

CHAPTER 29A.

HOUSING CODE.

Editor's Notes: Ordinance No. 7378 transfers the administration and enforcement of the housing code from the director of public health to the building official. The International Property Maintenance Code, as amended for use as Duluth's Housing Code by Ordinance No. 9462, is available in the building official's office.

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Article I. In General.

Sec. 29A-1. IPMC adopted.

The city of Duluth does hereby adopt by reference the year 2000 edition of the International Property Maintenance Code, as hereinafter amended pursuant to this ordinance, as the Housing Code of the city of Duluth. (Ord. No. 7262, 1-9-1961, § 2; Ord. No. 7501, 12-6-1965, § 1; Ord. No. 7502, 12-6-1965, § 1; Ord. No. 8463, 6-11-1979, § 1; Ord. No. 8671, 10-11-1983, § 1; Ord. No. 8880, 3-28-1988, § 2; Ord. No. 9154, 8-23-1993, § 1; Ord. No. 9462, 10-10-2000, § 1.)

Sec. 29A-2. Applicability of article.

This Article shall apply to dwellings, dwelling units, housekeeping units, rooming units, rental units and premises located within the city, except that it shall not apply to suites and sleeping rooms in hotels which are let to the public for periods of less than one week nor to common areas in such hotels. (Ord. No. 7262, 1-9-1961, § 2; Ord. No. 7501, 12-6-1965, § 1; Ord. No. 7502, 12-6-1965, § 3; Ord. No. 8463, 6-11-1979, § 2; Ord. No. 8671, 10-11-1983, § 2; Ord. No. 9642, 10-10-2000, § 5.)

Sec. 29A-3. Inspections; enforcement; fees.

(a) For the purposes of attaining uniform acceptable housing standards in the city and enforcing this Chapter the building official is hereby authorized to enter, examine and survey, between the hours of 8:00 a.m. and 5:00 p.m. all dwellings, dwelling units, housekeeping units, rooming units and premises. The building official, prior to making such inspection, shall inform the owner or their agent of the dwelling or dwelling units, housekeeping units, rooming units or premises to be inspected of the date and time of the inspection by letter postmarked not less than 96 hours prior to the time such inspection is made. After written notice has been given, the owner or occupant of such dwelling, dwelling unit, housekeeping unit or rooming unit, or the person in charge thereof, shall give the building official free access to such dwelling, dwelling unit, housekeeping unit or rooming unit and its premises, during such time, for the purpose of such inspection, examination or survey; provided, that such inspection, examination or survey shall not have for its purpose the harassment of such owner or occupant and that such inspection, examination or survey shall be made so as to cause the least amount of inconvenience to the owner or occupant, consistent with an efficient performance of the duties of the building official; provided, that nothing in this Section shall be construed to prohibit the entry of the building official:

(1) At any time when in the opinion of the building official an actual emergency tending to create an immediate danger to public health and safety exists; or

(2) At any time when such inspection, examination or survey may be requested by the owner or occupant;

(b) When an order to correct a condition constituting a violation of this Chapter has been issued, the building official is hereby authorized to enter and reinspect all dwellings, dwelling units, housekeeping units, rooming units and premises for the purpose of determining compliance with the mandates of such order. The reinspection shall be made under the direction of the building official, by the building official, or by a team composed of public officers as deemed appropriate under the circumstances by the building official. The owner or occupant of the dwelling, dwelling unit, housekeeping unit and rooming unit, or the person in charge thereof, shall give free access to such dwelling, dwelling unit, housekeeping unit or rooming unit and its premises for the purpose of such inspection, examination or survey;

(c) Every occupant of a dwelling, dwelling unit or housekeeping unit shall give the owner thereof, or his agent or employee, access to any part of such dwelling or dwelling unit, housekeeping unit or its premises, at all reasonable times, for the purpose of making such repairs or alterations as are necessary to effect compliance with the provisions of this Article or any lawful order issued pursuant to the provisions of this Article;

(d) There shall be no charge on inspections made in response to complaints. Fees for licensing inspections and other inspections shall be established, from time to time, by resolution of the

council. (Ord. No. 7262, 1-9-1961, § 3; Ord. No. 7378, 1-27-1964, § 1; Ord. No. 7501, 12-6-1965, § 1; Ord. No. 7502, 12-6-1965, § 3; Ord. No. 8463, 6-11-1979, § 3; Ord. No. 8671, 10-11-1983, § 3; Ord. No. 8953, 8-21-1989, § 3; Ord. No. 9118, 1-11-1993, § 23; Ord. No. 9462, 10-10-2000, § 6.)

Sec. 29A-4. Service of notices and orders.

(a) Issuance; form of notice. Whenever the building official determines that there are reasonable grounds to believe that there has been a violation of any provisions of this Article, notice of such alleged violation shall be given to the person responsible therefore, as hereinafter provided.

