

**MINUTES OF THE REGULAR MEETING
OF THE DULUTH CITY COUNCIL**

May 26, 2015

Duluth City Council meeting held on Tuesday, May 26, 2015, 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

Roll call: Present: Councilors Filipovich, Fosle, Gardner, Hanson, Julsrud, Russ, Sipress and President Larson -- 8

Absent: Councilor Krug -- 1

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PRESENTATION OF PETITIONS AND OTHER COMMUNICATIONS

15-0526-01 Minnesota state auditor audit report for Duluth transit authority for the years ended December 31, 2014, and 2013. -- Received

15-0526-02 Jason Beckman communication regarding the proposed funding for the Housing Access Center (15-0296R). -- Received

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REPORTS OF BOARDS AND COMMISSIONS

15-0526-03 Heritage preservation commission minutes of January 27, 2015, meeting. -- Received

15-0526-04 Parks and recreation commission minutes of December 10, 2014, meeting. -- Received

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REPORTS OF COUNCIL OPEN ISSUES

Councilor Hanson presented the May 2015 Duluth Distinguished Artists award to Amy Peterson who has shared her amazing photographic talent, sincere personal friendship and creativity to contribute to the growth of the Duluth still photography community, and whose amazing photography continues to inspire both viewers of her unique photographs and other regional professional and amateur still photographers. He added that her digital and print work also captures some of the best people, places and things Duluth has to offer.

Amy Peterson thanked the council for this recognition.

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RESOLUTION TABLED

President Larson moved to remove Resolution 15-0288, amending resolution 14-0599, adopting license, permit, fine, penalty and other charges for 2015, to amend the 2015 fee schedule to add a microdistillery off sale license fee, from the table, which motion was seconded and carried unanimously.

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President Larson moved to suspend the rules to consider Ordinance 15-034 at this time, which motion was seconded and unanimously carried.

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INTRODUCTION AND CONSIDERATION OF ORDINANCE

The following entitled ordinance was read for the first time:

BY PRESIDENT LARSON

15-034 (10377) - AN ORDINANCE AMENDING CHAPTER 8 OF DULUTH CITY CODE, 1959, AS AMENDED, TO ALLOW THE ISSUANCE OF MICRODISTILLERY OFF SALE LICENCES AND TEMPORARY ON SALE LIQUOR LICENSES TO MICRODISTILLERIES.

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

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Resolution 15-0288 was adopted as follows:

BY PRESIDENT LARSON:

RESOLVED, that Resolution 14-0599 adopting license, permit, fine, penalty and other charges for 2015, be amended by adding a microdistillery off sale license fee.

Clerk	
Fee Name	2015 Fee
Alcoholic Beverage - Intoxicating Liquor - Microdistillery - Off Sale - Annual [I1]	\$213

Resolution 15-0288 was unanimously adopted.

Approved May 26, 2015

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

RESOLVED, that the assessment rolls levied for reassessment of prior cancellations following are hereby confirmed:

(a) Permanent street (Contract 70840 - assessable amount \$924.41) for Plat 4510, Parcel 01130, to be deposited in Fund 330;

(b) 2013 Delinquent garbage (Contract 2013420 - assessable amount \$356.96) for Plat 4510, Parcel 01130, to be deposited in Fund 110;

(c) 2014 Delinquent garbage (Contract 2014010 - assessable amount \$366.94) for Plat 4510, Parcel 01130, to be deposited in Fund 110;

(d) Permanent street (Contract 70690 - assessable amount \$1,595.95) for Plat 0760, Parcel 01170, to be deposited in Fund 330.

Resolution 15-0293 was unanimously adopted.

Approved May 26, 2015

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to contract with A.W. Kuettel & Sons for the replacement of three control valves and fifteen main isolation valves at Duluth Steam, in accordance with plans and specifications provided by Ever-Green Energy, the Duluth steam management company, dated April 2, 2015, and the contractor's low bid of

\$329,533, payable from Steam 540, Steam Department 920, Steam Non-Operating 1499, Improvements Other than Buildings 5530.

Resolution 15-0285 was unanimously adopted.

