

CHAPTER 45.

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²**Error! Main Document Only.**Article XII will be repealed as of December 31, 2019, pursuant to Ord. No. 10298, 6-9-2014, § 1.

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Article I. In General.

Sec. 45-1. Assemblages blocking passage of streets and sidewalks prohibited.

No group or company of persons shall assemble together on any highway or sidewalk so as to obstruct the free passage thereof.

Sec. 45-2. Repealed by Ordinance No. 8774, 3-3-1986, § 1.

Sec. 45-3. Washing, repairing of automobiles and dumping of oil, grease, etc., on paved streets prohibited.

No person shall dump, throw, drain or allow to be dumped, thrown or drained any oil, grease or other lubricants, make general repairs or wash a vehicle or allow the same to be repaired or washed on any paved street or highway in the city. (Ord. No. 6838, 6-12-1950, § 126.)

Sec. 45-4. Obstructions--generally prohibited.

Except as provided in this Chapter, no person shall obstruct or cause to be obstructed any sidewalk, street, highway, alley or other public ground with any object or material whatsoever, or place or throw onto any sidewalk, street, highway, alley or other public ground any dust, sweepings, shavings, ashes or other refuse. (Ord. No. 6838, 6-12-1950, § 65; Ord. No. 7896, 12-20-1971, § 1.)

Sec. 45-4.1. Same--Generally permitted.

The city council may, by resolution, authorize the placement of objects or materials on public sidewalks or boulevard areas in cases where the council finds that such objects or materials will not substantially interfere with pedestrian traffic and that the placement of such objects or materials is beneficial to the public welfare. Prior to passage of any such resolution, with the exception of resolutions relating to objects or materials needed in connection with essential public services, the council shall refer the matter to the planning commission for its review and recommendations. In making its review, the planning commission shall, among other things, consider the comments and recommendations of the director of public service.

Prior to passage of any resolution authorizing a private person or organization to place objects or materials on public sidewalks or boulevard areas, such person or organization shall place on file with the city clerk a certificate of insurance approved as to form by the city attorney evidencing that such person or organization has in force insurance in the minimum amounts equal to the limits of liability for municipalities set out in Minnesota Laws, Chapter 466, or its successor, as may be amended from time to time, in any one year protecting such person or organization and the city of Duluth against liability for injuries or damages resulting from the placement of such objects or materials on public sidewalks or boulevard areas. The permission granted by such resolution shall be conditioned upon such person or organization continuing to supply the city with evidence that such insurance remains in effect and all insurance required herein shall contain a provision that no policy may be canceled until ten days after written notice is given to the city clerk. Such policy shall name the city as an additional insured. (Ord. No. 7896, 12-20-1971, § 2; Ord. No. 8189, 11-24-1975, § 6; Ord. No. 9537, 6-24-2002, § 1.)

Sec. 45-4.2. Awnings suspended over sidewalks; minimum clearance required.

All portions, including valances, of any awning suspended over any public sidewalk shall be at least seven feet over such public sidewalk. (Ord. No. 8379, 12-27-1977, § 1.)

Sec. 45-4.3. Flower boxes and planters placed upon or suspended above sidewalks; permit required.

Flower boxes and planters may be placed upon or suspended above sidewalks in commercially zoned areas upon issuance of a permit by the city's building official. Such permits shall be issued upon compliance with and subject to the following conditions:

- (a) The maximum extension of any such object from a building shall be 12 inches if the bottom of such object is less than 84 inches above the sidewalk; provided that a minimum passable sidewalk width of 60 inches shall be maintained. The maximum extension of any such object from a building shall be 24 inches if the bottom of such object is 84 inches or more above the sidewalk;
- (b) The maximum clearance between the sidewalk and the bottom of such objects shall be 27 inches; provided that such maximum clearance requirement may be exceeded if the clearance between the sidewalk and the bottom of such objects is at least 84 inches;
- (c) Such objects shall not reduce the clearance for doorway openings to less than 32 inches;
- (d) Such objects shall have no lights, signs, symbols or logos attached to them;
- (e) Such objects shall be well constructed and secured to the building, with no sharp edges or corners, and shall be maintained in good repair;
- (f) Permit requests for properties which have received loans from the city for storefront renovation must first be approved by the city's storefront loan design review committee;
- (g) Permits may be revoked by the building official for failure to comply with any of the provisions of this Section. (Ord. No. 9187, 4-11-1994, § 1.)

Sec. 45-4.4. Mass transit zones.

Upon application delivered to the city clerk from any citizen or provider of public mass transportation, except a taxi service, the city council may, by resolution passed after a public hearing, establish any number of mass transit zones. Each zone shall be located upon property owned or controlled by the city. Each zone shall be specifically described in a resolution of the council, either by words or by graphic display. A mass transit zone shall be finally established when the applicant complies with insurance and indemnity requirements set out below, or reasonable alternatives approved by the council, and the resolution establishing it has been passed by the city council. Each zone shall terminate after 50 years, or when the zone is terminated by resolution of the city council, whichever occurs first. Each zone shall be configured so that the public has safe and convenient access to mass transit and also has convenient passage around the zone for those who are not transit customers.

Once established, the mass transit zone shall be used only for the following purposes:

- (a) Entering or exiting a mass transit vehicle;
- (b) Waiting for the arrival of a mass transit vehicle;
- (c) Conducting business with a mass transit provider;
- (d) Maintaining the property or equipment of the city or a mass transit provider;
- (e) Traveling from one point to another, as evidenced by constant movement through the zone to a point or points outside the zone (frequent, repetitive movement within the zone, back and forth, is not allowed).

Persons who are not, at the time present in the zone, customers of a mass transit provider, or persons who are not in the zone for one of the five purposes set out above, shall not be allowed in the mass transit zone.

Each zone shall be large enough to accommodate the business needs of mass transit customers. Each shall be configured so that pedestrians who are not customers can safely travel to, from and around the zone.

The mass transit provider shall mark the boundaries of each zone by a reasonable means that advises the public of the existence of the zone.

The mass transit provider shall have authority to control the use and activities in a mass transit zone to the extent necessary to assure that the public has safe and convenient access to mass transit, except that city agents may enter to enforce the law, maintain the area, provide for public safety, or respond to emergencies.

The mass transit provider shall use each mass transit zone in compliance with all applicable laws and regulations.

The mass transit provider shall execute reasonable agreements to indemnify and defend the city and hold it harmless, up to its limits of liability, for claims against the city caused by the transit provider's fault in using a mass transit zone, and shall insure the city against such claims or losses.

Any person who violates this ordinance may be punished as set out in Duluth City Code, Section 1-7, or its successor. (Ord. No. 9538, 6-24-2002, § 1; Ord. No. 9581, 12-16-2002, § 1.)

Sec. 45-4.5. Repealed by Ordinance No. 9874, 11-26-2007, § 1.

Sec. 45-5. Loading, etc., of coal, cinders and garbage in congested district prohibited during certain hours.³

No person shall load or unload coal or cinders or collect garbage on Superior Street, First Street or on any avenue in the congested district between the hours of 10:00 a.m. and 6:00 p.m. (Ord. No. 6838, § 66.)

Sec. 45-6. Coasting by means of sleds, etc., prohibited on streets and sidewalks.

Coasting by means of a sled, bobsled, toboggan or similar vehicle or appliance upon any public street, sidewalk, avenue or alley within the city by any person is hereby determined and declared to be a public nuisance and is hereby prohibited. (Ord. No. 5461, § 1.)

Sec. 45-6.1. Tricycles, coaster wagons prohibited on roadways.

No person shall use any tricycle or coaster wagon upon any public street unless such public street does not provide a sidewalk for pedestrian use. No parent or guardian of any child under the age of eight years old shall allow or permit such child to use any tricycle or coaster wagon upon any public street in the city which does not provide a sidewalk for pedestrian use unless supervised by such parent or guardian. This Section shall not pertain to the use of any two or three wheeled bicycle if all of its wheels are at least nine inches in diameter. (Ord. No. 8328, 6-6-1977, § 1; Ord. No. 9978, 6-15-2009, § 2.)

Sec. 45-6.2. Inline skates, rollerskates and skateboards--general use.

(a) No person shall ride or propel inline skates, rollerskates or a skateboard upon any public sculpture, statue, monument, fountain, or on any planter, flower or tree box, flower bed or garden, upon any area designed and used for public seating, benches, railings, walls of any public building or structure or any other equipment or structure located in any public park or upon any public property;

(b) No person shall ride or propel inline skates, rollerskates or a skateboard at any time anywhere on the grounds of the main branch of the Duluth public library or the Duluth civic center;

(c) No person shall ride or propel inline skates, rollerskates, or a skateboard upon any sidewalk in a business district between the hours of 7:30 a.m. and 9:00 p.m. or at any times in posted areas which have been designated by city council resolution. For the purposes of this Section, the term business district shall have the meaning given it in Section 33-1 of this Code;

(d) No person shall ride or propel inline skates, rollerskates or a skateboard upon a public street, sidewalk, or other area available for pedestrian use by the public as a matter of right, in such manner as endangers or is likely to endanger other persons or cause damage to property.

Behavior deemed to endanger shall include, but is not limited to:

(1) Riders failing to yield to motor vehicles while riding upon or when crossing a public street or highway;

(2) Riders failure to operate at a speed which is reasonable and prudent for conditions of motor vehicle and/or pedestrian traffic;

(3) Riders failing to yield the right-of-way to any pedestrian upon any public way;

³As to garbage, trash and refuse generally, see Chapter 24 of this Code.

(4) Riders performing jumps, tricks or traveling in an unreasonable manner that results in any injury or damage to any person, animal or property of another;

(e) No parent or guardian of any child under the age of eight years old shall allow or permit such child to ride or propel inline skates, rollerskates or a skateboard upon any public street or alley in the city unless supervised by such parent or guardian. (Ord. No. 8887, 5-2-1988, § 1; Ord. No. 9131, 4-5-1993, § 1; Ord. No. 9978, 6-15-2009, § 3.)

Sec. 45-6.3. Use of recreational vehicles on public land.

