

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2013

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### OFFICIAL PROCEEDINGS

Duluth City Council meeting held on Monday, September 9, 2013, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

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

Absent: None -- 0

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### PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

13-0909-09 Councilor Garry Krause resignation from the office of Fourth District City Councilor. -- Received

13-0909-01 The following communications regarding the proposed regulation of electronic cigarettes (13-059-O and 13-060-O): (a) Lindsay Aijala; (b) American Cancer Society Cancer Action Network; (c) American Lung Association in Minnesota (5); (d) Peggy Anderson; (e) Brian Annis; (f) Arrowhead Youth Soccer Association; (g) Association for Nonsmokers-Minnesota; (h) Jessica Backe-Zweifel; (i) Lisa Bell; (j) Laura Bennett; (k) Jodi Broadwell; (l) Terry and Clifford Bronniche; (m) Mark R. Brown; (n) Terry Clark; (o) ClearWay Minnesota; (p) Consumer Advocates for Smoke-free Alternatives Association; (q) Ann Doberstein; (r) Duluth Transit Authority; (s) Bernadette Furey; (t) Mary Gallegos; (u) Cassie Grubbe; (v) Thomas J. Hagen; (w) Martin Herman; (x) Kelly Higgins Kleven; (y) Richard D. Hurt; (z) Frank J. Kampa; (aa) Lindsay Kolquist; (bb) Amy Lee; (cc) Karen Lewis; (dd) Addie Licari; (ee) Kim Mitchell; (ff) Randy and Julie Myhre; (gg) Angie Nolle; (hh) Jenny Peterson; (ii) Jim and Evie Pollock; (jj) Colene Rose; (kk) Rainbow Health Initiative; (ll) Andrew Roseth; (mm) Mary Streufert; (nn) Danny Strohman; (oo) Liz Taylor; (pp) Ladona Tornabene; (qq) Lisa Vogelsang; (rr) Ashley Wallace; (ss) Allise Wuorio; (tt) Zeppa Foundation and Zeitgeist Arts. -- Received

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### REPORTS OF BOARDS AND COMMISSIONS

13-0909-02 Commission on disabilities minutes of June 5, 2013, meeting. -- Received

13-0909-03 Duluth human rights commission minutes of July 10, 2013, meeting. -- Received

13-0909-04 Duluth public utilities commission: (a) Minutes of June 18, 2013, meeting; (b) Resolution establishing natural gas rates effective with meter reading after September 30, 2013; amending fixed monthly charges and volumetric charges; superseding all prior inconsistent or conflicting rates as of October 1, 2013 (13PUC-006). -- Received

13-0909-05 Duluth transit authority: (a) Minutes of May 29, 2013, meeting; (b) May 2013 financial statement. -- Received

13-0909-06 Duluth Seaway Port authority budget summary of July 2013. -- Received

13-0909-07 Entertainment and convention center authority minutes of: (a) April 30; (b) May 28; (c) June 25, 2013, meetings. -- Received

13-0909-08 Housing and redevelopment authority of Duluth minutes: (a) May 28; (b) July 15; (c) July 30, meetings. -- Received

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**OPPORTUNITY FOR CITIZENS TO BE HEARD**

Karen Lewis commented on: the frequent occurrence of the same problems with the slip bridge and that the contractor should be responsible for not fixing it properly; the slip should remain open with the charter boat docking relocated west of the Duluth Entertainment Convention Center; the outdoor lighting at the new housing on First Avenue West and West Fourth Street should be directed downward to minimize glare and city lighting in general should be examined with the use of solar lighting.

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**RESOLUTION TABLED**

Councilor Krug moved to remove Resolution 13-0438, authorizing a contract with North American Salt Company for the purchase of road salt for October through December 2013 in the amount of \$252,909, from the table, which motion was seconded and unanimously carried.

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

Linda Ross Sellner expressed concern that: snow with road salt melts and flows into the stormwater system and streams and thus empties into Lake Superior, the source of water for thousands of individuals and a high level of electric connectivity adversely affects aquatic life and that there needs to be an attempt to minimize the amount of road salt requested.

Resolution 13-0438 was adopted as follows:

RESOLVED, that the proper city officials are hereby authorized to contract with North American Salt Company for the purchase and delivery of 4,000 tons of road salt for October through December of year 2013 in accordance with Minnesota State Contract 62343, Release S-803(5), specifications and pricing at \$59.16 per ton for a total of \$236,640 plus \$16,269 sales tax for a combined total of \$252,909, terms net 30, FOB destination, payable from General Fund 110, Department/Agency 121 (public administration), Division 1217 (maintenance operations), Cost Center 2140 (street maintenance), Object 5223-01 (salt/sand salt).

Resolution 13-0438 was unanimously adopted.

Approved September 9, 2013

DON NESS, Mayor

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**MOTIONS AND RESOLUTIONS**

**CONSENT AGENDA**

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

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

RESOLVED, that the proper city officials are hereby authorized to contract with SHI International Corporation for the purchase and delivery of computer PC (personal computer) replacements and accessories as needed in fiscal year 2013 for all city departments in accordance with Minnesota State Swift Contract 48196, Release C-1046(5), specification and pricing, not to exceed the budget allocation of \$275,000, terms net 30, FOB destination, payable from various funds, departments/agencies, organizations and objects.

Resolution 13-0400 was unanimously adopted.

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Approved September 9, 2013  
DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to contract with CDW Government, Inc., for the purchase and delivery of computer laptop replacements and accessories as needed in fiscal year 2013 in accordance with National Joint Powers Alliance Contract 111309-CDW specifications and pricing, not to exceed the budget allocation of \$95,000, terms net 30, FOB destination, payable from various funds, departments/agencies, organizations and objects.

Resolution 13-0401 was unanimously adopted.  
Approved September 9, 2013  
DON NESS, Mayor

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BE IT RESOLVED, that the Duluth City Council hereby approves of the Minnesota gambling control board issuing a lawful gambling exemption to Regents of the University of Minnesota Duluth and St. Michael's Church and does hereby waive the 60 day waiting period which it has to object to the issuance of said exemptions.

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

Resolution 13-0470 was unanimously adopted.  
Approved September 9, 2013  
DON NESS, Mayor

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RESOLVED, that the proposed amendments to the specifications for the existing civil service classification of signal technician, which were approved by the civil service board on September 3, 2013, and which are filed with the city clerk as Public Document No. 13-0909-10, are approved; that said classification shall remain subject to the city's collective bargaining agreement with its basic unit employees, that the pay range will change from Pay Range 30, \$3,822 to \$4,521, to Pay Range 31, \$3,979 to \$4,690 per month. The proper city officials are authorized to execute and implement an agreement with the union to provide for employing one or more unit members consistent with this resolution.

Resolution 13-0469 was unanimously adopted.  
Approved September 9, 2013  
DON NESS, Mayor

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RESOLVED, that the city council hereby accepts \$2,481,395 in lead-based paint hazard control grant program funds from the U.S. department of housing and urban development's office of healthy homes and lead hazard control to address lead-based paint in Duluth residential properties and authorizes proper city officials to enter into contracts (Public Document No. 13-0909-11) for implementing the city's program with the Duluth housing and redevelopment authority for \$2,255,000 and the American Lung Association in Minnesota for \$181,395, contingent upon the completion of the environmental review process and payable from Fund 262 (community development), Agency 020 (planning department), Object 5434 (grants and awards).

Resolution 13-0458 was unanimously adopted.  
Approved September 9, 2013  
DON NESS, Mayor

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**PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2013**

RESOLVED, that the proper city officials are authorized to execute and implement a one-year agreement with United Way of Greater Duluth to serve as fiscal host and provide after school and summer youth programming at various city or school district locations, substantially the same as that on file with the city clerk as Public Document No. 13-0909-12, and providing for a total of \$150,000, payments to be made from Fund 205 (parks), Agency 130 (community resources), Organization 1219 (parks operating), Object 5310 (contract services).

Resolution 13-0464 was unanimously adopted.  
 Approved September 9, 2013  
 DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to contract with Lipe Brothers Construction, Inc., for renovation work on the Central Hillside Community Center located at 12 East Fourth Street to remove and replace the windows and doors of the facility in accordance with city-approved specifications and the vendor's low bid of \$236,900, payable from the Fund 262 (community development), Agency 020 (planning department), Object 5434 (grants and awards), Project 13.

Resolution 13-0465 was unanimously adopted.  
 Approved September 9, 2013  
 DON NESS, Mayor

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RESOLVED, that the city council hereby amends the 2013 annual action plan to add \$236,916 in CDBG funds for the project Central Hillside Community Center exterior window and door replacement, which will include the removal and replacement of windows and doors at the center.