Such notice shall:

(1) Be put in writing;

(2) Include a statement of the points of noncompliance with this Article;

(3) Allow a reasonable time for the performance of any act it requires. In determining a reasonable time for performance the building official shall consider along with all other pertinent factors the nature and extent of the work involved, the season of the year and the existence of any immediate danger to public health and safety;

(4) Be served upon the owner or the owner's agent and the occupant as the case may require; provided, that such notice shall be deemed to be properly served upon such owner or agent and upon such occupant if a copy thereof is served personally, or if a copy thereof is sent by United States mail, postage prepaid, to the last-known address, or if a copy thereof is posted in a conspicuous place in or about the dwelling affected by the notice, or if a copy thereof is served by any other method authorized or required under the Laws of Minnesota;

(5) Contain an outline of remedial action which, if taken, will effect compliance with the provisions of this Article;

(b) Notices served pursuant to this Section automatically become an order; exception. Any notice served pursuant to Subsection (1) of this Section shall automatically become an order if a written petition for a hearing is not filed in the office of the building official within 15 days after such notice is served. All orders shall be complied with; provided, that in the alternative, except for condition or situation amounting to a condemnation order, the use of the premises may be discontinued as a place of human habitation;

(c) Issuance of emergency orders without notice. Whenever the building official finds that an emergency exists which requires immediate action to protect the public health and safety, the building official may, without notice or hearing, issue an order declaring the existence of such an emergency and requiring that such action be taken as deemed necessary to meet the emergency notwithstanding the other provisions of this Article. Such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately. (Ord. No. 7262, 1-9-1961, § 4; Ord. No. 7378, 1-27-1964, § 1; Ord. No. 7501, 12-6-1965, § 1; Ord. No. 7502, 12-6-1965, § 4; Ord. No. 8671, 10-11-1983, § 4; Ord. No. 9462, 10-10-2000, § 7.)

Sec. 29A-5. Appeals.

Any person aggrieved by a decision of the building official in the enforcement of this Chapter may appeal such decision to the building appeal and licensing board created in Article IV of Chapter 10 of the Duluth City Code, 1959, as amended, in accordance with the provisions contained therein. (Ord. No. 7262, 1-9-1961, § 5; Ord. No. 8544, 11-3-1980, § 6.)

Secs. 29A-6 to 29A-15. Repealed by Ordinance No. 9462, 10-10-2000, § 8.

Secs. 29A-16 to 29A-26. Renumbered or repealed by Ordinance No. 8544, 11-3-1980, § 9; Ordinance No. 8671, 10-11-1983, § 15.

Article II. Licensing of Multiple Dwellings and Rooming Houses.

Sec. 29A-27. Definitions.

(a) Except as otherwise defined in this Section, the definitions contained in sections 201 and 202 of the year 2000 edition of the IPMC, as adopted by Section 29A-1 of this Chapter, shall apply to this Article;

(b) For purposes of this Article, "protection zone" means any parcel of land, lot or part thereof within or abutting the area described as follows: a point beginning at the point of intersection of the Lake Superior shoreline and the extended centerline of platted Eighth Avenue East, thence northwesterly along said Eighth Avenue East centerline to its point of intersection with the centerline of Superior Street Alley, thence southwesterly along the centerline of Superior Street Alley to its point of intersection with the centerline of North Sixth Avenue East, thence north westerly along the centerline of North Sixth Avenue East to its point of intersection with Central Entrance Drive, thence westerly along the centerline of Central Entrance Drive to its point of intersection with the centerline of Rice Lake Road, thence northerly along the centerline of Rice Lake Road to its point of intersection with the centerline of West Arrowhead Road, thence easterly along the centerline of West Arrowhead Road to its point of intersection with the centerline of Blackman Avenue, thence northerly along the centerline of Blackman Avenue to its point of intersection with the centerline of MacFarlane Road, thence easterly along the centerline of MacFarlane Road to its point of intersection with the centerline of Howard Gnesen Road, thence southeasterly along the centerline of Howard Gnesen Road to its point of intersection with the centerline of Old Howard Gnesen Road, thence north/northeasterly along the centerline of Old Howard Gnesen Road to its point of intersection with the centerline of South Road, thence easterly along the centerline of South Road in a straight line to its point of intersection with the northwest corner of the Third Glen Avon Division of Duluth, thence north in a straight line to its point of intersection with the centerline of Anoka Street, thence easterly along the centerline of Anoka Street to its point of intersection with the centerline of St. Paul Avenue, thence south along the centerline of St. Paul Avenue to its point of intersection with the centerline of Carlisle Avenue, thence easterly along the centerline of Carlisle Avenue to its point of intersection with the centerline of Grove Street, thence northeasterly along the centerline of Grove Street to its point of intersection with the centerline of Princeton Place, thence northeasterly along the centerline of Princeton Place to its point of intersection with the southerly boundary of Park Hill Cemetery, thence easterly along the southern boundary of Park Hill Cemetery until its point of intersection with the western easement line of Livingston Avenue, thence easterly in a straight line to its point of intersection with the centerline of Livingston Avenue, thence northerly along the centerline of Livingston Avenue to its point of intersection with the centerline of Everett Street, thence easterly along the centerline of Everett Street to its point of intersection with the centerline of Jean Duluth Road, thence southwestwesterly along the centerline of Jean Duluth Road to its point of intersection with the centerline of Lakeview Drive, thence southwestwesterly along the centerline of Lakeview Drive to its point of intersection with the centerline of Vermilion Road, thence southerly along the centerline of Vermilion Road to its point of intersection with the centerline of Congdon Park Drive, thence southeasterly along the centerline of Congdon Park Drive to its point of intersection with the centerline of 32nd Avenue East, thence southeasterly along the centerline of 32nd Avenue East to its point of intersection with the centerline of London Road, thence northeasterly along the centerline of London Road to its point of intersection with the west bank of Tischer Creek, thence southeasterly along the west bank of Tischer Creek to its point of intersection with the Lake Superior shoreline, thence southwestwesterly along the Lake Superior shoreline to the point of beginning, and as depicted on the map on file with the city clerk as Public Document No. 08-0609-20;