(a) No person shall operate any vehicle or machine on public land under the jurisdiction of the city of Duluth, except in compliance with M.S.A. Sec. 84.92 - Sec. 84.929, or its successor, and rules referred to therein;

(b) No person shall operate a recreational vehicle, as defined in M.S.A. Sec. 84.90, or its successor, including an all-terrain vehicle as defined in M.S.A. Sec. 84.92, subd. 8, or its successor, except a snowmobile, on any public land or street under the jurisdiction of the city of Duluth (M.S.A. Sec. 84.90, subd. 1(a), defines "recreational vehicle" to include a motor vehicle licensed for highway operation only when such a vehicle is being used for off-road recreational purposes.);

(c) The prohibitions of this Section do not apply:

(1) To areas where the state of Minnesota, county of St. Louis or United States of America have authorized a use that is prohibited by this ordinance;

(2) A farm vehicle being used for farming;

(3) A vehicle being used for military, fire emergency or law enforcement purposes;

(4) A vehicle being used for construction or maintenance authorized by the city;

(5) A vehicle owned or operated by the city;

(6) An all-terrain vehicle being used to remove snow from a driveway, sidewalk or boulevard; or being trailered or transported; or being used at a public access or, with the owner's permission, a private access point, for the purpose of legally using the all-terrain vehicle for fishing, hunting or trapping; or being used in a place authorized by the city council. (Ord. No. 9644, 2-2-2004, § 2.)

Sec. 45-7. Driving over sidewalks, etc.

No person shall drive any vehicle over the gutter, curb or sidewalk in any improved street, avenue or alley in the city, except at such places where a driveway or crossing has been provided according to law. (Ord. No. 670, § 1; Ord. No. 2590; Ord. No. 6838, § 47; Ord. No. 6989.)

Sec. 45-8. Use of salt and salt solutions.

No person shall throw, deposit or cause or permit to be thrown or deposited upon the sidewalks, grassplots, curbs, gutters or pavements in the city any salt (sodium chloride) or salt solution or shall throw or deposit such salt or salt solution where the same may flow upon or reach the sidewalks, grassplots, curbs, gutters or pavements or flow into any sewer inlet or sewer within the city.

All vehicles within the city engaged in the business of transporting ice cream freezers or any vessels containing salt solutions shall be equipped with watertight containers of sufficient capacity to prevent the dripping of salt solution upon the surface of the pavement.

The provisions of this Section shall not apply to the director of public service or any of his duly authorized agents using salt, salt solutions or chemicals in connection with the plowing, moving or removal of snow or ice from any of the public highways or grounds of the city; provided, that the city council, by resolution, may, at any time, order the immediate suspension of the use of salt, salt solutions or chemicals for such purposes if such suspension shall be deemed to be in the public interest. (Ord. No. 2239, § 1; Ord. No. 6848.)

Sec. 45-9. Injury or destruction generally.⁴

No person shall throw, drop or cause to be thrown or dropped any iron weight, whether used for the purpose of hitching or tying horses thereto or otherwise, any stone, ice, barrel, merchandise or other substance or thing upon any sidewalk, street, alley or public place to the damage or injury of any such sidewalk, street, alley or public place or to the damage or hindrance of the public use thereof within the city. (12-11-1907, § 1; 6-9-1909, § 1.)

Sec. 45-10. Repair of streets--driving on prohibited.

No person shall drive any horse or vehicle along, over or across any portion of any street, avenue or alley within the city when the same is being repaired or improved, when the city engineer shall deem it necessary to close the same for the purpose of protecting such repairs or improvement.

The city engineer is hereby authorized to prevent all travel upon, over or across any street, avenue or alley in the city, whenever, in his judgment, it shall be necessary so to do in order to protect any repair or improvement thereof. (12-2-1903, §§ 1, 3.)

Sec. 45-11. Same--Removal of signs or barricades prohibited.

No person shall remove any barricade or sign placed upon any street, avenue or alley in the city by the direction of the city engineer for the purpose of preventing travel thereon. (12-2-1903, § 2.)

Sec. 45-12. Naming of alleys.

Every alley in the city shall be named as follows:

(a) Each alley lying between streets running easterly and westerly in the city the same name as the street next northerly therefrom;

(b) Each alley running northerly and southerly between streets or avenues lying westerly of Lake Avenue shall have the same name as the street or avenue lying next westerly therefrom;

(c) Each alley running northerly and southerly between streets lying easterly of Lake Avenue shall have the same name as the street or avenue lying next easterly therefrom.

This Section shall not apply to alleys names by order or ordinance of the city council prior to the effective date of this Section.⁵ Such alleys shall continue to have the same names as they have already received. (6-27-1906, § 1.)

Sec. 45-13. Throwing water from hose.

No person, upon any business street within the city, shall throw or cause to be thrown a stream of water across or over the sidewalks or streets of the city by means of a garden hose or otherwise for the purpose of washing the windows of any business block or for any other purpose, between the hours of 7:00 a.m. and 10:00 p.m. of any day or between the hours of 10:00 p.m. and 7:00 a.m., if the sidewalks are occupied by people in passing at the place where such water is being thrown. (8-13-1891, § 5.)

Sec. 45-14. Driveway crossings.

No person shall construct a driveway or crossing from a publicly maintained street or highway into private property without having first applied for and obtained a permit so to do from the office of the city engineer. Upon receiving this permit said driveway or crossing shall be constructed according to plans and specifications approved by the city engineer, and such construction shall be carried out under the direction and inspection of such engineer or his representative.

The city engineer shall charge a fee, which shall be set in accordance with Section 31-6(a) of this Code, for each permit issued pursuant to this Section, and in addition shall charge a fee sufficient to cover the actual cost of inspections conducted by the city in connection with the issuance of such permit.

⁴As to injury or destruction of steps on the Duluth shipping canal, see § 26-12 of this Code.

⁵Editor's note.--The ordinance from which this Section is derived became effective July 27, 1906.

No driveway or crossing from a publicly maintained street or highway into private property shall be constructed or maintained in such a manner that it obstructs the flow of surface water along any gutter or ditch line or causes such water to flow onto, under or across the publicly maintained portion of such street or highway. (Ord. No. 670, 12-2-1915, §§ 1, 2; Ord. No. 7755, 1-5-1970, § 1; Ord. No. 9118, 1-11-1993, § 33; Ord. No. 9611, 7-28-2003, § 41.)

Article II. Excavations and Obstructions.⁶

Sec. 45-15. Permits--required generally.

No person within the city shall make any excavation for any purpose in the streets, public sidewalks, avenues, alleys, highways and public grounds, place any obstruction therein, or place or cause to be placed any scaffold, obstruction, equipment or materials of any kind in, upon or above any of the streets, public sidewalks, avenues, alleys, highways or public grounds of the city, or immediately adjacent thereto, without first having applied for and obtained a permit so to do from the city engineer. Each permit issued shall state on its face:

- (a) Whether or not it authorizes an excavation to be made; and
- (b) Whether or not it authorizes blasting in conjunction with the obstruction permitted.

No person shall excavate or blast in or under any street, public sidewalk, alley or other public ground unless his permit authorizes such excavation or blasting. (Ord. No. 6857, 6-27-1951, § 1; Ord. No. 7603, 11-20-1967, § 1; Ord. No. 8415, 8-7-1978, § 1.)

Sec. 45-16. Same--Required of city employees.

No employee of the city shall make any excavation in any street, avenue, alley, highway or public ground of the city until a permit therefor shall have been obtained from the city engineer. Such permit shall be issued for the purpose of keeping a record in the city engineer's office of all excavations in the streets, avenues, alleys, highway or public grounds of the city. In case of emergency, requiring an officer or employee of the city to make an excavation in or under any of the public ways or grounds of the city, and a delay in obtaining a permit required by this Section would endanger the public health or safety, such officer or employee shall nevertheless make such excavation without a permit and give notice thereof to the city engineer not later than the forenoon of the first business day next succeeding the day of the making of such excavation, whereupon the city engineer shall issue such permit. No fee shall be charged for any permit issued under this Section. All the rules and regulations prescribed in this Article relative to restoring such public ways and grounds shall apply to excavations and obstructions so made. (Ord. No. 6857, 6-27-1951, § 5.)

Sec. 45-17. Same--Fee.

Except for free permits issued to city employees, the city engineer shall charge fees set in accordance with Section 31-6(a) of this Code for the following permits issued pursuant to this Article:

- (a) A base fee; plus
- (b) An amount per month per square foot of area occupied, or a minimum fee, whichever is greater, provided that when the square footage monthly fee exceeds the above-mentioned minimum fee, and the permit is issued for a fraction of any month, the square footage fee shall be prorated to charge only for the fraction of the month the area is actually occupied, but in no case shall any prorated fee be less than the above-mentioned minimum fee; plus
- (c) If the area occupied is equipped with parking meters, an additional fee shall be charged for each parking meter space or part thereof that has been closed to parking, which fees shall be set in accordance with Section 31-6(a) of this Code.

Such fee or fees shall be deposited with the city treasurer, to the credit of the engineering department.

⁶As to obstruction of streets by trains, see § 42-5. As to excavations, sand removal, etc., on or near Minnesota Point, see §§ 45-100 to 45-102. As to filling of excavations by the department of public utilities, see § 48-20. As to excavations within two feet of watermains, hydrants, etc., see § 48-25.

Where any work done pursuant to a permit granted hereunder requires an inspection from the engineering division, the city engineer shall estimate the cost of inspecting such work and add said cost to the permit fee.

Whenever any work is started before a permit is applied for and granted by the city engineer, a penalty will be added to the cost of the permit fee. The penalty will be based on additional inspection, enforcement and processing time incurred by the city engineer's office, but in no event shall the penalty be less than that set in accordance with Section 31-6(a) of this Code. (Ord. No. 6857, 6-27-1951, § 10; Ord. No. 7580, 7-24-1967, § 1; Ord. No. 8444, 3-12-1979, § 1; Ord. No. 9118, 1-11-1993, § 31; Ord. No. 9167, 11-29-1993, § 1; Ord. No. 9611, 7-28-2003, § 42.)

Sec. 45-18. Same--Card with permit number required; posting.

The city engineer, before granting a permit, shall require the applicant to furnish a drawing of the area proposed to be excavated, occupied or obstructed in the public right-of-way, an estimate of the length of time of such excavation, occupation or obstruction, and to deposit the fee based upon such estimates.

The city engineer, at the time of granting a permit required by this Article, shall assign to the applicant a number, and shall give to the applicant a card or board upon which shall be plainly written or printed, in letters at least one inch high, the following:

Division of Public Works Permit No. Expires

In the first blank space shall be inserted the number of such permit. After the word expires shall be stated the time when such permit expires. Any person receiving such permit shall keep posted in a conspicuous place at such excavation or obstruction such card or board. No person or his agents shall misstate upon any such board or card the number of such permit or the time when the same expires. (Ord. No. 6857, 6-27-1951, § 6; Ord. No. 7580, 7-24-1967, § 2.)

Sec. 45-18.1. Yearly permit for certain types of vehicular obstructions.

