

ORDINANCE NO. 15,733

AN ORDINANCE to amend the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, by amending Sections 118-204 and 118-208, relating to fee for connection to major sanitary sewer facilities.

Be It Ordained by the City Council of the City of Des Moines, Iowa:

Section 1. That the Municipal Code of the City of Des Moines, Iowa, 2000, adopted by Ordinance No. 13,827, passed June 5, 2000, as heretofore amended, is hereby amended by amending Sections 118-204 and 118-208, relating to fee for connection to major sanitary sewer facilities, as follows:

**Sec. 118-204. Conditions of permission to connect and fees payable.**

Sewer connections referred to in section 118-203 of this division may be permitted or denied by the city manager or such city employee as may be designated by the city manager to exercise such function under direction of the city manager, such permission or denial to be exercised with the aim and purpose that no such connection shall be permitted which will be inconsistent with standards contained in city plumbing and right-of-way occupancy ordinances, which will be inconsistent with objectives of the city with reference to possible future annexation of the area proposed for service, which will or may interfere with orderly extension of trunk lines or laterals at some future date, or which will tend to require the sewer to which connection is sought or the sewer system of the city or the sewage treatment facilities of the city to be burdened beyond their rated capacity and shall wherever and whenever permitted be upon the following conditions precedent:

- (1) No person shall make any connections to the city sewer system either directly or indirectly without first making application therefor and obtaining a permit to do so from the city manager or his or her designee and paying the fees and connection charges established in this division.
- (2) No sewer connection permit under circumstances described in section 118-203 of this division shall be issued unless a written application for the issuance of a sewer connection permit is submitted to the city manager or his or her designee. The written application shall state the name and address of the applicant; the nature, location and purpose of the connection; the description showing the dimensions thereof and area in square feet of the property to be served with reference to a properly recorded plat; the date of proposed commencement and the date of proposed completion of the connection, and it shall contain an agreement by the owner of the property binding upon the owner and the owner's successors or assigns to comply with all rules and regulations established regulating the use

of the sewer and connections thereto including city ordinances relating to plumbing and street excavations, city ordinances prescribing sewer rental charges as stated or as amended; agreeing to waive any possible future objections to annexation proceedings instituted by the city which might be founded upon such sewer service, unless specifically waived or limited by resolution of the city council; and agreeing to hold the city harmless from any loss, liability or damage resulting from such connections or the use thereof.

- (3) Failure to apply to the city manager or his or her designee with the information required in subsection (2) of this section shall be sufficient cause to deny issuance of a sewer connection permit. The city manager or his or her designee may refuse to issue the permit provided for in this section to any former permit holder who has intentionally violated the sections of this division relating to sewer connections.
- (4) One sewer connection shall serve no more than 10,000 square feet of property, without approval of the city council setting an additional fee, as provided in this section. If the area of the property to be served exceeds 10,000 square feet, as shown in the written application for sewer connection permit, the city manager or his or her designee shall deny the application and immediately refer it to the city council. The maximum depth of any area to be served adjacent to a sewer to which property outside the city may connect under this section shall be 175 feet from the street right-of-way line, except those properties adjacent to the East Fourteenth Street sewer, which may be served to a depth of not to exceed 400 feet from the centerline of East Fourteenth Street. Any improvements beyond these limitations shall not be served by city sewer.
- (5) When the application for connecting to the municipal sanitary utilities is filed with the city manager or his or her designee, the application shall be accompanied by a sewer connection fee as established within this division for the applicable trunk sewer, or where no sewer connection fee is established a sum computed at the rate of \$0.015 per square foot of lot area to approximate the cost of extending trunk line sewer service to the near vicinity of the subject property and a further sum computed at the rate of \$7.76 per front foot of the property to be served to approximate the cost of extending lateral sewer lines to the near vicinity of such property, which fee shall, however, in no case exceed the equitable portion of the total original cost to the city of extending such sanitary utilities to the near vicinity of the property served. If the property to be served exceeds 10,000 square feet, but is otherwise shown to qualify under this section for permission to connect, the city council may, nevertheless, approve the connection but may charge an additional reasonable and equitable fee proportionate to the fee in this subsection, based upon the area and frontage of the property to be served by the connection.
- (6) If the fee established in subsection (5) of this section exceeds the equitable portion of the total original cost to the city of extending the sanitary utilities to the near vicinity of the property served, the city manager or his or her designee shall submit the application to the city council, which will make such adjustments as will render the fee reasonable and equitable in the circumstances. If the property owner has an objection to the reasonableness of the sewer connection fee or

