

PUBLIC WORKS AND UTILITIES COMMITTEE

10-064-O

ORDINANCE NO. _____

AN ORDINANCE DESIGNATING THE DPUC TO HEAR APPEALS UNDER CHAPTERS 43 AND 48 OF THE CODE, AMENDING SECTIONS 43-33.2, 48-1 AND 48-15.3 AND ARTICLE XV OF CHAPTER 48 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That Section 43-33.2 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 43-33.2. Certificate of noncontribution.

(a) Upon inspection of any building by the director for compliance with the requirements of Section 43-31 above and based on that inspection, the director is authorized to issue a certificate of noncontribution in a form suitable for recording among the property records of St. Louis County recorder if he or she determines either that:

(1) The sump pump, footing drain disconnect, and building trap removal are in compliance with Section 43-31 above;

(2) The plumbing materials and equipment as installed and operating in that building are in compliance with the requirements of Section 43-31 above;

(3) The plumbing and equipment in said building is not in compliance with the requirements of Section 43-31 above but the director determines that the building 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;

(b) Certificates of noncontribution shall only be issued by the director and persons designated by him or her to issue such certificates. The director shall establish standards and procedures for certifying persons authorized to issue certificates of

noncontribution on his or her behalf;

(c) In the event that the director determines after reasonable investigation that any building for which a certificate of noncontribution has been issued is now contributing a material or observable amount of unpolluted water to the public wastewater collection system, the director may give notice in the manner provided for in Section 43-33 above of his or her intention to revoke such certificate of noncontribution and that such revocation shall become final 15 days of the date of giving such notice unless the affected owner or person in control of the affected building files a written appeal of that decision with the city clerk prior to the revocation of the certificate. Any such appeal shall be heard by the Duluth public utilities commission ~~building appeals board~~ in accordance with the procedures established by the commission ~~under Section 10-5 of this Code~~. When the revocation of any certificate of noncontribution has become final, the director shall cause notice there to be filed in the office of the St. Louis County recorder.

Section 2. That Section 48-1 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 48-1. Definitions.

For the purposes of this Chapter, the following words and phrases shall have the meanings respectively ascribed to them by this Section:

Applicant. Any person or persons applying for water or gas service from the department and any guarantor of payment for such service as provided for in this Chapter.

Commission. The Duluth public utilities commission established pursuant to Article XXXV of Chapter 2 of this Code.

Department. The department of public works and utilities.

Domestic applicant. A noncommercial or nonindustrial

applicant who uses gas solely for purposes other than heat; i.e., cooking, hot water, clothes dryer, etc., and an applicant for water or sewage or both.

Fire service. An unmetered, large capacity water service which is used only for the suppression of fire and which is protected by appropriate backflow preventers to insure that potable water supplies are not contaminated.

High pressure gas line. Any gas line transmitting gas at a pressure in excess of 0.50 pounds per square inch (14 inches water column).

High volume gas service. Service used to provide gas at a rate in excess of 1,000,000 BTU's per hour.

High volume water service. Any service which is capable of providing in excess of 35 gallons of water per minute at water pressure levels which are normal at the location of such service.

House piping. The pipe or system of pipes conveying water or gas from the meter on a house service to the points of use of water or gas.

House service. That portion of a water service which extends from the curb stop controlling the flow through the house service, to and including the meter through which the flow in the house service is measured.

Master box. The primary curb stop on a water service or private line which controls one or more curb stops downstream.

Meter. Meter is a registration device connected directly to a water or gas service line directly registering the amount of water or gas passing through it.

Privately owned service. A water or gas service supplying one or more parcels of private property that has not been accepted by the department as a part of its distribution facilities.

Remote register. A registration device attached to a meter replicating the reading on that meter.

Residential heating applicant. An applicant whose primary use of gas is as fuel for heating of a residence or residential building.

Service. A pipe for conveying an individual supply of water or gas of a premises from the common supply in the main to and including the meter registering the flow of water or gas to the service.

Standard volume gas service. Any gas service capable of using not more than 400,000 BTU's per hour.

Standard volume water service. Any water service which is capable of providing up to 35 gallons of water per minute at water pressure levels which are normal at the location of such service.

Street. A street, avenue, alley or other regularly established and existing public highway or public right-of-way.

Street service. That portion of a water service which extends from its connection with the main to and including the curb stop, which controls the flow through the street service.

Section 3. That Section 48-15.3 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 48-15.3. Same--Disputes.

Whenever an applicant advises the department that any part of a billing for water or gas service is in dispute, the department shall investigate the dispute promptly, advise the applicant of the result of its investigation and attempt to resolve the dispute. The department shall not take any action relating to the disputed matter until the investigation is completed, the applicant is informed of the findings of the department, the applicant has been informed of his right to appeal any adverse finding to the commission ~~water and~~

~~gas service hearing board~~, and the applicant has either waived his or her right to appeal or failed to appeal within the required time period, or the appeal has been resolved in favor of the department.