2009 CDBG Program Fund 262, Agency 020, Object 5434, Project CD09CD				
Project	Activity	Original Budget	New Grant	Difference
ECDV-1244	CHUM employment	112,500	51,000	(61,500)
ECDV- 2805	NYS JET employment	37,500	29,000	(8,500)
2010 CDBG Program Fund 262, Agency 020, Object 5434, Project CD10CD				
Project	Activity	Original Budget	New Grant	Difference
PF-01	Memorial Community Center	250,000	245,500	(500)
2011 CDBG Program Fund 262, Agency 020, Object 5434, Project CD11CD				
Project	Activity	Original Budget	New Grant	Difference
PF-01	Curbs and sidewalks acc	61,495	24,000	(37,495)

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ADMC-AD07	Housing for inmates	15,000	13,500	(1,500)
ADMC-AD08	At Home neighbor plan	10,000	7,500	(2,500)
2013 CDBG Program Fund 262, Agency 020, Object 5434, Project CD13CD				
<b>Project</b>	<b>Activity</b>	<b>Original Budget</b>	<b>New Grant</b>	<b>Difference</b>
PF-05	Central Hillside windows and door	0	236,916	236,916

Resolution 13-0466 was unanimously adopted.

Approved September 9, 2013

DON NESS, Mayor

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RESOLVED, that:

(a) Resolution 10-0402 is amended by amending the following:

(1) Subparagraph (3) of paragraph (f) is hereby amended as follows:

Vacating that part of Chestnut Street lying southwesterly of a line beginning at a point on the northerly extension of the West line of Lot 11, Block 1, extended north 16.50 feet and being the centerline of said Chestnut Street, to the northeast corner of Lot 12 of said Block 1; all in CENTREDALE ADDITION TO DULUTH, city of Duluth, St. Louis County, Minnesota; TOGETHER WITH that part of Chestnut Street lying west of the northerly extension of the east line of Lot 10, Block 1, CENTREDALE ADDITION TO DULUTH and 50 feet northeasterly of the original rail alignment of the Duluth Missabe & Iron Range Railway; TOGETHER WITH all of Chestnut Street in BRYANT ADDITION TO DULUTH, FIRST DIVISION, city of Duluth, St. Louis County, Minnesota; subject to the retention of a utility easement in that part of vacated Chestnut Street lying between the northerly extension of the west and east lines of Lot 10, Block 1, CENTREDALE ADDITION TO DULUTH, city of Duluth, St. Louis County, Minnesota; TOGETHER WITH that part of vacated Chestnut Street lying southwesterly of a line beginning at a point on the northerly extension of the west line Lot 11, Block 1, extended north 16.50 feet and being the centerline of said Chestnut Street, to the northeast corner of Lot 12 of said Block 1; all in CENTREDALE ADDITION TO DULUTH, city of Duluth, St. Louis County, Minnesota; and

(2) Subparagraph (4) of paragraph (f) is hereby amended as follows:

Vacating all that part of the alley adjacent to Lot 18, Block 5, BRYANT ADDITION TO DULUTH, THIRD DIVISION, lying southerly of the south line of the adjacent alley in Block 6, BRYANT ADDITION TO DULUTH, extended west, city of Duluth, St. Louis County, Minnesota; and

(b) That the city clerk is, pursuant to Section 100(b)(7) of the Home Rule Charter of the city of Duluth, 1912, as amended authorized to record, with the register of deeds and/or the registrar of titles of Saint Louis County, Minnesota, a certified copy of this resolution and Public Document No. 13-0909-13 showing the portions of the streets and alleys to be vacated, utility easements retained and alley dedicated.

Resolution 13-0472 was unanimously adopted.

Approved September 9, 2013

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, a copy of which is on file in the office of the city clerk as Public Document No. 13-0909-14 with Independent School District No. 709, accepting an easement across certain property therein-described which property is part of the campus of the new East High School at no cost to the city.

Resolution 13-0456 was unanimously adopted.  
Approved September 9, 2013  
DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Utility Systems of America, Inc., for the Chester Park Ski Trail Bridge 2 project in the amount of \$204,927, payable from Disaster Recovery Fund 225, Department 125 (finance), Division 1803 (roads and bridges), Object 5403 (street repair and maintenance), City Project No. 1170, Flood Site No. 305B.

Resolution 13-0459 was unanimously adopted.  
Approved September 9, 2013  
DON NESS, Mayor

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RESOLVED, that the city of Duluth has applied to the commissioner of transportation for a grant from the Minnesota state transportation fund for the construction of Bridge No. 69K15 on Triggs Avenue, City Project No. 1145.

FURTHER RESOLVED, that the grant has been approved and that the amount of the grant is \$69,828.75.

FURTHER RESOLVED, that the city of Duluth agrees to the terms and conditions of the grant consistent with Minnesota Statutes, Section 174.50, subdivision 5, clause (3), and will pay any additional amount by which the cost exceeds the estimate, and will return to the Minnesota state transportation fund any amount appropriated for the project but not required. The proper city officials are hereby authorized to execute a grant agreement concerning the above referenced grant. Grant monies shall be deposited into Disaster Recovery Fund 225, Department/Agency 125 (finance), Division 1803 (roads and bridges) Object 5403 (street repair and maintenance), City Project No. 1145, S.A.P. 118-080-045, Flood Site No. 021.

Resolution 13-0461 was unanimously adopted.  
Approved September 9, 2013  
DON NESS, Mayor

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RESOLVED, that Contract 21888 with Northland Constructors of Duluth, LLC for the mill and overlay of Vinland Street from Irwin Avenue to Boundary Avenue and 27th Avenue West from Third Street to 11th Street be amended for an increase in the amount of \$307,667 for a new total of \$775,000. This increase is payable from Disaster Recovery Fund 225, Department 125 (finance), Division 1803 (roads and bridges), Object 5403 (street repair and maintenance), City Project No. 1155, S.P. 118-115-008 and 118-102-004, flood sites 052, 267 and 388.

Resolution 13-0462 was unanimously adopted.  
Approved September 9, 2013  
DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into a CodeRed service agreement, substantially in the form of that agreement on file in the office of the city

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clerk as Public Document No. 13-0909-15 and a CodeRED weather warning service addendum, substantially in the form of that on file in the office of the city clerk as Public Document No. 13-0909-15 with Emergency Communications Network, LLC, for the provision of simultaneous notification to specified data bases which will include city staff and members of the public of information or directives needing high-speed and targeted communications at a total cost of not to exceed \$19,871.24, payable in the following amounts from the following funds:

110-150-1501-5440 (general fund, fire department, administration, emergency management)	\$13,696.24
510-500-1915-5441 (water, public works and utilities utility general expenses, other services and charges)	\$ 1,543.75
520-500-1915-5441 (gas, public works and utilities utility general expenses, other services and charges)	\$ 1,543.75
530-500-1915-5441 (sewer, public works and utilities utility general expenses, other services and charges)	\$ 1,543.75
535-500-1915-5441 (stormwater, public works and utilities utility general expenses, other services and charges)	\$ 1,543.75

Resolution 13-0446 was unanimously adopted.

Approved September 9, 2013

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to contract with Nelson Auto Center, Inc., for the purchase and delivery of nine 2014 Ford patrol interceptor AWD (all wheel drive) utility vehicles - to include eight Model F Duluth K8A and one Model F Duluth K8A AC - for the Duluth police department in accordance with Minnesota State Contract 37669, Release A-174(5), specifications and pricing for a total of \$251,288.38, terms net 30, FOB destination, payable from Capital Equipment Fund 250, Department/Agency 015 (public administration), Division 2013 (fiscal year), Object 5580 (capital equipment), Project CE250-V1302.

RESOLVED FURTHER, that this purchase is tax-exempt since these vehicles will be used as marked squads.

Resolution 13-0449 was unanimously adopted.

Approved September 9, 2013

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to execute a joint powers agreement, substantially the same as that on file with the city clerk as Public Document No. 13-0909-16, with the state of Minnesota, department of public safety, bureau of criminal apprehension, providing for the continued participation by the city of Duluth police department in the Minnesota internet crimes against children task force program through May 31, 2016.

Resolution 13-0451 was unanimously adopted.

Approved September 9, 2013

DON NESS, Mayor

**PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2013**

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RESOLVED, that in accordance with the provisions of Section 33-88.2 of the Duluth City Code, 1959, as amended, the following accessible parking zones are established:

In front of 211 West Fourth Street;

In front of 215 West Fourth Street.

Resolution 13-0457 was unanimously adopted.

Approved September 9, 2013

DON NESS, Mayor

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RESOLVED, that the city council hereby authorizes the proper city officials to execute a mutual aid agreement with the city of Hibbing, city of Virginia and the Cloquet Area Fire District, substantially the same as that on file in the office of the city clerk as Public Document No. 13-0909-17, authorizing mutual aid for training for fire protection and ambulance services.

Resolution 13-0467 was unanimously adopted.

