS.

- - -

The following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR KRUG

12-008 (10139) - AN ORDINANCE MODIFYING VARIOUS FEE LANGUAGE, PROVIDING FOR FEES TO BE SET BY RESOLUTION, AMENDING SECTIONS 12-10, 43-33.4, 44A-9, 44A-10, 44A-15 AND 48-40 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

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

- - -

INTRODUCED BY COUNCILOR STAUBER

12-011 (10140) - AN ORDINANCE AUTHORIZING THE GRANTING OF AN EASEMENT TO THE STATE OF MINNESOTA, DEPARTMENT OF TRANSPORTATION ADJACENT TO INTERSTATE 35 IN THE POINT OF ROCKS AREA FOR \$39,000.

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

- - -

The meeting was adjourned at 10:40 p.m.

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

- - -

**ORDINANCE NO. 10138**

AN ORDINANCE AMENDING CHAPTER 13 OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO CIVIL SERVICE.

The city of Duluth does ordain:

Section 1. That Chapter 13 of the Duluth City Code, 1959, as amended, is amended by deleting the language of the Chapter as it existed prior to the effective date of this ordinance and by adopting the following language as Chapter 13 of the Duluth City Code, 1959, as amended:

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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### CIVIL SERVICE.

#### Sec. 13-1. Purpose.

The civil service board is established pursuant to Chapter V of the Duluth City Charter. This Chapter 13 shall constitute the rules and regulations of the board and are established pursuant to Section 36, Chapter V, of the Duluth City Charter. Minnesota law and agreements reached under the Minnesota Public Employment Labor Relations Act to which the city is a party shall supersede these rules and regulations as required by Minnesota law. The purpose of this Chapter 13 is to ensure a fair, efficient and effective system of city human resource administration that meets the needs of the city and provides an equal opportunity for all qualified individuals to obtain employment within the civil service of the city.

#### Sec. 13-2. Definitions.

The following definitions apply to this Chapter:

(a) Appointing authority. The chief administrative officer, department head or acting department head, or staff officer appointed pursuant to charter or statute;

(b) Board. The civil service board established pursuant to Chapter V of the Charter;

(c) Charter. The City Charter for the city of Duluth;

(d) Chief administrative officer. The chief administrative officer for the city or such officer's designee;

(e) Class or class of positions. A group of positions established under this Chapter sufficiently similar in respect to the duties, responsibilities qualifications, and authority that the same descriptive title may be used to designate each position allocated to the class;

(f) Class description. A description of the major duties of each class, examples of tasks performed, and the minimum qualifications required, and other essential functions of the class;

(g) Classification plan. The classes of positions within the classified service;

(h) Classified employee. Any employee, except an employee provisionally appointed, who, in accordance with the provisions of this Chapter, occupies any position in the classified service, or who is on leave of absence from such position if such position is held vacant pending the employee's return;

(i) Classified service. Any position in the service of the city except the following:

(1) Any position excluded from the definition of public employee under applicable state law; or

(2) Any other position which is exempted from the classified service by the Charter;

(j) Eligible. Any person whose name is on a reappointment, re-employment, internal-employment or open-employment list for a given class and who continues to meet the minimum qualifications for the position;

(k) Eligible list. A list of the names of persons who have been found qualified for employment in positions in the classified service, including the names of persons on the reappointment, re-employment, promotional, internal-employment and open-employment lists;

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(l) Employment test. A test or group of tests used to determine the relative fitness of applicants for positions allocated to a class;

(m) Internal-employment list. A list of names of persons currently employed in the classified service who have qualified through employment tests administered by the secretary for employment in other positions allocated to a different class;

(n) Layoff series. A list of class titles that has been created to allow a qualified employee to bump into a lower classification, and whose order has been negotiated as provided in a collective bargaining agreement to which the city is a party;

(o) Open-employment list. A list of names of persons who have qualified through employment tests administered by the secretary for employment in positions allocated to a class. within the classification plan;

(p) Organization unit. Any department, office or division of the city government commonly recognized as a unit for purposes of administration;

(q) Position. A full or part-time job held by one person, unless the job is filled by a job sharing arrangement;

(r) Promotional list. A list containing the names of persons currently employed in the classified service in the police or fire departments in a lower class of position, as determined by pay range, who have qualified through employment tests administered by the secretary for promotion to a higher class of position in the same department;

(s) Reappointment list. A list containing the names of city employees within the classified service who have been demoted for non-disciplinary reasons;

(t) Re-employment list. A list of the names of persons who have occupied permanent positions allocated to any class, who have been separated from the service as a result of layoff or approved leave of absence, and who, in accordance with this Chapter, are entitled to have their names certified to the appointing authority when vacancies in the class are to be filled;

(u) Secretary. The manager of human resources for the city or the manager's designee.

### Sec. 13-3. Duties of the board.

(a) In addition to the authority and responsibility conferred upon the board by Chapter V of the Charter and by the provisions of this Chapter, the board shall act in accordance with the authority and responsibility conferred upon it by any provision of any collective bargaining agreement to which the city is a party;

(b) The board shall serve as a veteran's hearing board as provided by Minnesota law;

(c) All new civil service board members shall participate in training regarding the role of the board, employment laws and other pertinent human resources topics necessary to carry out their duties;

(d) All civil service board members shall participate in annual training regarding applicable employment laws and pertinent human resources topics.

### Sec. 13-4. Meetings of the board.

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All meetings of the board shall be open to the public as required by state law. A simple majority of the board membership then serving shall constitute a quorum for meeting purposes. Any meeting shall be adjourned in the absence of a quorum. Regular meetings of the board shall be scheduled once per month. The board shall make the determination of whether to hold or cancel meetings when there is no business requiring board action. Special meetings of the board may be held at any time on the call of the secretary or the board chair, or pursuant to the standing rules of the board.

Sec. 13-5. Duties of secretary to the board.

(a) The secretary shall act as the secretary to the board, attend meetings of the board, prepare matters that require board action and prepare the board minutes;

(b) The secretary shall serve as a nonvoting ex officio member of the board and shall have the right to participate in board discussions;

(c) The secretary shall arrange for all training of the board required by this Chapter.

Sec. 13-6. Civil service administration, duties of the secretary.

Unless otherwise provided herein, the secretary shall have all powers necessary to administer the functions and provisions of this Chapter. These powers include, but are not limited to, the creation and maintenance of the class descriptions, administration of all civil service hiring processes, maintenance of the eligible lists, and maintenance of employment records as required by state or federal law.

Sec. 13-7. Establishment of and amendments to the classification plan.

(a) Management shall meet and confer with the applicable union personnel committee, labor management committee or appropriate union representative regarding all new and revised class descriptions of all positions within the classification plan prior to approval by the board and city council;

(b) The classification of all positions within the classified service shall be approved by the chief administrative officer;

(c) An appointing authority, subject to the approval of the chief administrative officer, shall determine the classifications to be utilized within any organizational unit under the supervisory authority of such appointing authority;

(d) The chief administrative officer may abolish existing classes that are obsolete and no longer in use, subject to the approval of city council.

Sec. 13-8. Reclassification of positions.

If, after the evaluation of a position, it is the opinion of the secretary that there has been a significant change in the duties of such position, the secretary may assign such position to a different classification, subject to the approval of the chief administrative officer. Upon reclassification of the position, the chief administrative officer shall, after receipt of the secretary's and appointing authority's recommendation, determine whether the reclassified position will be filled through an employment test or by the appointment of the incumbent of the former position to the reclassified position. The secretary shall notify the affected employee in writing at least ten calendar days prior to implementation of the chief administrative officer's determination. New job classifications created as a result of this process shall not be submitted to city council for approval until the appeal period has expired.

