

**DULUTH/NORTH SHORE SANITARY DISTRICT
ORDINANCE NO. 4**

CAPACITY RESERVATION ORDINANCE

The Board of Managers of the Duluth/North Shore Sanitary District ordains as follows:

1. Recitals.

- (a) The Duluth/North Shore Sanitary District (the “District”) owns and operates a wastewater collection system (the “System”) within its jurisdictional boundaries. Treatment is provided by the Western Lake Superior Sanitary District (“WLSSD”) at its treatment facilities in Duluth, Minnesota (the “Treatment Facilities”) pursuant to a Connection and Limited Capacity Allocation Agreement between the District and WLSSD (the “Treatment Agreement”).
- (b) The WLSSD has allocated a portion of its treatment capacity to the District pursuant to the Western Lake Superior Sanitary District Wastewater Treatment Capacity Allocation Agreement between the District and WLSSD (the “Allocation Agreement”).
- (c) The Treatment Facilities have a permitted, but limited capacity serving the area of the cities of Cloquet, Carlton, Scanlon, Thomson, and Wrenshall and the towns of Silver Brook, Thomson, and Twin Lakes in Carlton County, the cities of Duluth, Hermantown, and Proctor and the towns of Canosia, Duluth, Grand Lake, Lakewood, Midway, Rice Lake, and Solway and the District in St. Louis County and the Knife River area of the Knife River – Larsmont Sanitary District in Lake County (“KRLSD”).
- (d) The Treatment Facilities are operated in accordance with a Discharge Permit, as amended, issued by the Minnesota Pollution Control Agency (“MPCA”). The Board of Managers of the District (the “Board”) is obligated by law and contract to comply with conditions of that permit, and to operate and manage the System as an essential governmental function.
- (e) The design capacity of the System is 1,373 Equivalent Domestic Units, or EDUs, as certified by the Minnesota Pollution Control Agency. One EDU is equivalent to one Capacity Availability Fee (CAF) Unit, or such other unit of measurement as may be adopted by the WLSSD from time to time.
- (f) The design capacity is comprised of 1,182 EDUs (the “Design Capacity”) for use by the District and 191 EDUs reserved for use by KRLSD under

the terms of the Wastewater Service Agreement between the District and KRLSD approved by the Board on September 14, 2005 and by the KRLSD Board of Managers on August 25, 2005.

- (g) The Design Capacity was determined by the District's Engineer by taking the sum of existing customer Flows and adding an allotment for future growth in EDUs/CAF Units of 2 percent per year through 2022.
- (h) The Design Capacity of the System is of finite capacity and will likely require replacement or upsizing at such time that the Design Capacity is exceeded.

2. Policy Statement.

- (a) It is the policy of the Board to encourage moderate growth in the customer base in order to avoid unexpected, unplanned capital investment that might adversely impact District finances by limiting Service Connections to the Growth Rate Policy.
- (b) Recognizing that (i) the Load on the System must be controlled, (ii) there is insufficient capacity to service the entire jurisdictional area of the WLSSD, (iii) uncontrolled assignment of capacity will cause growth more rapidly than the System or the Treatment Facilities can accommodate, and (iv) believing that it is necessary to maintain a balance of industrial, commercial and residential uses and a mix of housing types, the Board shall allocate the Reserve Capacity pursuant to this Ordinance by zoning districts and use classifications imposed by the Municipalities underlying the boundaries of the District.
- (c) The capacity of the Treatment Facilities allocated to the District is the property of WLSSD. The System is the property of the District. The capacity of the Treatment Facilities assigned to the District pursuant to the Allocation Agreement and the Reserve Capacity of the System shall be allocated by the Board in the manner described below.
- (d) This Ordinance shall not be construed as an abandonment or relinquishment of the authority or responsibility of the Board to regulate, control and supervise all means and methods of sewage collection, treatment and disposal within the District, nor shall it be construed to impair or inhibit the ability of the Board to contract with persons for the collection, transmission and treatment of sewage.
- (e) The allocation of capacity over the Design Period pursuant to this Ordinance is necessary to ensure the moderate pace of Development called for by the Treatment Agreement and the Allocation Agreement and to provide time for the District to acquire or construct additional capacity,

but the Board may reserve capacity that can be Used for the implementation of specific goals of its comprehensive plan at any time.