Approved September 9, 2013

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into an agreement, a copy of which is on file in the office of the city clerk as Public Document No. 13-0909-18, with the Duluth Friends of Tennis, Inc., to operate, manage and use certain portions of Longview tennis facility for advancement of their mission and to provide mission-related services to the community.

FURTHER RESOLVED, that the city of Duluth will provide not more than \$50,000 to Duluth Friends of Tennis, Inc., to be used exclusively for resurfacing tennis courts at Longview tennis facility. The source of funding for said project is 205 (parks), 130 (community resources), 1220 (parks capital), 5530 (improvements other than buildings), Project Number CM205mpcrts.

Resolution 13-0473 was unanimously adopted.

Approved September 9, 2013

DON NESS, Mayor

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Councilor Julsrud moved to suspend the rules to consider ordinances 13-058, 13-059 and 13-060 at this time, which motion was seconded and unanimously carried.

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**INTRODUCTION AND CONSIDERATION OF ORDINANCES**

The following entitled ordinances were read for the second time:

BY COUNCILORS JULSRUD AND KRUG

13-058 (10241) - AN ORDINANCE AMENDING SECTION 28-64 OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO THE INGESTION OF PROHIBITED SUBSTANCES.

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BY COUNCILORS JULSRUD AND KRUG

13-059 (10242) - AN ORDINANCE AMENDING SECTIONS 28-63 AND 28-72 OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO THE USE OF ELECTRONIC CIGARETTES.

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BY COUNCILORS JULSRUD AND KRUG

13-060 (10243) - AN ORDINANCE AMENDED CHAPTER 11 OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO THE SALE OF ELECTRONIC CIGARETTES.

Councilor Julsrud moved to suspend the rules to hear speakers on this this issue, which motion was seconded and unanimously carried.

Rosemarie Mitchell, Donald Poe, Marjorie Johnson, representing the American Cancer Society, Julie Zaruba Fountaine, St. Scholastica wellness coordinator , Mike McAvoy, administrative leader at Essentia Health, Karen Lewis, Bridget Benson, tobacco treatment specialist at Essentia Health, Sharon Lund, Terry Clark, retired lung disease physician, and Pat McKone, executive director of the American Lung Association Duluth, supported the ordinances for reasons of: the protection of children from the influence of cigarettes; the food and drug administration (FDA) has not yet approved electronic cigarettes (e-cigarettes) and/or stated that these are safe; it is meant to encourage, not reduce, smoking; the vapors from these also produce unknown noxious chemicals; the American Cancer Society supports these ordinances; college students and youth are the target of e-cigarette proponents; the use of e-cigarettes stimulates and glamorizes smoking; e-cigarettes are being prohibited in hospital areas just like regular cigarettes; we should have learned from the lessons on the types of sales from the Last Place On Earth store and e-cigarette equipment should be tested for drug residue; e-cigarettes are proven to not be an safe alternative to smoking or tobacco concession.

William Rees and Brian Annis opposed the ordinances for reasons of: these e-cigarettes have not been proven to be a health hazard; there is no connection to smoking, because there is no odor or tobacco; the environmental protection agency (EPA) has only an opinion on this issue, not a ruling; multiple studies have shown that e-cigarettes are much less harmful than tobacco cigarettes; e-cigarettes are just as successful as other products to curb cigarette smoking and sampling allows customers to be informed on how to use it and determine the flavor they prefer.

Mike Damron suggested postponing action on this issue until more information is available.

Councilor Fosle stated that he opposes all the ordinances for reasons that any business can ban these e-cigarettes at their business and why worry about what is being a sampled by adults inside a store.

Councilor Krause moved to amend Ordinance 13-058, by adding the following language to Subsection 28-64(a)(7) as follows: "except where the sampling is of a non-tobacco electronic cigarette at an establishment where 80 percent or more of the sales at the establishment are of electronic cigarettes and electronic cigarette components, parts or accessories," which motion was seconded and failed as follows:

Yeas: Councilors Gardner, Krause and Stauber -- 3

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

Councilors Krause and Gardner spoke at length on: the aspect of private business rights; the harmful effects of other common items if they are taken in excess and that all the scientific information is not in yet.

Councilors Julsrud and Krug moved passage of Ordinance 13-058 and the same was adopted upon the following vote:

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

Nays: Councilors Fosle, Gardner and Krause -- 3

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Councilors supporting the ordinance spoke at length on the merits of the ordinance.

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Councilors Julsrud and Krug moved passage of Ordinance 13-059 and the same was adopted upon the following vote:

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

Nays: Councilors Fosle and Krause -- 2

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Councilors Julsrud and Krug moved passage of Ordinance 13-060 and the same was adopted upon the following vote:

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

Nays: Councilor Fosle -- 1

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The following resolutions were also considered:

RESOLVED, that pursuant to Minnesota Statutes, Sec. 275.065, the city council adopts the following proposed tax levy:

Section 1. That sum to be raised by taxation for the year 2014 for the special parks fund levy is hereby determined to be the sum of \$2,600,000 which sum is levied against the taxable property of the city of Duluth and appropriated to the various accounts as set forth in the following section:

Section 2. That pursuant to Ordinance 10134, approved by voter referendum on November 9, 2011, pursuant to the authority contained in Laws of Minnesota, 1953, Chapter 560, Section 1, there will be levied for the parks fund the sum of \$2,600,000.

Resolution 13-0450 was adopted upon the following vote:

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

Nays: Councilor Fosle -- 1

Approved September 9, 2013

DON NESS, Mayor

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RESOLVED, that pursuant to Minnesota Statutes, Section 469.033, Subdivision 6, the city council adopts the following proposed property tax levy:

Section 1. The sum to be raised by taxation for the year 2014 for the housing and redevelopment authority taxing district's operation is hereby determined to be the sum of \$936,947 which sum is levied against the taxable property of the city of Duluth and appropriated to the various accounts as set forth in the following section, viz:

Section 2. That pursuant to Minnesota Statute 469.033, subdivision 6, there will be levied for the purpose of providing for the housing and redevelopment authority special taxing district the sum of \$936,947.

Resolution 13-0452 was adopted upon the following vote:

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

Nays: Councilors Fosle, Krause and Stauber -- 3

Approved September 9, 2013

DON NESS, Mayor

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RESOLVED, that pursuant to Minnesota Statutes, Sec. 275.065, the city council adopts the following proposed tax levy:

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Section 1. The sum to be raised by taxation for the year 2014 for Duluth transit authority special taxing district's operations is hereby determined to be the sum of \$1,391,900 which sum is levied against the taxable property of the city of Duluth and appropriated to the various accounts as set forth in the following section, viz:

Section 2. That pursuant to Minnesota Statutes, Sec. 485A.31, Subd. 1, there will be levied for transit operations the sum of \$1,391,900.

Resolution 13-0453 was adopted upon the following vote:

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

Nays: Councilor Fosle -- 1

Approved September 9, 2013

DON NESS, Mayor

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RESOLVED, that pursuant to Minnesota Statutes, Section 275.065, the city council adopts the following proposed tax levy:

Section 1. The sum to be raised by taxation for the year 2014 for general operations is hereby determined to be the sum of \$19,441,000 which sum is levied against the taxable property of the city of Duluth and appropriated to the various accounts of the city, as set forth in the following sections, viz:

Section 2. There will be levied for the support of the general fund the sum of \$12,869,100.

Section 3. For the payment of debt, there will be levied for the general obligation debt fund the sum of \$6,291,900.

Section 4. That pursuant to Laws of Minnesota 1971, Chapter 824, to pay for the portion of the cost of local improvements which will not sustain a special assessment, there will be levied for the permanent improvement fund the sum of \$280,000.

Resolution 13-0454 was adopted upon the following vote:

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

Nays: Councilors Fosle, Krause and Stauber -- 3

Approved September 9, 2013

DON NESS, Mayor

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RESOLVED, that in accordance with Minnesota Statutes, Sec. 275.065, the city council hereby adopts the following proposed budget for the fiscal year beginning January 1 and ending December 31, 2014.

GENERAL		
010	Total legislative and executive	2,627,500
121	Total public administration	22,523,100
125	Total finance	2,602,400
132	Total planning and construction services	2,282,000
135	Total business and community development	735,100
150	Total fire	14,524,900

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GENERAL		
160	Total police	19,111,200
500	Total public works	1,735,800
700	Total transfers	9,958,000
110	General fund total	76,100,000

Resolution 13-0455 was adopted upon the following vote:

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

Nays: Councilors Fosle, Krause and Stauber -- 3

Approved September 9, 2013

DON NESS, Mayor

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Resolution 13-0475, transferring monies to street improvement debt service fund from the community investment trust (CIT) fund to cancel 2014 debt service tax levy and to replenish the community investment trust fund, was introduced by Councilor Hartman; and Resolution 13-0474, by Councilor Krause, transferring monies to street improvement debt service fund from the community investment trust fund and general fund reserve to cancel 2014 debt service tax levy, were introduced for discussion.