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Sec. 13-9. Requirements for entrance into the classified service.

No permanent appointment to a position in the classified service shall be made unless the person so appointed has satisfied the following criteria:

- (a) Filed the application materials required by the secretary;
- (b) Qualified by passing the required test(s);
- (c) Been certified in accordance with this Chapter; provided, that no additional application materials other than proof of license, certificate or educational requirement, and ability to perform the essential functions of the class as specified in the class description, shall be required from a person who has been employed and whose name is certified from a re-employment or reappointment list unless required by state or federal law.

Sec. 13-10. Determination of type of eligible list to be created.

(a) When employment tests are to be held to establish an eligible list, the secretary, in consultation with the appointing authority, shall determine whether to administer a promotional only, internal only, internal and open, or open only test process; however, promotional only test processes shall be administered for higher level classifications in the police and fire departments only, excluding management classifications in the police department and fire prevention classifications in the fire department;

(b) Only persons currently employed in the classified service who have completed a probationary period for a position within the service, may apply to participate in an internal test process;

(c) All persons at least 18 years old, and who may be legally employed in the United States, may apply to participate in an open test process.

Sec. 13-11. Tests to determine fitness of applicants, notice.

(a) The secretary shall select the employment tests used to determine the fitness of applicants for positions in any class and to establish the eligible lists;

(b) For each employment test given the secretary shall issue an appropriate notice containing a description of the duties and qualifications, the type of eligible list to be created, the type of test(s), relative weight assigned to each test or group of tests, the minimum rating, if any, required in any test or group of tests, and any other information deemed appropriate by the secretary;

(c) The duration of any eligible list shall be determined by the secretary prior to issuance of the notice and shall be included in the notice.

Sec. 13-12. Applications for appointment.

(a) All applications for appointment to the classified service shall be filed with the secretary;

(b) Application materials shall be determined by the secretary;

(c) All applications shall be filed with the secretary by the deadline specified in the public notice. The secretary shall reject any application received after the specified deadline;

(d) All applicants shall provide evidence that they meet the minimum qualifications for the class and other documents as required by federal or state law.

Sec. 13-13. Rejection of applicants for cause and reconsideration of action.

(a) The secretary may, for cause, reject any applicant at any time prior to their appointment. The secretary shall provide written notice to the applicant

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specifying the reason for the action and shall advise the applicant of the ability to request an appeal of the action as provided in this Section;

(b) The applicant must request an appeal within ten calendar days after issuance of the secretary's notice. The request shall be in writing, shall contain a complete statement of the reasons supporting the appeal, include any supporting documentation, and shall be signed and dated by the applicant. The request shall be addressed to the secretary and filed with the office of the secretary. Filing may be accomplished by electronic submission, personal delivery or United States mail addressed to the secretary; however, filing shall not be timely unless the request is delivered to the office of the secretary within the time provided by this Section;

(c) The secretary shall reject any request for appeal delivered after the time limit provided in this Section and shall cause the applicant to be notified of the rejection;

(d) The filing of a timely request for appeal shall stay all proceedings in furtherance of the applicable hiring process;

(e) The secretary shall reconsider the rejection based on the appeal documentation within five days of receipt. If the secretary upholds the rejection, the secretary shall call a meeting of the board as soon as possible to hear the appeal.

Sec. 13-14. Grounds for rejection of applicants.

Any of the following may be deemed sufficient cause for rejecting an applicant, though rejection may be made for causes other than those enumerated:

(a) That the applicant failed to timely file their application;

(b) That the applicant is found to lack any of the minimum qualifications as stated in the class description;

(c) That the applicant is unable to perform the essential functions of the class;

(d) That the applicant has been removed from previous employment with the city for cause, delinquency or misconduct;

(e) That the applicant has made a false statement in their application;

(f) That the applicant has been previously employed in the classified service and has been removed for cause or did not resign in good standing.

Sec. 13-15. Testing procedure.

(a) The secretary shall ensure that all tests are administered in a fair and lawful manner;

(b) Any person who obtained or used without permission any extraneous, forbidden or unfair source of information or otherwise cheated shall be deemed to have failed the test. A violation of this Section by a current employee of the city shall constitute just cause for discipline;

(c) If the secretary determines that the tests held were not fair, the secretary may void the tests and take any other appropriate corrective action;

(d) The secretary shall notify in writing all test participants of the action and rights to appeal the decision.

Sec. 13-16. Creation of eligible list.

(a) Following the completion of test scoring, the secretary shall prepare an eligible list showing the names of the test participants, the raw score of each

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participant in each test or group of tests and the participant's total weighted score;

(b) The names of the participants shall be arranged on the eligible list in the order of total weighted scores with the highest first; provided, that if two or more participants have the same weighted score, those names shall be placed on the eligible list in the same rank;

(c) In no case shall the name of any applicant be included on an eligible list if the applicant fails to obtain a passing score on any test or group of tests, as stated in the notice of the test.

Sec. 13-17. Notification of test results and access to examination data.

(a) The secretary shall send to each test participant a written report of their test results, and, if the participant's name is placed on the eligible list, their relative standing on the list;

(b) Access and release of examination data shall comply with state and federal law.

Sec. 13-18. Duration of eligible lists.

(a) An eligible list shall become effective on the date the list is approved by the secretary;

(b) Any name placed on a reappointment list shall remain on the list for five years. Any name shall be removed if the person separates from the classified service for any reason;

(c) Any name placed on a re-employment list due to a layoff shall remain on the list for the person's class and any lower class of that layoff series until such time that the person is rehired, has indicated he/she wishes to have his/her name removed from the list, or has refused to accept an appointment offered him or her unless a different period of time is specified in a collective bargaining agreement to which the city is a party;

(d) Any name placed on a re-employment list for reasons other than layoff shall remain on the list for a period of one year.

Sec. 13-19. Reappointment list--ranking of names.

The names of persons eligible for inclusion on a reappointment list shall be ranked in order of seniority within the classified service. The secretary shall provide written notice to persons whose names are placed on a reappointment list.

Sec. 13-20. Re-employment list--ranking of names.

The names of persons eligible for inclusion on a re-employment list shall be ranked on the list for their class and lower classes in the layoff series in order of their seniority.

Sec. 13-21. Cancellation of eligible lists.

The secretary may cancel any eligible list under the following circumstances:

(a) Illegality, fraud or mistake has affected the creation or maintenance of a list;

(b) The secretary determines that an insufficient number of names remain on the list;

The secretary shall provide written notice to all persons whose name appeared on the cancelled list.

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Sec. 13-22. Criminal history background checks.

The secretary is authorized to coordinate pre-employment background investigations on applicants for appointment to the classified service, subject to the limitations of federal and state law.

Sec. 13-23. Certification of eligibles.

Whenever a vacancy in a position in the classified service is to be filled other than by transfer or demotion, the appointing authority shall request that the secretary certify the names of the persons eligible for appointment.

