

PUBLIC WORKS AND UTILITIES COMMITTEE

09-019-0

ORDINANCE NO. _____

AN ORDINANCE MODIFYING AND ESTABLISHING PROCEDURES FOR ASSESSING FOR LOCAL IMPROVEMENTS, AMENDING CHAPTER 45 OF THE CODE.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That Section 45-74 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 45-74. Special assessment board--composition.

~~The~~ ~~In accordance with the provisions of Chapter IX of the Charter of the city of Duluth, as amended at the special municipal election held September 8, 1964, the~~ special assessment board shall consist of the chief administrative officer ~~assistant~~, who shall be board chairman, the city engineer, the city assessor, the director of public works and utilities and the community development manager ~~city planning director~~.

Section 2. That Section 45-75 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 45-75. Same--Hearings and meetings; quorum; minutes; election of secretary; adoption of rules.

Three members of the board shall at all times constitute a quorum. The board shall keep minutes of all hearings conducted by the board and of all meetings held by the board, which minutes shall be signed by the secretary and the presiding officer of the board, and filed in the office of the city clerk as a permanent record. The secretary shall be elected by the board, and may or may not be a member of the board. The board shall hold meetings at such times and at such places as the board shall determine. The board may adopt such rules and regulations not inconsistent with the Charter nor with this Division as the board shall deem advisable or

necessary to give effect to this Section. Upon adoption of any such rules or regulations by the board, notice of the adoption thereof along with copies thereof shall be transmitted to the city council for their review. Unless the council shall, by resolution, vote to delay or overturn any such rule or regulation by the meeting next proceeding the meeting at which the council receives notice thereof, said rules and regulations shall be thereafter deemed to be effective and shall thereafter govern the practices and procedures of and before the board. In addition to the meetings and hearings which the board may or shall hold under authority of this Section, the council nevertheless may direct the board to hold other meetings and hearings as the council by resolution may determine.

Section 3. That Section 45-76 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 45-76. Local improvements to conform to requirements of division.

Except as otherwise specifically provided in this Code Section, and ~~except as to assessments made for the sprinkling or treating with oil or other preservative of any highway made pursuant to the provisions of Section 61 of the Charter~~, every local improvement to be paid for in whole or in part by special assessment shall as nearly as may be practicable conform to the requirements of this Division. The costs of such improvements shall be assessed against benefitted property in a manner determined by the council to be a fair and equitable method of allocating such costs, which method may include but shall not be limited to a "per front foot" basis, a "per square foot" basis or a "per parcel" basis.

Section 4. That Chapter 45 of the Duluth City Code, 1959, as amended, is hereby amended by the addition of a new Section 45-76.1 which reads as follows:

Sec. 45-76.1 Initiation of improvements to be assessed.

Every local improvement, any portion of the cost of which is to be assessed against benefitted property shall be initiated either by petition in accordance with the provisions of Section 45-77 below or by direction of a city council resolution as provided for in Section 45-77.1 below.

Section 5. That Section 45-77 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 45-77. Petitions for local improvements; procedure for filing; action of city council.

(a) Any petition for a local improvement shall be filed with the city clerk, who thereupon shall forthwith transmit such petition to the city assessor. The assessor shall, with the assistance of the city engineer, determine whether such petition has been properly executed. In order to be valid, a petition must be executed by the owners of the majority of the front footage of the property which will be assessed for all or a portion of the costs of such improvements ~~complies with the provisions of Section 62 of the Charter relating to the ownership and the amount of property to be involved in the improvement described in the petition.~~ The assessor shall report his findings as to sufficiency to the city council. If the council shall find the petition to be sufficient, the council may adopt an ordering in resolution ordering in the construction of the improvement; ~~In case the council determines that it may be necessary to construct an improvement and no petition has been filed calling for such improvement, the council shall adopt a resolution of intent to construct the improvement, which resolution shall be effective upon the affirmative vote of a simple majority of the council.~~

(b) As part of the ordering in resolution as provided for in Section 62 of the Charter, the council shall make a determination of the total estimated cost of the project to be assessed against benefitted properties which may include the city's direct and indirect costs of designing, building and financing the project and, the method by which the assessable cost of the improvements are to be assessed against the benefitted property, which may include but not be limited to a "per front foot" basis, a "per square foot" basis or a "per parcel" basis. Upon approval of said resolution, the city shall send notice to the owners of all property to be assessed in the manner provided for in Section 61(b) of the Charter setting forth the method by which the costs are to be assessed and setting forth the estimated amount to be assessed against the subject property;

(c) The owners of property to be assessed shall have ten days from the date that notice is sent to them to deliver notice to the city clerk that they are unwilling to accept the proposed improvements and the proposed assessment against their property and that they wish to withdraw their signature or signatures from the petition, if they were signatories of the petition. If any property owner fails to so notify the city clerk within said ten day period, such owner shall have waived any right to object to the assessment for such work on any grounds related to the sufficiency of the petition process or such owner's consent to the improvement and the assessment therefore;

(d) If, after the end of the ten day period provided for in subsection (c) above, there remains, not withdrawn from the petition, signatures of the owners of property which will be required to pay a majority of the costs of such improvements which

are to be paid by assessment, said petition shall be valid and the city may proceed to have constructed the subject improvements and to so assess for said portion of such costs. If, after said ten day period, there shall not remain on the petition the signatures of the owners of property which will be required to pay a majority of the costs of such improvements which are to be paid by assessment, said petition shall be deemed to have been insufficient.

