



City of Duluth

411 West First Street
Duluth, Minnesota 55802

Minutes

City Council

MISSION STATEMENT: *The mission of the Duluth City Council is to develop effective public policy rooted in citizen involvement that results in excellent municipal services and creates a thriving community prepared for the challenges of the future.*

TOOLS OF CIVILITY: *The Duluth City Council promotes the use and adherence of the tools of civility in conducting the business of the council. The tools of civility will provide increased opportunities for civil discourse in order to find positive resolutions to the issues that face the city. These tools include: pay attention, listen, be inclusive, do not gossip, show respect, be agreeable, apologize, give constructive criticism and take responsibility. [Approved by the council on August 25, 2003]*

Monday, July 27, 2015

7:00 PM

Council Chamber

ROLL CALL

Present: 5 - Councilors Zach Filipovich, Jay Fosle, Sharla Gardner, Howie Hanson, Jennifer Julsrud, Linda Krug, Barb Russ and Joel Sipress.

Absent: 1- President Emily Larson

PUBLIC HEARING - 7:00 PM - Proposed Confirmation of Assessment Roll for the Riverside Reconstruction.

At this time, 7:03 p.m., the public hearing began.

Carole Newkumet expressed her dissatisfaction about the quality of work that was done on this project.

At this time, 7:06 p.m., the public hearing was declared closed and the regular order of business resumed.

PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

- 1. 15-021** Colleen Baggs and Dick Swanson communication, submitted by Councilor Hanson, regarding the proposed renaming of ball fields near Wade Stadium (15-0423R and 15-0424R).

Attachments: [Communication](#)

This Petition/Other Communication was received.

- 2. 15-023** Bev Berglund communication regarding the proposed confirmation of the assessment roll for the Riverside reconstruction (15-0387R).

Attachments: [Communication](#)

This Petition/Other Communication was received.

3. **15-024** Barbara Hoffman communication regarding the proposed vacation of alleys southwest of Kenwood Avenue and Arrowhead Road (15-0429R).

Attachments: [Communication](#)

This Petition/Other Communication was received.

REPORTS FROM OTHER OFFICERS

4. **15-016** Clerk applications for exempt permits (raffles) to the Minnesota gambling control board from Circle of Hope on October 18, 2015, Essentia Health - Duluth and Essentia Health St. Mary's Medical Center on November 6, 2015.

Attachments: [Application_CircleofHope](#)
[Application_EssentiaHealthDuluth](#)
[Application_EssentiaHealthSMMC](#)

This Other Officers Report was received.

REPORTS OF BOARDS AND COMMISSIONS

5. **15-019** Duluth airport authority minutes of June 16, 2015, regular and special meetings.

Attachments: [Regular Meeting Minutes](#)
[Special Meeting Minutes](#)

This Board or Commission Report was received.

6. **15-020** Duluth public utilities commission minutes of May 19, 2015, meeting and resolution amending water customer category C/I 6 to include golf course irrigation (15PUC-005).

Attachments: [Minutes](#)
[15PUC-005](#)

This Board or Commission Report was received.

7. **15-022** Duluth parking commission minutes of August 15, September 19, October 3, November 7 and December 5, 2014.

Attachments: [08152014 Minutes](#)
[09192014 Minutes](#)
[10032014 Minutes](#)
[11072014 Minutes](#)
[12052014 Minutes](#)

This Board or Commission Report was received.

OPPORTUNITY FOR CITIZENS TO BE HEARD

RESOLUTIONS TABLED

COMMITTEE 1

BY COUNCILOR HANSON (PURCHASING & LICENSING)

8. **15-0423R** RESOLUTION OF SUPPORT FOR NAMING THE LITTLE LEAGUE FIELDS LOCATED BEHIND WADE STADIUM THE JOHN BAGGS LITTLE LEAGUE FIELDS.

RESOLUTION OF SUPPORT FOR NAMING THE LITTLE LEAGUE FIELDS LOCATED BEHIND WADE STADIUM THE JOHN BAGGS LITTLE LEAGUE FIELDS.

BY COUNCILOR HANSON:

WHEREAS, John Baggs was a baseball coach for the College of St. Scholastica for 17 years up until his death in 2009; and

WHEREAS, John Baggs brought the St. Scholastica baseball program from relative obscurity to national prominence; and

WHEREAS, the St. Scholastica baseball team won 12 straight Upper Midwest Conference Titles under the leadership of John Baggs and he was named Upper Midwest Conference Coach of the year ten times; and

WHEREAS, John Baggs was a beloved coach, mentor and leader in Duluth's baseball community and inspired many local youth; and

WHEREAS, there is strong community support to honor Johns Baggs' memory by naming a baseball field in his name.

WHEREAS, the Little League fields outside of Wade Stadium are currently unnamed.

THEREFORE, BE IT RESOLVED, that the city council, in recognition of Mr. Baggs' remarkable coaching career and community involvement, hereby supports the naming of the little league fields located behind Wade Stadium.

STATEMENT OF PURPOSE: This resolution recognizes the leadership and exceptional contributions of John Baggs to the sport of baseball in Duluth. Accordingly, the city council supports the naming of the little league fields behind Wade Stadium in honor of Mr. Baggs.

Sponsors: Hanson

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

A motion was made that this Resolution be adopted. The motion carried by a unanimous vote.

9. 15-0424R

RESOLUTION OF SUPPORT FOR NAMING THE TWO SOFTBALL FIELDS OUTSIDE WADE STADIUM THE DICK SWANSON FIELDS.

RESOLUTION OF SUPPORT FOR NAMING THE TWO SOFTBALL FIELDS OUTSIDE WADE STADIUM THE DICK SWANSON FIELDS.

BY COUNCILOR HANSON:

WHEREAS, Dick Swanson has been a long time coach of youth sports in the city of Duluth; and

WHEREAS, Mr. Swanson was formerly the girl's basketball coach at both Duluth Denfeld and Duluth Central high schools; and

WHEREAS, Mr. Swanson is currently the coach of the Denfeld Hunter's softball team and has been the Denfeld high school softball coach for nearly twenty years; and

WHEREAS, Mr. Swanson has also coached numerous girls youth softball teams at the softball fields outside of Wade Stadium; and

WHEREAS, Mr. Swanson is recognized by the citizens of West Duluth as a leader and advocate of youth softball; and

WHEREAS, the softball fields outside of Wade Stadium are know as "Wade Fields" simply because of their location and have not been previously named.

THEREFORE, BE IT RESOLVED, that the city council, in recognition of Mr. Swanson's leadership and efforts promoting youth softball, hereby supports the naming of the two softball fields outside of Wade Stadium for Dick Swanson and requests that the proper city officials take the necessary steps to initiate the process of naming.

STATEMENT OF PURPOSE: This resolution recognizes the leadership and exceptional contributions of Dick Swanson to the sport of softball in West Duluth. Accordingly, the city council supports the naming of the two softball fields outside of Wade Stadium in honor of Mr. Swanson.

Sponsors: Hanson

Councilor Hanson moved to remove the resolution from the table, which motion

was seconded and unanimously carried.

A motion was made that this Resolution be adopted. The motion carried by a unanimous vote.

MOTIONS AND RESOLUTIONS

CONSENT AGENDA

COMMITTEE 2

BY COUNCILOR RUSS (PLANNING & ECONOMIC DEVELOPMENT)

11. **15-0429R** RESOLUTION VACATING ALLEYS IN BLOCKS 1, 2, AND 11, MYERS AND WHIPPLES ADDITION TO DULUTH, LOCATED SOUTHWEST OF KENWOOD AVENUE AND ARROWHEAD ROAD, RETAINING A UTILITY EASEMENT OVER WESTERN PORTION OF THE ALLEY (KENWOOD VILLAGE LLC)

RESOLUTION VACATING ALLEYS IN BLOCKS 1, 2, AND 11, MYERS AND WHIPPLES ADDITION TO DULUTH, LOCATED SOUTHWEST OF KENWOOD AVENUE AND ARROWHEAD ROAD, RETAINING A UTILITY EASEMENT OVER WESTERN PORTION OF THE ALLEY (KENWOOD VILLAGE LLC)

CITY PROPOSAL:

RESOLVED, that:

- (a) The city council finds a sufficient petition was filed with the city requesting the vacation described in (d) below; and
- (b) Pursuant to Section 100 of the City Charter and Section 50-37.6 of Chapter 50 of the Duluth City Code, as amended, such petition was duly referred to the city planning commission and such commission gave due notice of public hearing and did consider same in a public hearing and the city planning commission found that this portion of the street easement is useless for all purposes; and
- (c) The city planning commission, at its Tuesday, June 9, 2015 regular meeting, recommended approval of the vacation petition; and
- (d) The city council of the city of Duluth approves the vacation of the platted road easement, maintaining a public utility easement, described below:

VACATION LEGAL DESCRIPTION:

All those parts of alleys appurtenant to Blocks Two (2) and Eleven (11) and Lots Five (5) through Ten (10), Block One (1) Excepting the north 19 feet thereof, all in Myers & Whipples Addition to Duluth, City of Duluth, St. Louis County, Minnesota.

