

PUBLIC WORKS AND UTILITIES COMMITTEE

10-016-0

AS AMENDED  
REPLACEMENT

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE CREATING A DULUTH PUBLIC UTILITIES COMMISSION, ESTABLISHING MEMBERSHIP AND POWERS AND DUTIES THEREOF AND AUTHORIZING SAID COMMISSION TO ESTABLISH VARIOUS UTILITY RATES, AMENDING CHAPTERS 2, 43 AND 48 OF THE CODE.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That Chapter 2 of the Duluth City Code, 1959, as amended, is hereby amended to add a new Article XXXV thereof to read as follows:

Article XXXV. Duluth Public Utilities Commission.

Sec. 2-182. Statement of purpose--Duluth public utilities commission.

The city council of the city hereby finds that the management and operation of the city's water, natural gas, sanitary sewer and stormwater utility systems has become more complex and is in need of expertise and continuity in long-term planning to effectively manage and guide future development of the utilities and the rate structures related thereto and that it is appropriate to secure expertise not only from elected officials but also from citizens of the city having expertise and experience to bring to those processes and therefore that it is appropriate to create a Duluth public utilities commission which shall have the membership and the powers and duties hereinafter set forth.

Sec. 2-183. Same--Creation.

There is hereby created the Duluth public utilities commission which shall have the membership and the powers and duties hereinafter set forth in this Article.

Sec. 2-184. Same--Membership.

(a) The membership of the commission shall consist of seven commissioners who shall be appointed to the membership of said

commission as hereinafter set forth. No member shall serve more than two consecutive terms or portions thereof on the commission:

(1) Three ~~Two~~ members shall be city councilors appointed by the council. Initially one such councilor shall be appointed for a one year term, one shall be appointed for a two year term and one such councilor shall be appointed for a three year term. Thereafter all councilors shall be appointed for three year terms, provided, however that councilors shall serve only as long as they continue to hold such office or, unless removed from membership on the commission by the affirmative vote of a majority of the city councilors then serving on the city council, excluding the subject councilor;

(2) Four ~~Five~~ members of the commission shall be appointed by the ~~mayor and confirmed by the~~ city council. Said members shall be residents of the city of Duluth, shall be responsible to pay charges to the city for the use of at least two of the utilities regulated by the commission and shall be chosen for their expertise in the areas of utility operations, finance and utility construction or other relevant experience. Initially one such commissioner shall be appointed for a one year term, one ~~two~~ shall be appointed for a two year term and two shall be appointed for a three year term. Thereafter all commissioners shall be appointed for three year terms. All terms shall expire on March 31 of the appropriate year. When a vacancy occurs in said commission, by means of resignation, death, or removal from the city, such vacancy shall be filled for the unexpired term. If a commissioner shall be found to have failed or neglected to perform the duties of a commissioner, the Mayor with the approval of the city council may remove such commissioner from office and the vacancy created thereby

shall be filled for the unexpired term;

(b) Commissioners shall serve without compensation;

(c) Within 20 days after all of the commissioners have been appointed, the commission shall meet and organize and adopt, and thereafter may amend, such rules and regulations for the conduct of the commission as the commission shall deem to be in the public interest and most likely to advance, enhance, foster and promote the purposes of this ordinance [Article]. At such meeting and at all subsequent meetings of the commission, five commissioners shall constitute a quorum for the transaction of business, provided that at least two such commissioners shall be city councilors;

(d) The commissioners shall elect from among their membership a president and vice president and shall also elect a secretary who, may or may not be a member of said commission. No two of such offices shall be held by one commissioner. The officers shall have their duties and powers usually attendant upon such offices and such other duties and powers not inconsistent therewith as may be provided by the commission.

Sec. 2-185. Staff support; consultants.

(a) Staff support, including clerical services and incidental expenses, shall, whenever practical, be provided by such city staff personnel and from such funds as shall be directed by the director of public works and utilities;

(b) In the event that services, such as consulting services, are not reasonably available from the city, the commission may request that the city hire consultants to provide necessary staff services and may request that a particular person or firm be hired to provide such services.

Sec. 2-186. Commission authority.

