



## STAFF REPORT

DATE: October 11, 2016

**WORK SESSION**

ITEM #:

**DISCUSSION**

**TO:** Mayor and City Council

**FROM:** Kristina Handt, City Administrator

**AGENDA ITEM:** SSTS Ordinance and County Services

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### **BACKGROUND:**

The City's ordinances relating to subsurface sewage treatment systems (SSTS) is in Chap 51 of the code. A copy is included in your packet. The city has been contracting with Washington County for SSTS permit and inspections. It has been determined by county staff that the current city ordinance is out of compliance with state rules.

### **ISSUE FOR DISCUSSION:**

What ordinance amendment should staff prepare?

### **PROPOSAL DETAILS/ANALYSIS:**

Included in your packet is a memo from county staff laying out the options and discussing the issues. County staff (Girard Goder or Jeff Tavis) will be in attendance at the work session to provide additional information and answer questions since this is a very technical issue.

In addition to the memo, I asked for more specific info from county staff about what aspects of the city's SSTS ordinance were out of compliance. Girard Goder provided the following comments:

The City Code includes the following provision (because it incorporates the County Ordinance word for word):

#### 3.1 Administrative scope.

This chapter shall apply and be in effect in all areas in Washington County other than cities and towns that have adopted ordinances that comply with Minnesota Statute Section 115.55, Minnesota Rules, Chapter 7082, and are as strict as this Chapter. [...]

Discussion: The City does not have the statutorily granted authority to enact an ordinance outside of its jurisdiction.

#### 3.3 Variance procedures.

[...] Modifications related to setbacks or zoning shall be heard by the Washington County Board of Adjustment and Appeals. [...]

Discussion: Here the establishes that the Washington County Board of Adjustment and Appeals consider variance requests, which is problematic because the Board does not have land use authority within the City. This also conflicts with Section 51.005 of the City Code which establishes that variances and appeals shall be heard by the City.

There are numerous other instances where the verbatim incorporation of the County Ordinance unintentionally grants/confers/requires County oversight/administration/control for a city ordinance. Should the City wish to continue to have the County administer the City ordinance, the better course of action would be for the City to establish itself as the regulatory authority (by still adopting the County Ordinance but also modifying all references to Washington County [and the various boards, departments, etc.] to instead read as their City equivalent counterparts) and subsequently contract with the County to deliver the City program.

In regards to the exceptions established in Section 53.003 of the City Code, I have the following comments:

(A) The following provisions are adopted separately from the Chapter 4 adopted in § 51.002 and are more restricting than Chapter 4 of the Washington County Development Code:

(1) Washington County Development Code Chapter 4; Section 6 - Permits:

(a) "Mound systems are not allowed for collector systems in the OP Open Space Preservation District."

In the hypothetical scenario\* that an existing community septic system needed to be replaced due to a separation to groundwater, and the soil conditions dictated that a replacement system would need to be a mound system, one of the two outcomes would result:

1. An individual mound would need to be constructed for every residence, or
2. The existing structures would become uninhabitable because a replacement, compliance community septic system would be prohibited.

\*Note: I do not know whether any existing community septic systems are located in OP Open Space Preservation Districts, so the above points may be moot and this provision only applies to new construction.

(2) Washington County Development Code Chapter 4; Section 22 - Maintenance:

(b) "Sewage tanks shall be pumped or inspected by a licensed septic pumper, or inspected by a state-certified septic inspector every 2 years. A pumping and/or inspection report shall be submitted to the permitting authority by the pumper or inspector."

As written, this requirement may be preempted by the restriction in MINN STAT 115.55 Subp. 5 (c), which states, in pertinent part:

A certificate of compliance for an existing system is valid for three years from the date of issuance unless the local unit of government finds evidence of an imminent threat to public health or safety requiring removal and abatement under section 145A.04, subdivision 8.

To fully address whether this provision is allowable, the term "inspected" as used here, would need to be defined. The type of inspection (a tank integrity assessment) that I believe is intended here is allowable under state and county rules to be performed by a licensed septic maintenance business (i.e. "septic pumper"). However the type of inspection (a compliance inspection) that is required under state and county rules to be performed by a "state-certified septic inspector", cannot be required every two years by the City.

(B) OP Waste Water Treatment Systems.

(1) Collector systems in the OP zone shall be operated and maintained by a business licensed as a service provider in accordance with Minn. Rules 7083. An operation and maintenance plan shall be prepared by the developer prior to final plat approval. The homeowners association shall be responsible for implementing this plan. Included in this plan shall be both ground water monitoring, and visual inspections. Biannual reports shall be prepared by the service provider and submitted to the permitting authority.

This provision is, for all intents and purposes, redundant with a provision in the County Ordinance.

(C) Systems Serving Multiple Properties.

(1) Any SSTS system serving two or more properties shall be designed by a registered professional engineer in the State of Minnesota in addition to having all other necessary certifications and licenses required by Minn. Rules, Chapter 7083, including the collection component of the shared system, or any component of the system that is located within an asset of the city.

This provision may be prohibited by MN Rules 7082.00100 Subp. 3 Item A (in pertinent part):

[...] A local unit of government is not authorized to require additional local licenses, local registrations, local certificates, or other similar professional credentials to perform SSTS work.

**FISCAL IMPACT:**

NA

**OPTIONS:**

- 1) Adopt a current ordinance
- 2) Repeal or amend sections of current ordinance