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Title: AN ORDINANCE AMENDING CHAPTER 43 OF DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE THAT THE DULUTH PUBLIC UTILITIES COMMISSION HEAR AND DECIDE APPEALS ARISING UNDER CHAPTER 43 OF THE CITY CODE, AMENDING TIMELINES FOR FILING APPEALS, AND INCLUDING THE PUBLIC UTILITIES COMMISSION IN THE CHAPTER DEFINITIONS.

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AN ORDINANCE AMENDING CHAPTER 43 OF DULUTH CITY CODE, 1959, AS AMENDED, TO PROVIDE THAT THE DULUTH PUBLIC UTILITIES COMMISSION HEAR AND DECIDE APPEALS ARISING UNDER CHAPTER 43 OF THE CITY CODE, AMENDING TIMELINES FOR FILING APPEALS, AND INCLUDING THE PUBLIC UTILITIES COMMISSION IN THE CHAPTER DEFINITIONS.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That Section 43-3 of the Duluth city code, 1959, as amended, is hereby amended to read as follows:

Sec. 43-3. Definitions.

For the purpose of this Chapter, the following words and phrases when used in the definitions in this Section and when otherwise used in this Chapter shall have the meanings ascribed to them in this Section, unless the context otherwise clearly indicates.

43-3.1. Best management practices program (BMP program). A program conforming to the requirements set forth in Section 43-50.1(b) below which establishes practices and procedures for addressing FOG issues as they affect a wastewater facility.

43-3.2.

(a) Building drain. That part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of a building and conveys it to the building's sewer, beginning five feet (1.5 meters) outside the inner face of the

building wall;

(b) Building drain--sanitary. A building drain which conveys wastewater only;

(c) Building drain--storm. A building drain which conveys storm water or other unpolluted water drainage but no wastewater.

43-3.3.

(a) Building sewer. The extension of the building drain from a clean-out complying with the requirements of the Plumbing Code to the public sewer or other place of disposal including the "wye" pipe or other connection into the public sewer, also called house connection;

(b) Building sewer--sanitary. A building sewer which conveys wastewater only;

(c) Building sewer--storm. A building sewer which conveys storm water or other unpolluted water drainage but no wastewater.

43-3.4. Capital cost. All reasonable and necessary costs and expenses incurred by the city in planning, designing, financing and constructing wastewater facilities including but not limited to costs and expenses for obtaining necessary permits, licenses, approvals and grants for design and construction, architects' and engineers' fees, construction costs, fees for legal and consulting services, and that portion of WLSSD capital costs charged by WLSSD to city.

43-3.5. City. The city of Duluth, a municipal corporation, located in St. Louis County, Minnesota.

43-3.6.

(a) Classes of uses. The division of wastewater facility users by waste characteristics, and process or discharge similarities;

(b) Domestic user. Those users which discharge exclusively domestic strength wastewater as defined in Section 43-3.40 below or wastewater which contains characteristics so similar to domestic strength wastewater as to be capable of treatment in the same manner as domestic strength wastewater;

(c) Nondomestic wastewater user. A user which discharges wastewater other than domestic wastewater.

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43-3.6.1. Commission. The Duluth public utilities commission established pursuant to Articles XXXV of Chapter 2 of this Code.

43-3.7. Debt service. The principal and interest necessary to pay indebtedness of the city and city's share of the indebtedness of the WLSSD.

43-3.7.1. Director. The director of public works and utilities or his or her designee.

43-3.8. Easement. An acquired legal right for the specific use of land owned by others.

43-3.9. Federal code of regulations. The United States government regulations so entitled.

43-3.10. Floatable oil. Oil, fat or grease in a physical state such that it will separate by gravity from wastewater by treatment in an approved pretreatment facility.

43-3.11. Biochemical oxygen demand (BOD). The quantity of oxygen utilized in the biochemical oxidation of organic matter expressed in milligrams per liter, as determined in accordance with standard laboratory procedures as set out in standard methods.

43-3.11.1. FOG. Fats, oil and grease derived or containing any biological substance or process.

43-3.11.2. Food service facility (FSF). Any facility which prepares or serves food for commercial sale or distribution to any members of the public.

43-3.11.3. Food grinder. Any device installed in the plumbing or sewage system for the purpose of grinding food waste or food preparation by-products for the purpose of disposing it into the sewer system.

43-3.12. Garbage. The animal and vegetable waste resulting from the handling, preparation, cooking and serving of foods.

43-3.12.1. Grease interceptor. A device designed to remove FOG consisting of a baffled and partitioned vault that is installed in-ground and outside the building which it serves.

43-3.12.2. Grease trap. A device designed to remove FOG located within the kitchen of a FSF.

