



## Legislation Text

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AN ORDINANCE AMENDING DIVISION 2 OF ARTICLE VII OF CHAPTER 45 OF THE DULUTH CITY CODE, 1959, AS AMENDED BY ADDING A NEW SECTION 45-89.1 THERETO AND BY AMENDING PROVISIONS OF ARTICLE VIII THEREOF GOVERNING OWNER'S RESPONSIBILITY FOR INSTALLING AND MAINTAINING DRIVEWAY CULVERTS.

### CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That Division 2 of Article VII of Chapter 2 of the Duluth City Code, 1959, as amended, is hereby amended to add a new Section 45-89.1 which reads as follows:

**Sec. 48-89.1. Driveway Culverts-installation and maintenance.**

(a) Except as hereinafter provided for in this section, the installation, maintenance, repair or replacement of any culvert in any ditch within a city right-of-way upon or over which a driveway has been constructed or is to be constructed connecting a city street within said right-of-way to private property adjacent to said right-of-way and the cost thereof shall be solely the responsibility of the owner of the adjacent property so connected. Any such culvert shall be deemed to be a local improvement under this division and the provisions of this division shall apply to such installation, maintenance, repair or replacement of such culvert.

(b) Notwithstanding the provisions of Paragraph (a) above, in the event that the city is performing any construction work in any portion of any street right-of-way and the City Engineer determines, in the exercise of his or her discretion, that said construction work has caused or will cause damage to or disruption of the function of any culvert in said right-of-way or shall otherwise determine that it is advantageous to the city to do so, the city may cause any such culvert within such right-of-way to be reset or to be replaced as the City Engineer shall determine, in a manner which will result in the culvert serving substantially the same functional purposes as the culvert that it replaces. The choice of driveway surface materials used to replace any driveway shall be at the discretion of the City Engineer.

(c) Notwithstanding the provisions of Paragraph (a) above, in the event that the City Engineer shall determine, in the exercise of his or her discretion, that a culvert described in Paragraph (a) above is structurally deficient due to being severely rusted, cracked, crushed or crimped or is otherwise hydrologically deficient through no fault of the owner of the adjacent property such that the condition of said culvert is causing unreasonable ponding of water or other condition having a detrimental impact on the structural integrity of the adjacent road or public property, the owner of the adjacent property may give notice of such condition to the City Engineer and request that the City replace said culvert. In the event that the City Engineer determines that said culvert is so in need of replacement, the City Engineer may order the subject culvert replaced at such time and in such manner as the City's time and resources dictate; provided that nothing herein shall create any liability on the part of the City to replace said culvert or any liability to said owner or to any third party for any injury to or death of any person or persons or any liability for any damage to or destruction of property arising in any way out of the condition of said culvert or any failure to replace it. . The choice of driveway surface materials used to replace any driveway shall be at the discretion of the City Engineer.

(d) Notwithstanding the provisions of Paragraph (c) above, nothing herein shall be deemed to prevent the owner of property adjacent to a culvert so in need of replacement from replacing a culvert in accordance with the terms and conditions of Paragraph (a) above.

Section 2. That Section 45-93 of the Duluth City Code, 1959, as amended is hereby amended to read as follows:

**Sec. 45-93. Obstructions causing water to flow over highways or public grounds prohibited.**

No person, either directly or indirectly, shall install, construct, maintain, cause to be installed,

constructed, maintained, or commence the installation, construction or maintenance in, upon or under any natural watercourse, any culvert, ditch, drain, pipe, main, driveway or any obstruction whatsoever in such manner as shall or may cause surface water to overflow into, upon, over, across or under any of the public highways or grounds within the city.

Section 3. That Section 45-94 of the Duluth City Code, 1959, as amended is hereby amended to read as follows:

**Sec. 45-94. Permit--required.**

With the exception of a publicly regulated utility doing business in the city under a franchise granted by the city, doing business in such city under authority of general law or under a certificate of public convenience and necessity issued by any agency of the state authorized to issue any such certificate, no person, either directly or indirectly, shall construct, reconstruct or install in, upon or under any natural watercourse any culvert, ditch, drain, pipe, main, driveway or any obstruction whatsoever without first applying to and receiving from the engineering division of the city a permit therefor in the manner provided in this Article.

Section 4. That Section 45-95 of the Duluth City Code, 1959, as amended is hereby amended to read as follows:

**Sec. 45-95. Same--Application.**

The application for a permit under this Article shall set forth, in writing, the name of the applicant, the legal description and common post office address of the place where the applicant will install, construct, maintain or keep any such culvert, ditch, drain, pipe, main, driveway or any obstruction whatsoever, the size and type of material which the applicant proposes to use for such culvert, ditch, drain, pipe, main, driveway or obstruction, together with such other or additional information or data as the engineering division may require.

Section 5. That Section 45-97 of the Duluth City Code, 1959, as amended is hereby amended to read as follows:

**Sec. 45-97. Same--Investigation.**

Upon the filing of an application for a permit under this Article, the city engineer or his duly authorized agent shall promptly investigate the matters set forth in the application and thereupon shall determine whether the culvert, ditch, drain, pipe, main, driveway or obstruction, as proposed to be installed, constructed or maintained, can be accomplished in accordance with recognized engineering practices and in such manner as to prevent damage or destruction of any public highway or public ground resulting or likely to result from the overflow or diversion of surface waters from the presence of any such culverts, ditches, drains, pipes, mains or obstruction in, near or adjacent to any such highway or ground.

Section 6. That Section 45-98 of the Duluth City Code, 1959, as amended is hereby amended to read as follows:

**Sec. 45-98. To be kept in good repair.**

Every person, whether owner, tenant, occupant or agent of any land lying in or forming part of a natural watercourse wherein is located any such culvert, ditch, drain, pipe, main or other obstruction, shall keep and maintain the same continually in a state of good repair.

Section 7. That Section 45-99 of the Duluth City Code, 1959, as amended is hereby amended to read as follows:

**Sec. 45-99. Establishment of rules and regulations.**

The city engineer is authorized to prescribe such reasonable rules and regulations not inconsistent with this Article as he may deem necessary and proper for the inspection of any such culvert, ditch, drain, pipe, main, driveway or other obstruction before the bed or trench in which either of the same is backfilled or covered.

Section 8. That this ordinance shall take effect 30 days after its passage and publication.

STATEMENT OF PURPOSE: The purpose of this ordinance is to clarify the responsibilities of the city and of property owners for the maintenance, repair and replacement of ditch culverts that provide for driveway access to private property.

In areas of the city not substantially served by curb and gutter systems, stormwater is normally handled by ditches constructed adjacent to roadways and within the city right-of-way. These ditches are public facilities

within the right-of-way and necessary to serve and protect the public roads. But, in order for adjacent property owners to gain access to their properties, they need to have culverts placed in those ditches so that they can construct driveways to connect their properties to the road. These culverts do not serve the needs of the public and are essentially for the benefit of the adjacent properties.

Culverts can fail over time due to the effects of weather and time, such as rust, cracking and other causes. But in addition, structurally sound culverts which are adequately meeting the city's needs for functional ditching can also cause problems to adjacent property owners due to frost heaving or other problems related to the driveways they support. This often precipitates requests that the city "fix" their culvert problems.

The purpose of this ordinance is to clarify what the responsibilities of the city and of the adjacent property owners are. In essence, as the culverts primary purpose is to provide access to private property, it is intended to make it clear that the owner of the benefitted property is responsible for the costs of maintaining the culverts. The exceptions are when the culverts are serving the purpose of protecting the public road or and impacted by a city construction project. And it should be noted that culvert replacement by the city will be on an "as available" basis.