

PUBLIC WORKS AND UTILITIES COMMITTEE

12-031-O

REPLACEMENT

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

AN ORDINANCE AUTHORIZING ASSESSING DELINQUENT WATER AND SANITARY SEWER CHARGES AGAINST BENEFITTED PROPERTIES IN CERTAIN CASES, AMENDING SECTION 43-6 OF THE DULUTH CITY CODE, 1959, AS AMENDED, AND ADDING A NEW SECTION 48-15.5 TO THE CODE.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That Section 43-6 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 43-6 Joint liability for payments.

The owner of premises which are connected to the city's wastewater facilities, the occupant thereof and the user of the service shall be jointly and severally liable to pay for the service to such premises and the service is furnished to the premises by the city only upon the condition that the owner of the premises, occupant and user of the services are jointly and severally liable to the city therefor. A claim for unpaid charges which have been billed to the occupant of the premises or the user of the service may be recovered against the owner, occupant or user if a civil action in any court of competent jurisdiction or in the discretion of the director may be certified to the county auditor to be collected with taxes against such premises so served. The certification of such charges shall be performed in accordance with the provisions of subsections b. through f. of Section 48-15.5 of this Code. Money paid to the county auditor on such account shall belong to the city and shall be remitted to the city treasurer by the county auditor in the manner provided by law for the payment of other money belonging to the city. In addition to, and not in lieu of, the foregoing method of enforcing payment of such charges, the director may, according to such rules and regulations as he may have

established and the council shall have by resolution approved, cause the city water supply for and to any premises to be shut off until all arrears, with interest and penalties on such delinquent charges, shall be paid, together with the cost of shutting off and turning on such water.

Section 2. That Chapter 48 of the Duluth City Code, 1959, as amended, is hereby amended by the addition of a new Section 48-15.5 thereto which reads as follows:

Sec. 48-15.5            Assessment of unpaid sewer charges generally and assessment of unpaid water charges in certain cases.

(a) Application. The authorization to assess for unpaid water charges in this Section shall apply only in cases meeting the following criteria; said criteria shall not limit the authority of the city to assess for unpaid sewer charges under Section 43-6 of the Code:

(1) Where more than one building is served by a single water service;

(2) Where at least one of the buildings so served is under separate ownership from one or more of the other buildings served by said service;

(3) Where there are at least two months of unpaid charges for water service provided to any such separately-owned property;

(4) Where the director certifies that reasonable efforts to collect such unpaid charges have been unsuccessful and the applicant for such services does not have a valid agreement with the department to pay such charges;

(5) Where there is not a water shut-off valve located within a public street easement which will allow water service to be

shut off to the property to which the unpaid charges pertain without turning off water service to a property where payments received for water service are current;

(b) List of delinquent accounts. On or before June 1 of each year, the department may transmit to the city assessor a list of properties described in Subsection (a) above and any other properties having unpaid sewer charges certified by the director for assessment against the property pursuant to Section 43-6 of the Code, together with the amount due with respect to each such property. For each account transmitted, a collection fee in the amount set by city council resolution pursuant to Section 31-8 of the City Code shall be added to reimburse the department for its administrative costs;

(c) Preparation of assessment roll. Upon the receipt of such lists, 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 Subsection (b) above;

(d) Notice. On or before July 1 of each year, the city assessor shall certify the assessment roll to the city council. The assessor shall give 20 days notice by first class mail to the apparent owner of each lot or parcel of land and any other party known to have a legal interest in said land stating the amount of the assessment, including the collection fee, the description of the property, that the assessment roll is on file in the assessor's office and that any party aggrieved by the assessment may appeal the assessment to the city assessor by filing a written notice of appeal with the assessor within 20 days after the notice of assessment.

