

## CHAPTER 48.

### WATER AND GAS.<sup>1</sup>

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**Article I. In General.**

**Sec. 48-1. Definitions.**

For the purposes of this Chapter, the following words and phrases shall have the meanings respectively ascribed to them by this Section:

Applicant. Any person or persons applying for water or gas service from the department and any guarantor of payment for such service as provided for in this Chapter.

Commission. The Duluth public utilities commission established pursuant to Article XXXV of Chapter 2 of this Code.

Department. The department of public works and utilities.

Domestic applicant. A noncommercial or nonindustrial applicant who uses gas solely for purposes other than heat; i.e., cooking, hot water, clothes dryer, etc., and an applicant for water or sewage or both.

Fire service. An unmetered, large capacity water service which is used only for the suppression of fire and which is protected by appropriate backflow preventers to insure that potable water supplies are not contaminated.

High pressure gas line. Any gas line transmitting gas at a pressure in excess of 0.50 pounds per square inch (14 inches water column).

High volume gas service. Service used to provide gas at a rate in excess of 1,000,000 BTU's per hour.

High volume water service. Any service which is capable of providing in excess of 35 gallons of water per minute at water pressure levels which are normal at the location of such service.

House piping. The pipe or system of pipes conveying water or gas from the meter on a house service to the points of use of water or gas.

House service. That portion of a water service which extends from the curb stop controlling the flow through the house service, to and including the meter through which the flow in the house service is measured.

Master box. The primary curb stop on a water service or private line which controls one or more curb stops downstream.

Meter. Meter is a registration device connected directly to a water or gas service line directly registering the amount of water or gas passing through it.

Privately owned service. A water or gas service supplying one or more parcels of private property that has not been accepted by the department as a part of its distribution facilities.

Remote register. A registration device attached to a meter replicating the reading on that meter.

Residential heating applicant. An applicant whose primary use of gas is as fuel for heating of a residence or residential building.

Service. A pipe for conveying an individual supply of water or gas of a premises from the common supply in the main to and including the meter registering the flow of water or gas to the service.

Standard volume gas service. Any gas service capable of using not more than 400,000 BTU's per hour.

Standard volume water service. Any water service which is capable of providing up to 35 gallons of water per minute at water pressure levels which are normal at the location of such service.

Street. A street, avenue, alley or other regularly established and existing public highway or public right-of-way.

Street service. That portion of a water service which extends from its connection with the main to and including the curb stop, which controls the flow through the street service.

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

(Ord. No. 6930, 7-27-1953, §§ 1.2 to 1.9; Ord. No. 8156, 6-30-1975, § 1; Ord. No. 8704, 10-9-1984, § 1; Ord. No. 8873, 12-28-1987, § 1; Ord. No. 9258, 6-8-1995, § 1; Ord. No. 9381, 9-14-1998, § 1; Ord. No. 9405, 3-15-1999, § 4; Ord. No. 10072, 12-20-2010, § 2. Ord. No. 10611, 2-11-2019, §1)

**Sec. 48-2. Right of department to shut off water or gas supply when necessary.**

The right is reserved to the department to shut off the water or gas supply at any time it may deem it necessary to avoid potential harm to persons or damage to property. (Ord. No. 6930, § 10.1; Ord. No. 8704, 10-9-1984, § 2.)

**Sec. 48-3. Department authorized to establish regulations; regulations to be published.**

The department is hereby authorized to establish regulations not inconsistent with this Chapter. All such regulations shall be published in the official newspaper of the city ten days prior to going into effect and shall be available for examination and copying at the department's main office during normal business hours. (Ord. No. 6930, § 10.3; Ord. No. 8156, 6-30-1975, § 2.)

**Sec. 48-4. Liability of city for failure of water or gas supply.**

The city shall not be liable for any deficiency or failure in the supply of water or gas. (Ord. No. 6930, §§ 10.2, 10.4; Ord. No. 8156, 6-30-1975, § 3.)

**Sec. 48-5. Liability of persons violating chapter.**

Any person guilty of violation of the provisions of this Chapter shall be liable to the department for any and all expense, cost or damage caused the department by such violation in addition to criminal penalties set forth in Section 1-7 of this Code. (Ord. No. 6930, §§ 10.5, 31.9; Ord. No. 8156, 6-30-1975, § 4; Ord. No. 8976, 3-26-1990, § 1.)

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

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

(b) No person or persons shall be provided service until they have presented sufficient information to the department to clearly and accurately establish, to the satisfaction of the department, their identity and their utility credit history. (Ord. No. 6930, § 10.6; Ord. No. 8156, 6-30-1975, § 5; Ord. No. 8704, 10-9-1984, § 3; Ord. No. 8873, 12-28-1987, § 2; Ord. No. 8976, 3-26-1990, § 2; Ord. No. 9381, 9-14-1998, § 2; Ord. No. 10354, 2-9-2015, § 1.)

**Sec. 48-7. Department may require bond before supplying water or gas.**

Should it appear in any case that, in the opinion of the department, the supplying of water or gas to any premises or through any service pipe by the department will be attended by unreasonable risk, the department may refuse to supply water or gas to such premises or through such pipe until a valid instrument accompanied by an approved bond, with approved sureties, in a reasonable sum, not less than \$5,000, has been filed with the department releasing the department and saving it harmless from any damages or claims for damages that may result from or be incidental to supplying water or gas to the premises or through the service pipe. (Ord. No. 6930, § 10.7.)

**Sec. 48-8. Cross connections between city water supply and other sources of supply.**

No person shall cause a direct cross connection to be made or to allow one to exist for any purpose whatsoever between the city water supply and any other source of supply or cause a cross connection to be made or one to exist between the city water supply and any piping system transporting water from any source of supply whatsoever which has been subjected to contamination by storage in an unsanitary container, such as uncovered and improperly constructed pools, reservoirs, storage tanks and standpipes. City supply lines discharging to improperly constructed pools, reservoirs, storage tanks, standpipes and unsanitary containers or piping shall be piped in such a manner as to prevent the discharge or siphoning back of the water or material therein contained into the city supply line. There shall be no physical provision for any connection which is prohibited by this Chapter.

Any person whose premises are supplied with water from the city water supply system and who also has on the same premises a separate source of water supply or stored water in unsanitary pools, storage tanks, standpipes or any other unsanitary containers from which the water therein stored is circulated through a piping system shall immediately file with the department a statement of the existence or nonexistence of cross connections. Where cross connections now exist, the person permitting such cross connections to exist shall immediately eliminate the same.

Any person who neglects or refuses to comply with any and all of the provisions of this Section shall have his city water supply services to the premises discontinued. Such water supply service shall not be restored until the requirements of this Section have been fully complied with. (Ord. No. 6930, 8-29-1953, §§ 21.1 to 21.3; Ord. No. 8156, 6-30-1975, § 6.)

**Sec. 48-9. Wasting, diverting, etc., of water or gas from city systems prohibited.**

No person shall take, use, waste, divert or permit the taking, using, wasting or diversion of water or gas from the water or gas systems of the city, except by the authority of and in the manner and at the place prescribed by the department.

The supply of water, gas or both may be withheld from any person guilty of unauthorized use, waste or diversion of water or gas until proper authority has been obtained and rules have been complied with and until payment has been made for the commodity taken, used, wasted or diverted, together with all reasonable charges and expenses entailed by such unauthorized use. (Ord. No. 6930, 8-29-1953, §§ 25.1, 25.2; Ord. No. 8156, 6-30-1975, § 7.)

**Sec. 48-10.** Repealed by Ordinance No. 8704, 10-9-1984, § 4.

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

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

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

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

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

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

(c) The department shall not require a deposit or a guarantee of payment based upon source of income, residential location, employment tenure, nature of occupation, race, color, creed, sex, marital status, age, national origin or any other criteria which does not bear a reasonable relationship to the assurance of payment. (Ord. No. 6930, 8-29-1953, §§ 27.1, 27.3, 27.5; Ord. No. 8156, 6-30-1975, § 9; Ord. No. 8518, 4-21-1980, § 1; Ord. No. 8704, 10-9-1984, § 5; Ord. No. 8873, 12-28-1987, § 3; Ord. No. 10354, 2-9-2015, § 2.)

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

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

(a) The security deposit shall be in an amount of 1/6 the estimated total annual cost of services to be provided at the premises for which the applicant contracts for service, except as provided herein. If the department requires a greater deposit, it shall give written reasons for its requirement. A person aggrieved by the requirement of a deposit may have a hearing before the director of public works and utilities by requesting one in writing. If the applicant is a recipient for low income home energy assistance according to the criteria of the current Minnesota state plan for low income energy assistance, and also that the applicant's utility credit history shows that there is little risk of nonpayment to the department, then the director may reduce the deposit to any reasonable amount in excess of \$49;

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

(c) Any security deposit shall bear interest at a rate determined by state statute. The interest shall be credited to the customer's security deposit account;

(d) The department shall keep records of persons from whom deposits are collected, and the amounts, interest paid and the distribution, if any, of such deposits. Receipts shall be issued to applicants for the deposits. (Ord. No. 6930, 8-29-1953, §§ 27.2, 27.4; Ord. No. 8156, 6-30-1975, § 10; Ord. No. 8518, 4-21-1980, § 2; Ord. No. 8704, 10-9-1984, § 6; Ord. No. 8873, 12-28-1987, § 4; Ord. No. 9208, 9-12-1994, § 1; Ord. No. 10354, 2-9-2015, § 3.)

**Sec. 48-13. Use of security deposit.**

(a) If, at any time, an applicant does not promptly pay any charges owing to the department, and the applicant has a security deposit with the department, then the department, at its option, may use said security to satisfy the charges owing on any account of applicant. Whenever the department applies the security deposit to the payment of charges, it shall send written notice of its action to the applicant within 35 days. If the security deposit is used to pay charges owed to the department, then the department, at its option,

may require the deposit with it of additional security, under the same conditions set out in sections 48-11 and 48-12 of this Code. If the applicant fails to make the required security deposit within 30 days of a request to do so, the department may terminate service to the customer as provided in Section 48-208(a) below;

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

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

(d) If an applicant has more than one account or is receiving service at more than one property, security for any account or property may be applied and used for any other account or property of the applicant. (Ord. No. 6930, § 27.6; Ord. No. 8156, 6-30-1975, § 11; Ord. No. 8704, 10-9-1984, § 7; Ord. No. 8873, 12-28-1987, § 5; Ord. No. 8976, 3-26-1990, § 3; Ord. No. 10354, 2-9-2015, § 4.)

