

Ordinance 20-0SW Credit-O

..Title

AN ORDINANCE AMENDING ARTICLE ix OF CHAPTER 43 OF THE DULUTH CITY CODE, 1959, AS AMENDED, AUTHORIZE CREDITS AGAINST STORMWATER UTILITY FEES FOR STORMWATER REDUCTION MEASURES, AMENDING SECTIONS 43-65 AND 43-67 AND ADDING NEW SECTIONS 43-67.1, 43-67.2 AND 43-67.3.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That section 43-65 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 43-65. Definitions.

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

Applicant. The person or entity responsible, as set forth in Section 43-66(f) above, for paying stormwater fees on subject property and who applies, as provided in Section 43-66.3 below, for credit against the payment of those fees on that property in accordance with Section 43-66.1 or 43-66.2 below

"Best management practices" or "BMP's". Practices to prevent or reduce the pollution of the waters of the state, including schedules of activities, prohibitions of practices, and other management practice, and also includes treatment requirements, operating procedures, and practices to control plant site runoff or drainage from raw material storage. In determining whether proposed practices constitute best management practices, practical factors and considerations related to the property affected and financial feasibility of the property and use thereof to support the cost thereof shall be considerations.

Budget. The budget of the stormwater utility. The budget shall include yearly operating and maintenance costs, capital costs, debt service and amounts necessary to meet unanticipated costs.

Capital costs. Costs reasonably incurred in connection with providing capital improvements to the system or any portion thereof, including but not limited to:

- (a) Acquisition of all property, real or personal and all interests in connection therewith, including all rights-of-way and easements therefor;
- (b) Physical construction, installation and testing, including the costs of labor, services, materials, supplies and utility services used in connection therewith;
- (c) Architectural, engineering, legal and other professional services;

(d) Expenses of obtaining permits or approvals before construction or other project charges which become due during construction;

(e) Any miscellaneous expenses incidental to a project.

Debt service. The principal and interest necessary to pay an indebtedness of the city related to the stormwater utility in any year.

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

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

Equivalent residential unit or ERU. The average impervious area of residential property per dwelling unit located within the city.

ERU rate. A utility fee charged on each ERU as established by resolution of the Duluth public utilities commission as provided herein.

Green rate control infrastructure. One or more rate control structures designed, constructed and maintained to collect stormwater runoff, temporarily store it and attenuate the discharge flow rate from the property from which it is collected by means of plant or soil systems, permeable pavement or other permeable surfaces or substrates, stormwater harvest and reuse, or landscaping to store, infiltrate, or evapotranspire stormwater .

Green water quality infrastructure. One or more water quality structures designed, constructed and maintained to capture sediment, floatable debris and oil and other chemical pollutants to prevent them from being discharged into public waters by means of plant or soil systems, permeable pavement or other permeable surfaces or substrates, stormwater harvest and reuse, or landscaping to store, infiltrate, or evapotranspire stormwater.

Impervious area. For purposes of this Section, "impervious area" shall mean the same as "impervious surface" as defined in Section 50-41.9 of the Duluth City Code, 1959, as may be amended.

Nonresidential property. Developed property that is classified by the city assessor as property types 3 and 5 pursuant to Minnesota Statutes Section 273.13. Property that has a mixture of residential and nonresidential uses shall be considered nonresidential.

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

which are such as may be reasonably expected to be incurred in accordance with sound accounting practices.

PUC. The Duluth Public Utilities Commission established pursuant to Article XXXV of Chapter 2 of the Code.

Rate Control Structure. One or more stormwater structures designed, constructed and maintained to collect stormwater runoff, temporarily store it and attenuate the discharge flow rate from the property from which it is collected. The term, Rate Control Structure, may include a Green Rate Control Structure. A Rate Control Structure shall be designed, constructed and maintained so that it also constitutes a water quality control structure.

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

Served property. That portion of a subject property from which stormwater is exclusively channeled to a rate control structure or to a water quality control structure or which deposits stormwater solely into Lake Superior, the St. Louis river or the St. Louis river Estuary.

Stormwater. Water that is generated by rainfall or snowmelt which causes runoff.

Stormwater drainage system or system. The existing constructed and natural stormwater drainage facilities and channels of the city and all improvements thereto which are the property and responsibility of the utility, to be operated by the utility to, among other things, conserve water, control discharges necessitated by rainfall events, incorporate methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over-drainage, environmental degradation and water pollution or otherwise affect the quality and quantity of discharge from such system.

“Stormwater management site plan” or “SMSP”. A SMSP shall include

(a.) a plan of the subject property showing all impervious surfaces on the property by size, type, and location.

(b.) drainage patterns for the entirety of the subject property.

(c.) location and type of any rate control structure and water quality control structure on the subject property along with a schematic drawing of each such structure and operation, maintenance and inspection procedures and schedules for each such structure.

(4.) green space portions of the subject property which are protected from any use which would negatively affect their ability to absorb stormwater.

Stormwater utility or utility. The utility created by this article to operate, maintain and improve the stormwater drainage system.

Subject property. Property which is designated as such on the application, which shall include served property.

Utility fee. A utility fee authorized by Minnesota law and this Article which is established to pay for operations and maintenance, extension and replacement and debt service.

Waterfront property. Property having frontage directly on Lake Superior, the St. Louis River or the St. Louis River estuary.

Water quality control structure. One or more structures which are designed, constructed and maintained to constitute BMPs to capture sediment, floatable debris including oil and other chemical, and pollutants to prevent them from being discharged into public waters from served property. A water quality control structure may include a green water quality control structure.

