

PUBLISHED FEBRUARY 10, 2015

OFFICIAL PROCEEDINGS

Excerpt from the minutes of the Duluth City Council meeting held on Monday, February 9, 2015, at 7:00 p.m. in the Council Chamber, City Hall, Duluth, Minnesota.

ORDINANCE NO. 10354

AN ORDINANCE AMENDING CHAPTER 48 OF THE DULUTH CITY CODE, 1959, AS AMENDED, UPDATING LANGUAGE RELATED TO UTILITY SERVICE BILLING AND COLLECTION, DEPARTMENT SERVICES AND AUTHORIZED RESIDENTIAL GAS CONNECTIONS.

The city of Duluth does ordain:

Section 1. That Section 48-6 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 48-6. Application required; applicants to answer all questions of department.

(a) All applicants for water, gas, gas transportation or sewer service shall sign an application form for said service furnished by the department;

(b) No person or persons shall be provided service until they have presented sufficient information to the department to clearly and accurately establish, to the satisfaction of the department, their identity and their utility credit history.

Section 2. That Section 48-11 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 48-11. Security from applicants--when it may be required by department.

The department, at any time and at its discretion, may require from an applicant reasonable security to safeguard itself against the loss of or damage to equipment and to insure prompt payment of all bills, subject to the following conditions:

(a) The department may, at its discretion, accept security in the form of a contract executed by a third party guaranteeing payment by the applicant. Such guarantee contract shall be in a form acceptable to the department and be given by a person or entity acceptable to the department;

(b) A security deposit shall not be required of:

(1) A residential heating or domestic applicant who has been an applicant of the department within the last one year at other premises within the city, or who has had like utility services outside the city within the last one year, and has promptly paid all service charges for the last 12 months at such other premises; or

(2) An applicant, other than a residential heating or domestic applicant, who has been an applicant of the department within the last two years at other premises within the city, or who has had like utility services outside the city within the last two years, and has promptly paid all service charges for the last 24 months at such other premises;

(c) The department shall not require a deposit or a guarantee of payment based upon source of income, residential location, employment tenure, nature of occupation, race, color, creed, sex, marital status, age, national origin or any other criteria which does not bear a reasonable relationship to the assurance of payment.

Section 3. That Section 48-12 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 48-12. Security from applicant--amount.

The department, at any time and at its discretion, may require from an applicant reasonable security to safeguard itself against the loss of or damage to equipment and to insure prompt payment of all bills subject to the following conditions:

(a) The security deposit shall be in an amount of 1/6 the estimated total annual cost of services to be provided at the premises for which the applicant contracts for service, except as provided herein. If the department requires a greater deposit, it shall give written

reasons for its requirement. A person aggrieved by the requirement of a deposit may have a hearing before the director of public works and utilities by requesting one in writing. If the applicant is a recipient for low income home energy assistance according to the criteria of the current Minnesota state plan for low income energy assistance, and also that the applicant's utility credit history shows that there is little risk of nonpayment to the department, then the director may reduce the deposit to any reasonable amount in excess of \$49;

(b) The security deposit shall be in the form of a cash deposit;

(c) Any security deposit shall bear interest at a rate determined by state statute.

The interest shall be credited to the customer's security deposit account;

(d) The department shall keep records of persons from whom deposits are collected, and the amounts, interest paid and the distribution, if any, of such deposits. Receipts shall be issued to applicants for the deposits.

Section 4. That Section 48-13 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 48-13. Use of security deposit.

(a) If, at any time, an applicant does not promptly pay any charges owing to the department, and the applicant has a security deposit with the department, then the department, at its option, may use said security to satisfy the charges owing on any account of applicant. Whenever the department applies the security deposit to the payment of charges, it shall send written notice of its action to the applicant within 35 days. If the security deposit is used to pay charges owed to the department, then the department, at its option, may require the deposit with it of additional security, under the same conditions set out in sections 48-11 and 48-12 of this Code. If the applicant fails to make the required security deposit within 30 days of a request to do so, the department may terminate service to the customer as provided in Section 48-208(a) below;

(b) Subject to paragraph (a) above, any security deposit shall be refunded to a residential heating or domestic applicant when such applicant has promptly paid his or her bills for a period of 12 consecutive months after such applicant has deposited the full amount of the required security with the department, and to an applicant other than a residential heating or domestic applicant when said applicant has promptly paid his or her bills for a period of 24 consecutive months after such applicant has deposited the full amount of the required security with the department. Said deposit shall be paid directly to applicant;

(c) Whenever an applicant terminates all business with the department, the amount of such security deposit shall be applied against applicant's final bill for service, and the applicant shall be given, within 45 days, a written accounting of the disposition of any security deposit given by that applicant and any remaining amounts due to him or her;

(d) If an applicant has more than one account or is receiving service at more than one property, security for any account or property may be applied and used for any other account or property of the applicant.

