

PUBLIC WORKS & UTILITIES COMMITTEE

11-059-0

ORDINANCE NO. _____

AN ORDINANCE PROHIBITING WORK WHICH DAMAGES CITY UTILITIES AND PROVIDING FOR PENALTIES FOR VIOLATION THEREOF, AMENDING CHAPTER 48 OF THE DULUTH CITY CODE, 1959, AS AMENDED, BY ADDING A NEW ARTICLE XIII THERETO.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That Chapter 48 of the Duluth City Code, 1959, as amended, is hereby amended to add a new Article XIII which reads as follows:

Article XIII Damage to underground utilities.

Sec. 48-224. Definitions.

For the purposes of this Article, the following terms and phrases shall have the meanings hereinafter ascribed to them:

(a) Damage to utilities: shall mean an event which results in any damage to or destruction of any facilities of the utility which may include but does not necessarily include escape of any quantity of water, natural gas, sewage or storm water from the utility;

(b) Excavation: shall mean any activity that moves, removes or otherwise disturbs any earthen material of any kind, including but not limited to an "excavation" as defined in Minnesota Statutes Section 216D.01, Subd. 5;

(c) Person: shall mean any individual, partnership, corporation, company, association, and any governmental entity of any kind or level, any other business, organization and public entity of any kind whatsoever and a trustee, receiver, assignee or personal representative of any of them;

(d) State one-call statute: shall mean the provisions of Minnesota Statutes Chapter 216D, and as the same may from time to time be amended or renumbered;

(e) Utility: shall mean any pipe of any kind or size owned

by the city and connected to the city's water, natural gas, sanitary sewer and storm sewer utilities and used by the city's water, natural gas, sanitary sewer and storm sewer utilities for the conveyance of water, natural gas, sanitary sewage or storm water as part of the city's water distribution system or the city's natural gas distribution system or the collection of sanitary sewage or storm water as part of the city's sewer systems, and any equipment, machinery any facilities of any kind whatsoever used by the city to facilitate the distribution of water or natural gas through said distribution systems or the collection of sanitary sewage or storm water as part of the city's sewer systems, whether or not located on public or private property or easements.

Sec. 48-225. Excavations causing damage to utilities.

No person shall cause or allow any excavation to be made which results in damage to utilities, whether intentional or unintentional, in violation of any of the following provisions:

(a) Such person fails to request identification of the physical locations of all elements of the utility in the vicinity of the excavation in conformance with the requirements of the state one-call statute;

(b) Damage to the utility results from failing to exercise the necessary level of care when excavating in close proximity to any element of the utility, the location of which is properly identified as provided for in the state one-call statute;

(c) The manner in which such excavation is performed violates the provisions of Section 48-25 of this Code.

Sec. 48-226. Damages.

City shall be entitled to collect damages flowing from any violation of this Article from any person violating said provisions which shall include but not be limited to the following:

(a) Costs of repairing the damage to the utility, including direct and indirect labor costs, equipment costs, cost of materials, cost of supervision and other overhead, legal costs, attorney's fees and any other costs attributable to the damage to the utility. Such costs shall be the higher of actual, out-of-pocket cost or attributable costs based on reasonable market value;

(b) Value of water or natural gas which escaped from the utility as a result of the damage to the utility;

(c) The value of any damage to any real or personal property owned or controlled by the city or for which the city is responsible;

(d) Any costs incurred by city as a result of claims of third parties alleging that they were damaged as a direct or indirect result of the damage to the utility;

(e) The amount of any fines, penalties or other charges assessed against the city by any governmental or regulatory agency resulting from the escape of any water or natural gas;

(f) Any other loss or cost incurred by city as a result of the damage to the utility.

Sec. 48-227. Penalties.

In addition to damages as described in Section 48-226 above and other remedies as described in Section 48-228 below, any person violating the provisions of this Article shall be subject to the issuance of a citation for such violation under Chapter 12 of this Code, subject to the following:

(a) The city engineer and his or her designees are authorized to issue citations for violation of this Article;

(b) The penalty to be assessed to the violator for violation of the provisions of this Article shall be established by the city council by resolution;

(c) The provisions of 12-3(b) shall not be deemed to limit the city's rights to enforce the provisions of Section 48-226 or of Section 48-228.

Sec. 48-228. Other enforcement.

In addition to the provisions of Section 48-226 and 48-27 above, in the event that a person has violated the term of this Article more than twice in the immediately preceding twelve month period:

(a) The city engineer may refuse to issue an excavation or obstruction permit under Article II of Chapter 45 of this Code to such person and for any project where such person is identified as a contractor or subcontractor or with regard to which such person is reasonably anticipated to perform any excavation;

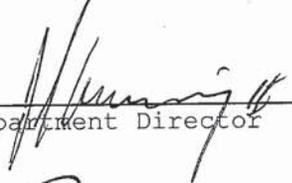
(b) The city purchasing agent may reject the bid of such person to perform any work for the city or of any other person where the violating person is identified as the bidder or a contractor or subcontractor of the bidder or with regard to which the violating person is reasonably anticipated to perform any excavation.

Sec. 48-228. Vicarious liability.

Any person responsible for the supervision of any person violating the requirements of this Article or contracting with such violating person to perform the excavation which gives rise to the damage to utilities shall be jointly and severally liable for such violation and for all penalties, damages and consequences flowing therefrom as set forth in this Article.

Section 2. This ordinance shall take effect 30 days from and after its passage and publication.

Approved:



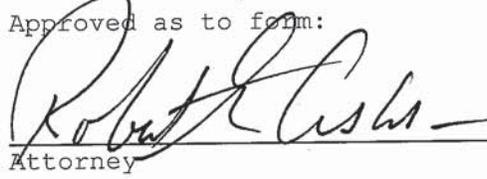
Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

PW&U/ATTY 11/10/2011 REA:dma

STATEMENT OF PURPOSE: The purpose of this ordinance is to incentivise persons doing excavations to avoid damage to the City's water, gas, sanitary sewer and storm sewer utilities.

In recent years the City has suffered a rash of damage to various of its utilities from persons carelessly excavating near City utility lines. The State

has created a system called the Gopher State One-call System whereby persons proposing to do excavating are supposed to contact a central source who then refers the location of the excavation to the appropriate owners of underground utilities (like the City) who can then "locate" and mark their utilities so that the excavator can avoid them.

Sometimes excavators will not bother to contact the State's central source. Sometimes after the utilities have been "located", the excavator ignores the "locate" and excavates over a marked utility. And sometimes the excavation is simply carried out in a negligent manner by failing to use hand tools to excavate next to the utility.

The result of such failures is damage to, in the City's case, City water mains, City natural gas mains, sanitary sewer lines and storm sewer lines which in turn results in the escape of water sewage and, most dangerously, natural gas.

This ordinance is intended to discourage this disrespect of the City's utility systems by allowing the City to not only collect damages resulting from these actions but also to allow the imposition of an administrative penalty under the City Code and to also deny excavation permits of a violator and to reject their bids on City projects as not responsible bidders, both as bidders and as subcontractors to other bidders.

At its meeting of November 9, 2011 the Duluth Public Utilities Commission voted to recommend that the Council approve this ordinance.