

## CHAPTER 43.

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**Article I. Wastewater Facilities System.**

**Sec. 43-1. Established.**

There is hereby established a city wastewater facilities system. Such system shall include all lateral, main and intercepting sewers, wastewater pumping stations, equipment and other works and facilities, whether presently existing or hereafter acquired, as are found necessary for completion of such system in first class operating condition adequate to collect and transmit all wastewater of the city which is discharged into the city's wastewater facilities system to the wastewater facilities of the WLSSD. (Ord. No. 6155, 9-9-1938, § 1; Ord. No. 8331, 6-13-1977, § 1.)

**Sec. 43-2. Declaration of policy and benefits.**

It is hereby declared and ordained that the establishment and operation of the city wastewater facilities system is necessary and conducive to the public health, safety, welfare and convenience of the city and its inhabitants; that such system shall constitute and be a public utility plant and convenience from which revenues may and shall be derived; and that service to be rendered to the inhabitants, industries and properties by the collection of wastewater confers direct and indirect benefits to the inhabitants, industries and properties of the city for which reasonable rates and charges may be imposed. (Ord. No. 6155, 9-9-1938, § 2; Ord. No. 8331, 6-13-1977, § 1.)

**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  $10^{-7}$  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. Ord No. 10463, 7-11-2016, §1)

## **Article II. User Charge System and Industrial Cost Recovery.**

### **Sec. 43-4. User charge system established.**

For the purpose of distributing among users within the city the charges made to the city by the WLSSD for the cost of the city's proportionate share of the operation, maintenance, including replacement and debt service of WLSSD wastewater facilities for the purpose of recovering from users the cost of operation, maintenance, including replacement and debt service of city wastewater facilities and for services rendered and benefits conferred by WLSSD and city facilities, the Duluth public utilities commission is hereby authorized to establish a wastewater facility user charge system. (Ord. No. 8331, 6-13-1977, § 1; amended by Ord. No. 10024, 4-26-2010, § 2.)

### **Sec. 43-5. Director to establish billing system.**

The user charges provided for in this Article shall be collected by the director through a monthly or other periodic billing and collection procedure to be established in regulation form by the director and such procedure shall be effective upon approval of the council by resolution. Such procedure shall include a late payment penalty provision and shall provide for an interest charge on the unpaid balance of such charges. (Ord. No. 8331, 6-13-1977, § 1; Ord. No. 9629, 10-27-2003, § 11.)

### **Sec. 43-6. Joint liability for payments.**

The owner of premises which are connected to the city's wastewater facilities, the occupant thereof and the user of the service shall be jointly and severally liable to pay for the service to such premises and the service is furnished to the premises by the city only upon the condition that the owner of the premises, occupant and user of the services are jointly and severally liable to the city therefor. A claim for unpaid charges which have been billed to the occupant of the premises or the user of the service may be recovered against the owner, occupant or user if a civil action in any court of competent jurisdiction or in the discretion of the director may be certified to the county auditor to be collected with taxes against such premises so served. The certification of such charges shall be performed in accordance with the provisions of subsections b. through f. of Section 48-15.5 of this Code. Money paid to the county auditor on such account shall belong to the city and shall be remitted to the city treasurer by the county auditor in the manner provided by law for the payment of other money belonging to the city. In addition to, and not in lieu of, the foregoing method of enforcing payment of such charges, the director may, according to such rules and regulations as he may have established and the council shall have by resolution approved, cause the city water supply for and to any premises to be shut off until all arrears, with interest and penalties on such delinquent charges, shall be paid, together with the cost of shutting off and turning on such water. (Ord. No. 8331, 6-13-1977, § 1; Ord. No. 9629, 10-27-2003, § 11; Ord. No. 10173, 8-27-2012, § 1.)

### **Sec. 43-7. Water use determines wastewater discharge.**

Except as otherwise hereinafter provided, for the purpose of determining the charge to be rendered against premises using the city's wastewater facilities system and the WLSSD wastewater facilities, the volume of wastewater discharged into the city wastewater facilities system by the owner, lessee or occupant of any premises having any direct or indirect connection with such system shall be deemed to be and shall be based and computed upon the amount of water used on such premises.

(a) In all cases where such premises obtain water from the city's water supply, the volume of water used on any such premises shall be determined by the water meter readings made by the city;

(b) In all cases where the water used on such premises is derived in whole or in part from sources independent from the city, the charge to be rendered against such premises for use of the city and WLSSD wastewater facilities shall be determined on one of the following bases:

(1) Water used thereon which is supplied from private sources shall be measured by a water meter of a type approved by the director to be installed by the owner, lessee or occupant of such premises at his own cost and subject to the supervision and inspection of the director. User charges against such premises shall be based upon the volume of water used thereon, as measured from both public and private sources;

(2) Whenever the owner, lessee or occupant fails to install such meter, or where it is not practicable to measure the water consumed on any premises by a meter, the director shall determine in such manner and by such methods as he may find practicable considering conditions and attendant circumstances in each case, the estimated volume of water from private sources which discharges into such system. Such methods may include, in the case of domestic users an average or per capita usage as reported in wastewater journals or as based on local experience. Such estimate determined by the director shall be used in lieu of the meter volume of water from private sources to determine the user charge thereon and therefor. (Ord. No. 8331, 6-13-1977, § 1; Ord. No. 9629, 10-27-2003, § 11.)

**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 15 days following receipt of notice to the applicant by the director, the applicant or other aggrieved party appeals such determination in writing to Duluth public utilities commission. Within 30 days of the filing of such appeal, the commission shall hold a duly noticed hearing thereon. In reviewing the director's determination, the 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. (Ord. No. 8331, 6-13-1977, § 1; Ord. No. 8445, 3-19-1979, § 1; Ord. 9629, 10-27-2003, § 11. Ord. No. 10463, 7-11-2016, §2)

**Sec. 43-9. Allowance for outdoor use--conditions.**

During the months of May through September, the amount of wastewater determined to be discharged by a user shall be reduced by the amount of water assumed to be used during such months in such manner that it does not enter the sanitary sewer system, subject to the following; provided, that such reduction shall not exceed the difference between the actual water consumption during each such month, reduced by 100 cubic feet, and the average of water consumption as determined for the immediately preceding months of October through March. The director of public works and utilities of the city is hereby authorized to promulgate regulations not inconsistent with the provisions of this Section, which regulations shall be published in the official newspaper of the city ten days prior to going into effect and shall be available for examination and copying at the office of public works and utilities department during normal business hours. (Ord. No. 8331, 6-13-1977, § 1; Ord. No. 8524, 6-9-1980, § 1; Ord. No. 8840, 7-13-1987, § 1; Ord. No. 9629, 10-27-2003, § 11; Ord. No. 10277, 1-27-2014, § 1; Ord. No. 10294, 5-12-2014, § 1.)

**Sec. 43-10. WLSSD charges apportioned under domestic equivalent system.**

At such time as the WLSSD wastewater treatment works presently under construction becomes operational, charges made to the city by the WLSSD for the cost of the city's proportionate share of the operation, maintenance, including replacement and debt service of the WLSSD wastewater facilities, shall be distributed among the users within the city in accordance with the current WLSSD domestic equivalent classification system, a copy of which is on file in the office of the city clerk. Revisions to the WLSSD domestic equivalent classification system may be approved by council resolution. (Ord. No. 8331, 6-13-1977, § 1; Ord. No. 8435, 1-8-1979, § 1.)

