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Title:	AN ORDINANCE AMENDING CHAPTER 48 OF THE DULUTH CITY CODE, 1959, AS AMENDED TO ALLOW TERMINATION OF WATER SERVICE TO CUSTOMERS OF THE CITY'S DISTRICT HEATING UTILITY FOR FAILURE TO TIMELY PAY UTILITY BILL AMENDING SECTIONS 48-1, 48-208, 48-208.2, 48-208.3, 48-209, 48-210 AND 48-212 THEREOF..		

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AN ORDINANCE AMENDING CHAPTER 48 OF THE DULUTH CITY CODE, 1959, AS AMENDED TO ALLOW TERMINATION OF WATER SERVICE TO CUSTOMERS OF THE CITY'S DISTRICT HEATING UTILITY FOR FAILURE TO TIMELY PAY UTILITY BILL AMENDING SECTIONS 48-1, 48-208, 48-208.2, 48-208.3, 48-209, 48-210 AND 48-212 THEREOF..

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That Section 48-01 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.

Utility. Water or natural gas furnished by the City or steam or hot water furnished through the City's district energy system or any combination thereof.

Section 2. : That Section 48-208 of the Duluth City Code, 1959, as amended, is hereby amended to

read as follows:

Sec. 48-208. Right of department to shut off supply of utilities~~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 utilities~~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 utility~~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, if applicable, 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 3. :That Section 48-208.2 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 48-208.2. Misdemeanor to rent premises where any utility~~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 any utility~~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 any utility~~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 4. : That Section 48-208.3 of the Duluth City Code, 1959, as amended, is hereby 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 utility~~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 utility~~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 5. : That Section 48-209 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 48-209. All charges to be paid before utilitywater or gas supply is re-established.

After the supply of any utilitywater or gas, or both, to any applicant or to any premises has been shut off due to nonpayment of charges or for violation of the provisions of this Chapter or department rules, no utility neither water nor gas will be again supplied to applicant until all charges against applicant including charges for shutting off and turning on the supply of utilities haswater or gas, have been paid, or until other arrangements are made with the department at its discretion, except that utilitywater and gas service will be supplied to tenants applying for reinstatement of service pursuant to Section 48-208.2 of this Code.

Section 6. : That Section 48-210 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 48-210. Charges.

The charges for shutting off and turning on the supply of any utilitywater or gas, where it has been shut off for nonpayment of charges, to facilitate maintenance or repair of any service or for violation of the rules, shall be not less than that amount set in accordance with Section 31-8 of this Code and shall include compensation to the department for all expenses incurred in such shutting off and turning on the supply

Section 7. : That Section 48-212 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 48-212. Turning on water or gas supply by unauthorized persons prohibited.

No person not authorized by the department to do so shall turn on any utilitythe water or gas supply to any premises.

Section 8. That this ordinance shall take effect 30 days after its passage and publication.

STATEMENT OF PURPOSE: The purpose of this ordinance is make applicable to steam energy and hot water energy supplied by the city's district energy system ("DES") the same requirements as currently apply to water and natural gas supplied by the City.

Presently, Chapter 48 of the code gives the city certain specified rights to disconnect water or gas service or both to customers for non-payment of bills or other violations of the ordinances and rules which cover provision of service. The code also includes a number of protections for consumers including the incorporation of the so-called "cold weather rule".

None of the rights or protections apply to steam or hot water provided by the DES. The reason, of course, is that district energy was first supplied by a private company and then, when the city acquired the system, it was run by private cooperative.

Now that the city owns and operates the system through its agent, Evergreen Energy, the issue has been brought to the fore as to how to deal with energy customers that fail to pay for the utilities they consume. A fair and obvious answer is to afford them the same rights and responsibilities that are

currently applicable to the city's other utility customers.

This ordinance amendment would accomplish this by adding a new definition of "utility(ies)" which would include steam and hot water supplied by DES along with water and gas and then by amending the relevant sections of Article IX of Chapter 48 which deals with shut-offs for non-payment, substituting "utility" for "water or gas or both", thereby allowing the same procedures and rights currently applicable to water and gas to apply also to DES-supplied utilities.