#### **Sec. 48-14. Charges for water and gas--basis of computation--notice of rate changes.**

Charges for supplying water and gas shall be made on the basis of such rates for meter registration, demand charges and service charges as may be authorized from time to time by the Duluth public utilities commission. The department shall, at the time of any change in the rate schedules, deliver to each applicant a copy of the new schedule of rates.

All water or gas sold shall be metered, except for fire protection and other specially authorized supplies, provided, that appropriate charges may be made for unmetered water or gas taken or wasted by unauthorized means or by leaks or through meters improperly registering. (Ord. No. 6930, §§ 28.1, 28.2; Ord. No. 8518, 4-21-1980, § 3; Ord. No. 8873, 12-28-1987, § 6; Ord. No. 10024, 4-26-2010, § 9.)

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

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

(b) Except in unusual cases or when approval is obtained from the applicant, readings of all meters used for determining charges to applicants shall be made at least every other month unless otherwise authorized by resolution of the city council; provided, however, that in the case of premises not served by gas, the department shall not be required to read water meters more frequently than once every four months. The term, month, for meter reading and billing purposes is the period between successive meter reading dates which shall be as nearly as practicable to a 30 day interval.

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

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

(d) The department may render no more than two consecutive estimated bills to any applicant. When two consecutive bills have been issued, the department will send a letter to the applicant with the second bill, giving that applicant ten days to make arrangements with the department for reading the meter, either by making an appointment to grant the meter reader access to the meter or delivering a key to the department for access to the meter. The letter shall also state that if no such arrangements are made within ten days, the department will disconnect service. (Ord. No. 6930, § 28.3; Ord. No. 7306; Ord. No. 8156, 6-30-1975, § 12; Ord. No. 8518, 4-21-1980, § 4; Ord. No. 8704, 10-9-1984, § 8; Ord. No. 8829, 3-23-1987, § 1;

Ord. No. 8873, 12-28-1987, § 7; Ord. No. 8976, 3-26-1990, § 31; Ord. No. 10155, 5-29-2012, § 26; Ord. No. 10354, 2-9-2015, § 5.)

**Sec. 48-15.1. Same--Budget plans.**

Budget plans shall be made available to those who qualify and so request. The department shall notify all future applicants for service of the availability of such a plan at the time of application for service. Budget plans shall not be available to applicants who are in arrears as of the date of their request for such plan or to applicants previously on a budget plan, who are in arrears for service actually provided during any budget plan period at the end of the 12th month thereof. Furthermore, any applicant who is in arrears for two budget plan bills may be removed from such budget plan and be required to pay current charges and arrearages. The budget plan shall consist of 11 equal monthly payments, estimated by the department based on the water, gas and sewage usage of the premises during the preceding 12 month period if possible. The 12th budget plan bill shall be the bill for current services received during that billing period plus the difference, if any, between the amount of budget plan payments made in the 11 preceding months and the charges for actual services received by the applicant during that time period. If the budget payments are greater or less than the amount actually due at the time service is voluntarily terminated or the budget plan period ends, the accumulated difference shall be credited or added to the final or next month's bill, or, upon the applicant's request, credited or added into the next 12 month budget estimate. (Ord. No. 8518, 4-21-1980, § 5; Ord. No. 8704, 10-9-1984, § 9; Ord. No. 8873, 12-28-1987, § 8.)

**Sec. 48-15.2. Charges for water and gas bills--contents of bills.**

Bills rendered periodically to applicants for water and gas service shall include, at a minimum, the following information:

- (a) The present and last preceding meter readings;
- (b) The date of the present reading;
- (c) Identification of the applicable rate schedule;
- (d) The number and kinds of units metered;
- (e) A complete itemization of all charges incurred at each level of applicant usage;
- (f) The amount of the bill;
- (g) The date on which the bill will become delinquent;
- (h) Any interest charge for delinquent bills;
- (i) If an estimated or budget payment bill, clear and conspicuous language identifying the bill as an estimated or budget payment bill;
- (j) The amount of state and local taxes separately itemized.

The department shall implement the provisions of this Section as soon as practical. (Ord. No. 8518, 4-21-1980, § 6; Ord. No. 8704, 10-9-1984, § 10; Ord. No. 8873, 12-28-1987, § 9.)

**Sec. 48-15.3. Same--Disputes.**

Whenever an applicant advises the department that any part of a billing for water or gas service is in dispute, the department shall investigate the dispute promptly, advise the applicant of the result of its investigation and attempt to resolve the dispute. The department shall not take any action relating to the disputed matter until the investigation is completed, the applicant is informed of the findings of the department, the applicant has been informed of his right to appeal any adverse finding to the commission, and the applicant has either waived his or her right to appeal or failed to appeal within the required time period, or the appeal has been resolved in favor of the department. (Ord. No. 8518, 4-21-1980, § 7; Ord. No. 8704, 10-9-1984, § 11; Ord. No. 8873, 12-28-1987, § 10; Ord. No. 8976, 3-26-1990, § 4; Ord. No. 10072, 12-20-2010, § 3.)

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

If it comes to the attention of the department director that because of death, insolvency or other cause, the debt of an applicant or customer is presently uncollectible and that there appears to be no chance that such debt will become collectible in the future, the director may present evidence of such uncollectibility to the director of finance and to the city attorney. If both the director of finance and the city attorney agree in writing that the debt appears to be uncollectible presently and in the future, the director may delete such debt from the list of delinquent accounts receivable. Debts discharged pursuant to bankruptcy and debts of less than \$5 may be recommended to the director of public works and utilities for deletion from the list of delinquent accounts receivable by the department office manager. (Ord. No. 8867, 12-7-1987, § 1; Ord. No. 9208, 9-12-1994, § 2; Ord. No. 10354, 2-9-2015, § 6.)

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

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

- (1) Where more than one building is served by a single water service;
- (2) Where at least one of the buildings so served is under separate ownership from one or more of the other buildings served by said service;
- (3) Where there are at least two months of unpaid charges for water service provided to any such separately-owned property;
- (4) Where the director certifies that reasonable efforts to collect such unpaid charges have been unsuccessful and the applicant for such services does not have a valid agreement with the department to pay such charges;
- (5) Where there is not a water shut-off valve located within a public street easement which will allow water service to be shut off to the property to which the unpaid charges pertain without turning off water service to a property where payments received for water service are current;

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

(c) Preparation of assessment roll. Upon the receipt of such lists, the chief financial officer shall make an assessment roll containing, in columns, the name of the owner of each lot or parcel of land separately assessed, if known to him, together with a description of each such lot or parcel of land and the amount of such assessment. The assessment roll shall include the collection fee set forth in Subsection (b) above;

(d) Notice. On or before July 1 of each year, the chief financial officer shall certify the assessment roll to the city council. The chief financial officer shall give 20 days notice by first class mail to the apparent owner of each lot or parcel of land and any other party known to have a legal interest in said land. The notice shall state the amount of the assessment, including the collection fee, the description of the property, that the assessment roll is on file in the chief financial officer's office and that any party aggrieved by the assessment may appeal by filing a written notice of appeal with the office of the chief financial officer within 20 days after receiving notice of assessment. Such notice shall indicate that the assessment, including the collection fee, is due and payable on or before October 1 of the current year. Failure to make payment by such date shall render the assessment delinquent;

(e) Form of appeal to the chief financial officer. Any party aggrieved by an assessment made pursuant to this Section may appeal such assessment by filing a written notice of appeal with the chief financial officer within 20 days of receipt of the notice of assessment. The notice shall state the precise grounds upon which the appeal is taken. The chief financial officer shall notify the appellant of the time and place of the hearing. At the hearing, the chief financial officer shall hear and determine all objections made to the regularity of the proceedings or to the correctness of the amount of such assessment or of the amount levied upon a particular lot or parcel of land. If the proceedings are found to be regular and the amounts claimed had been properly billed with regard to the benefited property, the chief financial officer shall correct

any errors which may have been found in the assessment and shall thereupon recommend that the city council by resolution confirm such assessment. To each assessment a collection fee shall be added in an amount set by council resolution pursuant to Section 31-8 of the City Code to reimburse the city its administrative assessment costs. Immediately thereafter notice of the confirmed assessment and its amount, including the collection fees, shall be sent by the city treasurer by mail to the apparent owner of each lot or parcel of land assessed. Such notice shall indicate that the assessment is due and payable on or before October 1 of the year when confirmed and that failure to make payment by such date shall render the assessment delinquent. After all appeals are heard and determined, the city council shall confirm the entire assessment roll by resolution;

(f) Certification of delinquent assessments. After the city council confirms the assessment roll, the city treasurer shall file with the county auditor, during the time set by law for such filings, a certified statement of all assessments delinquent under this Chapter, describing the land affected and giving the amount of the assessment, with ten percent penalty added, after which the assessment shall follow the provisions of Chapter IX of the City Charter including but not limited to Sections 67 and 68 thereof. (Added by Ord. No. 10173, 8-27-2012, § 2; Ord. No. 10354, 2-9-2015, § 7.)

**Sec. 48-16. Estimated charges--where water or gas has been converted, diverted, etc., without authority or where meter functioning improperly, removed, etc.**

Should it be found that water or gas has been taken, converted or diverted from the city's water or gas works without authority or by known leak not registered by a meter or should a meter for registering the consumption of water or gas be found to be removed, stopped or registering incorrectly, the department shall make an estimate of the consumption, based upon all available pertinent information and normal charges shall be computed on the basis of the estimate so made. (Ord. No. 6930, § 29.1.)

**Sec. 48-17. Same--Computation--malfunction of meter.**

In case of incorrect registration by a meter, the applicant shall pay for the estimated consumption for the period of two months previous to the discovering of malfunction of the meter only. In the case of incorrect registration by a remote register, the applicant shall pay for the value of services actually provided by the department as registered on the meter. (Ord. No. 6930, § 29.2; Ord. No. 8873, 12-28-1987, § 11.)

**Sec. 48-18. Same--same--Water or gas taken without authority or meter willfully tampered with, etc.**

In cases of water or gas taken without authority or of a meter having been willfully removed or registered incorrectly by reason of having been tampered with, the consumption upon which normal charge is computed shall be estimated for the entire period over which, as indicated by the evidence, the irregular taking, conversion or diversion has persisted. (Ord. No. 6930, § 29.3; Ord. No. 8156, 6-30-1975, § 13.)

**Sec. 48-19. Same--Modification.**

Charges may be modified by the department upon presentation of material evidence that such modification may be equitably made. (Ord. No. 6930, § 29.4; Ord. No. 8156, 6-30-1975, § 14.)

**Sec. 48-20. Damaging and removing of property and filling of excavations of department prohibited.**

No person, without authority from the department, shall break, remove or damage any property of any kind, including any seal, belonging to the city and used in the business of furnishing water or gas to the people of the city, nor fill any excavation made by the department in carrying on its business. (Ord. No. 6930, § 31.1; Ord. No. 8156, 6-30-1975, § 15.)