Councilor Krause commented that: the desirable debt levies should be no more than nine percent; that the CIT balance is being reduced after being told that it would not be; that a budget should be balanced and past debts should be kept under control.

Councilor Gardner moved to table both resolutions for further discussion, which motion was seconded and failed upon the following vote:

Yeas: Councilors Gardner and Julsrud -- 2

Nays: Councilors Fosle, Hartman, Krause, Krug, Larson Stauber and President Boyle -- 7

Councilors commented at length about the issues, history and options associated with these resolutions.

Resolution 13-0475 failed upon the following vote (Public Document No. 13-0909-19):

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

Nays: Councilors Fosle, Krause and Stauber -- 3

*[Editor's Note: This resolution needed a 7/9ths vote to be approved.]*

- - -

Resolution 13-0474 failed upon the following vote (Public Document No. 13-0909-20):

Yeas: Councilor Krause -- 1

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

- - -

Resolution 13-0477, by Councilor Gardner, establishing a procedure for selecting a candidate to fill the prospective vacancy of the Fourth District council seat of Garry Krause, was introduced for discussion.

Councilors Stauber, Fosle and Krause raised concerns of: appointing someone just before there is an election for that district and that the person elected for the next term should just be appointed to fill the balance of this current term.

Resolution 13-0477 was adopted as follows:

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2013

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BY COUNCILOR GARDNER:

RESOLVED, that the city council desires to establish a procedure for selecting a candidate for the fourth district council seat currently held by Garry Krause as follows:

(a) Candidate applications shall be immediately available in the city clerk's office and must be submitted to the city clerk by 12:00 p.m. on September 16, 2013;

(b) The city council shall conduct preliminary interviews with applicants on September 19, 2013. At a special council meeting on September 23, 2013, each councilor shall rank their top three candidates with #1 receiving three points, #2 receiving two points and #3 receiving one point. Councilors will submit their selections to the city clerk who will tabulate them by the end of the special council meeting on September 23, 2013. The top three candidates will then be voted on by the council;

(c) If in the event the council president determines that the council is not able to agree upon a candidate using the resolution process described above, the council shall proceed to ranked choice voting to select a winner.

Resolution 13-0477 was adopted upon the following vote:

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

Nays: Councilors Fosle, Krause and Stauber -- 3

Approved September 9, 2013

DON NESS, Mayor

- - -

Resolution 13-0468, by Councilor Stauber, vetoing DPUC Resolution 13PUC-006 establishing natural gas rates effective after September 30, 2013, was introduced for discussion.

Councilors Fosle, Krause and Stauber expressed concerns of: the history of rate increases; the consultant's comments about the questionable quality of data received from the gas utility; that the consultant does not recommend this increase to this level and that if there is a reserve, the rates should not be raised.

Councilors Gardner, Hartman, Julsrud and Krug opposed the resolution, noting: the actual small dollar amount of the increase to individuals; that the infrastructure needs to be repaired and that there were public hearings and there is support for this increase.

Resolution 13-0468 failed upon the following vote (Public Document No. 13-0909-21):

Yeas: Councilors Fosle, Krause and Stauber -- 3

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

- - -

RESOLVED, that the city council hereby authorizes settlement in the matter of *Steve Jankowski and Peter Scott v. City of Duluth*, filed in the United States District Court, District of Minnesota, File No.: 11-3392, pursuant to the terms and conditions of the proposed consent decree and judgment, substantially the same as that on file in the office of the city clerk as Public Document No. 13-0909-22, which includes payment of attorney fees in the amount of \$177,500, payable from Fund 610-036-1651-5841, and further authorizes the proper city officials to take all actions necessary to conclude this matter on a full, final and complete basis.

Resolution 13-0460 was adopted upon the following vote:

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

Nays: Councilor Fosle -- 1

Approved September 9, 2013

DON NESS, Mayor

- - -

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2013

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Resolution 13-0463, authorizing an agreement with LHB, Inc. for professional engineering services to provide planning and preliminary design services for the Superior Street reconstruction project in the amount of \$361,568, was introduced by Councilor Julsrud for discussion.

Councilors Fosle and Krause opposed the resolution for reasons of: that this is just going to be the start of a large amount of spending for the streets and infrastructure, including the replacement of the steam lines, and a funding source for the total project needs to be in place first.

Resolution 13-0463 was adopted as follows:

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement with LHB, Inc., for professional engineering services to provide planning and preliminary design services for the Superior Street reconstruction project in Downtown Duluth in the amount of \$361,568, payable from Permanent Improvement Fund 411, Department 035 (capital projects), Object 5530 (improvements other than buildings), City Project No. 0923TR.

Resolution 13-0463 was adopted upon the following vote:

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

Nays: Councilors Fosle and Krause -- 2

Approved September 9, 2013

DON NESS, Mayor

- - -

### INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinance was read for the first time:

INTRODUCED BY COUNCILOR STAUBER

13-062 - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH TO PROVIDE FOR THE RECLASSIFICATION FROM RESIDENTIAL-URBAN (R-2) TO MIXED USE-NEIGHBORHOOD (MU-N), FOR PROPERTIES BETWEEN NORTH 24TH AVENUE WEST AND NORTH 28TH AVENUE WEST FROM THE WEST FOURTH STREET ALLEY TO THE WEST THIRD STREET ALLEY (CITY OF DULUTH).

- - -

The following entitled ordinances were read for the second time:

BY COUNCILOR GARDNER

13-061 (10244) - AN ORDINANCE PROHIBITING SMOKING OF ANY KIND IN CENTRAL HILLSIDE PARK, AMENDING SECTIONS 28-63 AND 28-64 TO CHAPTER 28 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

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

- - -

INTRODUCED BY COUNCILOR STAUBER

13-054 (10245) - AN ORDINANCE AMENDING SECTION 33-97.11 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO PARKING CAMPER TRAILERS AND RECREATION VEHICLES.

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

- - -

**PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2013**

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INTRODUCED BY COUNCILOR STAUBER

13-055 (10246) - AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN PROPERTY ON OR IN THE DULUTH HEIGHTS NEIGHBORHOOD TO ETHAN C. AND LAURA L. COLE FOR \$1,600.

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

- - -

INTRODUCED BY COUNCILOR STAUBER

13-056 (10247) - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH TO PROVIDE FOR THE RECLASSIFICATION, FROM MIXED USE BUSINESS (MU-B) TO MIXED USE NEIGHBORHOOD (MU-N), FOR PROPERTIES LOCATED AT THE NORTHWEST CORNER OF COMMONWEALTH AVENUE AND EAST CARTERETT STREET (SMR ACQUISITIONS COMPANY, LLC).

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

- - -

INTRODUCED BY PRESIDENT BOYLE

13-057 (10248) - AN ORDINANCE AUTHORIZING THE CHIEF ADMINISTRATIVE OFFICER OR DESIGNEE TO EXECUTE AGREEMENTS WITH ARTISTS FOR THE DISPLAY OF ARTWORK.

President Boyle moved passage of the ordinance and the same was adopted upon a unanimous vote.

- - -

INTRODUCED BY COUNCILOR FOSLE

13-049 (10249) - AN ORDINANCE AMENDING SECTION 10-3 OF THE DULUTH CITY CODE, 1959, AS AMENDED, REGARDING NOTICE OF DEMOLITION ORDERS.

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

- - -

INTRODUCED BY COUNCILOR FOSLE

13-050 (10250) - AN ORDINANCE AMENDING SECTION 10-5 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TRANSFERRING JURISDICTION OF LOCAL BUILDING CODE APPEALS TO THE STATE APPEALS BOARD.

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

- - -

The meeting was adjourned at 10:50 p.m.

JEFFREY J. COX, City Clerk

- - -

**ORDINANCE NO. 10241**

BY COUNCILORS JULSRUD AND KRUG:

AN ORDINANCE AMENDING SECTION 28-64 OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO THE INGESTION OF PROHIBITED SUBSTANCES.

The city of Duluth does ordain:

Section 1. That Section 28-64 of the Duluth City Code, 1959, as amended, is hereby amended as follows:

**PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2013**

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Sec. 28-64. Ingesting a prohibited substance--prohibited in certain places.