Section 5. That Section 48-15 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 48-15. Same--To be paid monthly--meter reading requirements.

(a) Payment for the supply of water, gas, sewage and all other charges and fees shall be made monthly, on or before time for payment stated on the bill, but in no case shall such time be less than 20 days after the date of mailing of the bill. The department shall charge interest on delinquent bills, including all charges, fees and budget plan payments, at the rate of the amount set in accordance with Section 31-8 of this Code per month. Interest on such delinquent bills shall be charged from the date of the mailing of the delinquent bill, but interest of less than \$1 accruing during a billing period shall be waived;

(b) Except in unusual cases or when approval is obtained from the applicant, readings of all meters used for determining charges to applicants shall be made at least every other month unless otherwise authorized by resolution of the city council; provided, however, that in the case of premises not served by gas, the department shall not be required to read water meters more frequently than once every four months. The term, month, for meter

reading and billing purposes is the period between successive meter reading dates which shall be as nearly as practicable to a 30 day interval.

The department shall read the meter when there is a change in applicants;

(c) When access to a meter cannot be gained an estimated bill may be rendered; provided that in cases of emergency, the department may render estimated bills without reading meters. Estimated bills shall be based on the applicant's normal consumption for a corresponding period during the preceding year or any other reasonable and accurate method;

(d) The department may render no more than two consecutive estimated bills to any applicant. When two consecutive bills have been issued, the department will send a letter to the applicant with the second bill, giving that applicant ten days to make arrangements with the department for reading the meter, either by making an appointment to grant the meter reader access to the meter or delivering a key to the department for access to the meter. The letter shall also state that if no such arrangements are made within ten days, the department will disconnect service.

Section 6. That Section 48-15.4 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 48-15.4. Same--Uncollectible debts.

If it comes to the attention of the department director that because of death, insolvency or other cause, the debt of an applicant or customer is presently uncollectible and that there appears to be no chance that such debt will become collectible in the future, the director may present evidence of such uncollectibility to the director of finance and to the city attorney. If both the director of finance and the city attorney agree in writing that the debt appears to be uncollectible presently and in the future, the director may delete such debt from the list of delinquent accounts receivable. Debts discharged pursuant to bankruptcy and debts of less than \$5 may be recommended to the director of public works and utilities for deletion from the list of delinquent accounts receivable by the department office manager.

Section 7. That Section 48-15.5 of the Duluth City Code, 1959, as amended, be amended to read 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's chief financial officer 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 chief

financial officer 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 chief financial officer shall certify the assessment roll to the city council. The chief financial officer 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. The notice shall state the amount of the assessment, including the collection fee, the description of the property, that the assessment roll is on file in the chief financial officer's office and that any party aggrieved by the assessment may appeal by filing a written notice of appeal with the office of the chief financial officer within 20 days after receiving 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) Form of appeal to the chief financial officer. Any party aggrieved by an assessment made pursuant to this Section may appeal such assessment by filing a written notice of appeal with the chief financial officer within 20 days of receipt of the notice of assessment. The notice shall state the precise grounds upon which the appeal is taken. The chief financial officer shall notify the appellant of the time and place of the hearing. At the hearing, the chief financial officer 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 chief financial officer 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 8. That Section 48-26 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 48-26. Connections, etc., to be made by authorized persons only.

Any person making any attachment or connection to, or doing any work with or on any water house service and any appurtenances thereto, must be authorized by the laws of the state of Minnesota to do such work. All persons performing gas-fitting work from the outside meter stop valve to any appliance or outlet, including all gas house piping, shall be a plumber or pipefitter licensed by the state of Minnesota working for a licensed and bonded plumbing contractor. Residential gas piping in owner-occupied units in one and two family dwellings may also be performed by an employee of a mechanical contractor bonded in accordance with Minnesota law if the employee is qualified to do gas piping through an education and training program approved by the building official. The provisions of this Section shall not apply to city employees doing work for the city and to any property owner

doing work on their single family, owner occupied dwelling.