**Sec. 48-21. Unauthorized connection, use, etc., of meters and other connections prohibited.**

No person, without authority from the department, shall install meters or use or knowingly permit on his premises the installation, maintenance or use of any pipe, connection or device of any such nature or in such manner for the purpose of, or that will permit, taking, converting or diverting of water or gas, or both, from the city water or gas distribution system without such water or gas, or both, being registered by a department owned meter. Violation of this provision shall be a misdemeanor. (Ord. No. 6930, § 31.2; Ord. No. 8156, 6-30-1975, § 16.)

**Sec. 48-21.1. Use of unmetered water or gas.**

It shall be a misdemeanor for any person to use or to knowingly allow to be used on premises he owns, leases, rents or controls water or gas which has not been registered on a department owned meter. (Ord. No. 8156, 6-30-1975, § 17.)

**Sec. 48-22. Pollution of commodities supplied by city prohibited.**

No person, in any way, shall willfully or negligently corrupt or render impure any water or gas, or both, supplied by the city to the people of the city. (Ord. No. 6930, § 31.3; Ord. No. 8156, 6-30-1975, § 18.)

**Sec. 48-23. Opening or shutting of service stops and hydrants prohibited.**

No person, without being authorized by the department, or by law, shall open or shut any service stop or fire hydrant or remove or unscrew, wholly or partially, the cap from such fire hydrant.<sup>2</sup> (Ord. No. 6930, § 31.4; Ord. No. 9381, 9-14-1998, § 3.)

**Sec. 48-24. Unauthorized use of water prohibited.**

No person who has not obtained authority from the department shall take water from any pipe into any specified building or onto any specified premises to be used for any specified purpose or use such water in any other building or upon any other premises, or for any other purpose than that specified in the authority granted by the department. (Ord. No. 6930, § 31.5.)

**Sec. 48-25. Excavations within two feet of gas or water mains, services or hydrants, etc., prohibited.**

No person in the city shall dig or excavate within two feet of any main pipe, valve, hydrant or blow-off belonging to the city except by use of hand tools or in a manner authorized by the department. (Ord. No. 6930, § 31.6; Ord. No. 9381, 9-14-1998, § 4.)

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

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

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<sup>2</sup>As to hydrants generally, see §§ 48-204 to 48-207 of this Code.

for the city and to any property owner doing work on their single family, owner occupied dwelling. (Ord. No. 6930, § 31.7; Ord. No. 8156, 6-30-1975, § 19; Ord. No. 8189, 11-24-1975, § 13; Ord. No. 8976, 3-26-1990, § 5; Ord. No. 9381, 9-14-1998, § 5; Ord. No. 10354, 2-9-2015, § 8.)

**Sec. 48-27. Turning on gas meter stop or water curb stop after same shut off by department.**

(a) No person whatsoever, other than an authorized employee of the city, shall turn on the supply of gas or water after such gas or water has been shut off by the department.

(b) In the event that someone other than an authorized employee of the city shall turn on the supply of gas or water to any property, the department may impose a charge equal to volume of gas or water supplied to such property times a rate equal to the rate normally charged for such commodity during the term of its consumption. In the event that the volume of gas or water consumed cannot be determined by objective measurement, the department may estimate the volume of gas or water so consumed based on the best available evidence and change the applicant based on the foregoing rate. An applicant disputing the volume of gas or water as determined by the department shall have the burden of proving the volume of gas or water actually consumed.

(c) In addition to the volume charges authorized pursuant to subsection (b) above, the department may impose a penalty for each unauthorized turning on of water or gas service to any property in an amount established by commission by resolution, which amount may increase over the amount charged for a prior violation on the subject property for each subsequent violation.

(d) The charges arising under this section shall be payable in the same manner and time as normal charges for consumption of gas or water on the served property. (Ord. No. 6930, § 31.8; Ord. No. 8156, 6-30-1975, § 20; Ord. No. 9381, 9-14-1998, § 6; Ord. No. 10443, 3-28-2016, §1)

**Sec. 48-28. Disposition of money collected under chapter.**

(a) Except as provided for in subsections (b) and (c) below, all money collected or recovered under the provisions of this Chapter shall be paid into the water and gas fund for the benefit and use of the department or by resolution of the city council for the benefit and use of the city;

(b) For the purposes of this Section, the following terms shall have the meanings hereinafter ascribed to them:

(1) PILOT shall mean those funds authorized to be transferred out of the gas division account in any year pursuant to the authority of Laws, 1951, Chapter 507, Section 1, as amended by Laws 1993, Chapter 148, Section 1;

(2) Base PILOT shall mean \$3,600,000 beginning in 2014 and increased annually thereafter by the preceding year change in consumer price index for all consumers (CPI-U), for U.S. city average issued by the bureau of labor statistics of the U.S. department of labor or its successor index;

(3) Current PILOT shall mean the PILOT for the year then current;

(4) Incremental PILOT shall mean the difference between the base PILOT and the current PILOT in any year;

(c) The base PILOT shall be deposited in the general fund;

(d) The incremental PILOT shall be deposited in the street system utility fund. (Ord. No. 6930, § 31.10; Ord. No. 8156, 6-30-1975, § 21; Ord. No. 9944, 11-10-2008, § 1; Ord. No. 10335, 11-24-2014, § 1.)

**Article II. Licenses and Permits for Water and Gas Plumbing.**

**Secs. 48-29 to 48-37.** Repealed by Ordinance No. 8156, 6-30-1975, § 22.

**Sec. 48-38. Permit--required for certain jobs.**

A written service construction permit shall be obtained from the department for each separate job of construction, installation, alteration, extension, repair, replacement or renewal of house services or fire services connected with the water or gas distribution systems of the city.

Permittee shall furnish such information as the department deems reasonably necessary to the granting of such permit, including but not limited to detailed plans showing the exact location of the proposed work and the materials used.

Work done under any service construction permit shall be performed only by the permittee thereunder or by his regular employees. (Ord. No. 6930, §§ 30.8, 30.9; Ord. No. 8156, 6-30-1975, § 23; Ord. No. 8976, 3-26-1990, § 6.)

**Sec. 48-39. Same--Return within ten days of completion of work required.**

Every person to whom has been issued a service construction permit shall make a full and complete written return on a form furnished by the department of all work done under such permit within ten days after completion of such work. (Ord. No. 6930, § 30.10; Ord. No. 8976, 3-26-1990, § 7.)

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

Should a permittee under any service construction permit neglect or refuse to make the required return within ten days after completion of the work, the city is authorized to make a special inspection of the work and, if the same be found satisfactory, to turn on the water and gas. The permittee shall be required to pay a reasonable fee, not less than that fee which shall be set in accordance with Section 31-8 of this Code, for the special inspection. (Ord. No. 6930, § 30.12; Ord. No. 8156, 6-30-1975, § 24; Ord. No. 8976, 3-26-1990, § 8; Ord. No. 10139, 3-12-2012, § 6.)

**Sec. 48-41. Same--Gas and water to remain shut off at curb until return made, exception to same.**

The licensed plumber or pipefitter to whom a service construction permit shall have been issued shall be held responsible that water and gas remain shut off at the curb until the return shall have been made or until application has been made for installation of a meter; except, that the same may be turned on for testing purposes, but must be turned off on completion of test. (Ord. No. 6930, § 30.11; Ord. No. 8976, 3-26-1990, § 9.)

**Sec. 48-42. Same--Liability of permittee for work done in violation of rules of department.**

Should a permittee under a building permit or a service construction permit perform work on any premises in violation of the rules of the department or State Building Code in such manner that any commodity supplied by the department is or is attempted to be taken, converted or diverted without due payment, the permittee shall be jointly liable to the department with the owner of the premises for all charges, fees and penalties for which the department shall be reimbursed. (Ord. No. 6930, § 30.13; Ord. No. 8976, 3-26-1990, § 10.)

**Article III. Gas Appliances.**

**Division 1. Generally.**

**Sec. 48-43. Conformity with state code standards.**

Any appliance, fixture and other device connected directly or indirectly to the department's gas or water distribution systems and the installation thereof shall conform with the standards of the building code of the state of Minnesota and all department regulations. (Ord. No. 6930, § 2.1; Ord. No. 8156, 6-30-1975, § 25; Ord. No. 8976, 3-26-1990, § 11.)

**Sec. 48-44. Use to be compatible with design, etc.**

The intended use and actual use of any such appliance, fixture or device and its location shall be compatible with its design and manufacture, especially with respect to safety. (Ord. No. 6930, § 2.2; Ord. No. 8156, 6-30-1975, § 26.)

**Sec. 48-45. Appliances, etc., to be modified to conform to article.**

If the department determines that such appliance, fixture or device does not conform to the standards of this Article, the owner of such appliance, fixture or device or the owner of the premises upon which it is installed, or both, at their expense shall modify such appliance, fixture or device to conform to such standards or disconnect it in all respects from the department's system. (Ord. No. 6930, § 2.3; Ord. No. 8156, 6-30-1975, § 27.)

**Sec. 48-46. Department to charge for servicing gas appliances.**

The department shall charge applicants for the servicing of gas furnaces and other gas appliances according to a schedule of rates approved from time to time by resolution of the city council. (Ord. No. 8338, 7-5-1977, § 1; Ord. No. 8873, 12-28-1987, § 12.)

**Secs. 48-47 to 48-108.** Repealed by Ordinance No. 8156, 6-30-1975, § 28.

**Article IV. Services.**

**Division 1. Generally.**

**Sec. 48-109.** Repealed by Ordinance No. 8156, 6-30-1975, § 28.

**Sec. 48-110. Conformity with state building code standards.**

All plumbing, gas-fitting and gas-piping connected into the department's gas or water distribution system shall conform to the requirements of the Minnesota State Building Code, this Chapter and all department regulations. (Ord. No. 6930, § 11.2; Ord. No. 8156, 6-30-1975, § 29; Ord. No. 8976, 3-26-1990, § 12.)

**Secs. 48-111 to 48-114.** Repealed by Ordinance No. 8156, 6-30-1975, § 30.

**Sec. 48-115. Installations on private premises to conform with department regulations.**

All services installed on private premises shall be located in conformance with department regulations which take into consideration installation and maintenance problems, effects on life of the service and related problems. (Ord. No. 6930, § 11.7; Ord. No. 8156, 6-30-1975, § 31.)

**Division 2. Gas services and water street services.**

**Sec. 48-116. Water supply to be taken through street service pipes; exception.**

Except as provided in Section 48-205, gas or water supply for individuals and for individual premises shall be taken from the common or public supply in the mains only through street service pipes. (Ord. No. 6930, § 12.1.)