43-3.13. Industrial cost recovery. Recovery by the WLSSD from the industrial users of the WLSSD wastewater facilities of the grant amount received by the WLSSD from the United States environmental protection agency allocable to the transmission and treatment of such users' wastewater in the amount as required by Public Laws 92-500.

43-3.14. Industrial user. Any nongovernmental user of the district's wastewater treatment facilities, as is identified in the Standard Industrial Classification Manual (1972), office of management and budget, as amended and supplemented, under the following divisions:

- (a) Division A - agriculture, forestry and fishing;
- (b) Division B - mining;
- (c) Division D - manufacturing;
- (d) Division E - transportation, communication, electric, gas and sanitary services;
- (e) Division I - services;

and otherwise classified as industrial user according to the Federal Water Quality Act amendments of 1972 and regulations promulgated pursuant thereto.

43-3.15. Industrial waste. The solid, liquid or gaseous waste resulting from any industrial or manufacturing processes, trade or business, or from the development, recovery or processing of natural resources.

43-3.16. Loads. Quantities of wastewater characteristics such as BOD, SS, P or other constituents.

43-3.17. May. That the action described is permissive.

43-3.18. National pollution discharge elimination system (NPDES) permit. Is a permit system of the United States environmental protection agency.

43-3.19. Natural outlet. Any outlet into a water course, pond, ditch, lake or other body of surface or ground water.

43-3.20. Peak flow. The minimum instantaneous rate of flow that is discharged by a user into the wastewater facility.

43-3.21. Permit. Written authorization from the city or the WLSSD to perform acts allowed or required by this ordinance [Chapter].

43-3.22. Person. Any individual, firm, company, association, society, corporation (municipal or otherwise) or other group discharging wastewater to the wastewater facilities.

43-3.23. pH. The logarithm of the reciprocal of the hydrogen ion concentration. The concentration is the weight, in grams, of hydrogen ions per liter of solution. Neutral water, for example, has a pH value of 7 and a hydrogen ion concentration of 10 to the -7 power.

43-3.24. Phosphorus (P). Total phosphorus in wastewater as determined under standard laboratory procedures as set forth in standard methods.

43-3.24.1. Plumbing Code. The Uniform Plumbing Code as amended and adopted by the state of Minnesota as the Minnesota State Plumbing Code and as the same may, from time to time, be further amended.

43-3.24.2. Point of sale certificate or POS certificate. A certificate issued by the director upon his or her determination either that the plumbing materials and equipment as installed and operating in the subject building are in compliance with the requirements of Section 43-31 below, that the building on the subject property does not have a basement or a cellar of any kind, or that the plumbing and equipment related to said building is not in compliance with the requirements of

Section 43-31 below but the director determines that the building and building sewer is not contributing any material or observable amounts of unpolluted water to the public wastewater collection system and is not likely to do so in the future.

43-3.25. Polluted water. Water of quality which does not meet the effluent criteria in effect, or water which would cause violation of receiving water quality standards and would be benefited by discharge to the sanitary sewers and wastewater treatment facilities provided.

43-3.26. Pretreatment. The treatment of wastewater prior to introduction thereof into the city or the WLSSD wastewater facilities.

43-3.27. Private wastewater disposal system. An arrangement of devices or structures for treating domestic or nondomestic wastewater approved for use by applicable regulations of the state of Minnesota and the county of St. Louis.

43-3.28. Properly shredded garbage. The wastes from the preparation, cooking or dispensing of foods that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers with no particle greater than 1/2 inch (1.27 centimeters) in any dimension.

43-3.29. Public sewer. Any sewer owned or operated by the city or the WLSSD.

43-3.29.1. Renovation. Any remodeling of, reconstruction of or modification of an FSF for which a building permit is required under the Minnesota State Building Code.

43-3.30. Sanitary sewer. A sewer which carries wastewater and to which storm, surface and ground water are not intentionally admitted.

43-3.30.1. Sanitary sewer overflow (SSO). An overflow, spill or diversion or release of wastewater from or caused by any blockage, disruption or damage to either a private or public sanitary sewer line, that causes wastewater to reach any waters of Minnesota or the United States, or any private or public property.

43-3.31. Sewer. A pipe or conduit that carries wastewater to storm surface or ground water.

43-3.32. Shall. That the action described is mandatory.

43-3.33. Slug. Any discharge of water or wastewater which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than 15 minutes more than five times the average 24 hour concentration of flows during normal operation and which may adversely affect the collection system and/or performance of the wastewater treatment works.

43-3.34. Standard methods. The latest edition of Standard Methods for the Examination of Water and Wastewater, published jointly by the American Public Health Association, the American Water Works Association and the Water Pollution Control Federation.

43-3.35. Repealed by Ord. No. 9629, 10-27-2003, § 11.

43-3.36. Suitable wastewater collection facilities. A device(s) adequate to capture all significant wastewater developed or occurring on the premises where such facilities are located.

