

ARTICLE IV. STORMWATER MANAGEMENT UTILITY

Sec. 78-155. Authority.

The city is authorized by the Florida Constitution and the provisions of F.S. ch. 166 and F.S. § 403.0893 to construct, reconstruct, improve, and extend stormwater utility systems and to issue revenue bonds and other debts if needed to finance in whole or part the cost of such system and to establish just and equitable rates, fees, and charges for the services and facilities provided by the system.

(Code 1991, § 26-131; Ord. No. 3032, § 1, 7-20-1993)

Sec. 78-156. Findings and determinations.

It is hereby found, determined, and declared as follows:

(1) The purpose of this article is to implement the provisions of F.S. § 403.0893(1), by creating a city-wide stormwater utility and adopting stormwater utility fees sufficient to plan, construct, operate and maintain stormwater management systems set forth in the local program required pursuant to F.S. § 403.0891(3). Furthermore, this article shall serve as notification to ~~Metropolitan~~ Miami-Dade County that the city has elected to exercise its option to be exempt from the provisions of article ~~V~~ V of ch. 24 of the county code in compliance with the provisions of section ~~24-61.2~~ 24-51.2 as provided therein.

(2) Those elements of the system which provide for the collection of and disposal of stormwater and regulation of groundwater are of benefit and provide services to all property within the incorporated city limits, including property not presently served by the storm elements of the system.

(3) The costs of operating and maintaining the city stormwater management system and financing necessary repairs, replacement, improvements, and extension thereof should, to the extent practicable, be allocated in relationship to the benefits enjoyed and services received therefrom.

(4) This article shall be liberally construed to protect the public health, safety, and welfare and to effectuate the purposes set forth herein.

(Code 1991, § 26-132; Ord. No. 3032, § 2, 7-20-1993)

Sec. 78-157. Definitions.

For the purpose of this article, the following definitions shall apply; words used in the singular shall include the plural, and the plural, the singular; words used in the present tense shall include the future tense. The word "shall" is mandatory and not discretionary. The word "may" is permissive. Words not defined herein shall be construed to have the meaning given by common and ordinary use as defined in the latest edition of Webster's Dictionary.

Availability charge means a charge to a developer or individual resident to recover the debt service and extension and replacement costs paid on a stormwater management system facility that had been previously constructed, but which serves such developer or individual resident.

Bonds means any bonds, notes, loans or any other debt obligations issued or incurred to finance the costs of construction and costs of issuance (including municipal bond insurance if any), and funding of such reserve accounts or funds as may be necessary in the opinion of the city commission.

Costs of construction means costs reasonably incurred in connection with providing capital improvements to the system or any portion thereof, including but not limited to the costs of:

(1) Acquisition of all property, real or personal, and all interests in connection therewith including all rights-of-way and easements therefor;

- (2) Physical construction, installation and testing, including the costs of labor, services, materials, supplies and utility services used in connection therewith;
- (3) Architectural, engineering, legal and other professional services;
- (4) Insurance premiums taken out and maintained during construction, to the extent not paid for by a contractor for construction and installation;
- (5) Any taxes or other charges which become due during construction;
- (6) Expenses incurred by the city or on its behalf with its approval in seeking to enforce any remedy against any contractor or subcontractor in respect of any default under a contract relating to construction;
- (7) Principal of and interest of any bonds; and
- (8) Miscellaneous expenses incidental thereto.

Debt service means, with respect to any particular fiscal year and any particular series of bonds, an amount equal to the sum of:

- (1) All interest payable on such bonds during such fiscal year; plus
- (2) Redemption premium, if any, on such bonds;
- (3) Any principal installments of such bonds during such fiscal year.

Developed property means real property that has been altered from "natural" state by the addition of any improvements such as a building, structure, or impervious surface. ~~For new construction, property shall be considered developed pursuant to this article:~~

- (1) ~~Upon issuance of a certificate of occupancy, or upon completion of construction or final inspection if no such certificate is issued; or~~
- (2) ~~If construction is at least 50 percent complete and construction is halted for a period of three months.~~

Director means the director of public works or his designee.

Dwelling means any building that is exclusively used, or intended to be used, for living, sleeping, cooking and eating.

Dwelling unit means a single unit or apartment providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

Equivalent residential unit or *ERU* means the average impervious area of residential developed property per dwelling unit located within the city and as established by the city commission resolution as provided herein.

ERU rate means a utility fee charged on each ERU as established by the city commission resolution as provided herein.