**Sec. 48-117.** Repealed by Ordinance No. 9381, 9-14-1998, § 29.

**Sec. 48-118. Same--Ownership to be vested in department.**

No gas service shall be installed or renewed after the effective date of this Section unless ownership of such service is vested in the department in conformance with the provisions of this Chapter. Nor shall the department provide gas to such newly installed or renewed service unless ownership is so vested in the department. (Ord. No. 6930, §§ 12.3, 12.4; Ord. No. 8156, 6-30-1975, § 34.)

**Sec. 48-119. Same--Easement for transfer of ownership.**

The department shall accept transfer of ownership of any privately installed gas service line only if accompanied by an easement to the department on a form approved by the city attorney granting the department the right to place a gas service, where applicable, and gas meter upon such premises and the right of reasonable access to such premises to inspect, maintain, repair or replace them. (Ord. No. 6930, §§ 12.5 to 12.7; Ord. No. 8156, 6-30-1975, § 35; Ord. No. 9381, 9-14-1998, § 7.)

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

All street services shall be maintained and repaired by the department at department cost. Privately owned water services downstream from the curb stop or master box shall be repaired and maintained by the owners at their expense. (Ord. No. 6930, § 12.8; Ord. No. 8156, 6-30-1975, § 36; Ord. No. 9381, 9-14-1998, § 8; Ord. No. 10354, 2-9-2015, § 9.)

**Sec. 48-121. Same--Department services to be maintained at department's expense.**

Except for damage done by others, all gas services owned by the department shall be maintained and repaired by the department at its own expense. (Ord. No. 6930, § 12.9; Ord. No. 8156, 6-30-1975, § 37; Ord. No. 9381, 9-14-1998, § 9.)

**Secs. 48-122 to 48-123.** Repealed by Ordinance No. 9381, 9-14-1998, § 29.

**Sec. 48-124. Same--Installation of new high pressure services.**

(a) High pressure gas services shall be installed by the department at its expense, except as provided by department regulations;

(b) All high pressure gas services shall be installed in strict conformance with all regulations and specifications of the department. (Ord. No. 6930, 7-27-1953, § 12.12; Ord. No. 7160, 6-16-1958, § 1; Ord. No. 7393, 4-6-1964, § 1; Ord. No. 8156, 6-30-1975, § 40; Ord. No. 8976, 3-26-1990, § 13; Ord. No. 9381, 9-14-1998, § 10.)

**Sec. 48-125. Same--Centering of new services on property.**

All new water street services will be located at the center of the property to be served unless otherwise agreed upon by the department, or unless the department shall specify otherwise after reasonable notice to the registered property owner and opportunity for said owner to be heard. (Ord. No. 6930, § 13.1; Ord. No. 7240, 5-23-1960, § 1; Ord. No. 8156, 6-30-1975, § 41; Ord. No. 9381, 9-14-1998, § 11.)

**Sec. 48-126. Water street services--private ownership maintained unless transferred.**

All water street services privately owned as of the effective date of this ordinance [Section] shall remain privately owned unless such ownership is transferred to the department in conformance with the provisions of this Chapter. (Ord. No. 6930, 7-27-1953, § 13.2; Ord. No. 8156, 6-30-1975, § 42.)

**Sec. 48-127. Same--Ownership to be vested in department.**

No water street service shall be installed or renewed after the effective date of this ordinance [Section] unless ownership of such service is vested in the department in conformance with the provisions of this Chapter. The department shall not provide water to such newly installed or renewed service unless ownership is so vested in the department. (Ord. No. 6930, 7-27-1953, § 13.3; Ord. No. 8156, 6-30-1975, § 43.)

**Sec. 48-128.** Repealed by Ordinance No. 10354, 2-9-2015, § 10.

**Sec. 48-129. Same--Maintenance of department services.**

All water street services owned by the department shall be maintained and repaired by the department at its expense. (Ord. No. 6930, 7-27-1953, § 13.5; Ord. No. 8156, 6-30-1975, § 45.)

**Sec. 48-130. Same--Installation and assessment of costs for new services connected to new mains.**

All new water street services installed in conjunction with a new water main shall be installed by the department, the cost of which installation shall be assessed against the property to be served as provided for in Article XII of this Chapter. (Ord. No. 6930, 7-27-1953, § 13.6; Ord. No. 8156, 6-30-1975, § 46.)

**Sec. 48-131. Same--Installation of new services connected to existing mains; centering of new services on existing mains; centering of new services on property.**

New water street services to be connected to existing mains shall be installed by the department, and the owner of the property so served shall pay the department (the reasonable value thereof). All such new services will be located at the center of the property to be served unless otherwise agreed upon by the department or unless the department shall specify otherwise after reasonable notice to the registered property owner and opportunity for him to be heard. (Ord. No. 6930, § 13.7; Ord. No. 8156, 6-30-1975, § 47.)

**Sec. 48-131.1. Abandoning water and gas services.**

A water or gas service shall be deemed to be abandoned when the structure or premises it served is demolished and not rebuilt within one year or when for any other reason it is anticipated that the service will never be used again. No person shall abandon a water or gas service without giving the department at least three business days written notice so that the service can be properly disconnected at the main. Service disconnections shall be made as provided in Section 10-4(i) of this Code. Services serving buildings to be demolished that are deemed suitable for reuse by the department for service to a newly constructed building on the site may be retained as provided in Section 10-4(i) of this Code. (Ord. No. 9381, 9-14-1998, § 12.)

**Division 3. Water house services.**

**Sec. 48-132. Ownership, control, installation, etc.**

All water house services shall be owned, controlled, installed, maintained, repaired, replaced or renewed by the property owner at his own expense. (Ord. No. 6930, § 13.8; Ord. No. 8156, 6-30-1975, § 49.)

**Sec. 48-133. Plumbing to conform to plumbing code department standards.**

All water house service plumbing shall conform with the requirements of the Minnesota State Plumbing Code and all regulations and specifications of the department. (Ord. No. 6930, § 13.16; Ord. No. 8156, 6-30-1975, § 50; Ord. No. 8976, 3-26-1990, § 14.)

**Sec. 48-134. Permit required for connection, etc.**

No water house service shall be installed, repaired, replaced, renewed or connected to the department's water supply, nor shall any water be furnished through such service until a permit as provided for in Section 48-38 is obtained from the department. (Ord. No. 6930, § 13.9; Ord. No. 8156, 6-30-1975, § 51.)

**Sec. 48-135. Issuance and compliance with regulations governing placement, etc.**

The department shall issue regulations governing the placing of water house services, the method of their installation, the materials to be used and other related matters. No permit for the installation, repairing, replacing or renewing of such a service shall be issued and no such newly installed, repaired, replaced or

renewed service shall be furnished with water unless such service conforms to the requirements of this Chapter and the above regulations. (Ord. No. 6930, § 13.10; Ord. No. 8156, 6-30-1975, § 52.)

#### **Division 4. Repealed.**

**Secs. 48-136 to 48-141.** Repealed by Ordinance No. 9381, 9-14-1998, § 29.

#### **Division 5. Curb stops and curb stop boxes.**

##### **Sec. 48-142. Department property.**

All curb stops and curb stop boxes used in the distribution of water and gas, except on privately owned services, are the property of the department and the department shall have the exclusive right to repair, maintain or replace them at its own expense. (Ord. No. 6930, § 15.1; Ord. No. 8156, 6-30-1975, § 53; Ord. No. 9381, 9-14-1998, § 13.)

##### **Sec. 48-143. Expense of installation.**

The department will furnish one curb stop and curb stop box for water for connection to each house service. Additional curb stops and curb stop boxes shall be furnished by the department for a reasonable fee. (Ord. No. 6930, § 15.2; Ord. No. 8156, 6-30-1975, § 54; Ord. No. 8261, 8-23-1976, § 1; Ord. No. 9381, 9-14-1998, § 14.)

##### **Sec. 48-144. Tampering, etc.**

No person not a representative of the department shall tamper with, manipulate or disconnect in any manner curb stops or curb stop boxes, or attempt to do so. (Ord. No. 6930, § 15.3; Ord. No. 8156, 6-30-1975, § 55; Ord. No. 9381, 9-14-1998, § 15.)

##### **Sec. 48-144.1. Access by department.**

The department shall have the right of reasonable access to served premises for the purposes of inspecting, turning on, turning off, maintaining, repairing or replacing curb stops and curb stop boxes. (Ord. No. 8156, 6-30-1975, § 56; Ord. No. 9381, 9-14-1998, § 16.)

#### **Division 6. Fire services.**

##### **Sec. 48-145. May be granted by department.**

Services which are to be used exclusively for supplying water to extinguish fire will be granted by the department where, in its judgment, special protection may be necessary; provided, that the conditions set out in this Division are complied with. (Ord. No. 6930, § 20.1.)

##### **Sec. 48-146. Application.**

Application for a fire service shall be made by the owner of the premises to be served or his legal representative on the form prescribed by the department, which application shall guarantee compliance with all rules and regulations of the department which apply and shall save the department and the city free and harmless from all damages which may be occasioned by or on account of the service rendered. (Ord. No. 6930, § 20.2.)

##### **Sec. 48-147. Certain drawings required.**

The applicant for a fire service shall also furnish with the application a complete and correct drawing or set of drawings, showing the location of the premises to be supplied, together with location of all valves, pipes, hydrants, tanks, sprinkler heads and other appurtenances on the premises. The plans will remain the property of the department.

The applicant for a fire service shall also agree to furnish the department with drawings showing revisions to piping or appurtenances whenever the same are made. (Ord. No. 6930, §§ 20.3, 20.4.)

**Sec. 48-148. Size of service pipe.**

The department expressly reserves the right to determine the size of service pipe which will be granted, depending upon the size of the street main, the available pressure on the main and the nature and capacity of the fire protection equipment within the building. (Ord. No. 6930, § 20.5.)

**Sec. 48-149. All installations to conform to department specifications.**

All fire services will be installed at the permit applicant or property owner's expense in strict conformance with all specifications set forth by the department, which will ascertain the best location for same and direct the applicant to lay the pipe from the street main to a point just inside the wall or the building line of opening yards where buildings are set back from the building line. All repairs to the service pipe between the street main and to and including the service valve shall be done by the department at its expense. All other repairs shall be done by the owner at the owner's expense. (Ord. No. 6930, § 20.6; Ord. No. 8976, 3-26-1990, § 20.)