PUBLIC UTILITY EASEMENT:

All that part of alley appurtenant to Lots Nine (9) through Eighteen (18), Blocks Two (2) and Eleven (11), Myers & Whipples Addition to Duluth, City of Duluth, St. Louis County, Minnesota, lying westerly of a line drawn between a point that is the 5.00 feet easterly of, and parallel with, the westerly line of said Lot 9, Block 2 intersected with the north line of said alley and a point 15.00 feet easterly of, and parallel with, the westerly line of said Lot 9, Block 11 intersected with the south line of said alley.

(e) 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 showing the platted easement to be vacated; and

(f) The applicant has agreed to pay for all utility relocation or alteration expenses associated with this application.

STATEMENT OF PURPOSE: This resolution vacates alleys in the area of the proposed Kenwood Village development, southwest of the Kenwood Avenue/Arrowhead Road intersection. A utility easement will be retained to provide Minnesota Power access to existing utility lines adjacent to existing single-family homes.

On June 9, 2015, the Duluth city planning commission held a public hearing on the proposal and voted 8 yeas, 0 nays, and 0 abstentions to recommend the city council approve the vacation.

The motion to approve the vacation by the city council must prevail with at least six affirmative votes.

Petition Received: May 5, 2015

Action Deadline: September 2, 2015

Petitioner:

Kenwood Village LLC

3600 American Boulevard West, Suite 750

Bloomington, MN 55431

PL 15-079

Attachments: [final signed exhibit](#)

[Staff Report and Attachments](#)

This Resolution was adopted.

12. 15-0436R RESOLUTION AUTHORIZING A DEVELOPMENT AGREEMENT WITH ONE ROOF COMMUNITY HOUSING FOR THE JAY STREET HOUSING PROJECT.

RESOLUTION AUTHORIZING A DEVELOPMENT AGREEMENT WITH ONE ROOF COMMUNITY HOUSING FOR THE JAY STREET HOUSING PROJECT.

CITY PROPOSAL:

RESOLVED, that the proper city official are hereby authorized to enter into a development agreement, substantially in the form of that attached hereto, with One Roof Community Housing (“Developer”) pursuant to which the city agrees to convey property in St. Louis County legally described as Lots 1 through 16, Block 104, London Road addition to Developer at no cost, which conveyance was authorized pursuant to Ordinance No. 15-026-O effective June 21, 2015, and Developer agrees to perform environmental remediation, replat the property and construct market rate and moderate income housing on the site; the cost of the environmental remediation in an amount up to \$285,419 to be paid by the city from Fund No. 255-020-5458 (economic development, planning department, payment to developers); 75% being funded from a department of employment and economic development (“DEED”) contamination cleanup grant in an amount up to \$214,064 and 25% being funded by city utility funds in an amount up to \$71,355; and an additional 25% of the cost of removal of the concrete pad to be paid by Fund No. 510-500-1905-5535 (gas fund, public works & utilities, capital, non-capital improvements) in an amount up to \$12,085; for a total cost of up to \$297,504.

STATEMENT OF PURPOSE: The purpose of this resolution is to approve a Development Agreement with Developer for the Jay Street housing project. The City will convey property located between Jay and Dodge Streets and 40th and 41st Avenues East to the Developer. The conveyance was previously authorized by ordinance. The developer will undertake the environmental remediation of the site, 75% of the cost of which is being funded through a DEED Contamination Cleanup Grant and 25% of which is being funded by the City. The City is reimbursing the Developer for 25% of the cost of removing the concrete pad on the site. Developer will replat the property and construct at least three units of moderate income housing priced at \$226,881 or less and up to five units of market rate housing.

Attachments: [Jay Street Development Agreement](#)

This Resolution was adopted.

- 13. 15-0462R** RESOLUTION AUTHORIZING A SUBORDINATION AGREEMENT RELATING TO THE REFINANCING OF THE VILLAGE AT MATTERHORN HOUSING PROJECT.
- RESOLUTION AUTHORIZING A SUBORDINATION AGREEMENT RELATING TO THE REFINANCING OF THE VILLAGE AT MATTERHORN HOUSING PROJECT.
- CITY PROPOSAL:
- RESOLVED, that the proper city officials are hereby authorized to execute a Subordination Agreement, substantially in the form of that attached hereto as Exhibit A, with Oak Grove Commercial Mortgage, LLC, and Matterhorn Apartments, LLC, relating to the refinancing of the Village at Matterhorn Housing Project.
- STATEMENT OF PURPOSE: Located at the end of Burning Tree Road, the Village at Matterhorn project consists of 96 units of mixed-income housing in two apartment buildings and 15 townhomes. Of the 96 total, 68 are tax credit units (30 of which are also HOPE VI units) and 28 market rate units. In 2006, the city provided \$150,000 of Housing Investment Fund ("HIF") monies to the project. The HIF monies are a 0% deferred loan for a period of 30 years at which time the balance is due and payable. Projects providing long-term affordability may be considered for forgivable loans. The decision to forgive cannot occur before one year prior to the end of the loan period.
- The city's HIF loan is in seventh mortgage position currently behind two Wells Fargo loans in the combined amount of \$2,725,000, an HRA loan in the amount of \$1,592,580, two loans of Minnesota Housing Finance Agency in the combined amount of \$1,627,929 and Greater Minnesota Housing Fund loan in the amount of \$1,000,000. The combined Wells Fargo loan is being refinanced with a new \$3,250,000 HUD loan. The increased value of the HUD mortgage along with all subordinate debt has been verified through an appraisal performed by Diversified Real Estate Services. Under the refinancing, the city will retain its seventh position behind approximately \$525,000 in additional debt, part of which includes added HUD reserve requirements, an origination fee, survey and legal fees and some amortization of a deferred developer fee which is required for tax credit projects. The subordination agreement calls for the extension of the maturity of the HIF loan to coincide with the new maturity on the HUD loan which is August 1, 2050 and further provides that if the term of the HUD Loan is extended, that the HIF Loan would also effectively be extended.

Attachments: [Exhibit A - 15-0462R](#)

This Resolution was adopted.

COMMITTEE 3

BY COUNCILOR JULSRUD (PUBLIC WORKS & UTILITIES)

14. 15-0450R RESOLUTION AWARDING A CONTRACT TO UTILITY SYSTEMS OF AMERICA, INC. FOR KNOWLTON CREEK WATER MAIN RELOCATIONS AT GRAND AVENUE IN THE AMOUNT OF \$292,897.

RESOLUTION AWARDING A CONTRACT TO UTILITY SYSTEMS OF AMERICA, INC. FOR KNOWLTON CREEK WATER MAIN RELOCATIONS AT GRAND AVENUE IN THE AMOUNT OF \$292,897.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into a contract with Utility Systems of America, Inc. for the relocation of the Knowlton Creek water mains at Grand Avenue in the amount of \$292,897, payable out of Water Fund 510, Department 500 (Public Works & Utilities), Division 1905 (Capital), Object 5533 (Capital Improvement - Revenue), city project no. 1416.