(a) The secretary shall certify from the list in the following order: reappointment, re-employment, promotional, internal-employment and/or open-employment list;

(b) When certification from a reappointment or re-employment list is made, the secretary shall certify the name of the person whose name is highest on the list and who still meets the qualifications of the classification;

(c) When certification from a promotional or internal-employment list is made, the secretary shall certify the names of the three persons highest on the internal employment list; however, when more than one vacancy is to be filled, the number of names certified shall be twice the number of such vacancies. If the internal-employment list has less than three names, additional names may be certified from the open-employment list. Certification shall start with the name in the highest position on the promotional or internal-employment list. When certification is made from a rank consisting of more than one name, the names of all persons in such tied rank shall be certified;

(d) When certification from an open employment list is made, the secretary shall certify the names of the seven persons highest on the open employment list; however, when more than one vacancy is to be filled, an additional two names shall be certified for each additional vacancy. When certification is made from a rank consisting of more than one name, the names of all persons in such tied rank shall be certified;

(e) The appointing authority may also request the certification of the name of an additional eligible in case one whose name was first certified withdraws from consideration, does not accept the position or does not respond to the appointing authority's communications;

(f) The secretary shall provide notice of certification by mail or via electronic communication to the applicant certified at the last notification address appearing in the secretary's records;

(g) The notification shall advise the applicant of the certification, the title of the position, the organization unit, the name and address of the appointing authority and other appropriate instructions;

(h) A copy of the notice shall be sent to the appointing authority.

Sec. 13-24. Delay of appointment by appointing authority.

(a) If in the opinion of the appointing authority there are an inadequate number of names certified, the appointing authority may refuse to appoint anyone so certified and may then wait for an adequate eligible list to be established;

(b) If a reappointment list or re-employment list is established for such class before an adequate internal-employment and/or open-employment list is established, such reappointment list or re-employment list shall be used.

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Sec. 13-25. Provisional appointments to permanent positions pending tests.

(a) When an appointing authority requests certification of eligibles and no eligible list for the class exists, or when an appointing authority refuses to appoint from names certified because the number of names certified was inadequate, the appointing authority may hire a qualified person for provisional appointment to the position as provided in this Section;

(b) No position shall be provisionally occupied more frequently than one period of 180 days in any 12 consecutive months;

(c) The provisional appointment shall expire upon the happening of any of the following events:

(1) An eligible is appointed and begins employment on the agreed upon start date;

(2) A period of 180 days from date of provisional appointment has passed.

Sec. 13-26. Probation period for classified employees.

Except as otherwise provided by this Section, any person appointed to a position in the classified service after certification from an eligible list shall be on probation for a period of six months or the period specified in the test notice, whichever is longer.

(a) Any person who bumps from a position in one classification to a position in a lower classification and pursuant to a layoff, as provided for in a collective bargaining agreement, shall be on probation for a period of six months; provided, that if an employee bumps or has been laid off or demoted without fault of such employee, and has completed the probationary period in the classification to which he or she is bumping, being demoted or reappointed, such employee shall not be required to serve a second probationary period;

(b) If an employee bumps or is laid off or demoted without fault of such employee during the probationary period, and is appointed to a position in the same class in the same organization unit from which such employee bumped or was laid off or demoted, the probationary period already served shall be carried over to the new appointment, but if appointed in a different organization unit, such employee shall serve a full probationary period for the class.

Sec. 13-27. Rejection of probationary employee.

The appointing authority may at any time before the expiration of the probation period reject any person appointed to a position; provided, that the appointing authority shall forthwith provide a written report to the secretary of the action, identifying the date the rejection becomes effective and the reasons for the rejection. Any probationary employee who fails to successfully complete probation shall be considered permanently separated from the classified service in the classification last held and shall not be entitled to have their name placed on an eligible list.

Sec. 13-28. Temporary vacancies in permanent positions.

(a) A vacancy created by the absence of the incumbent shall be known as a temporary vacancy in a permanent position, and any person appointed to fill such vacancy shall be known as a substitute in that position;

(b) Whenever a temporary vacancy in a permanent position occurs, the appointing authority may fill the position through certification in the following

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order: from the reappointment list, re-employment list, internal-employment list or open-employment list, as provided for in these rules;

(c) The substitute appointment shall terminate upon the return of the incumbent. Upon termination, one of the following actions shall occur:

(1) If the substitute has not completed the probation period, the substitute's name shall be restored to the eligible list from which certification occurred. If that list has expired, the substitute shall be terminated; however, if the appointment was made from an internal-employment list, the substitute shall be returned to the position previously held;

(2) If the substitute has completed the probation period, the substitute's name shall be placed on a re-employment list and if hired from an internal employment list, the substitute shall be returned to the position previously held;

(d) In such cases where it is determined that the incumbent will not return to the position, the substitute shall be appointed to the position as the regular employee if the substitute has successfully completed the probation period;

(e) If no eligible list exists, or no person certified from such list accepts the appointment, the appointing authority may fill the position with a provisional appointment.

Sec. 13-29. Appeals to the board.

(a) Right to appeal.

(1) An applicant who has been qualified by the secretary to participate in a selection process for a position within the classified service and any employee whose civil service status is directly affected by an action of the secretary may appeal to the board as provided in this Section;

(2) An applicant who has been rejected under Section 13-13 of this Code may appeal to the board the basis for the rejection as provided in this Section;

(b) Manner and time for appeal. An appeal is perfected by filing a notice of appeal within ten calendar days after the secretary's written notification of the action. The notice of appeal shall be in writing, shall contain a complete statement of the matter in controversy and the relief requested, and shall be signed and dated by the appellant. The notice shall be addressed to the board and filed with the office of the secretary. Filing may be accomplished by electronic submission, personal delivery or United States mail addressed to the secretary; however, filing shall not be timely unless the notice of appeal is received in the office of the secretary within the time fixed for appeal;

(c) Secretary's authority to reject appeals. The secretary shall reject any appeal received after the time limit provided by this Section or any appeal that exceeds the authority of the board as provided by this Section;

(d) Board scope of authority. Unless otherwise provided by this Chapter, state or federal law, or required by a collective bargaining agreement, the board's jurisdiction shall be to hear and render a decision on:

(1) Appeals challenging the fairness or scoring of a test, including the number of veteran's preference points allotted to an applicant;

(2) Appeals from applicants that have been rejected under Section 13-13 of this Code;

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(3) Appeals of the secretary's action related to placement on a reappointment list;

(4) Appeals of the secretary's action that directly impacts the civil service status of a current classified employee;

(5) In rendering its decision the board shall not modify or waive any of the qualifications, skills, abilities or experience requirements provided for in the classification description;

(e) Limitation of board authority. Unless otherwise required by the provisions of a collective bargaining agreement to which the city is a party, the board shall have no authority to hear the appeal of a dispute that is subject to the grievance article of a collective bargaining agreement;

(f) Suspension of employment process pending appeal. The filing of a timely appeal shall stay all proceedings in furtherance of the applicable employment action;

(g) Notification of board decision. After due deliberation, the board shall render its decision on the record. Within ten calendar days of the board's decision the secretary shall provide written notice of the decision to the appellant and appointing authority. The notice of decision shall be delivered by any reasonable means. The secretary shall provide a copy of the record of decision upon request and as required by Minnesota law. The appellant shall be deemed to have actual notice of the decision on the date the decision was rendered if the appellant or the appellant's representative was present during the meeting at which the board took the action;

(h) Finality of board decision. All decisions of the board are final. Any party aggrieved by a decision of the board may appeal as authorized by Minnesota law;

(i) Implementation of board decision. The secretary shall implement the decision of the board, and in so doing shall determine and implement steps necessary to ensure that legal compliance is maintained.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: April 13, 2012)

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

Yeas: Councilors Julsrud, Krause, Krug, Larson and President Hartman -- 5

Nays: Councilors Boyle, Fosle, Gardner and Stauber -- 4

Passed March 12, 2012

Approved March 12, 2012

DON NESS, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

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**ORDINANCE NO. 10139**

AN ORDINANCE MODIFYING VARIOUS FEE LANGUAGE, PROVIDING FOR FEES TO BE SET BY RESOLUTION, AMENDING SECTIONS 12-10, 43-33.4, 44A-9, 44A-10, 44A-15 AND 48-40 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

The city of Duluth does ordain:

Section 1. That Section 12-10 of the Duluth City Code, 1959, as amended, is amended to read as follows:

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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Sec.12-10. Administrative hearings procedure.