(c) For purposes of this Article, the phrase "one family dwelling" shall have the meaning ascribed by Section 50-1.20;

(d) For purposes of this Article, the phrase "two family dwelling" shall have the meaning ascribed by Section 50-1.21;

(e) For purposes of this Article, the phrase "multiple family dwelling" shall have the meaning ascribed by Section 50-1.23. (Ord. No. 8371, 11-7-1977; § 1; Ord. No. 9462, 10-10-2000, § 9; Ord. No. 9914, 6-9-2008, §§ 1, 3 [*Ordinance will expire after midnight on June 30, 2012.*].)

Sec. 29A-28. License required.

No person, whether an owner, manager, agent or sublessor, shall operate or permit the operation of a dwelling, structure or rooming house or rent or lease or offer to rent or lease any rental unit unless such dwelling, structure, rooming house, housekeeping unit or rental unit has been granted a license from the building official as provided herein. No owner of any dwelling shall permit or allow any rental unit in such dwelling to be rented or leased unless such unit is licensed as provided herein. If, during the licensing period, the number of dwelling units in a dwelling or beds in a rooming house is increased, no person shall rent or cause to be rented such additional units or beds, or permit the same to be occupied, until the building official has inspected the premises and approved them for occupancy. If found to be renting or causing to be rented a dwelling, dwelling unit, housekeeping unit, rooming unit or rental unit without a proper license, an investigation fee as established by resolution of the city council shall be paid by the owner whether or not the dwelling, dwelling unit, housekeeping unit, rooming unit or rental unit is subsequently licensed. (Ord. No. 8371, 11-7-1977; § 1; Ord. No. 9154, 8-23-1993, § 2; Ord. No. 9462, 10-10-2000, § 10.)

Sec. 29A-29. Licenses--application, procedure.

(a) All licenses shall be issued by the building official. Applications for licenses shall be made by the owner or manager of the dwelling to the building official upon forms provided by such official, and such applications shall be accompanied by the required license fee. Applications for renewals of licenses and licenses for new dwellings shall be made at least 60 days prior to the time the current license will expire or the units will be offered for rent. Upon receipt of a completed application and fees the building official shall issue a temporary license permitting the temporary rental of the dwelling until such dwelling has been inspected by the building official. New dwellings, dwelling units, housekeeping units, rooming units or rental units which comply with the State Building Code shall be issued a license upon completion of construction inspections issuance of a certificate of occupancy and receipt of a completed application and fees by the building official. Buildings which comply with the State Building Code and have been completed and certified for occupancy by the building official within one year of the certification of occupancy and receipt of a completed application and fees by the building official shall also be issued a license for the initial licensing period without further inspection. All other multiple dwellings, rooming houses and rental units shall be inspected before a license is issued. If the inspection by the building official discloses that there are violations in the building, the temporary license may be extended for a reasonable period of time, not to exceed 120 days, so that the violations can be corrected and the building reinspected by the building official. The building official shall not extend a temporary license more than twice. No license shall be issued unless the premises or portions of the premises to be licensed have been found by the building official to comply with the provisions of this Chapter and all other applicable ordinances of the city. If only a portion of a building is licensed, no unlicensed portion shall be rented. Renting any unlicensed portion of a building shall result in revocation of the license and issuance of a notice to vacate the building;

(b) If, after issuance of a temporary license for an establishment, the building official is denied access to such establishment, or any portion thereof, at any reasonable time while attempting to inspect the premises, the building official may revoke such temporary license upon written notice to the applicant, subject to the applicant's right to appeal as provided in this Article;

(c) In addition to the requirements set forth above, no rental license, except a temporary rental license, shall be issues for any dwelling unless a certificate of noncontribution as provided for in Section 43-33.2 has been issued for that dwelling. (Ord. No. 8371, 11-7-1977, § 1; Ord. No. 8154, 8-23-1993, § 3; Ord. No. 9462, 10-10-2000, § 11; Ord. No. 9629, 10-27-2003, § 2.)

Sec. 29A-30. Fees.

Fees for rental licenses shall be established by resolution of the city council. (Ord. No. 8371, 11-7-1977; § 1; Ord. No. 8462, 6-11-1979; § 1; Ord. No. 8953, 8-21-1989, § 4; Ord. No. 9118, 1-11-1993, § 24; Ord. No. 9154, 8-23-1993, § 4; Ord. No. 9462, 10-10-2000, § 12.)

Sec. 29A-31. Term of license.

Licenses issued pursuant to this Article shall be for a term of three years. (Ord. No. 8371, 11-7-1977; § 1.)

Sec. 29A-32. Licenses--terms and conditions.