action of the city manager or his or her designee in computing the fee or denying the application, such owner may file a protest with the city council within ten days after such action or determination of the fee. The city council shall then consider the property owner's objection, and its determination shall be final.

- (7) Upon receipt of the application in compliance with this section, together with the required fee, the city manager or his or her designee shall issue the sewer connection permit within ten days of the date of filing of such application unless it appears that the proposed connection would be contrary to the best interest of the city for reasons referred to in this section or such application does not comply with the conditions stated in this section.

**Sec. 118-208. Fee for connection to major sanitary sewer facilities.**

- (a) The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

*Benefited district* means that area to which sanitary sewer service can feasibly be provided by a major sanitary sewer facility of a given design and capacity. For benefitted districts established after December 1, 2018, benefitted district means that area to which sanitary sewer service can feasibly be provided by a major sanitary sewer facility of a given design and capacity, excluding properties which are within the boundaries of another city and excluding properties the city is prohibited from annexing pursuant to an agreement with another city.

*Connection* means the act of connecting the building sewer of a residential structure to a lateral sewer or manhole constituting a part of a major sanitary sewer facility, or the act of connecting a lateral sewer serving a subdivision to a trunk sewer or manhole constituting a part of a major sanitary sewer facility.

*Major sanitary sewer facility* means and includes sanitary sewer trunk lines and sanitary sewer interceptors of greater than eight inches in diameter, and sanitary sewer force mains, pumping stations and detention basins.

- (b) The city has determined the necessity of establishing a policy and a procedure to be utilized to recover the cost of designing and constructing major sanitary sewer facilities when a significant number of the properties to be benefitted by such facilities are not sufficiently developed to permit the recovery of those costs through the special assessment process as provided in I.C. § 384.37 et seq. The city declares its intent to utilize connection fees, as provided in this section, to recover the costs of designing and constructing such major sanitary sewer facilities from property owners who connect to such facilities subsequent to their construction. It is the intent of this section to set forth the method of recovering proportional cost shares from those property owners who connect their properties to major sanitary sewer facilities subsequent to their construction, so that if all property, other than the city right-of-way, which lies within the benefitted district is connected to the major sanitary sewer facilities during their expected useful life, those properties shall bear, in the aggregate, up to 100 percent of the cost of designing and constructing such facilities, including legal and administrative expenses associated therewith.

(c) If the city council determines the necessity of constructing a major sanitary sewer facility and determines that the utilization of a connection fee is the most equitable manner in which to recover the city's costs associated therewith, the city council shall cause a notice of public hearing on the proposed adoption of an ordinance to establish a benefited district and a connection fee to be published in a newspaper of general circulation within the city as provided in this section. In addition to indicating the date, time, and place of the public hearing, the notice shall:

- (1) Indicate the nature and extent of the major sanitary sewer facility under consideration for construction, as well as the estimated cost for the design and construction of the facility;
- (2) Identify by general description the proposed benefited district to be served by the major sanitary sewer facility; and
- (3) Set forth the proposed schedule of connection fees to be paid by property owners within the benefited district who connect to the facilities, expressed in dollars per acre of land area served.

The notice shall also state that the proposed connection fee ordinance is on file and available for public inspection in the office of the city clerk. The notice shall be published not more than 45 days and not less than ten days prior to the scheduled date of the public hearing and shall be mailed to each property owner within the benefited district as shown by the records of the county auditor.