(a) Upon receipt of a notice of appeal and appeal deposit from any citation, the administrator shall schedule a date and time for a hearing before a hearings officer with regard to said appeal and shall mail notice thereof to the violator as herein provided for. Said date shall be not less than ten days after the date of mailing of the notice of hearing to the violator. Said notice shall state the date and time of the hearing, the location where the hearing is to be held and shall identify the hearings officer who will be scheduled to hear the violator's appeal;

(b) For good cause shown, a violator may request that their appeal be heard by a different hearings officer by causing to be received by the administrator not less than three days prior to the scheduled hearing date a written statement of facts supporting the allegation of good cause and a request for substitution of a different hearings officer. Upon such a showing of good cause which might reasonably render the assigned hearings officer unable to fairly hear violator's appeal, the administrator may re-assign the violator's appeal to be heard by a different hearings officer. If necessary, the administrator may re-schedule the date and time of the hearing to accommodate the assignment of a new hearings officer. Only one such re-assignment shall be available with regard to any one appeal;

(c) Upon good cause shown by the violator or by the city, the administrator may grant a continuance of the hearing on any appeal. The party requesting the continuance shall cause to be received by the administrator not less than three days prior to the scheduled hearing date a written statement of facts supporting the allegation of good cause and a request for continuance. Upon the grant of any such continuance, the administrator shall cause to be delivered to the violator and the city a notice setting forth the date, time and place of the re-scheduled hearing;

(d) Upon the written request of the violator or the city demonstrating the need therefore, delivered to the administrator not less than six days prior to the scheduled hearing date, the administrator may issue an administrative subpoena for the attendance of a witness or the production of books, papers, records or other documents that are material to the hearing of the violation. A fee shall be charged to any violator for the issuance of each such subpoena, which fee shall be set in accordance with Section 31-8 of this Code. The party requesting the administrative subpoena shall be responsible to cause any such subpoena to be served in the manner provided for in the *Minnesota Rules of Civil Procedure* and for pay all fees and expenses of any witness subpoenaed. In addition the hearings officer, on their own motion, may cause such subpoena to be issued in which case the city shall be responsible for service thereof and for fees and expenses. Any person served with such an administrative subpoena who deems compliance therewith to be unreasonable or oppressive may appeal therefrom by causing to be received by the administrator not less than three days prior to the date scheduled for compliance therewith a written statement of facts supporting the allegation of unreasonableness or oppressiveness. The administrator may cancel the subpoena, affirm it or modify it, mitigating those factors rendering it unreasonable or oppressive. Any person who, without just cause, fails or refuses to comply with any administrative subpoena shall be guilty of a

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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misdemeanor. In addition, the party requesting the administrative subpoena may seek an order from district court directing compliance with the administrative subpoena;

(e) Neither the city nor the violator shall be represented at the hearing by an attorney. Provided that, where relevant or where requested by the hearings officer, either party may submit a legal memorandum relevant to the issues being heard;

(f) At the hearing, the hearings officer may hear and rely on any testimony or other evidence they deem to be reasonably reliable, including, in the exercise of their discretion, hearsay testimony. Strict compliance with the *Minnesota Rules of Evidence* will not be required. The proceedings shall be either recorded by a recording clerk recording the evidence in summary form or by means of an audio recording, and a record of all testimony and of all evidence considered shall be maintained for at least 60 days after the close of the hearing. The interpretation of technical codes such as building codes, electrical codes and other such codes by those regularly engaged in their enforcement and interpretation shall be given substantial weight;

(g) In all hearings the city shall have the burden of proving by a preponderance of the evidence that the alleged violation has occurred and that the violator is the person or one of the persons legally responsible therefore;

(h) If any violator fails to appear for any scheduled hearing, the violation shall be deemed to have been admitted by such violator, the hearings officer shall impose such penalty or order or both as they deem appropriate and the violator shall be deemed to have waived any further right of appeal.

Section 2. 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

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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notified and the property so inspected, except as provided for in subsection (e) below. The seller or transferor may choose to utilize an inspector other than the city inspector to perform said inspection, providing the inspector is bonded and meets the qualifications as a licensed plumbing contractor in the city of Duluth, holds a Class S-C wastewater license and passes a city administered training course. The private inspector must make certification that the building either needs a sump pump or that there is a sump pump in place and properly functioning or that no sump pump is required. No fee except a nominal filing fee to the city will be required under these circumstances;

(c) If a building sewer contains a house trap and the footing drains are active, the trap shall be removed. If the property requires footing drain disconnections and sump pump installation, it shall be done. The required repairs shall be completed within 90 days of the date of the inspection referred to in subparagraph (b) above. If they are satisfactorily completed, the director shall issue a POS certificate with regard to footing drain contribution only but such POS certificate shall not evidence total compliance with all of the requirements of Section 43-31(a) above. If the required repairs are not satisfactorily completed within said 90 day period, the owner or customer shall be charged a monthly surcharge each month until the repairs are satisfactorily completed, which surcharge shall be set in accordance with Section 31-8 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

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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be subject to the requirements of this Article as if the inspection had been made prior to closing;

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

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

(h) Upon the receipt of such list, the city assessor shall make an assessment roll containing, in columns, the name of the owner of each lot or parcel of land separately assessed, if known to him 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 ten percent penalty added, after which the assessment shall follow the provisions of Article IX of the City Charter.

Section 3. That Section 44A-9 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 44A-9. Peddlers and solicitors.

No person shall peddle or sell any merchandise or solicit any funds within the skywalk system without first receiving a permit to do so from the skywalk system coordinator. Applications for permits shall be submitted on forms furnished by the skywalk system coordinator and shall be accompanied by a nonrefundable fee, which fee shall be set in accordance with Section 31-6(a) of this Code. Permits shall be granted only in accordance with skywalk use policy. Permits may be suspended or revoked for good cause. The skywalk system

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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coordinator may impose any conditions and restrictions on such permits as he deems necessary and reasonable.

Section 4. That Section 44A-10 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 44A-10. Permit required for displays, signs, banners, special events, obstructions, etc.

(a) The skywalk system coordinator may, consistent with skywalk system use policy, and at his discretion, grant permits:

(1) To authorize the posting and/or display of signs or banners within the skywalk system;

(2) To authorize displays, exhibits or shows which occupy floor space in the skywalk system;

(3) To authorize special events, including meetings, within the skywalk system;

(4) To authorize other temporary or permanent use of floorspace, airspace, or wallspace within the skywalk system;

(b) The skywalk system coordinator may issue permits only if the proposed use is compatible with the public interest, not detrimental to public health, safety or morals, consistent with existing skywalk system use policy, does not violate any contractual obligation of the city, and does not substantially interfere with pedestrian passage through the public easement;

(c) Applications for such permits shall be made in writing to the skywalk system coordinator on forms supplied by him and shall be accompanied by an application fee, which fee shall be set in accordance with Section 31-6(a) of this Code. The skywalk system coordinator shall investigate the proposed use to the extent he deems necessary and grant or deny the permit. The skywalk system coordinator may place such restrictions and conditions on any permit as he deems necessary. These conditions and restrictions may include, but are not limited to, the following:

(1) Insurance, bond, or damage or cleanup deposit requirements;

(2) Restrictions on hours of operation;

(3) Restrictions on area of operation;

(4) Duration of the permit;

(5) Design specifications for any part or all of the proposed use;

(6) Security provisions, including extra police protection, for any proposed use;

(7) Maintenance and/or cleanup standards for the proposed use.