(a) Each license or copy thereof or placard at least 3"x5" with the same information noted below in this subparagraph shall be displayed in a conspicuous place so that it can be seen and read by a person outside the building and within the common way or near the main entrance of the dwelling and shall state the name, e-mail address and telephone number of the owner or managing agency, if applicable, which is managing the dwelling. Any permitted license rental will ensure there is a local point of contact (within a 25 mile radius) available on such license. No license shall be transferred to another dwelling or rental unit;

(b) If there is a change in either ownership or management of a dwelling, the person or agency managing such dwelling prior to such change in ownership or management shall give written notice of the name and address of the new owner and/or manager to the building official;

(c) A new license shall be issued to the dwelling for the remainder of the license period with the name of the new manager and/or owner upon payment of the required fee and submission of all required application forms;

(d) Any licensed one family or two family dwellings in a district zoned R-1-a, R-1-b or R-1-c shall provide a minimum of two off street parking spaces. In addition, for each additional bedroom in excess of three, there shall be provided one additional off street parking space. Any off street parking spaces shall comply with the standards for off street parking set forth in Section 50-26. The number of required off street parking spaces shall be determined by the building official at the time of licensure. The owner shall ensure that all required off street parking spaces are cleared of snow to at least the required dimension of such spaces within 72 hours after the end of every snowfall;

(e) Except as otherwise provided in this Section, any licensed one family or two family dwelling, lawfully existing on September 1, 2007, may continue to be so used even though such use does not conform to the provisions of this Section. If the number of bedrooms is increased in a licensed one family or two family dwelling located in a district zoned R-1-a, R-1-b or R-1-c after September 1, 2007, the off street parking requirements of this Section shall apply to the entire licensed property. If the license for such nonconforming use is revoked or lapses for any period of time, any subsequent licensed use must comply with all provision of this Chapter;

(f) Expired pursuant to Ordinance No. 9909;

(g) Expired pursuant to Ordinance No. 9909;

(h) Expired pursuant to Ordinance No. 9909;

(i) In all residentially zoned districts restrictions shall not apply to short term licenses. Except as otherwise provided, the building official may issue short term licenses for a period not to exceed 12 consecutive months. A short term license may not be issued more frequently than once in any three year period. Such short term licenses shall be applied for in the same manner as other rental licenses and all rental requirements for such dwelling unit shall otherwise meet all rental licensing requirements. A short term license may be issued for any single family or two family dwelling under the following circumstances:

(1) The owner is the current occupant of the dwelling unit, and

(2) For professional, educational or military service reasons the owner intends to reside in another community located at least 50 miles from the dwelling unit, and

(3) The owner provides sufficient evidence of such intention to temporarily relocate to the building official. Such evidence may include, but is not limited to written offers of employment, employment transfer directives, letter of acceptance from an educational institution, or military orders.

A short term license may be extended for an additional six months period provided that an application for extension is received prior to the expiration of the short term license and adequate evidence

justifying such an extension is submitted with the application. The building official shall act upon such application for extension within 15 business days of delivery of the application.

The action of the building official is subject to appeal as provided in Section 29A-34;

(j) Expired pursuant to Ordinance No. 9909. (Ord. No. 8371, 11-7-1977; § 1; Ord. No. 9154, 8-23-1993, § 5; Ord. No. 9462, 10-10-2000, § 13; Ord. No. 9677, 7-12-2004, § 1; Ord. No. 9845, 7-9-2007, § 1; Ord. No. 9853, 8-13-2007, § 1; Ord. No. 9869, 10-22-2007, § 1; Ord. No. 9909; 5-12-2008, §§ 1, 2; Ord. No. 10015, 2-22-2010, § 1.)

Sec. 29A-32.1. Rental restrictions in the protection zone.

(a) In areas zoned R-1-a, R-1-b and R-1-c located within the protection zone, no license shall be issued for any dwelling, rooming house or rental unit within a distance of 300 feet from any other licensed dwelling, rooming house or rental unit. The distance restriction shall not apply to the following:

- (1) A two family dwelling;
- (2) Any multiple family dwelling containing less than five dwelling units;
- (3) An owner occupied one family dwelling, provided that the number of persons occupying pursuant to a rental agreement is limited to one person;

(b) In areas zoned R-2 and R-3 located within the protection zone, no license shall be issued for any one family dwelling within a distance of 300 feet from any other licensed one family dwelling. The restriction shall not apply to the following:

- (1) An owner occupied one family dwelling, provided that the number of persons occupying pursuant to a rental agreement is limited to one person;

(c) In all residentially zoned districts within the protection zone, restrictions shall not apply to short-term licenses. Except as otherwise provided, the building official may issue short-term licenses for a period not to exceed 12 consecutive months. A short-term license may not be issued more frequently than once in any three year period. Such short-term licenses shall be applied for in the same manner as other rental licenses and all rental requirements for such dwelling unit shall otherwise meet all rental licensing requirements. A short-term license may be issued for any single-family or two-family dwelling under the following circumstances:

- (1) The owner is the current occupant of the dwelling unit; and
- (2) For professional, educational or military service reasons the owner intends to reside in another community located at least 50 miles from the dwelling unit; and
- (3) The owner provides sufficient evidence of such intention to temporarily relocate to the building official. Such evidence may include, but is not limited to written offers of employment, employment transfer directives, letter of acceptance from an educational institution, or military orders.

