

FINANCE COMMITTEE

12-008-0

ORDINANCE NO. _____

AN ORDINANCE MODIFYING VARIOUS FEE LANGUAGE, PROVIDING FOR FEES TO BE SET BY RESOLUTION, AMENDING SECTIONS 12-10, 43-33.4, 44A-9, 44A-10, 44A-15 AND 48-40 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

CITY PROPOSAL:

Section 1. That Section 12-10 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec.12-10. Administrative hearings procedure.

(a) Upon receipt of a notice of appeal and appeal deposit from any citation, the administrator shall schedule a date and time for a hearing before a hearings officer with regard to said appeal and shall mail notice thereof to the violator as herein provided for. Said date shall be not less than ten days after the date of mailing of the notice of hearing to the violator. Said notice shall state the date and time of the hearing, the location where the hearing is to be held and shall identify the hearings officer who will be scheduled to hear the violator's appeal;

(b) For good cause shown, a violator may request that their appeal be heard by a different hearings officer by causing to be received by the administrator not less than three days prior to the scheduled hearing date a written statement of facts supporting the allegation of good cause and a request for substitution of a different hearings officer. Upon such a showing of good cause which might reasonably render the assigned hearings officer unable to fairly hear violator's appeal, the administrator may re-assign the violator's appeal to be heard by a different hearings officer. If necessary, the administrator may re-schedule the date and time of the hearing to accommodate the assignment of a new hearings officer. Only one such re-assignment shall be available with regard to any one appeal;

(c) Upon good cause shown by the violator or by the city, the administrator may grant a continuance of the hearing on any appeal. The party requesting the continuance shall cause to be received by the administrator not less than three days prior to the scheduled hearing date a written statement of facts supporting the allegation of good cause and a request for continuance. Upon the grant of any such continuance, the administrator shall cause to be delivered to the violator and the city a notice setting forth the date, time and place of the re-scheduled hearing;

(d) Upon the written request of the violator or the city demonstrating the need therefore, delivered to the administrator not less than six days prior to the scheduled hearing date, the administrator may issue an administrative subpoena for the attendance of a witness or the production of books, papers, records or other documents that are material to the hearing of the violation. A fee of ~~\$25~~ shall be charged to any violator for the issuance of each such subpoena, which fee shall be set in accordance with Section 31-6(a) of this Code. The party requesting the administrative subpoena shall be responsible to cause any such subpoena to be served in the manner provided for in the *Minnesota Rules of Civil Procedure* and for pay all fees and expenses of any witness subpoenaed. In addition the hearings officer, on their own motion, may cause such subpoena to be issued in which case the city shall be responsible for service thereof and for fees and expenses. Any person served with such an administrative subpoena who deems compliance therewith to be unreasonable or oppressive may appeal therefrom by causing to be received by the administrator not less than three days prior to the date scheduled for compliance therewith a written statement of facts supporting the allegation of unreasonableness or oppressiveness. The administrator may cancel

the subpoena, affirm it or modify it, mitigating those factors rendering it unreasonable or oppressive. Any person who, without just cause, fails or refuses to comply with any administrative subpoena shall be guilty of a misdemeanor. In addition, the party requesting the administrative subpoena may seek an order from district court directing compliance with the administrative subpoena;

(e) Neither the city nor the violator shall be represented at the hearing by an attorney. Provided that, where relevant or where requested by the hearings officer, either party may submit a legal memorandum relevant to the issues being heard;

(f) At the hearing, the hearings officer may hear and rely on any testimony or other evidence they deem to be reasonably reliable, including, in the exercise of their discretion, hearsay testimony. Strict compliance with the *Minnesota Rules of Evidence* will not be required. The proceedings shall be either recorded by a recording clerk recording the evidence in summary form or by means of an audio recording, and a record of all testimony and of all evidence considered shall be maintained for at least 60 days after the close of the hearing. The interpretation of technical codes such as building codes, electrical codes and other such codes by those regularly engaged in their enforcement and interpretation shall be given substantial weight;

(g) In all hearings the city shall have the burden of proving by a preponderance of the evidence that the alleged violation has occurred and that the violator is the person or one of the persons legally responsible therefore;

(h) If any violator fails to appear for any scheduled hearing, the violation shall be deemed to have been admitted by such violator, the hearings officer shall impose such penalty or order or

both as they deem appropriate and the violator shall be deemed to have waived any further right of appeal.

Section 2. That Section 43-33.4 of the Duluth City Code, 1959, as amended, is 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 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, which surcharge shall be set in accordance with Section 31-6(a) of this Code;

(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 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 or her, 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 Section 44A-9 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 44A-9. Peddlers and solicitors.

No person shall peddle or sell any merchandise or solicit any funds within the skywalk system without first receiving a permit to do so from the skywalk system coordinator. Applications for permits shall be submitted on forms furnished by the skywalk system coordinator and shall be accompanied by a \$2 nonrefundable fee, which fee shall be set in accordance with Section 31-6(a) of this Code. Permits shall be granted only in accordance with skywalk use policy. Permits may be suspended or revoked for good cause. The skywalk system coordinator may impose any conditions and restrictions on such permits as he deems necessary and reasonable.