43-3.37. Total suspended solids (TSS). Total suspended solids in wastewater as determined under standard laboratory procedures as set forth in standard methods as defined in Section 43-3.34 above.

43-3.38. Unpolluted water. Water which meets the effluent criteria in effect or water that would not cause violation of receiving water quality standards and would not be benefited by discharge to the sanitary sewers and wastewater treatment facilities provided.

43-3.39. User charge. A charge levied on the users of the wastewater facilities for the cost of operation, maintenance, including replacement and debt service.

43-3.40. Wastewater. That portion of the spent water of a community which is polluted water. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions.

(a) Domestic strength wastewater. Wastewater having an average daily suspended solids

concentration of not more than 300 mg./1., an average daily BOD of not more than 300 mg./1., an average daily phosphorus concentration of not more than 7 mg./1. and an average daily hexane soluble matter (grease and oil) concentration of not more than 40 mg./1;

(b) Nondomestic strength wastewater. All wastewater other than domestic strength wastewater.

43-3.40.1. Wastewater collection and transmission system (WCTS). Any system of publicly owned sewer pipes, lift stations and storage tanks utilized in the transmission of wastewater from a privately owned sewer system to a wastewater treatment facility.

43-3.41. Wastewater facility. The structures, equipment and process required to collect, carry away and treat domestic and nondomestic wastes and dispose of the effluent -- when preceded by the word "district" means the wastewater facilities of the WLSSD and when preceded by the word city means the wastewater facilities of the city.

43-3.42. Wastewater treatment works. An arrangement of devices and structures for treating wastewater, industrial waste and sludge.

43-3.43. WLSSD. Western Lake Superior Sanitary District, a public corporation and political subdivision of the state of Minnesota established by Chapter 478, Laws of Minnesota, 1971. (Ord. No. 8331, 6-13-1977, § 1; Ord. No. 9629, 10-27-2003, §§ 3 and 11; Ord. No. 9930, 10-13-2008, §§ 1-3; Ord. No. 10016, 2-22-2010, § 1; Ord. No. 10008, 12-21-2009, §§ 1-12.)

Section 2. That Section 43-8 of the Duluth city code, 1959, as amended, is hereby amended to read as follows:

Sec. 43-8. Wastewater use determined by wastewater meter--and by other means.

(a) Where the owner, occupant or user of the service has been required by the director or the WLSSD as authorized by Section 43-46 to install meters or other measuring devices that serve to demonstrate the volume of wastewater being discharged to the city's wastewater collection system and the WLSSD's treatment facilities, the volume of wastewater as so measured shall be the basis upon which the charges to be made hereunder shall be determined;

(b) Where the owner, occupant or user of the service makes use of, or disposes of water in a manner that results in not all water used as determined in Section 43-7 being discharged into the city's wastewater collection system, said owner, occupant or user may make application to the director for a determination of the quantity of such water not discharged into the city's wastewater collection system. Said application shall be addressed to the director in writing and he shall make such determination within 30 days of the receipt thereof. In making such determination, the director shall take into account all available facts and information with regard to the applicant's circumstances and operation which serve to demonstrate that the volume of wastewater being discharged into the city's collection system is less than the water used on the premises as determined in Section 43-7. The director shall, in every instance, cause inspection to be made of the applicant's premises.

Upon said determination being made, the director shall file written notice thereof with the city clerk, and shall send a copy thereof to the applicant by regular mail. The director's determination of the quantity of wastewater discharged shall be final, unless, within ~~ten~~ 15 days of the mailing of the following receipt of notice to the applicant by the director, the applicant or other aggrieved party appeals such determination in writing to the ~~city council~~ Duluth public utility commission. Within 30 days of the filing of such appeal, the ~~city council~~ commission shall hold a duly noticed hearing thereon. In reviewing the director's determination, the ~~council~~ commission shall take into account all facts and information with regard to the applicant's circumstances and operation which serve to demonstrate that the volume of wastewater being discharged into the city's collection system is less than the water used on the premises as determined in Section 43-7, but shall recognize that said determination must be in accordance with the regulations of the United States environmental protection agency.

Upon final determination being made on any such application, the volume of wastewater discharged into the city's wastewater collection system as so determined shall be the basis upon which charges to be made hereunder shall be determined. Such charges shall be made effective retroactive to the date of receipt of the written application to the director. Such charges shall be effective only for so long as the facts, information and circumstances upon which the determination is based shall continue to exist. An applicant who receives relief by virtue of a determination made under this Subsection, or his successors or assigns with notice, shall be under a continuing obligation to notify the director within 30 days of any change of circumstances in his operation, process, building drain or sewer plumbing or connection which causes an increase in the volume of the wastewater being discharged into the city's wastewater collection system.