Section 6. That Chapter 45 of the Duluth City Code, 1959, as amended, is hereby amended by the addition of a new Section 45-77.1 which reads as follows:

Sec. 45-77.1 Assessments initiated by council action.

In the event that the council determines that it is necessary to construct a local improvement for which no petition has been filed, the council may adopt a resolution of intent to construct the improvement, which resolution shall be effective upon the affirmative vote of a simple majority of the council present and voting.

Section 7. That Section 45-82 of the Duluth City Code, 1959, as amended, is hereby amended by deleting said section in its entirety and by substituting the following for it:

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

(a) Approval of assessment roll. After local improvement as provided in this chapter shall have been completed and accepted by the city, the city engineer shall compute and certify to the city council the cost thereof, including any incidental expenses of publication, mailing, etc., and the city assessor shall certify to the city council an assessment roll. At the next regular meeting thereafter, the city council shall consider and adopt said

assessment roll, or return said assessment roll to the city assessor with instructions as to any corrections or modifications required. In the event that said assessment is so returned, the city assessor shall make said corrections and return said assessment roll as corrected to the council prior to its next regular meeting, at which time it shall be considered and approved with or without further amendment and correction by the council;

(b) Hearing; time for payment. Within ten days after such approval, the council shall have published in the official paper of the city and shall have mailed to each person whose name appears on said assessment roll a notice briefly describing the improvement for which the assessment is made, and stating that the assessment is payable at the treasurer's office at any time within 90 days subsequent to the publication of said notice in the case of assessments which are not eligible for payment in installments, and within 40 days subsequent to the publication of said notice in the case of assessments which are eligible for payment in installments, and that unless the same is so paid within said period, or in the case of assessments eligible for payment in installments, an application is made to the city treasurer for an extension of time of payment as herein provided within such 40 day period after the publication of notice, a penalty of ten percent will be added to such assessment. Assessments shall be eligible for payment in installments when so determined by the council, except that an assessment against an owner of property which is less than \$500 for any single description of land as shown on the records of the city assessor shall not be so eligible;

(c) Installment payment. Within the 40 days after the publication of the notice of assessment, upon application in writing

to the city treasurer by any owner of real estate against which an assessment which is eligible for payment in installments is made, the treasurer shall extend the time for paying such assessment in installments extended in the manner determined by the council not to exceed the estimated useful life of the improvement and, in any event, not exceeding 15 in number, payable yearly from 40 days after the date of the approval by the council of said assessment. Each of said installments of extended assessments shall be payable annually from the date the entire assessment would be payable, without penalty, and shall bear interest at a rate which shall be from time to time by resolution of the city council. Such installments of extended assessments, together with the accrued interest thereon, from the first Monday in January following, shall be considered to be delinquent under Section 45-82.1 below when they shall severally become due and payable, but not before. Any such installments may be paid prior to its maturity with interest to the date of payment only. Installment payment of assessments as authorized herein shall be computed in such a way that the minimum installment payment for any single parcel of land as shown on the records of the city assessor shall be \$100, except for the final payment;

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

(e) Modification by the board. Within 18 months after an assessment is confirmed by the city council, the special assessment board is authorized to withdraw such assessment and either extend the time during which the property owner may elect to pay such assessment in installments in those cases where the board is

satisfied that good cause exists for such extension, or correct a mathematical error made in the computation of such assessment; provided, however, that whenever such correction results in an increase of the assessment, the affected party shall be given notice by mail of such increased assessment, and such party may, within 14 days after such notice is given, request the special assessment board to submit such increased assessment to the city council for its approval. Upon receipt of such request, the special assessment board shall submit such increased assessment to the city council and the council may approve or disapprove such assessment or make such adjustment to such assessment as it deems appropriate. If the city council approves all or any part of the modified assessment roll, the affected party may appeal such assessment within 30 days of the date of the city council's action on the matter, such appeal to be governed by the provisions of Section 67 of the charter. Action by the special assessment board pursuant to this paragraph shall be approved by at least three members thereof and a copy of the minutes of the board relating to such action shall be filed with the city clerk, who shall attach such minutes to the assessment roll affected by such action.

