

**AN ORDINANCE TO AMEND CHAPTER 45 OF THE CITY CODE TO
ADOPT A COMPREHENSIVE CROSS-CONNECTION CONTROL
PROGRAM**

#0363

Sponsor:

Council
Member
Oliver

WHEREAS, Section 4462 of Title 16 of the Delaware Administrative Code entitled “Public Drinking Water Systems” contains regulations that apply to all public water systems in the State of Delaware (“Section 4462”); and

WHEREAS, the Delaware Department of Health and Social Services, Division of Public Health, has adopted Regulation 21.0 entitled “Cross-Connection Control” thereby amending Section 4462 (“Regulation 21.0”); and

WHEREAS, Regulation 21.0 imposes strict regulations on public water systems to prevent contamination of potable water systems, including, but not limited to, requiring every public water system to develop a plan for a comprehensive cross-connection control program for the elimination, prevention, and control of cross-connections; and

WHEREAS, Regulation 21.0 took effect on February 1, 2021 and mandates that all public water systems comply with its requirements by February 1, 2024; and

WHEREAS, the City’s Department of Public Works, via its Water Division, operates a public water system as such term is defined in Section 4462 and therefore must comply with Regulation 21.0; and

WHEREAS, City Council deems it necessary and appropriate to amend Chapter 45 of the City Code to adopt a comprehensive cross-connection control program in compliance with Regulation 21.0.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON
HEREBY ORDAINS:**

SECTION 1. Chapter 45 of the City Code is hereby amended by amending Section 45-99 thereof by adding the underlined language to read as follows:

Sec. 45-99. - Existing installations equipped with double check valve system.

Existing installations equipped with a double check valve system as previously approved and installed shall be maintained. The expense of maintaining the double check valve system shall be borne by the owner of the property. In case of failure to correct a faulty installation, after due notice from the commissioner, the city water supply to such premises shall be cut off. The department, or its designee, shall test the double check valves annually at the expense of the owner.

SECTION 2. Chapter 45 of the City Code is hereby amended by amending the “Reserved” Sections of Division 6 thereof by adding the underlined language and deleting the stricken language to read as follows:

DIVISION 6. - PRIVATE FIRE SERVICES

....

Secs. 45-229 - 45-245~~31~~. - Reserved.

SECTION 3. Chapter 45 of the City Code is hereby amended by adding a new Division 7 to Article III containing the underlined language to read as follows:

DIVISION 7. - Cross-Connection Control

Sec. 45-232. - Cross-Connection Control Program adopted; compliance required.

- (a) Adoption. The City hereby adopts the “City of Wilmington Cross-Connection Control Program” dated October 2023, as may be amended from time to time (the “CCC Program”), in conformance with 16 *Del. Admin. C.* § 4462, § 21.0 entitled “Cross-Connection Control.” The CCC Program is incorporated herein by reference and any reference to this division is meant to also include the CCC Program.
- (b) Amendments. The CCC Program may be amended from time to time without further amending the City Code.
- (c) Compliance. Compliance with the CCC Program is hereby required.

Sec. 45-233. - Scope of this Division.

All territory within the geographical limits of the city or served by the city's public potable water distribution system shall be governed by this division to the extent permitted by law.

Sec. 45-234. - Inspections.

The commissioner, or designee, shall cause inspections to be made of all properties served by the city's potable water distribution system. The frequency of inspections and re-inspections shall occur as set forth in the CCC Program and in accordance with 16 Del. Admin. C. § 4462, § 21.0.

Sec. 45-235. - Property access for inspections.

Duly authorized city representatives shall be permitted to enter any building, structure, or property served by a connection to the city's public potable water distribution system for the purpose of inspecting the piping system(s) to look for actual or potential cross-connections, to test water quality, to test backflow preventers, to conduct health hazard assessments, and to identify hazards that could contaminate the city's public potable water distribution system. Owners will be notified in writing, via regular mail or email, if the city requires access to a building, structure, or property to perform an inspection or backflow prevention assembly test. The city shall obtain consent to access any building, structure, or property from a person with apparent authority prior to entering the building, structure, or property to perform the inspection or backflow prevention assembly test. If the city is unable to obtain consent, the owner of the building, structure, or property, at the owner's sole expense, shall have an inspection performed in a timely manner by a professional approved by the department and certified by the State of Delaware and the results of such inspection shall be provided to the department.

Sec. 45-236. - Testing of backflow prevention assemblies.

Every backflow prevention assembly shall be tested initially upon installation to ensure that the assembly is working properly. Subsequent testing of assemblies shall be conducted on an annual basis or as otherwise required by the department.