**Sec. 48-150. Limitation on number of services in any one premises.**

One fire service only will be allowed to any one building or premises, unless in the opinion of the department more than one is absolutely necessary for the proper protection of the premises. All fire protection equipment connected to the city service shall be confined within the building or on the premises named in the application. Where two or more connections are made for one building or premises they shall be kept separated, unless special permission is obtained from the department to connect the same in a manner to be approved by the department. (Ord. No. 6930, § 20.7.)

**Sec. 48-151. Drawing of water prohibited; valves to be sealed.**

No water shall be drawn from the fire service pipes downstream from the backflow preventer for any purpose whatever, except for the extinguishment of fire. No connection shall be made between the fire service pipe system downstream from the backflow preventer and the regular water supply to the premises. Valves on hose outlets, drain valves, etc., placed on the pipe system shall be of a style that can be sealed by the department inspector. When any such valve is opened, the owner or occupant of the premises shall notify the department so that the same can be resealed at once. This Section shall not be construed as prohibiting a reasonable use of water for fire drills, draining of a system to prevent freezing or other reasonable use in connection with proper fire protection. (Ord. No. 6930, § 20.8; Ord. No. 9381, 9-14-1998, § 17.)

**Sec. 48-152. Connections with other supplies prohibited on services supplied with city water.**

Any fire protection system supplied with water from the city service shall be supplied exclusively with such water. No connection will be allowed with any other system drawing its supply from any other source. No auxiliary or secondary suction pipe to any underwriters pump taking water from any contaminated source will be permitted.

Any fire protection system, using water from any other source than the city service, shall be kept entirely separate from any such system supplied from the city service. (Ord. No. 6930, §§ 20.9, 20.10.)

**Sec. 48-153. Inspections by department.**

All fire services shall be subject to inspection by the inspectors of the department who will visit all premises having fire services from time to time. Owners or tenants shall give the inspector all reasonable facilities for making the inspections and any information concerning the same that they may require.

Care will always be taken that inspection will be made with as little inconvenience to the owners or occupants as possible. (Ord. No. 6930, § 20.11; Ord. No. 8976, 3-26-1990, § 21.)

**Sec. 48-154. Water to be shut off where being wasted from service; service may be discontinued for second violation.**

In any case when the owners or occupants of any premises are found to be using or wasting water from a fire service for other purposes than fire protection, the water shall be shut off from same until the offender shall give reasonable assurance to the director of public utilities that the offense will not be repeated.

Payment of the current service charge plus the estimated charge of water taken or wasted will be required for turning the water on after it has been shut off for this cause.

A second violation of this rule will be considered sufficient cause of cutting the service off at the main, and refusing to reconnect the same while the offender occupies the premises. (Ord. No. 6930, §§ 20.12, 20.13; Ord. No. 9381, 9-14-1998, § 18.)

**Sec. 48-155. Water meters may be required.**

The department reserves the right at any time to require the owner of the premises supplied to furnish and install, at his expense and under the direction of the department, an approved water meter and keep the same in accurate operating condition. (Ord. No. 6930, § 20.14.)

**Article V. Volume Services.**

**Sec. 48-156. Contracts with department.**

High volume water services and high volume gas services will be supplied only by and under contract with the department. The provisions of this Chapter shall not apply to such services except as provided for and incorporated in such a contract. (Ord. No. 6930, § 14.1; Ord. No. 8156, 6-30-1975, § 58.)

**Sec. 48-157. Transportation services.**

The department is authorized to provide by contract interruptible natural gas transportation services to high volume gas service users. The provisions of this Chapter shall not apply to such services except as provided for and incorporated in such a contract. (Ord. No. 9258, 6-8-1995, § 2; Ord. No. 10354, 2-9-2015, § 11.)

**Secs. 48-158 to 48-162.** Repealed by Ordinance No. 8156, 6-30-1975, § 59.

**Article VI. House Piping.**

**Division 1. Repealed.**

**Secs. 48-163 to 48-170.** Repealed by Ordinance No. 8156, 6-30-1975, § 59.

## **Division 2. Water.**

### **Sec. 48-171. Valve required adjacent to meter; reduction valve required on certain systems.**

A suitable valve shall be installed on house water piping downstream of each meter. Where water pressure exceeds 80 pounds per square inch, a suitable pressure reducing and regulating valve shall be installed on the water service pipe adjacent to the water meter. (Ord. No. 6930, § 17.2; Ord. No. 9208, 9-12-1994, § 3; Ord. No. 9381, 9-14-1998, § 19.)

### **Sec. 48-172. Department may enforce removal of certain valves, faucets, etc.**

The right is reserved to the department to enforce the removal of any faucet, water closet, stop cock, valve or other device of a character that will cause or is liable to cause excessive shock to the water pipes, waste of water or pollution of the general or individual water supply. (Ord. No. 6930, § 17.3.)

### **Sec. 48-173. Design of piping to prevent freezing.**

House piping shall be so designed and installed as to obviate any necessity for allowing water to run to avoid freezing. (Ord. No. 6930, § 17.4.)

### **Sec. 48-174. Cross connection control.**

(a) If, in the judgment of the department or building official, an approved backflow prevention assembly is required for the safety of the water system, the department shall give notice to said customer to install such an approved backflow prevention assembly(ies) at specific location(s) on the customer's premises.

The customer shall install such approved assembly(ies), within the time period ordered by the department, at the customer's own expense; and failure, refusal or inability on the part of the customer to install, have tested and maintain said assembly(ies) shall constitute grounds for discontinuing water service to the premises until such requirements have been satisfactorily met;

(b) The customer's system should be open for inspection at all reasonable times to authorized representatives of the department or building official to determine whether cross connections or other structural or sanitary hazards, including violation of city regulations, exist;

(c) In the case of premises having (1) internal cross connections that cannot be permanently corrected and controlled, or (2) intricate plumbing and piping arrangements or where entry to all portions of the premises is not readily accessible for inspection purposes, making it impracticable or impossible to ascertain whether or not dangerous cross connections exist, the public water system shall be protected against backflow from the premises by installing an approved backflow prevention assembly in the service line and at the customer's own expense;

(d) In the case of any premises where, because of security requirements or other prohibitions or restrictions, it is impossible or impractical to make a complete in-plant cross connection survey, the public water system shall be protected against backflow from the premises by either an approved air-gap separation or an approved reduced pressure principle backflow prevention assembly on each service to the premises which shall be installed at the customer's own expense. (Ord. No. 9839, 6-11-2007, § 1.)

## **Division 3. Repealed.**

**Secs. 48-175 to 48-180.** Repealed by Ordinance No. 8156, 6-30-1975, § 60.

## **Article VII. Meters and Metering.**

### **Sec. 48-181. Supply of water and gas to be recorded by meter.**

The supply of water and gas through each house service or authorized branch thereof shall be recorded by a meter furnished and installed by the department. (Ord. No. 6930, § 18.1; Ord. No. 8521, 5-12-1980, § 1.)

**Sec. 48-182. Application--generally.**

Permanent and temporary meters will be furnished and installed by the department upon the filing at the office of the department of an approved application therefor, accompanied by the payment of duly authorized installation charges, if any, and any security required under this Chapter.

The applicant for a temporary meter shall designate the number of days he will require use of the meter. Upon completion of construction he shall notify the department, water shall be shut off at the curb and the meter removed from the premises by an authorized employee of the department. Permanent meters shall not be installed until approval is obtained that the effluent or waste facilities from a premises has met the regulations set forth by the building inspector's office. (Ord. No. 6930, §§ 19.1, 19.3; Ord. No. 9381, 9-14-1998, § 20.)

**Sec. 48-183. Same--grounds for disapproval.**

Any application for installation of meters may be disapproved for premises:

- (a) Whose applicant is in arrears to the department for lawful charges for gas or water supply, street services, or other commodities, supplies or services;
- (b) For which premises any regulations as to house piping, house service, street service or inspection remain uncomplied with;
- (c) When charges for water or gas consumed on such premises remain unpaid;
- (d) For which an enforceable order condemning said premises for habitation is in effect and the city building official has not approved the application because of requirements for repair or safety; or
- (e) For which no valid certificate of occupancy is in effect and the city building official has not approved the application because of requirements for repair or safety. (Ord. No. 6930, § 19.2; Ord. No. 8156, 6-30-1975, § 61; Ord. No. 9381, 9-14-1998, § 21; Ord. No. 9516, 11-26-2001, § 1.)

**Sec. 48-184. Work to be done by department only.**

Meters shall be installed, removed, repaired, connected and disconnected by employees of the department only. Connecting, disconnecting, changing or in any manner tampering with any meter registering water or gas by any person other than the employees of the department shall be unlawful. (Ord. No. 6930, § 18.2.)

**Sec. 48-185. Meters, fittings, etc., to remain property of department.**

Meters, fittings and appurtenances furnished by the department shall remain the property of the department. (Ord. No. 6930, § 18.3.)

**Sec. 48-186. Responsibility for damaged meters.**

The department shall be responsible for all damaged meters due to ordinary wear, improper installation or servicing of equipment by the department or any other damage to the meters that is not due to negligence on the part of the applicant. The applicant shall be responsible for all damaged or destroyed meters resulting from his own negligence and shall be charged for the repairs or replacement thereof on the basis of the depreciated value of the meter.

The applicant for a meter or contractor shall be responsible for the safekeeping of the meter until he notifies the department he is through using the meter and it is removed by the department. Contractors shall be liable for any loss or damage sustained by meter or connections during the time they are using the meter and it is in their possession. (Ord. No. 6930, §§ 18.4, 19.3; Ord. No. 8873, 12-28-1987, § 13.)

**Sec. 48-187. Tests.**

Upon request of the applicant, the department will test the meter supplying any premises, in the presence of the applicant should the latter so desire. Should the meter be found not to register correctly within two percent on a flow equal to that through an orifice of diameter equal to 1/8 of the nominal size of the meter, no charge will be made. Otherwise the current service charge will be made by the department to pay for testing and resetting the meter. (Ord. No. 6930, § 18.5; Ord. No. 8873, 12-28-1987, § 14; Ord. No. 9381, 9-14-1998, § 22.)

**Sec. 48-188. Metering of multiple services.**

Multiple water and gas services and meters may be connected to a house service when, in the judgment of the department, such house service is of sufficient size that service pressures will not be impaired. When more than one meter is connected to a single house service, the applicant shall provide means for stopping each service with a valve accessible at all times to the department and lockable or accessible only to the department. Each meter so supplied and read shall be billed separately. (Ord. No. 6930, § 18.6; Ord. No. 8521, 5-12-1980, § 2.)

**Sec. 48-189. Location.**

Except in cases governed by this Section, water and gas meters shall be installed as near as is practicable to the point where the house service enters the building served.