Section 4. That Section 44A-10 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 44A-10. Permit required for displays, signs, banners, special events, obstructions, etc.

(a) The skywalk system coordinator may, consistent with skywalk system use policy, and at his discretion, grant permits:

(1) To authorize the posting and/or display of signs or banners within the skywalk system;

(2) To authorize displays, exhibits or shows which occupy floor space in the skywalk system;

(3) To authorize special events, including meetings, within the skywalk system;

(4) To authorize other temporary or permanent use of floorspace, airspace, or wallspace within the skywalk system;

(b) The skywalk system coordinator may issue permits only if the proposed use is compatible with the public interest, not detrimental to public health, safety or morals, consistent with existing skywalk system use policy, does not violate any contractual obligation of the city, and does not substantially interfere with pedestrian passage through the public easement;

(c) Applications for such permits shall be made in writing to the skywalk system coordinator on forms supplied by him and shall be accompanied by an application fee ~~of \$10~~, which fee shall be set in accordance with Section 31-6(a) of this Code. The skywalk system coordinator shall investigate the proposed use to the extent he deems necessary and grant or deny the permit. The skywalk system coordinator may place such restrictions and conditions on any permit as he deems necessary. These conditions and restrictions may include, but are not limited to, the following:

(1) Insurance, bond, or damage or cleanup deposit requirements;

(2) Restrictions on hours of operation;

- (3) Restrictions on area of operation;
- (4) Duration of the permit;
- (5) Design specifications for any part or all of the proposed use;
- (6) Security provisions, including extra police protection, for any proposed use;
- (7) Maintenance and/or cleanup standards for the proposed use.

Section 5. That Section 44A-15 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 44A-15. Minimum skywalk door access hours.

(a) The city council may, by regulation as provided for in Section 44A-12 hereof, establish minimum hours during which any or all skywalk doors shall be accessible. Skywalk doors shall include those doors providing access between buildings on the skywalk system, access to skywalk bridges and access from the skywalk system to the street. For the purposes of this Section, skywalk doors giving access to skywalk bridges and to streets shall be deemed to be "accessible" when said doors are unlocked and can be opened by the general public; skywalk doors between buildings shall be deemed to be accessible when they are unlocked and in an opened position;

(b) It shall be the responsibility of building owners owning buildings connected to the skywalk system to ensure that all skywalk doors in and adjacent to their buildings remain accessible during the minimum hours set pursuant to paragraph (a) above;

(c) Upon receipt of a complaint that any skywalk door is not accessible in violation of minimum skywalk hours regulations, the police department may render any skywalk door or doors accessible. In the event that the department does so, the owner of the building shall be responsible to pay a service fee of ~~\$50~~ for each time the

police department renders the aforesaid service, which fee shall be set in accordance with Section 31-6(a) of this Code;

(d) For each incident of police service referred to in paragraph (c) above, the chief of police shall promptly notify the skywalk operations administrator of the date, time and place of rendering such service. The skywalk operations administrator shall promptly cause a billing of the service fee therefore to be transmitted to the owner of the building in question, which owner shall be deemed to be the owner shown to be such on the records of the county auditor. The service fee for said service shall be immediately payable by the owner.

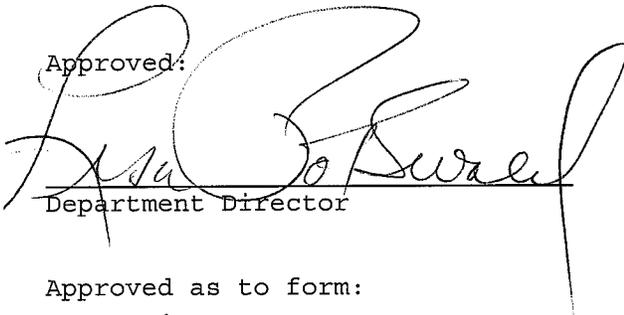
Section 6. That Section 48-40 of the Duluth City Code, 1959, as amended, is amended to read as follows:

Sec. 48-40. Same--Inspection by city where return not made.

Should a permittee under any service construction permit neglect or refuse to make the required return within ten days after completion of the work, the city is authorized to make a special inspection of the work and, if the same be found satisfactory, to turn on the water and gas. The permittee shall be required to pay a reasonable fee, not less than \$25, that fee which shall be set in accordance with Section 31-6(a) of this Code. for the special inspection.

Section 7. That this ordinance shall take effect 30 days after its passage and publication.

Approved:



Department Director

Approved for presentation to council:



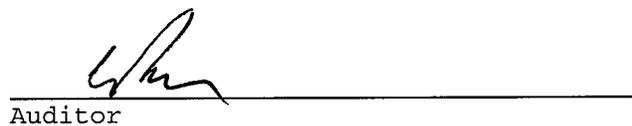
Administrative Assistant

Approved as to form:



Attorney

Approved:



Auditor

CLK JJC:jmr 1/27/2012

STATEMENT OF PURPOSE: This ordinance modifies the language pertaining to licenses, permits and fees in the Code, omitting the dollar amounts and providing for them to be set by city council resolution.