**Sec. 43-11. Rate established for cost of city wastewater system.**

(a) Charges made to the city by the WLSSD for the cost of the city's proportionate share of the operation, maintenance, including replacement and debt service of the WLSSD wastewater facilities, shall be in accordance with the current WLSSD ordinance distributing those costs among its constituent users.

(b) Upon receipt of a wastewater treatment capacity allocation permit or similar document allocating to the city its proportionate costs of WLSSD's waste water treatment system, said document shall be sent to the director of public works and utilities who shall review it and forward it to the city council with the director's recommendation to approve or to disapprove said allocation document. Unless the city council shall, at its next regularly-scheduled meeting, direct the Director to the contrary, the director shall thereafter execute or refuse to execute said document in accordance with the director's recommendation or, if different, the council's direction.

(Ord. No. 8331, 6-13-1977, § 1; Ord. No. 8392, 3-27-1978, § 1; Ord. No. 8435, 1-8-1979, § 2; Ord. No. 10024, 4-26-2010, § 3. Ord. No. 10758, 8/23/2021, §1)

**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 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. (Ord. No. 9199, 6-19-2008, § 8; Ord. No. 9982, 6-15-2009, § 1; Ord. No. 10024, 4-26-2010, § 4.)

#### **Sec. 43-12. Rates applicable for certain contract users.**

Upon recommendation of the director, the mayor, subject to the approval of the city council, shall have the power to make contracts with responsible persons outside the city and with any federal or state governmental authority within or outside the city for the use of the city's wastewater facilities. Whenever the city shall enter into such a contract, such person or governmental authority shall pay to the city all charges made to the city by the WLSSD for the treatment of such wastewater so discharged, determined and allocated as in Section 43-10, together with a payment to the city representing the cost of operating its wastewater facilities at a rate not less than that rate provided in Section 43-11. The director shall establish a system for determining quantity so discharged by such reasonable means as he shall determine. (Ord. No. 8331, 6-13-1977, § 1; Ord. No. 9629, 10-27-2003, § 11.)

#### **Sec. 43-12.1. Surcharge for noncompliance.**

In the event that the director is denied or refused access to any building in violation of Section 43-33.1 below or that any building is found to be in violation of Section 43-31 below for more than 90 days, a surcharge in an amount established by the Duluth public utilities commission by resolution or in an amount calculated in accordance with a methodology approved by the Duluth public utilities commission by resolution shall be added to the wastewater facilities user charge otherwise established pursuant to this Article and billed to said property each month until such refusal, denial or noncompliance has been cured. (Ord. No. 9629, 10-27-2003, § 4; Ord. No. 10024, 4-26-2010, § 5.)

#### **Sec. 43-13. Industrial cost recovery system.**

Charges made to the city by the WLSSD in accordance with the industrial cost recovery requirements of Title II of the Federal Water Pollution Control Act amendments of 1972 (Public Laws 92-500, 33 U.S.C. 1251 et seq.) shall be apportioned among industrial users within the city in accordance with the WLSSD industrial cost recovery classification system, 1977, a copy of which is on file in the office of the city clerk. (Ord. No. 8331, 6-13-1977, § 1.)

### **Article III. Use of Public Sewers Required.**

#### **Sec. 43-14. Discharge to natural outlet prohibited.**

It shall be unlawful to discharge to any natural outlet within the city or in any area under jurisdiction of the city any wastewater or other polluted waters except where suitable treatment has been provided in accordance with the provisions of this ordinance [Chapter]. (Ord. No. 8331, 6-13-1977, § 1.)

#### **Sec. 43-15. Limitation on use of wastewater disposal devices.**

Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of wastewater. (Ord. No. 8331, 6-13-1977, § 1.)

**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 [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 the relevant premises may appeal the official notice to connect premises to the proper public sewer by filing a notice of appeal with the city clerk within 15 days following receipt of official notice. It shall be the duty of the city clerk to transmit such notice of appeal to the Duluth public utilities commission at the next regular or special meeting thereof. The commission shall hold a hearing on such appeal within 30 days of the receipt by the commission of said notice of appeal. The commission may affirm or overturn the official notice to connect the premises to the proper public sewer. The decision by the commission on appeal shall be final. If the commission affirms such official notice, the commission shall set a time for compliance with the order, which shall in no event exceed 90 days from the date of the hearing on the appeal. (Ord. No. 8331, 6-13-1977, § 1; Ord. No. 9919, 6-19-2008, § 1. Ord. No 10463, 7-11-2016, §3)

**Article IV. Private Wastewater Disposal.**

**Sec. 43-17. When private disposal system required.**

Where a public sanitary sewer is not available within the distance prescribed by the provisions of Section 43-16, the building sewer shall be connected to a private wastewater disposal system complying with the provisions of this Article. (Ord. No. 8331, 6-13-1977, § 1.)

**Sec. 43-18. Permit required.**

Before commencement of construction of a private wastewater disposal system, the owner shall first obtain a written permit from the St. Louis County health department. (Ord. No. 8331, 6-13-1977, § 1.)

**Sec. 43-19. Type, etc., of system.**

The type, capacities, location and layout of a private wastewater disposal system shall comply with all requirements of the ordinances and regulations of St. Louis County. No such system shall be permitted to discharge to any natural outlet. (Ord. No. 8331, 6-13-1977, § 1.)

**Sec. 43-20. Disconnect when public system available.**

At such time as a public sewer becomes available to a property served by a private wastewater disposal system within the distance prescribed by Section 43-16, a direct connection shall be made to the public sewer within 90 days in compliance with this ordinance [Chapter] and any private wastewater disposal system shall be cleaned of sludge and filled with suitable material. (Ord. No. 8331, 6-13-1977, § 1.)

**Sec. 43-21. Operation subject to regulation.**

The owner shall operate and maintain the private wastewater disposal system in a manner which complies with applicable state and county regulations at all times and at no expense to the city. (Ord. No. 8331, 6-13-1977, § 1.)

**Sec. 43-22. Limitation on construction of article.**

No statement contained in this Article shall be construed to interfere with any additional requirements that may be imposed by the Minnesota pollution control agency, St. Louis County, Minnesota, or the WLSSD. (Ord. No. 8331, 6-13-1977, § 1.)

**Article V. Building Sewers and Connections.**

**Sec. 43-23. Tampering with system prohibited.**

Except for city employees acting in the course of employment, no person shall uncover, make any connections with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the director. (Ord. No. 8331, 6-13-1977, § 1; Ord. No. 9629, 10-27-2003, § 11.)

**Sec. 43-24. Permits required.**

There shall be three classes of building sewer connection permits:

- (a) For users discharging domestic strength wastewater to sanitary sewers;
- (b) For users discharging nondomestic strength wastewater to sanitary sewers;
- (c) For discharge of stormwater or other unpolluted drainage to storm sewers.

In all cases, the owner or his agent shall make application on a special form furnished by the city. The permit application shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the director. For new construction, no permit shall issue unless a valid certificate of noncontribution, issued pursuant to this ordinance, is in force for the premises. A permit and inspection fee sufficient to defray the cost incidental to the processing of such connection permit, including the cost of inspection of connection for each such class, shall be established by resolution of the city council and shall be paid to the city at the time the application is filed. (Ord. No. 8331, 6-13-1977, § 1; Ord. No. 9629, 10-27-2003, §§ 10 and 11.)

**Sec. 43-25. Costs of installation.**

All costs and expenses incidental to the installation and connection and maintenance of the building sewer shall be borne by the owner. The owner shall indemnify the city from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer. (Ord. No. 8331, 6-13-1977, § 1; Ord. No. 9919, 6-19-2008, § 2.)