3. **Definitions.** The following words have the meanings below when used in this Ordinance. Capitalized terms not otherwise defined herein have the meanings given in the District's Ordinance No. 1 and Ordinance No. 3, which are incorporated by reference.

"Capacity Reservation" means the decision by the Board to commit a specified amount of sewage treatment capacity (measured in EDUs/CAF Units) to a specific Development. A Capacity Reservation may or may not include Reservation Phasing.

"Capacity Reservation Agreement" means a written agreement prepared by the Board between a Person and the District pursuant to which the Board makes a Capacity Reservation for such Person.

"Capacity Reservation Fee(s)" means the fee payable by a property owner in order to receive a Capacity Reservation.

"Committed Reserve Capacity" means the total amount of Development Flow measured in gallons per day from all Developments/buildings approved by the Board for discharge to the Treatment Facilities, but not yet discharging at the time of the calculation.

"Complete Construction" means:

- (a) for building Development, the completion of construction of all foundations, framing, siding and roofs; and
- (b) for subdivision Development, the sale of the individual lots.

"Connection Fee" means the fee that addresses the capital cost of that portion of the capacity of the Wastewater Treatment Facilities necessary to accommodate the anticipated Flow and Load from a new User, as provided in Ordinance No. 3.

"Connection Permit" means a permit authorizing the permit holder to construct the necessary facilities and a connection to the System as required by Section 6.1 of Ordinance No. 1.

"Design Capacity" means 1,182 EDUs/CAF Units.

"Design Period" means the period of time ending on December 31, 2022.

“Development” means the construction of improvements on a tract of land for any purpose, including, but not limited to, residential, commercial and industrial activity.

“Development Wastewater Flow” means the Flow resulting from full use of a Development at its peak capacity, which Flow shall be calculated using Flow quantities as promulgated at the time a Capacity Reservation is made.

“Discharge Permit” means a permit issued by the MPCA for the discharge of wastewater pursuant to authority granted in Minnesota Statutes.

“Growth Rate Policy” means the policy of the Board to limit Service Connections for each year to a number of CAF Units not to exceed 2 percent of total CAF Units as assigned by the Superintendent pursuant to Ordinance No. 3 for each previous year through 2022.

“Initiated” with respect to construction of a Development, means:

- (a) for building Development, the completion of the foundation; and
- (b) for subdivision Development, the start of construction of infrastructure (water, sewer, roads, etc.).

“Municipalities” means the jurisdictions underlying the District, specifically the City of Duluth, the Town of Duluth and the Town of Lakewood.

“Permitted Wastewater Flow” means the maximum Flows and Loads authorized under the Allocation Agreement on an annual average (365-day average) basis.

“Reservation Phasing” means a provision included as part of a Capacity Reservation for a specific Development which specifies the amount of the total Capacity Reservation which may be Used each year.

“Reserve Capacity” means the Permitted Wastewater Flow minus the aggregated Committed Reserve Capacity during the applicable period.

“Sewer Service Area” means the area of the District.

“Unused Reservation” means Capacity Reservation allocated to a Development which has not yet been Used by any particular structure.

“Used” means that point in time when a Capacity Reservation (or part thereof) is committed to serving a specific structure or structures.

4. Determination of Reserve Capacity.

- (a) Prior to each five-year revision of the Allocation Agreement, the Board shall determine the Reserve Capacity that is available in the System. This determination shall be based on the following information:
 - (i) the total capacity of the Treatment Facilities that is expected to be available to the District during the period covered by the Allocation Agreement, including both existing capacity and any anticipated additions to capacity;
 - (ii) the current average annual Flow in the System and Flow projections designed to account for seasonal and annual variations;
 - (iii) existing and anticipated Capacity Reservations to planned municipal facilities, including schools and other municipal buildings;
 - (iv) outstanding Capacity Reservations, including the need to adjust such Capacity Reservations to reflect actual Flows; and
 - (v) the need to maintain a Reserve Capacity sufficient to account for seasonal variations in Flows and the uncertainty in Flow projections for different land uses and emergencies.
- (b) Based on its determination of Reserve Capacity, the Board shall allocate that Capacity over the Design Period in accordance with the Growth Rate Policy.
- (c) The Board's determination of Reserve Capacity may be changed as necessary at any time to account for public health emergencies as provided by Section 5 or unanticipated changes in Treatment Facilities capacity.