House piping shall not be run so as to necessitate the placing of a gas meter under steps, under a show window, in an unventilated closet or other small confined space, in a coal bin, driveway passage or other location where it will be subject to damage or near a furnace or boiler or other equipment which produces large heating effects. The meter should be located at a safe distance from any probable source of unguarded flame or electric sparks and where it will not be subject to unusual corrosion. Extremely high or low temperatures and sudden changes of temperatures should be avoided where practical.

Whenever, in the opinion of the department, there exists sufficient and reasonable reasons therefor, such, for example, as excessive risk of undetected leakage or the need for greater accessibility, water meters shall be installed at a point approved by the department, between the curb cock and the building supplied.

An approved, accessible, dry and frost proof place for installation of the meter, together with approved piping, fittings and appurtenances, shall be furnished by the owner of the premises served. The place for installation of the meter shall consist of an approved meter vault or other approved shelter when necessitated by circumstances, such as cases covered in this Section.

Where more than one meter is set on a particular premises, they shall be set at one location, unless otherwise approved by the department. In multiple meter installations, each separate gas piping system shall be plainly identified by the installer with a metal tag at the meter location. (Ord. No. 6930, §§ 18.7 to 18.10.)

**Sec. 48-190. Installation of gas meters in stories other than that into which house service makes entrance.**

Gas meters may be installed in stories other than that into which the house service makes entrance, only on condition that the entire supply through the house service be metered by a master meter in the story of service entrance and that the owner of the premises be responsible for the payment of any excess registration by the master meter over the sum of the registrations of the subsidiary meters. (Ord. No. 6930, § 18.11.)

**Sec. 48-191. Approval of locations by department.**

All gas and water meter locations shall be approved by the department. They shall be so placed as to be at all times readily accessible for inspections, reading, testing and shutting off gas or water supply. (Ord. No. 6930, § 18.14.)

**Sec. 48-192. Right of entry to read or examine meters.**

Subject to the provisions of Section 48-15 of this Code, authorized employees of the department shall have easy access to meters at all reasonable hours for reading or examination of the same or for any other lawful errand.

If an applicant denies an employee of the department access at any reasonable time to any meter, the water or gas supply may be shut off until access is gained and payment is made of charges for shutting off and turning on the supply and for extra trips necessitated. Willful failure to permit an employee to gain access to shut off the water and gas supply or for any other lawful errand shall be a misdemeanor. (Ord. No. 6930, §§ 18.12, 18.13; Ord. No. 8518, 4-21-1980, § 8; Ord. No. 8873, 12-28-1987, § 15.)

**Sec. 48-193. Valve to be installed on outlet side of water meter installed for building or construction purposes.**

All water meters installed for building or construction purposes shall have a suitable valve installed on the outlet side of the meter and the meter shall be supported by pipe securely fastened to the floor or wall. (Ord. No. 6930, § 18.15.)

**Article VIII. Inspections.**

**Sec. 48-194. When required.**

For protection of the interest of the department, all house services, house piping and gas appliances connected thereto shall be inspected at the time of construction or installation thereof and at any time thereafter when good cause for such inspection exists by an authorized employee of the city. Inspection shall entail no liability or responsibility by the department for defects or inadequacy of the work or for damages arising therefrom. (Ord. No. 6930, § 22.1; Ord. No. 8156, 6-30-1975, § 62.)

**Sec. 48-195. Right of entry of inspectors.**

Inspectors or other employees authorized by the city shall have free access at all reasonable hours to all parts of any premises supplied with water or gas from the water or gas systems of the city for the purpose of examining meters, piping or fixtures, for observing the manner in which water or gas is used or for attaching or attending gauges or other instruments. (Ord. No. 6930, § 22.2; Ord. No. 8156, 6-30-1975, § 63.)

**Sec. 48-196. Department to be notified one day prior to desired inspection.**

Notification, as to when work under construction will be ready for inspection, shall be given the department at least one day previous to inspection. (Ord. No. 6930, § 22.3.)

**Sec. 48-197. Pipe covered prior to inspection to be exposed for inspection.**

Pipe covered before inspection shall be again exposed for inspection at the expense of the plumber or gas fitter. (Ord. No. 6930, § 22.4.)

**Sec. 48-198. Issuance of certificate upon approval.**

Should the work be found satisfactory, on inspection, a certificate to that effect shall be issued by the inspector. (Ord. No. 6930, § 22.5.)

**Sec. 48-199. Charges.**

One inspection trip in each case will be performed without charge. Additional visits for inspection, necessitated by unsatisfactory work at the time specified in the notification, shall be paid for by the plumber or

gas fitter at the current service rate for each such additional visit. (Ord. No. 6930, § 22.6; Ord. No. 9381, 9-14-1998, § 23.)

#### **Article IX. Seals.**

##### **Sec. 48-200. Right of department to seal valves, openings, etc.**

The right is reserved to the department to seal any valve, opening or any part of the piping on the applicant's premises where it would be unlawful to make connections or to draw the water or gas. The owner shall, at the request of the department, provide stops, valves or other fittings of a style that can be readily sealed. (Ord. No. 6930, § 23.1; Ord. No. 8873, 12-28-1987, § 16; Ord. No. 9381, 9-14-1998, § 24.)

##### **Sec. 48-201. Department to be notified when sealed valves, stops, etc., opened.**

Sealed stops, valves or other fittings shall be broken only in cases of fire or other emergencies which necessitate the operation of the sealed stops, valves or fittings or with written approval of the department. It shall be a violation of this Section to break the seals under any other circumstances. When any seal is broken, the owner or occupant of the premises shall notify the department within 24 hours of the occurrence so that the seals may be replaced. (Ord. No. 6930, § 23.2; Ord. No. 9381, 9-14-1998, § 25.)

##### **Sec. 48-202. Seals to be placed without charge.**

All seals placed by the department will be placed without charge. (Ord. No. 6930, § 23.3.)

##### **Sec. 48-203. Inspection.**

Seals will be inspected by the department from time to time. No charge for inspection will be made in the case of seals found unbroken. In the case of a seal found broken, of which no report has previously been made to the department, an inspection fee equal to the current service fee shall be made for each seal found broken and not reported. (Ord. No. 6930, § 23.4; Ord. No. 8976, 3-26-1990, § 22; Ord. No. 9381, 9-14-1998, § 26.)

#### **Article X. Hydrants.<sup>3</sup>**

##### **Sec. 48-204. Opening, tampering, etc., prohibited.**

No person not an employee of the city authorized to do so shall use, operate, draw water from or in any manner tamper or interfere with any fire hydrant. (Ord. No. 6930, § 24.1; Ord. No. 8976, 3-26-1990, § 23.)

##### **Sec. 48-205. Permit to temporarily take water from fire hydrant--generally.**

The department may grant a permit that water be taken temporarily from a fire hydrant for other than domestic purposes in localities where other arrangement for supply would be unduly difficult. In this case, a flow control assembly shall be attached to one of the hydrant openings by a department employee and the hydrant opened full, the supply of water being controlled entirely by the control valve attached to the small nozzle. Upon discontinuation of supply through a hydrant, the department shall be notified and the hydrant shall be closed and fittings removed therefrom by an authorized employee of the department. (Ord. No. 6930, § 24.2; Ord. No. 9304, 5-13-1996, § 1.)

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<sup>3</sup>As to fire protection generally, see Chap. 21 of this Code.

**Sec. 48-206. Same--To authorize taking from one specific hydrant only.**

A permit granted to take water from a fire hydrant shall authorize taking water from one specific hydrant only. (Ord. No. 6930, § 24.3.)

**Sec. 48-207. Same--Fees.**

A fee based on current service charges shall be collected for each permit to take water from a fire hydrant and for establishing supply thereunder. This fee shall not be part of any charge for water used from the hydrant. (Ord. No. 6930, § 24.4; Ord. No. 9304, 5-13-1996, § 2; Ord. No. 10354, 2-9-2015, § 12.)

**Article XI. Shutting Off and Re-establishing  
Water and Gas Supply.**

**Sec. 48-208. Right of department to shut off utilities.**

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

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

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

(A) The reason for the termination;

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

(C) The amount delinquent;

(D) That the department will accept payment at any time during business hours

prior to termination;

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

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

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

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

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

(c) If the department has received no response from an applicant to whom a notice of service termination has been sent pursuant to this Section, the department must make one attempt, within ten days prior to the date of termination, to contact the applicant ascertain the reason for nonpayment and provide information on financial resources available to pay for energy expenses, if appropriate. This attempt shall be in addition to the regular monthly bill and the notice of termination required by this Section. (Ord. No. 6930, § 26.1; Ord. No. 8156, 6-30-1975, § 64; Ord. No. 8518, 4-21-1980, § 9; Ord. No. 8704, 10-9-1984, § 12; Ord. No. 8873, 12-28-1987, § 17; Ord. No. 8976, 3-26-1990, § 24; Ord. No. 9208, 9-12-1994, § 4; Ord. No. 10354, 2-9-2015, § 13. Ord. No. 10611, 2-11-2019, §2)

**Sec. 48-208.1. Notice of discontinuance; payment of current charges by tenants.**

(a) Where the department provides service to a residence with an address which is different than that of the applicant for service to such residence, or where the department has other reason to know that a landlord is the applicant for the utility account at a residence occupied by tenants; and where the department proposes to discontinue service at such residence for nonpayment of outstanding charges, then the department shall post, on or near the front and rear entrances of the premises where service is rendered, a notice of intent to discontinue service. Said notice shall be posted not less than 15 calendar days prior to the actual discontinuance of said service. Copies of said notice shall also be mailed to the tenants of the address where services are rendered, addressed to "resident," and to the applicant at the billing address. The notice to the tenants shall contain the following information:

- (1) The date of posting;
- (2) The proposed date of termination;
- (3) The reason for the proposed termination;
- (4) The total amount of arrearages owed by the landlord applicant for the unit or units subject to termination and the current bill for utility consumption over the past billing period;
- (5) The right of the tenant(s) to avoid termination by paying the current charges, following the procedures of Section 48-208.3 of this Code;

(b) If the reason for the proposed termination of service is failure of the landlord to pay outstanding charges on his accounts, then the tenant shall be entitled during the 15 day notice period provided by subparagraph (a) of this Section to avoid termination of services by following the procedures of Section 48-208.3 of this Code;

(c) No person shall deface or remove any notice posted by the department pursuant to this Section during the 15 day notice period or until the tenant has made arrangements to avoid termination following the procedures of Section 48-208.3 of this Code. (Ord. No. 8384, 3-7-1978, § 1; Ord. No. 8408, 7-10-1978, § 1; Ord. No. 8704, 10-9-1984, § 13; Ord. No. 8864, 12-7-1987, § 1; Ord. No. 8873, 12-28-1987, § 18; Ord. No. 8976, 3-26-1990, § 25.)