A short-term license may be extended for an additional six months period provided that an application for extension is received prior to the expiration of the short-term license and adequate evidence justifying such an extension is submitted with the application. The building official shall act upon such application for extension within 15 business days of delivery of the application.

The decision of the building official is subject to appeal as provided in Section 29A-34;

(d) This Section shall not apply to a one family or two family dwelling that is subject to a purchase agreement for the sale of the dwelling when all of the following conditions are met:

- (1) The dwelling is occupied by a seller; and
- (2) The buyer and seller agree that the buyer may occupy the dwelling prior to completion of the sale; and
- (3) The buyer, pursuant to a written early occupancy agreement between the buyer and seller, occupies the dwelling; and
- (4) The sales transaction is completed or cancelled in writing within 120 days from the date of the written early occupancy agreement;

(e) Any licensed dwelling, rental unit or rooming house lawfully existing in the protection zone on July 19, 2008, may continue, even though such use does not conform to the provisions of this Chapter;

(f) If a rental license lapses as a result of the failure to comply with Section 29A-29, the license may be administratively reissued without regard to the provisions of paragraphs (a) and (b) of this Section if within 60 days of the expiration of the license the owner complies with Section 29A-29;

(g) If a rental license lapses as a result of the failure to comply with Section 29A-29, the owner fails to comply with paragraph (f) of this Section, and the provisions of paragraphs (a) and (b) prohibit issuance of a license, the owner may appeal pursuant to Section 29A-34. The building appeal board may authorize issuance of a license without regard to the provisions of paragraphs (a) or (b) of this Section if the owner demonstrates by clear and convincing evidence the existence of good cause for the failure to comply with Section 29A-29. For purposes of this provision, good cause shall be defined as circumstances beyond the control of the owner which made compliance with Section 29A-29 impossible;

(h) The building appeal board may grant a variance from the provisions of paragraphs (a) and (b) of this Section where a hardship exists. For purposes of this Section, a hardship exists when it can be demonstrated by clear and convincing evidence that the property no longer retains a reasonable economic value as an owner occupied dwelling and the ability to rent the property is necessary in order to retain a reasonable economic use. (added by Ord. No. 9914, 6-9-2008, §§ 2, 3 [Ordinance will expire after midnight on June 30, 2012].)

Sec. 29A-33. Inspections of licensed premises--suspensions.

(a) All premises licensed pursuant to this Article shall be made available for inspection by the building official at any reasonable time. If the building official is denied access to any licensed premises, such official may suspend the license of the dwelling or rental unit upon written notice to the licensee, subject to the right to appeal as provided in this Article, and any such suspension shall remain in effect until inspection has been permitted;

(b) If, upon inspection of licensed rental units for which the license has been suspended, the building official finds that any rental unit does not comply with the provisions of this Article, or other applicable ordinances of the city, a written notice shall be served by the building official upon the licensee stating the nature of any violation and a reasonable time, not to exceed 90 days, in which the violations must be corrected or the affected premises vacated. At the end of said time, the building official shall reinspect the premises. If the premises are not vacated or the violations are not corrected, the building official may suspend the license of the dwelling or any rental units therein, subject to licensee's right of appeal as provided in this Article. The licensee may, after such suspension, pay a reinspection fee and request reinspection and reinstatement of the license with respect to the entire dwelling or to rental units within the dwelling not affected by the violation. If the building official inspects the premises and determines that the violations have been corrected, the license for the entire structure shall be reinstated upon payment of a reinstatement fee;

(c) In any case where the building official suspends a license pursuant to this Section, written notice of such suspension shall be served on the licensee and posted in a conspicuous place in the dwelling or rental unit, and both such notices shall order the vacation of the dwelling or rental unit within a reasonable time. After receipt of such notice, and if no appeal is taken within the period for appeals, it shall be unlawful for the licensee to rent or lease any rental unit or bed until the license for said unit is reinstated. Licensee shall, within ten days after receiving such notice of suspension, give notice in writing to the tenants stating the contents of the vacation order issued by the building official. (Ord. No. 8371, 11-7-1977; § 1; Ord. No. 9154, 8-23-1993, § 6; Ord. No. 9462, 10-10-2000, § 14.)

Sec. 29A-34. Notices.

No license shall be issued pursuant to this Section unless the applicant designates in writing to the building official at an address located in the city of Duluth where notices issued by the building official may be delivered. All notices issued by the building official regarding a particular license shall be sent by first class mail or personally delivered to the address specified by the licensee, and for purposes of this Article delivery by such means shall constitute service of such notice on the licensee.

Any person who receives an order from the building official denying, suspending or revoking a license may appeal such denial, suspension or revocation to the building appeal board under the procedures set forth in Section 10-5 of the Duluth City Code, 1959, as amended. Request for such appeal shall be made in writing to the building official within 15 days after the day the notice was served. If an appeal is filed, no denial, suspension or revocation shall take effect until after the appeal is heard and

determined as provided herein. The building official shall then set a time and place for such appeal to be heard and notify the appellant of said time and place. No appeal shall be set for hearing less than ten days or later than 40 days from the date the appeal is filed. At the hearing, appellant may be represented by counsel, may produce witnesses, and may testify in their own behalf. The building appeal board may administer oaths, take testimony and subpoena witnesses and papers at such hearing. After hearing all the evidence and arguments, and after due deliberation, the building appeal board shall affirm, reverse or modify the action of the building official. Notice of the building appeal board's decision shall be served on the appellant within 48 hours after such decision is rendered. Any action taken by the board shall be final. (Ord. No. 8371, 11-7-1977; § 1; Ord. No. 9154, 8-23-1993, § 7; Ord. No. 9462, 10-10-2000, § 15.)