In furtherance of the purposes set forth in Section 2-182, the commission shall have the following authority:

(a) To establish such internal rules and regulations as the commission shall deem advantageous for its internal operations;

(b) To establish rates to be charged for the provision of water service, natural gas service, sanitary sewer service and stormwater utility service, provided that any resolution establishing any such rate or rates shall include findings of fact setting forth the justification for the newly established rates;

(c) To establish rates to be charged by the city for the following services:

(1) Gas furnace comfort policy fee;

(2) Gas furnace or other appliance service;

(3) Inflow and infiltration non-inspection or noncompliance surcharge per month;

(4) Point of sale inspection fee;

(5) Violation or noncompliance service charge;

(6) Water hydrant usage;

(7) Water, natural gas and sanitary sewer service tapping fees;

(8) Fees for the right of access to and the right to connect to existing water, natural gas and sanitary sewer mains;

(d) To approve and recommend to the city council for its approval an annual budget for the water utility, the natural gas utility, the sanitary sewer utility and the stormwater utility; and

(e) To develop and recommend to the city council a municipal utility plan for the future development and extension of the water utility, the natural gas utility, the sanitary sewer utility and the stormwater utility.

Sec. 2-187. City council review; veto.

Before any rates approved by the commission pursuant to paragraphs (b) or (c) of Section 2-186 above shall take effect for any purpose whatsoever, a full, true and correct copy of the commission's resolution approving such rates shall be filed in the office of the city clerk and there remain on file as a public document for at least one week before the holding of a regular meeting of the city council. It is hereby made the duty of the city clerk to report to the council at any regular meeting thereof concerning the filing of said resolution. The council may, by a resolution adopted by the affirmative vote of at least six councilors, veto the rate modifications proposed by such resolution at any such meeting. If the council votes to veto said rate modification, the rates last approved shall continue in force and effect until modified in accordance with the provision of this Article. If such rate increase is not vetoed at such meeting, the rates approved by the commission's resolution shall go into effect on the date specified in the commission's resolution or the day after such council meeting, whichever is later.

Section 2. That Section 43-4 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

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.

Section 3. That Section 43-11 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

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

For the purpose of recovering from users the cost of operation, maintenance (including replacement) and debt service of the city's wastewater facilities, the Duluth public utilities commission is authorized to establish a customer charge and a user charge based upon the volume of wastewater discharged to the city's wastewater facilities system and determined as in Section 43-7, which shall be collected by the city beginning with meter readings made on February 12, 1979, and thereafter.

Revisions to the customer charge and the user charge may be made from time to time by resolution of the commission.

Section 4. That Section 43-11.1 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 43-11.1. Clean water surcharge.

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

(1) The amounts collected as the clean water surcharge under this Section;

(2) Any amount allocated to it by action of the city council or city administration;

(3) Any amounts received as penalties for violation of Chapter 43, Article IV;

(4) Any amount received as fees or surcharge under Section 43-33.4;

(5) Any amount received as the surcharge authorized by Section 43-12.1;

(6) Any interest earned by the fund;

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

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

Section 5. That Section 43-12.1 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

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.

Section 6. That Section 43-65 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 43-65. Definitions.

For the purpose of this Article, the following words and phrases shall have the meanings given them in this Section:

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 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.

Impervious area. Roofed and paved areas, including, but not limited to, areas covered by roofs, roof extensions, patios, porches, driveways, sidewalks, parking areas and athletic courts.

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.

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.

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 utility or utility. The utility created by this article to operate, maintain and improve the stormwater drainage system.

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.

Section 7. That Section 43-66 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

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 ten percent penalty added, 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.

Section 8. That Section 43-70 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

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.

Section 9. That Section 48-14 of the Duluth City Code, 1959, as amended, is hereby amended to read as follows:

Sec. 48-14. Charges for water and gas--basis of computation--notice of rate changes.

Charges for supplying water and gas shall be made on the basis of such rates for meter registration, demand charges and service charges as may be authorized from time to time by the Duluth public utilities commission. The department shall, at the time of any change in the rate schedules, deliver to each applicant a copy of the new schedule of rates.

All water or gas sold shall be metered, except for fire protection and other specially authorized supplies, provided, that appropriate charges may be made for unmetered water or gas taken or wasted by unauthorized means or by leaks or through meters improperly registering.

Section 10. Notwithstanding the authority granted to the Duluth public utilities commission pursuant to this ordinance to establish rates and charges for the provision of various commodities, the use of various utility facilities and the provision of various services, until such time as the commission shall have established such rates and charges, the rates and charges as previously established by the city for the provision of such commodities, the use of such facilities and the provision of such services shall continue to be in force.

Section 11. This ordinance shall take effect 30 days from and after its passage and publication or upon the first meeting of the Duluth public utilities commission, whichever is later. (Effective date to be determined)

Approved:

Approved for presentation to council:

\_\_\_\_\_  
Department Director

\_\_\_\_\_  
Chief Administrative Officer

Approved as to form:

Approved:

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Auditor

PWU/ATTY    REA: jkw    4/1/2010

STATEMENT OF PURPOSE: The purpose of this ordinance is to establish a Duluth public utilities commission to establish rates for the various city utilities and to recommend budgets for them to the city council.