(a) Notwithstanding any provision in this Article to the contrary, the city engineer may issue yearly vehicular obstruction permits allowing vehicles for which such permits have been issued to obstruct street, alleys or sidewalks subject to the restrictions set forth herein. Such permit shall authorize such obstructions only when the city engineer determines that such obstruction is reasonably necessary to allow the permit holder to construct, repair, improve or demolish a building or structure immediately adjacent to the affected street, alley or sidewalk. The fee for such permit shall be set in accordance with Section 31-6(a) of this Code. No such permit shall be issued unless the applicant has first filed a bond and insurance required by Section 45-19 in this Article. Such permit shall authorize a vehicle displaying such permit to obstruct streets, alleys or sidewalks where such obstruction meets the following criteria:

(1) No obstruction shall last longer than eight hours, and the permittee shall not obstruct that area or the surrounding 100 feet for at least five days thereafter;

(2) No part of any street or alley shall be obstructed unless one unobstructed lane of traffic at least 12 feet wide is maintained in each direction, and, in the case of sidewalks, at least a five foot width of sidewalk or boulevard shall remain unobstructed for pedestrian passage;

(3) No excavations shall be involved;

(4) The area obstructed shall not exceed 350 square feet, at any location;

(5) No mobile machinery shall be moved onto an obstructed sidewalk;

(6) Only equipment and mobile machinery needed for maintenance purposes may be placed in a street or alley;

(7) All street and alley obstructions must be signed and/or protected by traffic control devices as set forth in the Minnesota manual on uniform traffic control devices and its appendices;

(8) Such permit shall not be valid to permit obstruction of any street, alley or sidewalk within 50 feet of any property owned or controlled by the permit holder or any entity legally related to the permit holder;

(9) The city engineer may impose any other conditions on the permit deemed necessary to protect public safety, including a requirement that the city be notified of street obstructions;

(b) In addition to the permit authorized by this Section, the holder of such permit shall be required to take out permits pursuant to this Article for any obstruction or excavation not meeting the criteria set forth in Subdivision (a) of this Section;

(c) The holder of a permit issued under this Section shall post such permit or a copy thereof on each vehicle using said permit to authorize any applicable obstruction. (Ord. No. 8444, 3-12-1979, § 2; Ord. No. 9118, 1-11-1993, § 32; Ord. No. 9240, 3-6-1995, § 1; Ord. No. 9611, 7-28-2003, § 43; Ord. No. 10273, 1-13-2014, § 1.)

Sec. 45-19. Same--Surety bond and insurance required.

No permit required by this Article shall be issued by the city engineer unless the applicant therefor shall first file with the city engineer a corporate surety bond of an insurance company duly authorized by the laws of the state to transact business as a surety, in the sum of at least \$10,000.

In addition to such bond, the applicant shall also file with the city engineer a certificate of an insurance company duly authorized by the laws of the state to transact business as an insurance company, duly certifying to the fact that the applicant has in force with such company a comprehensive general liability policy, including completed operations and products liability-coverage to cover his operations under such permit. If the permit authorizes an excavation, the insurance policy shall have collapse and underground property damage coverage in addition to the coverage stated above. If the permit authorizes blasting, the insurance policy shall have explosion, collapse, and underground property damage coverage in addition to the coverage stated above. All policies shall be in the amount of \$500,000 for bodily injuries occurring in any year and \$100,000 for property damage occurring in any year and shall name the city as an additional insured.

Neither the certificate of insurance nor the surety bond shall be received or filed by the city engineer until approved, in writing, as to form, correctness and validity by the city attorney. Every such corporate surety bond and every permit issued pursuant to Section 45-15 shall be conditioned as follows: That the applicant guarantees to indemnify and save the city harmless from any and all claims, demands, damages or causes of action of any kind whatsoever arising or to arise out of the doing of the work or the thing authorized by the permit issued to the applicant, to restore the street, avenue, alley, highway or public ground to the condition it was in prior to the making of such excavation or obstruction and that any work done under the permit, including the installation of any sewer, gas or water connections made by the applicant, will be done in accordance with all applicable provisions of this Code and other ordinances, rules and regulations of the city.

If the applicant's contractor has on file with the city engineer the corporate surety bond and certificate of insurance required by this Section, it shall not be necessary for such applicant to file any bond or certificate of insurance.

If the permit is for only the demolition or moving of a building and the excavations for service disconnections for such building, and if the applicant has filed an insurance certificate and bond with the building official as required by Chapter 10 of this Code for a mover's or wrecker's permit, then no additional insurance or bond filing shall be required to secure a street obstruction or excavation permit for that work. (Ord. No. 6857, 6-27-1951, § 2; Ord. No. 7603, 11-20-1967, § 2; Ord. No. 8189, 11-24-1975, § 7; Ord. No. 8415, 8-7-1978, § 2; Ord. No. 8444, 3-12-1979, § 3.)

Sec. 45-20. Same--Release of surety bond.

Any corporate surety bond filed under the terms of this Article may be released in writing by the city engineer not sooner than one year after the completion of the work, only if the work done under such permit shall have been completed to the satisfaction of the city engineer and only after all inspection fees have been paid. (Ord. No. 6857, 6-27-1951, § 4.)

Sec. 45-21. Additional authorization required for work on water and gas mains.⁷

If the application for a permit under this Article is for a permit authorizing excavations to be used for the purpose of making water or gas connections to city water and gas mains, the city engineer shall

⁷As to water and gas generally, see Chapter 48 of this Code.

not issue such permit unless the applicant shall first obtain the written consent of the department of public utilities to the making of such connections. All work done and materials used in the installing of such connections shall conform to the rules and regulations of the department of public utilities in force as of the date of the commencement of such work. (Ord. No. 6857, 6-27-1951, § 2.)

Sec. 45-22. Fences or other guards required.

No person, when so authorized, shall make any excavation in or under any streets, avenues, alleys, highways, public grounds or public sidewalks of the city, nor shall any such person place any scaffold, obstruction, equipment or materials of any kind in, upon or above any of the public sidewalks of the city, or immediately adjacent to such sidewalks, until such person shall erect a suitable guard or fence about the place of such excavation or obstruction sufficient to protect persons or animals from being injured by falling into or upon the same and to prevent injury or damage by objects falling from such scaffold. No machinery, equipment, materials or scaffolding shall be placed or stored outside of such fencing and no operations of any kind or nature, including the unloading or storage of materials shall be carried on outside of such fencing. When required by the city engineer, a suitably protected pedestrian walk-way shall be provided along such fencing, to protect pedestrians from vehicular traffic and falling objects.

Every person making such excavation or obstruction shall place and maintain barricades and warning devices around such excavation in conformance with the rules and regulations regarding barricading and warning devices as established by the city engineer. The city engineer shall promulgate such rules and regulations, and shall file a copy thereof with the city clerk, and at all times maintain a copy of such rules and regulations in his office available to the public. The city engineer may from time to time amend such rules and regulations by filing a copy of such amended rules and regulations in his office and in the office of the city clerk 30 days prior to the effective date of such amendments.

Failure or neglect to place and maintain barricades and warning devices in accordance with the rules and regulations established by the city engineer shall thereupon and forthwith be a sufficient authority to the city engineer, or his duly authorized agents, to cause such barricades and warning devices to be erected, placed and maintained, and to charge the cost thereof to the person to whom a permit has been issued under this Article. (Ord. No. 6857, 6-27-1951, § 3; Ord. No. 7580, 7-24-1967, § 3, Ord. No. 7603, 11-20-1967, § 3.)

Sec. 45-23. Restoration of excavations.

If an excavation is to be made in an improved highway, public ground or under a public sidewalk, the person making such excavation shall not commence the work of restoring such highway, public ground or sidewalk until he shall have notified the city engineer that he is ready to commence the work of restoration. The city engineer shall cause some person to be present in behalf of the city to see the manner in which the work of restoring such street is done and to make report of the method in which such work is done. When the work of restoration is completed, the person having such permit shall return the same, certifying to the city engineer that the work of restoring such street, ground or sidewalk has been completed. The city engineer shall examine the same and see that such street, public ground or sidewalk has been restored to its former condition as near and as soon as practicable. (Ord. No. 6857, 6-27-1951, § 7.)

Sec. 45-24. Reports of violations.

Whenever any policeman of the city shall find an excavation or obstruction which is not marked or identified by the card or board prescribed by Section 45-18, that such obstruction is not suitably safeguarded and lighted, as required by Section 45-22, or any excavation or obstruction has been made in violation of this Article, he shall forthwith make report thereof to the city engineer. The city engineer shall make complaint before the municipal court of the city of any and all persons violating any of the provisions of this Article. (Ord. No. 6857, 6-27-1951, § 9.)

Sec. 45-25. Establishment of rules and regulations.

The city engineer, subject to the approval of the city council, may, from time to time, prescribe such reasonable rules and regulations, not inconsistent with the terms of this Article, as he may deem necessary for carrying out the purposes of this Article. (Ord. No. 6857, 6-27-1951, § 8.)

Sec. 45-26. Applicability of article; emergency excavations.

The provisions of this Article shall not be held to prevent excavations by any contractor or his employees in pursuance of contract from the city for the improvement of any street, avenue, alley, highway or public ground within the city, the building or repairing of sewers, drains and conduits, the laying or repairing of water and gas pipes belonging to the city or the repairing, construction or reconstruction of public sidewalks, nor shall this Article be held to prevent any person who has been granted the privilege to excavate in such highways for the construction of gas or water mains, for the construction of electric light or power appliances or for other public service utilities, when the necessity for such excavation is so immediate by reason of the bursting of a pipe or main, falling of wires or other accident as to prevent such person from applying for and receiving a permit, but this Article shall apply to all cases where such permit can be obtained prior to the making of such excavation or the causing of such obstruction without serious injury or danger to persons or property during the time necessary to make such application and to receive such permit; provided, that no public service corporation using or occupying the highways or other public grounds of the city, operating its business in such city, either under a franchise granted by the city or under a certificate of convenience and necessity issued by the railroad and warehouse commission of the state, shall be required to file with the city engineer any corporate surety bond or certificate of insurance; and provided further, that the person making such excavation or causing such obstruction without such permit under such necessity shall, not later than the forenoon of the first business day next succeeding the day of the making of such excavation or obstruction, give notice thereof to the city engineer, whereupon the city engineer shall issue such permit. All the rules and regulations prescribed in this Article relative to restoring such public ways and grounds shall apply to excavations and obstructions so made. (Ord. No. 6857, 6-27-1951, § 5.)

**Article III. Lights, Banners, Flags, etc., Suspended
Over Public Thoroughfares.**

Sec. 45-27. Permit--required.

