

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

10-012-0

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING THE NEED FOR POS CERTIFICATE AND AUTHORIZING ASSESSMENT FOR UNPAID COSTS THEREOF, AMENDING SECTIONS 43-3.24.2 AND 43-33.4 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

BY COUNCILOR STAUBER:

The city of Duluth does ordain:

Section 1. That Section 43-3.24.2 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

43-3.24.2. Point of sale certificate or POS certificate. A certificate issued by the director upon his or her determination either that the plumbing materials and equipment as installed and operating in the subject building are in compliance with the requirements of Section 43-31 below, that the building on the subject property does not have a basement or a cellar of any kind, or that the plumbing and equipment related to said building is not in compliance with the requirements of Section 43-31 below but the director determines that the building and building sewer is not contributing any material or observable amounts of unpolluted water to the public wastewater collection system and is not likely to do so in the future.

Section 2. That Section 43-33.4 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 43-33.4. Repairs required at time of sale.

(a) This Section 43-33.4 applies to transfers of ownership of or of possessory rights in property which property is required to be served by the city's public sanitary sewer, as set out in Section 43-16, or its successor;

(b) Unless there is then in effect a valid POS certificate pertaining to such property, upon the signing and acceptance of a legally binding offer to purchase or at least 30 days before a

transfer of title to, or the entering into of a contract for deed for, or contract for sale of, real estate, which sale, transfer or contract gives a party other than the seller or transferor a right of possession, whichever occurs first, the seller or transferor shall notify the director of the date of the proposed sale or transfer closing and arrange for a building sewer inspection to determine whether the property requires a sump pump, building sewer trap removal, and footing drain disconnect in order to be in compliance with this Chapter. The seller or transferor shall pay an inspection fee to city in advance of the inspection to defray the city's costs of such inspection in an amount established from time to time by resolution of the city council. No person shall sell, transfer or enter in a contract for deed for or contract for sale of real estate, which sale, transfer or contract gives a party other than the seller or transferor a right of possession in any property, nor shall any person purchase, accept transfer of or enter into any contract for deed or contract for sale of real property as a transferee which sale, transfer or contract results in such person acquiring a right of possession in any property ~~such sale or transfer shall be allowed to occur~~ unless the director has been so notified and the property so inspected, except as provided for in subsection (e) below. The seller or transferor may choose to utilize an inspector other than the city inspector to perform said inspection, providing the inspector is bonded and meets the qualifications as a licensed plumbing contractor in the city of Duluth, holds a Class S-C wastewater license and passes a city administered training course. The private inspector must make certification that the building either needs a sump pump or that there is a sump pump in place and properly functioning or that no

sump pump is required. No fee except a nominal filing fee to the city will be required under these circumstances;

(c) If a building sewer contains a house trap and the footing drains are active, the trap shall be removed. If the property requires footing drain disconnections and sump pump installation, it shall be done. The required repairs shall be completed within 90 days of the date of the inspection referred to in subparagraph (b) above. If they are satisfactorily completed, the director shall issue a POS certificate with regard to footing drain contribution only but such POS certificate shall not evidence total compliance with all of the requirements of Section 43-31(a) above. If the required repairs are not satisfactorily completed within said 90 day period, the owner or customer shall be charged a monthly surcharge of \$250 each month until the repairs are satisfactorily completed;

(d) If, upon the inspection provided for in subparagraph (b) above, the director determines that the property qualifies, the director shall issue or cause to be issued a POS certificate which shall be valid for the proposed sale or transfer related to that inspection and for any other such sale or transfer occurring within one year ~~60 days~~ of said proposed sale or transfer unless the director determines in the exercise of his or her discretion that there is sufficient reason to believe that said POS certificate does not accurately represent the existing condition of the property in question. Provided, however, if the director has issued a POS certificate because the building served by sanitary sewer on the subject property does not have a basement or cellar, said certificate shall continue to be valid unless and until revoked by the director upon the director's determination in the exercise of

his or her discretion that there is sufficient reason to believe that said POS certificate does not accurately represent the existing condition of the property in question;

