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Title: ORDINANCE AMENDING CHAPTER 43 OF DULUTH CITY CODE TO CONFORM TO REQUIREMENTS OF WLSSD I & I ORDINANCE AND TO DELETE REFERENCES TO THE CONSENT DECREE, AMENDING SECTIONS 43-11.1, 43-31, 43-33.1 AND 43-31.2 AND BY REPEALING SECTION 43-34 OF THE CODE.

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ORDINANCE AMENDING CHAPTER 43 OF DULUTH CITY CODE TO CONFORM TO REQUIREMENTS OF WLSSD I & I ORDINANCE AND TO DELETE REFERENCES TO THE CONSENT DECREE, AMENDING SECTIONS 43-11.1, 43-31, 43-33.1 AND 43-31.2 AND BY REPEALING SECTION 43-34 OF THE CODE.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That Section 43-11.1 of the Duluth City Code is hereby amended to read as follows:

Sec. 43-11.1. Clean water surcharge.

(a) In order to protect the public health and the environment, the city, under order from the United States environmental protection agency and Minnesota pollution control agency must improve its wastewater collection system. Therefore, upon the effective date of this ordinance, the Duluth public utilities commission shall be authorized to create a clean water surcharge upon each customer and user. There is also created in the city accounting system a fund known as the clean water fund. Into the fund shall be deposited the following amounts:

- (1) The amounts collected as the clean water surcharge under this Section;
- (2) Any amount allocated to it by action of the city council or city administration;
- (3) Any amounts received as penalties for violation of Chapter 43, Article IV;
- (4) Any amount received as fees or surcharge under Section 43-33.4;
- (5) Any amount received as the surcharge authorized by Section 43-12.1;
- (6) Any interest earned by the fund;
- (7) Any loans, loan payments or grants received by the city for the purpose of designing,

constructing, repairing, maintaining, or replacing structures or facilities, including structures used for sanitary sewage overflow storage or for repayment of loans made pursuant to the private sewer service program established pursuant to Section 43-33.1(c)(2) below, for the purpose of attaining compliance with federal, or state, or local I&I standards, or any consent decree for that purpose which is binding on the city;

(b) The money in the clean water fund shall be spent only for the purpose set out in (7) above or for the purpose of making grants and loans under the said private sewer service program. The requirements of this Chapter continue in force after the termination of the clean water surcharge. It is the policy of the city that eventually each sewer in the city shall be inspected and brought into compliance with this Chapter.

Section 2. That Section 43-31 of the Duluth City Code is hereby amended to read as follows:

Sec. 43-31. Unpolluted water prohibited.

- (a) No leak, break, failure to function of a building sewer, or connection of area way drains, perimeter foundation drains, rain leaders, down spouts or rain connector, or any condition of the building sewer that allows other sources of unpolluted waters, such as stormwater, ground water, roof runoff, subsurface drainage, unpolluted industrial water or cooling water, to enter a building sewer or building drain which is connected directly or indirectly to a public sanitary sewer shall be made or allowed to exist. ~~Down spouts connected to roof gutters will not discharge water within two feet of the building foundations, and parallel to the property if within five feet of the property line. An exception of this will be if the building down spout is connected to a rain barrel with a minimum capacity of 35 gallons. The owner or operator is responsible for compliance with the requirements of this Article.~~ From time to time, the city may offer programs, grants or incentives in an effort to improve the sanitary collection system. Regardless of these measures, it is the policy of the city to inspect, enforce and attain compliance with this Code for all buildings and sewers. Enforcement actions separate from any program or incentive are proper. Homes with existing sump pumps will be reinspected to ensure proper functioning. There shall be no fee for this reinspection;
- (b) Upon completion of the construction, reconstruction, repair which includes excavation of any kind or replacement of any building sewer, said building sewer shall be capable of passing an air test in accordance with the plumbing code. Any such building sewer not capable of passing such air test shall either be further repaired or replaced in its entirety until it passes such air test;
- (c) No person owning or controlling, in whole or in part, any building shall allow any condition or connection prohibited in subsection (a) above to be made or to exist, or shall fail to cause any such condition or connection existing to be disconnected or remedied within 90 days of discovery of the defect or of being ordered to make such disconnection or repair by the director. Any homeowners with redirected sump pump that deliberately discharges into the sanitary sewer system will be fined up to \$500 upon conviction for each offense. Additionally, any homeowner who installed a sump pump at any city expense which pump deliberately discharges into the sanitary sewer system will be required to reimburse the city for all costs associated with the installation of the sump pump;
- (d) No person shall tamper with, modify or make any change to any plumbing materials or equipment necessary to prevent noncompliance with the requirements of Subsection (a) above. Nor shall any owner or person owning or controlling any building permit any person to so tamper with, modify or make any changes to such materials or equipment in such building or fail to maintain in fully functional condition such materials and equipment.

Section 3. That Section 43-33.1 of the Duluth City Code is hereby amended to read as follows:

Sec. 43-33.1. Entry for inspections; building sewer improvement, I&I program and private sewer service grant/loan program.