The administrative assistant may grant a permit to any person to place or suspend over and across any public thoroughfare in the city, except on skywalk bridges, decorative lights, banners, bunting, flags, pennants or streamers, none of which shall have affixed or printed thereon any information or message advertising a sale of any kind, the occupancy of a store or a carnival, exposition, show, circus, sport or political, religious or membership campaign subject to the conditions hereinafter set forth; provided, however, that permits may be granted allowing the suspension of American flags over public thoroughfares without requiring payment of the fee specified under Section 45-29 of this Code or requiring the making of the deposit specified under Section 45-30 of this Code. A permit granted pursuant to this Section may allow the attachment of Articles to light standards or any other structure owned or under the control of the city provided the appropriate city official has first approved the proposed method of attaching such articles to such structures and the proposed location of such articles on such structures. (Ord. No. 6977, 8-16-1954, § 1; Ord. No. 7943, 8-28-1972, § 1; Ord. No. 8763, 12-30-1985, § 5.)

Sec. 45-28. Same--Application.

Any person desiring a permit for any of the purposes specified in the preceding Section shall file with the city clerk a written application therefor. The application shall contain the following information:

(a) The name of the person requesting the permit, together with the residence and business address of the applicant;

(b) The points along the course of the thoroughfare over and across which such lights, banners, bunting, flags, pennants or streamers will be placed, together with the beginning and ending dates during which such decorative materials will be in place;

(c) A brief description of the composition of the decorative material to be used, together with a statement of the wording, if any, which will be imprinted thereon;

(d) The name and business address of the person hired by the applicant to install any such decorative materials. (Ord. No. 6977, 8-16-1954, §§ 2, 3.)

Sec. 45-29. Same--Fee.

The fee for any permit issued under this Article shall be set in accordance with Section 31-6(a) of this Code. (Ord. No. 6977, 8-16-1954, § 2; Ord. No. 9118, 1-11-1993, § 34; Ord. No. 9611, 7-28-2003, § 44.)

Sec. 45-30. Deposit required of applicant.

The applicant for a permit under this Article shall deposit with the city clerk either a corporate surety bond or a certified check drawn on a bank authorized to transact business in the state in the sum of \$500 such deposit to be conditioned on the applicant complying with the terms of this Article. (Ord. No. 6977, 8-16-1954, § 2.)

Sec. 45-31. Insurance required.

The applicant for a permit under this Article or his contractor, if the applicant shall employ a contractor, shall provide the city with proof, either in the form of the original policy of insurance or a certificate of insurance, showing that the applicant or the contractor, as the case may be, will and shall have unceasingly in force during the term of the permit comprehensive general liability insurance naming the city of Duluth as an additional insured, in the amount of \$300,000 for bodily injury in any year and \$50,000 for property damage in any year. The applicant or contractor shall also include in such insurance policy or insurance certificate that the liability insurance shall not be cancelled by the insurance company without the insurance company first giving written notice to the city of the company's intention to cancel such insurance, such notice to be given at least ten days in advance of the date named in the notice of termination.

The city may require the applicant or the contractor, if the applicant shall employ a contractor, to name in such policy of insurance or certificate of insurance an additional person as an assured party for inclusion in such policy or certificate of insurance. No insurance policy or certificate of insurance shall be approved by the city attorney unless such policy or certificate is issued by an insurance company duly authorized to transact business as an insurance company under the laws of the state. Every policy or certificate of insurance, when approved as to form by the city attorney, shall be filed with the application with the city clerk. (Ord. No. 6977, 8-16-1954, §§ 3, 6, 7; Ord. No. 8189, 11-24-1975, § 8.)

Sec. 45-32. Beginning work prior to issuance of permit or approval of insurance prohibited.

No person or applicant or any contractor on behalf of such applicant shall, in any way, begin the installation or the placing of any of the decorative materials set out in Section 45-27 over or across any public thoroughfare in the city before the administrative assistant has authorized a permit for such installation, nor shall such installation be commenced unless and until the policy of insurance or certificate of insurance required by this Article shall have been submitted for approval as to form by the city attorney at least one week before the commencement of any such installation. (Ord. No. 6977, 8-16-1954, § 5.)

Sec. 45-33. Attaching material to buildings, etc., owned by persons other than permittee.

No permit issued under authority of this Article shall be construed, interpreted or read as in anywise furnishing or providing authority of any kind whatsoever to a permittee or a contractor, if the permittee shall employ a contractor, to fasten or in anywise attach to any building, structure or pole any

fixture or appliance in connection with any such decorative materials without the consent of the owner of such building, structure or pole. (Ord. No. 6977, 8-16-1954, § 4.)

Sec. 45-34. Removal of material.

The applicant for a permit under this Article or the contractor, if a contractor is employed by the applicant, shall remove the decorative materials covered by any permit issued under this Article not later than 48 hours after the termination date specified in the permit, Sundays and holidays excluded. If such decorative materials are not removed at the time specified in this Section, then the city shall make such removal and reimburse itself for the cost thereof out of the corporate surety bond or check deposited with the city clerk. (Ord. No. 6977, 8-16-1954, § 3.)

Sec. 45-35. Material placed in violation of article declared nuisance.

Every decorative light, banner, bunting, flag, pennant or streamer which is placed, erected, suspended, kept in place or maintained without first obtaining a permit therefore as required by this Article, or in violation of this Article, is hereby declared to be a continuing public nuisance. (Ord. No. 6977, 8-16-1954, § 8.)

Sec. 45-36. Applicability of article.

This Article shall not be construed, interpreted or read as an expression of purpose or intentment whatsoever to amend or repeal Section 3-9. (Ord. No. 6977, 8-16-1954, § 11.)

Article IV. Repealed.

Secs. 45-37 to .45-48. Repealed by Ordinance No. 10107, 9-12-2011, § 1.

**Article V. Use of Streets and Sidewalks for Community Events;
Parades and Races.**

Sec. 45-49. Definitions.

For the purposes of this Article, the following words and phrases shall have the meanings given them in this Section:

Community Event. A special community celebration or event of community interest held on a street or sidewalk that requires the partial or total blockage or barricading of such street or sidewalk.

Parade. A organized procession of persons or vehicles, other than a funeral procession, proceeding on a street.

Race. All types of organized contests of speed or endurance run on or across streets or sidewalks and shall include, without limitation, walking, running, bicycle, ski, dog sled, automobile, motorcycle, wheelchair, roller ski and skateboard races.

Street. The improved portion of the right of way that is normally used for the driving and/or parking of vehicles. (Ord. No. 8774, 3-3-1986, § 2.)

Sec. 45-50. Permits required for community events, parades and races; applications; filing and investigation fee.

(a) No person shall conduct a community event, parade or race, as defined in this Article, without having first secured a permit to conduct such event from the administrative assistant. Only civic, charitable or educational organizations or groups or associations of abutting owners shall be eligible for community events permits;

(b) Applications for permits for community events, parades and races shall be made in the office of the city clerk on forms provided by the clerk at least 30 days before the event is to take place, provided that the administrative assistant or chief of police may waive the 30-day waiting period for good

cause. Each application shall contain the name of the applicant, the organization which the applicant represents, the street and/or sidewalk to be used, the amount of unused street and/or sidewalk to be available to the traveling public, the number of people expected to participate and be in attendance at the event, the nature and purpose of the event, the number of days the event shall take place and the hours of each day the event shall be taking place, whether electronic sound amplification will be used and the hours and nature of such amplification, and any other information required by the administrative assistant or chief of police. In the event the permit is requested by a group or association of abutting owners, the application shall list all such abutters participating in the event and the ratio which such participants bear to the total number of abutters;

(c) Each application shall be accompanied by a filing and investigation fee which shall be set in accordance with Section 31-6(a) of this Code. (Ord. No. 7162, 7-14-1958, § 1; Ord. No. 8774, 3-3-1986, § 2; Ord. No. 9118, 1-11-1993, § 35; Ord. No. 9611, 7-28-2003, § 46.)

Sec. 45-51. Investigation.

Each permit application shall be referred to the chief of police for investigation and recommendations. The chief of police may consult with the traffic engineer and shall determine and report probable inconvenience to the traveling public, city manpower needed to police the event, cost of such manpower, disturbance to the neighborhood, and any other relevant information. The chief may recommend route, time and operational changes to lessen public inconvenience and disturbance and the amount of city resources required and may also recommend that a permit fee be charged to cover unusual expenses to the city in setting up or policing the event. (Ord. No. 7162, 7-14-1958, § 2; Ord. No. 8774, 3-3-1986, § 2.)

Sec. 45-52. Same--Grant or denial; standards; administrative assistant to set certain restrictions and prescribe permit fee.

(a) The administrative assistant shall grant or deny any permit sought under this Article. The following factors shall be considered in making the determination:

- (1) Inconvenience to and safety of motor vehicle and pedestrian traffic;
- (2) The health, safety and peace and comfort of the surrounding neighborhood;
- (3) The cost to the city of policing and setting up barricades for the event and cleaning up after the event;

- (4) The significance of the event to the community and to the sponsors of the event;

(b) If the permit is granted, the administrative assistant may impose any modifications or restrictions on the event he deems necessary to protect public peace and safety, including but not limited to hours of operation, security provisions, fencing and barricades, sanitary facilities, sound amplification restrictions and route or area modifications;

(c) The administrative assistant may also set a permit fee in addition to the filing and investigation fee to cover part or all of any expenses of the city in setting up for the event or policing the event. (Ord. No. 7162, 7-14-1958, § 4; Ord. No. 8774, 3-3-1986, § 2.)

Sec. 45-53. Insurance required.

Before any permit under this Article becomes effective, the applicant shall file with the city clerk certificates or policies of comprehensive general liability insurance, approved as to form by the city attorney covering the applicant's operations under the permits. Such insurance shall name the city of Duluth as an additional insured and shall contain a provision requiring ten days' written notice by the insurer to the city before cancellation of such policy. Such insurance shall be in the amount of \$300,000 for bodily injuries occurring in any year and \$50,000 for property damage occurring in any year. (Ord. No. 7162, 7-14-1958, § 5; Ord. No. 8189, 11-24-1975, § 9; Ord. No. 8774, 3-3-1986, § 2.)

Sec. 45-54. Appeal to city council.

Any person aggrieved by a decision of the administrative assistant in the administration of this Article may appeal such decision to the city council by filing written notice of appeal with the city clerk within ten days after receiving notice of such decision. The council shall thereafter hear the appeal as

soon as practicable and shall, after taking into consideration the standards in this Article, affirm, reverse or modify the decision of the administrative assistant. (Ord. No. 8774, 3-3-1986, § 2.)

