

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;