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Title: AN ORDINANCE TO FUND FROM THE GENERAL LEVY THE STREET SYSTEM MAINTENANCE UTILITY, AMENDING ARTICLE XIII OF CHAPTER 45 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

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AN ORDINANCE TO FUND FROM THE GENERAL LEVY THE STREET SYSTEM MAINTENANCE UTILITY, AMENDING ARTICLE XIII OF CHAPTER 45 OF THE DULUTH CITY CODE, 1959, AS AMENDED.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That Article XIII of Chapter 45 of the Duluth city code, 1959, as amended, is hereby amended to read as follows:

Article XIII. Street System Maintenance Utility.

Sec. 45-109. Policy and purpose.

The city council finds that all persons, businesses, institutions and organizations in the city benefit from the use of the street system across the entire city for the development and maintenance of economic, cultural and community vitality as well as for the general health, safety and welfare of the city's residents. The council further finds that the loss of the previous funding sources for street maintenance and reconstruction has had a significant adverse impact on the city's ability to maintain its street system at an acceptable level of repair. Therefore the city council has determined that, in order to provide a safe, well maintained street system which will promote the economic vitality of the city and the general health, safety and welfare of its residents, it is in the best interests of the city and

its residents, businesses and institutions that the city create and operate a city-wide street system maintenance utility. The city council further has determined that the operation and maintenance of such a utility benefits each and every property within the city. The city council has therefore determined that it is fair, appropriate and reasonable that the costs of such operation be paid for on a fair and reasonable basis by all ~~taxable~~ of the property in the city so benefitted and that the costs thereof should be ~~charged to and~~ collected from all such benefitted properties.

Sec. 45-110. Definitions.

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

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

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

~~Non-residential property. All property other than residential property.~~

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

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

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

~~Street maintenance utility levy~~ **Utility fee.** A levy provided for ~~fee authorized by this Article which is established~~ to pay for operations, maintenance, significant repair and replacement costs including reconstruction and mill and overlay and debt service

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

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

(a) **Utility budget development.**

Annually, in conjunction with the approval of the overall city budget city administration shall cause a budget to be prepared for the coming year for the utility. Said budget shall describe the nature of the work to be performed and the estimated amount to be spent on the items of work.

Sec. 45-112. Utility fees and revenues.

Upon approval of the utility budget as described in Section 45-111 above, the council shall by

ordinance resolution establish the street maintenance utility levies as part of the city's general levy fees to pay for recover from property benefitting from the system the costs of the utility. Subject to the limitations contained in this Section, this Article shall apply to all property in the city of Duluth. The council may establish differing rates for residential and non-residential property based on the reasonable benefits accruing to each such classification of property. The fees established shall defray the anticipated cost of the utility for the budget year to which they related based on the reasonable benefits accruing to each class of property;

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

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

(d) Nothing to the contrary in this Article withstanding, in the event that any work constitutes an improvement the cost of which is assessed against any property pursuant to Chapter IX of the Charter, the amount of said assessment related thereto payable in the first year only of such assessment shall be reduced by the amount of any fees paid pursuant to this Section in the most immediate preceding year;

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

(f) In addition, delinquent utility fees shall be collected in the same manner as taxes against the property and may also be collected in an action at law against the owner, lessee or the occupant of the parcel. On or before July 1 of each year, the director shall transmit to the city assessor a list of all delinquent utility fees for the preceding calendar year and the parcels which each delinquent fee relates to. Upon receipt of such list, the city assessor shall prepare a delinquent utility fee roll containing, in columns, the name of the owner, if known, of each parcel where utility fees are delinquent, a description of each parcel and the amount of delinquent utility fees from the previous year. On or before August 1 of each year, the city assessor shall certify the delinquent utility fee roll to the city council. The city clerk shall send notice by first class mail to the apparent owner of each parcel and any other party known to have a legal interest in the property stating the amount of the utility fee due, a description of the property, that the utility fees are due and payable before October 1 of that year and that the delinquent utility fee roll is on file in the office of the city clerk. If the city council finds the roll to be proper and correct, it shall by resolution confirm the roll on or before October 1. The confirming resolution shall contain a collection fee added to each amount due to reimburse the city for its administrative costs of collection. On or before the tenth day of October each year, the city treasurer shall file with the county auditor a certified statement of all delinquent utility fees under this Article, describing the land affected and giving the amount of the fee, with a ten percent penalty added, after which the delinquent fee shall be processed in the same manner as an assessment under the provisions of the City Charter.

Section 2. That this ordinance shall take effect on January 1, 2017 or 30 days after its passage and publication, whichever is later.

STATEMENT OF PURPOSE: The purpose of this ordinance is implement a change in the funding source for the street maintenance utility, changing it from a fee separate from the City's general levy

backed up by assessments to the city's general property tax levy. Recent state supreme court decisions have raised questions related to the use of fee-based system backed by special assessments to fund such utilities and so, to provide the revenue necessary to fund street maintenance, the city is switching to an unquestioned source of funding for that purpose.