Sec. 45-55. Repealed by intent of Ordinance No. 8774, 3-3-1986, § 2.

Article VI. Snow Removal.

Sec. 45-56. Abutter defined.

For the purposes of this Division, the word abutter shall mean any person who owns, leases or otherwise lawfully occupies any parcel of land which abuts any public sidewalk with the city. (Ord. No. 5915, § 1; Ord. No. 9353, 11-10-1997, § 1.)

Sec. 45-57. Duty of abutters--within 24 hours.

All abutters shall remove or cause to be removed sufficient snow falling on any public sidewalk abutting such parcel of land within 24 hours after the end of every snowfall to create a clear path of a minimum width of 36 inches. (Ord. No. 5915, § 3; Ord. No. 9353, 11-10-1997, § 2.)

Sec. 45-57.1. Repealed (Ord. No. 9353, 11-10-1997, § 3. Ord. No. 10594, 10-08-2018, §1)

Sec. 45-58. Repealed by Ordinance No. 9353, 11-10-1997, § 7.

Sec. 45-59. Sand to be sprinkled on sidewalks when ice cannot be readily removed.

All abutters shall sprinkle sand and/or a chemical deicer other than salt upon any ice forming upon any public sidewalks abutting upon their property when such ice cannot be readily removed, so that such sidewalks shall be made reasonably safe for the use of pedestrians. (Ord. No. 5915, § 5; Ord. No. 9353, 11-10-1997, § 4.)

Sec. 45-60. Repealed by Ordinance No. 9353, 11-10-1997, § 7.

Sec. 45-61. Removal by city when owner fails to do so--authorized.

The director of public works, either by contract to the lowest responsible bidder or by such other method as may, in his judgment, seem best adapted for the purpose under the circumstances shall cause all snow not removed by the abutter, immediately upon the default of such abutter, to be removed from such sidewalks. (Ord. No. 5915, § 8; Ord. No. 9353, 11-10-1997, § 5.)

Sec. 45-62. Same--Assessment of cost.

The director of the public works department shall keep an accurate account of the expense of removing snow where the abutter has failed to remove such snow. At the close of the season, he shall report the same to the city council, which shall thereupon cause an assessment to be made and levied against the real property abutting upon such sidewalks for the purpose of defraying the expense and cost of such snow removal. Such assessment shall be enforced and collected in accordance with the procedure prescribed by the Charter, this Code and other ordinances relating to the enforcement and collection of special assessments for local improvements. To each assessment a collection fee may be added in an amount set by city council resolution to reimburse the city its administrative assessment costs. (Ord. No. 5915, § 9; Ord. No. 9353, 11-10-1997, § 6.)

Secs. 45-63 to 45-72. Repealed by Ordinance No. 9353, 11-10-1997, § 7.

Sec. 45-73. Depositing, etc., accumulations of snow on lots, etc., prohibited.

The depositing, placing or throwing, upon any of the public sidewalks, ways or other public grounds, of snow or accumulations thereof for the purpose of removing such snow or accumulation thereof from any lot, tract or parcel of land, is hereby prohibited. No person, as owner, lessee, occupant, tenant or agent, of any lot, parcel or tract of land, shall allow, authorize, direct or permit another to do or cause to be done any of the things forbidden by this Section. (Ord. No. 6871, § 10.)

Article VII. Local Improvements.⁸

Sec. 45-74. Special assessment board--composition.

The special assessment board shall consist of the chief administrative officer, who shall be board chairman, the city engineer, the city assessor, the director of public works and utilities and the community development manager. (Ord. No. 7447, 2-8-1965, § 1; Ord. No. 9970, 5-11-2009, § 1.)

Sec. 45-75. Same--Hearings and meetings; quorum; minutes; election of secretary; adoption of rules.

Three members of the board shall at all times constitute a quorum. The board shall keep minutes of all hearings conducted by the board and of all meetings held by the board, which minutes shall be signed by the secretary and the presiding officer of the board, and filed in the office of the city clerk as a permanent record. The secretary shall be elected by the board, and may or may not be a member of the board. The board shall hold meetings at such times and at such places as the board shall determine. The board may adopt such rules and regulations not inconsistent with the Charter nor with this Division as the board shall deem advisable or necessary to give effect to this Section. Upon adoption of any such rules or regulations by the board, notice of the adoption thereof along with copies thereof shall be transmitted to the city council for their review. Unless the council shall, by resolution, vote to delay or overturn any such rule or regulation by the meeting next proceeding the meeting at which the council receives notice thereof, said rules and regulations shall be thereafter deemed to be effective and shall thereafter govern the practices and procedures of and before the board. In addition to the meetings and hearings which the board may or shall hold under authority of this Section, the council nevertheless may direct the board to hold other meetings and hearings as the council by resolution may determine. (Ord. No. 7447, 2-8-1965, § 1; Ord. No. 9970, 5-11-2009, § 2.)

Sec. 45-76. Local improvements to conform to requirements of division.

Except as otherwise specifically provided in this Code, every local improvement to be paid for in whole or in part by special assessment shall as nearly as may be practicable conform to the requirements of this Division. The costs of such improvements shall be assessed against benefitted property in a manner determined by the council to be a fair and equitable method of allocating such costs, which method may include but shall not be limited to a "per front foot" basis, a "per square foot" basis or a "per parcel" basis. (Ord. No. 7447, 2-8-1965, § 1; Ord. No. 9970, 5-11-2009, § 3.)

Sec. 45-76.1. Initiation of improvements to be assessed.

Every local improvement, any portion of the cost of which is to be assessed against benefitted property shall be initiated either by petition in accordance with the provisions of Section 45-77 below or by direction of a city council resolution as provided for in Section 45-77.1 below. (Added by Ord. No. 9970, 5-11-2009, § 4.)

⁸For Charter provisions authorizing city to make local improvements, see Char., §§ 60, 61.

Sec. 45-77. Petitions for local improvements; procedure for filing; action of city council.

(a) Any petition for a local improvement shall be filed with the city clerk, who thereupon shall forthwith transmit such petition to the city assessor. The assessor shall, with the assistance of the city engineer, determine whether such petition has been properly executed. In order to be valid, a petition must be executed by the owners of the majority of the front footage of the property which will be assessed for all or a portion of the costs of such improvements. The assessor shall report his findings as to sufficiency to the city council. If the council shall find the petition to be sufficient, the council may adopt an ordering in resolution ordering in the construction of the improvement;

(b) As part of the ordering in resolution as provided for in Section 62 of the Charter, the council shall make a determination of the total estimated cost of the project to be assessed against benefitted properties which may include the city's direct and indirect costs of designing, building and financing the project and the method by which the assessable cost of the improvements are to be assessed against the benefitted property, which may include but not be limited to a "per front foot" basis, a "per square foot" basis or a "per parcel" basis. If the project was initiated by petition pursuant to this Section, upon approval of said resolution, the city shall send notice to the owners of all property to be assessed in the manner provided for in Section 61(b) of the Charter setting forth the method by which the costs are to be assessed and setting forth the estimated amount to be assessed against the subject property;

(c) In the case of projects initiated by petition pursuant to this Section, the owners of property to be assessed shall have ten days from the date that notice is sent to them to deliver notice to the city clerk that they are unwilling to accept the proposed improvements and the proposed assessment against their property and that they wish to withdraw their signature or signatures from the petition, if they were signatories of the petition. If any property owner fails to so notify the city clerk within said ten day period, such owner shall have waived any right to object to the assessment for such work on any grounds related to the sufficiency of the petition process or such owner's consent to the improvement and the assessment therefore;

(d) In the case of projects initiated by petition pursuant to this Section, if, after the end of the ten day period provided for in subsection (c) above, there remains, not withdrawn from the petition, signatures of the owners of property which will be required to pay a majority of the costs of such improvements which are to be paid by assessment, said petition shall be valid and the city may proceed to have constructed the subject improvements and to so assess for said portion of such costs. If, after said ten day period, there shall not remain on the petition the signatures of the owners of property which will be required to pay a majority of the costs of such improvements which are to be paid by assessment, said petition shall be deemed to have been insufficient. (Ord. No. 7447, 2-8-1965, § 1; Ord. No. 9970, 5-11-2009, § 5; Ord. No. 9995, 9-14-2009, § 1.)

Sec. 45-77.1. Assessments initiated by council action.

In the event that the council determines that it is necessary to construct a local improvement for which no petition has been filed, the council may adopt a resolution of intent to construct the improvement, which resolution shall be effective upon the affirmative vote of a simple majority of the council present and voting. (Added by Ord. No. 9970, 5-11-2009, § 6.)

Sec. 45-78. Preparation of plans, specifications and estimates; mayor's recommendation.

Following the adoption of a resolution of intent to construct an improvement, whether initiated by petition or on council action, the mayor shall cause to be prepared and filed with the secretary of the board, a report which shall contain plans and specifications for such improvement and an estimate of the cost thereof, which estimate shall include cost of acquisition of rights-of-way, easements, slopes and fills, interest costs, and all other items of expense reasonably and necessarily incurred or to be incurred as incidental to the making of such improvement; together with the mayor's special recommendation as to what portion of the cost should be paid by special assessment and what part, if any, should be a general obligation of the city, the number of installments in which the assessment may be paid, the lands which should be included in the special assessment, and an estimate of the amount proposed to be assessed against each parcel of land. (Ord. No. 7447, 2-8-1965, § 1.)

Sec. 45-79. Public hearings; notice to be given; board to report to council as to necessity, etc.

Within ten days after such filing of plans, specifications and estimates as above directed, the special assessment board shall fix the time, date and place at which the board will meet at public hearing to consider such improvement. The city clerk shall cause a notice of such hearing to be published and to be mailed to those persons appearing by name in the office of the city assessor as being subject to a real estate tax on the property to be assessed, or if such property is not subject to a real estate tax, the owner of such property as shown in the office of the city assessor, such notice to be mailed to the address of such person as listed on the records of the assessor. The notice shall describe in general language the improvement or improvements recommended in the mayor's report to the special assessment board, the estimated cost thereof, and shall include a statement of the territorial limits within which the assessment is to be made. The notice shall also state that the preliminary plans and estimates are on file and open to public examination at the office of the city engineer during normal business hours up to and including the date set for the hearing. At the time and place specified in the notice hereinbefore required for the public hearing, the special assessment board shall meet and hear any person to be affected by the proposed public improvement or assessment therefor. The hearing may be adjourned from time to time by the board. After completion of the hearing, the board shall transmit to the council the plans, specifications and estimates theretofore filed with its secretary by the mayor, as hereinbefore required, and shall report to the council its findings as to the necessity of the proposed public improvement and its recommendation therefor, and amendments to the proposal as previously submitted, and its recommendation as to what part, if any, of the cost should be paid by special assessment and what part, if any, should be a general obligation of the city, its recommendations as to the number of installments in which assessments may be paid, and its determination of the property upon which such assessments shall be levied. The board may include in its report a recommendation that the owner of a particular parcel of land be permitted by the council to pay in advance sufficient amounts of money to bring the balance of the amount to be assessed for the improvement within the limitations of Section 60 of the Charter. (Ord. No. 7447, 2-8-1965, § 1.)