Section 3. That Section 43-16 of the Duluth city code, 1959, as amended, is hereby amended to read as follows:

Sec. 43-16. Connection to city sewer system required.

The owner of any house, building or properties of any character wherein or whereon wastewater develops or occurs is hereby required, at the owner's expense, to install, and thereafter maintain, suitable wastewater collection facilities therein or thereon and to connect such facilities directly with the proper public sewer in accordance with the provisions of this ordinance [Chapter] at the time of construction of such facilities in the case of new construction or new use or within 90 days after date of official notice to do so in the case of existing housing, buildings or properties, provided that such public sewer is within 200 feet of the property line. All new building construction will include sump pump connections to a rain garden approved by the city engineer or to the city storm sewer system where feasible. In the event there is no feasible connections, the city may permit sump pump discharges directly to an approved site.

The owner of ~~such existing~~ the relevant premises may appeal ~~such the~~ official notice to connect ~~such the~~ premises to the proper public sewer by filing a notice of appeal with the city clerk within 15 days following receipt of ~~such the~~ official notice. It shall be the duty of the city clerk to transmit such notice of appeal to the ~~city council~~ Duluth public utilities commission at the next regular or special meeting thereof. The ~~council~~ commission shall hold a hearing on such appeal within ~~15~~30 days of the receipt by the ~~council~~ commission of said notice of appeal. The ~~council~~commission may affirm or overturn the official notice to connect ~~such the~~ premises to the proper public sewer. The decision by the ~~council~~commission on ~~such~~ the appeal shall be final. If the ~~council~~commission affirms ~~such the~~ official notice, the ~~council~~commission shall set a time for compliance with ~~such the~~ order, which shall in no event exceed 90 days from the date of the hearing on the appeal.

Section 4. That Section 43-43 of the Duluth city code, 1959, as amended, is hereby amended to read as follows:

Sec. 43-43. Authority of director and WLSSD concerning certain wastes.

If any waters or wastes are discharged or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in Sections ~~43-38~~41 to 43-42, and which in the judgment of the director or the WLSSD, may have a deleterious effect upon the wastewater facilities, processes, equipment or receiving waters or which otherwise create a hazard to life or constitute a public nuisance, the director or the WLSSD may:

- (a) Reject the wastes. In the event the director elects to reject the wastes, he shall file a report with the ~~council~~Duluth public utilities commission within seven days of such action, setting forth the full particulars and circumstances leading to such action. Unless said waters or wastes create a hazard to life or constitute a public nuisance the ~~council~~commission may, ~~by resolution passed~~ at its next regular or special meeting, overturn the action of the director in rejecting such waste;
- (b) Require pretreatment to an acceptable condition having in mind the effect on

wastewater facilities and the ability of the wastewater treatment works to treat such waste and achieve a discharge in compliance with the NPDES permit;

- (c) Require control over the quantities and rates of discharge;
- (d) Require payment to cover added cost of handling and treating the wastes not covered by existing user charges under the provisions of this ordinance [Chapter].

Section 5. That Section 43-67 of the Duluth city code, 1959, as amended, is hereby amended to read as follows:

Sec. 43-67. Utility fee adjustments.

(a) Any person liable for the payment of stormwater utility fees on nonresidential property may, subject to the limitations set forth in the Section, apply to the director for a utility fee adjustment if the person believes the utility fee to be incorrect. The request for adjustment shall be made in writing and shall state, in detail, the grounds upon which relief is sought. The director may require the applicant for relief to submit, at applicant's expense, supplemental information including, but not limited to, survey data certified by a registered land surveyor and engineering reports certified by a registered professional engineer. The director may grant an adjustment if it is found that:

- (1) A substantial error was made in the calculation of the impervious area on the nonresidential property;
- (2) The stormwater runoff from the property never enters any facility of the stormwater drainage system;
- (3) The property is subject to stormwater management practices that significantly improve the quantity or quality of the stormwater runoff from the property;

(b) Adjustments and denials of adjustments shall be made in writing by the director. No adjustment shall be made retroactively, except for initial appeals filed within six months of the effective date of this ordinance;

(c) Any person denied an adjustment by the director may appeal the denial to the ~~city council~~ Duluth public utilities commission by filing written notice of appeal with the city clerk within ~~30~~ 15 days of receipt of the director's decision and by paying a filing fee in an amount established pursuant to Section 31-8 of this Code. The ~~city council~~ commission shall hear the appeal and affirm, modify or reverse the decision of the director, applying the standards for granting adjustments set forth in this Section.

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

STATEMENT OF PURPOSE: This ordinance amends Chapter 43 by including the Duluth public utilities commission in the chapter definitions and amending Sections 43-8, 43-16, 43-43 and 43-67 by providing uniform timelines for appeal and directing such appeals to the public utilities commission, versus the city council, for final review and determination.