(a) No person shall ingest by smoking or chewing any prohibited substance at or in any of the following locations:

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

(2) Inside any Duluth Transit Authority transit shelter;

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

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

(5) Within 100 feet of the nearest property line of a medical facility, said 100 feet measured in a straight line of constant elevation; provided that this prohibition does not apply to a person inside an enclosed motor vehicle in motion on a public street or alley;

(6) On the Lakewalk, on Lake Place or in Leif Ericson Park;

(7) Within the indoor area of any establishment with a retail tobacco license, including smoking for the purpose of sampling prohibited substances;

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

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

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: October 11, 2013)

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

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

Nays: Councilors Fosle, Gardner and Krause -- 3

Passed September 9, 2013

Approved September 9, 2013

DON NESS, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

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**ORDINANCE NO. 10242**

BY COUNCILORS JULSRUD AND KRUG:

AN ORDINANCE AMENDING SECTIONS 28-63 AND 28-72 OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO THE USE OF ELECTRONIC CIGARETTES.

The city of Duluth does ordain:

Section 1. That Section 28-63 of the Duluth City Code, 1959, as amended, is hereby amended as follows:

Sec. 28-63. Definitions.

For the purposes of this Article, the following words and phrases shall have the meaning hereinafter ascribed to them:

(a) Electronic cigarette shall mean any electronic-smoking device that can be used to deliver nicotine or any other substances to the person inhaling

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2013

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from the device. The term shall include such devices whether they are manufactured as electronic cigarettes, electronic cigars, electronic pipes or any other product name;

(b) Kitchi Gammi Park, for the purposes of this Article only, shall mean that park located on land located between Congdon Boulevard and Lake Superior and between the Lester River and 69th Avenue East;

(c) Lake Place shall mean that structure elevated over the right-of-way of Interstate Highway 35 between Lake Avenue and Fourth Avenue East containing park-like amenities;

(d) Lakewalk shall mean the constructed trail surface of that recreational trail running in close proximity to Lake Superior from the Duluth Aerial Lift Bridge to 26th Avenue East and from there following the platted railroad right-of-way of the Duluth, Missabe and Iron Range Railroad to east side of the Lester River and thereafter connecting to and located in Kitchi Gammi Park;

(e) Leif Ericson Park shall mean that property used for park purposes located between the platted railroad right-of-way of the Duluth, Missabe and Iron Range Railroad and the shoreline of Lake Superior and between Eighth Avenue East and 13th Avenue East;

(f) Medical facility shall mean any medical hospital, medical or dental clinic;

(g) Prohibited substances shall mean any tobacco related product, electronic cigarette and any other substance labeled as not safe for or intended for human consumption;

(h) Public place shall mean any public street, public sidewalk, public easement, publicly owned property, public park, publicly owned or operated parking lot or parking facility;

(i) Smoke shall mean the gases, particles or vapors released into the atmosphere as a result of combustion, electrical ignition or vaporization of or by any prohibited substance;

(j) Smoking shall mean inhaling or exhaling smoke from any instrumentality, including but not limited to any cigar, cigarette, pipe, hookah pipe or an operating electronic cigarette, or having in possession any such instrumentality producing smoke or engaging in any act that generates smoke;

(k) Tobacco related products shall mean any product containing, made or derived from tobacco that is intended for human consumption, or any component, part, or accessory of a tobacco product, including but not limited to tobacco found in cigars and cigarettes, tobacco intended to be used in pipes or cigarettes, chewing tobacco, moist or dry snuff, dissolvable tobacco products and electronic cigarettes and any other product containing, made or derived from tobacco that is intended or expected to be consumed with or without being combusted but does not include any tobacco product that has been approved by the United States food and drug administration for sale as a tobacco cessation product, tobacco dependent product or for other medical purposes and is marketed and sold only for those purposes.

Section 2. That Section 28-72 of the Duluth City Code, 1959, as amended, is hereby amended as follows:

Sec. 28-72. Smoking outdoors--near medical facilities.

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2013

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(a) Medical facility means any medical hospital, medical or dental clinic;

(b) Public place means any public street, public sidewalk, public easement, publicly owned property, public park, publicly owned or operated parking lot or parking facility;

(c) Smoke or smoking means the use or possession of a lighted cigar, cigarette, electronic cigarette, pipe, tobacco smoking device or any other lighted smoking equipment;

(d) No person shall smoke in any public place within 100 feet of the nearest property line of a medical facility, said 100 feet measured in a straight line of constant elevation;

(e) The prohibition of (d), above, does not apply to a person inside an enclosed motor vehicle in motion on a public street or alley.

Section 3. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: October 11, 2013)

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

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

Nays: Councilors Fosle and Krause -- 2

Passed September 9, 2013  
Approved September 9, 2013  
DON NESS, Mayor

ATTEST:  
JEFFREY J. COX, City Clerk

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**ORDINANCE NO. 10243**

BY COUNCILORS JULSRUD AND KRUG:

AN ORDINANCE AMENDED CHAPTER 11 OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO THE SALE OF ELECTRONIC CIGARETTES.

The city of Duluth does ordain:

Section 1. That Section 11-1 of the Duluth City Code, 1959, as amended, is hereby amended as follows:

Sec. 11-1. License to sell--required; definitions.

(a) For the purposes of this Chapter, the terms "tobacco" and "tobacco related devices" shall have the meanings given them in Section 609.685 of the Minnesota Statutes and as the same may from time to time be amended, and shall include electronic cigarettes defined as any electronic-smoking device that can be used to deliver nicotine or any other substances to the person inhaling from the device. The term shall include such devices whether they are manufactured as electronic cigarettes, electronic cigars, electronic pipes or any other product name;

(b) No person or any clerk, servant, employee or agent of any such person shall, within the city, directly or indirectly upon any pretense manufacture, sell, exchange, barter or keep for sale any tobacco or tobacco related devices without first having obtained a license therefor.

Section 2. That Section 11-4 of the Duluth City Code, 1959, as amended, is hereby amended as follows:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2013

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Sec. 11-4. Same--Character of applicant; movable places of business and vending machines licenses prohibited; to be issued for sale only at single location.

No license required by this Chapter shall be issued except to a person of good moral character. No license shall be issued to an applicant for sale of tobacco or tobacco related devices at any place other than his established place of business. No license shall be issued for the sale of tobacco or tobacco related devices at a movable place of business, nor shall any license be issued for the sale of tobacco or tobacco related devices at more than one place of business. No license shall be issued authorizing the sale of tobacco or tobacco related devices from a vending machine or any other mechanical device.

Section 3. That Section 11-7 of the Duluth City Code, 1959, as amended, is hereby amended as follows:

Sec. 11-7. Sales from vending machines prohibited.

No person shall sell or offer for sale any tobacco or tobacco related devices from a vending machine or other mechanical device. The presence of a cigarette vending machine containing tobacco or tobacco related devices on any business premises other than that of a supplier, repairer or distributor of cigarette vending machines shall constitute prima facie evidence of such business offering for sale tobacco or tobacco related devices through the use of a vending machine.

Section 4. That Section 11-9 of the Duluth City Code, 1959, as amended, is hereby amended as follows:

Sec. 11-9. Smoking by minors, possession or purchase of tobacco prohibited.

(a) The smoking or use of tobacco or tobacco related devices within the city by any person below the age of 18 years is hereby prohibited. Any person of such minor age found smoking or using tobacco or tobacco related devices shall be guilty of a misdemeanor;

(b) No person under 18 years of age shall possess any tobacco or tobacco related devices on his or her person;

(c) No person under 18 years of age shall purchase, attempt to purchase, or conspire to have another person purchase for him or her any tobacco or tobacco related devices.

Section 5. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: October 11, 2013)

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

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

Nays: Councilor Fosle -- 1

ATTEST:  
JEFFREY J. COX, City Clerk

Passed September 9, 2013  
Approved September 9, 2013  
DON NESS, Mayor

- - -

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2013

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ORDINANCE NO. 10244

BY COUNCILOR GARDNER:

AN ORDINANCE PROHIBITING SMOKING OF ANY KIND IN CENTRAL HILLSIDE PARK, AMENDING SECTIONS 28-63 AND 28-64 TO CHAPTER 28 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

The city of Duluth does ordain:

Section 1. That Section 28-63 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 28-63. Definitions.

