

PUBLIC WORKS AND UTILITIES COMMITTEE

09-046-0

ORDINANCE NO. _____

AN ORDINANCE CLARIFYING THE ASSESSMENT OF PROJECTS INITIATED BY COUNCIL RESOLUTION, AMENDING SECTION 45-77 OF THE CODE.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. 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. 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;

(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. If the project was initiated by

petition pursuant to this Section, upon ~~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) In the case of projects initiated by petition pursuant to this Section, the ~~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) In the case of projects initiated by petition pursuant to this section, if ~~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 2. That this ordinance shall take effect 30 days after its passage and publication.

Approved:

Department Director

Approved as to form:

Attorney

CLERK/ATTY REA:blj 8/14/2009

Approved for presentation to council:

Chief Administrative Officer

Approved:

Auditor

STATEMENT OF PURPOSE: This ordinance clarifies Section 45-77 to make it clear that, in the case of assessment projects initiated by vote of the city council, where no petition is involved, additional notices need not be sent to properties to be assessed for the project after approval of the ordering in resolution.

The City Charter and the Code have long provided for two methods of initiating projects where some or all of the costs of the project were going to be assessed against benefitted property. One was by vote of the city council and the other was by a petition signed by 25 percent or 35 percent of the owners of benefitted property, depending on the type of work to be done. In the latter case, after approval of the ordering in resolution, notice that the project was to be constructed and assessed had to be sent to the property owners to be assessed. They then had 60 days to file a remonstrance petition and if a remonstrance petition was filed, there was an additional 30 days in which the proponents could file a responsive petition, signed by at least 50 percent or 60 percent of the owners to be assessed supporting the project, again depending on the type of work.

There was no process under the prior Charter and Code provisions for notice or remonstrance in the case of an assessment project initiated by the city without petition.

When the Charter and the Code were amended, the intent was to simplify the process regarding projects initiated by petition to simply require +50 percent to initiate a project and then, after approval of the ordering in resolution, giving notice to property owners to be assessed and allowing them ten days to withdraw their signature from the petition. If enough owners withdraw their signatures to reduce the petition to represent less than 50 percent of the benefits of the project, the project will not go forward.

The above process, under the amended Charter and Code, is obviously irrelevant to projects initiated by council resolution. As such projects are initiated without a petition, there is no petition for the property owners to withdraw from and therefore the sending of the notice is irrelevant and possibly deceptive, falsely suggesting to property owners that they have a right to protest the construction of the assessment project.

Note that property owners to be assessed can still protest the amount of the assessment when the assessment roll is considered and approved, both before the council and in court.

The purpose of this ordinance is to amend Section 45-77 of the Code to clarify that the rights to notice and withdrawal apply only in those cases where the project was initiated by petition.

This portion of the process continues to be the same as it was under the prior iteration of the Charter and Code for projects initiated by council resolution.