**Sec. 43-26. Determination of capacity.**

No building sewer connection permit shall be issued unless the director first determines that all city and WLSSD wastewater facilities have sufficient capacity to accommodate the flow and load to be discharged as a result of such connection. (Ord. No. 8331, 6-13-1977, § 1; Ord. No. 9629, 10-27-2003; § 11.)

**Sec. 43-27. Separate building sewer required.**

(a) A separate and independent building sewer shall be provided for every building; except where an existing building stands at the rear of another or two or more buildings are served by a single building sewer which is in good repair and is adequately serving all properties connected thereto and no separate sewer has been constructed therefor, such building or buildings may continue to be connected to the building sewer of the front building and the whole considered as one building sewer, but the city

shall have no obligation or responsibility for damage caused by or resulting from any such single connection aforementioned;

(b) When any building sewer serving more than one building is excavated in whole or in part for any reason, a separate and independent building sewer shall thereafter be provided for each such building. (Ord. No. 8331, 6-13-1977, § 1; Ord. No. 9930, 10-13-2008, § 4.)

**Sec. 43-28. Limitation on use of old building sewers.**

Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the director, to meet all requirements of this ordinance [Chapter]. (Ord. No. 8331, 6-13-1977, § 1; Ord. No. 9629, 10-27-2003, § 11.)

**Sec. 43-29. Compliance with building and plumbing code.**

The size, slope, alignment, materials of construction of a building sewer and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the requirements of the Building and Plumbing Code or other applicable rules and regulations of the city. (Ord. No. 8331, 6-13-1977, § 1.)

**Sec. 43-30. Elevation.**

Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer. (Ord. No. 8331, 6-13-1977, § 1.)

**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. (Ord. No. 8331, 6-13-1977, § 1; Ord. No. 9629, 10-27-2003, § 5; Ord. No. 9919, 6-19-2008, § 3; Ord. No. 9930, 10-13-2008, § 5.)

**Sec. 43-32.** Repealed by Ord. No. 9629, 10-27-2003, § 12.

**Sec. 43-33. Designation of sewer basin for inspection; inflow and infiltration reduction (I&I) program notice of disconnect requirement.**

Upon recommendation of the director, the council shall designate the basin or basins in the city wherein the city can best utilize its available resources to reduce the amount of unpolluted water entering or infiltrating the city's wastewater collection system, which designation shall constitute the authorization of the I&I program in the sewer basin. Such resolution shall direct the director to notify, in writing, the owners and persons in control of premises connected with the sanitary sewer within such basin to disconnect any prohibited drain or device and to remedy any circumstance of the building sewer that allows unpolluted water into the wastewater collection system, all within 90 days after the date of such notice. Such notice shall be directed by the director to the owner or person in control of the affected property at the post office address of the person applying for or paying for sewer service for such premises. When so deposited in the post office of the United States, or an adjunct thereof, such deposit shall constitute due service of the notice upon the owner or controlling person therein named. (Ord. No. 8331, 6-13-1977, § 1; Ord. No. 9629, 10-27-2003, § 6; Ord. No. 9919, 6-19-2008, § 4.)

**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. (Ord. No. 9629, 10-27-2003, § 7; Ord. No. 9919, 6-19-2008, § 5; Ord. No. 9982, 6-15-2009, § 2.)

#### **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;

(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. (Ord. No. 9629, 10-27-2003, § 8; Ord. No. 9919, 6-19-2008, § 6; Ord. No. 10072, 12-20-2010, § 1.)

**Sec. 43-33.3.** Repealed by Ordinance No. 9930, 10-13-2008, § 7.

#### **Sec. 43-33.4. Repairs required at time of sale.**

(a) This Section 43-33.4 applies to transfers of ownership of or of possessory rights in property which property is required to be served by the city's public sanitary sewer, as set out in Section 43-16, or its successor;

(b) Unless there is then in effect a valid POS certificate pertaining to such property, upon the signing and acceptance of a legally binding offer to purchase or at least 30 days before a transfer of title to, or the entering into of a contract for deed for, or contract for sale of, real estate, which sale, transfer or contract gives a party other than the seller or transferor a right of possession, whichever occurs first, the seller or transferor shall notify the director of the date of the proposed sale or transfer closing and arrange for a building sewer inspection to determine whether the property requires a sump pump, building sewer trap removal, and footing drain disconnect in order to be in compliance with this Chapter. The seller or transferor shall pay an inspection fee to city in advance of the inspection to defray the city's costs of such

inspection in an amount established from time to time by resolution of the city council. No person shall sell, transfer or enter in a contract for deed for or contract for sale of real estate, which sale, transfer or contract gives a party other than the seller or transferor a right of possession in any property, nor shall any person purchase, accept transfer of or enter into any contract for deed or contract for sale of real property as a transferee which sale, transfer or contract results in such person acquiring a right of possession in any property unless the director has been so notified and the property so inspected, except as provided for in subsection (e) below. The seller or transferor may choose to utilize an inspector other than the city inspector to perform said inspection, providing the inspector is bonded and meets the qualifications as a licensed plumbing contractor in the city of Duluth, holds a Class S-C wastewater license and passes a city administered training course. The private inspector must make certification that the building either needs a sump pump or that there is a sump pump in place and properly functioning or that no sump pump is required. No fee except a nominal filing fee to the city will be required under these circumstances;

(c) If a building sewer contains a house trap and the footing drains are active, the trap shall be removed. If the property requires footing drain disconnections and sump pump installation, it shall be done. The required repairs shall be completed within 90 days of the date of the inspection referred to in subparagraph (b) above. If they are satisfactorily completed, the director shall issue a POS certificate with regard to footing drain contribution only but such POS certificate shall not evidence total compliance with all of the requirements of Section 43-31(a) above. If the required repairs are not satisfactorily completed within said 90 day period, the owner or customer shall be charged a monthly surcharge each month until the repairs are satisfactorily completed, which surcharge shall be set in accordance with Section 31-8 of this Code;

(d) If, upon the inspection provided for in subparagraph (b) above, the director determines that the property qualifies, the director shall issue or cause to be issued a POS certificate which shall be valid for the proposed sale or transfer related to that inspection and for any other such sale or transfer occurring within one year of said proposed sale or transfer unless the director determines in the exercise of his or her discretion that there is sufficient reason to believe that said POS certificate does not accurately represent the existing condition of the property in question. Provided, however, if the director has issued a POS certificate because the building served by sanitary sewer on the subject property does not have a basement or cellar, said certificate shall continue to be valid unless and until revoked by the director upon the director's determination in the exercise of his or her discretion that there is sufficient reason to believe that said POS certificate does not accurately represent the existing condition of the property in question;

(e) In the event that the director receives notice of a proposed sale or transfer and request for city inspection which complies with the requirements of subsection (b) above, but the department fails to complete the inspection required by this Section prior to the date of the proposed closing contained in the notice or the date of the actual closing, whichever is later, the director shall provide a temporary waiver of the inspection requirement contained in subsection (b) above which shall be effective until the department shall offer to perform the required inspection on the property during ordinary business hours; the department shall attempt to make reasonable accommodation to the schedule of the acquiring party. Such waiver shall be subject to the acquiring party agreeing in writing to allow representatives of the department to enter upon the property for the purposes of making the inspection and shall be effective only until date the department proposes to make such inspection. Upon the inspection being made under this subsection, the property inspected and the acquiring party shall be subject to the requirements of this Article as if the inspection had been made prior to closing;