- (a) Upon designation of any sewer basin pursuant to Section 43-33 above, the director shall cause all buildings within said sewer basin to be inspected for compliance with Section 43-31 above. Upon determination that any building does not comply with Section 43-31 above and does not qualify for a certificate of noncontribution, the director shall issue an order to disconnect any portion of the plumbing of such building in violation of said Section 43-31, or do any act required to attain compliance;
- (b) No person shall fail or refuse to allow the director to inspect any building to determine whether the plumbing of such building complies with the requirements of Section 43-31 above after having been given reasonable advance notice of the director's intent to do so; such notice may be given by mail as provided for in Section 43-33 above or in person or by posting notice thereof on the premises to be inspected. In the event that the owner or person in control of any building shall deny or refuse to allow the director to inspect any such building after such notice has been given, the director may allow the inspection to be made by a qualified person who is not a city employee, in a manner acceptable to the director, having results reported and supported by evidence acceptable to the director, all at the owner's expense. If the owner or person in control refuses to allow any sufficient inspection, the director shall use such other means as are authorized by law, including but not limited to securing a search warrant for such building or a court order requiring that access be granted in order to gain access to conduct such inspection;
- (c) (1) The director, using uniform criteria, shall determine which properties and/or building sewers in the district shall be included in the I&I program. For each building sewer included in the I&I program, sewer

inspections required by the director for purposes of the program will be performed by city employees or agents without charge. The director, using uniform criteria, shall annually designate ~~at least 630~~ building sewers that, as part of the I&I program, will have the building sewer trap removed, footing drains disconnected from the sanitary sewer system, and a sump pump installed or gravity discharge installed. The city will pay up to \$2,150 of the reasonable cost of these improvements based upon the uniform criteria in the I&I guidelines;

(2) Pursuant to the authority of Minnesota Statutes Section 471.342 and any successor thereto, the city hereby establishes the Duluth private sewer service grant/loan program, hereinafter referred to as the "private sewer service program," as part of the city's inflow and infiltration program. Said program shall be available for use on properties located within basins designated pursuant to paragraph (a) above which have been specifically designated as eligible therefor in writing by the director. The city council is hereby authorized to approve, by resolution, program guidelines establishing criteria for program eligibility and standards for compliance with the program. Pursuant to said guidelines the city may provide grants or loans or both to private property owners for the repair, reconstruction or lining of private sanitary sewer laterals which are eligible therefore pursuant to the private sewer service program guidelines;

(d) A property remains subject to all applicable standards, requirements, and penalties of this Chapter regardless of whether or not it is selected for the I&I program;

(e) The clean water surcharge shall terminate on June 30, 2028.

Section 4. That Section 43-33.2 of the Duluth City Code is hereby amended to read as follows:
Sec. 43-33.2. Certificate of noncontribution.

(a) Upon inspection of any building by the director for compliance with the requirements of Section 43-31 above and based on that inspection, the director is authorized to issue a certificate of noncontribution in a form suitable for recording among the property records of St. Louis County recorder if he or she determines either that:

(1) The sump pump, footing drain disconnect, and building trap removal are in compliance with Section 43-31 above;

(2) The plumbing materials and equipment as installed and operating in that building are in compliance with the requirements of Section 43-31 above;

(3) The plumbing and equipment in said building is not in compliance with the requirements of Section 43-31 above but the director determines that the building 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;

(b) Certificates of noncontribution shall only be issued by the director and persons designated by him or her to issue such certificates. The director shall establish standards and procedures for certifying persons authorized to issue certificates of noncontribution on his or her behalf;

~~(b)(c)~~ In the event that the director determines after reasonable investigation that any building for which a certificate of noncontribution has been issued is now contributing a material or observable amount of unpolluted water to the public wastewater collection system, the director may give notice in the manner provided for in Section 43-33 above of his or her intention to revoke such certificate of noncontribution and that such revocation shall become final 15 days of the date of giving such notice unless the affected owner or person in control of the affected building files a written appeal of that decision with the city clerk prior to the revocation of the certificate. Any such appeal shall be heard by the Duluth public utilities commission in accordance with the procedures established by the commission. When the revocation of any certificate of noncontribution has become final, the director shall cause notice there to be filed in the office of the St. Louis County recorder

Section 5. That Section 43-34 of the Duluth City Code is hereby repealed.

~~Sec. 43-34. Survey by director.~~

~~The director shall make a careful survey of all districts provided with sanitary sewers and report to the city council, as early as practical, the extent of which such sewers are being used for the disposal of unpolluted water and make such recommendations as he may deem proper.~~

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

STATEMENT OF PURPOSE: The purpose of this ordinance is to eliminate reference to the consent decree

and to make minor adjustments to bring the city's I & I provisions into conformance with the requirements of the recently-enacted WLSSD I & I ordinance.

The city has had provisions in its Code aimed at reducing or eliminating inflow and infiltration ("I & I") of clear water into its sanitary sewer system. Some of these provisions were drafted to address issues that were identified by the consent decree with USEPA and the MPCA and Code provisions reflected this origin. These and other efforts undertaken by the city have been sufficiently successful to allow the consent decree to be lifted and consequently the city's approach to the I & I issue is no longer controlled by it. Therefore it is appropriate to eliminate the references to it in the Code and that is what is done by a number of the proposed Code changes.

In addition, other changes coincide with the passage of the soon-to-be-effective WLSSD I & I ordinance. At this point, the city has completed its initial sweep of all of its sewer basins and it is now in the process of doing second-round follow-up of those properties that did not respond to the city's first attempts to inspect and enforce compliance with its I & I programs. So the designation, inspection and enforcement process is being adjusted to this phase of enforcement.