Approved May 26, 2015

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to contract with Diverse Construction Services for the replacement of the roofs at Fire Hall #4 and #7, in accordance with plans and specifications prepared by Northland Consulting Engineers, LLP, the consultant, dated November 11, 2014, and the contractor's low bid of \$156,900, payable as follows:

\$32,200. Capital Improvements 450; Finance 030; Buildings and Structures 5520; Project: CP2008-ot0820 - 2008 capital projects, citywide roof replacement;

\$44,100. Capital Improvements 450; Finance 030; Buildings and Structures 5520; Project: CP2013-1307B - 2013 capital projects, building citywide roof replacement;

\$80,600. Capital Improvements 450; Finance 030; Buildings and Structures 5520; Project: CP2015-1509B - 2015 capital projects, Fire Hall #4 upgrades.

Resolution 15-0287 was unanimously adopted.

Approved May 26, 2015

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to contract with Amendola Builders, Inc., for the Lakewalk stair repair, in accordance with the plans and specifications prepared by Northland Consulting Engineers, LLP, the consultant, dated March 25, 2015, and the contractor's low bid of \$182,950, payable from Capital Improvements 450; Finance 030; Improvements Other than Buildings 5530; Project: CP450-MALTSH - Malt Shoppe to Lakewalk stairs.

Resolution 15-0289 was unanimously adopted.

Approved May 26, 2015

DON NESS, Mayor

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RESOLVED, that:

(a) The city council finds a sufficient petition was filed with the city requesting the vacation 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, May 12, 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 described below and as described and depicted on Public Document No. 15-0526-07:

VACATION LEGAL DESCRIPTION:

That part of Lynn Avenue, the alley between Blocks 38 and 46, and the alley between Block 37 and 47, all in Rice's Point, according to the recorded plat thereof, filed in the St. Louis County Recorder's Office in Duluth, Minnesota, described as follows:

Beginning at the most westerly corner of Block 46, Rice's Point; thence South 27°49'50" East along the southwest line of said Block 46, it's southeasterly extension, and the southwest line of said Block 47 for a distance of 619.92 feet, more or less, to the right-of-way of the Northbound Garfield Ramp; thence North 54°03'40" West along the right-of-way of the

Northbound Garfield Ramp for a distance of 27.15 feet, more or less, to the northeast line of said Block 37; thence North 27°49'50" West along the northeast line of said Block 37 for a distance of 20.56 feet, more or less, to the most northerly corner of Block 37; thence South 62°10'10" West along the northwest line of said Block 37 for a distance of 10.13 feet, more or less, to the right-of-way of the Northbound Garfield Ramp; thence North 54°03'40" West along the right-of-way of the Northbound Garfield Ramp for a distance of 83.61 feet, more or less, to the southeast line of said Block 38; thence North 62°10'10" East along the southeast line of said Block 38 for a distance of 47.09 feet, more or less, to the most easterly corner of said Block 38; thence North 27°49'50" West along the northeast line of said Block 38 for a distance of 400.00 feet to the most southerly corner of property previously vacated by City of Duluth Resolution 08-0525; thence North 62°10'10" East along the southeast line of said previously vacated property for a distance of 4.00 feet to the most easterly corner of said previously vacated property; thence North 27°49'50" West along the northeast line of said previously vacated property for a distance of 100.00 feet to the most northerly corner of said previously vacated property; thence North 62°10'10" East on a line connecting the most northerly corner of said Block 38 and the most westerly corner of said Block 46 for a distance of 8.00 feet to the point of beginning.

Retaining a utility easement over that portion of said described vacation which lies northwest of the centerline of Lynn Avenue;

(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 and Public Document No. 15-0526-07 showing the platted easement to be vacated.

Resolution 15-0297 was unanimously adopted.