Sec. 45-80. Information to be furnished council by board.

The board, at the direction of the mayor, shall include in its report to the council information upon which the council can determine whether or not the property to be assessed is specially benefited by the improvement, whether or not such amount exceeds the amount of benefits to be received by such property, whether or not such assessment will cause the total amount of the special assessment levied by the city and outstanding against any property, exclusive of delinquent installments and assessments for current services, to exceed 60 percent of the fair cash market value of the property after giving effect to the benefit accruing thereto from the improvement, and whether or not the assessments will become a tax burden on the interest or sinking funds. (Ord. No. 7447, 2-8-1965, § 1.)

Sec. 45-81. Resolution ordering improvement.

After the report of the special assessment board has been received, the council may by resolution determine to make the improvement and to defray the whole or any part of the cost of the improvement by special assessment upon the property specially benefited, and what part, if any, shall be a general obligation of the city, determine the number of installments in which assessments may be paid and designate the district or land and premises upon which special assessments shall be levied, and order said improvement. (Ord. No. 7447, 2-8-1965, § 1.)

Sec. 45-82. Certification and approval of assessment roll; publication of assessments; manner of paying assessments.

(a) Approval of assessment roll. After local improvement as provided in this Chapter shall have been completed and accepted by the city, the city engineer shall compute and certify to the city council the cost thereof, including any incidental expenses of publication, mailing, etc., and the city assessor shall certify to the city council an assessment roll. At the next regular meeting thereafter, the city council shall consider and adopt said assessment roll, or return said assessment roll to the city

assessor with instructions as to any corrections or modifications required. In the event that said assessment is so returned, the city assessor shall make said corrections and return said assessment roll as corrected to the council prior to its next regular meeting, at which time it shall be considered and approved with or without further amendment and correction by the council;

(b) Hearing; time for payment. Within ten days after such approval, the council shall have published in the official paper of the city and shall have mailed to each person whose name appears on said assessment roll a notice briefly describing the improvement for which the assessment is made, and stating that the assessment is payable at the treasurer's office at any time within 90 days subsequent to the publication of said notice in the case of assessments which are not eligible for payment in installments, and within 40 days subsequent to the publication of said notice in the case of assessments which are eligible for payment in installments, and that unless the same is so paid within said period, or in the case of assessments eligible for payment in installments, an application is made to the city treasurer for an extension of time of payment as herein provided within such 40 day period after the publication of notice, a penalty, set in accordance with Section 31-8 of this Code, will be added to such assessment. Assessments shall be eligible for payment in installments when so determined by the council, except that an assessment against an owner of property which is less than that amount which shall be set in accordance with Section 31-8 of this Code for any single description of land as shown on the records of the city assessor shall not be so eligible;

(c) Installment payment. Within the 40 days after the publication of the notice of assessment, upon application in writing to the city treasurer by any owner of real estate against which an assessment which is eligible for payment in installments is made, the treasurer shall extend the time for paying such assessment in installments extended in the manner determined by the council not to exceed the estimated useful life of the improvement and, in any event, not exceeding 15 in number, payable yearly from 40 days after the date of the approval by the council of said assessment. Each of said installments of extended assessments shall be payable annually from the date the entire assessment would be payable, without penalty, and shall bear interest at a rate which shall be from time to time by resolution of the city council. Such installments of extended assessments, together with the accrued interest thereon, from the first Monday in January following, shall be considered to be delinquent under Section 45-82.1 below when they shall severally become due and payable, but not before. Any such installments may be paid prior to its maturity with interest to the date of payment only. Installment payment of assessments as authorized herein shall be computed in such a way that the minimum installment payment for any single parcel of land as shown on the records of the city assessor shall be that amount which shall be set in accordance with Section 31-8 of this Code, except for the final payment;

(d) Default. In the event of default in timely payment of an installment assessment levied upon a tract or parcel of land, the council may, at its option, declare all subsequent installment assessments at once due and payable;

(e) Modification by the board. Within 18 months after an assessment is confirmed by the city council, the special assessment board is authorized to withdraw such assessment and either extend the time during which the property owner may elect to pay such assessment in installments in those cases where the board is satisfied that good cause exists for such extension, or correct a mathematical error made in the computation of such assessment; provided, however, that whenever such correction results in an increase of the assessment, the affected party shall be given notice by mail of such increased assessment, and such party may, within 14 days after such notice is given, request the special assessment board to submit such increased assessment to the city council for its approval. Upon receipt of such request, the special assessment board shall submit such increased assessment to the city council and the council may approve or disapprove such assessment or make such adjustment to such assessment as it deems appropriate. If the city council approves all or any part of the modified assessment roll, the affected party may appeal such assessment within 30 days of the date of the city council's action on the matter, such appeal to be governed by the provisions of Section 67 of the Charter. Action by the special assessment board pursuant to this paragraph shall be approved by at least three members thereof and a copy of the minutes of the board relating to such action shall be attached to the assessment roll affected by such action. (Ord. No. 7447, 2-8-1965, § 1; replaced by Ord. No. 9970, 5-11-2009, § 7; Ord. No. 10155, 5-29-2012, § 23.)

Sec. 45-82.1. Delinquencies in payments of assessments--penalties; assessments to be lien upon real estate.

Each assessment not paid on or before 40 days after the publication of the notice directing payment shall be deemed delinquent except as hereinafter provided for, and a penalty which shall be set in accordance with Section 31-8 of this Code, shall thereupon be added, unless an extension of the assessment shall have been made by the council, as provided for in the next preceding Section. All installments of extended assessments shall be deemed delinquent if not paid at the time fixed for payment in the extension, and when delinquent a ten percent penalty shall in each case be added except as hereinafter provided for; provided, however, that no penalty or interest shall accrue or be charged against any property which is assessed during such time as it is owned by the state of Minnesota pursuant to forfeiture for nonpayment of real estate taxes until said property is redeemed pursuant to Minnesota Statutes, Chapter 281, or any successor statute. Every assessment shall be a lien upon the property against which the assessment is made, from the time such assessment is confirmed by the council. (Added by Ord. No. 9970, 5-11-2009, § 8; Ord. No. 10155, 5-29-2012, § 24.)

Sec. 45-82.2. Same--Statement of delinquencies; enforcement and collection.

In each year the council shall cause to be made a certified statement of the several pieces of land against which assessments have been made and are delinquent, describing the land affected and giving the amount of assessment with penalties added, which certified statement shall be filed with the county auditor of St. Louis County, Minnesota, on or before five working days after December 20 in each year. It shall be the duty of said county auditor to extend said assessments with penalties, as shown by said certified statement, upon the tax rolls of the said county of St. Louis for the taxes of the particular year in which said assessment is filed, and the same for each year ending October 15 shall be carried into the tax becoming due or payable in January of the following year, and shall be enforced and collected in the manner provided for the enforcement and collection of state and county taxes under and in accordance with the provisions of the general laws of the state, except that in court proceedings to enforce the collection of taxes, no defense as to the validity of any such assessment shall be permitted. Such assessment, if not paid, shall become delinquent and be subject to the same penalties and the same rate of interest as the taxes for state and county purposes under the general laws of the state. (Added by Ord. No. 9970, 5-11-2009, § 9.)

Sec. 45-82.3. Assessments, penalties and interest belong to city; applicability of Chapter to public service corporations.

All assessments with penalties and interest thereon paid to the county treasurer shall belong to the city of Duluth, and shall be turned over to the treasurer by said county treasurer in the manner provided by law.

Every franchise granted to any public service corporation shall contain a provision that such corporation shall to the extent of such franchise be subject to all the provisions of this Chapter in all respects the same as any other person or corporation. (Added by Ord. No. 9970, 5-11-2009, § 10.)

Sec. 45-82.4. Public sidewalk repair--private initiation--assessment.

The city engineer is authorized to contract with private property owners to repair or replace the public sidewalk located on said owner's property subject to the owner or owners of benefitted property agreeing, in the form of an agreement which is approved by the city attorney, to either reimburse the city for all of the city's direct and indirect costs of such work or agreeing that the benefitted property be assessed for all of such costs. The term of any such assessment shall be established by the city engineer. (Added by Ord. No. 9974, 5-26-2009, § 1.)

Sec. 45-82.5. Incidental private repair--assessments.

When the city is itself or by means of a contract repairing or replacing any public sidewalk, the city engineer or his or her designee is hereby authorized to enter into an agreement to repair or replace

private sidewalks, curbs, stairs, railings or concrete curb aprons on property on or adjacent to property upon which said public sidewalks are located subject to the owner or owners of benefitted property agreeing, in the form of an agreement which is approved by the city attorney, to either reimburse the city for all of the city's direct and indirect costs of such work or agreeing that the benefitted property be assessed for all of such costs. The term of any such assessment shall be established by the city engineer. (Added by Ord. No. 9974, 5-26-2009, § 2.)

Sec. 45-82.6. Sidewalk vault repair or abandonment--assessment.

(a) If the city engineer determines in the exercise of his or her discretion that the existence or condition of a vault under any city street, sidewalk or alley is in such a condition or state of disrepair as to pose a danger to the public or that it imperils the condition or integrity of such street, sidewalk or alley, the city engineer may cause a notice thereof to be mailed to those persons appearing by name in the office of the city assessor as being subject to a real estate tax on the property upon which the vault is located, or if such property is not subject to a real estate tax, the owner of such property as shown in the office of the city assessor, such notice to be mailed to the address of such person as listed on the records of the assessor. Said notice shall inform said person or persons of the determination of the city engineer, shall notify said person or persons that the city requires said person or persons, within 60 days of the sending of the notice, to either repair said vault in a manner acceptable to the city engineer or to abandon, close and fill said vault in a manner acceptable to the city engineer. Said person or persons shall be required to obtain a permit from the city engineer for any such repair or abandonment work and to provide bonds and insurance as is required in this Chapter and the plans therefore shall be subject to the prior approval of the city engineer;

(b) If the vault referenced in subsection (a) above is not repaired or abandoned in accordance with the requirements of said subsection within the time established in the notice requiring such repair or abandonment, the city engineer may proceed to seek authorization from the city council under Section 45-77.1 of this Code to have said work performed and to assess the cost of said work against the benefitted property pursuant to this Article VII of Chapter 45 of the Code. (Added by Ord. No. 10050, 9-27-2010, § 1.)

