

PUBLIC WORKS AND UTILITIES COMMITTEE

09-044-0

ORDINANCE NO. _____

AN ORDINANCE ESTABLISHING METHOD OF DETERMINING WATER,
GAS AND SEWER FEES IN LIEU OF ASSESSMENT, AMENDING
CHAPTERS 43 AND 48 OF THE CODE.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That Section 43-56 of the Duluth City Code, 1959, as amended,
is hereby amended to read as follows:

Sec. 43-56. Connection permit--application; fee.

Any person desiring to make connection to a sanitary sewer to
serve land not previously assessed for a direct special benefit
conferred by the construction of such sewer shall apply to the
director for a ~~connection~~ permit to so connect said property, and
shall accompany his application with a description of the land
proposed to be served. The director shall have the authority to
approve or disapprove said connection. The director's decision to
disapprove any such application may be appealed in writing to the
special assessment board within ten days of said decision by filing
the same in the office of the director. The amount of the fee the
applicant is required to pay shall be determined by application of
the rate established in accordance with Section 43-56.1 below
~~forward such application to the special assessment board along with
a recommendation for the amount of the connection fee which should
be charged in such case. In developing such recommendation, the
director shall consider the then current average or typical front
foot cost for the construction of a sanitary sewer lateral. The
special assessment board shall determine the appropriate connection
fee to be charged in each case based upon the recommendations of the
director. If not satisfied with the amount of the connection fee,
the applicant may appeal to the city council for a final~~

~~determination of such matter.~~ Any person making application for a sewer connection pursuant to this Section shall either elect to pay the established ~~connection~~ fee in lieu of assessment in full immediately, in which case such fee should be delivered to the director; prior to issuance of the connection permit; or to pay such ~~connection~~ fee in lieu of assessment over a period of 15 years, in which case payment of such fee and interest shall be made in the same manner as is provided for the payment of deferred assessments under Section 68 of the City Charter. In those cases where a person elects to pay the ~~connection~~ fee in lieu of assessment over a period of 15 years, he shall be required to execute an agreement, acceptable in form to the city attorney, which shall be recorded by such person against the property to which the sewer connection is made, and which shall bind the applicant and future owners of such property to pay the unpaid balance of the ~~connection-fee~~ in lieu of assessment.

Section 2. That Chapter 43 of the Duluth City Code, 1959, as amended, is hereby amended by the addition of a new Section 43-56.1 which reads as follows:

Sec. 43-56.1. Fee in lieu of assessment fee rate--established.

The special assessment board shall from time to time establish the sewer fee in lieu of assessment to be charged to applicants applying for a connection under Section 43-56 above on a per front foot basis, which fee shall then be applicable for the remainder of the calendar year in which it is established unless subsequently modified by the board as herein provided for. In establishing such fee in lieu of assessment, the board shall take into account the then current average or typical front foot cost for the construction of a sanitary sewer main. Nothing to the contrary in the foregoing withstanding, the board may amend said fee established with regard

to any year upon a determination by the board that the previously established fee does not accurately reflect the city's current costs for construction of such sewer mains. Upon approval of the sewer fee in lieu of assessment by the board, it shall cause notice thereof to be filed with the city council. Any person wishing to contest the fee so established may appeal to the council within 30 days of such filing. The determination of the council shall be final.

Section 3. That Section 48-222 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 48-222. Charge in lieu of assessment for connection to water and gas mains.

Any person desiring to make a connection to a water or gas main to serve land not previously assessed for a direct special benefit conferred by the construction of such water or gas main shall apply to the office of the director of public works and utilities or his or her designee, hereinafter referred to as the director, for a permit to so connect said property ~~water and gas engineer for a connection permit~~, and shall accompany his application with a description of the land proposed to be served. The director shall have the authority to approve or disapprove said connection. The director's decision to disapprove any such application may be appealed in writing to the special assessment board within ten days of said decision by filing the same in the office of the director. The amount of the fee in lieu of assessment the applicant is required to pay shall be determined by application of the rate established in accordance with Section 48-223 below ~~engineer shall forward such application to the special assessment board along with a recommendation for the amount of the connection fee which should be charged in such case. In developing such~~