(f) In the event that neither the seller or transferor nor the acquiring party shall have paid for the inspection provided for in paragraph (b) above within 30 days of the date of closing on the sale or transfer of the subject property, the city shall have the right to assess the amount owed against the property in the manner set forth in this Section, which property shall be deemed to have been benefitted thereby;

(g) On or before June 1 of each year, the director shall transmit to the city assessor a list of properties upon which inspections have been performed and with regard to which the payment therefore has not been made in the immediately preceding 15 months, together with the amount due with respect to each such property. For each such property, a collection fee in the amount set by city council resolution shall be added to reimburse the city its administrative costs;



(h) Upon the receipt of such list, the city assessor shall make an assessment roll containing, in columns, the name of the owner of each lot or parcel of land separately assessed, if known to him or her, together with a description of each such lot or parcel of land and the amount of such assessment. The assessment roll shall include the collection fee set forth in paragraph (g) above;

(i) On or before July 1 of each year, the city assessor shall certify the assessment roll to the city council. The assessor shall recommend that the city council by resolution confirm such assessment. To each assessment a collection fee shall be added in an amount set by council resolution to reimburse the city its administrative assessment costs. Immediately thereafter notice of the confirmed assessment and its amount, including the collection fees, shall be sent by the city treasurer by mail to the apparent owner of each lot or parcel of land assessed. Such notice shall indicate that the assessment is due and payable on or before October 1 of the year when confirmed and that failure to make payment by such date shall render the assessment delinquent. After any appeals are heard and determined, the city council shall confirm the entire assessment roll by resolution;

(j) After the city council confirms the assessment roll, the city treasurer shall file with the county auditor, during the time set by law for such filings, a certified statement of all assessments delinquent under this Chapter, describing the land affected and giving the amount of the assessment, with penalty added, which shall be set in accordance with Section 31-8 of this Code, which the assessment shall follow the provisions of Article IX of the City Charter. (Ord. No. 9919, 6-19-2008, § 9; Ord. No. 9930, 10-13-2008, § 6; Ord. No. 9956, 12-15-2008, § 1; Ord. No. 10016, 2-22-2010, § 2; Ord. No. 10139, 3-12-2012, § 2; Ord. No. 10155, 5-29-2012, § 20.)

**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. (Ord. No. 8331, 6-13-1977, § 1; Ord. No. 9629, 10-27-2003, § 11.)

**Sec. 43-35. Enforcement of sections 43-31 to 43-34.**

The director shall enforce the provisions of sections 43-31 to 43-34. (Ord. No. 8331, 6-13-1977, § 1; Ord. No. 9629, 10-27-2003, § 11.)

**Sec. 43-36. Requirements of connection.**

The connection of the building sewer into the public sewer shall conform to the requirements of the Building and Plumbing Code or other applicable rules and regulations of the city. A building sewer that is leaking shall not be allowed. Any such connection shall be made gastight and watertight and verified by proper testing. The director shall have authority to promulgate rules, regulations and tests as to the manner in which connections shall be made and such rules, regulations and tests when so promulgated and filed with the city clerk shall be met. (Ord. No. 8331, 6-13-1977, § 1; Ord. No. 9629, 10-27-2003, § 11; Ord. No. 9919, 6-19-2008, § 7.)

**Sec. 43-37. Notification of director.**

The applicant of the building sewer connection permit shall notify the director when the building sewer is ready for inspection and connection to the public sewer. The connection and testing shall be made under the supervision of the director. (Ord. No. 8331, 6-13-1977, § 1; Ord. No. 9629, 10-27-2003, § 11.)

**Sec. 43-38. Excavations to be barricaded and lighted.**

All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property

disturbed in the course of the work shall be restored in a manner satisfactory to the director. (Ord. No. 8331, 6-13-1977, § 1; Ord. No. 9629, 10-27-2003, § 11.)

## **Article VI. Use of Public Sewers.**

### **Division 1. General provisions.**

#### **Sec. 43-39. Discharge of unpolluted water prohibited.**

Except as existing drains or devices are not required to be discontinued as provided in Section 43-32, no person shall discharge or cause to be discharged any unpolluted waters such as storm water, ground water, roof runoff, subsurface drainage, unpolluted industrial process water or cooling water to any sanitary sewer. Storm water runoff from limited areas, which storm water may be polluted at times, may be discharged to the sanitary sewer by written permission of the director. (Ord. No. 8331, 6-13-1977, § 1; Ord. No. 9629, 10-27-2003, § 11.)

#### **Sec. 43-40. Use of storm sewers.**

Stormwater other than that exempted under Section 43-39 and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as storm sewers or to a natural outlet approved by the director. No persons shall connect to or otherwise make use of storm sewers without first obtaining a permit as provided in Section 43-24. (Ord. No. 8331, 6-13-1977, § 1; Ord. No. 9629, 10-27-2003, § 11.)

#### **Sec. 43-41. Discharge prohibited.**

No person shall discharge or cause to be discharged any of the following-described waters or wastes to any public sewers:

(a) Any gasoline, benzene, naphtha, fuel oil, oil solvent, or other flammable or explosive liquid, solid or gas;

(b) Any waters containing toxic or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any waste treatment process or wastewater facilities, to constitute a hazard to humans or animals, to create a public nuisance or to create any hazard in the receiving waters of the wastewater treatment works;

(c) Any waters or wastes having a pH lower than 5.5 or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the wastewater treatment works;

(d) Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers or other interference with the proper operation of the wastewater facilities such as, but not limited to, ashes, asphalt, bones, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, disposable diapers, wood, unground garbage, whole blood, paunch, manure, hair and fleshings, entrails and paper dishes, napkins, cups, milk containers, either whole or ground by garbage grinders. (Ord. No. 8331, 6-13-1977, § 1.)

#### **Sec. 43-42. Limitation on discharge.**

The following-described substances, materials, waters or waste shall be limited in discharges to the wastewater facilities to concentrations or quantities which will not harm the wastewater facilities, will not endanger lives, limb, public property or constitute a nuisance and which are capable of regular and ordinary treatment at the wastewater treatment works so as to permit discharge therefrom in compliance with the NPDES permit issued to the WLSSD. The director and the WLSSD may set limitations different than the limitations established in the regulations below if such further limitations are necessary to meet the above objectives. In making such determination, due consideration shall be given to such factors as the quantity of waste in relation to flows and velocities in the sewers, materials of construction of the sewers, the wastewater treatment process employed, capacity of the wastewater facility, degree of treatability of the waste in the wastewater facility and other pertinent factors. Until different limitations or

restrictions on materials or characteristics are so established, no person shall discharge or cause to be discharged any of the following-described waters or wastes to any sanitary sewer without the approval of the director:

- (a) Wastewater having a temperature higher than +150 degrees Fahrenheit (65 degrees Celsius);
- (b) Wastewater having a concentration of more than 25 milligrams per liter of petroleum oil, nonbiodegradable cutting oils or products of mineral oil origin;
- (c) Wastewater from industrial plants or commercial establishments containing floatable oils, fat or grease;
- (d) Any garbage that has not been properly shredded. Garbage grinders may be connected to sanitary sewers from homes, hotels, institutions, restaurants, hospitals, catering establishments or similar places where garbage originates from the preparation of food in kitchens for the purpose of consumption on the premises or when served by caterers, provided that no garbage grinder with 3/4 horsepower or greater motor shall be used without the approval of the director;
- (e) Any waters or wastes containing iron, chromium, copper, zinc, lead, mercury, cadmium, organic solvents, nonbiodegradables, organic chemicals and similar untreatable or toxic substances to such degree that any such material received in the composite wastewater at the wastewater treatment works exceeds the limits established by the director for such materials;
- (f) Any waters or wastes containing odor-producing substances exceeding limits which may be established by the director;
- (g) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the director in compliance with applicable state or federal regulations;
- (h) Quantities of flow, concentration, or both, which constitute a slug as defined herein;
- (i) Waters or wastes containing substances which are not amenable to treatment or reduction by the wastewater treatment processes employed or are amenable to treatment only to such degree that the wastewater treatment works effluent cannot meet the requirements of the NPDES permit issued to the WLSSD or are amenable to treatment only by the application of extraordinary processes;
- (j) Any water or wastes which, alone or by interaction with other water or wastes in the public sewer system, release noxious gases, form suspended solids which interfere with the collection system or create a condition deleterious to structures and treatment processes. (Ord. No. 8331, 6-13-1977, § 1; Ord. No. 9629, 10-27-2003, § 11.)