STATEMENT OF PURPOSE: This resolution will authorize the relocation of water mains at Knowlton Creek at Grand Avenue by Utility Systems of America, Inc. for the amount of \$292,897, payable from Water Fund 510, Department 500 (Public Works & Utilities), Division 1905 (Capital), Object 5533 (Capital Improvement - Revenue), city project no. 1416, requisition no. 15-0405. Utility Systems of America, Inc. was the lowest bidder of the five companies that responded. The engineer's estimate was \$340,000. The water mains are being relocated due to MnDOT's TH 23 project, in which the existing box culvert will be replaced with a bridge.

TABULATION OF BIDS RECEIVED JULY 15, 2015

Utility Systems of America, Inc.	Eveleth, MN	\$292,897.00
Hibbing Excavating, Inc.	Hibbing, MN	\$305,935.00
Hanco Utilities, Inc.	Lake Nebagamon, WI	\$326,210.00
GM Contracting, Inc.	Lake Crystal, MN	\$369,994.20
RJS Construction Group, Inc.	Superior, WI	\$372,725.00

Attachments: [15-0450R Map](#)

This Resolution was adopted.

BY COUNCILOR FOSLE (PUBLIC SAFETY)

15. 15-0467R RESOLUTION SCHEDULING A PUBLIC HEARING ON THE PROPOSED DESIGNATION OF CERTAIN STREETS IN THE VICINITY OF UNIVERSITY OF MINNESOTA DULUTH AS RESIDENT PERMIT PARKING.

RESOLUTION SCHEDULING A PUBLIC HEARING ON THE PROPOSED DESIGNATION OF CERTAIN STREETS IN THE VICINITY OF UNIVERSITY OF MINNESOTA DULUTH AS RESIDENT PERMIT PARKING.

CITY PROPOSAL:

RESOLVED, that in accordance with Section 33-125 of the Duluth City Code, 1959, as amended, the city council hereby indicates that on Monday, August 10, 2015, at 7:00 P.M. in the Council Chamber on the third floor in City Hall, the council will conduct a public hearing on whether to designate portions of Lyons Street, East Niagara Street and Missouri Avenue as resident permit parking, as shown on the map attached hereto.

FURTHER RESOLVED, that the city clerk is hereby directed to mail notice of such hearing by addressing such notice to occupant at each address within or abutting the parking areas of the portions of the streets so proposed to be designated.

STATEMENT OF PURPOSE: This resolution schedules a public hearing and provides notice thereof pursuant to the requirements of Section 33-125 of the Duluth City Code, 1959, as amended, regarding the proposed designation of portions of Lyons Street, East Niagara Street and Missouri Avenue as resident permit parking. This proposal has been reviewed and recommended by the Duluth parking commission.

Attachments: [Attachment for 15-0467R](#)

This Resolution was adopted.

BY COUNCILOR SIPRESS (RECREATION, LIBRARIES & AUTHORITIES)

16. 15-0451R RESOLUTION AUTHORIZING ACCEPTANCE OF A QUIT CLAIM DEED FROM BRADLEY E. LINDER FOR PROPERTY TO BE USED AS PART OF THE AMITY CREEK GRANT-IN-AID CONNECTOR SNOWMOBILE TRAIL TO THE C.J. RAMSTAD/NORTH SHORE STATE TRAIL.

RESOLUTION AUTHORIZING ACCEPTANCE OF A QUIT CLAIM DEED FROM BRADLEY E. LINDER FOR PROPERTY TO BE USED AS PART OF THE AMITY CREEK GRANT-IN-AID CONNECTOR SNOWMOBILE TRAIL TO THE C.J. RAMSTAD/NORTH SHORE STATE TRAIL.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to accept

the donation of property for park and trail purposes by a quit claim deed, substantially in the form of that attached hereto as Exhibit A, from Bradley E. Linder, a single person, at no cost to the city.

STATEMENT OF PURPOSE: The purpose of this resolution is to accept the donation of certain property from Bradley E. Linder to allow the public to continue to use a trail corridor across the property.

Attachments: [Exhibit A](#)
[Linder Parcel Map](#)

This Resolution was adopted.

- 17. 15-0464R** RESOLUTION AUTHORIZING CITY OFFICIALS TO APPLY FOR, ACCEPT, AND EXECUTE AN AGREEMENT FROM THE NATIONAL PARKS SERVICE RIVERS, TRAILS AND CONSERVATION ASSISTANCE PROGRAM FOR NON-MONETARY TECHNICAL ASSISTANCE IN PREPARING A MASTER PLAN AROUND THE INVESTMENTS IN A FUTURE NATIONAL WATER TRAIL ON THE ST. LOUIS RIVER.

RESOLUTION AUTHORIZING CITY OFFICIALS TO APPLY FOR, ACCEPT, AND EXECUTE AN AGREEMENT FROM THE NATIONAL PARKS SERVICE RIVERS, TRAILS AND CONSERVATION ASSISTANCE PROGRAM FOR NON-MONETARY TECHNICAL ASSISTANCE IN PREPARING A MASTER PLAN AROUND THE INVESTMENTS IN A FUTURE NATIONAL WATER TRAIL ON THE ST. LOUIS RIVER.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to apply to the National Parks Service for technical assistance through the Rivers and Trails Conservation Assistance Program (RTCA) on behalf of the city.

FURTHER RESOLVED, that if the city of Duluth is awarded aforesaid assistance, the city of Duluth agrees to accept the program assistance and the proper city officials are authorized to enter into an agreement with the National Parks Service Rivers, Trails and Conservation Assistance Program, substantially the same as the form of Exhibit A.

STATEMENT OF PURPOSE: This resolution authorizes, by the proper City Officials, the application for and acceptance of, if offered, a grant agreement from the National Parks Service Rivers, Trails and Conservation Assistance program. This program is a division of the National Parks Service. The National Parks Service Rivers, Trails and Conservation Assistance program supports successful partnerships with

communities across America in achieving their conservation and outdoor recreation visions.

The RTCA would assist the city of Duluth in creating a master plan around investments in a future National Water Trail on the St. Louis River. This assistance is in the form of time committed by an RTCA staff person and the application process is minimal. The project assistance will aid in offsetting the costs associated with planning for a National Water Trail designation.

Community technical assistance is a major component of RTCA. This program assists communities in a variety of ways but is mainly associated with master planning processes. The city of Duluth plans to submit an application by August 1, 2015, for Community Assistance. Rivers, Trails and Conservation Assistance program does not award monetary grants or loans. Instead, one of the RTCA staff with extensive experience in community-based outdoor recreation and conservation will work with the city of Duluth and community partners to get the project off the ground. If funding is necessary to achieve project goals, RTCA can often assist in identifying and securing sources of financial assistance.

Attachments: [15-0464R EXHIBIT A -DRAFT APP.pdf](#)

This Resolution was adopted.

- 18. 15-0466R** RESOLUTION AUTHORIZING A LEASE AGREEMENT WITH COMMUNITY ACTION DULUTH FOR USE OF A CITY-OWNED GARAGE IN THE LINCOLN PARK NEIGHBORHOOD.
- RESOLUTION AUTHORIZING A LEASE AGREEMENT WITH COMMUNITY ACTION DULUTH FOR USE OF A CITY-OWNED GARAGE IN THE LINCOLN PARK NEIGHBORHOOD.
- CITY PROPOSAL:
- RESOLVED, that the proper city officials are hereby authorized to enter into a one-year agreement, with the option to extend the agreement for two additional one-year periods, substantially in the form of that attached hereto, with Community Action Duluth, a non-profit corporation, for the lease of a city-owned garage in the Lincoln Park neighborhood with monthly rent of \$25 payable into Fund 110-121-1222-4622 (general, public administration, facilities management, rent of buildings).
- STATEMENT OF PURPOSE: This resolution authorizes the city to enter into a one-year lease agreement, with the option to extend agreement for two additional one-year periods, with Community Action Duluth ("CAD") for the lease of a city-owned garage in the Lincoln Park neighborhood. The

garage, located on the corner of 25th Avenue West and West 5th Street, will be used to store supplies and tools for CAD's Seeds of Success and Stream Corps programs. The agreement may be terminated by either party upon 20 days' notice. In consideration, CAD will pay the city \$25 a month in rent.

Attachments: [Attachment to 15-0466R](#)

This Resolution was adopted.