Approved May 26, 2015

DON NESS, Mayor

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RESOLVED, that:

(a) The city council finds a sufficient petition was filed with the city requesting the vacation 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, May 12, 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 described below and as described and depicted on Public Document No. 15-0526-08:

VACATION LEGAL DESCRIPTION:

That part of Elm Avenue in Rice's Point, according to the recorded plat thereof, filed in the St. Louis County Recorder's Office in Duluth, Minnesota, lying southwest of the United States Government Harbor Line and lying northeast of the northeast line of Helberg Drive, Helberg Drive as described by others as follows:

A 60.00-foot wide easement for roadway purposes, the centerline of said easement is described as follows:

Commencing at the southwest corner of Lot 2, First Subdivision of RICE'S POINT; thence on an assigned bearing of North 27 degrees 50 minutes 22 seconds West along the westerly line of said Lot 2 and its extension 745.00 feet to the point of beginning; thence North 62 degrees 09 minutes 38 seconds East 288.70 feet; thence 198.71 feet along a tangential curve, concave southwest, having a radius of 120.00 feet and a central angle of 94

degrees 52 minutes 30 seconds; thence South 22 degrees 57 minutes 53 seconds East 138.68 feet; thence 533.95 feet along a tangential curve, concave northeast, having a radius of 845.00 feet and a central angle of 36 degrees 12 minutes 18 seconds and said center line there terminating.

Together with an 80.00-foot wide easement for roadway purposes over, under, and across the above-described property. The centerline of said easement is described as follows:

Beginning at the terminus of the previously described centerline; thence South 59 degrees 10 minutes 11 seconds East 288.54 feet; thence 218.73 feet along a tangential curve, concave southwest, having a radius of 400.00 feet and a central angle of 31 degrees 19 minutes 49 seconds; thence South 27 degrees 50 minutes 22 seconds East 807.82 feet and said centerline there terminating.

Together with a 70.00-foot wide easement for roadway purposes over, under, and across the above-described property. Said easement being 40.00 feet to left and 30.00 feet to the right of the following described line:

Beginning at the terminus of the above-described line; thence 205.76 feet along a tangential curve, concave northeast, having a radius of 1340.00 feet and said line there terminating.

Together with an 80.00-foot wide easement for roadway purposes over, under, and across the above-described property. The centerline of said easement is described as follows:

Beginning at the terminus of the above-described line, thence 73.58 feet along a continuation of the above-described curve; thence South 39 degrees 47 minutes 01 seconds East 678.41 feet; and said centerline there terminating.

Together with a 60.00-foot wide easement for roadway purposes over, under, and across the above-described property. The centerline of said easement is described as follows:

Beginning at the terminus of the above-described line; thence continuing South 39 degrees 47 minutes 01 seconds East 71.43 feet; thence 137.75 feet along a tangential curve, concave northeast, having a radius of 300.00 feet and a central angle of 26 degrees 18 minutes 30 seconds; thence South 66 degrees 05 minutes 31 seconds East 83.38 feet; thence 199.53 feet along a tangential curve, concave southwest, having a radius of 300.00 feet and a central angle of 38 degrees 06 minutes 26 seconds; thence South 27 degrees 59 minutes 05 seconds East 60.00 feet and said centerline there terminating.

Said parcel contains 3.04 acres, more or less (Helberg easement description by others);

(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 and Public Document No. 15-0526-08 showing the platted easement to be vacated.

Resolution 15-0298 was unanimously adopted.

Approved May 26, 2015

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into a contract with A-Plus Landscaping, LLC, for Amity Creek bank stabilization in the amount of \$172,580, payable out of Disaster Recovery Fund 225, Department/Agency 125 (finance), Division 1807 (parks, recreation and other), Object 5400 (miscellaneous repair and maintenance services), City Project No. 1290, Flood Site No. 579d.

Resolution 15-0282 was unanimously adopted.

Approved May 26, 2015

DON NESS, Mayor

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RESOLVED, that Contract 22074 with LHB, Inc., for professional engineering services for construction administration and inspection for the 2012 flood repairs of Bridge Nos. 91143 (Third Street at Chester Creek), L6113 (Fourth Street at Tischer Creek), 88552 (Third Street at Miller Creek), 92277A - G, I and K (26th Avenue West at Miller Creek), and 92277H and J (26th Avenue West at Miller Creek) be amended to increase the amount by \$251,626 for a new total of \$448,624. This increase is due to the construction engineering phase for the bridge rehabilitation projects, and is payable from Disaster Recovery Fund 225, Department/Agency 125 (finance), Organization 1803 (roads and bridges), Object 5303 (engineering services) City Project Nos. 1175 (S.A.P. 118-126-020), 1176 (S.P. 118-133-007), 1178 (S.P. 118-126-021), 1235 (S.P. 118-109-019 and 118-194-007), and 1304 (FEMA and S.A.P. 118-173-010).