For the purposes of this Article, the following words and phrases shall have the meaning hereinafter ascribed to them:

(a) Central Hillside Park shall mean that property bounded by Lake Avenue, Third Street, First Avenue East and Fourth Street, commonly referred to as "Central Hillside Park":

(b) Kitchi Gammi Park, for the purposes of this Article only, shall mean that park located on land located between Congdon Boulevard and Lake Superior and between the Lester River and 69th Avenue East;

(c) Lake Place shall mean that structure elevated over the right-of-way of Interstate Highway 35 between Lake Avenue and Fourth Avenue East containing park-like amenities;

(d) Lakewalk shall mean the constructed trail surface of that recreational trail running in close proximity to Lake Superior from the Duluth Aerial Lift Bridge to 26th Avenue East and from there following the platted railroad right-of-way of the Duluth, Missabe and Iron Range Railroad to east side of the Lester River and thereafter connecting to and located in Kitchi Gammi Park;

(e) Leif Ericson Park shall mean that property used for park purposes located between the platted railroad right-of-way of the Duluth, Missabe and Iron Range Railroad and the shoreline of Lake Superior and between Eighth Avenue East and 13th Avenue East;

(f) Medical facility shall mean any medical hospital, medical or dental clinic;

(g) Prohibited substances shall mean any tobacco related product and any other substance labeled as not safe for or intended for human consumption;

(h) Public place shall mean any public street, public sidewalk, public easement, publicly owned property, public park, publicly owned or operated parking lot or parking facility;

(i) Smoke shall mean the gases, particles or vapors released into the atmosphere as a result of combustion, electrical ignition or vaporization of or by any prohibited substance;

(j) Smoking shall mean inhaling or exhaling smoke from any instrumentality, including but not limited to any cigar, cigarette, pipe, hookah pipe or an operating electronic cigarette, or having in possession any such instrumentality producing smoke or engaging in any act that generates smoke;

(k) Tobacco related products shall mean any product containing, made or derived from tobacco that is intended for human consumption, or any

**PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2013**

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component, part, or accessory of a tobacco product, including but not limited to tobacco found in cigars and cigarettes, tobacco intended to be used in pipes or cigarettes, chewing tobacco, moist or dry snuff, dissolvable tobacco products and electronic cigarettes and any other product containing, made or derived from tobacco that is intended or expected to be consumed with or without being combusted but does not include any tobacco product that has been approved by the United States food and drug administration for sale as a tobacco cessation product, tobacco dependent product or for other medical purposes and is marketed and sold only for those purposes.

Section 2. That Section 28-64 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 28-64. Ingesting a prohibited substance--prohibited in certain places.

(a) No person shall ingest by smoking or chewing any prohibited substance at or in any of the following locations:

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

(2) Inside any Duluth Transit Authority transit shelter;

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

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

(5) Within 100 feet of the nearest property line of a medical facility, said 100 feet measured in a straight line of constant elevation; provided that this prohibition does not apply to a person inside an enclosed motor vehicle in motion on a public street or alley;

(6) On the Lakewalk, on Lake Place or in Leif Ericson Park;

(7) In Central Hillside Park;

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

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

Section 3. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: October 11, 2013)

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

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

Nays: None -- 0

ATTEST:  
JEFFREY J. COX, City Clerk

Passed September 9, 2013  
Approved September 9, 2013  
DON NESS, Mayor

- - -

**PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2013**

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**ORDINANCE NO. 10245**

AN ORDINANCE AMENDING SECTION 33-97.11 OF THE DULUTH CITY CODE, 1959, AS AMENDED, PERTAINING TO PARKING CAMPER TRAILERS AND RECREATION VEHICLES.

The city of Duluth does ordain:

Section 1. That Section 33.97-11 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 33-97.11. Parking camping trailers or recreational vehicles.

No person shall park, store or occupy any trailer or recreational vehicle in, on or upon any place or premises situated outside an approved and duly licensed trailer camp; but nothing contained in this ordinance shall prohibit the parking or storing of only one unoccupied trailer in a private garage, driveway or in a rear yard located anywhere within the city of Duluth, provided that no living quarters shall be maintained, for a period in excess of 35 consecutive days and 60 total days in any calendar year, nor any business carried on, or profession practiced in such trailer, during all of the time such trailer is so parked or stored.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: October 11, 2013)

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

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

Nays: None -- 0

Passed September 9, 2013  
Approved September 9, 2013  
DON NESS, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

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**ORDINANCE NO. 10246**

AN ORDINANCE AUTHORIZING THE SALE OF CERTAIN PROPERTY ON OR IN THE DULUTH HEIGHTS NEIGHBORHOOD TO ETHAN C. AND LAURA L. COLE FOR \$1,600.

The city of Duluth does ordain:

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

(a) City Resolution 13-0406 approved the sale or conveyance of certain property in the Duluth Heights neighborhood;

(b) As per Section 2-178 of the Duluth City Code, 1959, as amended (the Code), if, due to existing laws or regulations, no building can legally be constructed on a parcel, the city may directly sell such parcel by ordinance to an adjacent owner or adjacent owners without competitively bidding but at a price at least equal to its market value as determined by the city assessor;

(c) The manager of the city's physical planning division has reviewed the parcel in question and determined that due to existing laws, no building can be legally constructed on it;

(d) As per Section 2-176(c) of the Code, the county assessor has provided an estimate of the market value to be \$1,600;

**PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2013**

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(e) The property described in Section 2 below is hereby determined to be surplus to the city's future needs and is therefore appropriate for sale and pursuant to Article XXXIII of Chapter 2 of the Code.

Section 2. That the proper city officials are hereby authorized to sell and convey the following described property in St. Louis County, Minnesota, by quit claim deed, to Ethan C. and Laura L. Cole, husband and wife, as joint tenants, for the amount of \$1,600 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:

Lot 47, Block 179, DULUTH PROPER THIRD DIVISION.

Section 3. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: October 11, 2013)

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

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

Nays: None -- 0

Passed September 9, 2013

Approved September 9, 2013

DON NESS, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

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**ORDINANCE NO. 10247**

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH TO PROVIDE FOR THE RECLASSIFICATION, FROM MIXED USE BUSINESS (MU-B) TO MIXED USE NEIGHBORHOOD (MU-N), FOR PROPERTIES LOCATED AT THE NORTHWEST CORNER OF COMMONWEALTH AVENUE AND EAST CARTERETT STREET (SMR ACQUISITIONS COMPANY, LLC).

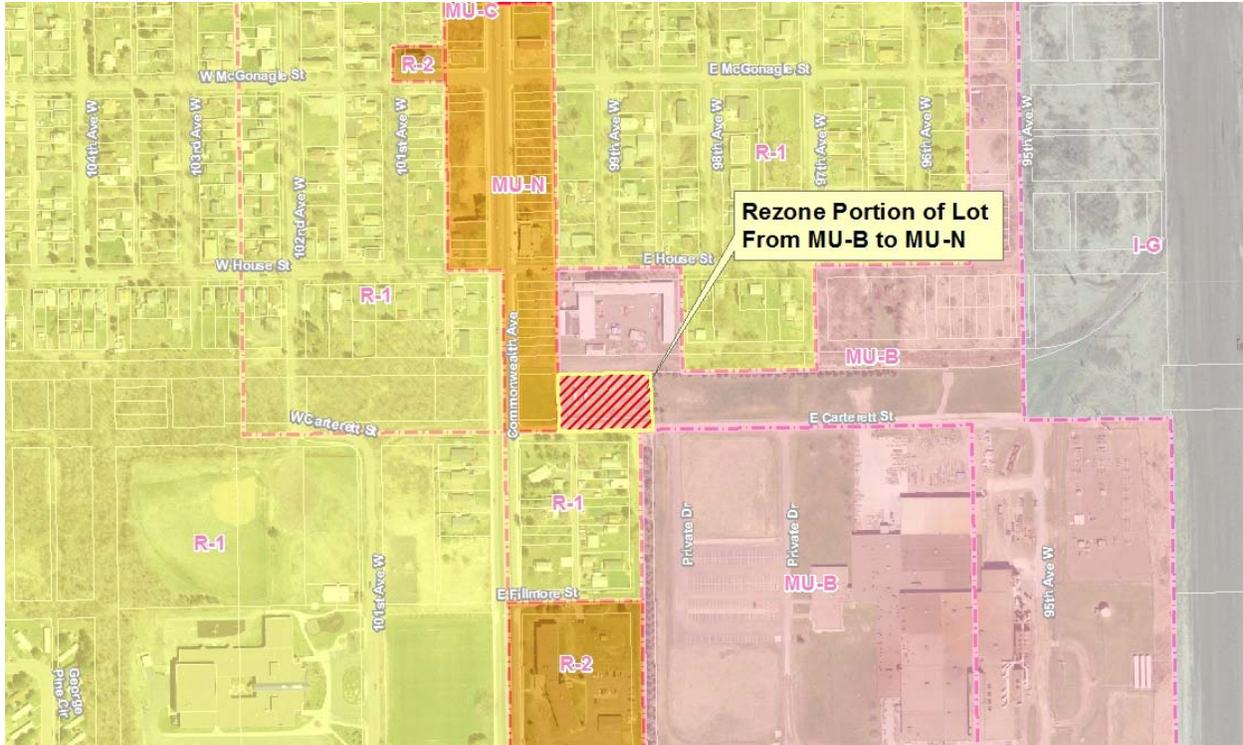
The city of Duluth does ordain:

Section 1. That portions of the 1 acre subject property located at the corner of Commonwealth Avenue and East Carterett Street, and as more particularly described in Exhibit A and by the following:

010-2730-00272

be reclassified from MU-B to MU-N, and that the official zoning map of the city of Duluth as referenced in Chapter 50 of the Duluth City Code, 1959, is amended to read as follows:

PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2013



Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: October 11, 2013)

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

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

Nays: None -- 0

Passed September 9, 2013  
Approved September 9, 2013  
DON NESS, Mayor

ATTEST:  
JEFFREY J. COX, City Clerk

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**ORDINANCE NO. 10248**

AN ORDINANCE AUTHORIZING THE CHIEF ADMINISTRATIVE OFFICER OR DESIGNEE TO EXECUTE AGREEMENTS WITH ARTISTS FOR THE DISPLAY OF ARTWORK.