#### **Sec. 48-208.2. Misdemeanor to rent premises where any utility disconnected.**

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

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

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

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

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

(c) If residential premises are rented in violation of paragraph (a) of this Section, the tenant may temporarily reinstate service by paying to the department an amount equal to the estimated utility charges for the remainder of the period for which the tenant has paid rent, not to exceed 31 days. At the end of said period, the department may immediately disconnect service to said premises unless other arrangements are made by the landlord or by the tenant under Section 48-208.3 below. The department shall bill the landlord for the reconnection charges. (Ord. No. 8704, 10-9-1984, § 14; Ord. No. 8873, 12-28-1987, § 19; Ord. No. 8976, 3-26-1990, § 26; Ord. No. 10354, 2-9-2015, § 14. Ord. No. 10611, 2-11-2019, §4)

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

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

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

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

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

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

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

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

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

(i) This Section is intended to comply with all applicable provision of Minnesota Statutes chapters 325E and 504B, as may be amended, and shall be interpreted to comply with those provision wherever possible. (Ord. No. 8704, 10-9-1984, § 15; Ord. No. 8873, 12-28-1987, § 20; Ord. No. 8976, 3-26-1990, § 27; Ord. No. 10354, 2-9-2015, § 15. Ord. No. 10611, 2-11-2019, §4)

**Sec. 48-209. All charges to be paid before utility supply is re-established.**

After the supply of any utility, to any applicant or to any premises has been shut off due to nonpayment of charges or for violation of the provisions of this Chapter or department rules, no utility will be again supplied to applicant until all charges against applicant including charges for shutting off and turning on the supply of utilities, have been paid, or until other arrangements are made with the department at its discretion, except that utility will be supplied to tenants applying for reinstatement of service pursuant to Section 48-208.2 of this Code. (Ord. No. 6930, § 26.2; Ord. No. 8156, 6-30-1975, § 65; Ord. No. 8704, 10-9-1984, § 16; Ord. No. 8873, 12-28-1987, § 21; Ord. No. 8976, 3-26-1990, § 28. Ord. No. 10611, 2-11-2019, §5)

**Sec. 48-210. Charges.**

The charges for shutting off and turning on the supply of any utility where it has been shut off for nonpayment of charges, to facilitate maintenance or repair of any service or for violation of the rules, shall be not less than that amount set in accordance with Section 31-8 of this Code and shall include compensation to the department for all expenses incurred in such shutting off and turning on the supply. (Ord. No. 6930, §§ 26.3, 26.4, Ord. No. 8156, 6-30-1975, § 66; Ord. No. 8518, 4-21-1980, § 10; Ord. No. 8704, 10-9-1984, § 17; Ord. No. 10137, 2-27-2012, § 1; Ord. No. 10155, 5-29-2012, § 27. Ord. No. 10611, 2-11-2019, §6)

**Sec. 48-211. Water and gas will not be turned off on weekends; exception.**

Water or gas will not be turned off from any service pipe, except in cases of necessity, between the hours of 10:00 a.m. on Saturday and 9:00 a.m. on the following Monday. (Ord. No. 6930, § 26.5.)

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

No person not authorized by the department to do so shall turn on any utility supply to any premises. (Ord. No. 6930, § 26.6. Ord. No. 10611, 2-11-2019, §7)

**Article XII. Assessments for Extension of Water and Gas Mains.**

**Sec. 48-213. Generally; watermains.**

Whenever the city council shall order the extension of water mains, or the installation of new water services as provided for in sections 48-122 and 48-130, pursuant to Section 62 of the City Charter and upon completion of such extension and appurtenances or any part thereof, the cost of such extension including engineering and other expenses having been determined, an assessment of such cost shall be made against the property specially benefited by such extension or portion thereof so completed, which assessment shall be payable pursuant to the provisions of Section 68 of the City Charter; provided that in determining the cost of any extension assessed under the provisions of this Article, any cost arising from the laying of water mains larger than eight inch mains, over and above what would be the cost of such eight inch mains, shall not be included in the assessments of residential property. (Ord. No. 6930, § 32.1; Ord. No. 7309, § 1; Ord. No. 8078, 6-3-1974, § 1; Ord. No. 8156, 6-30-1975, § 67; Ord. No. 9381, 9-14-1998, § 27.)

**Sec. 48-214. Generally; gas mains.**

(a) The city council hereby finds that the deregulation of the natural gas industry and competition from other energy suppliers has subjected the Duluth public works and utilities department to competitive pressures in the gas sales area that it has never before faced. The city council further finds that the existing methods for extending gas mains in Duluth are cumbersome and capital intensive to prospective gas customers. The city council finds that having a more flexible and cost competitive gas main extension policy would enhance the public works and utilities department's ability to market natural gas and remain competitive with other suppliers. It is the purpose of this Section to provide a method of developing gas main extensions that will enable the public works and utilities department to remain competitive in the future;

(b) The director of the public works and utilities department, with the approval of the Duluth public utilities commission, may develop programs and procedures for the extension of gas mains and services, funding of gas main extensions and services connect thereto and procedures for connecting previously unassessed properties to existing mains and for assessing previous unassessed property to such mains in addition to procedures set forth in the City Charter. Without limitation, these programs may involve the creation of a two tiered gas rate in lieu of assessments for gas main extensions and services and may involve the development of a sinking fund to finance future gas main extensions. These programs may also provide that the department may enter into long term gas usage agreements with customers in conjunction with such main and service extensions. No such extension program shall take effect until it is approved by resolution of the Duluth public utilities commission, subject to review and veto by the city council in the same manner as is

provided for in Section 2-187 of the City Code. (Repealed by Ord. No. 8078, 6-3-1974, § 2; reinstated by Ord. No. 9381, 9-14-1998, § 28; Ord. No. 10263, 12-9-2013, § 1; Ord. No. 10278, 2-10-2014, § 1.)

**Secs. 48-215 to 48-218.** Repealed by Ordinance No. 8078, 6-3-1974, § 2.

**Sec. 48-219.** Repealed by Ordinance No. 8156, 6-30-1975, § 68.

**Secs. 48-220 to 48-221.** Repealed by Ordinance No. 8078, 6-3-1974, § 2.

**Sec. 48-222. Charge in lieu of assessment for connection to water and gas mains.**

Any person desiring to make a connection to a water or gas main to serve land not previously assessed for a direct special benefit conferred by the construction of such water or gas main shall apply to the office of the director of public works and utilities or his or her designee, hereinafter referred to as the director, for a permit to so connect said property, and shall accompany his application with a description of the land proposed to be served. The director shall have the authority to approve or disapprove said connection. The director's decision to disapprove any such application may be appealed in writing to the special assessment board within ten days of said decision by filing the same in the office of the director. The amount of the fee in lieu of assessment the applicant is required to pay shall be determined by application of the rate established in accordance with Section 48-223 below. Any person making application for a water or gas connection pursuant to this Section shall either elect to pay the established fee in lieu of assessment in full immediately, in which case such fee should be delivered to the director prior to issuance of the connection permit; or to pay such fee in lieu of assessment over a period of 15 years, in which case payment of such fee and interest shall be made in the same manner as is provided for the payment of deferred assessments under Section 68 of the City Charter. In those cases where a person elects to pay the fee in lieu of assessment over a period of 15 years, he shall be required to execute an agreement, acceptable in form to the city attorney, which shall be recorded against the property to which the water or gas connection is made, and which shall bind the applicant and the future owners of such property to pay the unpaid balance of the fee in lieu of assessment.

Upon compliance by an applicant with the provisions of this Section, the director shall issue a connection permit; provided, however, that the director shall deny the issuance of such permit if he or she determines that water or gas service might reasonably be provided to the property by a public extension of the water or gas system or if the granting of such permit would encourage development of property which cannot be economically served by other utilities or by improved public access. A decision on the part of the special assessment board to deny issuance of a connection permit may be appealed by the applicant to the city council.

For connections to existing gas mains where the property to be served has not been previously assessed, in lieu of the procedure set forth in this Section, the applicant for connection may pay for said connection as provided for in the gas main extension program developed pursuant to Section 48-214 of this Chapter. (Ord. No. 7309, § 6; Ord. No. 8110, 11-4-1974, § 1; Ord. No. 9381, 9-14-1998, § 30; Ord. No. 9994, 9-14-2009, § 3.)

**Sec. 48-223. Fee in lieu of assessment--establishment.**

The special assessment board shall from time to time establish the water fee in lieu of assessment and the gas fee in lieu of assessment to be charged to applicants applying for a connection under Section 48-222 above on a per front foot basis, which fee shall then be applicable for the remainder of the calendar year in which it is established unless subsequently modified by the board as herein provided for. In establishing the fee in lieu of assessment, the board shall take into account the then current average or typical front foot cost for the construction of water and gas mains. Nothing to the contrary in the foregoing withstanding, the board may amend either or both of the fees established with regard to any year upon a determination by the board that the previously established fee does not accurately reflect the city's current costs for construction of such water or gas mains. Upon approval of any fee in lieu of assessment by the board, it shall cause notice thereof to be filed with the city council. Any person wishing to contest the fee so established may appeal to the council

within 30 days of such filing. The determination of the council shall be final. (Added by Ord. No. 9994, 9-14-2009, § 4.)

### **Article XIII. Damage to Underground Utilities.**

#### **Sec. 48-224. Definitions.**

For the purposes of this Article, the following terms and phrases shall have the meanings hereinafter ascribed to them:

(a) Damage to utilities: shall mean an event which results in any damage to or destruction of any facilities of the utility which may include but does not necessarily include escape of any quantity of water, natural gas, sewage or storm water from the utility;

(b) Excavation: shall mean any activity that moves, removes or otherwise disturbs any earthen material of any kind, including but not limited to an "excavation" as defined in Minnesota Statutes Section 216D.01, Subd. 5;

(c) Person: shall mean any individual, partnership, corporation, company, association, and any governmental entity of any kind or level, any other business, organization and public entity of any kind whatsoever and a trustee, receiver, assignee or personal representative of any of them;

(d) State one-call statute: shall mean the provisions of Minnesota Statutes Chapter 216D, and as the same may from time to time be amended or renumbered;

(e) Utility: shall mean any pipe of any kind or size owned by the city and connected to the city's water, natural gas, sanitary sewer and storm sewer utilities and used by the city's water, natural gas, sanitary sewer and storm sewer utilities for the conveyance of water, natural gas, sanitary sewage or storm water as part of the city's water distribution system or the city's natural gas distribution system or the collection of sanitary sewage or storm water as part of the city's sewer systems, and any equipment, machinery any facilities of any kind whatsoever used by the city to facilitate the distribution of water or natural gas through said distribution systems or the collection of sanitary sewage or storm water as part of the city's sewer systems, whether or not located on public or private property or easements. (Added by Ord. No. 10127, 12-5-2011, § 1.)