Section 5. That Section 44A-15 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 44A-15. Minimum skywalk door access hours.

(a) The city council may, by regulation as provided for in Section 44A-12 hereof, establish minimum hours during which any or all skywalk doors shall be accessible. Skywalk doors shall include those doors providing access between buildings on the skywalk system, access to skywalk bridges and access from the skywalk system to the street. For the purposes of this Section, skywalk doors giving access to skywalk bridges and to streets shall be deemed to be

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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"accessible" when said doors are unlocked and can be opened by the general public; skywalk doors between buildings shall be deemed to be accessible when they are unlocked and in an opened position;

(b) It shall be the responsibility of building owners owning buildings connected to the skywalk system to ensure that all skywalk doors in and adjacent to their buildings remain accessible during the minimum hours set pursuant to paragraph (a) above;

(c) Upon receipt of a complaint that any skywalk door is not accessible in violation of minimum skywalk hours regulations, the police department may render any skywalk door or doors accessible. In the event that the department does so, the owner of the building shall be responsible to pay a service fee for each time the police department renders the aforesaid service, which fee shall be set in accordance with Section 31-8 of this Code;

(d) For each incident of police service referred to in paragraph (c) above, the chief of police shall promptly notify the skywalk operations administrator of the date, time and place of rendering such service. The skywalk operations administrator shall promptly cause a billing of the service fee therefore to be transmitted to the owner of the building in question, which owner shall be deemed to be the owner shown to be such on the records of the county auditor. The service fee for said service shall be immediately payable by the owner.

Section 6. That Section 48-40 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 48-40. Same--Inspection by city where return not made.

Should a permittee under any service construction permit neglect or refuse to make the required return within ten days after completion of the work, the city is authorized to make a special inspection of the work and, if the same be found satisfactory, to turn on the water and gas. The permittee shall be required to pay a reasonable fee, not less than that fee which shall be set in accordance with Section 31-8 of this Code, for the special inspection.

Section 7. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: April 13, 2012)

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

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

Nays: None -- 0

Passed March 12, 2012  
Approved March 12, 2012  
DON NESS, Mayor

ATTEST:  
JEFFREY J. COX, City Clerk

- - -

**ORDINANCE NO. 10140**

AN ORDINANCE AUTHORIZING THE GRANTING OF AN EASEMENT TO THE STATE OF MINNESOTA, DEPARTMENT OF TRANSPORTATION ADJACENT TO INTERSTATE 35 IN THE POINT OF ROCKS AREA FOR \$39,000.

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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The city of Duluth does ordain:

Section 1.

(a) As per Section 2-177.3, of the Duluth City Code, 1959, as amended (the Code), the city may convey city property, including easements, to another governmental entity if the best interests of the citizens of the city will be best served by accomplishing such conveyance;

(b) The state of Minnesota has provided an appraisal of valuation of the property involved and the city assessor has reviewed said appraisal and finds the amount of \$39,000 offered for said easement to be fair and equitable.

Section 2. That the proper city officials are hereby authorized to convey an easement to the state of Minnesota in perpetuity for light standard erection and maintenance, and utility access over the following described property, for the amount of \$39,000 to be deposited into Fund 110 (general), Agency 700 (transfers and other functions), Organization 1420 (capital programs), Object 4640 (sale of land), and further to execute all documents necessary with regard to said conveyance:

Tract A. Lots 242, 244 and 246, Block 20, Duluth Proper Second Division, according to the plat thereof on file and of record in the office of the county recorder in and for St. Louis County, Minnesota.

Tract B. Lots 226, 228, 230, 232, 234, 236, 238 and 240, Block 21, Duluth Proper Second Division, according to the plat thereof on file and of record in the office of the county recorder in and for St. Louis County, Minnesota.

Tract C. Lots 216, 218, 220, 222 and 224, Block 22, Duluth Proper Second Division, according to the plat thereof on file and of record in the office of the county recorder in and for St. Louis County, Minnesota.

Tract D. Lots 200 and 202, Block 23, Duluth Proper Second Division, according to the plat thereof on file and of record in the office of the county recorder in and for St. Louis County, Minnesota.

The easement herein granted is described as follows and is shown on Public Document No. 12-0312-17 and made a part hereof:

A strip being that part of Tract A hereinbefore described which lies northwesterly of the northwesterly right-of-way line of Trunk Highway No. 35 as now located and established and southeasterly of the southeasterly right-of-way line of Lower Michigan Street as now located and established;

A strip being that part of Tract B hereinbefore described which lies southeasterly of the northwesterly 140 feet thereof and northwesterly of the northwesterly right-of-way line of said Trunk Highway No. 35;

A strip being that part of Tract C hereinbefore described which lies northwesterly of the northwesterly right-of-way line of said Trunk Highway No. 35 and southeasterly of the following described line: beginning at a point on the southwesterly line of Lot 224, said Block 22, distant 135 feet southeasterly of the most westerly corner thereof; thence run northeasterly to a point on the northeasterly line of Lot 222, said Block 22, distant 135 feet southeasterly of the most northerly corner thereof; thence northeasterly to a point on the northeasterly line of Lot 216, said Block 22, distant 110 feet southeasterly of the most northerly corner thereof and there terminating;

A strip being that part of Tract D hereinbefore described which lies southeasterly of the northwesterly 85 feet thereof and northwesterly of the northwesterly right of way line of said Trunk Highway No. 35; containing 19,023 square feet, more or less.

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

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Section 3. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: April 13, 2012)

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

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

Nays: None -- 0

ATTEST:

JEFFREY J. COX, City Clerk

Passed March 12, 2012

Approved March 12, 2012

DON NESS, Mayor

- - -

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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### OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, March 26, 2012, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Boyle, Fosle, Julsrud, Krause, Krug, Larson and President Hartman -- 7

Absent: Councilors Gardner and Stauber -- 2

- - -

The minutes of council meetings held on January 30 and February 9, 2012, were approved upon a unanimous vote.

- - -

### PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

12-0326-01 Judy Gordon communication regarding proposed rezoning on Park Point (12-017-O). -- Received

12-0326-08 Jim Livesay communication regarding proposed \$90,000 for office equipment (12-0150R). -- Received

12-0326-09 Robert Prusak communication regarding proposed council veto requirements for utility rates set by the Duluth public utilities commission (12-014-O). -- Received

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### REPORTS FROM THE ADMINISTRATION

Chief Administrative Officer David Montgomery reviewed upcoming issues of Lakewalk final phase construction and a time crunch for some ordinances and the need for a special meeting on April 5.

- - -

### REPORTS OF BOARDS AND COMMISSIONS

12-0326-16 Alcohol, gambling and tobacco commission minutes of February 1, 2012, meeting. -- Received

12-0326-02 Civil service board minutes of: (a) February 7; (b) February 21, 2012, meetings. -- Received

12-0326-03 Duluth human rights commission minutes of January 11, 2012, meeting. -- Received

12-0326-04 Duluth public arts commission minutes of January 23, 2012, meeting. -- Received

12-0326-05 Duluth Seaway Port authority budget summary of December 2011. -- Received

12-0326-06 Library board minutes of January 24, 2012, meeting. -- Received

12-0326-07 Spirit Mountain recreation area authority minutes of: (a) December 15, 2011; (b) January 12, 2012, meetings. -- Received

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### OPPORTUNITY FOR CITIZENS TO BE HEARD

Loren Martell expressed his viewpoints on the Duluth School District Red Plan, that: it was not given enough time for real examination; media coverage only told the what the district said; the public remains in the dark about the increased spending; that Johnson Controls is the only winner; the lack of not selling the Secondary Technical Center cannot be the sole blame

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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for the problem and now borrowing along with high, exorbitant interest rates will increase costs.