Article III. Emergency Remedies in Residential Rental Property.

Sec. 29A-35. Statement of purpose; scope.

It is the purpose of this Article to protect and promote the general health, safety and welfare of the citizens of Duluth by providing tenants an effective remedy against loss of heat, water, electricity, gas, security or basic fire and life safety. This Article shall apply to all units enumerated in Section 29A-2 of this Chapter which are rented or held out for rent to another. (Ord. No. 8880, 3-28-1988, § 1; Ord. No. 9462, 10-10-2000, § 16.)

Sec. 29A-36. Emergency conditions, loss of heat, water, electricity, etc.

(a) If, contrary to the rental agreement, the landlord fails to provide heat as required by Section 602 of the Code, adopted by Section 29A-1 above, running hot and cold water, electricity, gas or operable toilet or bathing facilities as required by law, the tenant may immediately notify the landlord and the building official, either orally or in writing, of the condition. The building official shall, as soon as possible thereafter, inspect the premises to ascertain whether such violation exists. If the building official finds the violation to exist, the building official shall immediately notify the landlord orally of the condition and cause written notice of the violation to be sent. If the landlord has not remedied the situation within 24 hours after receiving notice of the deficiency from the building official, the tenant may then correct the deficiency by paying a utility bill or causing the necessary repairs or corrections to be made, and may then deduct the amount of money actually used to correct the deficiency from future rent. All repairs made shall be made in conformance with applicable codes by persons who are licensed to perform the required work. In cases involving major repair or replacement of a heating plant, electric service, water service or sewer, where the apparent cost of the work exceeds \$500, the landlord shall have the right to approve the method of repair and to choose the contractor if, and only if, the landlord supplies temporary heat, water or electricity to the dwelling unit in accordance with this Chapter and if a written repair contract is signed within seven days after notice is given by the building official;

(b) If the landlord fails to provide deadbolt locks or smoke detectors as required by law, the tenant may notify the landlord and the building official in accordance with Subsection (a) above and the building official shall inspect and notify the landlord of violations in accordance with said subsection. If the landlord fails to provide required deadbolt locks or smoke detectors within five days after receiving notice from the building official, the tenant may cause the corrections to be made and deduct the cost of such corrections from the rent as provided in said Subsection (a). (Ord. No. 8880, 3-28-1988, § 1; Ord. No. 9462, 10-10-2000, § 17.)

Article IV. Crime Free Housing Program.

Sec. 29A-37. Findings of fact and statement of purpose.

The council finds that providing for the public health, safety and welfare requires a rental unit licensing and maintenance program that not only corrects substandard housing conditions and enforces a habitability standard for rental units as is currently provided for in Article II of this Chapter, but that also

provides for the quiet enjoyment of the normal activities of life for occupants of rental properties and for the neighborhoods in which such rental properties are located.

It is the purpose of this Article to ensure that all residential rental units in the city are decent, safe, sanitary and operated and maintained in a manner that avoids the creation of a nuisance to the neighborhood, an influence that fosters blight and deterioration, or creates a disincentive to neighborhood reinvestment. Property owners and managers are responsible for taking such reasonable steps as are necessary to ensure that the citizens of the city who occupy rental units may pursue the quiet enjoyment of the normal activities of life in surroundings that are safe, secure, sanitary and free from criminal activity and nuisances. (Ord. No. 9932, 10-13-2008, § 1.)

Sec. 29A-38. Definitions.

Unless otherwise provided in this Section, the definitions contained in sections 29A-1 and 29A-27 of this Chapter shall apply to this Article. In addition, for purposes of this Article the following words and phrases shall have the meanings respectively ascribed to them by this Section:

- (a) Disorderly behavior. Any of the following activities:
 - (1) A nuisance event as defined in Section 40-10 of this Code; or
 - (2) A violation of Chapter 49 of this Code or any state statute or federal law related to the ownership, possession or use of a firearm; or
 - (3) Illegal drug related activity including, but not limited to the illegal possession, manufacture, sale, distribution, purchase, use or possession with intent to manufacture, sell or distribute a controlled substance as defined in the Controlled Substance Act [21U.S.C. 802] or possession of drug paraphernalia as provided in Minnesota Statutes Section 152.092. A tenant shall be deemed to be in possession of a controlled substance if any amount is located in the tenant's rental unit even if the tenant denies knowledge of the controlled substance unless the tenant provides a notarized statement made under oath by a person, other than the tenant or a member of the tenant's household, that the controlled substance was in their possession and the tenant had no knowledge of the controlled substance; or
 - (4) Any violation of Chapter 34 of this Code; or
 - (5) Any act that jeopardizes the health, safety and welfare of the landlord, the landlord's agent or other tenants, or guests of tenants of a licensed premise;
 - (6) Any act that is prohibited by the smoking policy for the premises on which the dwelling is located;
 - (7) The following circumstances shall be deemed to be exceptions to the definition of disorderly behavior:
 - (A) An "emergency call" within the definition of Minnesota Statutes Section 609.78 and Subd.3, will not be considered an instance of disorderly behavior when the victim and suspect are "family or household members" as defined in the Domestic Abuse Act, Minnesota Statutes, Section 518B 01, Subd. 2 (b) and there exists a report of domestic abuse as defined in the Domestic Abuse Act, Minnesota Statutes Section 518B 01, Subd. 2 (a);
 - (B) An "emergency call" within the definition of Minnesota Statutes Section 609.78, Subd. 3, will not be considered an instance of disorderly behavior if the call is a result of a tenant or guest of a tenant taking action to seek emergency assistance that is protected by Minnesota State Statute 504B.205;
- (b) Guest of the tenant. Any person present at the licensed premise by either the express or implied consent of a tenant;
- (c) Licensed premise. A rental unit, all common areas of the building in which a rental unit is located, all accessory structures and improvements located upon the real property, and the real property upon which a rental unit is located;
- (d) Tenant. The lessee pursuant to a rental agreement and any member of the lessee's household;
- (e) Smoking policy disclosure. A disclosure of the smoking policy for the premises on which the dwelling is located. The disclosure must state whether smoking is prohibited on the premises, allowed on the entire premises (except where prohibited by other federal, state or local law) or allowed in limited areas on the premises. If the smoking policy allows smoking in limited areas on the premises, the

disclosure must identify the areas on the premises where smoking is allowed. (Ord. No. 9932, 10-13-2008, § 1; Ord. No. 10032, 6-14-2010, § 1.)

Sec. 29A-39. Crime-free and smoking policy disclosure rental agreement provisions required; exceptions.

All rental agreements for any rental unit licensed as required by Article II, except for residential facilities licensed by the state, shall be assumed to contain the crime-free and smoking policy disclosure provisions of Section 29A-40. (Ord. No. 9932, 10-13-2008, § 1; Ord. No. 10032, 6-14-2010, § 2.)

Sec. 29A-40. Licensee duties; mandatory rental agreement terms.

(a) It shall be the responsibility of any tenant to ensure that all tenants and all guests of a tenant while on or about the licensed premise not engage in disorderly behavior;

(b) The licensee shall cause the commencement of an unlawful detainer or other eviction proceedings pursuant to the provisions of state law if a tenant violates the provisions of clause (c) of this Section on three or more occasions during a 12 month period;

(c) Except for rental agreements related to occupancy of a state licensed residential facility, and except as otherwise preempted by federal or state laws and regulations, all rental agreements for the occupancy of a rental unit entered into on or after January 1, 2009, shall be assumed to contain the following provisions:

(1) No tenant or guest of a tenant shall engage in disorderly behavior while on or about the licensed premise;

(2) No tenant or guest of a tenant shall aid or abet disorderly behavior occurring on or about the licensed premise;

(3) No tenant or guest of a tenant shall conspire with others to engage in disorderly behavior on or about the licensed premise;

(4) No tenant shall permit a guest of the tenant to engage in disorderly behavior on or about the licensed premise;

(5) Any violation of paragraphs 1-4, above, shall constitute a material violation of the rental agreement and shall constitute good cause for the immediate termination of the rental agreement;

(d) The licensee, prior to the commencement of the term of the rental agreement shall provide to the lessee(s) a written notice that contains the definition of disorderly behavior as provided by Section 29A-38(a), above, and the provisions of clause (c) of this Section and shall maintain a written acknowledgment signed by the lessee(s) acknowledging receipt of such notice;

(e) Prior to entering into any rental agreement, the licensee shall cause a criminal background check to be conducted on all prospective adult tenants. The criminal background check shall include a search for all misdemeanor, gross misdemeanor and felony convictions as follows:

(1) A state criminal history check covering the last three years and which utilizes the most recent update of the state criminal history files; or

(2) A criminal history check covering the last three years from the prospective tenant's previous state of residence, if available, if the prospective tenant is moving directly from another state; or

(3) Criminal history check from this state and the prospective tenant's prior state(s) of residence, if available, covering the three year period prior to commencement of the tenancy if the prospective tenant's current period of residency in the state has been for less than a period of three consecutive years;

(f) The licensee, prior to the commencement of the term of any rental agreement beginning on or after July 14, 2010, must include a smoking policy disclosure as part of the rental agreement. (Ord. No. 9932, 10-13-2008, § 1; Ord. No. 10032, 6-14-2010, § 3.)

Sec. 29A-41. Revocation, suspension, declination or denial of a license; authority.