Resolution 15-0284 was unanimously adopted.

Approved May 26, 2015

DON NESS, Mayor

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RESOLVED, that Contract 21121 with MSA Professional Services, Inc., for design and construction services for five sanitary sewer lift stations be amended for additional engineering services associated with additional construction services for Lift Station No. 23, design and bidding services for Lift Station No. 39 flow meter, additional services for Pier B Lift Station, design of VVFD pumps at Lift Station No. 1, and a major change in scope for Lift Station No. 8 including expanded evaluation of pumps, modification to a wet well/dry well configuration and addition of a building, separate bidding and construction administration and adjustment to billing rates due to extended project schedule from 2010 to 2016, in the estimated amount of \$234,000 for a new total of \$527,288; payable from Sanitary Sewer Fund 530, Department 500 (public works and utilities), Division 1905 (capital improvements), Division 5536 (utility infrastructure improvements), City Project No. 0858SN.

Resolution 15-0294 was unanimously adopted.

Approved May 26, 2015

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to enter into a contract with A Plus Landscaping, LLC, for debris removal and stream bank stabilization at Keene Creek, Merritt Creek, Sargent Creek and Stewart Creek, in the amount of \$340,056, payable out of Disaster Recovery Fund 225, Department/Agency 125 (finance), Division 1807 (parks, recreation and other), Object 5400 (miscellaneous repair and maintenance services), City Project Nos. 1278, 1286 and 1291, Flood Site Nos. 585, 589, 592 and 593.

Resolution 15-0299 was unanimously adopted.

Approved May 26, 2015

DON NESS, Mayor

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RESOLVED, that pursuant to Section 2-176(a) of the Duluth City Code, 1959, as amended, the city council hereby states its intention to convey the West half of Lot 222, UPPER DULUTH LAKE AVENUE to facilitate the improvements to Sanitary Sewer Pump Station No. 8 serving the Park Point area.

Resolution 15-0303 was unanimously adopted.

Approved May 26, 2015

DON NESS, Mayor

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RESOLVED, that the proper city officers are hereby authorized to execute an agreement, substantially the same as that on file in the office of the city clerk as Public

Document No. 15-0526-09, with the Duluth transit authority (DTA) to fund one community based police officer position for and over a period of five years and accepting \$93,870 annually plus a three percent annual increase thereafter, said officer to work with the DTA to improve transit riders' safety, reduce crime and disorder, and improve quality of life to all areas serviced by the DTA at stops, hubs, on buses and other modes of transportation, funds to be payable to Fund 110-160-1610-4263.

Resolution 15-0280 was unanimously adopted.

Approved May 26, 2015

DON NESS, Mayor

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BE IT RESOLVED, that pursuant to Section 8-22(b) of the Duluth City Code, the Duluth City Council hereby authorizes consumption of alcoholic beverages in public places on the 1300 block of Commonwealth Avenue on June 26-28, 2015, to coincide with the Far West Fest special events license, provided that all alcoholic beverages consumed outside of the designated serving areas of licensed establishments be consumed only from paper or plastic cups.

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

Resolution 15-0291 was unanimously adopted.

Approved May 26, 2015

DON NESS, Mayor

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RESOLVED, that the proper city officials are hereby authorized to accept a grant award from the Minnesota department of public safety in the total amount of \$201,500 and to execute a grant agreement substantially the same as that on file in the office of the city clerk as Public Document No. 15-0526-06 for the purpose of funding one DWI police officer who will work exclusively on DWI enforcement, and to also fund a police vehicle and equipment for one year. Funds to be deposited into Fund #215-200-2211-4210-01 (Duluth police grant program, police, NHTSA DWI officers, pass-thru federal grants capital) and to be deposited in Fund# 215-200-2211-4210-02 (Duluth police grant programs, police, NHTSA DWI officers, pass-thru federal grants operating).

Resolution 15-0292 was unanimously adopted.