**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 Section 43-41 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 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 commission may, 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 [Chapter]. (Ord. No. 8331, 6-13-1977, § 1; Ord. No. 9629, 10-27-2003, § 11. Ord. No 10463, 7-11-2016, §4)

**Sec. 43-44. When interceptors required.**

Grease, oil and sand interceptors (sometimes termed traps) shall be provided when, in the opinion of the director or the WLSSD, they are necessary for the proper handling of liquid wastes containing floatable grease in excessive amounts, as specified in Section 43-38(c), or any flammable wastes, sand, grit or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the director and the WLSSD, and shall be located as to be readily and easily accessible for cleaning and inspection. In the maintaining of these interceptors, the owner shall be responsible for the proper removal and disposal by appropriate means of the captured material and shall maintain records of the dates and means of disposal which are subject to review by the director and the WLSSD. Any removal and hauling of the collected materials not performed by owner personnel must be performed by currently licensed waste disposal firms. (Ord. No. 8331, 6-13-1977, § 1; Ord. No. 9629, 10-27-2003, § 11.)

**Sec. 43-45. Pretreatment and flow equalizing facilities.**

Where pretreatment or flow equalizing facilities are provided or required for any water or wastes, plans, specifications and any other pertinent information relating thereto shall be submitted for approval of the city and the WLSSD and no construction of such facilities shall be commenced until approval in writing is granted. Where such facilities are provided, they shall be maintained continuously in satisfactory and effective operating order by the owner at his expense and shall be subject to periodic inspection by the city and the WLSSD to determine that such facilities are being operated in conformance with applicable federal, state and local laws, regulations and permits. The owner shall maintain operating records and shall submit to the city and the WLSSD a monthly summary report of the character of the influent and effluent to show the performance of the pretreatment facilities and for comparison against WLSSD and city monitoring records. (Ord. No. 8331, 6-13-1977, § 1.)

**Sec. 43-46. Director may require metering and sampling facilities.**

When required by the director or the WLSSD, the owner of any property served by a building sewer carrying industrial wastes shall install a suitable structure together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling and measurement of the wastes by the city and the WLSSD. Such structure, when required, shall be accessible and safely located and shall be constructed in accordance with plans approved by the director and the WLSSD. The structure shall be installed by the owner at his expense and shall be maintained by him so as to be safe and accessible at all times. (Ord. No. 8331, 6-13-1977, § 1; Ord. No. 9629, 10-27-2003, § 11.)

**Sec. 43-47. Director and WLSSD may require additional information.**

The director and the WLSSD may require a user of sewer services and a person applying for sewer service to provide information needed to determine compliance with this ordinance [Chapter]. These requirements may include:

- (a) Wastewater peak flow and volume over a specified time period;
- (b) Chemical analyses of wastewaters;
- (c) Information on raw materials, processes and products affecting wastewater volume and quality;
- (d) Quantity and disposition of specific liquid, sludge, oil, solvent or other materials important to sewer use control;
- (e) A plot plan of the user's property showing sewer and pretreatment facility or flow equalizing facility location;
- (f) Details of wastewater pretreatment or flow equalizing facility;
- (g) Details of systems to prevent and control the losses of materials through spills to the public sewer;
- (h) Access to users' premises so that city and WLSSD personnel carry out sampling, monitoring and measurement of users' discharge. (Ord. No. 8331, 6-13-1977, § 1; Ord. No. 9629, 10-27-2003, § 11.)

**Sec. 43-48. Notice of unusual waste required.**

Users of the wastewater facilities shall immediately notify the director and the WLSSD of any unusual flows of wastes that are discharged accidentally or otherwise to the wastewater facilities. (Ord. No. 8331, 6-13-1977, § 1; Ord. No. 9629, 10-27-2003, § 11.)

**Sec. 43-49. Use of standard methods.**

All measurements, tests and analyses of the characteristics of waters and wastes to which reference is made in this ordinance [Chapter] shall be determined in accordance with the provisions set out in standard methods. (Ord. No. 8331, 6-13-1977, § 1.)

**Sec. 43-50. Unusual wastewater may be received by agreement.**

No statement contained in this Article shall be construed as preventing any special agreement or arrangement between the city and the WLSSD, and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the city and WLSSD for treatment. Provided that any such agreement shall establish that charges to such user shall be in accordance with the city established user charges. (Ord. No. 8331, 6-13-1977, § 1.)

**Division 2. FOG program.**

**Sec. 43-50.1. FOG program participation required.**

(a) As of the effective date of this ordinance and thereafter, no FSF shall discharge any substance of any kind into any portion of a WTCS facility except in accordance with a BMP program which has been approved by the director in writing;

(b) The city shall, from time to time, establish by resolution the minimum standards for the content of a BMP program;

(c) No FSF shall discharge any substance of any kind into any portion of a wastewater facility which is not in conformance with the BMP program for that FSF. (Added by Ord. No. 10008, 12-21-2009, § 13.)

**Sec. 43-50.2. FOG prohibitions.**

The following prohibitions apply to all FSFs:

(a) Installation of food grinders in a plumbing or sewage system in any new construction or renovation of a structure designed to house a FSF;

(b) Discharge any wastewater containing FOG into a wastewater facility except in compliance with the BMP program for that facility;

(c) Introduction of any additives into the wastewater system for the purpose of emulsifying FOG or biologically or chemically treating any substance introduced into any wastewater facility for purpose of treatment or pretreatment of wastewater, unless a specific written authorization by the director is obtained;

(d) Discharge of wastewater from dishwashers to any grease interceptor or grease trap;

(e) Discharge of wastewater at temperatures in excess of 140 F to any grease interceptor or grease trap;

(f) Operation of grease interceptors if the unit has accumulated waste, both FOG and food solids, accounting for 25 percent or more of its wetted depth measured from the static water level to the interior tank bottom, with FOG and solids accumulation, exceeding 25 percent of the total operating depth of the grease interceptor;

(g) Discharge of any FOG or any other solid materials removed from the grease control device to a WCTS. (Added by Ord. No. 10008, 12-21-2009, § 13.)