5. Capacity Reservation - General.

- (a) No Reserve Capacity shall be allocated outside the Sewer Service Area existing on the date of the adoption of this Ordinance, unless approved by the WLSSD and the MPCA and the Board has amended Ordinance No. 2.
- (b) The Board shall maintain a commitment to providing for new single connections and changes of use on a first-come, first-serve basis. Persons wishing a Connection Permit shall apply to the Board on a form prescribed by the Board as required by Section 6.1 of Ordinance No. 1.

- (c) Acknowledging it has limited resources to support the permit application process and that it desires to accommodate growth in an orderly fashion, the Board reserves the right to give priority to Developments meeting any of the following criteria:
 - (i) Multi Structure/Parcel connections that are supported by a Capacity Reservation Agreement complying with the requirements of this Ordinance in which Capacity Reservation Fees are paid in full;
 - (ii) Applications that are respectful of the fact that each Municipality located within the District's service area is anticipating a measure of growth in the coming years;
 - (iii) Multi Structure/Parcel connections that do not require an extension of the System;
 - (iv) Multi Structure/Parcel connections that are developed in phases that establish a more moderate pace of growth in new connections; or
 - (v) connections that are consistent with the Board's Growth Rate Policy regarding moderate growth.

- (c) The Board may, on its own initiative, reserve capacity to be held and used to encourage specific types of Development, including housing for special populations and major employers. Such a reservation may be created only to implement a specific goal of the District's comprehensive plan. In addition, the Board may also reserve capacity sufficient to account for seasonal variations in sewage Flows and the uncertainty in sewage Flow projections for different land uses and emergencies.

6. **Additional Capacity.** Both the Board's determination of Reserve Capacity, as required by Section 4 above, and its reservation of capacity described in Section 8 below, may be revised, as necessary, to account for the acquisition of additional capacity.

7. **Application Procedure.** A Capacity Reservation grant shall be administered by the Board. Capacity Reservation shall be granted on a first come, first serve basis. In order to receive a Capacity Reservation, a Person must enter into a Capacity Reservation Agreement with the District.

- (a) Applications for a Capacity Reservation Agreement will be processed on a first come, first serve basis, in the order they are received.

- (b) The Superintendent will, with the advice of the Engineer if necessary, determine the Flow and Load that will be generated by the proposed Development. If sufficient Reserve Capacity is available, the Superintendent shall process the application. If sufficient Reserve Capacity is not available, the application shall be denied and returned to the applicant.
- (c) Upon satisfactory review of the application by the Superintendent, the Superintendent shall forward the completed application to the Board, indicating that sufficient capacity is available and that the Board should enter into a Capacity Reservation Agreement with the applicant. An approved Capacity Reservation Agreement has no effect on the status of a Connection Permit or a building permit within the Municipalities, whichever is applicable.
- (d) The capacity shall be considered Used when a Service Connection is installed. Until the Service Connection is installed, the capacity is considered Unused Reservation and is subject to Capacity Reservation Fees and Connection Fees in accordance with Section 10 below. After installation of the Service Connection, sewer usage is subject to the District's User Charges in accordance with Ordinance No. 1 and Ordinance No. 3.
- (e) If capacity is not Used within the term established in the Capacity Reservation Agreement, it shall revert to the Reserve Capacity. There shall be no refund of any Capacity Reservation Fees paid on the reverted capacity. The Board may grant an extension of the term of the Capacity Reservation Agreement if it finds that the holder of the Capacity Reservation has been working diligently to implement the Development. The Board shall not be obligated in any way to approve an extension of the term of a Capacity Reservation Agreement.