Approved May 26, 2015

DON NESS, Mayor

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RESOLVED, that the city council hereby authorizes the disbursement of grant funds from the parks fund neighborhood grants program to the following organizations in the following amounts, and further authorizes the proper city officials to execute a grant agreement with each organization receiving funds, amounts to be payable from Fund 205-130-1219-5439 (parks, community resources, parks operating, special projects and events):

Organization	Program Name	Rec Amt
Chester Bowl Improvement Club	Chester Bowl Safety Improvements	\$5,000
Cyclists of Gitchee Gumme Shores	Summer Maintenance Program	\$5,000
Duluth Cross-Country Ski Club	Lester/Amity Chalet Water Drainage Abatement	\$5,000

Organization	Program Name	Rec Amt
East Hillside Patch	Chester Creek: Taking Care with Shovel and Song	\$2,000
Friends of Keene Creek Park	Seating for Keene Creek Park	\$5,000
Glen Avon Hockey Association	Ice Rink Repairs	\$5,000
GND Development Alliance	GND Center Revitalization and Sod	\$5,000
Hartley Nature Center	Environmental Education Intern Support	\$5,000
University of Minnesota Foundation	Park Point Beach Safety Kit Boxes	\$3,000
Woodland Amateur Hockey	Lower Rink Maintenance Free Boards	\$5,000
Arrowhead Zoological Society	John Deere Riding Lawn Mower Purchase	\$5,000
Total		\$50,000

Resolution 15-0301 was unanimously adopted.

Approved May 26, 2015

DON NESS, Mayor

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RESOLVED, that the city council hereby approves the Duluth Cross Country Ski Trail master plan and authorizes implementation of the plan, in partnership with the Duluth Cross Country Ski Club, as funding becomes available.

Resolution 15-0302 was unanimously adopted.

Approved May 26, 2015

DON NESS, Mayor

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The following resolutions were also considered:

Resolution 15-0296, authorizing an agreement in the amount of \$40,000 for the Housing Access Center, was introduced by Councilor Filipovich.

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

Rebecca Domagala, Bill Anderson, Sarah Fritz, Rick Klun Cynthia Finley expressed support for the resolution.

Allan Kehr expressed concerns about the resolution.

Resolution 15-0296 was adopted as follows:

RESOLVED, that the proper city officials are hereby authorized to enter into an agreement of \$40,000 to fund a housing access center run by One Roof Community Housing from the general fund as follows:

Department 700 – Transfers and other functions...\$40,000

FURTHER RESOLVED, that the city's funding in the amount of \$40,000 is contingent upon a \$20,000 match from the housing and redevelopment authority of Duluth.

FURTHER RESOLVED, that a funder's review will take place 18 months after the implementation of these funds.

Resolution 15-0296 was unanimously adopted.

Approved May 26, 2015

DON NESS, Mayor

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Resolution 15-0286, awarding a contract to the Jamar Company for roof replacements at Fire Hall #10 and the animal shelter in the amount of \$141,500, was introduced by Councilor Hanson.

Councilor Hanson moved to return the resolution to the administration as per their request, which motion was seconded and unanimously carried.

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RESOLVED, that the proper city officials are hereby authorized to purchase 12 months of NAF plus software and a five megabyte flat plan from PreCise MRM, LLC, for the ongoing data and network costs of the current GPS/AVL system, for a total amount of \$134,664, payable as follows:

\$4,092. General 110-Planning and Construction Services 132-Construction Services and Inspection 1304-Software Licenses and Maintenance Agreements 5414;

\$4,092. General 110-Public Administration 121-Facilities Management 1222-Software Licenses and Maintenance Agreements 5414;

\$1,488. General 110-Fire 150-Operations 1502-Software Licenses and Maintenance Agreements 5414;

\$1,860. Fleet Services 660-Public Administration 015-Software Licenses and Maintenance Agreements 5414;

\$744. General 110-Public Administration 121-Library Services 1218-Software Licenses and Maintenance Agreements 5414;

\$12,276. General 110-Public Administration 121-Maintenance Operations 1217-Park Maintenance 2145-Software Licenses and Maintenance Agreements 5414;

\$3,720. General 110-Public Administration 121-Maintenance Operations 1217-Traffic Operations 2130-Software Licenses and Maintenance Agreements 5414;

\$20,460. General 110-Police 160-Administration and Investigation 1610-Software Licenses and Maintenance Agreements 5414;