**Sec. 43-50.3. FOG interceptors installation requirements.**

(a) Except as provided for in Section 43-50.5 below, any structure designed for or intended to be used for an FSF must have a grease interceptor installed prior to discharging any wastewater into a WTCS facility. Such grease interceptor must be constructed on the property occupied by the structure in a location outside of any building which allows unrestricted access at any time to city representatives for the purposes of inspection, sampling and testing. Such grease interceptor must comply with all conditions as set forth in the state of Minnesota Administrative Code, Sec 4715.1115 Exterior Grease Interceptors;

(b) Property owners of new commercial construction structure designed to house multiple FSFs on a single parcel shall be responsible to install and maintain a single grease interceptor to serve each individual FSF tenant unless a property owner demonstrates to the director that it is not practically possible to install and maintain a single grease interceptor to serve each individual FSF located in the structure in which case the director has the discretion to approve a plan for such structure providing for more than one grease interceptor or a combination of grease interceptors and grease traps to service such property, which approval shall be in writing. Said approved plan shall include the minimum number of grease interceptors and grease traps that can reasonably serve the structure and the BMP program shall specifically include service for all approved grease intercepts and grease traps;

(c) The owner of any structure occupied by more than one FSF shall be jointly and severally liable with the owner of each FSF served by any grease interceptor or any grease trap for the servicing and maintenance of that grease interceptor or grease trap and for any servicing and maintenance of any wastewater facility located downstream from said structure to remove any accumulations of FOG therefrom;

(d) The director may require existing FSFs and owners of structures in which such FSFs are located which have been identified as introducing FOG in the any portion of the wastewater system, and which introduction of FOG, in whole or in combination with other FOG contributors, has been responsible for causing the need for the city to clean such portion of the wastewater system more than twice in a single calendar year to install grease interceptors or other FOG equipment as deemed necessary to comply with this ordinance. Such installation shall be completed and operational within 180 days of notice by the director. (Added by Ord. No. 10008, 12-21-2009, § 13.)

**Sec. 43-50.4. Maintenance and cleaning of grease interceptors.**

In the maintaining and routine cleaning of grease interceptors and any other grease control device, the owner of the FSF and the owner of the structure in which it is located, if different from the owner of the FSF shall be responsible for the proper removal and disposal by appropriate means of the captured material. If not performed by personnel under the direct control and direction of any such owner, such removal and haul shall be performed by currently licensed waste disposal firms. (Added by Ord. No. 10008, 12-21-2009, § 13.)

**Sec. 43-50.5. Exception from grease interceptor requirements.**

If the owner of any FSF or of any structure in which an FSF is located or is to be located demonstrates to the reasonable satisfaction of the director that installation of a grease interceptor is not feasible, the director may grant an exception allowing such owner to install grease traps or other alternative treatment technology which will in his or her discretion adequately control the release of FOG from the FSF or the structure into the wastewater system.. The FSF bears the burden of demonstrating that the installation of a grease interceptor is not feasible. The request for an exemption shall include the following information if relevant:

- (a) Evidence of a lack of available exterior space necessary to place an interceptor relative to the location of sewer main and easement;
- (b) Evidence of a lack of adequate slope for gravity flow between kitchen plumbing fixtures in the FSF and the wastewater facilities;
- (c) Description and specifications of the alternative grease control equipment that will be installed;

(d) Evidence that the size, available seating or type of food preparation does not generate any significant volume of FOG. (Added by Ord. No. 10008, 12-21-2009, § 13.)

**Sec. 43-50.6. Charge for remedial maintenance or repair of the city or WLSSD WCTS.**

(a) In the event that the owner of an FSF or the owner of any structure in which an FSF is located is found to have contributed to the partial or complete obstruction of a wastewater facility resulting from the discharge of wastewater or waste containing FOG and that the City or the WLSSD is required to act immediately to control a public health hazard because of such blockage, such owner shall be required to reimburse the city, the WLSSD or both for all costs of abating such condition. In situations where there are multiple owners identified as contributing to FOG causing such obstruction, the director will apportion the cost of the cleanup, maintenance or repair costs on a prorated basis, based on each owner's percentage share of the average total sanitary sewer charges for all such owners. Further should inspection, testing or other sampling activity by the city confirm that any user is contributing excessive FOG (including other harmful ingredients) and is causing the repair or extraordinary maintenance activity to maintain the integrity of the WCTS, the director or the WLSSD may require retrofitting of the structure with grease interceptors or grease traps, including testing facilities and access thereto sufficient to resolve the problem;

(b) The costs for curing any private sewer lateral failures and SSOs, including cleaning and other maintenance, caused in whole or in part by FOG introduced into the wastewater treatment facilities by any FSF, alone or in conjunction with any other party, are the responsibility of the owner of the FSF and the owner of any structure in which the FSF contributing the FOG to wastewater system is located. (Added by Ord. No. 10008, 12-21-2009, § 13.)

**Sec. 43-50.7. Penalties and assessments for FOG program noncompliance.**

In the event that the owner of an FSF or the owner of any structure in which an FSF is located is found to have failed to comply with the provisions of this division, the following penalties or assessments or both may be applied:

(a) For introduction of FOG into any wastewater facility resulting in obstruction to said facility or in an SSO:

(1) The city may disconnect water and sewer service to the FSF and to the structure in which the FSF is located;

(2) City may impose a fine of not more than that amount set in accordance with Section 31-8 of this Code per month until such owner demonstrates that the subject FSF or structure is in compliance with the requirements of this Division;

(b) For failure to maintain records as required by the BMP program for any FSF, or failing or refusing to timely comply with any request for records required to be provided to the director, a fine of up to that amount set in accordance with Section 31-8 of this Code per day until such records are provided;

(c) For failure to pass the FOG inspection due to lack of or ineffective FOG equipment the director may:

(1) Require the subject FSF to install additional FOG equipment as necessary to resolve the problem;

(2) Change the sewer rate class of the FSF to reflect the presence of the excessive FOG contribution by the FSF. (Added by Ord. No. 10008, 12-21-2009, § 13; Ord. No. 10155, 5-29-2012, § 21.)

**Article VII. Damage to Wastewater Facilities Prohibited.**

**Sec. 43-51. Prohibition and penalty.**

No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the wastewater facilities. Any person violating this provision shall be guilty of a misdemeanor, shall be subject to immediate arrest and

shall be liable to the city and the WLSSD for the cost of making necessary repairs occasioned by such violation. (Ord. No. 8331, 6-13-1977, § 1.)

#### **Article VIII. Powers and Authority of Inspectors.**

##### **Sec. 43-52. Entry for inspection authorized.**

The director and other duly authorized employees of the city and the WLSSD bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling and testing pertinent to discharge to the wastewater facilities in accordance with the provisions of this ordinance [Chapter]. (Ord. No. 8331, 6-13-1977, § 1; Ord. No. 9629, 10-27-2003, § 11.)

##### **Sec. 43-53. Industrial process information required.**

The director or other duly authorized employees of the city and the WLSSD shall be provided by users with such information concerning industrial processes as have a direct bearing on the kind and source of discharge to the wastewater facilities. (Ord. No. 8331, 6-13-1977, § 1; Ord. No. 9629, 10-27-2003, § 11.)

##### **Sec. 43-54. Inspectors to abide by safety rules; limited indemnity.**

While performing the necessary work on private properties referred to in Section 43-48 of this Article, the director or duly authorized employees of the city and the WLSSD shall observe all safety rules applicable to the premises established by the owner, and the owner shall be held harmless for injury or death to such employees, and the city and the WLSSD respectively shall indemnify the owner against loss or damage to its property by city and WLSSD employees and against liability claims and demands for personal injury or property damage asserted against the owner and growing out of the gauging and sampling operation, except as such may be caused by negligence of the owner or the failure of the owner to maintain safe conditions as required by law. (Ord. No. 8331, 6-13-1977, § 1; Ord. No. 9629, 10-27-2003, § 11.)

##### **Sec. 43-55. Entry to properties upon which easement exists.**

The director and other duly authorized employees of the city and WLSSD bearing proper credentials and identification shall be permitted to enter all private properties through which the city holds an easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the wastewater facilities lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full in accordance with the terms of the easement pertaining to the private property involved. (Ord. No. 8331, 6-13-1977, § 1; Ord. No. 9629, 10-27-2003, § 11.)