Section 4. That Article XV of Chapter 48 of this Code is hereby amended to read as follows:

Article XV. Hearing of Disputes

~~Water and Gas Service Hearing Board.~~

~~Sec. 48-236. Water and gas service hearing board established members quorum.~~

~~There is hereby established a water and gas service hearing board composed of five members who shall be appointed by the mayor and confirmed by the city council. The present members of such board shall continue to serve until their terms expire. One of the new members shall be appointed for a term of three years, and the other new member shall be appointed for a term of two years. All subsequent members shall serve for terms of three years. In case of any vacancy, a person shall be appointed in the same manner to fill the unexpired term. Of the appointees to such board, one shall be a person who represents low and moderate income individuals. A majority of the members serving on the board at any time shall constitute a quorum for purposes of conducting the business of the board.~~

Sec. 48-237. Duluth public utilities commission--hearings
~~same--Powers and duties.~~

The commission ~~water and gas service hearing board~~ shall hear and decide appeals by water and gas applicants from department determinations concerning disputes over charges for water or gas service department decisions to terminate service to an applicant, department determinations on the ability of an applicant to pay service charges immediately made pursuant to Section 48-208(b) (3) of

this Code, and the department's denial of a prospective applicant's application for service; provided that no applicant is entitled to obtain service pending the hearing and decision by the commission board. The commission board has no power to cancel a debt to the department. All decisions of the commission board shall be binding on the department unless contrary to law, and decisions of the commission board relating to the ability of the applicant to pay service charges shall be binding upon the applicant.

Sec. 48-238. Same--Procedure for appeal--payment plans.

If a determination of the department is adverse to the applicant and such matter is appealable to the commission water and gas service hearing board under Section 48-237 of this Code, the department shall communicate its findings to the applicant and shall inform the applicant of the applicant's right to appeal the determination. If an applicant desires to appeal the department's determination, applicant shall give notice of the appeal in writing to the director of the department and shall briefly state the nature of the dispute and the basis for the appeal. If the appeal involves a termination of service, the appeal must be filed prior to the proposed date of termination to avoid action by the department. All appealable actions of the department may be appealed at any time within six months of the occurrence that gives rise to the appeal. The department shall advise the applicant of the above requirements. Any payment plan approved by the commission water and gas service hearing board shall ensure that the applicant will be current in paying the water and gas bills in the shortest affordable period of time not to exceed 18 months. The commission board shall serve written notice of its approval of any payment plan upon the department director and upon the applicant. If after 30 days from the date of such order, the applicant experiences a change in

circumstances which makes compliance with such payment plan impossible, the applicant, upon five days notice to the department, may petition the commission board for a revised order to take into account these changed circumstances. If the applicant fails to comply with the payment plan as determined by the commission board, the department may terminate service to such applicant by giving five days notice of termination by first class mail to the applicant and by first class mail to all commission board members.

Sec. 48-239. Same--Procedure for hearings.

(a) ~~The water and gas service hearing board shall meet a minimum of once every month on a particular day of the month, to be determined by the board. Meetings shall be open to the public.~~ Appeals shall be heard at the first meeting of the commission following the filing of an appeal. Appeals shall be heard in an order determined by the commission board. The commission board may limit the number of people allowed to speak on any appeal, and the time allowed for presentation of any appeal, as long as the applicant and one employee of the department are allowed reasonable time to present information relevant to the appeal. Failure of an applicant to attend the commission board meeting shall be grounds to dismiss that applicant's appeal, unless circumstances beyond the control of the applicant (as determined by the commission board) cause the failure to appeal. Continuances shall be granted at the discretion of the commission board only upon a showing of circumstances beyond the control of the applicant;

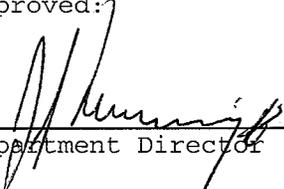
(b) ~~A board member selected by the board shall preside at the meetings.~~ Whenever possible, names of the parties to each appeal shall be furnished to all members of the commission board at least one week prior to the meeting. A commissioner member who has a conflict of interest on a particular case shall disqualify himself or herself from discussion or voting on the appeal;

(c) The commission board may use the department for

reasonable staff services. The city attorney shall advise the board. The ~~commission~~board may promulgate reasonable rules to govern their deliberations which are not inconsistent with this Chapter.

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

Approved:



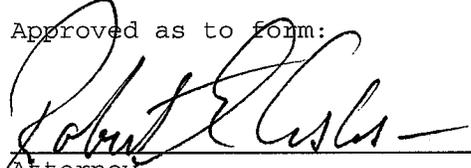
Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

PW&U/ATTY REA:dma 11/23/2010

STATEMENT OF PURPOSE: The purpose of this ordinance is to approve amendments to Chapters 43 and 48 of the City Code to allow the Duluth Public Utilities Commission to hear appeals from staff determinations pertaining to the certificates of noncontribution of water from footings and foundations into the sanitary sewer system ("I & I") and disputes pertaining to water and gas service. When the I & I Program was developed, an appellate tribunal to hear appeals from the Directors' determination that a property was not entitled to a "certificate of noncontribution" was needed. The best choice at the time appeared to be the Building Appeals Board, even though this matter was not within the ordinary scope of the duties.

Similarly when the City decided to create an appellate body to resolve disputes pertaining to the furnishing of water or gas services (usually payment disputes), there was no appropriate body available and so the Water and Gas Service Hearing Board was created. However, in practice the services of this Board are hardly ever called upon because there are very few appeals that come within their jurisdiction.

With the creation of the DPUC whose primary responsibilities are related to utility issues, it seems more appropriate to devolve these responsibilities to that body. The DPUC is willing to assume that responsibility. This resolution approves ordinance amendments which accomplish these results.