\$1,860. Street Lighting Utility 550-Public Administration 120-Software Licenses and Maintenance Agreements 5414;

\$33,852. General 110-Public Administration 121-Maintenance Operations 1217-Street Maintenance 2140-Software Licenses and Maintenance Agreements 5414;

\$744. Parks 205-Community Resources 130-Parks Operating 1219-Software Licenses and Maintenance Agreements 5414;

\$1,116. Parking 505-Public Administration 015-On Street Parking and Enforcement 1481-Software Licenses and Maintenance Agreements 5414;

\$2,976. General 110-Public Works and Utilities 500-Engineering 1930-Transportation Engineering 2300-Software Licenses and Maintenance Agreements 5414;

\$13,020. Water 510-Public Works and Utilities 500-Utility General Expense 1915-Software Licenses and Maintenance Agreements 5414;

\$18,600. Gas 520-Public Works and Utilities 500-Utility General Expense 1915-Software Licenses and Maintenance Agreements 5414;

\$8,928. Sewer 530-Public Works and Utilities 500-Utility General Expense 1915-Software Licenses and Maintenance Agreements 5414;

\$4,836. Stormwater 535-Public Works and Utilities 500-Utility General Expense 1915-Software Licenses and Maintenance Agreements 5414.

Resolution 15-0283 was adopted upon the following vote:
Yeas: Councilors Filipovich, Gardner, Hanson, Julsrud, Russ, Sipress and President
Larson – 7
Nays: Councilor Fosle – 1
Absent: Councilor Krug – 1
Approved May 26, 2015
DON NESS, Mayor

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INTRODUCTION AND CONSIDERATION OF ORDINANCES

The following entitled ordinances were read for the first time:

INTRODUCED BY COUNCILOR HANSON

15-035 - AN ORDINANCE AMENDING CHAPTER 8, SECTION 43, OF THE DULUTH CITY CODE, 1959, AS AMENDED, RELATING TO CONSUMPTION AND DISPLAY PERMITS.

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INTRODUCED BY COUNCILOR RUSS

15-036 - AN ORDINANCE GRANTING TO NORSHOR THEATRE LLC, A CONCURRENT USE PERMIT FOR AN APPROXIMATELY NINE FEET BY 47 FEET STRUCTURE (FORMER BUS SHELTER) LOCATED IN THE NORTH SECOND AVENUE EAST PUBLIC RIGHT OF WAY.

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INTRODUCED BY COUNCILOR RUSS

15-037 - AN ORDINANCE GRANTING TO NORSHOR THEATRE LLC, A CONCURRENT USE PERMIT FOR UNDERGROUND VAULTS LOCATED IN THE RIGHT OF WAY OF EAST SUPERIOR STREET (APPROXIMATELY 188 FEET BY 14 FEET) AND NORTH SECOND AVENUE EAST (APPROXIMATELY 84 FEET BY 13 FEET), ADJACENT TO THE NORSHOR THEATRE.

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INTRODUCED BY COUNCILOR RUSS

15-038 - AN ORDINANCE GRANTING TO NORSHOR THEATRE LLC, A CONCURRENT USE PERMIT FOR THE TEMPLE OPERA/NORSHOR THEATRE BUILDINGS, WHICH PROTRUDE INTO THE REAR ALLEY APPROXIMATELY 0.4 FEET AND INTO SUPERIOR STREET A DISTANCE RANGING FROM 0.3 FEET TO 1.1 FEET.

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INTRODUCED BY COUNCILOR RUSS

15-039 - AN ORDINANCE GRANTING TO NORSHOR THEATRE LLC, A CONCURRENT USE PERMIT FOR THE EXISTING MARQUEE WHICH EXTENDS APPROXIMATELY 11 FEET INTO EAST SUPERIOR STREET.

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INTRODUCED BY COUNCILOR RUSS

15-040 - AN ORDINANCE GRANTING TO SPIRIT MOUNTAIN A CONCURRENT USE PERMIT FOR A 36 INCH PRIVATE WATER LINE LOCATED ON THE PUBLIC RIGHT OF WAY OF A PLATTED AND UNIMPROVED ALLEY AT THE 8500 BLOCK OF GRAND AVENUE (SPIRIT MOUNTAIN AREA RECREATION AUTHORITY).