- 19. 15-0468R** RESOLUTION AUTHORIZING PROPER CITY OFFICIALS TO ACCEPT A GRANT FROM THE STATE OF MINNESOTA IN THE AMOUNT OF \$320,000.00 FOR THE LAKE SUPERIOR ZOO.
- RESOLUTION AUTHORIZING PROPER CITY OFFICIALS TO ACCEPT A GRANT FROM THE STATE OF MINNESOTA IN THE AMOUNT OF \$320,000.00 FOR THE LAKE SUPERIOR ZOO.
- CITY PROPOSAL:
RESOLVED, that the proper city officials are hereby authorized to accept a grant from the state of Minnesota in the amount of \$320,000, such funds to be used to support the operation of the Lake Superior Zoo, and to execute a grant agreement, substantially the same as Exhibit A, funds to be deposited in Fund 200-130-4220-02 (zoo, community resources).
- STATEMENT OF PURPOSE: This resolution authorizes the proper city officials to accept a grant from the state of Minnesota for the operation of the Lake Superior Zoo and further authorizes city officials to execute the grant agreement.
- This is a biennial allocation from the Legislature since 2001. The grant is for Lake Superior Zoo and Como Park Zoo. The DNR is the state agency that receives the funds. No matching funds are required and reimbursements are distributed quarterly through the DNR. The grant's start date is July 1, 2015 and it expires on June 30, 2017.
- This grant and a specific allocation from the city's tourism tax fund are available to the Lake Superior Zoo each year for operating expenses. These allocations are part of the city's agreement with the Lake Superior Zoological Society.

Attachments: [Exhibit A -Duluth Zoo Contract FY16 with City signature page.pdf](#)

This Resolution was adopted.

END OF CONSENT AGENDA

The following entitled resolution was also considered:

COMMITTEE 1

BY COUNCILOR FILIPOVICH (FINANCE)

10. 15-0387R RESOLUTION CONFIRMING ASSESSMENT ROLL LEVIED TO DEFRAY THE ASSESSABLE PORTIONS OF THE RIVERSIDE RECONSTRUCT.
RESOLUTION CONFIRMING ASSESSMENT ROLL LEVIED TO DEFRAY THE ASSESSABLE PORTIONS OF THE RIVERSIDE RECONSTRUCT.

CITY PROPOSAL:

RESOLVED, that the assessable rolls levied to defray the assessable portions of the following are hereby confirmed:

(a) Riverside Reconstruct: total reconstruction of utilities and streets for St. Louis Ct, Industrial Ave, Viewcrest Ave, Riverview Ave, Marine Ct, Spring St, Riverside Dr, Manitou St, Sunnyside St, Union St, England Ave, Cato Ave, Penton Blvd and East Penton Blvd Alley.

Contract 9902650 - total assessable amount of \$517,497.00 to be deposited in Fund 440.

STATEMENT OF PURPOSE: This resolution confirms the assessable portion of the above-related projects.

Attachments: [Riverside Resolution Attachment](#)

A motion was made that this Resolution be adopted. The motion carried by the following vote:

Yea: 8 - Councilors Filipovich, Fosle, Gardner, Hanson, Julsrud, Krug, Russ and Sipress.

Absent: 1 - President Larson

The following entitled ordinances were read for the first time:

COMMITTEE 1

BY COUNCILOR FILIPOVICH (FINANCE)

20. 15-063-O AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF TAXABLE GENERAL OBLIGATION STEAM UTILITY REVENUE BONDS OF THE CITY OF DULUTH IN AN AMOUNT NOT TO EXCEED \$4,150,000 UPON TERMS AND CONDITIONS TO BE PROVIDED BY RESOLUTION OF THE CITY COUNCIL AND PLEDGING REVENUES

FOR THE PAYMENT THEREOF.

AN ORDINANCE AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF TAXABLE GENERAL OBLIGATION STEAM UTILITY REVENUE BONDS OF THE CITY OF DULUTH IN AN AMOUNT NOT TO EXCEED \$4,150,000 UPON TERMS AND CONDITIONS TO BE PROVIDED BY RESOLUTION OF THE CITY COUNCIL AND PLEDGING REVENUES FOR THE PAYMENT THEREOF.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. Bond Purpose and Authorization.

1.01 Under and pursuant to the provisions of Section 55 of the City Charter, Minnesota Laws, 1979, Chapter 113 and Chapter 475 of Minnesota Statutes and other pertinent provisions of said Charter and statutes, the city is authorized to issue its general obligation revenue bonds to provide funds for the improvement of the municipal steam plant, which bonds shall be a specific lien upon such plant and may be payable primarily from net revenues to be derived from service charges pledged for their payment.

1.02 The city council determines that it is necessary and desirable to make capital improvements to the municipal steam utility located in the downtown area of Duluth (the "Municipal Steam Utility"), including the (i) capital maintenance improvements; (ii) emergency generator upgrades; (iii) boiler natural gas system upgrades; (iv) DECC piping system repairs and hot water extension to the Great Lakes Aquarium; and (v) biomass cofiring facilities; and determines that it is necessary to issue taxable general obligation steam utility revenue bonds in an amount not exceeding \$4,150,000 for the purpose of paying for the improvements and paying for a portion of the interest cost of the issue, as allowed by Minnesota Statutes, Section 475.56.

1.03 The city heretofore issued and sold Taxable General Obligation Steam Utility Revenue Refunding Bonds, Series 2012G, dated November 27, 2012 (the "2012G Bonds"), now outstanding in the amount of \$4,250,000. Under the provisions of the resolution authorizing said bonds, the city reserved the privilege of issuing additional bonds payable from said net revenues on a parity with the 2012G Bonds.

1.04 Pursuant to the authority herein recited, the City Council authorizes and directs the sale of taxable general obligation steam utility revenue bonds of the city of Duluth in an amount not exceeding \$4,150,000 for the purposes stated in Section 1.02 hereof and pledges the full faith and

credit and taxing powers of the city irrevocably to the extent required, for the payment of the principal and interest when due on such bonds, and also pledges and appropriates irrevocably for such payments the income and revenues to be derived from time to time from the operation of the Municipal Steam Utility in excess of the normal reasonable and current costs of the operating and maintenance thereof.

1.05 The city reserves the right and privilege of issuing additional bonds and of pledging and appropriating the income and revenues of the Municipal Steam Utility for the payment thereof, when authorized in accordance with the law and the City Charter and determined by the city council to be necessary for the improvement of the utility or for the refunding of indebtedness payable from said income and revenues, provided that no such pledge shall constitute a lien upon the income and revenues superior to the pledge thereof for the payment of the bonds issued hereunder.

Section 2. Terms of Bonds.

2.01 The city council shall, by resolution or resolutions, provide for the issuance and sale of such bonds in one or more series and shall fix the precise maturities, interest rates, redemption provisions and other terms and conditions of such bonds, and covenants securing their payment, and prescribe the form thereof, and offer to sell such bonds in such a manner and at such time or times as shall be deemed in the public interest, all in accordance with the authority recited in Section 1.01 of the ordinance.

Section 3. Revenues and Accounts.

3.01 The city council shall, by resolution or resolutions, provide for the method of imposing and collecting just and equitable charges for all use and for the availability of facilities of the Municipal Steam Utility at the times and amounts required to pay the normal, reasonable and current operating expenses and to maintain the Municipal Steam Utility and also to produce net revenues at least adequate at all times to pay the principal and interest due on the bonds issued hereunder and on all other bonds heretofore or hereafter issued and made payable from said net revenues.

3.02 The city council shall, by further resolution or resolutions, establish appropriate accounts and credit monies from the proceeds of the bonds herein authorized to accounts, all in accordance with Section 54 of the City Charter and Chapter 475 of Minnesota Statutes.

Section 4. Certificates of Proceedings.

4.01 The city clerk is directed to file with the county auditor of St. Louis County, Minnesota, a certified copy of this ordinance, and such other

information as the county auditor may require, and to obtain from the county auditor a certificate stating that the bonds herein authorized have been duly entered on his register.

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

Section 5. Effective Date.

5.01 This ordinance shall take effect and be in force 30 days from and after its passage and publication. This ordinance shall be published one time on the city's official website and remain on such website for a period of at least 30 days.