Section 2. That Section 43-67 of the Duluth City Code, 1959, as amended is hereby amended by deleting therefrom Sub-subsection (3) of Subsection (a) thereof:

~~(3) The property is subject to stormwater management practices that significantly improve the quantity or quality of the stormwater runoff from the property;~~

3. That Article IX of Chapter 43 of the Duluth City Code is hereby amended by the addition of a new Section 43-76.1 which reads as follows:

Section 43-67.1 Credit-treatment and rate reductions

An applicant who has applied for and has been approved for a credit under this section against the stormwater fee payable with regard to any served property shall be entitled to credit against the fee payable with regard to the served property as follows as long as approval of the Application had not been revoked:

(a.) for property served by a water quality control structure which is not a green water quality control infrastructure—a percentage of the fee payable pursuant to Section 43-66 above with regard to the served property established by the PUC.

(b.) for property served by for a green water quality control infrastructure— a percentage of the fee payable pursuant to Section 43-66 above with regard to the served property established by the PUC

(c.) for property served by a rate control structure which reduces the runoff rate from the served property to the level of a 5 year flood— a percentage of the fee payable pursuant to Section 43-66 above with regard to the served property established by the PUC.

(d.) for property served by a rate control structure which reduces the runoff rate from the served property to the level of a 10 year flood— a percentage of the fee payable pursuant to Section 43-66 above with regard to the served property established by the PUC.

(e.) for property served by a rate control structure which reduces the runoff rate from the served property to the level of a 25 year flood— a percentage of the fee payable pursuant to Section 43-66 above with regard to the served property established by the PUC.

(f.) for property served by a rate control structure which reduces the runoff rate from the served property to the level of a 100 year flood— a percentage of the fee payable pursuant to Section 43-66 above with regard to the served property established by the PUC.

(g.) for property which was previously undeveloped or from which previously existing development is being removed and replaced by new development, a percentage, as determined by the City Engineer, representing the reduced runoff rate from its previous state to the runoff rate after its development or redevelopment.

(h.) any portion of any property which is not served property shall not be entitled to any credit.

4. That Article IX of Chapter 43 of the Duluth City Code is hereby amended by the addition of a new Section 43-76.2 which reads as follows:

Section 43-67.2 Waterfront property credit

An applicant who has applied for and has been approved for a waterfront property credit against the stormwater fee payable with regard to any served property shall be entitled to credit of of a percentage of the fee payable pursuant to Section 43-66 above with regard to the served property established by the PUC as long as approval of the Application had not been revoked, subject to the following:

- (a.) all served property shall be nonresidential property.
- (b.) all stormwater leaving the served property must leave the property only after having been treated by an appropriate water quality control structure.
- (c.) no stormwater from the served property shall enter the City stormwater system.

5. That Article IX of Chapter 43 of the Duluth City Code is hereby amended by the addition of a new Section 43-76.3 which reads as follows:

Section 43-67.3 Credit application process-revocation

(a.) The applicant for a credit under Section 43-67.1 or 43-67.2 shall submit a written application to the director in the form directed by the Director which shall include at least the following. The director may refuse to accept any application that the director deems to be incomplete or otherwise inadequate.

- (1.) the legal name and legal status of the applicant.
- (2.) the address of Applicant
- (3.) the address and legal description of the subject property;
- (4.) a scaled site plan of the subject property, showing, if applicable, the waterfront property involved in the Application.
- (5.) a scaled site plan of the served property.
- (6.) a scaled drawing and written description of each rate control structure and water quality control structure serving the served property.

(7.) a SMSP including a maintenance plan and program for each rate control structure and water quality control structure serving the served property.

(8.) where Minnesota state regulations require an Industrial Stormwater Permit and a Stormwater Pollution Prevention Plan, said permit and plan shall have been approved by the Minnesota State Pollution Control Agency and submitted to the director

(b.) before accepting an application, the director, at their discretion, may require the applicant to submit a survey of the subject property prepared by a licensed engineer showing the boundaries of the subject property and the boundaries of the served property. The director may also require the applicant to provide an as-built engineered drawing of each rate control structure and each water quality control structure or any combination thereof.

(c.) the director may cause an on-site inspection to be made of the subject property and of the served property; a written record of any on-site inspection shall be filed with the application.

(d.) after completion of construction of any rate control structure and any water quality control structure and upon completion of the requirements of subsection a., b. and c. above, the director may grant or deny the application for credit. Upon the granting of any credit, the applicant's stormwater management fees shall be reduced by the amount of the approved credit.

(e.) in the event that the director determines, at any time, that any of the following has occurred, the director may revoke any credit after which no such credit shall be applied to the applicant's stormwater management fees:

(1.) the application contained any false or misleading information.

(2.) any of the rate control structures or the water quality control structures included in the application were not installed in accordance with the information contained in the application.

(3.) any of the rate control structures or the water quality structures have not been operated or maintained in a manner which maintains their design efficiency.

Section 6. That this ordinance shall take effect 30 days after its passage and publication.

..Statement of Purpose

STATEMENT OF PURPOSE: The purpose of this ordinance is to authorize a credit against stormwater fees charged pursuant to the code for properties where the payers of those fees have installed measures to treat stormwater runoff from their properties and also where they have installed measures reduce the volume of that runoff. It also authorizes credits for commercial and industrial properties that treat and then divert runoff from their properties into Lake Superior, the St. Louis River and the Estuary. It also allows the treatment and runoff control to be accomplished by man-made structures and by "green" means.

The actual amounts of the credits are to be established by the PUC.