Extension and replacement means costs of extensions, additions and capital improvements to, or the renewal and replacement of capital assets of, or purchasing and installing new equipment for, the system, or land acquisition for the system and any related costs thereto, or paying extraordinary maintenance and repair, including the costs of construction, or any other expenses which are not costs of operation and maintenance or debt service.

Fee-in-lieu-of means a charge to a developer or individual resident to recover the:

- (1) Costs of construction and debt service on a new stormwater management system facility which serves such developer or individual resident; or
- (2) Extension and replacement costs necessitated by development undertaken by such developer or individual resident.

Fiscal year means a 12-month period commencing on the October 1 of any year, or such other 12-month period adopted as the fiscal year of the utility.

Impervious area means a horizontal ground surface that is not readily penetrated by rainwater and includes roofed and paved areas including, but not limited to, areas covered by roofs, roof extensions, patios, porches, driveways, sidewalks, parking areas, swimming pools and athletic courts.

Mixed use developed property means any developed property that contains dwellings or dwelling units and is also used for nonresidential purposes.

Nonresidential developed property means developed property that does not contain dwellings or dwelling units, is classified by the property appraiser as land use types 10 through 99 using the Florida Department of Revenue Land Use Codes, as amended or supplemented.

Operating budget means the annual utility operating budget adopted by the city for the succeeding fiscal year.

Operations and maintenance means the current expense, paid or accrued, of operation, maintenance and current repair of the system, as calculated in accordance with sound accounting practice, and includes, without limiting the generality of the foregoing, insurance premiums, administrative expenses, labor, executive compensation, the cost of materials and supplies used for current operations, and charges for the accumulation of appropriate reserves for current expenses not annually incurred, but which are such as may reasonably be expected to be incurred in accordance with sound accounting practice.

Property appraiser means the office of the county property appraiser.

Residential developed property means developed property that contains only dwellings or dwelling units, is classified by the property appraiser as land use types 00 through 09 using the Florida Department of Revenue Land Use Codes, as amended or supplemented.

Revenues mean all rates, fees, assessments, rentals or other charges or other income received by the utility, in connection with the management and operation of the system, including amounts received from the investment or deposit of moneys in any fund or account and any amounts contributed by the city, all as calculated in accordance with sound accounting practice.

Stormwater management system or *system* means the existing stormwater management of the city, and all improvements thereto which by this article are constituted as the property and responsibility of the utility. The utility shall to be operated as an enterprise fund to, among other things, conserve water, control discharges necessitated by rainfall, events, and incorporate methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over-drainage, environmental degradation and water pollution or to otherwise affect the quality and quantity of discharge from such system.

Stormwater management utility or *utility* means the enterprise fund utility created by this article for the purpose of operating, maintaining and improving the system.

Surface waters means freshwater or saltwater canals or lakes located within the jurisdictional limits of the city, as well as those portions of Biscayne Bay located adjacent to the city limits.

Undeveloped parcel means a parcel that has not been altered from its natural state by dredging, filling, removal of trees and vegetation or other activities that have disturbed or altered the topography or soils on the property.

Utility fee means a utility fee authorized by state law and this article established to pay operations, maintenance, extension, replacement, and debt service.

(Code 1991, § 26-133; Ord. No. 3032, § 3, 7-20-1993)

Sec. 78-158. Establishment of stormwater management utility.

- (a) The stormwater management utility is hereby established by the city commission to provide for the general welfare of the city and its residents.
- (b) The governing body of the stormwater management utility shall be the board of city commissioners of the city.
- (c) The director of public works shall be the chief staff member of the utility, subject to the supervision of the city manager.
- (d) The organization and operating procedures of the utility shall be prescribed by administrative orders and regulations of the director.

(e) The director is hereby empowered to organize at his discretion an administrative stormwater management review board consisting of the director, the finance director, and the building and zoning director to hear appeals and review rates imposed by the stormwater utility. Any decision made by the stormwater management review board shall be subject to final review and approval by the city commission.

(Code 1991, § 26-134; Ord. No. 3032, § 4, 7-20-1993)

Sec. 78-159. Operating budget.

The city shall adopt an operating budget not later than the first day of each fiscal year. The operating budget shall set forth for such fiscal year the estimated revenues and the estimated costs for operations and maintenance, extension and replacement, and debt service.

(Code 1991, § 26-135; Ord. No. 3032, § 5, 7-20-1993)

Sec. 78-160. Required levels of rates for utility fees.

The city commission shall require that adequate revenue be generated to provide for a balanced operating budget by at least annually setting sufficient levels of utility fees.

(Code 1991, § 26-136; Ord. No. 3032, § 6, 7-20-1993)

Sec. 78-161. Imposition of utility fees.