Section 9. That Section 48-120 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 48-120. Same--Services to be maintained by department to curb stop only.

All street services shall be maintained and repaired by the department at department cost. Privately owned water services downstream from the curb stop or master box shall be repaired and maintained by the owners at their expense.

Section 10. That Section 48-128 of the Duluth City Code, 1959, as amended, is repealed.

Section 11. That Section 48-157 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 48-157. Transportation services.

The department is authorized to provide by contract interruptible natural gas transportation services to high volume gas service users. The provisions of this Chapter shall not apply to such services except as provided for and incorporated in such a contract.

Section 12. That Section 48-207 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 48-207. Same--Fees.

A fee based on current service charges shall be collected for each permit to take water from a fire hydrant and for establishing supply thereunder. This fee shall not be part of any charge for water used from the hydrant.

Section 13. That Section 48-208 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 48-208. Right of department to shut off supply of gas or water.

(a) For violation of or noncompliance with the provisions of this Chapter or the rules of the department, other than for nonpayment of any charges, the right is reserved to the department to shut off the supply of water or gas, or both, after the giving of such notice and opportunity to be heard as is reasonable under the circumstances. Whenever possible, such notice shall be mailed or otherwise given to the owner of record of affected premises or his agent, to any lessee of such premises known to the department and to residents of such premises, such notice to residents being in the form of letter addressed to "resident" at such premises or in another reasonable manner;

(b) For nonpayment of any charges the department may terminate water or gas service, or both, to the premises where the service was received and to any other premises owned or occupied by the applicant, provided that:

(1) Notice of termination has been given at least 15 calendar days prior to such action by mail to the applicant at the billing address. A record of all notices must be kept on file by the department for a period of not less than one year. Such notice shall specify:

(A) The reason for the termination;

(B) The date on which termination of service is scheduled to occur;

(C) The amount delinquent;

(D) That the department will accept payment at any time during business hours prior to termination;

(E) The right of an applicant to establish inability to pay the charges and work out a payment plan during the cold weather months, as provided in subparagraph (3) of this paragraph;

(F) The availability of low-income energy assistance or other resources for energy expense; and

(G) That the applicant has a right to a hearing if the applicant disputes the bill;

(2) Such charges are undisputed or, if disputed, the dispute resolution procedure provided for in sections 48-15.3, 48-237 and 48-238 of this Code has been complied with by the department;

(3) Termination is conducted in accordance with Minnesota's "Cold Weather Rule" (Minn. Stat. § 216B.097, as may be amended);

(c) If the department has received no response from an applicant to whom a notice of service termination has been sent pursuant to this Section, the department must make one attempt, within ten days prior to the date of termination, to contact the applicant ascertain the reason for nonpayment and provide information on financial resources available to pay for energy expenses, if appropriate. This attempt shall be in addition to the regular monthly bill and the notice of termination required by this Section.

Section 14. That Section 48-208.2 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 48-208.2. Misdemeanor to rent premises where water or gas disconnected.

(a) No person shall let to another for occupancy any dwelling or dwelling unit covered by the city of Duluth Housing Code (Chapter 29A of the City Code), for the purpose of living therein, to which water, gas or sewer service has been discontinued by the department for the failure of the owner or any other person to pay outstanding charges on his or her account, unless one of the following conditions is met:

(1) The landlord provides the prospective tenant with written confirmation from the department that arrangements have been made to reconnect utility service; or

(2) The landlord and prospective tenant enter into a written agreement approved by the department providing for payment of current and continuing utility charges, whether through allocation of rent toward satisfaction of utility charges or otherwise, in consideration for reconnection of utility service; or

(3) The prospective tenant applies for service pursuant to Section 48-6 of this Chapter;

(b) No landlord, agent of the landlord or person acting under a landlord's direction or control may disconnect or cause the disconnection of water, gas or sewer services to the tenant, without the tenant's consent, unless such interruption is for the purpose of repairing or correcting faulty or defective equipment or protecting the health and safety of the occupants of the premises involved. If such disconnection occurs, the landlord shall be obligated to reinstate the service as soon as possible;

(c) If residential premises are rented in violation of paragraph (a) of this Section, the tenant may temporarily reinstate service by paying to the department an amount equal to the estimated utility charges for the remainder of the period for which the tenant has paid rent, not to exceed 31 days. At the end of said period, the department may immediately disconnect service to said premises unless other arrangements are made by the landlord or by the tenant under Section 48-208.3 below. The department shall bill the landlord for the reconnection charges.