Such notice shall indicate that the assessment, including the collection fee, is due and payable on or before October 1 of the current year. Failure to make payment by such date shall render the assessment delinquent;

(e) Appeal to city assessor. Any party aggrieved by an assessment made pursuant to this Section may appeal such assessment by filing a written notice of appeal with the city assessor. The notice shall state the precise grounds upon which the appeal is taken. The city assessor shall notify the appellant of the time and place of the hearing. At the hearing, the city assessor shall hear and determine all objections made to the regularity of the proceedings or to the correctness of the amount of such assessment or of the amount levied upon a particular lot or parcel of land. If the proceedings are found to be regular and the amounts claimed had been properly billed with regard to the benefitted property, the assessor shall correct any errors which may have been found in the assessment and shall thereupon 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 pursuant to Section 31-8 of the City Code 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 all appeals are heard and determined, the city council shall confirm the entire assessment roll by resolution;

(f) Certification of delinquent assessments. 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 Chapter IX of the City Charter including but not limited to Sections 67 and 68 thereof.

Section 3. This ordinance shall take effect 30 days from and after its passage and publication.

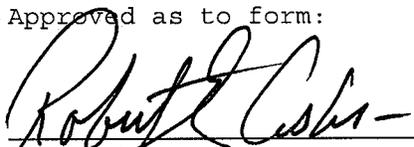
Approved:

  
\_\_\_\_\_  
Department Director

Approved for presentation to council:

  
\_\_\_\_\_  
Chief Administrative Officer

Approved as to form:

  
\_\_\_\_\_  
Attorney

Approved:

  
\_\_\_\_\_  
Auditor

PW&U/ATTY REA:dma 05/01/2012

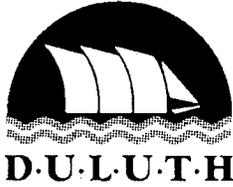
STATEMENT OF PURPOSE: The purpose of this ordinance is to authorize the Public Works and Utilities Department to assess for unpaid water charges where more than one property is served by a single service and to cut off water service would unfairly penalize another party served by the same service who is current with their charges. It also acts to create a process for implementing the previously-existing authority to assess for unpaid sewer bills.

Normally, when a party fails to pay their water or sewer bill without reason or an agreement with the Department to pay delinquent bills, the Department is able to "encourage" payment of the delinquent account by turning off water service to the non-paying property at the street.

Occasionally, however, there are circumstances where, for reasons unknown, a single water service line provides service to more than one property and the only shut-off valve to which the Department has access is located such that it turns off service to both properties. In that situation, when one of the property owners is current and the other is delinquent and refuses to pay, the Department cannot shut off service to the delinquent property without cutting off service to the other property, thereby punishing the innocent with the guilty. In addition, in many of these cases, the delinquent property is also not owner-occupied, rendering ordinary collections procedures problematic.

The purpose of this ordinance is to allow the unpaid charges for water and sewer service to the subject property to be assessed against it and collected with the real estate taxes. The rationale supporting this process is that the property where the service is consumed clearly benefits from having service as the property would not be habitable if it did not have service and, in the case of rental property, the owner could not rent such property and receive rent payments if there were no service.

This process would only be used in unusual cases and as a last resort as, normally, more customary and less cumbersome methods of securing payment are available and would be used first.



**CITY OF DULUTH  
CITY ATTORNEY**

**INTER-DEPARTMENTAL CORRESPONDENCE**

**DATE:** July 18, 2012  
**TO:** City Council  
**FROM:** Robert E. Asleson, Assistant City Attorney  
**SUBJECT:** 10-031 O Replacement

This ordinance which was previously before the Council on May 14<sup>th</sup>, 2012, originally authorized the assessment of unpaid water service charges against the property where they were consumed in those cases where a single water service and shut-off valve served two or more properties and the other property or properties served were current on their bills.

Normally when customers refuse to pay their water bills, the City can shut off the water service to the non-paying property but in the above cases, such a remedy would be unfair to the other property owner being served who was current.

It was noted at Council that the same customers who were not paying their water service bills were almost assuredly not paying their sanitary sewer service bills either and so the draft ordinance was sent back to the Administration to add the ability to assess for unpaid sewer bills.

A review of Section 43-6 of the Code pertaining to sanitary sewer charges makes it clear that the Director presently has that authority. Chapter 43 does not, however, include the process by which such assessments can be implemented.

10-031 O Replacement addresses this issue by making the process for assessing for unpaid sanitary sewer bills clear.