STATEMENT OF PURPOSE: This ordinance authorizes the issuance of taxable general obligation steam utility revenue bonds in an amount not exceeding \$4,150,000 for improvements to the municipal steam utility located in the downtown area and are payable primarily from net revenues of such steam utility. The improvements to such steam plant include (i) capital maintenance improvements; (ii) emergency generator upgrades; (iii) boiler natural gas system upgrades; (iv) DECC piping system repairs and hot water extension to the Great Lakes Aquarium; and (v) biomass co-firing facilities.

This Ordinance was read for the first time.

Enactment No: 10397

BY COUNCILOR GARDNER (PERSONNEL)

21. **15-060-O** AN ORDINANCE AMENDING CHAPTER II, SECTION 4, OF THE CITY CHARTER TO ALLOW AN ELIGIBLE PERSON TO FILL A VACANCY UNTIL THE FIRST MONDAY IN JANUARY AFTER THE NEXT MUNICIPAL ELECTION.
- AN ORDINANCE AMENDING CHAPTER II, SECTION 4, OF THE CITY CHARTER TO ALLOW AN ELIGIBLE PERSON TO FILL A VACANCY UNTIL THE FIRST MONDAY IN JANUARY AFTER THE NEXT MUNICIPAL ELECTION.

CITY PROPOSAL/BY COUNCILOR GARDNER:

The city of Duluth does ordain:

Section 1. That Chapter II, Section 4, of the 1912 Home Rule Charter of the city of Duluth, as amended, is hereby amended, to read as follows:

Section 4. The office of mayor or councilor shall be deemed vacant in case of failure to qualify within ten (10) days after election, or by reason of death, resignation, removal from the city or the district except as in Section 2 provided, conviction of a felony, violation of any of the duties of office, which, by provisions of this Charter, render the office vacant, or continuous absence from the city for more than thirty days, but if additional time is needed, leave may be granted by the council for a longer absence.

If any such vacancy occurs (other than by recall or resignation after recall petition is filed) the Council shall without delay appoint an eligible person to fill the same until the first Monday in January after the next municipal election, when the office shall be filled by election for the unexpired term.

In the case of an absence of shorter duration than renders the office of mayor vacant, or in the event of disability of the mayor, the mayor's duties shall be filled by an acting mayor who shall be appointed by the mayor from the councilors-at-large after each general municipal election. Should the mayor become disabled or be absent for more than ten (10) days without having appointed an acting mayor, the district councilors, by majority vote, shall appoint one of the councilors-at-large as acting mayor. The mayor shall not be considered disabled within the meaning of this Charter unless such disability shall be determined by the council at a hearing held upon notice to the mayor for the purpose of making such determination. The appointment of a councilor as acting mayor shall not be deemed to create a vacancy in the office of councilor-at-large, but while serving as acting mayor such councilor shall not perform city council duties.

The compensation of the acting mayor during the absence or disability of the mayor shall be set by the city council in an amount commensurate with the duties required of the acting mayor from time to time.

Section 2. That this ordinance shall take effect 90 days after its passage and publication.

STATEMENT OF PURPOSE: This ordinance amends Section 4 of the City Charter to allow an eligible person chosen to fill a vacancy to serve until the first Monday in January after an election for that position has been held. The proposed charter change was reviewed and recommended by the Charter commission at its meeting of July 8, 2015.

This ordinance requires a unanimous vote for approval.

Sponsors: Gardner

This Ordinance was read for the first time.

Enactment No: 10398

- 22. 15-061-O** AN ORDINANCE AMENDING CHAPTER II, SECTION 5, OF THE CITY CHARTER TO ESTABLISH A PROCEDURE TO SET THE FEE PAID TO CITY COUNCIL MEMBERS FOR SERVING AS MEMBERS OF THE CITY COUNCIL.

AN ORDINANCE AMENDING CHAPTER II, SECTION 5, OF THE CITY CHARTER TO ESTABLISH A PROCEDURE TO SET THE FEE PAID TO CITY COUNCIL MEMBERS FOR SERVING AS MEMBERS OF THE CITY COUNCIL.

CITY PROPOSAL/BY COUNCILOR GARDNER:

Section 1. That Chapter II, Section 5, of the 1912 Home Rule Charter of the city of Duluth, as amended, is hereby amended, to read as follows:

Section 5. The salary of the mayor shall be set by the council.

The council shall provide in the annual operating budget a contingent fund of five thousand dollars (\$5,000) unless and until increased by the council. This fund may be expended by the mayor for such public purposes as the mayor may deem proper.

The appointed chief administrative officer shall be paid a salary set by the mayor with the approval of the council.

The council shall not decrease the salary of any mayor or incumbent chief administrative officer, except prior to the general municipal election, and to take effect at the beginning of the next term of office for mayor.

The councilors shall be paid a fee of ~~eight hundred thirty-three dollars (\$833) per month~~ for service as a member of the council. The Charter commission shall determine a suitable fee for service and recommend said fee to the council. The council must approve the recommended fee by at least a two-thirds vote. The new fee amount may not take effect until the month of January after the next municipal election. Service as a member of the council, to be eligible for this fee, shall require that the councilor shall be present and in attendance for at least one full formal meeting of the council during the month for which this fee is paid.

Section 2. That this ordinance shall take effect 90 days after its passage and publication.

STATEMENT OF PURPOSE: This ordinance amends Section 5 of the City Charter to allow the charter commission to set the fee paid to council members. The council must approve the fee by a two-thirds vote. The new fee amount will take effect the month of January after the next succeeding municipal election.

The proposed Charter change was reviewed and recommended by the

Charter commission at its meeting of July 8, 2015.

This ordinance requires a unanimous vote for approval.

Sponsors: Gardner

This Ordinance was read for the first time.

- 23. 15-062-O** AN ORDINANCE AMENDING CHAPTER II, SECTION 4, OF THE CITY CHARTER TO ALLOW THE CITY COUNCIL TO CHOOSE AN ELIGIBLE PERSON BY COIN TOSS TO FILL A VACANCY IF THE COUNCIL IS DEADLOCKED.

AN ORDINANCE AMENDING CHAPTER II, SECTION 4, OF THE CITY CHARTER TO ALLOW THE CITY COUNCIL TO CHOOSE AN ELIGIBLE PERSON BY COIN TOSS TO FILL A VACANCY IF THE COUNCIL IS DEADLOCKED.

CITY PROPOSAL/BY COUNCILOR GARDNER:

The city of Duluth does ordain:

Section 1. That Chapter II, Section 4, of the 1912 Home Rule Charter of the city of Duluth, as amended, is hereby amended to read as follows:

Section 4. The office of mayor or councilor shall be deemed vacant in case of failure to qualify within ten (10) days after election, or by reason of death, resignation, removal from the city or the district except as in Section 2 provided, conviction of a felony, violation of any of the duties of office, which, by provisions of this Charter, render the office vacant, or continuous absence from the city for more than thirty days, but if additional time is needed, leave may be granted by the council for a longer absence.

If any such vacancy occurs (other than by recall or resignation after recall petition is filed) the Council shall without delay appoint an eligible person to fill the same until the next municipal election, when the office shall be filled by election for the unexpired term. If the council vote to appoint an eligible person to fill a vacancy results in a deadlock, an eligible person will be chosen by coin toss.

In the case of an absence of shorter duration than renders the office of mayor vacant, or in the event of disability of the mayor, the mayor's duties shall be filled by an acting mayor who shall be appointed by the mayor from the councilors-at-large after each general municipal election. Should the mayor become disabled or be absent for more than ten (10) days without having appointed an acting mayor, the district councilors, by majority vote, shall appoint one of the councilors-at-large as acting mayor. The mayor shall not be considered disabled within the meaning of this Charter unless such disability shall be determined by the council at a hearing held upon notice to the mayor for the purpose of making such determination. The appointment of a councilor as acting mayor shall not be deemed to create a vacancy in the office of councilor-at-large, but while

servicing as acting mayor such councilor shall not perform city council duties.

The compensation of the acting mayor during the absence or disability of the mayor shall be set by the city council in an amount commensurate with the duties required of the acting mayor from time to time.