- - -

Jerry Schlafer expressed concerns about debt and that when the city wants federal funding, the federal government borrows it and thus adds to the national debt.

- - -

Tyler Nord commented on his concerns about: recent police enforcement of the building code with Occupy Duluth; that Occupy Duluth is seeking to help the Greater Downtown Council clean up and educate on how to be part of the Seeds of Success program and requested support for the foreclosure moratorium bill in the legislature.

- - -

### RESOLUTION RECONSIDERED

President Hartman moved to reconsider Resolution 12-0108, establishing city of Duluth election precincts, which motion was seconded and unanimously carried.

Councilor Fosle moved to amend the resolution by moving the easterly lines of precincts 28 and 29 to the ore docks, which motion was seconded for discussion.

Councilor Fosle stated that the rationale for his amendment is that this area is considered West Duluth and thus the whole West Duluth community would be in his district and it only creates for him a +2.38 percent deviation from the mean district size requirement.

City Clerk Jeffrey Cox clarified that the council does not have a specific percentage requirement and that the City Charter only states that after the census is final, the council has the responsibility to "determine whether or not the population of each council district is substantially the same" and to "equalize, as nearly as practical." He further noted that with the amendment, it would create a -5.26 percent deviation from the mean district size for the fourth district.

Councilor Krause felt that this amendment would create a domino effect in trying to equalize districts across the board; but as it is, it creates a district that is five percent smaller than the others.

President Hartman noted that historically the council has not made amendments to the recommendations from staff to keep politics out of it.

The amendment failed as follows:

Yeas: Councilor Fosle -- 1

Nays: Councilors Boyle, Julsrud, Krause, Krug, Larson and President Hartman -- 6

Absent: Councilors Gardner and Stauber -- 2

Resolution 12-0108 was adopted as follows:

RESOLVED, that pursuant to Minnesota Statutes 204B.14, subd. 3(d), the election precincts as shown on Public Document No. 12-0326-10, on file in the office of the city clerk, are hereby established in the city of Duluth.

Resolution 12-0108 was adopted upon the following vote:

Yeas: Councilors Boyle, Julsrud, Krause, Krug, Larson and President Hartman -- 6

Nays: Councilor Fosle -- 1

Absent: Councilors Gardner and Stauber -- 2

Approved March 26, 2012

DON NESS, Mayor

- - -

**MOTIONS AND RESOLUTIONS**

The following entitled resolution was read for the first time:

BY PRESIDENT HARTMAN

12-0147 - RESOLUTION AMENDING THE STANDING RULES - CONSENT AGENDA.

- - -

**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, city officials are hereby authorized to contract with MacQueen Equipment, Inc., for the purchase and delivery of a 2012 Elgin Pelican Model NS street sweeper with options in accordance with state of Minnesota State Contract 27094, Release S-843(5), specifications and pricing in the amount of \$181,541 (includes freight) plus \$12,480.94 sales tax, for a total amount of \$194,021.94, terms net 30, FOB St. Paul, payable as follows:

(a) \$173,000 from Stormwater Fund 535, Department/Agency 500 (public works and utilities), Division 1905 (capital), Object 5580 (capital equipment);

(b) \$21,021.94 from Capital Equipment Fund 250, Department/Agency 015 (administrative services), Division 2012 (fiscal year 2012), Object 5580 (capital equipment), Project No. CE250-V1203.

Resolution 12-0041 was unanimously adopted.

Approved March 26, 2012

DON NESS, Mayor

- - -

BE IT RESOLVED, that the city council of the city of Duluth hereby issues the following on sale intoxicating liquor license and dancing license and application for a 2:00 a.m. beverage license for the period ending August 31, 2012, subject to departmental approvals and the payment of sales and property taxes:

The Dukes Partners, LLC (Spurs on 1st), 109 West First Street, with Nick Patronas, 100 percent owner.

Resolution 12-0125 was unanimously adopted.

Approved March 26, 2012

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to contract with Maney International, Inc., for the purchase and delivery of two 2013 International Model 7500 4x2 single axle cab and chassis units for the fleet services division in accordance with Minnesota State Contract 31624, Release T-647(5), specifications and pricing in the amount of \$166,084.66 plus \$10,795.50 state motor vehicle tax (6-1/2%) plus \$250 license, registration and tax exempt plates for a combined total amount of \$177,130.16, terms net 30, FOB destination, payable from Capital Equipment Fund 250, Department/Agency 015

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

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(administrative services), Division 2012 (fiscal year), Object 5580 (capital equipment), Project CE250-V1203.

Resolution 12-0136 was unanimously adopted.

Approved March 26, 2012

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to contract with Thane Hawkins Polar Chevrolet for the purchase and delivery of four vehicles - one 2012 Chevrolet Tahoe Special Service UV33 4x4 unit, one 2012 Chevrolet Silverado 3500 HD 4x4 regular cab and chassis unit, one 2012 Chevrolet Colorado 4x4 crew cab pickup truck, and one Chevrolet Silverado 2500 4x4 extended cab long box pickup - all in accordance with Minnesota state contract specifications and pricing, for a total of \$107,568.95 plus \$6,991.99 state vehicle sales tax (6-1/2 percent), plus \$302.30 license, registration and tax-exempt plates and fees, for a combined total of \$114,863.24, payable as follows:

(a) Requisition 12-0112 - 2012 Chevrolet Tahoe (State 35472, Release A-175(5)): \$32,334.47 - Capital Equipment Fund 250, Administrative Services 015, Fiscal Year 2012, Capital Equipment 5580, Project No. CE250-V1202;

(b) Requisition 12-0197 - 2012 Chevrolet Silverado (State 36174, Release T-636(5)): \$33,019.60 - Capital Equipment Fund 250, Administrative Services 015, Fiscal Year 2012, Capital Equipment 5580, Project No. CE250-V1203;

(c) Requisition 12-0205 - Chevrolet Colorado (State 37909, Release T-642(5)): \$22,771.37 - Capital Equipment Fund 250, Administrative Services 015, Fiscal Year 2012, Capital Equipment 5580, Project No. CE250-V1203;

(d) Requisition 12-0228 - Chevrolet Silverado (State 37909, Release T-642(5)): \$26,737.80 - Capital Equipment Fund 250, Administrative Services 015, Fiscal Year 2012, Capital Equipment 5580, Project No. CE250-V1204.

Resolution 12-0145 was unanimously adopted.

Approved March 26, 2012

DON NESS, Mayor

- - -

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

Grandma's Marathon - Duluth, Inc., Canal Park Drive and Buchanan Street, for June 15-17, 2012, with Scott Kennan, manager, with the music and serving ending at 2:00 a.m.

Resolution 12-0146 was unanimously adopted.

Approved March 26, 2012

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a three year agreement with Toshiba Business Solutions, Inc., for the lease and maintenance of copiers as needed in accordance with Minnesota State Swift Contract 23628 (5) specifications and pricing for a total of \$136,254.84 for each contract year of years 2012-2013, 2013-2014

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

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and 2014-2015, payable from General Fund 110, Transfers and Other Functions 700, Citywide Communications 1403, and Copier, Printer Lease and Supplies 5356.

Resolution 12-0152 was unanimously adopted.

Approved March 26, 2012

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a joint powers agreement pertaining to the housing tax credit program, substantially in the form of the copy on file in the office of the city clerk as Public Document No. 12-0326-11, with the Minnesota housing finance agency (Minnesota housing) for the year 2013.

Resolution 12-0133 was unanimously adopted.