The city of Duluth does ordain:

Section 1. That pursuant to Section 32 of the Home Rule Charter of the city of Duluth, the chief administrative officer or his/her designee is hereby authorized to enter into agreements substantially in the form of that on file in the office of the city clerk as Public Document No. 13-0909-23 with local artists for the display of artwork throughout the city, including the Duluth International Airport, beginning on the effective date of this ordinance through December 31, 2018, at no cost to the city.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: October 11, 2013)

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

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2013

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

Nays: None -- 0

ATTEST:  
JEFFREY J. COX, City Clerk

Passed September 9, 2013  
Approved September 9, 2013  
DON NESS, Mayor

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### ORDINANCE NO. 10249

AN ORDINANCE AMENDING SECTION 10-3 OF THE DULUTH CITY CODE, 1959, AS AMENDED, REGARDING NOTICE OF DEMOLITION ORDERS.

The city of Duluth does ordain:

Section 1. That Section 10-3 of the Duluth City Code, 1959, as amended, is hereby amended as follows:

Sec. 10-3. Demolition procedure.

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

(b) Orders for demolition and assessment of costs. All orders for the demolition of a dangerous, defective or deteriorated building, or for repairs to the same, shall be in writing, signed by the building official, and shall allow not less than 30 days in which to comply with said order. Each order shall identify the structure, state the legal basis of the order, the date of the order, the fair market value of the building, the building official's good faith, reasonable estimate of the cost of repairs, the calculation that forms the basis for the opinion that the damage requires that the building be demolished, the time and procedure for appeal, and other information deemed relevant by the building official. Should any such order not be complied with within the time allowed therefor or, should the structure constitute an immediate threat of bodily harm to the public, or the appeal provided for in Section 10-5 of this Chapter not be taken, the building official shall, in writing, communicate such information to the city council. The

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2013

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city council may direct the building official to proceed with the work ordered, or to contract to have the work done. In case of the demolition of a building, should the sale of the salvage from such building exceed the cost of the demolition, the balance in excess of the cost shall be paid to the owner of said building or to such other persons as may by law be entitled thereto. A statement of the cost of such work shall be transmitted to the city council which may cause the same to be charged against the land on which the building existed as a municipal lien, which lien shall be recorded with the register of deeds or registrar of titles as a lien against such land, or to be recovered in a suit at law against the owner, or to cause any or all of such costs to be assessed against the property from which such removal takes place. If the city council decides to assess the cost of demolition against the affected property, such assessment shall be made by resolution of the council, and such resolution shall state a time by which such assessment shall be payable, which time shall be not less than 30 days after publication of such resolution and service of notice of the assessment upon the property owner. Notice of such assessment and the time within which it shall be paid, shall be served on the owner of such property in the manner provided in Subsection (c) of this Section below, except that it shall not be necessary to post such notice on the affected property or to publish such notice other than to publish in the regular manner the resolution by which such assessment is made. Delinquent assessments shall be certified to the county auditor of St. Louis County for collection in the same manner as other assessments, pursuant to Section 70 of the Duluth City Charter;

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

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

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

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

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2013

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

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

(d) In addition to other provisions of the Code, this Section 10-3(d) is enacted;

(1) Policy. Pursuant to authority provided in Minnesota Statutes, Section 463.26, permitting cities to enact and enforce ordinances on hazardous buildings, and in order to enhance the livability and preserve the tax base and property values of buildings within the city, and based upon the findings contained in Section (2); and because of the need to assure that buildings which are capable of rehabilitation are promptly rehabilitated and buildings which are not capable of rehabilitation be promptly demolished, the city hereby declared that it is the policy of the city to promote rehabilitation of vacant and unoccupied buildings, and to assure a prompt process for demolition of hazardous buildings through a procedure fixing appropriate responsibility in accordance with due process requirements;

(2) Findings. The city council finds, determines and declares that buildings which remain vacant and unoccupied for any appreciable period of time become an attractive nuisance to children, a harborage for rodents, and invitation to derelicts, vagrants and criminals as a temporary abode, and an increased fire hazard, and that the unkempt grounds surrounding such property invite the dumping of garbage and rubbish thereon; that such buildings are permitted to become dilapidated since such buildings are often economically obsolete and the owners of such buildings are unwilling to expend the necessary funds to repair or raze the buildings; that such buildings contribute to the growth of blight within the city, depress market values of surrounding properties to the detriment of the various taxing districts and require additional governmental services; that the use and maintenance of property in such condition and manner endangers the public safety and health, constitutes an unreasonable use and condition to the annoyance, discomfort and repose of a considerable number of the public, is detrimental to the public good and to the common welfare; and renders a considerable number of the public insecure in the use and enjoyment of their property, and thus may constitute a nuisance condition. Adequate protection of public health, safety and welfare, therefore, requires the establishment and enforcement of the means by which such nuisance conditions may be abated;

(3) Securing vacant buildings;

(A) In general, if any building becomes vacant or unoccupied and is deemed hazardous due to the fact that the building is open to trespass and has not been secured and the building could be made safe by securing the building, the building official may order the building secured and shall cause notice of the order to be served upon the owner of the premises. Such notice may be served personally or by mail. Service by mail is complete upon mailing a copy of the order to the owner at the last known address. If the owner fails to comply with the order within six days after the order is served, the

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2013

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building official shall cause the building to be boarded up or otherwise properly secured;

(B) Emergency. When it is determined by the building official or the chief of police, or the fire chief that an emergency exists with respect to the health or safety of persons in the community, and immediate boarding and securing of a building is required, and where danger will exist to children, transients or others in the absence of an immediate boarding or securing of the building, the building official or the chief of police, or the fire chief may waive all requirements herein and immediately board or otherwise secure the building, provided that:

1. The conditions showing the existence of an exigency are documented in writing by the building official or the chief of police or the fire chief or their designees;

2. Notice be mailed immediately by the department invoking this Section to the address of the owner and taxpayer, and, if recorded on the assessor's rolls, the address of the mortgage holder, of the date of boarding or otherwise securing and the reasons therefore;

(C) After a vacant or unoccupied building has been boarded or otherwise secured under this section, should the owner fail to maintain the building in a secured condition until such time as it has been repaired and reoccupied, the building official shall resecure any openings into the building whenever it again becomes open to trespass, without further notice to the owner. An administrative fee shall be set in accordance with Section 31-6(a) of this Code and all other costs incurred by the city for boarding or otherwise securing a building under this Chapter, including, but not limited to the actual costs for boarding, posting and monitoring the building, building and housing code compliance inspections, police or fire department inspection, response, or protection; public health and safety investigation; control of people or property wrongfully on the premises shall be assessed as provided in Duluth City Code Section 10-3. The above fees, when collected, shall be dedicated to the use of the department(s) that administer(s) the enforcement actions. Owner, for the purposes of this Section, shall mean the person who is listed as the contact person on the current rental licensing application on file with the city, if any; or, if none, the person listed as owner by the city assessor on the homestead record; or, if none, the taxpayer as shown by the records of the city assessor;

(4) Vacant building registration;

(A) The owner of a residential building or building located in a residentially zoned area shall register the building with the building official within 30 days after it becomes a vacant building. In this Section, a vacant building is at least one of the following:

1. Condemned;
2. Unoccupied and unsecured for 30 days or more;
3. Unoccupied and secured by means other than those normally used in the design of the building for 30 days or more;
4. Unoccupied and has multiple housing maintenance, fire or building code violations existing for 30 days or more;

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2013

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(B) The registration shall be submitted on forms provided by the building official and shall include the following information supplied by the owner:

1. A description of the premises;
2. The names and addresses of the owner or owners;
3. The names and addresses of all known lien holders and all other parties with an ownership interest in the building;
4. The period of time the building is expected to remain vacant; and a plan and timetable for returning the building to appropriate occupancy or for demolition of the building;

(C) The owner shall submit a plan and timetable that must comply with the guidelines adopted by the building official. The guidelines are adopted for purposes of preventing nuisance conditions and maintaining compliance with this Code. These guidelines shall be made available to building owners. The plan shall be submitted at the time of registration, or within a reasonable period of time thereafter to be determined by the building official;