Section 2. That this ordinance shall take effect 90 days after its passage and publication.

STATEMENT OF PURPOSE: This ordinance amends Section 4 of the City Charter to specify that if the city council should deadlock when choosing an eligible person to fill a vacancy, the person will be chosen by coin toss. Minnesota Statute, Sec. 204C.34, allows for usage of a coin toss to break an election deadlock.

The proposed charter change was reviewed and recommended by the Charter commission at its meeting of July 8, 2015.

This ordinance requires a unanimous vote for approval.

Sponsors: Gardner

This Ordinance was read for the first time.

Enactment No: 10399

COMMITTEE 2

BY PRESIDENT LARSON (COMMITTEE OF THE WHOLE)

24. 15-064-O AN ORDINANCE AMENDING CHAPTER I, SECTION 1, OF THE CITY CHARTER AMENDING THE LEGAL DESCRIPTION FOR THE CITY OF DULUTH.

AN ORDINANCE AMENDING CHAPTER I, SECTION 1, OF THE CITY CHARTER AMENDING THE LEGAL DESCRIPTION FOR THE CITY OF DULUTH.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That Chapter I, Section 1 of the 1912 Home Rule Charter of the city of Duluth, as amended, is hereby amended, to read as follows:

Section 1. The city of Duluth in the County of St. Louis and State of Minnesota shall continue to be, upon the adoption of this Charter, a municipal corporation of the same name, and with the same boundaries as it now has, to-wit: Commencing at a point where the north line of section twenty-five (25) township fifty-one (51) north of range thirteen (13) west, in St. Louis County, Minnesota, intersects the shore line of Lake Superior; thence west to the northwest corner of section twenty-six (26), in said township fifty-one (51) north of range thirteen (13) west; thence south to the

quarter corner post on the west line of said section twenty-six (26); thence west to the center of section twenty-seven (27) in said township fifty-one (51) north of range thirteen (13) west; thence south to the quarter corner post on the south line of said section twenty-seven (27); thence west to the northwest corner of section thirty-five (35) in township fifty-one (51) north of range fourteen (14) west; thence south to the southwest corner of said section thirty-five (35); thence west to the northwest corner of township fifty (50) north of range fourteen (14) west (A.); thence south to the southwest corner of said township fifty (50) north of range fourteen (14) west; thence west to the northwest corner of section two (2) in township forty-nine (49) north of range fifteen (15) west (B.); thence south to the southwest corner of section fourteen (14) in said township forty-nine (49) north of range fifteen (15) west, thence west to the northwest corner of section twenty-two (22) in said township forty-nine (49) north of range fifteen (15) west; thence south to the southwest corner of section thirty-four (34) in said township forty-nine (49) north of range fifteen (15) west; thence west on the town line between township forty-eight (48) north of range fifteen (15) west and township forty-nine (49) north of range fifteen (15) west, to the southwest corner of said township forty-nine (49) north of range fifteen (15) west; thence south on the range line between township forty-eight (48) north of range fifteen (15) west and township forty-eight (48) north of range sixteen (16) west, to the center line of the channel of the St. Louis River; thence easterly along the center line of the channel of said river to the state boundary line between the States of Minnesota and Wisconsin; thence along said state boundary line to the mouth of the St. Louis River at the entry of the Bay of Superior between Minnesota and Wisconsin points; thence in a straight line to the place of beginning.

By and in its corporate name, it shall have perpetual succession; save as herein otherwise provided and save as prohibited by the Constitution or Statutes of the State of Minnesota, it shall have and exercise all powers, functions, rights and privileges possessed by the city of Duluth prior to the adoption of this Charter; also all powers, functions, rights and privileges now or hereafter given or granted to municipal corporations of the first class having "home rule charters" by the Constitution and laws of the State of Minnesota; also all powers, functions, rights and privileges usually exercised by, or which are incidental to, or inhere in, municipal corporations of like power and degree; also all municipal power, functions, rights, privileges and immunities of every name and nature whatsoever; and in addition, it shall have all the powers, and be subject to the restrictions contained in this Charter. In its corporate name, it may take and hold, by purchase, condemnation, gift or devise, and lease and convey any and all such real, personal or mixed property, within or without its boundaries as its purposes may require, or as may be useful or beneficial to its inhabitants.

Section 1(A). Certain lands upon which the Duluth International Airport is located were annexed to the corporate limits of the city of Duluth

by Ord. No. 7564, passed February 13, 1967, under authority of M.S.A. 414.03, Subd. 2.

Section 1(B). Certain lands upon which the South St. Louis County fairgrounds is located were detached from the corporate limits of the city of Duluth by Resolution No. 11-0052 and subsequent order by the state of Minnesota chief administrative law judge, under authority of M.S.A. 414.061, Subd. 1.

Section 1(C). Certain lands formerly in Midway Township were annexed to the corporate limits of the city of Duluth by Ord. No. 10321, passed July 21, 2014, under authority of M.S.A. 414.0325.

Section 2. That this ordinance shall take effect 90 days after its passage and publication.

STATEMENT OF PURPOSE: This ordinance amends Section 1 of the City Charter amending the municipal boundaries of the city of Duluth.

The proposed charter change was reviewed and recommended by the Charter commission at its meeting of April 10, 2013.

This ordinance requires a unanimous vote for approval.

This Ordinance was read for the first time.

Enactment No: 10400

The following entitled ordinances were read for the second time:

COMMITTEE 1

BY COUNCILOR FILIPOVICH (FINANCE)

25. 15-059-O AN ORDINANCE AMENDING CHAPTER 8, SECTION 41, OF THE DULUTH CITY CODE, 1959, AS AMENDED, ELIMINATING THE PROHIBITION AGAINST GRANTING ALCOHOLIC BEVERAGE LICENSES TO CITY OFFICIALS NOT EMPLOYED IN THE POLICE OR FIRE DEPARTMENTS.

AN ORDINANCE AMENDING CHAPTER 8, SECTION 41, OF THE DULUTH CITY CODE, 1959, AS AMENDED, ELIMINATING THE PROHIBITION AGAINST GRANTING ALCOHOLIC BEVERAGE LICENSES TO CITY OFFICIALS NOT EMPLOYED IN THE POLICE OR FIRE DEPARTMENTS.

BY COUNCILOR FILIPOVICH::

The city of Duluth does ordain:

Section 1. That Chapter 8, Section 41, of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 8 41. Types generally.

(a) With respect to intoxicating liquor, there shall be the following types of licenses: on sale, on sale club, on sale wine, on sale culinary class, on sale theater, on sale brewer taproom, on sale microdistillery cocktail room, temporary on sale, off sale and a brewery malt liquor off sale;

(b) On sale licenses authorize the licensee to sell intoxicating liquor at retail for consumption only on the licensed premises. The following additional requirements apply to specific types of on sale licenses:

(1) On sale culinary class licenses authorize on sales subject to the restrictions of Section 8-44(d) of this Chapter and Minnesota Statutes Section 340A.4041, or its successor;

(2) On sale theater licenses authorize on sales each day of the week to persons attending events at the theater;

(3) On sale brewer taproom licenses authorize on sales of malt liquor produced by the brewer for consumption on the premises of or adjacent to one brewery location owned by the brewer, subject to the restrictions of this Chapter and Minnesota Statutes Section 340A.301, subd. 6(b), or its successor. Notwithstanding Section 8-17 of this Chapter or Minnesota Statutes Section 340A.504, subdivision 3, a taproom may be open and may conduct on sale business on Sundays if authorized by the city in the license. All Sunday sales are subject to the limitation on hours of sale provided in Section 8-46 of this Chapter;

(4) On sale microdistillery cocktail room licenses authorize on sales of distilled liquor produced by the distiller for consumption on the premises of or adjacent to one distillery location owned by the distiller subject to the restrictions of Section 8-44(h) of this Chapter and Minnesota Section 340A.22 or its successor;

(5) Temporary on sale licenses authorize temporary on sales in connection with a social event sponsored by the licensee and only at the designated licensed premise;

(c) Except as provided herein, off sale licenses authorize the licensee to sell intoxicating liquor at retail in original packages only for consumption off the licensed premises. The following additional requirements apply to specific types of off sale licenses:

(1) Brewery malt liquor licenses permit breweries holding on sale licenses, or breweries that manufacture fewer than 3,500 barrels of malt liquor in a year, to sell malt liquor off sale in 64-ounce containers commonly known as growlers, subject to the restrictions in Minnesota Statutes, Section 340A.301, subd. 7(b), or its successor, and this Chapter;

(2) Notwithstanding the provisions of sections 8-21 and 8-22 of this Chapter, it shall be lawful for the holder of an off sale intoxicating liquor license or a brewery malt liquor off sale license to provide samples as provided in Minnesota Statutes, Section 340A.510, or its successor;

(d) With respect to 3.2 percent malt liquor, there shall be three types of licenses: on sale, off sale and temporary on sale. Each type of 3.2 percent malt liquor license authorizes the licensee to sell 3.2 percent malt liquor subject to the following additional requirements applicable to the specific

type of license:

(1) On sale licenses authorize the sale of 3.2 percent malt liquor at retail for consumption only on the licensed premises;

(2) Off sale licenses authorize the sale of 3.2 percent malt liquor at retail in original packages for consumption only off the licensed premises;

(3) Temporary on sale licenses authorize the sale of 3.2 percent malt liquor at retail for a limited period of time, and only at the designated licensed premise;

(e) No alcoholic beverage license of any type shall be granted ~~to any~~ ~~elective, appointed, executive or administrative officer of the city,~~ to any employee holding a position in the classified service of the city and working as a licensed peace officer in the police department, to any police chief, deputy chief of police, fire chief, deputy fire chief, fire marshal or deputy fire marshal, nor shall any such officer or employee engage in the business, be employed by an establishment licensed by the city, or have an ownership interest in such business licensed by the city.

(Effective Date: August 26, 2015)

STATEMENT OF PURPOSE: The purpose of this ordinance is to eliminate the prohibition against granting an alcoholic beverage license to elective, appointed, executive or administrative city officials who are not employed in the fire or police department and to have the city of Duluth's alcoholic beverage license requirements be consistent with state statutes.

Sponsors: Filipovich

A motion was made that this Ordinance be adopted. The motion carried by the following vote:

Yea: 8 - Councilors Filipovich, Fosle, Gardner, Hanson, Julsrud, Krug, Russ and Sipress.

Absent: 1 - President Larson

Enactment No: 10416

COMMITTEE 2

BY COUNCILOR RUSS (PLANNING & ECONOMIC DEVELOPMENT)

26. 15-055-O AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH TO PROVIDE FOR THE RECLASSIFICATION FROM RR-1 TO MU-B 160 ACRES ALONG THE EAST SIDE OF RICE LAKE ROAD SOUTH OF RIDGEVIEW ROAD (JLH PROPERTIES OF DULUTH LLC).

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH TO PROVIDE FOR THE RECLASSIFICATION FROM RR-1 TO MU-B 160 ACRES ALONG THE EAST SIDE OF RICE LAKE ROAD SOUTH OF RIDGEVIEW ROAD (JLH PROPERTIES OF DULUTH LLC).

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That approximately 160 acres of land located on the east side of Rice Lake Road south Ridgeview Road and as more particularly described as follows:

Northwest Quarter of Section 5, Township 50 North of Range 14 West of the Fourth Principle Meridian, Saint Louis County, Minnesota; be reclassified from Residential-Rural 1 (RR-1) to Mixed Use-Business Park (MU-B), 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 shown on the attached map.

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective Date: August 26, 2015)

STATEMENT OF PURPOSE: This zoning map amendment provides a zoning change from RR-1 to MU-B for 160 acres of land on the east side of Rice Lake Road south of Ridgeview Road.

On May 12, 2015, the Duluth city planning commission held a public hearing on the proposal and tabled the matter to learn more about why the comprehensive plan future land use map designated the property general mixed use. The attached memo, in addition to the staff report, provides explanations. On June 9, 2015 the Duluth city planning commission voted 8 yeas, 0 nays and 0 abstentions, to recommend that the city council approve the rezoning requested for the following reasons:

This proposed MU-B District is consistent with the comprehensive land use plan future land use map designation for the property of general mixed use. The planning commission review of the platting of the property and/or application of UDC development standards during staff review of development proposals for the site will allow for implementation of the purpose statement of the MU-B zone district through setting aside land for natural resources protections, buffering to protect surrounding properties from possible impacts, and the evaluation of transportation connections to the site.

The applicant did not submit written consent of 2/3 of property owners within 100 feet of the property to be rezoned. Therefore, the motion to approve the rezoning ordinance must prevail with an affirmative vote of 6/9 of the city council.

Date of application: April 10, 2015

Action deadline: August 8, 2015

Petitioner:

JLH Properties of Duluth LLC
4843 Rice Lake Road

Duluth, MN 55803

PL 15-064

Attachments: [Map Attachment](#)
[Staff Report and Attachments](#)

A motion was made that this Ordinance be adopted. The motion carried by the following vote:

Yea: 8 - Councilors Filipovich, Fosle, Gardner, Hanson, Julsrud, Krug, Russ and Sipress.

Absent: 1 - President Larson

Enactment No: 10417

- 27. 15-056-O** AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1 TO P-1, FOR CONGDON PARK, LONGVIEW TENNIS COURTS, MORLEY PARK, OLD MAIN PARK AND WAVERLY PARK (CITY OF DULUTH).

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH AS REFERENCED IN CHAPTER 50 OF THE DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE FOR THE RECLASSIFICATION FROM R-1 TO P-1, FOR CONGDON PARK, IONGVIEW tENNIS cOURTS, mORLEY PARK, OLD MAIN PARK AND WAVERLY PARK (CITY OF DULUTH).

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That the subject properties located on located on the eastern and northeast portions of the city and as more particularly described as follows:

010-0710-00240
010-2710-03625
010-4120-00520
010-3320-00560
010-1380-03455
010-4450-00830
010-2610-01320

be reclassified from Residential-Traditional (R-1) to Park and Open Space (P-1), 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 shown on the attached map.

Section 2. That this ordinance shall take effect and be in force 30 days from and after its passage and publication.

STATEMENT OF PURPOSE: This zoning map amendment provides a zoning change for the park properties located on the eastern portion of the City including Congdon Park, Longview Tennis Courts, Morley Heights Park, Old Main Park and Waverly Park from the current zoning districts of Residential- Traditional(R-1) to Park and Open Space (P-1).

On February 11, 2015 the Duluth parks and recreation commission unanimously passed a resolution in support of the rezoning of city park property.

On June 9, 2015, the Duluth city planning commission held a public hearing on the proposal and voted 8 yeas, 0 nays and 0 abstentions, to recommend that the city council approve the rezoning requested for the following reasons:

Rezoning to Park and Open Space (P-1) is the zone most reasonably able to implement the objectives of the comprehensive plan related to the proposed land use for this area.

The rezoning is consistent with the comprehensive-plan future land use map.

While providing protection for this area, the P-1 zone will also provide flexibility to permitted uses the ability to improve their facilities, via the special use permit process as required by Section 50-37.10, in order to increase their public benefit.

Material adverse impacts on nearby properties are not anticipated.
(Effective Date: August 26, 2015)

licable
ble

Petitioner:
City of Duluth
Planning Division
Room 208
City Hall
Duluth, Minnesota

PL 15-082

Attachments: [Zoning Map Attachment](#)
[Staff Report and Attachments](#)

A motion was made that this Ordinance be adopted. The motion carried by the following vote:

Yea: 8 - Councilors Filipovich, Fosle, Gardner, Hanson, Julsrud, Krug, Russ and Sipress.

Absent: 1 - President Larson

Enactment No: 10418

28. 15-058-O AN ORDINANCE GRANTING A CONCURRENT USE PERMIT FOR UNDERGROUND UTILITIES IN THE RIGHT OF WAY OF 5TH AVENUE EAST BETWEEN 2ND STREET AND 4TH STREET (ESSENTIA HEALTH)

AN ORDINANCE GRANTING A CONCURRENT USE PERMIT FOR UNDERGROUND UTILITIES IN THE RIGHT-OF-WAY OF FIFTH AVENUE EAST BETWEEN SECOND STREET AND FOURTH STREET (ESSENTIA HEALTH).