Sec. 45-83. Deferral of assessment in certain cases.

Pursuant to authority contained in Minnesota Statutes, Sections 435.193 through 435.195, and in Section 1 of the City Charter, the special assessment board is hereby authorized to defer the payment of special assessments for local improvements made against homestead property owned by persons for whom it would be a hardship to make such payment who are either 65 years of age or older or retired by virtue of a permanent and total disability or who are members of the Minnesota National Guard or other military reserves who are ordered into active military service, as defined by M.S. Section 190.05, subd. 5b or 5c, as stated in such person's military orders⁹. The special assessment board shall establish, and as necessary amend, specific guidelines to cover the exercise of its responsibilities under this Section. The interest rate on such deferred assessments shall be the same as the rate applicable to assessments for the same local improvement paid by installments pursuant to Section 68 of the City Charter.

All amounts deferred, and interest due thereon, shall become due upon the occurrence of any of the following events:

- (a) The death of the owner, provided that the spouse is not otherwise eligible for deferment hereunder;
- (b) The sale, transfer or subdivision of the homestead property, or any part thereof;
- (c) The loss for any reason of homestead status of the benefitting property;
- (d) If for any reason the council determines that there would be no hardship to require immediate or partial payment of the amount deferred. (Ord. No. 8100, 9-16-1974, § 1; Ord. No. 9148, 6-28-1993, § 1; Ord. No. 10103, 9-12-2011, §§ 1, 2.)

⁹Language added by Ord. No. 10103, § 1, shall apply to all applications for deferral made after August 1, 2011.

Division 2. Improvements by private parties.

Sec. 45-84. Permit--authority of city engineer.

In addition to other authority possessed by the city engineer, there is hereby conferred upon the city engineer the authority to issue special permits to private parties to make local improvements in, upon or under the public highways and public grounds of the city, as such local improvements are defined and authorized by Chapter IX of the City Charter, if an application for such permit is made in writing to the city engineer in a manner and under the conditions prescribed by this Article. (Ord. No. 7055, 8-27-1956, § 1.)

Sec. 45-85. Same--Application.

Any person desiring to make any such local improvement shall make an application in writing upon a form approved by the city engineer, describing the nature of such improvement, the estimated cost thereof, the time in which construction of such improvement will be commenced and the time when it will be completed, together with such other information as the city engineer may require. (Ord. No. 7055, 8-27-1956, § 2.)

Sec. 45-86. Same--Conditions.

In making application for a permit under this Division and by accepting a permit in pursuance of such application, the applicant shall agree:

- (a) To accept all of the terms of this Division;
- (b) That the applicant will commence and complete the improvement within the time specified in the application;
- (c) That he will make such improvement at his own sole expense and without expense of any kind whatsoever to the city;
- (d) That upon the completion of such improvement to the satisfaction of the city engineer and his acceptance thereof, the applicant will assign, set over, and transfer unto the city, in trust for the use and benefit of the public, such improvement. (Ord. No. 7055, 8-27-1956, § 4.)

Sec. 45-87. Surety bond and insurance required.

No person to whom a permit has been issued under this Division shall occupy any highway or public ground where such local improvement is to be made unless such person has first filed with the city engineer a corporate surety bond of an insurance company duly authorized by the laws of the state to transact business as a surety, in the sum of at least \$10,000, and, in addition to such bond, the applicant shall also file with the city engineer the certificate of an insurance company duly authorized by the laws of the state to transact business as an insurance company, duly certifying to the fact that the applicant is insured by such company with a comprehensive general liability policy which includes completed operations, products liability, explosion, collapse and underground property liability coverage in the amount of \$300,000 for bodily injury in any year and \$50,000 property damage in any year. Such insurance policy shall name the city as an additional insured.

Neither the certificate of insurance nor the surety bond, as aforesaid, shall be received or filed by the city engineer until approved, in writing, as to form, correctness and validity by the city attorney.

Every such corporate surety bond shall be conditioned as follows: That the applicant guarantees to indemnify and save the city harmless from any and all claims, demands, damages or causes of action of any kind whatsoever arising or to arise out of the doing of the work or the thing authorized by the permit issued to the applicant, and that he will comply in every respect with the terms of this Division, and all material representations contained in his application; and guarantees that any work done under the permit, including the installation of any sewer connections made by the applicant, will be done in accordance with all applicable provisions of this Code and other rules and regulations of the city. (Ord. No. 7055, 8-27-1956, § 10; Ord. No. 8189, 11-24-1975, § 11.)

Sec. 45-88. Improvements to comply with specifications for all other improvements.

Every local improvement to be made by any person under this Division shall comply in every respect with all specifications as are required by the city engineer in cases where such local improvement would be made under contract between the city and a contractor. (Ord. No. 7055, 8-27-1956, § 3.)

Sec. 45-89. Approval and acceptance.

Upon the approval and acceptance by the city engineer of any such local improvement, he shall make a report thereof, in writing, to the city council. Such report shall be filed with the city clerk as a public document. Thereafter the city shall assume the supervision and control of such improvement in the same manner and to the same extent as would be required by law if such local improvement had been made under contract between the city and the contractor. (Ord. No. 7055, 8-27-1956, § 5.)

Sec. 45-90. Establishment of rules and regulations.

In enforcing the terms of this Division, the city engineer may prescribe such rules and regulations as shall not be inconsistent with the terms of this Division. (Ord. No. 7055, 8-27-1956, § 6.)

Sec. 45-91. Applicability of division.

Nothing contained in this Division shall be deemed to amend, modify or repeal any provisions of Article II of this Chapter.

No provision of this Division shall be deemed to amend, modify or repeal any provision of this Code regulating the construction and maintenance of gas mains and water mains by the city.¹⁰ (Ord. No. 7055, 8-27-1956, §§ 7, 8.)

Article VIII. Obstructions to Watercourses.

Sec. 45-92. Purpose of article; liability of city and employees thereof.

This Article is enacted in aid of the governmental functions of the city in order to protect and preserve the public welfare and shall not be construed as in anywise imposing any liability of any kind upon the city or an officer or agent thereof by reason of the failure or neglect of any person to comply with the terms of this Article. (Ord. No. 6978, § 7.)

Sec. 45-93. Obstructions causing water to flow over highways or public grounds prohibited.

No person, either directly or indirectly, shall install, construct, maintain, cause to be installed, constructed, maintained, or commence the installation, construction or maintenance in, upon or under any natural watercourse, any culvert, drain, pipe, main or any obstruction whatsoever in such manner as shall or may cause surface water to overflow into, upon, over, across or under any of the public highways or grounds within the city. (Ord. No. 6978, § 1.)

Sec. 45-94. Permit--required.

With the exception of a publicly regulated utility doing business in the city under a franchise granted by the city, doing business in such city under authority of general law or under a certificate of public convenience and necessity issued by any agency of the state authorized to issue any such certificate, no person, either directly or indirectly, shall construct, reconstruct or install in, upon or under any natural watercourse any culvert, drain, pipe, main or any obstruction whatsoever without first applying to and receiving from the engineering division of the city a permit therefor in the manner provided in this Article. (Ord. No. 6978, § 2; Ord. No. 6986.)

¹⁰As to water and gas mains generally, see Chapter 48 of this Code.

Sec. 45-95. Same--Application.

The application for a permit under this Article shall set forth, in writing, the name of the applicant, the legal description and common post office address of the place where the applicant will install, construct, maintain or keep any such culvert, drain, pipe, main or any obstruction whatsoever, the size and type of material which the applicant proposes to use for such culvert, drain, pipe, main or obstruction, together with such other or additional information or data as the engineering division may require. (Ord. No. 6978, § 3.)

Sec. 45-96. Same--Fee.

Every application for a permit under this Article shall be accompanied by a fee set in accordance with Section 31-6(a) of this Code. (Ord. No. 6978, § 3; Ord. No. 9118, 1-11-1993, § 36; Ord. No. 9611, 7-28-2003, § 47; Ord. No. 9611, 7-28-2003, § 47.)

Sec. 45-97. Same--Investigation.

Upon the filing of an application for a permit under this Article, the city engineer or his duly authorized agent shall promptly investigate the matters set forth in the application and thereupon shall determine whether the culvert, drain, pipe, main or obstruction, as proposed to be installed, constructed or maintained, can be accomplished in accordance with recognized engineering practices and in such manner as to prevent damage or destruction of any public highway or public ground resulting or likely to result from the overflow or diversion of surface waters from the presence of any such culverts, drains, pipes, mains or obstruction in, near or adjacent to any such highway or ground. (Ord. No. 6978, § 4.)

Sec. 45-98. To be kept in good repair.

Every person, whether owner, tenant, occupant or agent of any land lying in or forming part of a natural watercourse wherein is located any such culvert, drain, pipe, main or other obstruction, shall keep and maintain the same continually in a state of good repair. (Ord. No. 6978, § 6.)

Sec. 45-99. Establishment of rules and regulations.

The city engineer is authorized to prescribe such reasonable rules and regulations not inconsistent with this Article as he may deem necessary and proper for the inspection of any such culvert, drain, pipe, main or other obstruction before the bed or trench in which either of the same is backfilled or covered. (Ord. No. 6978, § 5.)

Article IX. Minnesota Point.

Sec. 45-100. Permit for excavation, dredging, sand removal, etc.--required.

No person either directly or indirectly, shall remove any sand, earth or any other material from that part of Minnesota Point lying between the ship canal cut through and across Minnesota Point and the government reservation at the southerly extremity of Minnesota Point, remove or cause to be removed any sand, earth or other material from the waters adjacent to such portion of Minnesota Point within 150 feet of the low water mark, remove or to cause to be removed any sand, earth or other material from any part or portion of Minnesota Point in any case where doing so will cause or tend to cause injury to or destruction of any public street, avenue, alley or other public highway or ground or which will cause or tend to cause damage or destruction to any of the public sewer, gas or water mains or other public utilities upon Minnesota Point without first obtaining a permit from the public works division, in accordance with the provisions of this Article. (Ord. No. 5608, 8-27-1934, § 1.)

Sec. 45-101. Same--Application; issuance; prohibited permits.