Section 15. That Section 48-208.3 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 48-208.3. Tenant's right to pay bill and deduct charges from rent.

(a) Where the department has given notice that it will terminate utility service because of the failure of a landlord applicant to pay outstanding charges on his or her account, a tenant may notify the landlord in writing of his or her intent to follow the procedures set forth in this Section. During the time period from October 15 to April 15, if utility service has been disconnected, or is threatened with disconnection within 48 hours, the tenant may notify the landlord, either orally or in writing, of the situation and of his or her intent to pay the bill within such period as is reasonable under the circumstances. If the situation is not remedied, the tenant may pay the charges for the current billing period and, upon submitting to the landlord receipts, deduct the cost from the rent;

(b) If the department receives payment from a tenant under this Section equivalent to the current bill, it shall not terminate service for the following month;

(c) If the tenant desires to continue paying service charges for the landlord beyond the one month period authorized in paragraph (b) of this Section, the department may

require the tenant or tenants to agree to make payments to the department in an amount equal to the current charges not to exceed tenant's monthly rent to the landlord applicant. Payments shall be due monthly on the date tenant's rent is due under tenant's lease with the landlord. Tenant may, at his or her option, terminate the obligation under this agreement, continue to pay current charges under the terms and conditions of this Section or apply for service as provided for in Section 48-6 above. The department may require the tenant to furnish rent receipts, a written lease or other proof in writing of the amount of the tenant's monthly rent. All agreements to make payments to the department in lieu of rent shall be in writing, and signed by the tenant and a representative of the department. A copy of such agreement shall be furnished to the tenant;

(d) When a tenant elects to pay for water and gas service in accordance with this Section, the department shall notify the tenant's landlord of the election. This notice shall advise the landlord that the tenants have the right to deduct utility charges actually paid from future rental payments, and that no landlord can retaliate against tenants (i.e., eviction or rent increase without other good cause) for exercise of their rights under this Section;

(e) For purposes of this Section, "current bill" means the bill for utility consumption at the premises during the previous billing period and "average bill" means the bill for a year's consumption at the premises divided by the number of billing periods in a year;

(f) If the tenant fails to make payments under this Section, the department shall give the tenant five days notice by first class mail of its intent to terminate utility service before terminating such service;

(g) Notwithstanding a tenant's election to pay for current water and gas service in accordance with this Section, the landlord shall remain responsible for any and all arrearages on the account along with any and all accrued penalties on said arrearages. The landlord may choose to execute an assignment of rents with the department providing for the assignment of the landlord's right to receive tenant's remaining monthly rents until all arrearages on the account have been paid in full;

(h) If there are multiple tenants in an affected multifamily building, the department is not required to offer the right to become the responsible bill payer or customer of record to more than one tenant in a 12-month period;

(i) This Section is intended to comply with all applicable provision of Minnesota Statutes chapters 325E and 504B, as may be amended, and shall be interpreted to comply with those provision wherever possible.

Section 16. That Section 48-234 of the Duluth City Code, 1959, as amended, be amended to read as follows:

Sec. 48-234. Appropriated funds for use by director in advertising, etc.

Subject to the approval of the city's chief administrative officer, the director of the public works and utilities department is hereby authorized and directed during any calendar year, if funds shall be appropriated by the city council to purchase and contract for such services, materials and supplies and to pay for such selling expense items as the director may from time to time deem necessary in carrying on any advertising or publicity campaign designed to make effective the intent and purpose of this Article.

Section 17. That this ordinance shall take effect 30 days after its passage and publication.

(Effective date: March 12, 2015)

Councilor Julsrud moved passage of the ordinance and the same was adopted upon the following vote:

Yeas: Councilors Filipovich, Fosle, Gardner, Hanson, Julsrud, Krug, Russ, Sipress and President Larson -- 9

Nays: None -- 0

ATTEST:
JEFFREY J. COX, City Clerk

Passed February 9, 2015
Approved February 9, 2015
DON NESS, Mayor