#### **Article IX. Land Not Previously Assessed.**

##### **Sec. 43-56. Connection permit--application; fee.**

Any person desiring to make connection to a sanitary sewer to serve land not previously assessed for a direct special benefit conferred by the construction of such sewer shall apply to the director for a permit to so connect said property, and shall accompany his application with a description of the land proposed to be served. The director shall have the authority to approve or disapprove said connection. The director's decision to disapprove any such application may be appealed in writing to the special assessment board within ten days of said decision by filing the same in the office of the director. The amount of the fee the applicant is required to pay shall be determined by application of the rate established in accordance with Section 43-56.1 below. Any person making application for a sewer connection pursuant to this Section shall either elect to pay the established fee in lieu of assessment in



full immediately, in which case such fee should be delivered to the director; prior to issuance of the connection permit; or to pay such fee in lieu of assessment over a period of 15 years, in which case payment of such fee and interest shall be made in the same manner as is provided for the payment of deferred assessments under Section 68 of the City Charter. In those cases where a person elects to pay the fee in lieu of assessment over a period of 15 years, he shall be required to execute an agreement, acceptable in form to the city attorney, which shall be recorded by such person against the property to which the sewer connection is made, and which shall bind the applicant and future owners of such property to pay the unpaid balance of the fee in lieu of assessment. (Ord. No. 8331, 6-13-1977, § 1; Ord. No. 9629, 10-27-2003, § 11; Ord. No. 9994, 9-14-2009, § 1.)

**Sec. 43-56.1. Fee in lieu of assessment fee rate--established.**

The special assessment board shall from time to time establish the sewer fee in lieu of assessment to be charged to applicants applying for a connection under Section 43-56 above on a per front foot basis, which fee shall then be applicable for the remainder of the calendar year in which it is established unless subsequently modified by the board as herein provided for. In establishing such fee in lieu of assessment, the board shall take into account the then current average or typical front foot cost for the construction of a sanitary sewer main. Nothing to the contrary in the foregoing withstanding, the board may amend said fee established with regard to any year upon a determination by the board that the previously established fee does not accurately reflect the city's current costs for construction of such sewer mains. Upon approval of the sewer fee in lieu of assessment by the board, it shall cause notice thereof to be filed with the city council. Any person wishing to contest the fee so established may appeal to the council within 30 days of such filing. The determination of the council shall be final. (Added by Ord. No. 9994, 9-14-2009, § 2.)

**Sec. 43-57. Same--Issuance; grounds for denial; appeal of decision.**

Upon compliance by an applicant with the provisions of Section 43-56, the director shall issue a connection permit; provided, however, that such permit shall not be issued if the special assessment board determines that sanitary sewer service might reasonably be provided to the property by a public extension of the sanitary sewer system, if the property is not served by a public water supply system, or if the granting of such permit would encourage development of property which cannot be economically served by other utilities or by improved public access. A decision on the part of the special assessment board to deny issuance of a connection permit may be appealed by the applicant to the city council. (Ord. No. 8331, 6-13-1977, § 1; Ord. No. 9629; 10-27-2003, § 11.)

**Sec. 43-58. Disposition of money.**

All money paid under the provisions of Section 43-56 shall be deposited in the sewer utility fund. (Ord. No. 8331, 6-13-1977, § 1.)

**Article X. Concrete Wastewater.**

**Sec. 43-59. Discharge permit required.**

Except as permitted by Section 43-62, commencing June 1, 1992, no person shall discharge concrete wastewater or concrete truck wastewater without first obtaining a permit issued by the city council after a public hearing, investigation and report and recommendation by the city planning commission. (Ord. No. 9062, 12-19-1991, § 1.)

**Sec. 43-60. Procedures.**

Applications for such a permit shall be accompanied by a site plan, a landscape plan, wastewater and storm water runoff calculations and drawings and plans and specifications of any equipment and/or

facilities to be constructed or installed to treat or contain such wastewater in sufficient detail to enable the city planning commission to make the report and recommendation to the city council regarding the issuance of such a permit and conditions to be imposed on such permit. (Ord. No. 9062, 12-19-1991, § 1.)

**Sec. 43-61. Requirements for permit issuance.**

Such a permit shall be issued only after a finding that the following requirements will be satisfied:

(a) Wetlands, shorelands and floodplains shall be preserved as described in Chapter 51 of this Code;

(b) The discharge of such wastewater shall be designed to minimize pollutants;

(c) There shall be a minimum 20 foot landscaped or naturally vegetated setback area from all adjacent parcels of land sufficient to screen observation of the discharge area from adjacent landowners' property and roadways;

(d) The city of Duluth shall have been provided adequate financial security in the form of a performance bond, letter of credit or cash deposit to assure restoration of affected lands to the standards contained in the permit;

(e) The requirements contained in paragraphs (c) and (d) of this Section shall not be applicable to a site in a C-5 zone, as defined in Chapter 50 of this Code, on which a concrete mixing facility is located on the effective date of this ordinance. (Ord. No. 9062, 12-19-1991, § 1.)

**Sec. 43-62. Exceptions.**

No permit shall be required for the limited discharge of concrete wastewater at a construction site, which includes concrete mixed at such construction site, by a contractor or owner working on such site, provided such discharge will have no significant adverse impact on the environment or adjacent property. This Section shall not apply to the washing out of concrete trucks, but shall apply to the washing of the chutes on such trucks. (Ord. No. 9062, 12-19-1991, § 1.)

**Article XI. Stormwater Utility System.**

**Sec. 43-63. Stormwater utility established.**

Pursuant to Minnesota Statutes, Section 444.075, as made applicable to the city of Duluth by Laws of Minnesota, 1995, Chapter 90, and pursuant to the Duluth City Charter, the city hereby establishes a stormwater utility and authorizes the imposition of just and reasonable utility fees for the use and availability of storm sewer facilities. (Ord. No. 9369, 5-11-1998, § 1.)

**Sec. 43-64. Findings of fact; statement of purpose.**

(a) The city council hereby finds that effective management of stormwater runoff through a properly constructed and maintained storm sewer system enhances quality of life within the community and is necessary for public health, safety and general welfare. The city council finds that the age of existing stormwater infrastructure within the city and increasingly restrictive environmental regulations will constitute a financial burden with respect to adequate future maintenance, reconstruction and expansion of the system. The city council also finds that the city's stormwater management system benefits and provides a service to all property in the city. Assigning costs and making charges based upon expected stormwater runoff through impervious surface calculations cannot be done with mathematical precision but can only be accomplished within reasonable and practical limits. Finally, the city council finds that the costs of operating, maintaining and reconstructing the stormwater management system should, to the extent practicable, be allocated in relationship to the benefits and services received from the system;

(b) It is the purpose of this Article to provide a fair and organized method of maintaining a stormwater drainage system that will meet the future needs of the citizens of Duluth through the establishment of a reasonable and practical methodology for making stormwater utility charges. (Ord. No. 9369, 5-11-1998, § 1.)

**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), 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 and utilities 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.

**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 imperious 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; and

(d) 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.