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INTRODUCED BY COUNCILOR RUSS

15-041 - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH TO PROVIDE FOR THE RECLASSIFICATION FROM RR-1 TO RR-2, PROPERTY ALONG NORTH 87TH AVENUE WEST IN BAYVIEW HEIGHTS (JEREL FINEOUT).

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INTRODUCED BY COUNCILOR RUSS

15-042 - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH TO PROVIDE FOR THE RECLASSIFICATION FROM R-P TO R-1, BLOCKS 9, 10, 11, AND PART OF BLOCK 7, COFFEE CREEK SUBDIVISION (HAMILTON TAYLOR HOMES).

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INTRODUCED BY COUNCILOR RUSS

15-043 - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH TO PROVIDE FOR THE RECLASSIFICATION FROM R-P TO R-1, BLOCK 8 AND PART OF BLOCK 7, COFFEE CREEK SUBDIVISION(CITY OF DULUTH).

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INTRODUCED BY COUNCILOR RUSS

15-044 - AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF DULUTH TO PROVIDE FOR THE RECLASSIFICATION FROM R-1 to MU-N, PROPERTY AT 1501 KENWOOD AVENUE, 15 WEST CLEVELAND STREET, AND 1428 ARROWHEAD ROAD (KENWOOD VILLAGE LLC).

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INTRODUCED BY COUNCILOR JULSRUD

15-045 - AN ORDINANCE AUTHORIZING THE EXCHANGE OF PROPERTY ON SOUTH LAKE AVENUE WITH DALE AND ELIZABETH SOLA FOR EXPANSION OF SEWER PUMPING STATION NO. 8.

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The following entitled ordinance was read for the second time:

INTRODUCED BY COUNCILOR RUSS

15-030 (10376) - AN ORDINANCE GRANTING TO SAINT LOUIS COUNTY HERITAGE AND ARTS CENTER A CONCURRENT USE PERMIT FOR A 115 FOOT LONG COVERED WALKWAY AND CANOPY LOCATED IN THE SOUTH FIFTH AVENUE WEST PUBLIC RIGHT-OF-WAY (SAINT LOUIS COUNTY AND ONEIDA REALTY COMPANY).

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

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The meeting was adjourned at 7:54 p.m.

JEFFREY J. COX, City Clerk

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ORDINANCE NO. 10376

AN ORDINANCE GRANTING TO SAINT LOUIS COUNTY HERITAGE AND ARTS CENTER A CONCURRENT USE PERMIT FOR A 115 FOOT LONG COVERED WALKWAY AND CANOPY LOCATED IN THE SOUTH FIFTH AVENUE WEST PUBLIC RIGHT-OF-WAY (SAINT LOUIS COUNTY AND ONEIDA REALTY COMPANY).

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 Saint Louis County Heritage and Arts Center, and its successor(s) in interests, referred to herein as the permittee, to construct and maintain the following:

(a) A covered walkway and canopy approximately 5-1/2 feet wide by 115 feet long feet long over the pedestrian walkway of South Fifth Avenue West, as shown in Public Document No. 15-0526-05.

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 Public Document No. 15-0526-05; 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; and

(c) Permittee agrees to maintain the pedestrian walkway in such a manner so that snow and ice accumulation is removed in a timely manner.

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 30 days after its passage and publication. (Effective date: June 28, 2015)

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

Yeas: Councilors Filipovich, Fosle, Gardner, Hanson, Julsrud, Russ, Sipress and President Larson -- 8

Nays: None -- 0

Absent: Councilor Krug -- 1

ATTEST:
JEFFREY J. COX, City Clerk

Passed May 26, 2015
Approved May 26, 2015
DON NESS, Mayor

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ORDINANCE NO. 10377

BY PRESIDENT LARSON:

AN ORDINANCE AMENDING CHAPTER 8 OF DULUTH CITY CODE, 1959, AS AMENDED, TO ALLOW THE ISSUANCE OF MICRODISTILLERY OFF SALE LICENCES AND TEMPORARY ON SALE LIQUOR LICENSES TO MICRODISTILLERIES.

