

*Amended
95-0-003*

ORDINANCE NUMBER 95-0-001

AN ORDINANCE AMENDING ORDINANCES NO. 665, 686, 687A, 737, 747, 80-0-3, 84-0-8, 87-0-004, AND 88-0-004 ENTITLED "AN ORDINANCE REGULATING: THE USE OF PUBLIC AND PRIVATE SEWERS AND DRAINS, PRIVATE SEWAGE DISPOSAL, THE INSTALLATION AND CONNECTION OF BUILDING SEWERS, THE DISCHARGE OF WATERS AND WASTES IN TO THE PUBLIC SYSTEM, AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF; THE LEVYING OF CHARGES FOR WASTEWATER SERVICES (USE CHARGES) IN THE METRO EAST SANITARY DISTRICT, COUNTIES OF ST. CLAIR AND MADISON, STATE OF ILLINOIS."

NOW THEREFORE BE IT ORDAINED BY THE PRESIDENT AND THE BOARD OF COMMISSIONERS OF THE METRO EAST SANITARY DISTRICT, ST. CLAIR AND MADISON COUNTIES, ILLINOIS AS FOLLOWS:

A. That the above ordinances be and the same are hereby amended to add to said ordinances the following provisions;

ARTICLE 11 GENERAL PROVISIONS

SECTION 10. DISCONNECTION PROCEDURES

A. The District (Metro East Sanitary District) may undertake disconnection of owner, occupant or user of that real estate, or a person receiving any direct or indirect benefits from such service, or any person who holds a legal, equitable or possessory interest in the real estate connected to the Metro East Sanitary District Sewer System sanitary sewer services pursuant to this Section without first having to take any other enforcement action set forth in this Ordinance.

B. Compliance Meeting

1. Whenever non-payment of user charges by the owner, occupant or user of that real estate, or a person receiving any direct or indirect benefits from such service, or any person who holds a legal, equitable or possessory interest in the real estate connected to the Metro East Sanitary District Sewer System results in an amount equal to or greater than One Hundred Dollars (\$100.00), the District may prepare a Notice of Violation to be sent by certified or registered mail to the owner, occupant or user of that real estate or a person receiving any direct or indirect benefits from such service, or any person who holds a legal, equitable or possessory interest in the real estate connected to the Metro East Sanitary District Sewer System. The Notice of Violation shall specify the amount of delinquent user charges and

penalties, the period of delinquency, the service address, and the time and place for a compliance meeting to be attended by the President and by the owner, occupant or user of that real estate or a person receiving any direct or indirect benefits from such service, or any person who holds a legal, equitable or possessory interest in the real estate connected to the Metro East Sanitary District sewer system. The District may also notify any other person with an interest in the subject premises whose rights may be affected by continued enforcement proceedings.

2. The compliance meeting shall be scheduled not less than seven (7) days nor more than twenty-one (21) days from the date the Notice of Violation is sent. Any request for a continuance must be in writing setting forth in detail the reasons for the request. The President of the Metro East Sanitary District may grant or deny continuances upon said written request. The purpose of the compliance meeting shall be to obtain a voluntary plan to remedy the delinquent user charges. It is specifically designed as an informal process and is not penal in nature. The compliance meeting shall be conducted by the President of the Metro East Sanitary District. No formal rules of evidence shall be in effect and the proceedings shall not be transcribed by a court reporter. The President of the Metro East Sanitary District and owner, occupant or user of that real estate, or a person receiving any direct or indirect benefits from such service, or any person who holds a legal, equitable or possessory interest in the real estate connected to the Metro East Sanitary District sewer system shall discuss a compliance schedule for remedying the delinquent charges.

3. Within ten (10) working days, a letter shall be issued by the President of the Metro East Sanitary District indicating the results of the meeting and setting forth any Compliance Schedule developed for remedying delinquent user charges. This letter may specify dates of future meetings as may be required to monitor progress in remedying the delinquent charges. If no voluntary agreement to remedy the delinquent charges is reached, the President of the Metro East Sanitary District may recommend that the owner, occupant or user of that real estate or a person receiving any direct or indirect benefits from such service, or any person who holds a legal, equitable or possessory interest in the real estate connected to the Metro East Sanitary District sewer system, be required to show cause why the subject real estate should not be disconnected from the District's wastewater facilities.