8. Approval, Findings and Conditions.

- (a) *Findings:* Upon receipt of the complete application for a Capacity Reservation Agreement, including all required fees and supporting documents, the Board may grant approval of a Capacity Reservation which varies from the Growth Rate Policy, if, based on information provided by the applicant, the Board can make affirmative findings that:
 - (i) there is sufficient Reserve Capacity, taking into account the Board's Growth Rate Policy, to accommodate the Flow and Load of the proposed connection;
 - (ii) the proposed use of the System by the Development complies with the standards set forth in this Ordinance; and

(iii) the proposed use of the System by the Development is consistent with other Ordinances and policies duly adopted by the Board; and either:

(A) the proposed wastewater to be treated is Normal Domestic Strength Waste; or

(B) the proposed wastewater is not of domestic sanitary origin and sufficient evidence has been presented by the applicant to demonstrate that the Flow and character of the wastewater is compatible with the proper operation of the Treatment Facilities and System and the proposed wastewater will not alone or in combination with other wastes cause a violation of the Discharge Permit or Ordinance No. 1, pass through the Treatment Facilities without treatment, interfere or otherwise disrupt the proper quality and disposal of Treatment Facilities sludge or be injurious in any other manner to the Treatment Facilities or System.

(b) *Approval and Conditions:* The Board, after making the findings above, may grant approval of a Capacity Reservation Agreement. The Capacity Reservation Agreement must be made in accordance with the provisions set forth herein and shall expire on December 31 immediately following its execution by all parties. The Capacity Reservation Agreement is a binding reservation of Reserve Capacity to the Development contingent on compliance with any conditions contained in the Capacity Reservation Agreement and this Ordinance. The Board may revoke the Capacity Reservation Agreement upon finding that the applicant failed to meet any of conditions included therein or in this Ordinance. The Board may include such additional conditions deemed necessary to ensure compliance with the intent of this Ordinance.

9. **Reversion.** A Capacity Reservation is granted to a specific Development on a specific parcel of land. After completion of the Development, or upon expiration of the term of a Capacity Reservation Agreement, the Unused Reservation (adjusted for the actual Development constructed, if necessary) as determined by the Board, will revert to the District.

10. **Cost Recovery; Fees.**

(a) *Cost Recovery.*

(i) The entire cost of any extension of the System's sewer lines, including costs of construction, to provide for new Users shall be

borne by the Persons to be served by the expansion, without regard to whether such extension was due to an emergency or otherwise.

(ii) Any Capacity Reservation Fee payments made as required by this Section shall not be construed as payments towards the Connection Fee required for any Development.

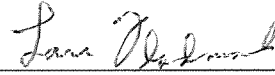
(b) *Fees.*

(i) Prior to the grant of a Capacity Reservation by the Board, the holder of the Capacity Reservation shall be assessed a Capacity Reservation Fee in the amounts authorized by the Board in Ordinance No. 3. Capacity Reservation Fees are due and payable at the time the application for a Capacity Reservation Agreement is submitted. The Board will not consider an application unless all fees have been paid in full.

(ii) Annually by December 31, the Board shall levy a Capacity Reservation Fee against any Unused Reservation held on that date, regardless of when the Capacity Reservation was obtained as provided in the Capacity Reservation Agreement for the Development. If the Capacity Reservation Fee is not paid when due, the Unused Reservation shall expire and revert to the Reserve Capacity.

11. **Authority to Require Connection.** Nothing herein shall be construed as limiting or impairing the authority of the District or its Board to require connections to the System under the general laws of the State of Minnesota or the District's Ordinances.
12. **Prior Reservations.** Adoption of this Ordinance, and any amendment thereto, shall not modify any allocations of treatment capacity issued prior to the adoption of this Ordinance, or amendment thereto. The procedures established by this Ordinance shall govern as of the date approved hereunder.
13. **Effect of Adoption of Ordinance.** To the extent that any provision herein shall be inconsistent with or contrary to any provision of the District's Ordinance No. 1 or Ordinance No. 3, then the provisions of this Ordinance shall apply.
14. **Severability.** If any portion of this Ordinance and any amendments made hereto are held unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance and any amendments made hereto shall not be affected and shall remain in full force and effect. If any statute referred to in this Ordinance shall be amended, this Ordinance shall be deemed to refer to such amended statute.

Adopted by the Board of Managers of the Duluth/North Shore Sanitary District, Saint Louis County, Minnesota on October 11, 2006.



Chair

ATTEST:



Secretary

M:\DOCS\13263\000014\ORN\IQ5641.DOC