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. Under the authority of Section 100 of the 1912 Home Rule Charter of the city of Duluth, as amended, and subject to the conditions, limitations and restrictions hereinafter set forth, permission is granted to Essentia Health, and its successor(s) in interests, referred to herein as the permittee, to construct and maintain the following:

(a) Private underground utilities to provide emergency power generation and communications wiring for the Essentia campus, to include the following: two underground concrete duct banks, electrical conduit, and a 4" PVC sump drain in the right of way of 5th Avenue E, approximately between the E 3rd Street alley and just south of E 4th Street, as shown in the exhibits.

Section 2. Before this ordinance shall be effective for any purpose whatsoever, the permittee shall file with the planning division a certification of insurance approved as to form by the city attorney evidencing that the permittee has in force a policy of insurance meeting the following requirements:

(a) Comprehensive general liability insurance in an amount not less than \$1,500,000 for bodily injuries and in an amount not less than \$500,000 for property damage or \$1,500,000 single limit coverage; and

(b) Insurance coverage shall include all permittee's activities occurring upon or within public right of way or easement occupied pursuant to this ordinance whether said activities are performed by the permittee or its agents or representatives; and

(c) The insurance policy shall be approved by the city attorney; and

(d) The policy shall contain a condition that it may not be canceled without 30 days written notice to the city of Duluth and directed to the attention of the city attorney; and

(e) The city of Duluth shall be named as an additional insured; and

(f) The certificate shall also reference this ordinance by its ordinance number.

Section 3. The permit granted by this ordinance may be terminated at any time by the city official exercising departmental authority of the public easement if the city of Duluth determines to use the area occupied by the permittee for any public purpose in accordance with the duly dedicated public easement or other lawful use.

Unless a shorter notice period is necessitated by emergency circumstances, or the violation of the conditions set forth in this ordinance, giving the permittee 30 days written notice delivered to the last known electronic address, facsimile number, or mailing address of the permittee shall be sufficient notice of termination.

Upon termination permittee shall cause all private improvements to be removed by the deadline provided in termination notice. Permittee shall be responsible for all costs incurred to remove the private improvements, including any costs associated with repairing damage caused to the public easement by the removal and without right to claim from the city of Duluth, or any of its officers, agents or servants, any compensation or reimbursement for damages of any kind whatsoever.

Section 4. By accepting the terms of this ordinance, the permittee agrees to hold harmless and defend and indemnify the city of Duluth against claims or demand which may arise against the city of Duluth by reason of the existence of private improvements, or any act or omission of the permittee, its employees, agents, and assigns. The permittee agrees that the city of Duluth shall not be liable for damage caused to the private improvements while the city engages in the repair and maintenance to, or replacement of, the public improvements or public utilities, including any snow removal operations. The permittee agrees to pay to the city of Duluth all extra costs of installation of any public improvements or public utilities made necessary by the presence of the private improvements.

Section 5. The permittee shall, at its expense, protect, support, temporarily disconnect, or remove from the public easement, the private improvements when required by city officials by reason of snow removal, traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines and tracks, the installation or repair of any type of structures or improvements by governmental agencies, when acting in a governmental or proprietary capacity.

Section 6. Upon the sale or transfer of permittee's interest in the permit granted by this ordinance, the permittee shall provide written notice to the planning division within five days of such transfer. The permittee's successor in interest shall file with the planning division within ten days of such transfer a duly executed and acknowledged written acceptance of the terms of this ordinance and the certificate of insurance required in Section 2 above.

Section 7. The permit granted by this ordinance is subject to termination by the city of Duluth upon permittee's failure to comply with any of the terms and conditions of this permit. Ten days written notice, delivered as provided in Section 3 above shall be sufficient notice of termination. Upon termination, permittee shall remove the private improvements as provided in Section 3.

Section 8. The permittee shall observe the following conditions:

(a) Permittee's use of the public right of way or easement shall be limited to the designated area described in Section 1 above and further shown on the exhibits; and

(b) Permittee agrees that the private improvements shall be constructed and maintained in such a manner so as in no way interfere with or damage any portion of any public improvement, or other public utilities now or to hereinafter located in any part of said public easement.

(c) Maintenance of the duct banks, conduit, and sump drain, and all other utilities in this right of way owned by permittee, will be the responsibility of the permittee, including performing locates when needed.

(d) Permittee shall provide the City with as-built information once improvements are installed.

Section 9. The following events shall automatically cause the termination of the term of this ordinance:

(a) The failure by the permittee to file the required insurance certificate as specified in Section 2 30 days after this ordinance takes effect; or

(b) The failure of the permittee to commence the improvements authorized by this ordinance within 180 days after this ordinance takes effect.

Section 10. That this ordinance shall take effect and be in force 30 days from and after its passage and publication. (Effective Date: August 26, 2015)

STATEMENT OF PURPOSE: This ordinance grants Essentia Health a concurrent use permit for right of way of 5th Avenue E, between the E 3rd Street alley and E 4th Street, for private underground utilities providing emergency power and communications.

On June 9, 2015, the planning commission held a public hearing on the proposal, and voted 8 yeas, 0 nays, and 0 abstentions to recommend that the city council approve the request for a concurrent use of streets.

Petition received: May 1, 2015

Action deadline: August 29, 2015

Applicant
Essentia Health
Attn: John Rice
502 E 2nd Street
Duluth, MN 55805

PL 15-076

Attachments: [Legal Description](#)
[Exhibit](#)
[Staff Report and Attachments](#)

A motion was made that this Ordinance be adopted. The motion carried by the following vote:

Yea: 8 - Councilors Filipovich, Fosle, Gardner, Hanson, Julsrud, Krug, Russ and Sipress.

Absent: 1 - President Larson

Enactment No: 10419

COMMITTEE 3

BY COUNCILOR FOSLE (PUBLIC SAFETY)

29. 15-057-O AN ORDINANCE AMENDING CHAPTER 33, SECTION 91, OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO UNATTENDED MOTOR VEHICLES.

AN ORDINANCE AMENDING CHAPTER 33, SECTION 91, OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO UNATTENDED MOTOR VEHICLES.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1: That Chapter 33, Section 91, of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 33 91. Keys to be removed from unattended vehicles.

Except for police officers and other public safety employees engaged in the performance of their official duties, No person shall leave a motor vehicle, except a truck which is engaged in loading or unloading, unattended on any street, alley, used car lot or unattended parking lot without first stopping the engine, locking the ignition and removing all ignition keys from the vehicle; provided, however, that any violation of these provisions shall not mitigate the offense of stealing such motor vehicle, nor shall such violation be used to effect a recovery in any civil action for theft of such motor vehicle, or the insurance thereon, or have any other bearing in any civil action.

Whenever any police officer of the city shall find any such motor vehicle standing in violation of the foregoing provisions, such police officer is authorized and directed to remove therefrom the keys left therein and to deliver the same to the officer in charge at police headquarters.

Section 2: That this ordinance shall take effect 30 days after its passage and publication. (Effective Date: August 26, 2015)

STATEMENT OF PURPOSE: This ordinance amends Chapter 33, Section 91, of the Duluth City Code to exempt police officers and other public safety officials from the requirements of the section while engaged in their official duties. This amendment is in response to the decision of the Minnesota Court of Appeals in *Briggs v Rasicot*, (A14-2022, Minn. App. 6/29/2015). In *Briggs* an officer left his squad running and unlocked during an attempted arrest. The suspect stole the squad and caused an accident resulting in death to an occupant of a civilian vehicle. The court held that the officer and the city that employed the officer were liable because the city code, which is similar to Section 91, did not exempt the officer from the requirements of the code. Because it is not practicable for officers and other public safety employees to always lock their vehicles while engaged in their official duties, it is necessary to amend Section 91 in order to avoid liability for the theft of a public safety vehicle.

A motion was made that this Ordinance be adopted. The motion carried by the following vote:

Yea: 8 - Councilors Filipovich, Fosle, Gardner, Hanson, Julsrud, Krug, Russ and Sipress.

Absent: 1 - President Larson

Enactment No: 10420

The meeting was adjourned at 7:24 p.m.