4. The compliance meeting is an optional procedure which may be instituted by the Metro East Sanitary District. The Metro East Sanitary District may at any time cancel, terminate, or bypass the compliance meeting and require the owner, occupant or user of that real estate or a person receiving any direct or indirect benefits from such service, or any person who holds a legal, equitable or

possessory interest in the real estate connected to the Metro East Sanitary District sewer system to show cause why the subject real estate should not be disconnected from the Metro East Sanitary District's wastewater facilities, whenever the President determines it is in the best interests of the Metro East Sanitary District to so proceed.

C. Show Cause Hearing

1. The show cause hearing procedure shall be initiated by the Board of Commissioners of the Metro East Sanitary District upon the recommendation of the President. The Board of Commissioners may conduct the hearing or designate an individual Commissioner or panel of Commissioners to conduct the hearing. For purpose of this subsection, "hearing officer" shall mean either the Board of Commissioners or a designated Commissioner or panel of Commissioners, as the case may be.

2. Upon initiation of the show cause hearing procedure, the Metro East Sanitary District shall prepare a Notice to Show Cause stating the delinquent amount and penalties, the delinquent period, the service address, the time and place of a show cause hearing, the name and address of the hearing officer, and requiring the owner, occupant or user of that real estate or a person receiving any direct or indirect benefits from such service, or any person who holds a legal, equitable or possessory interest in the real estate connected to the Metro East Sanitary District sewer system to appear at the hearing and show cause, if any, why the subject real estate should not be disconnected from the Metro East Sanitary District's wastewater facilities and said services be terminated. The Notice to Show Cause shall be sent by a certified or registered mail to the owner, occupant or user of that real estate or a person receiving any direct or indirect benefits from such service, or any person who holds a legal, equitable or possessory interest in the real estate connected to the Metro East Sanitary District sewer system last know address. If there is more than one delinquent owner, occupant or user of that real estate or a person receiving any direct or indirect benefits from such service, or any person who holds a legal, equitable or possessory interest in the real estate connected to the Metro East Sanitary District sewer system, the Notice shall be mailed to the last known address of each owner, occupant or user of that real estate or a person receiving any direct or indirect benefits from such service, or any person who holds a legal, equitable or possessory interest in the real estate connected to the Metro East Sanitary District sewer system. Notice will also be sent to the property owner as determined from a search of public records by registered or certified mail if the owner is other than the delinquent owner, occupant or user of that real estate or a person receiving any direct or indirect benefits from such service, or any person who holds a legal, equitable or possessory interest in the real estate connected to the Metro East

Sanitary District sewer system. The mailing of the Notice to Show Cause shall be construed as service. The Notice to Show Cause may also be personally served upon the owner, occupant or user of that real estate or a person receiving any direct or indirect benefits from such service, or any person who holds a legal, equitable or possessory interest in the real estate connected to the Metro East Sanitary District sewer system. The Metro East Sanitary District may also notify any other person with an interest in the subject premises whose rights may be affected by continued enforcement proceedings.

3. If service cannot be obtained on the owner, occupant or user of that real estate or a person receiving any direct or indirect benefits from such service, or any person who holds a legal, equitable or possessory interest in the real estate connected to the Metro East Sanitary District sewer system, as evidenced by a return of certified or registered mail unclaimed, or a report from the Sheriff's office or private process server, that the owner, occupant or user of that real estate or a person receiving any direct or indirect benefits from such service, or any person who holds a legal, equitable or possessory interest in the real estate connected to the Metro East Sanitary District sewer system cannot be found, the hearing officer may direct that the notice to show cause be served upon the owner of the property. In such case, the provisions of subsection C shall apply to the owner as if he or she was the owner, occupant or user of that real estate or a person receiving any direct or indirect benefits from such service, or any person who holds a legal, equitable or possessory interest in the real estate connected to the Metro East Sanitary District sewer system.

4. The show cause hearing shall be scheduled not less than ten (10) nor more than twenty-one (21) days from the date the Notice to Show Cause is sent. Any request for a continuance must be made in writing to the hearing officer setting forth in detail the reasons for the request. The hearing officer shall grant or deny continuances in writing upon said written requests.