~~recommendation the engineer shall consider the then current average or typical front foot cost for the construction of a water or gas main. The special assessment board shall determine the appropriate connection fee to be charged in each case based upon the recommendation of the water and gas engineer. If not satisfied with the amount of the connection fee, the applicant may appeal the city council for a final determination of such matter. Such connection fee shall not include the street service charge, which shall be billed separately.~~ Any person making application for a water or gas connection pursuant to this Section shall either elect to pay the established ~~connection~~ fee in lieu of assessment in full immediately, in which case such fee should be delivered to the director ~~water and gas engineer~~ prior to issuance of the connection permit; or to pay such ~~connection~~ fee in lieu of assessment over a period of 15 years, in which case payment of such fee and interest shall be made in the same manner as is provided for the payment of deferred assessments under Section 68 of the City Charter. In those cases where a person elects to pay the ~~connection~~ fee in lieu of assessment over a period of 15 years, he shall be required to execute an agreement, acceptable in form to the city attorney, which shall be recorded against the property to which the water or gas connection is made, and which shall bind the applicant and the future owners of such property to pay the unpaid balance of the ~~connection~~ fee in lieu of assessment.

Upon compliance by an applicant with the provisions of this Section, the director ~~water and gas engineer~~ shall issue a connection permit; provided, however, that the director ~~such engineer~~ shall deny the issuance of such permit if he or she ~~the special assessment board~~ determines that water or gas service might

reasonably be provided to the property by a public extension of the water or gas system or if the granting of such permit would encourage development of property which cannot be economically served by other utilities or by improved public access. A decision on the part of the special assessment board to deny issuance of a connection permit may be appealed by the applicant to the city council.

For connections to existing gas mains where the property to be served has not been previously assessed, in lieu of the procedure set forth in this section, the applicant for connection may pay for said connection as provided for in the gas main extension program developed pursuant to Section 48-214 of this Chapter.

Section 4. That Chapter 48 of the Duluth City Code, 1959, as amended, is hereby amended by the addition of a new Section 48-223 which read as follows:

Sec. 48-223. Fee in lieu of assessment--establishment.

The special assessment board shall from time to time establish the water fee in lieu of assessment and the gas fee in lieu of assessment to be charged to applicants applying for a connection under Section 48-222 above on a per front foot basis, which fee shall then be applicable for the remainder of the calendar year in which it is established unless subsequently modified by the board as herein provided for. In establishing the fee in lieu of assessment, the board shall take into account the then current average or typical front foot cost for the construction of water and gas mains. Nothing to the contrary in the foregoing withstanding, the board may amend either or both of the fees established with regard to any year upon a determination by the board that the previously established fee does not accurately reflect the city's current costs for construction of such water or gas mains. Upon approval of any fee

in lieu of assessment by the board, it shall cause notice thereof to be filed with the city council. Any person wishing to contest the fee so established may appeal to the council within 30 days of such filing. The determination of the council shall be final.

Section 5. This ordinance shall take effect 30 days from and after its passage and publication.

Approved:

Department Director

Approved as to form:

Attorney

PW&U/ATTY REA:blj 8/13/2009

Approved for presentation to council:

Chief Administrative Officer

Approved:

Auditor

STATEMENT OF PURPOSE: This ordinance clarifies and streamlines portions of the city's Water and Gas Code and its Sewer Code by changing terminology applicable to fees charged to properties for which connections to existing mains are being sought but which have not previously paid their share of the cost of constructing those mains and by regularizing the process of determining those costs and of charging or assessing them to the benefitted property.

The first change is a change of terminology. The Code presently refers to the fees for connecting to a previously constructed water, sewer or gas main that the subject property did not contribute to as "connection fees" when in fact the city has required those property owners to pay a fee intended to represent their fair share of the cost of original construction, discounted over time. In common utility parlance, the term, "connection fee," refers to the cost of the actual connection itself. Thus the amendment substitutes the phrase, "fee in lieu of assessment" to more accurately represent what is being required.

The other major change is to conform our process to more closely follow our actual practice. Normally the special assessment board approves a rate for such "connections" on an annual basis; but to follow the strict letter of the Code, each connection is required to be submitted to and approved by the board, which they do mechanically at the previously approved rate.

The proposed amendment would modify the process to follow the actual practice by allowing the board to set the rates for such connections and then allowing the director of public works and utilities to approve the actual connects. If there was a reason for the director to deny an application for specified reasons, he or she could do so, but that determination could be appealed to the board.