Approved March 26, 2012

DON NESS, Mayor

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The city council finds:

(a) That it is deemed necessary for the public conveyance and safety that East Oxford Street, Livingston Avenue and Glenwood Street between Woodland Avenue and Snively Road (City Project No. 0439TR) be reconstructed; and

(b) That this project will not be eligible for municipal state aid funds unless it is constructed to state aid standards for arterial roadways of urban (new or reconstruction) projects, or unless a variance is granted; and

(c) Practical limitations require that tighter horizontal curves than dictated by standards be used. This results in a 16 mph design speed in lieu of a 30 mph design speed, which requires a variance from the commissioner of transportation in accordance with Minnesota Rules Chapter 8820.3300; and

(d) The city council passed Resolution 11-0633, requesting said variance, on November 29, 2011; and

(e) The Minnesota department of transportation state aid engineer granted said variance on the condition that the city council hold harmless the state of Minnesota.

RESOLVED, that the city of Duluth agrees to indemnify, save and hold harmless the state of Minnesota and its agents and employees of and from claims, demands, actions or causes of action arising out of or by reason of the granting of said variance, and further agrees to defend at its sole cost and expense any action or proceeding commenced for the purpose of asserting any claim whatsoever arising as a result of the granting of this variance.

Resolution 12-0131 was unanimously adopted.

Approved March 26, 2012

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to enter into a 50-year license agreement, a copy of which is on file in the office of the city clerk as Public Document No. 12-0326-12, with the Minnesota department of natural resources for construction, maintenance and operation of high pressure gas mains under Mission Creek for a consideration of \$237, payable out of Gas Fund 520, Department/Agency 500 (public works and utilities), Division 1905 (capital), Object 5533 (capital improvements - revenue), City Project No. 1075.

Resolution 12-0137 was unanimously adopted.

Approved March 26, 2012

DON NESS, Mayor

**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 contract with PCI Roads, LLC, for the 2012 concrete pavement rehabilitation project in the amount of \$769,495.77, payable out of Permanent Improvement Fund 411, Department/Agency 035 (capital projects), Object 5530 (improvements other than buildings), City Project No. 0922TR, S.A.P 118-152-014.

Resolution 12-0139 was unanimously adopted.

Approved March 26, 2012

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to continue a proprietary annual contract with Dakota Supply Group, Inc., the state's certified distributor and sole supplier of Badger water meters, for the purchase and delivery of Badger water meter parts during year 2012 for an estimated total of \$34,393.75 plus \$2,364.57 sales tax, for a combined estimated total of \$36,758.32, terms net 30, FOB destination, payable from Water Fund 510, Public Works and Utilities 500, Customer Services 1940, Service 2410, Repair and Maintenance Supplies 5220.

Resolution 12-0140 was unanimously adopted.

Approved March 26, 2012

DON NESS, Mayor

- - -

RESOLVED, that it is deemed necessary for public convenience and safety, and it is hereby ordered that Oxford Street, Livingston Avenue and Glenwood Street from Woodland Avenue to Snively Road (City Project No. 0439TR) be improved.

FURTHER RESOLVED, that said work be done by contract and that the estimated cost of said project as estimated by the city engineer is \$4,230,089, payable from Permanent Improvement Fund 411, Department/Agency 035 (capital projects), Object 5530 (improvements other than buildings). The funding sources for this project will be as follows: \$2,930,089 from municipal state aid funds, \$650,000 from Water Fund 510, \$100,000 from Stormwater Utility Fund 535, \$550,000 from Sanitary Sewer Fund 530, and of these project costs \$530,089 will be assessed to benefitting properties.

FURTHER RESOLVED, that assessments shall be levied upon lands benefitting per the preliminary assessment roll (Public Document No. 12-0326-13), and may be paid in 15 annual installments at municipal bond index plus 1.50 percent interest.

Resolution 12-0144 was unanimously adopted.

Approved March 26, 2012

DON NESS, Mayor

- - -

RESOLVED, that Resolution 11-0524 to LHB, Inc., for professional engineering services for the reconstruction of Oxford Street, Livingston Avenue and Glenwood Street from Woodland Avenue to Snively Road be amended by an amount of \$24,883 for a new total of \$188,772. The increase will be payable from working fund Permanent Improvement Fund 411, Department/Agency 035 (capital projects), Object 5530 (improvements other than buildings), City Project No. 0439TR. This project is funded by municipal state aid funds, utility funds and special assessment funds.

Resolution 12-0148 was unanimously adopted.

Approved March 26, 2012

DON NESS, Mayor

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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BY COUNCILOR JULSRUD:

RESOLVED, that in accordance with the provisions of Section 33-97 of the Duluth City Code, 1959, as amended, the following no parking zone is hereby established on the following street:

Both sides of Arrowhead Road from Wallace Avenue for 200 feet easterly.

Resolution 12-0151 was unanimously adopted.

Approved March 26, 2012

DON NESS, Mayor

- - -

RESOLVED, that in accordance with the provisions of Section 33-88.2 of the Duluth City Code, 1959, as amended, the following accessible parking space is established: in front of 1031 East Sixth Street.

Resolution 12-0138 was unanimously adopted.

Approved March 26, 2012

DON NESS, Mayor

- - -

RESOLVED, that in accordance with the provisions of Section 33-97 of the Duluth City Code, 1959, as amended, the following no parking zone is hereby established:

On both sides of Glenwood Street between Livingston Avenue and Woodbury Lane, and on the south side of Glenwood Street between Woodbury Lane and Jean Duluth Road.

Resolution 12-0141 was unanimously adopted.

Approved March 26, 2012

DON NESS, Mayor

- - -

RESOLVED, that the proper city officials are hereby authorized to accept a grant from the state of Minnesota, department of public safety, homeland security and emergency management, in the amount of \$760,500 with matching funds in the amount of \$253,500 from Fund No. 250-015-2012-5580-CE250-E1211 (capital equipment, administrative services, fiscal year - 2012, fire communication system (ARMER)), and to execute a grant agreement, substantially the same as that on file in the office of the city clerk as Public Document No. 12-0326-14, for the purchase of portable and squad radios for the police and fire departments, funds to be deposited in Fund No. 215-200-2204-4210-01 (Duluth police grant programs, police, 2009 port security grant program).

Resolution 12-0142 was unanimously adopted.

Approved March 26, 2012

DON NESS, Mayor

- - -

The following resolutions were also considered:

Resolution 12-0150, authorizing a contract with Northern Business Products, Inc., for the purchase and delivery of Herman Miller office furniture for the parks and recreation division and parking enforcement and management staff in the amount of \$90,239.40, was introduced by Councilor Krause for discussion.

Mr. Montgomery reviewed: that the plan is to have 13 parks employees and eight parking management staff in this space; the description, nature and breakdown of costs of the work stations and for the respective staff needs; there was excess funds from the new the

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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police station construction that contributed to this; because of workers compensation issues, ergonomic furniture is needed; that no parks funds are being used for this; parks has a great deal of public meetings and needs good quality furniture that will hold up to heavy use and that the existing parks furniture will be used by the entity renting the parks space.

Councilor Krause expressed concerns that: at this time, this is not a good public image to make with this type of investment; if the new police building construction came in under budget, the money should have been used to reduce the debt; this is not fiscally responsible and there are many good types of ergonomic furniture that are not priced this high.