Any person desiring to make any excavation in Minnesota Point for any lawful purpose or within the waters adjacent to Minnesota Point or to remove any earth or sand therefrom shall make application to the public works division, stating the purposes for which such excavation is to be made or soil removed, what precautions the applicant will take, if any, to protect Minnesota Point while the excavation is being made, what structure, if any, the applicant proposes to place in the excavation so made and whether or not the applicant is the owner of the land upon which or adjacent to which the excavations are to be made. If it shall appear to the public works division that the applicant is the owner of the property where or adjacent to which the excavation is to be made or that the applicant has obtained the consent of the owner to make such excavation or to remove such earth, that the excavation and the removal of such earth can be effected without injury to Minnesota Point or without weakening or impairing the same as a natural breakwater and that sufficient precautions will be taken while the excavation is being made to protect Minnesota Point, the public works division shall grant the applicant a permit to make the excavation or to remove the material for which application is made; provided, that no permit shall ever be granted which shall authorize the removal or excavation of sand, earth or other material from any lot, tract or parcel of land below the established grade of any street, avenue or alley adjacent or nearest to such lot, tract or parcel of land located in or upon Minnesota Point, unless such removal or excavation is essential to the actual construction or erection of any lawfully authorized building or structure on such lot, tract or parcel of land. (Ord. No. 5608, 8-27-34, § 2; Ord. No. 6763, 3-31-1947.)

Sec. 45-102. Bond may be required for excavations.

The public works division may require the applicant for a permit under this Article to give bond in such sum as may be necessary, in its judgment, that the applicant will use all proper precautions while any excavation is being made or after the same is made to protect Minnesota Point and keep the same in place. (Ord. No. 5608, 8-27-34, § 2; Ord. No. 6763, 3-31-1947.)

Article X. Repealed.

Secs. 45-103 to 45-104. Repealed by Ordinance No. 10147, 4-23-2012, § 1.

Article XI. Establishment of Street Grades.

Sec. 45-105. City engineer to establish street grades.

The city engineer shall establish the grade of all streets, avenues, and alleys within the city for which grades have not heretofore been established; and once established, either before or after the adoption of this Article, the grade of any street, avenue, or alley shall not be changed, except upon the recommendation of the city engineer and the approval of the city council by resolution adopted by 2/3 vote of all of its members. (Ord. No. 7923, 4-17-1972, § 1.)

Article XII. Street Lighting System Utility.¹¹

Sec. 45-106. Policy and purpose.

The city council has determined that, to promote the general health, safety and welfare of the citizens and residents of the city, it is in the best interests of said citizens and residents that the city operate and maintain a city-wide street lighting system utility and further has determined that the operation and maintenance of such a utility benefits each and every property within the city. The city council has therefore determined that it is fair, appropriate and reasonable that the costs of such operation and maintenance be paid on a fair and reasonable basis by all of the property in the city so

¹¹ **Error! Main Document Only.**Article XII will be repealed as of December 31, 2019, pursuant to Ord. No. 10298, 6-9-2014, § 1.

benefitted and that cost thereof should be charged to and collected from all such benefitted property. (Ord. No. 9931, 10-13-2008, § 1.)

Sec. 45-107. Definitions.

For the purpose of this Article, the following words and phrases shall have the meanings given them in this Section:

Director. The director of public works or the director's designee.

Dwelling unit. A single unit that provides complete, independent living facilities for one or more persons including permanent provision for living, sleeping, eating, cooking and sanitation.

Operating and maintenance costs. The current paid or accrued expenses of operation, maintenance and current repair of the system, as calculated in accordance with sound accounting practices and includes, without limitation, administrative expenses, labor, the cost of materials and supplies used for current operations and charges for the accumulation of appropriate reserves for current expenses not annually incurred but which are such as may be reasonably expected to be incurred in accordance with sound accounting practices.

Nonresidential property. All property other than residential property.

Residential property. Developed property that is classified by the city assessor as land use Types 1, 4 and 2a pursuant to Minnesota Statutes Section 273.13.

Street lighting system or system. The existing system of street lights and signalized intersection systems and related wires and equipment owned or maintained by the city and all improvements thereto which are the property and responsibility of the utility, to be operated by the utility to provide lighting on public streets.

Street lighting utility or utility. The utility created by this article to operate, maintain and improve the street lighting system.

Utility fee. A utility fee authorized this Article which is established to pay for operations and maintenance, extension and replacement and debt service. (Ord. No. 9931, 10-13-2008, § 1.)

Sec. 45-108. Utility fees and charges.

(a) The utility shall charge utility fees established from time to time by the council by resolution to recover from property benefitting from the system the debt service, operation and maintenance costs of street lighting system facilities in the city. Subject to the limitations contained in this Section, this Article shall apply to all property in the city of Duluth. The council may establish differing rates for residential property and non-residential property based on its determination of the reasonable benefits accruing to each such classification of property;

(b) The fees charged under this Article shall be charged along with and in the same manner as stormwater utility fees pursuant to Article XI of Chapter 43 of this Code. The utility fees established by this Article are the joint and several responsibility of the owner, lessee and the occupant of each lot or parcel subject to the fee. The city council may provide for penalties and interest for late payments in the resolution establishing the utility fee rate;

(c) In the event that any utility fees under this Article are not paid when due, the payment thereof may be enforced in the same manner as any other unpaid utility fee owed to the city including those owed with regard to water, gas or sewer service, which enforcement may include but shall not be limited to the right to discontinue any or all such water, gas or sewer service being provided to the benefitted property;

(d) In addition, delinquent utility fees shall be collected in the same manner as taxes against the property and may also be collected in an action at law against the owner, lessee or the occupant of the parcel. On or before July 1 of each year, the director shall transmit to the city assessor a list of all delinquent street lighting system utility fees for the preceding calendar year and the parcels which each delinquent fee relates to. Upon receipt of such list, the city assessor shall prepare a delinquent utility fee roll containing, in columns, the name of the owner, if known, of each lot or parcel where utility fees are delinquent, a description of each lot or parcel and the amount of delinquent utility fees from the previous year. On or before August 1 of each year, the city assessor shall certify the delinquent utility fee roll to the city council. The city clerk shall send 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 the property stating the amount of the

utility fee due, a description of the property, that the utility fees are due and payable before October 1 of that year and that the delinquent utility fee roll is on file in the office of the city clerk. If the city council finds the roll to be proper and correct, it shall by resolution confirm the roll on or before October 1. The confirming resolution shall contain a collection fee added to each amount due to reimburse the city for its administrative costs of collection. On or before the tenth day of October each year, the city treasurer shall file with the county auditor a certified statement of all delinquent utility fees under this Article, describing the land affected and giving the amount of the fee, with a penalty added, which shall be set in accordance with Section 31-8 of this Code, after which the delinquent fee shall be processed in the same manner as an assessment under the provisions of the City Charter. (Ord. No. 9931, 10-13-2008, § 1; Ord. No. 10155, 5-29-2012, § 25.)

Article XIII. Street System Maintenance Utility.

Sec. 45-109. Policy and purpose.

The city council finds that all persons, businesses, institutions and organizations in the city benefit from the use of the street system across the entire city for the development and maintenance of economic, cultural and community vitality as well as for the general health, safety and welfare of the city's residents. The council further finds that the loss of the previous funding sources for street maintenance and reconstruction has had a significant adverse impact on the city's ability to maintain its street system at an acceptable level of repair. Therefore the city council has determined that, in order to provide a safe, well maintained street system which will promote the economic vitality of the city and the general health, safety and welfare of its residents, it is in the best interests of the city and its residents, businesses and institutions that the city create and operate a city-wide street system maintenance utility. The city council further has determined that the operation and maintenance of such a utility benefits each and every property within the city. The city council has therefore determined that it is fair, appropriate and reasonable that the costs of such operation be paid for on a fair and reasonable basis by all taxable property in the city so benefitted and that the costs thereof should be collected from all such benefitted properties. (Added by Ord. No. 10311, 6-23-2014, § 1.; Ord. No. 10474, 9-26-2016 §1)

Sec. 45-110. Definitions.

For the purpose of this Article, the following words and phrases shall have the meanings given them in this Section:

Operating and maintenance costs. The current paid or accrued expenses and debt service payments incurred for the operation, maintenance and repair of the system and costs incurred by the utility for mill-and-overlay, reconstruction of streets, alleys and sidewalks in the city, all as calculated in accordance with sound accounting practices and includes, without limitation, administrative expenses, labor, the cost of materials and supplies used for such work and charges for the accumulation of appropriate reserves for costs not annually incurred but which are such as may be reasonably expected to be incurred in accordance with sound accounting practices.

Maintenance. Maintenance shall include street sweeping, street washing, snow and ice control and removal, crack sealing, pot hole filling, street sealing, temporary or permanent street patching, gravel placement and grading of gravel streets and alleys, brick repair or spot replacement on brick streets, striping and other pavement marking, traffic sign erection and replacement, right-of-way maintenance including grass cutting, brush removal, culvert repairs and guard rail or other protective barriers and boulevard maintenance including tree replacement.

Street system. The existing system of streets, alleys and sidewalks owned or maintained by the city and all improvements thereto which are the responsibility of the utility, to operate and maintain.

Street system maintenance utility or utility. The utility created by this article to operate, maintain and reconstruct the city's street system.

Street maintenance utility levy. A levy provided for this Article to pay for operations, maintenance, significant repair and replacement costs including reconstruction and mill and overlay and debt service. (Added by Ord. No. 10311, 6-23-2014, § 1; Ord. No. 10474, 9-26-2016 §1)

Sec. 45-111. Street system maintenance utility budget.

The proceeds of street maintenance utility levies shall be expended only in accordance with a utility budget approved by the city council. If a utility budget is not approved for the expenditure of funds for any year, no utility fees or charges authorized pursuant to Section 45-112 shall be collected or expended in such year.

(a) Utility budget development.

Annually, in conjunction with the approval of the overall city budget city administration shall cause a budget to be prepared for the coming year for the utility. Said budget shall describe the nature of the work to be performed and the estimated amount to be spent on the items of work. (Added by Ord. No. 10311, 6-23-2014, § 1; Ord. No. 10474, 9-26-2016 §1)

Sec. 45-112. Utility fees and revenues.

Upon approval of the utility budget as described in Section 45-111 above, the council shall by ordinance establish the street maintenance utility levies as part of the city's general levy to pay for costs of the utility.

As part of approval of the utility budget as described in Section 45-111 above, other revenues necessary and applicable to the operation of the utility shall be identified and applied to the utility as set forth in the overall city budgeting process;

(Added by Ord. No. 10311, 6-23-2014, § 1; Ord. No. 10474, 9-26-2016 §1)