The commission hereby authorizes the imposition of utility fees on all property within the city.

(Code 1991, § 26-137; Ord. No. 3032, § 7, 7-20-1993)

Sec. 78-162. Rate schedule.

(a) *Property classification.* For purposes of assessing the utility fee, the following property classes will identify the customer base:

- (1) Residential developed property;
- (2) Nonresidential developed property; and
- (3) Mixed use developed property; and
- (4) Undeveloped parcel.

(b) *Computation of utility fee for residential developed property.* The utility fee for residential developed property shall be the ERU rate multiplied by the number of individual dwelling units existing on the property.

(c) *Computation of utility fee for nonresidential developed property.* The utility fee for nonresidential developed property shall be the ERU rate multiplied by the numerical factor obtained by dividing the total impervious area of a nonresidential developed property by one ERU. The minimum utility fee for any nonresidential developed property shall be equal to one ERU rate.

(d) *Computation of utility fee for mixed use developed property.* The utility fee for mixed use developed property shall be calculated by adding the number of ERUs for dwelling units on the property plus the number of ERUs attributable to that portion of the property used for nonresidential purposes. If more than one nonresidential account is established with respect to such mixed use properties, the ERUs for each shall reflect the ratio of square feet attributable to each nonresidential use in relation to the total square feet of nonresidential use.

(e) *Computation of utility fee for undeveloped parcel.* Undeveloped parcels shall be exempted from the utility fee.

(Code 1991, § 26-138; Ord. No. 3032, § 8, 7-20-1993)

Sec. 78-163. Billing and payment; delinquency.

(a) The utility fee is to be paid by the owner, tenant or occupant of each lot or parcel subject to the fee as determined by the director. All developed properties within the customer base shall be rendered bills or statements by the utility for the use of the these services and facilities of the system. The City may, at its option, elect to use the services of an outside agency such as Miami-Dade Water and Sewer Department (MDWASD), or its successors, to render bills or statements on the City's behalf. If MDWASD is used, then such by the county water and sewer authority department ("WASAD"), or its successors. The bills or statements rendered by them shall be payable at the same time and in the same manner and subject to the same discontinuance of service by the ~~WASAD~~ MDWASD, or its successors, as set forth under the terms and conditions of MDWASD's billing and collection agreement with the city. Irrespective of the foregoing, the City, at all times, reserves the right to commence in-house billing of the owner or tenant of such property or properties. If the fees are not fully paid by said owner, tenant or occupant on or before the past due date set forth on the bill or statement, the due date becomes delinquent a ten percent late charge may be added to the bill or statement and imposed by the utility in accordance with regulations prescribed by the director. ~~and compliance with the requirements of WASAD, or its successors, or the city commission.~~ Any unpaid balance for such fees and late charges shall be subject to an interest charge at the rate of six percent per annum (one-half percent per month) from the due date.

(b) Fees and late charges, together with any interest charges, shall be debts due and owing the utility and all of same shall be recoverable by the city or its assignee, on behalf of the utility, in any court of competent jurisdiction.

(c) The utility shall establish procedures to notify owners, tenants, occupants, and managers of developed property of delinquent fee accounts. Subscribers to this service shall pay in advance a fee in an amount set forth in the administrative orders of the director.

(d) All fees, late charges, said interest accruing thereupon, due and owing to the utility which remain unpaid 60 days after the past due date of the fees shall become a lien against and upon the developed property for which the fees are due and owing to the same extent and character as a lien for a special assessment. Until fully paid and discharged, said fees, late charges and interest accrue thereupon shall be, remain, and constitute a special assessment lien equal in rank and dignity with the liens of city advalorem taxes and superior in rank and dignity to all other liens, encumbrances, titles, and claims in, to or against the developed property involved for the period of seven years from the date said fees, late charges, and interest accrued thereupon, become a lien as set forth in this article. Said lien may be collected by the city in the same manner and with the same penalties and under the same provisions as to sale, deed and forfeiture as advalorem taxes are collectible. Said lien may be enforced and satisfied by the city, on behalf of the utility, pursuant to F.S. ch. 173, as amended from time to time, or by any other method permitted by law. The lien provided for herein shall not be deemed to be in lieu of any other legal remedies for recovery of said fee, late charges, and accrued interest available in the city and to the utility.

(e) For fees which become more than 60 days past due and unpaid, the city or the utility shall cause to be filed in the office of the clerk of the circuit court of the county, a notice of lien or statement showing a legal description of the property against which the lien is claimed, its location by street and number, the name of the owner, and an accurate statement of the fees and late charges then unpaid. A copy of such notice of lien shall be mailed with a reasonable time to the owner of the property involved as shown by the records of the county tax collector. No such lien shall be enforceable by the city or the utility unless said notice shall be filed within six months from the date the fees and late charges become a lien as established in this article, or proper notice issued in the same manner for collecting ad valorem taxes or special assessments.