(d) At the public hearing, the owners or occupants of properties within the proposed benefited district shall be heard and may offer comments or objections as to:

- (1) The necessity for the project;
- (2) The calculation of the area benefited by the proposed major sanitary sewer facilities;
- (3) The estimated cost of the proposed facilities; and
- (4) The proposed per-acre connection fee.

Upon concluding the hearing, the city council shall rule upon the objections presented during the hearing and may consider the adoption of the proposed connection fee ordinance. Upon consideration of the proposed connection fee ordinance, the council may (i) adopt the ordinance as proposed, (ii) delete elements or portions of the proposed major sanitary sewer facilities from the proposed project and the lands served thereby from the benefited district proposed, or (iii) amend the ordinance to reduce the connection fee.

(e) The connection fee ordinance may provide, at the city council's discretion, that single-family residences within the benefited district, in existence or under construction upon the effective date of the ordinance and located within the corporate limits, are eligible for connection to the major sanitary sewer facility. In that event, the ordinance shall include the provisions that:

- (1) The owner of a residence on a parcel of less than one acre in size located within the city may connect such residence to the major sanitary sewer facility upon approval of the application for connection, payment of the connection fee for the parcel, and construction of appropriate connection structures, as determined necessary by the city engineer; and
- (2) The owner of a residence on a parcel in excess of one acre in size located within the city may connect such residence to the major sanitary sewer facility upon approval of the application for connection, subdivision of the parcel into a

residence parcel and an outlot, payment of the connection fee for the residence parcel, and construction of appropriate connection structures, as determined necessary by the city engineer.

All other property located within the corporate limits and within a benefited district shall be eligible for connection to the major sanitary sewer facility upon approval of an application for connection by the owner thereof, as provided in this section, and payment of the connection fee for such property, provided such property has been appropriately subdivided for development and provided that all sanitary sewer improvements necessary to serve the property have been constructed and approved by the city. Property located outside the corporate limits of Des Moines shall not be eligible for connection to a major sanitary sewer facility except as otherwise provided herein.

- (f) After adoption and publication of a connection fee ordinance for a benefited district, the owners of those properties within the benefited district whose properties are eligible for connection and who propose to connect such properties directly or indirectly to the major sanitary sewer facility shall make application to the city engineer for such connection. No connection shall be made to a major sanitary sewer facility until such application has been approved and until the required connection fee has been paid.
- (g) For connections for service within a benefitted district, the sewer connection fee shall be in an amount equal to the maximum acre area of contiguous property or fraction thereof within the benefited district under such ownership which can be lawfully served through such proposed connection, multiplied by the per-acre connection fee established in the connection fee ordinance for that benefited district. For connections for service outside a benefitted district for which service could be provided by a major sanitary sewer facility for which a benefitted district was established, the sewer connection fee shall be in an amount equal to the maximum acre area of contiguous property or fraction thereof under such ownership which can be lawfully served through such proposed connection, multiplied by the per-acre connection fee established in the connection fee ordinance for that benefitted district. The connection fee ordinance may provide for a graduated connection fee, with annual interest adjustments, such that a property owner who connects in later years pays interest on the connection fee for his or her property.
- (h) The sewer connection fee required by this section is in addition to and not in lieu of any other fees for connection required under the plumbing code or other sections of this Code.
- (i) If any property owner connects his or her property to a major sanitary sewer facility without having made application therefor or without having received approval thereof or without having paid the required connection fee established by a connection fee ordinance, the city shall be entitled to disconnect such private sewer connection until such time as the property owner has made and received approval of his or her application and/or has paid the required connection fee.

Section 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

FORM APPROVED:

Kathleen Vanderpool, Deputy City Attorney

T. M. Franklin Cownie, Mayor

Attest:

I, Diane Rauh, City Clerk of the City of Des Moines, Iowa, hereby certify that the above and foregoing is a true copy of an ordinance (Roll Call No.18-2007), passed by the City Council of said City at a meeting held December 3, 2018 signed by the Mayor on December 3, 2018 and published and provided by law in the Business Record on December 21, 2018. Authorized by Publication Order No. 10561.

Diane Rauh, City Clerk