5. Upon written request prior to the hearing, the Metro East Sanitary District shall provide the following:

- (a) A list of all witnesses expected to testify at the show cause hearing: and
- (b) Copies of any documents expected to be used at the show cause hearing.

6. The Metro East Sanitary District shall make its employees available for examination at the show cause hearing upon written request. Further, upon written request, the Hearing Officer shall request the presence of any other person the owner, occupant or

user of that real estate or a person receiving any direct or indirect benefits from such service, or any person who holds a legal, equitable or possessory interest in the real estate connected to the Metro East Sanitary District sewer system expects to examine as a witness at the show cause hearing.

7. The President of the Metro East Sanitary District may enter into stipulations of fact or law on behalf of the Metro East Sanitary District.

8. The following procedures shall apply to all Show Cause Hearings:

- (a) The show cause hearing shall be recorded by a certified court reporter or by tape recorder:
- (b) The hearing officer shall open the hearing by stating his name and authority for holding the hearing and stating the owner, occupant or user of that real estate or a person receiving any direct or indirect benefits from such service, or any person who holds a legal, equitable or possessory interest in the real estate connected to the Metro East Sanitary District sewer system name and the service addresses involved:
- (c) The hearing officer shall ask for the appearances of the parties and in responding thereto, any persons representing the various parties shall state for the record their names and whom they represent:
- (d) The District shall offer a copy of the Notice to Show Cause as an exhibit into evidence and establish the date of mailing thereof. The owner, occupant or user of that real estate or a person receiving any direct or indirect benefits from such service, or any person who holds a legal, equitable or possessory interest in the real estate connected to the Metro East Sanitary District sewer system shall be given an opportunity to object to the form of sufficiency of notice. Notice may be waived by the owner, occupant or user of that real estate or a person receiving any direct or indirect benefits from such service, or any person who holds a legal, equitable or possessory interest in the real estate connected to the Metro East Sanitary District sewer system.
- (e) The hearing officer shall determine for the record whether due notice was given:

- (f) Following the determination of notice, the hearing officer shall solicit an opening statement from the Metro East Sanitary District and then from the owner, occupant or user of that real estate or a person receiving any direct or indirect benefits from such service, or any person who holds a legal, equitable or possessory interest in the real estate connected to the Metro East Sanitary District sewer system:
- (g) Following the opening statement, the Metro East Sanitary District shall examine its witnesses and present its documents. The owner, occupant or user of that real estate or a person receiving any direct or indirect benefits from such service, or any person who holds a legal, equitable or possessory interest in the real estate connected to the Metro East Sanitary District sewer system shall be afforded an opportunity to cross-examine the witnesses and object to any documents presented as evidence:
- (h) After the Metro East Sanitary District presents its witnesses and documents, the owner, occupant or user of that real estate or a person receiving any direct or indirect benefits from such service, or any person who holds a legal, equitable or possessory interest in the real estate connected to the Metro East Sanitary District sewer system shall be afforded the same opportunity to call witnesses and present documents. The Metro East Sanitary District shall be afforded the opportunity to cross-examine the witnesses and object to any documents presented as evidence:
- (i) The hearing officer shall accept or reject any documents offered as evidence. Such acceptance or rejection shall be noted for the record. No formal rules of evidence shall apply. All evidence which is relevant and authentic may be accepted into evidence.
- (j) Following the presentation of witnesses and documents, the hearing officer shall solicit closing statements from the Metro East Sanitary District and then from the owner, occupant or user of that real estate or a person receiving any direct or indirect benefits from such service, or any person who holds a legal, equitable or possessory interest in the real estate connected to the Metro East Sanitary District sewer system.

- (k) The hearing officer may suspend the hearing to show cause and set a date on which the hearing is to continue.