(D) The owner shall comply with all applicable laws and codes. The owner shall notify the building official of any changes in information supplied as part of the vacant building registration within 30 days of the change. If the plan or timetable for the vacant building is revised in any way, the revisions must meet the approval of the building official;

(E) The owner and the subsequent owners shall keep the building secured and safe and the building and grounds properly maintained until the rehabilitation or demolition has been completed;

(F) Failure of the owner or any subsequent owner to maintain the building and premises that result in abatement completed by the city shall be grounds for revocation of the approved plan and shall be subject to any applicable penalties provided by law;

(G) The new owner(s) shall register or re-register the vacant building with the building official within 30 days of any transfer of an ownership interest in a vacant building. The new owner(s) shall comply with the approved plan and timetable submitted by the previous owner until any proposed changes are submitted and meet the approval of the building official;

(H) The building official shall include in the file any property-specific written statements from community organizations, other interested parties or citizens regarding the history, problems, status or blighting influence of a vacant building;

(I) Vacant building fees:

1. The owner of a vacant building shall pay an annual fee, which shall be set in accordance with Section 31-6(a) of this Code. The fee is imposed to defray the administrative costs for registering and processing the vacant building registration form and for the costs of the city in monitoring the vacant building site;

2. The first annual fee shall be paid no later than 30 days after the building becomes vacant. Subsequent annual fees shall be due on the anniversary date of initial vacancy. The fees shall be paid in full prior to the issuance of any building permits, with the exception of a demolition permit;

**PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2013**

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3. Unpaid fees shall be levied and collected as a special assessment against the property as provided for under Section 10-3, with interest at the rate set in accordance with Section 31-8 of this Code per annum on the unpaid balance thereof. Upon transfer of ownership, the new owner(s) shall be responsible for all unpaid and subsequent annual fees;

(J) A building owner shall provide access to all interior portions of an unoccupied building in order to permit a complete inspection for the purpose of enforcing and assuring compliance with the provisions of this Chapter.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: October 11, 2013)

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

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

Nays: None -- 0

Passed September 9, 2013

Approved September 9, 2013

DON NESS, Mayor

ATTEST:

JEFFREY J. COX, City Clerk

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**ORDINANCE NO. 10250**

AN ORDINANCE AMENDING SECTION 10-5 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TRANSFERRING JURISDICTION OF LOCAL BUILDING CODE APPEALS TO THE STATE APPEALS BOARD.

The city of Duluth does ordain:

Section 1. That Section 10-5 of the Duluth City Code, 1959, as amended, is hereby amended as follows:

Sec. 10-5. Building appeal board.

(a) There is hereby established a building appeal board, which shall hear and determine appeals under the State Fire Code and Duluth Housing Code. Such board shall consist of 12 members who shall be appointed by the mayor, subject to the approval of the city council and who shall serve without compensation. The Duluth fire chief and building official shall be appointed as ex officio members of the board. The building official shall have no vote on any matter before the board and shall act as secretary of the board. One member of the board shall work in the area of finance; one member shall be a registered architect; one member shall be a registered engineer working in the area of building construction design; one member shall be engaged in the business of residential building construction; one member shall be engaged in the business of commercial building construction; one member shall work in the area of building materials supply; one member shall be a member of a building trade union; one member shall be a realtor or real estate manager; and two members shall be appointed from the general citizenry of the city of Duluth. Of the first persons appointed for membership on the board, four shall be appointed for three years, four shall be appointed for two years, and three shall be appointed for one year. Thereafter, all appointments shall be for a term of three years,

## PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2013

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except that vacancies caused by death, resignation or otherwise may be filled for the remaining unexpired term;

(b) Within 30 days after the initial appointments, the board shall meet and elect a chairman and vice chairman. Thereafter, the board shall meet at stated intervals fixed by resolution of the board, or at the call of the chairman or of any three members of the board. The board may adopt reasonable rules and regulations for conducting its investigations and hearings;

(c) The board shall have jurisdiction to perform the following functions:

(1) To hear appeals from decisions made by the building official in enforcing or interpreting the Duluth Housing Code, Chapter 29A, of the Duluth City Code;

(2) To hear appeals from decisions of the fire chief which arise under Chapter 21 of the Duluth City Code;

(3) To hear appeals from an order of the building official which applies Article II or III of Chapter 10 of Duluth City Code, as amended, or its successor, which includes orders for demolition or other decisions under Article II or III of Chapter 10, Duluth City Code;

(d) Any owner or occupant who wishes to appeal a decision of the building official or fire marshal shall serve written notice of appeal upon the building official within 15 days after receiving notice of such decision and pay the appeal fee. The appeal fee shall be set in accordance with Section 31-6(a) of this Code. The notice of appeal shall contain a complete statement of the matter in controversy and relief requested. If the appeal is from a decision of the fire chief, the building official shall forward a copy of the notice of appeal to the fire chief. The building official shall notify the appellant of the time and place of the hearing. If the appellant withdraws his or her appeal in writing prior to the date and time set therefore, the building official shall refund the aforesaid fee. At the hearing, the board shall hear all relevant evidence and arguments. After due deliberation, the board shall render its decision in writing and notify the appellant of its decision by U.S. mail, electronic means or personal service. The building official shall keep an indexed record of decisions of the board. If the board grants an appellant an extension of time to do an act, then, at the next meeting after expiration of that period of time, the matter shall be set on the meeting agenda for the board's review and action;

(e) In making its decisions, the board shall use the following criteria:

(1) Housing code appeals and appeals of demolition or other orders. The board may remedy any error it has found the building official has made in the interpretation of the housing code or of Article II or III of Chapter 10, Duluth City Code, or their successors. The board may also grant such relief as it deems reasonable from strict compliance with each provision of these parts of Duluth City Code, but no relief shall be granted unless it is found that:

(A) There is substantial compliance with the provisions of the Code;

(B) No detriment to public health or safety will result from granting such relief;

(C) The intent of the Code is not compromised;

(D) The relief granted will not result in increased cost expense to the city;

**PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2013**

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(2) Variances from the minimum requirements of the fire code may be recommended to the state fire marshal only if:

(A) There is substantial compliance with the provisions of the fire code;

(B) The safety of the building occupants and general public will not be jeopardized;

(C) Undue hardship will result to the applicant if relief is not granted;

(f) Any owner or occupant aggrieved by a decision of the board which involves a housing code matter, except a demolition matter under Section 10-3 of this Code, or its successor, may appeal such decision to the city council by filing a notice of appeal with the building official within 15 days after receiving notice of the board's decision. Such notice of appeal shall be addressed to the city council and shall state the grounds upon which the appeal is taken. The filing of a notice of appeal shall stay all proceedings in furtherance of the decision appealed from. The building official shall file all appeal notices with the city council. The city council shall hear the appeal within 30 days after the notice of appeal is filed and shall affirm, modify or reverse the decision of the board. The board's decision on demolition orders or any matter arising under Section 10-3 of this Code, or its successor, shall be appealed to the appellate courts pursuant to Minnesota Statutes Section 606.01.

Section 2. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: October 11, 2013)

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

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

Nays: None -- 0

ATTEST:  
JEFFREY J. COX, City Clerk

Passed September 9, 2013  
Approved September 9, 2013  
DON NESS, Mayor

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# PROCEEDINGS OF THE DULUTH CITY COUNCIL FOR 2013

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## OFFICIAL PROCEEDINGS

Special meeting of the Duluth City Council held on Thursday, September 12, 2013, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Fosle, Krause, Krug, Larson, Stauber and President Boyle -- 6

Absent: Councilors Gardner, Hartman and Julsrud -- 3

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## MOTIONS AND RESOLUTIONS

The council finds as follows:

(a) On September 10, 2013, there was held in the city of Duluth, pursuant to the provisions of Laws of Minnesota, 1973, Chapter 281, a primary municipal election for the purpose of electing certain city officers;

(b) The judges of the election districts in the city have made their returns of said election and the city council, acting as a canvassing board, has duly canvassed said returns (Public Document No. 13-0912-01) at 5:00 p.m., September 12, 2013, and ascertained the number of ballots cast at said election and thereby declared that at said election there were 6,283 cast ballots;

(c) Votes were cast for the office of city councilor at large in the following manner:

Zack Filipovich	3,081
Barb Russ	3,943
Ray (Skip) Sandman	1,175
Ryan Stauber	2,295
Ray Whitledge III	525

NOW, THEREFORE, BE IT RESOLVED, that Zack Filipovich, Barb Russ, Ray (Skip) Sandman and Ryan Stauber, having received the four largest numbers of the votes cast at said election for city councilor at large, are hereby certified to have their names placed on the general municipal election ballot and the city clerk is hereby directed to place their names on the general municipal election ballot.

Resolution 13-0476 was unanimously adopted.

Approved September 12, 2013

DON NESS, Mayor

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The meeting was adjourned at 5:17 p.m.

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