**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.

(Ord. No. 9369, 5-11-1998, § 1; Ord. No. 9480, 2-26-2001, § 1 [Ordinance 9480 was in effect only until January 1, 2003]; Ord. No. 10024, 4-26-2010, § 6; Ord. No. 10362, 3-23-2015, § 1. Ord. No. 10720, 11-23-2020. § 1 )

## **Sec. 43-66. Rates and charges.**

(a) The stormwater utility shall charge utility fees as provided in this Article to recover from property benefitting from the system the capital costs, debt service, operation and maintenance costs of stormwater facilities in the city. Subject to the limitations contained in this Section, this Article shall apply to all property in the city of Duluth;

(b) Utility fees shall be based upon the amount of impervious area on the benefitting property and shall be computed as provided in this Article. Each parcel of property within the city shall be categorized as residential, nonresidential, or undisturbed property. The utility fees for each type of property shall be as follows:

(1) The utility fee for residential property shall be the ERU rate multiplied by the number of dwelling units existing on the property;

(2) The utility fee for nonresidential property shall be the ERU rate multiplied by the numerical factor obtained by dividing the total impervious area for a nonresidential property by one ERU. The minimum utility fee for any nonresidential property shall be equal to one ERU rate;

(3) Undisturbed parcels of land shall be exempt from the utility fee;

(c) The Duluth public utilities commission shall, by resolution, adopt a schedule of utility fees sufficient to produce revenue equal to the budget of the stormwater utility. The resolution shall state the utility fee rate per ERU;

(d) The director shall gather impervious area data on residential property within the city and calculate an ERU value. The utility fees shall be based on this ERU value. In determining the ERU value, the director shall not be required to measure and consider all residential property in the city, but shall consider a reasonable sample representing areas throughout the city. The director shall further investigate nonresidential properties within the city to determine the impervious area on each property. The determination of impervious area made by the director shall be conclusive unless modified by the adjustment procedure set forth in this Article. The director shall endeavor to investigate and reestablish an ERU value for the city every five years after the effective date of this ordinance;

(e) Public rights-of-way and airport runways and taxiways shall be exempt from utility fees;

(f) The utility fees established by this Article are the joint and several responsibility of the owner, lessee and the occupant of each lot or parcel subject to the fee. The director shall cause monthly bills to be sent for each lot or parcel and shall develop a billing and collection system for said fees. Bills may be combined with other city utility bills. The Duluth public utilities commission may provide for penalties and interest for late payments in the resolution establishing the utility fee rate;

(g) Delinquent utility fees shall be collected as provided in Minnesota Statutes 444.075, Subd. 3, 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 stormwater 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 lot or parcel where utility fees are delinquent, a description of each lot or 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 lot or parcel of land 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 penalty added, set in accordance with Section 31-8 of this Code, after which the delinquent fee shall be processed in the same manner as an assessment under the provisions of Chapter 70 of the City Charter. (Ord. No. 9369, 5-11-1998, § 1; Ord. No. 9480, 2-26-2001, § 2 [*Ordinance 9480 was in effect only until January 1, 2003*]; Ord. No. 9629, 10-27-2003, § 11; Ord. No. 10024, 4-26-2010, § 7; Ord. No. 10155, 5-29-2012, § 22.)

#### **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;

(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 Duluth public utilities commission by filing written notice of appeal with the city clerk within 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 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. (Ord. No. 9369, 5-11-1998, § 1; Ord. No. 9629, 10-27-2003, § 11; Ord. No. 10360, 3-23-2015, § 1. Ord. No. 10463, 7-11-2016, §5. Ord. No. 10720, 11-23-2020. §2)

#### **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 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.

(f) 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.

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

Section 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: (Ord. No. 10720, 11-23-2020 § 3; Ord. No. 10807, 6-16-2022 §1)

#### **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 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; and

(c) No stormwater from the served property shall enter the city stormwater system.

Section 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: (Ord. No. 10720, 11-23-2020 § 4;)

**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; and
- (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; or
- (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. ((Ord. No. 10720, 11-23-2020 § 5;)

**Article XII. Fond du Lac Area Sanitary Sewers.**

**Sec. 43-68. Fond du Lac area sanitary sewer regulations; purpose; scope; applicability; area defined.**

(a) Public health, safety, welfare and convenience have made it necessary to construct a sanitary sewer system in the Fond du Lac area which will replace numerous marginal and failing septic systems located near an established floodplain of the St. Louis River. Because of the length of the system, lack of development density in the area, method of financing the system and methods required to discharge sewage from residences to sewer mains in the area, it is necessary to have some special wastewater facilities regulations that apply only to the Fond du Lac area;

(b) The regulations contained in this Article shall apply to wastewater facilities within the Fond du Lac area. The provisions of the remainder of Chapter 43 shall also apply to wastewater facilities within the Fond du Lac area to the extent that they are not inconsistent with the provisions of this Article;

(c) For the purposes of this Article, the Fond du Lac sanitary sewer area shall encompass the following area: the area bounded by the St. Louis River to the south; Sargent Creek to the northeast; and the Duluth city limits boundaries on the north and west from its intersection with Sargent Creek to its intersection with the St. Louis River. (Ord. No. 9483, 3-26-2001, § 1.)

**Sec. 43-69. Building sewers.**

(a) Building sewers in the Fond du Lac sanitary sewer area shall either be of a traditional gravity flow design or of a sump and grinder pump design, depending on the elevation of the building and sewer main. Building sewers shall conform to all city regulations and specifications and to applicable provisions of the state plumbing code;

(b) Buildings in existence in the Fond du Lac sanitary sewer area on December 31, 2000, which require sump and grinder pump building sewers shall be eligible for the installation of a publicly owned and maintained sump and grinder pump located in the public right-of-way if the sump and grinder pump are installed in the year 2001. It shall be the responsibility of the building owner to secure a proper sewer connection from the building to the sump, to secure a proper electrical connection from the building to the grinder pump electrical control panel, and to dedicate any right-of-way necessary for the installation. The city shall provide ordinary maintenance for the grinder pumps and shall replace grinder pumps that have worn out because of ordinary wear and tear. Building owners shall be responsible for cost of replacing grinder pumps damaged by their negligence or improper substances contained in the sewage;

(c) Buildings in the Fond du Lac sanitary sewer area that do not have a publicly owned sump and grinder pump installed in the year 2001 but that require a grinder pump shall be served only by a grinder pump approved by the city engineer as being compatible with wastewater collection facilities in the area. The building owner shall be responsible for installing and maintaining these grinder pumps;

(d) Gravity flow building sewers in the Fond du Lac sanitary sewer area shall be subject to the same regulations as other gravity flow building sewers in the city;

(e) Building sewers that serve three or more residential units or a commercial establishment in the Fond du Lac sanitary sewer area which require a sump and grinder pump system shall be serviced only by a duplex type grinder pump approved by the city engineer and shall be equipped with a meter which measures sewage flow from the grinder pump. If the building is eligible for the installation of a publicly owned grinder pump, the city shall contribute the cost of a typical one family residential grinder pump installation and the building owner shall be responsible for the remainder of the costs. The city will maintain the grinder pump as provided in paragraph (b) above. (Ord. No. 9483, 3-26-2001, § 1.)

**Sec. 43-70. Maintenance fees and user charges.**

(a) User charges for wastewater facility users in the Fond du Lac sanitary sewer area shall be those established pursuant to Article II of this Chapter, except that residences without water meters shall pay a wastewater user charge based on a water consumption of 800 cubic feet of water per month;

(b) In addition to the wastewater user fee, buildings serviced by publicly owned grinder pumps shall be subject to a grinder pump maintenance fee established by Duluth public utilities commission resolution, which shall be billed and collected with the wastewater user fee. (Ord. No. 9483, 3-26-2001, § 1; Ord. No. 10024, 4-26-2010, § 8.)