9. The Metro East Sanitary District shall have the burden of showing, by a preponderance of the evidence, the following elements:

- (a) Notice of the hearing conforming to the provisions herein above set forth:
- (b) Service provided to the service address(es) and charges for such services:
- (c) Non-payment of user charges after demand for such payment:

10. The hearing officer shall render a decision in writing with specific findings as to the elements set forth herein above within thirty (30) days of the hearing, or within such longer period as the hearing officer deems necessary, so long as notice is given to the parties of the longer period. If the hearing officer finds that the Metro East Sanitary District has proven each of the elements herein above set forth, the hearing officer shall make a recommendation to the Board of Commissioners of the Metro East Sanitary District. That recommendation may be that the subject real estate be disconnected from Metro East Sanitary District's wastewater facilities immediately, or after a stated period of time during which the owner, occupant or user of that real estate or a person receiving any direct or indirect benefits from such service, of any person who holds a legal, equitable or possessory interest in the real estate connected to the Metro East Sanitary District sewer system may cure the delinquency, that no disconnection take place because that the owner, occupant or user of that real estate or a person receiving any direct or indirect benefits from such service, or any person who holds a legal, equitable or possessory interest in the real estate connected to the Metro East Sanitary District sewer system has a justifiable reason for non-payment of the user charges or that the sewer service to the property be terminated. The hearing officer's decision may also include a requirement that the owner, occupant or user of that real estate or a person receiving any direct or indirect benefits from such service, or any person who holds a legal, equitable or possessory interest in the real estate connected to the Metro East Sanitary District sewer system or owner pay any costs incurred by the Metro East Sanitary District in preparing for disconnection, including personnel costs and equipment rental costs for personnel and equipment that proceed to the site of disconnection. The rate of pay shall be based on the Metro East Sanitary District's current pay scale, and equipment charges shall be based on the Metro East Sanitary District's then current rental charges.

11. In all cases where the hearing officer finds that the District has proven non-payment of the user charges, the hearing officer may assess the costs of enforcement as part of the recommendations. These costs shall include hearing officer fees, service fees, reasonable attorney's fees and disconnection charges. Disconnection charges may include the costs incurred by the Metro East Sanitary District in preparing for the disconnection of the property, even if disconnection does not take place. Disconnection charges may also include the costs incurred by the Metro East Sanitary District in dispatching personnel to the disconnection site where disconnection will be accomplished by disconnecting the sewer and may include any costs incurred by the District for termination of the sewer services.

12. The Board of Commissioners shall authorize disconnection of the sewer for non-payment of user charges only after a show cause hearing has been provided and the recommendation of the hearing officer has been submitted to it.

13. A Notice of Disconnection shall be sent certified or registered mail, at least ten (10) days prior to the disconnection date, to the owner, occupant or user of that real estate or a person receiving any direct or indirect benefits from such service, or any person who holds a legal, equitable or possessory interest in the real estate connected to the Metro East Sanitary District sewer system, to the mortgage and lien holders of record, and to the taxpayer. The local health department and building code enforcement office shall be notified of the disconnection date only if the sewer is to be disconnected. The Notice of Disconnection shall state the service address, the amount of the delinquent charges, interest, and penalties, and the date of disconnection.

14. Any property whose sewer service is disconnected pursuant to the terms of this Ordinance may have the services reconnected upon payment of all outstanding charges, interest, and penalties and payment of all costs and fees incurred by the District in performing the disconnection, as well as costs assessed by the hearing officer at the show cause hearing and any deposits required by the hearing officer's order. If a payment is made by a check and the check is returned by insufficient funds, sewer services to such property shall be immediately disconnected and remain disconnected until all costs incurred by the Metro East Sanitary District are paid in cash, certified check or money order and that all requirements of this Ordinance are complied with.

15. If the District personnel and equipment have been marshalled and dispatched to disconnect a sewer and offer of payment is made prior to the disconnection, disconnection shall only be stayed if all past delinquent charges, interest, penalties and other fees assessed by the Board of Commissioners are paid and if Metro East Sanitary District's Costs in marshalling and dispatching its personnel and equipment are paid.

All other provisions and terms set forth in the Ordinances hereby amended by adding the foregoing shall remain in full force and effect unless they are contrary to the provisions of this amendment.

This Ordinance shall be in full force and effect from and after its passage and approval and publication as provided by law. Passed by the Board of Commissioners of the Metro East Sanitary District of Madison and St. Clair Counties of Illinois on the 11th day of March, 1995.

Metro East Sanitary District by:


PRESIDENT

ATTEST:


CLERK (SEAL)