(e) In the event that the director receives notice of a proposed sale or transfer and request for city inspection which complies with the requirements of subsection (b) above, but the department fails to complete the inspection required by this Section prior to the date of the proposed closing contained in the notice or the date of the actual closing, whichever is later, the director shall provide a temporary waiver of the inspection requirement contained in subsection (b) above which shall be effective until the department shall offer to perform the required inspection on the property during ordinary business hours; the department shall attempt to make reasonable accommodation to the schedule of the acquiring party. Such waiver shall be subject to the acquiring party agreeing in writing to allow representatives of the department to enter upon the property for the purposes of making the inspection and shall be effective only until date the department proposes to make such inspection. Upon the inspection being made under this subsection, the property inspected and the acquiring party shall be subject to the requirements of this Article as if the inspection had been made prior to closing;

(f) In the event that neither the seller or transferor nor the acquiring party shall have paid for the inspection provided for in paragraph (b) above within 30 days of the date of closing on the sale or transfer of the subject property, the City shall have the right to assess the amount owed against the property in the manner set forth in this Section, which property shall be deemed to have been benefitted thereby;

(g) On or before June 1 of each year, the director shall transmit to the city assessor a list of properties upon which inspections have been performed and with regard to which the payment therefore has not been made in the immediately preceding 15 months, together with the amount due with respect to each such property. For each such property, a collection fee in the amount set by city council resolution shall be added to reimburse the city its administrative costs;

(h) Upon the receipt of such list, the city assessor shall make an assessment roll containing, in columns, the name of the owner of each lot or parcel of land separately assessed, if known to him, together with a description of each such lot or parcel of land and the amount of such assessment. The assessment roll shall include the collection fee set forth in paragraph (g) above;

(i) On or before July 1 of each year, the city assessor shall certify the assessment roll to the city council. The assessor shall recommend that the city council by resolution confirm such assessment. To each assessment a collection fee shall be added in an amount set by council resolution to reimburse the city its administrative assessment costs. Immediately thereafter notice of the confirmed assessment and its amount, including the collection fees, shall be sent by the city treasurer by mail to the apparent owner of each lot or parcel of land assessed. Such notice shall indicate that the assessment is due and payable on or before October 1 of the year when confirmed and that failure to make payment by such date shall render the assessment delinquent. After any appeals are heard and determined, the city council shall confirm the entire assessment roll by resolution;

(j) After the city council confirms the assessment roll, the

city treasurer shall file with the county auditor, during the time set by law for such filings, a certified statement of all assessments delinquent under this Chapter, describing the land affected and giving the amount of the assessment, with ten percent penalty added, after which the assessment shall follow the provisions of Article IX of the City Charter.

Section 3. That this ordinance shall take effect 30 days after its passage and publication.

Approved as to form:

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Attorney

CCREQ/ATTY JS/REA:jkw 2/1/2010

STATEMENT OF PURPOSE: This ordinance is to extend the duration of the effectiveness of a "point of sale certificate" (POS certificate) from 60 days to one year in most cases, to authorize issuance of a "permanent" POS certificate to properties where there is no basement or cellar and therefore no foundation drains draining into the city's sanitary sewer system and to allow the city to assess for unpaid POS inspection charges.

As presently existing the City Code recognizes the validity of a POS certificate for only 60 days after the date of the closing anticipated when the inspection is made. In the present real estate environment where it has become more likely that a planned closing would be delayed or that a sale would "fall through", this has resulted in the need for a second inspection on the same property, even when there was no reason to believe that the condition of the property had changed. This amendment would extend the validity of the POS certificate for up to a year from the date of inspection unless the department had reason to believe that the condition of the property had changed.

The second change is to recognize that properties that do not have basements or cellars do not contribute materially to the I&I problem in the sanitary sewer system and to provide that "permanent" POS certificate can be issued with regard to them, again unless the department has reason to believe that the condition of

the property has changed.

Finally, the amendment allows the city to assess for the cost of inspections if they are not otherwise paid for. Normally either the seller pays up front or the need to pay is caught at closing but there are a few circumstances where the inspection charges are not paid. This provision would allow the city to recover its costs of inspection by assessing the benefitted property for these costs in a manner similar to the way we assess for unpaid garbage services.