#### **Sec. 48-225. Excavations causing damage to utilities.**

No person shall cause or allow any excavation to be made which results in damage to utilities, whether intentional or unintentional, in violation of any of the following provisions:

(a) Such person fails to request identification of the physical locations of all elements of the utility in the vicinity of the excavation in conformance with the requirements of the state one-call statute;

(b) Damage to the utility results from failing to exercise the necessary level of care when excavating in close proximity to any element of the utility, the location of which is properly identified as provided for in the state one-call statute;

(c) The manner in which such excavation is performed violates the provisions of Section 48-25 of this Code. (Added by Ord. No. 10127, 12-5-2011, § 1.)

#### **Sec. 48-226. Damages.**

City shall be entitled to collect damages flowing from any violation of this Article from any person violating said provisions which shall include but not be limited to the following:

(a) Costs of repairing the damage to the utility, including direct and indirect labor costs, equipment costs, cost of materials, cost of supervision and other overhead, legal costs, attorney's fees and any other costs attributable to the damage to the utility. Such costs shall be the higher of actual, out-of-pocket cost or attributable costs based on reasonable market value;

(b) Value of water or natural gas which escaped from the utility as a result of the damage to the utility;

(c) The value of any damage to any real or personal property owned or controlled by the city or for which the city is responsible;

- (d) Any costs incurred by city as a result of claims of third parties alleging that they were damaged as a direct or indirect result of the damage to the utility;
- (e) The amount of any fines, penalties or other charges assessed against the city by any governmental or regulatory agency resulting from the escape of any water or natural gas;
- (f) Any other loss or cost incurred by city as a result of the damage to the utility. (Added by Ord. No. 10127, 12-5-2011, § 1.)

**Sec. 48-227. Penalties.**

In addition to damages as described in Section 48-226 above and other remedies as described in Section 48-228 below, any person violating the provisions of this Article shall be subject to the issuance of a citation for such violation under Chapter 12 of this Code, subject to the following:

- (a) The city engineer and his or her designees are authorized to issue citations for violation of this Article;
- (b) The penalty to be assessed to the violator for violation of the provisions of this Article shall be established by the city council by resolution;
- (c) The provisions of 12-3(b) shall not be deemed to limit the city's rights to enforce the provisions of Section 48-226 or of Section 48-228. (Added by Ord. No. 10127, 12-5-2011, § 1.)

**Sec. 48-228. Other enforcement.**

In addition to the provisions of Section 48-226 and 48-27 above, in the event that a person has violated the term of this Article more than twice in the immediately preceding twelve month period:

- (a) The city engineer may refuse to issue an excavation or obstruction permit under Article II of Chapter 45 of this Code to such person and for any project where such person is identified as a contractor or subcontractor or with regard to which such person is reasonably anticipated to perform any excavation;
- (b) The city purchasing agent may reject the bid of such person to perform any work for the city or of any other person where the violating person is identified as the bidder or a contractor or subcontractor of the bidder or with regard to which the violating person is reasonably anticipated to perform any excavation. (Added by Ord. No. 10127, 12-5-2011, § 1.)

**Sec. 48-229. Vicarious liability.**

Any person responsible for the supervision of any person violating the requirements of this Article or contracting with such violating person to perform the excavation which gives rise to the damage to utilities shall be jointly and severally liable for such violation and for all penalties, damages and consequences flowing therefrom as set forth in this Article. (Added by Ord. No. 10127, 12-5-2011, § 1.)

**Secs. 48-230 to 48-232.** Repealed by Ordinance No. 8156, 6-30-1975, § 68.

**Article XIV. Sales Promotion Division.**

**Sec. 48-233. Created.**

There hereby is confirmed, created and established, effective January 1, 1963, a sales promotion division for the department of water, gas and sewage treatment, for the purpose of increasing the sale of industrial, space heating, commercial and domestic gas; and also for the purpose of promoting the sale of appliances, equipment or devices which are or may be used with industrial, space heating, commercial or domestic gas. (Ord. No. 7328, 11-12-1962, § 1.)

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

Subject to the approval of the city's chief administrative officer, the director of the public works and utilities department is hereby authorized and directed during any calendar year, if funds shall be appropriated

by the city council to purchase and contract for such services, materials and supplies and to pay for such selling expense items as the director may from time to time deem necessary in carrying on any advertising or publicity campaign designed to make effective the intent and purpose of this Article. (Ord. No. 7328, 11-12-1962, § 2; Ord. No. 8873, 12-28-1987, § 22; Ord. No. 10354, 2-9-2015, § 16.)

**Sec. 48-235. Expenses not to exceed appropriation; payment procedure.**

The total cost of the administration and operation of the sales promotion division during any such calendar year shall not exceed the amount appropriated annually by the council to carry out the purposes authorized by this Article, and shall be paid out of public utility fund upon the presentation of properly verified vouchers approved by the proper city officers. (Ord. No. 7328, 11-12-1962, § 3; Ord. No. 8873, 12-28-1987, § 23.)

**Article XV. Hearing of Disputes.**

**Sec. 48-236.** Deleted by Ordinance No. 10072, 12-20-2010, § 4.

**Sec. 48-237. Duluth public utilities commission--hearings.**

The commission shall hear and decide appeals by water and gas applicants from department determinations concerning disputes over charges for water or gas service department decisions to terminate service to an applicant, department determinations on the ability of an applicant to pay service charges immediately made pursuant to Section 48-208(b)(3) of this Code, and the department's denial of a prospective applicant's application for service; provided that no applicant is entitled to obtain service pending the hearing and decision by the commission. The commission has no power to cancel a debt to the department. All decisions of the commission shall be binding on the department unless contrary to law, and decisions of the commission relating to the ability of the applicant to pay service charges shall be binding upon the applicant. (Ord. No. 8518, 4-21-1980, § 11; Ord. No. 8704, 10-9-1984, § 19; Ord. No. 8873, 12-28-1987, § 24; Ord. No. 8976, 3-26-1990, § 29; Ord. No. 10072, 12-20-2010, § 4.)

**Sec. 48-238. Same--Procedure for appeal--payment plans.**

If a determination of the department is adverse to the applicant and such matter is appealable to the commission under Section 48-237 of this Code, the department shall communicate its findings to the applicant and shall inform the applicant of the applicant's right to appeal the determination. If an applicant desires to appeal the department's determination, applicant shall give notice of the appeal in writing to the director of the department and shall briefly state the nature of the dispute and the basis for the appeal. If the appeal involves a termination of service, the appeal must be filed prior to the proposed date of termination to avoid action by the department. All appealable actions of the department may be appealed at any time within six months of the occurrence that gives rise to the appeal. The department shall advise the applicant of the above requirements. Any payment plan approved by the commission shall ensure that the applicant will be current in paying the water and gas bills in the shortest affordable period of time not to exceed 18 months. The commission shall serve written notice of its approval of any payment plan upon the department director and upon the applicant. If after 30 days from the date of such order, the applicant experiences a change in circumstances which makes compliance with such payment plan impossible, the applicant, upon five days notice to the department, may petition the commission for a revised order to take into account these changed circumstances. If the applicant fails to comply with the payment plan as determined by the commission, the department may terminate service to such applicant by giving five days notice of termination by first class mail to the applicant and by first class mail to all commission members. (Ord. No. 8518, 4-21-1980, § 11; Ord. No. 8704, 10-9-1984, § 20; Ord. No. 8873, 12-28-1987, § 25; Ord. No. 8976, 3-26-1990, § 30; Ord. No. 10072, 12-20-2010, § 4.)

**Sec. 48-239. Same--Procedure for hearings.**

(a) Appeals shall be heard at the first meeting of the commission following the filing of an appeal. Appeals shall be heard in an order determined by the commission. The commission may limit the number of people allowed to speak on any appeal, and the time allowed for presentation of any appeal, as long as the applicant and one employee of the department are allowed reasonable time to present information relevant to the appeal. Failure of an applicant to attend the commission meeting shall be grounds to dismiss that applicant's appeal, unless circumstances beyond the control of the applicant (as determined by the commission) cause the failure to appeal. Continuances shall be granted at the discretion of the commission only upon a showing of circumstances beyond the control of the applicant;

(b) Whenever possible, names of the parties to each appeal shall be furnished to all members of the commission at least one week prior to the meeting. A commissioner who has a conflict of interest on a particular case shall disqualify himself or herself from discussion or voting on the appeal;

(c) The commission may use the department for reasonable staff services. The city attorney shall advise the board. The commission may promulgate reasonable rules to govern their deliberations which are not inconsistent with this Chapter. (Ord. No. 8704, 10-9-1984, § 21; Ord. No. 8733, 12-28-1987, § 26; Ord. No. 10072, 12-20-2010, § 4.)

#### **Sec. 48-239.1 Cold Weather Rule Procedures**

The provisions of Minnesota Statutes Section 216B.097 and as the same may from time to time be amended shall govern the disconnection and reconnection of natural gas service to residential properties for which natural gas is the primary source of heating fuel between October 15<sup>th</sup> of any year and April 15<sup>th</sup> of the succeeding year and to any appeals from any decision of the department with regard the provision thereof. Unless the contrary shall be provided for in said statute, the appeals process set forth in this article shall apply to such disconnection and reconnection decisions except that, nothing to the contrary in section 48-237 above, natural gas service to any such residential property shall not be disconnected during the pendency of any appeal. (Ord. No. 10438, 2-22-2016, §1

### **Article XVI. Natural Gas Procurement.**

#### **Sec. 48-240. Procurement of natural gas.**

(a) Notwithstanding the provisions of Chapter 41 or any other provisions of this Code, the department may procure and purchase natural gas by exercising powers enumerated in Minnesota Statutes Sections 453A.01 through 453A.12 as authorized by the provisions of Minnesota Statutes Section 453A.08, Subdivision 2. The department may enter into cooperative agreements with other gas purchasing entities and exercise any and all of the powers granted in Minnesota Statutes Sections 453A.01 through 453A.12 in its utility operations;

(b) This Article shall not be construed in any manner to limit or diminish any existing legal right or power the department now has. (Ord. No. 9482, 3-19-2001, § 1.)

#### **Sec. 48-241. Finance director to oversee natural gas purchases.**

The finance director shall oversee the procurement and purchase of natural gas by the department and may conduct audits and make recommendations consistent with good accounting and purchasing practices. The finance director may appoint a committee to assist in performing duties set forth in this Section. (Ord. No. 9482, 3-19-2001, § 1.)