(a) In addition to the provisions of Section 29A-33 of this Chapter, the code official may revoke or suspend a current rental license, deny a new rental license or decline to renew a rental license issued under this Chapter as provided in this Section and Section 29A-42. In buildings containing more than one rental unit, the revocation, suspension, denial or declination may apply to one or more rental units at the discretion of the code official;

(b) The basis for such revocation, suspension, denial or declination includes, but is not limited to, any of the following circumstances:

(1) The license was procured by misrepresentation of material facts with regard to the rental unit or the ownership of the rental unit; or

(2) The applicant or one acting on behalf of the applicant made misstatements accompanying the application; or

(3) The applicant has failed to comply with any condition set forth in any other rental license granted to the applicant by the city; or

(4) The activities of the applicant or the applicant's agent create or have created a danger to the public health, safety or welfare; or

(5) The rental unit contains conditions that might injure or endanger the safety, health or welfare of any member of the public; or

(6) Failure to pay any application, penalty or reinstatement fees required by this Chapter and council resolution; or

(7) Failure to correct violations of this Chapter in the time period specified in the notice of violation and correction; or

(8) Failure to commence unlawful detainer or eviction proceedings following the third instance of disorderly behavior, except as provided by the postponement of enforcement as authorized in Section 29A-42; or

(9) Violation of any regulation or provision of the applicable to the activity, to which the license has been granted, or any regulation or law of the state so applicable; or

(10) Failure to continuously comply with any condition required of the applicant for the approval or maintenance of the license; or

(11) Any violation of this Chapter. (Ord. No. 9932, 10-13-2008, § 1.)

Sec. 29A-42. Abatement notice; procedure.

(a) The city shall respond as follows to a violation of the provisions of this Article:

(1) Upon occurrence of the first instance of a determination by the city that a rental unit was the location of an incident of disorderly behavior, the city shall cause notice to be made to the licensee, a property manager whose identity and address is on file in the office of the code official and the tenant of the rental unit. The notice shall direct the licensee to take steps to prevent further violations;

(2) Upon the occurrence of the second instance of the occurrence of an incident of disorderly behavior occurring at the rental unit within 12 months of the notice provided in clause (a)(1), above, the city shall cause notice to be made to the licensee, a property manager whose identity and address is on file in the office of the code official, and the tenant of the rental unit. The notice shall direct the licensee to submit, within ten days of the date of the notice, a written abatement report of all actions taken by the licensee since the first notice and actions the licensee intends to take to prevent further disorderly behavior;

(3) Upon the occurrence of the third instance of disorderly behavior occurring at the rental unit within 12 months after the first of two previous notices, the city shall cause notice to be made to the licensee, a property manager whose identity and address is on file in the office of the code official, and the tenant of the rental unit. In addition to such notice, the code official shall revoke, suspend, or reject an application to renew the license. The code official shall make the decision to revoke, suspend or refuse to renew the license within 15 days of the notice.;

(b) For purposes of this Section, second and third instances of disorderly behavior shall be those which:

(1) Occur at the same rental unit; or

(2) Involve tenants of the same rental unit; or

- (3) Involve guests of a tenant at the same rental unit; or
- (4) Involve guests of the same tenant; or
- (5) Involve the same tenant;

(c) Notwithstanding the provisions of Section 29A-41, above, no adverse license action shall be imposed where the instance of disorderly behavior occurred during a pending unlawful detainer action or other eviction proceeding or within 30 days of notice given by the licensee to a tenant to vacate the rental unit, except that if the code official determines that the licensee has failed to diligently pursue such process, such adverse license action shall proceed. Further, an action to deny, revoke, suspend or not renew a license based upon violations of this Article may be postponed or discontinued at any time if the code official determines that the licensee has taken appropriate measures which will prevent further instances of disorderly behavior. Such measures may include, but are not limited to, evidence of a failed eviction process despite the licensee's diligent pursuit of same;

(d) A determination that the rental unit has been the location of disorderly behavior shall be made by a preponderance of the evidence to support such a determination. It shall not be necessary that criminal charges be brought in order to support a determination of disorderly behavior, nor shall the fact or dismissal or acquittal of such a criminal charge operate as a bar to adverse license action under this Article;

(e) The code official shall notify the licensee or the licensee's agent in writing of the basis for the revocation, suspension, denial or non-renewal and the date upon which the action takes effect. Notice of the action shall be posted at the rental unit and/or licensed premise by the code official. No person, other than the code official, shall remove or alter any posting. The notice shall indicate the date the rental unit or licensed premise shall be vacated and no person shall reside in, occupy or cause to be occupied the rental unit or licensed premise until the code official has so removed said posting and issued a valid license therefore. (Ord. No. 9932, 10-13-2008, § 1.)

Sec. 29A-43. Violation; penalty.

Any person who violates the provisions of this Article may be charged with a violation thereof and be subject to the penalty provided in Section 1-7 of this Code. (Ord. No. 9932, 10-13-2008, § 1.)

Sec. 29A-44. Enforcement alternatives.

Enforcement actions provided in this Article shall not be exclusive, and the city may take any action with respect to a licensee, a tenant, or a rental unit(s) as is authorized by this Code or state law. (Ord. No. 9932, 10-13-2008, § 1.)

Sec. 29A-45. Retaliation; waiver prohibited.

No licensee or the licensee's agent shall bar or limit a tenant's right to call for police or emergency assistance in response to domestic abuse or any other conduct or impose a penalty on a tenant for calling for police or emergency assistance in response to domestic abuse or any other conduct. A tenant may not waive and no such licensee or licensee's agent may require the tenant to waive the tenant's right to call for police or emergency assistance. Any such waiver contained in a rental agreement shall be null and void and unenforceable. (Ord. No. 9932, 10-13-2008, § 1.)

Sec. 29A-46. Appeal.

The action of the code official to revoke, suspend, deny an application for rental license or deny renewal of a rental license made pursuant to this Article is subject to appeal as provided in Section 29A-5 of this Code. (Ord. No. 9932, 10-13-2008, § 1.)