Sec. 45-237. - Testing, installation, and maintenance of protective devices; expenses; reports.

Installation, testing, and maintenance of all protective devices required by this division shall only be conducted by individuals that are approved by the department and are certified by the State of Delaware. Copies of all testing, maintenance, and repair records shall be sent electronically, via web-based software, to the department's water division or its designated agent. The

owner of the building, structure, or property shall solely bear all expenses of installing, testing, and maintaining the protective devices required by this division.

Sec. 45-238. - Discontinuance of water service.

The commissioner, or designee, is hereby authorized to discontinue potable water service to any premises wherein any violation of this division exists and to take such other precautionary measures deemed necessary to eliminate any danger of contamination of the city's public potable water distribution system. Water services to such premises shall not be restored until (i) the actual or potential cross-connection or other hazard to the city's public potable water distribution system has been eliminated or (ii) an appropriate backflow prevention device has been installed in compliance with the provisions of this division.

Sec. 45-239. - Protection of the City's public potable water supply; interrelationship with other laws.

The city's public potable water supply shall be protected from present or future possible contamination as specified by this division, the State of Delaware Plumbing Code, the Delaware State Department of Health Plumbing regulations, and city plumbing laws. This division does not supersede any of the aforementioned laws but is supplementary to them. Where a conflict exists, the more restrictive provision in favor of protecting the city's public potable water supply shall apply.

Sec. 45-240. - Labeling required.

Any water outlet that could be used for potable or domestic purposes that is not supplied by the city's public potable water distribution system must be labeled by the Owner of the premises "WATER UNSAFE FOR DRINKING" in a conspicuous manner.

Sec. 45-241. - No liability for City employees.

No provisions of this division designating the duties of any city officer or employee shall be construed to make such officer or employee liable for any fine or penalty for failure to perform such duty.

Sec. 45-242. - Violations; penalties.

- (a) Notice. Notice of any violation of this division shall be given by delivering the same to the premises and mailing a copy to the billing address for the premises that is contained in the city's billing records for water service.

- (b) Penalties. Any person violating any provision of this division shall be subject to potential disconnection of water services as set forth in section 45-238, shall reimburse the city for all expenses incurred by the city in investigating such violation and repairing any damage to the city's public potable water distribution system caused in whole or in part by such violation, and shall be subject to and liable for a civil penalty in accordance with subsections (1) and (2) below. Each subsequent day that a violation listed in subsection (1) below continues shall constitute a separate and distinct offense. Each violation listed in subsection (2) below shall be considered a one-time violation per incident. All expenses, fines, and penalties are deemed to be part of the civil penalty for violation of this division.
- (1) The following fines shall apply to violations of this division regarding unprotected cross-connections:
- (i) Unprotected cross-connection which is deemed a high hazard: \$1,000 per day.
 - (ii) Unprotected cross-connection which is deemed a moderate hazard: \$500 per day.
 - (iii) Unprotected cross-connection for which no other civil penalty is prescribed: \$500 per day.
- (2) The following fines and penalties shall apply to other violations of this division:
- (i) Falsifying records which are required to be submitted by this division: inspector may be removed from the approved certified tester/repairer list and/or \$1,000.
 - (ii) Submitting incomplete records or failing to submit records which are required by this division: inspector may be removed from the approved certified tester/repairer list and/or \$500.
 - (iii) Failing to test backflow assemblies as required: \$1,000.
 - (iv) Failing to maintain backflow assemblies as required: \$1,000.
 - (v) Any other violation of the provisions of this division: \$500.
- (c) Repeated Violations. The commissioner may increase any civil penalty assessed under this division by \$300 or 50% of the maximum civil penalty associated with the violation, whichever is greater, for a second or subsequent violation of the same provision within a two-year period.

(d) Other Remedies. In addition to the penalties set forth above, the city may bring suit in an appropriate court to enjoin, restrain, or otherwise prevent the violation of any of the provisions of this division.

Secs. 45-243 - 45-245 - Reserved.

SECTION 3. This Ordinance shall be effective upon its passage by City Council and approval by the Mayor.

First Reading November 2, 2023
Second Reading November 2, 2023
Third Reading

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2023.

Mayor

SYNOPSIS: This Ordinance amends Chapter 45 of the City Code to adopt the “City of Wilmington Cross-Connection Control Program” dated October 2023, as may be amended from time to time, in conformance with 16 *Del. Admin. C.* § 4462, § 21.0 entitled “Cross-Connection Control.”

FISCAL IMPACT STATEMENT: There is no significant anticipated fiscal impact associated with this Ordinance.