Resolution 12-0150 was adopted as follows:

RESOLVED, that the proper city officials are hereby authorized to contract with Northern Business Products, Inc., for the purchase of Herman Miller office furniture for the city's parks and recreation division and parking enforcement and management staff, approximately 21 staff positions, and delivery of same furniture to the division's new master plan location in Duluth City Hall in accordance with Minnesota state contract (various nos.) and Release F-379(5) specifications and pricing and the vendor's quote as an authorized Herman Miller dealer, for a total of \$84,434.53 plus \$5,804.87 sales tax, for a combined total of \$90,239.40, payable from Capital Improvements Fund 450, Stimulus Act (ARRA) 025, Buildings and Structures 5520, Project No. CP2009-0929B.

Resolution 12-0150 was adopted upon the following vote:

Yeas: Councilors Boyle, Fosle, Julsrud, Krug, Larson and President Hartman -- 6

Nays: Councilor Krause -- 1

Absent: Councilors Gardner and Stauber -- 2

Approved March 26, 2012

DON NESS, Mayor

- - -

Resolution 12-0134, confirming the appointments and reappointments of members to city boards and commissions, was introduced by Councilor Boyle for discussion.

Councilor Krause expressed his concerns that there should be more fresh perspectives from citizens, which the city does not see with members being reappointed to more than two terms.

Resolution 12-0134 was adopted as follows:

RESOLVED, that pursuant to Section 2-68 of the Duluth City Code, 1959, as amended, the appointments and reappointments by Mayor Ness to city boards and commissions for terms expiring on March 31 of various years, as listed on Public Document No. 12-0326-15, are confirmed.

Resolution 12-0134 was adopted upon the following vote:

Yeas: Councilors Boyle, Fosle, Julsrud, Krug, Larson and President Hartman -- 6

Nays: Councilor Krause -- 1

Absent: Councilors Gardner and Stauber -- 2

Approved March 26, 2012

DON NESS, Mayor

- - -

Resolution 12-0135, reappointing Robert Prusak and appointing \_\_\_\_\_, replacing Jay Fosle, to the Duluth public utilities commission, was introduced by Councilor Boyle.

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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Councilor Boyle moved to table the resolution so Councilor Stauber could vote on this, which motion was seconded and carried as follows:

Yeas: Councilors Boyle, Fosle, Krause, Krug, Larson and President Hartman -- 6

Nays: Councilor Julsrud -- 1

Absent: Councilors Gardner and Stauber -- 2

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### INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

BY COUNCILOR KRAUSE

12-014 - AN ORDINANCE ALLOWING A MAJORITY OF THE CITY COUNCIL TO VETO UTILITY RATES APPROVED BY THE DULUTH PUBLIC UTILITIES COMMISSION AMENDING SECTION 2-187 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

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INTRODUCED BY COUNCILOR STAUBER

12-017 - 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 I-W, INDUSTRIAL WATERFRONT, TO MU-W, MIXED USE WATERFRONT, PROPERTY AT 1003 MINNESOTA AVENUE (GLOBE ENTERPRISES, INC.).

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INTRODUCED BY COUNCILOR FOSLE

12-016 - AN ORDINANCE AMENDING SECTIONS 36-1, 36-2, 36-6, 36-7, 36-8, 36-9, 36-12, 36-13, 36-16, 36-17, 36-19, 36-20, 36-21, AND 36-23 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO PAWNBROKERS AND PRECIOUS METALS.

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The following entitled ordinances were read for the second time:

INTRODUCED BY COUNCILOR JULSRUD

12-013 (10141) - AN ORDINANCE AUTHORIZING THE RECONVEYANCE OF CERTAIN PROPERTY IN THE UPPER RIVERSIDE AREA TO THE DULUTH ECONOMIC DEVELOPMENT AUTHORITY (DEDA) AT NO COST.

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

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INTRODUCED BY PRESIDENT HARTMAN

12-012 (10142) - AN ORDINANCE AMENDING SECTION 2-42 OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO ASSIGNMENT OF ELECTION PRECINCTS.

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

Yeas: Councilors Boyle, Julsrud, Krause, Krug, Larson and President Hartman -- 6

Nays: Councilor Fosle -- 1

Absent: Councilors Gardner and Stauber -- 2

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The meeting was adjourned at 7:53 p.m.

JEFFREY J. COX, City Clerk

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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**ORDINANCE NO. 10141**

AN ORDINANCE AUTHORIZING THE RECONVEYANCE OF CERTAIN PROPERTY IN THE UPPER RIVERSIDE AREA TO THE DULUTH ECONOMIC DEVELOPMENT AUTHORITY (DEDA) AT NO COST.

The city of Duluth does ordain:

Section 1.

(a) As per Section 2-177.3, of the Duluth City Code, 1959, as amended (the Code), the city may convey city property to another governmental entity if the best interests of the citizens of the city will be best served by accomplishing such conveyance;

(b) The property shown in Section 2 below was originally conveyed by DEDA to the city at no cost in 1997 for public open space, with said property in Section 2 below remaining unimproved or unenhanced for the purpose for which it was originally conveyed;

(c) DEDA has been requested by the adjacent owner to acquire said property in Section 2 below for buffer purposes.

Section 2. That the proper city officials are hereby authorized to reconvey to DEDA the following described property, by quit claim deed, at no cost, and in "as-is" condition without any representations or warranties or its fitness for any particular purpose whatsoever, and that city shall have no liability for demolition or abatement of any hazardous substances or clean-up costs, and further to execute all documents necessary with regard to said reconveyance:

That part of Blocks 41, 42 and 48, Ironton Second Division, lying east of the following described line:

Commencing at the intersection of the easterly line of the DWP right-of-way and the northerly right-of-way of Gogebic Street; thence on an assumed bearing of north 30 degrees 54 minutes 20 seconds east along the east line of the DWP right-of-way 910.04 feet to the beginning of said line; thence south 78 degrees 05 minutes 20 seconds east, 110.93 feet; thence north 75 degrees 03 minutes 13 seconds east, 210.84 feet; thence south 86 degrees 05 minutes 41 seconds east, 237.82 feet; thence south 60 degrees 37 minutes 11 seconds east, 279.27 feet to the south line of said Block 48 and there terminating.

Except that part of Block 48 lying south of the north line of Highway 23.

Section 3. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: April 27, 2012)

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

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

Nays: None -- 0

Absent: Councilors Gardner and Stauber -- 2

ATTEST:  
JEFFREY J. COX, City Clerk

Passed March 26, 2012  
Approved March 26, 2012  
DON NESS, Mayor

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PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2012

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**ORDINANCE NO. 10142**

AN ORDINANCE AMENDING SECTION 2-42 OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO ASSIGNMENT OF ELECTION PRECINCTS.

The city of Duluth does ordain:

Section 1. That Section 2-42 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 2-42. Assignment of election precincts to council districts.

Pursuant to Section 2 of the Duluth City Charter the city council hereby assigns the election precincts established by city council Resolution No. 12-0108 to the various council districts as follows:

Council district No. 1 shall consist of election precincts numbered 1, 2, 3, 4, 5, 6 and 7.

Council district No. 2 shall consist of election precincts numbered 8, 9, 10, 11, 12 and 13.

Council district No. 3 shall consist of election precincts numbered 14, 15, 16, 17, 18, 19 and 20.

Council district No. 4 shall consist of election precincts numbered 21, 22, 23, 24, 25, 26 and 27.

Council district No. 5 shall consist of election precincts numbered 28, 29, 30, 31, 32, 33 and 34.

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective date: April 27, 2012)

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

Yeas: Councilors Boyle, Julsrud, Krause, Krug, Larson and President Hartman -- 6

Nays: Councilor Fosle -- 1

Absent: Councilors Gardner and Stauber -- 2

ATTEST:  
JEFFREY J. COX, City Clerk

Passed March 26, 2012  
Approved March 26, 2012  
DON NESS, Mayor

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