Section 8. That Chapter 45 of the Duluth City Code, 1959, as amended, is hereby amended by the addition of a new Section 45-82.1 which reads as follows:

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

Each assessment not paid on or before 40 days after the publication of the notice directing payment shall be deemed delinquent except as hereinafter provided for, and a penalty of ten percent shall thereupon be added, unless an extension of the

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

Section 9. That Chapter 45 of the Duluth City Code, 1959, as amended, is hereby amended by the addition of a new Section 45-82.2 which reads as follows:

Sec. 45-82.2. Same--Statement of delinquencies; enforcement and collection.

In each year the council shall cause to be made a certified statement of the several pieces of land against which assessments have been made and are delinquent, describing the land affected and giving the amount of assessment with penalties added, which certified statement shall be filed with the county auditor of St. Louis County, Minnesota, on or before five working days after December 20 in each year. It shall be the duty of said county auditor to extend said assessments with penalties, as shown by said certified statement, upon the tax rolls of the said county of St. Louis for the taxes of the particular year in which said assessment is filed, and the same for each year ending October 15th shall be carried into the tax becoming due or payable in January of the

following year, and shall be enforced and collected in the manner provided for the enforcement and collection of state and county taxes under and in accordance with the provisions of the general laws of the state, except that in court proceedings to enforce the collection of taxes, no defense as to the validity of any such assessment shall be permitted. Such assessment, if not paid, shall become delinquent and be subject to the same penalties and the same rate of interest as the taxes for state and county purposes under the general laws of the state.

Section 10. That Chapter 45 of the Duluth City Code, 1959, as amended, is hereby amended by the addition of a new Section 45-82.3 which reads as follows:

Sec. 45-82.3. Assessments, penalties and interest belong to city; applicability of chapter to public service corporations.

All assessments with penalties and interest thereon paid to the county treasurer shall belong to the city of Duluth, and shall be turned over to the treasurer by said county treasurer in the manner provided by law.

Every franchise granted to any public service corporation shall contain a provision that such corporation shall to the extent of such franchise be subject to all the provisions of this Chapter in all respects the same as any other person or corporation.

Section 11. That this ordinance shall take effect 30 days after its passage and publication.

Approved:

Approved for presentation to council:

Department Director

Chief Administrative Officer

Approved as to form:

Approved:

Attorney

Auditor

FINANCE/ATTY REA:blj 4/15/2009

STATEMENT OF PURPOSE: This ordinance completes the process of cleaning up and modernizing the city's assessment process begun last year with the amendment to the City Charter.

In addition to amending some provisions of the Charter which were outdated, the amendments were intended to allow many issues previously addressed in the Charter to be addressed by the City Code instead, where it would be more appropriately addressed as time and circumstances changed by ordinance amendment. Thus, many of the provisions of this ordinance reinstate processes and procedures that were in place under the old Charter.

There are, however, significant differences. One such change is elimination of the process by which the owners of less than 50 percent of the front footage to be improved could initiate the assessment procedure with a concomitant remonstrance process. The ordinance simply provides that 50+ percent is required to initiate. Thus there should be no need for a remonstrance process and both time and costs can be saved.

This is still, however, an opportunity for the affected property owners to reconsider their commitment to the assessment process. As part of the council's determination to proceed with the project (approval of the ordering in resolution), the council also determines how the assessments are to be allocated to the benefitted properties and the estimated amount to be assessed against each property. Then notice is sent to all affected property owners, giving them the option of withdrawing their approval from the petition within ten days of the notice. If at the end of the ten day period, approvals are still in place from owners paying for 50+ percent of the amount to be assessed, the project can go forward on the basis of the petition. If not, the petition fails.

In addition to the petition process, if the council can determine that any project is necessary for the general welfare and that it is appropriate to assess all or a portion of the costs against benefitted property, the council can approve proceeding with the project on that basis without petition. This is similar to the process available under the old Charter but the old Charter's limitation of the assessable amount to 25 percent of the costs was removed from the new Charter language and this ordinance continues to allow the council to assess the portion of the project costs it deems fair and reasonable.

Also, the ordinance allows the assessment to be spread over the benefitted property on any basis that the council determines to be fair and reasonable. Under the old Charter process, the only allowable method was on a "front foot" basis. The ordinance specifically approves of the "per front foot" basis, the "per square foot" basis and the "per parcel" basis, but allows the council to levy the assessments on any basis it finds "fair and reasonable."

In all cases, however, the amount of the assessment still cannot exceed the benefits to the property.

The other major changes include increasing the minimum amount that the city will allow to be paid over time and the minimum amounts of the annual installments. The old Charter allowed assessments of as little as \$100 to be spread over 15 years and allowed annual payments to be as little as \$10, both of which limitations were woefully out of date (undoubtedly dating from the passage of the Charter in 1958) and unrealistic, as the costs of collecting the assessments from even willing property owners exceeds the amount of the payments. The ordinance proposed that the minimum assessable amount should be \$500 and that the minimum annual assessment amount be not less than \$100.