The city of Duluth does ordain:

Section 1. That Section 8-41 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, microdistillery 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;

(3) A microdistillery off sale license permits a microdistillery to sell product manufactured on-site, subject to the restrictions of Section 8-17 of this Chapter and Minnesota Statute, Section 340A.22 Subd. 3, 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 deputy chief of police, 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.

Section 2. That Section 8-44 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 8-44. To whom licenses issued--intoxicating liquor.

(a) On sale intoxicating liquor licenses may only be granted to establishments that are used exclusively for the retail sale of intoxicating liquor, cigars, cigarettes, ice, all forms of tobacco, 3.2 percent malt liquor and soft drinks and to hotels, clubs, restaurants and bowling alleys;

(b) On sale club licenses may only be granted, subject to the approval of the commissioner of public safety, to clubs or to congressionally chartered veterans organizations which have been in existence for three years or more. Such license shall authorize the sale of intoxicating liquors only to members of the licensed organization and their bona fide guests;

(c) On sale wine licenses may only be granted to restaurants or bed and breakfast establishments and shall authorize licensees on every day of the week to sell wine not exceeding 14 percent alcohol by volume, for consumption on the licensed premises only, in conjunction with the sale of food. A bed and breakfast establishment may furnish wine only to registered guests of the establishment and, if the facility contains a licensed commercial kitchen, also to guests attending private events at the facility if such events are otherwise authorized by Chapter 50 of this Code. Sunday hours of sale shall be from Noon to 1:00 a.m. Monday. No on sale wine license shall be in effect until it is approved by the liquor control commissioner of the state of Minnesota;

(d) On sale culinary class licenses may only be granted to business establishments that meet the following conditions:

(1) The business establishment is not otherwise eligible for an on sale intoxicating liquor license; and

(2) That, as a regular part of its business the establishment conducts culinary or cooking classes for which payment is made by each participant and only if such participant has made an advance reservation.

The license authorizes the licensee to furnish to each participant in each class, at no additional cost to the participant, up to a maximum of six ounces of wine or 12

ounces of intoxicating malt liquor, during and as part of the class, for consumption on the licensed premises only;

(e) Temporary on sale liquor licenses may be issued in connection with a social event sponsored by the licensee. The license may only be issued to:

(1) Clubs, charitable organizations, religious organizations and other nonprofit organizations in existence for at least three years;

(2) A registered political committee;

(3) A state university;

(4) A brewer who manufactures fewer than 3,500 barrels of malt liquor in a year; or

(5) A microdistillery;

A temporary license may only be issued for a limited length of time, not to exceed four consecutive days. Temporary on sale licenses to any one organization or for one location shall not exceed more than three four-day, four three-day, six two-day or 12 one-day licenses, in any combination not to exceed 12 days per year. No more than one license shall be issued to any one organization or for any one location within any 30 day period unless the licenses are issued in connection with an event officially designated a community festival by the city. The city may authorize the temporary on sale liquor license on premises other than premises the licensee owns or permanently occupies. The license may provide that the licensee may contract for intoxicating liquor catering services with the holder of a full-year on sale intoxicating liquor license used by the city;

(f) Off sale intoxicating liquor licenses may only be granted to exclusive liquor stores;

(g) Brewery malt liquor off sale licenses may only be granted to:

(1) Breweries holding on sale licenses; or

(2) A brewer who manufactures fewer than 3,500 barrels of malt liquor in a year, and shall be subject to all restrictions, terms and conditions contained in Minnesota Statutes, Section 340A.301, subd. 7(b), or its successor;

(h) Microdistillery cocktail room licenses may only be granted to microdistilleries licensed under Minnesota Statutes Section 340A.301, subdivision 6c or its successor;

(i) Microdistillery off sale licenses may only be granted to microdistilleries licenced under Minnesota Statutes Section 340A.301, subdivision 6c or its successor.

Section 3. That this ordinance shall take effect 30 days after its passage and publication. (Effective date: June 26, 2015)

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

Yeas: Councilors Filipovich, Fosle, Gardner, Hanson, Julsrud, Russ, Sipress and President Larson -- 8

Nays: None -- 0

Absent: Councilor Krug - 1

ATTEST:
JEFFREY J. COX, City Clerk

Passed May 26, 2015
Approved May 26, 2015
DON NESS, Mayor

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