(f) Liens may be discharged and satisfied by payment to the city or the county, on behalf of the utility, of the aggregate amounts specified in the notice of lien, together with interest accrued thereon, and all filing and recording fees. When any such lien has been fully paid or discharged, the city shall cause evidence of the satisfaction and discharge of such lien to be filed with the office of the clerk of the circuit court of the county. Any person, firm, corporation, or other legal entity, other than the present owner of the property involved, who fully pays any such lien shall be entitled to receive an assignment of lien and shall be subrogated to the rights of the city and the utility with respect to the enforcement of such lien.

(g) Notwithstanding other provisions to the contrary herein, the city, on behalf of the utility, shall have the discretion not to file notices of lien for fees, late charges, and interest accrued thereupon in an amount less than ~~\$100.00~~ \$50.00. If the city or the utility elects not to file a notice of lien, said fees, late charges, and accrued interest shall remain as debts due and owing in accordance with subsection (b) of this section.

(h) The utility is authorized and directed to execute and deliver upon request written certificates certifying the amount fees, late charges and interest accrued thereupon, which are due and owing to the utility and the city, for any developed property which is subject to payment of said fees, or the utility may certify that no fees, late charges or accrued interest are due and owing. Said certificates shall be binding upon the city and the utility.

(Code 1991, § 26-139; Ord. No. 3032, § 9, 7-20-1993)

Sec. 78-164. Adjustment of fees.

(a) Request for adjustment of the utility fee shall be submitted to the director, who is hereby given the authority to develop and administer the procedures and standards for the adjustment of fees as established herein. All requests shall be judged on the basis of the amount of impervious area on the site. No credit shall be given for the installation of facilities required by city or county development codes or state stormwater rules. The following procedures shall apply to all adjustment requests of the stormwater fee:

(1) Any owner who has paid his utility fees and who believes his utility fee to be incorrect may, subject to the limitations set forth in this article, submit an adjustment request to the director.

(2) Adjustment requests for the utility fees are paid by an owner, making the request shall be in writing and set forth, in detail, the grounds upon which relief is sought.

(3) Adjustment requests made during the first calendar year that the utility fee is imposed will be reviewed by the director within a two-month period from the date of filing of the adjustment request. Adjustments resulting from such request shall be retroactive to the beginning of billings, but retroactive adjustment shall not exceed one year.

(4) The owner requesting the adjustment may be required, at his own cost, to provide supplemental information to the director including, but not limited to, survey data approved by either a registered professional land surveyor (RPLS) and engineering reports approved by a professional engineer (PE). Failure to provide such information may result in the denial of the adjustment request.

(5) Adjustments to the utility fee will be made upon the granting of the adjustment request, in writing, by the director. Denials of adjustment requests shall be made, in writing, by the director.

(6) Adjustments to the utility fee may be reviewed on an annual basis to determine their continued validity and compliance with state and federal regulations. Upon annual review, the adjustments to the utility fee may be modified at the recommendation of the director in order to bring the utility fee in conformity with the foregoing.

(b) Upon receipt of the written denial of the adjustment request, the owner who initially requested the adjustment may, within 30 days of receipt of such denial, appeal to the city commission for review of the denial.

(c) Upon recommendation of the director and acceptance thereof by the city commission, the utility shall increase fees commensurate with any requirements of state or federal regulations that impact upon the services required to be performed by the utility to ensure continued compliance with state and federal law.

(Code 1991, § 26-140; Ord. No. 3032, § 10, 7-20-1993)

Sec. 78-165. Capital contributions.

(a) Where the city has constructed or plans to construct stormwater facilities which are proposed to be used by a developer in lieu of a facility usually required to be constructed by him, the city may accept a capital contribution from the developer and waive certain construction requirements.

(b) Procedures and standards developed by the city shall define appropriate means by which to optimize the developers capital contributions in the construction or refunding of stormwater systems. These capital contributions shall take the form of fee-in-lieu-of or availability charges. Each situation will be analyzed by the city and a specific written decision will be developed. The application of each is defined as follows:

(1) Fee-in-lieu-of is applied to a site specific negotiated procedure, wherein a development's stormwater contribution (quantity and quality) is assessed its share of the capital needs of the facilities required to serve the development in question. This capital contribution would be used for the construction or refunding of city-owned stormwater facilities. The process does not apply wherein the stormwater facilities are privately held. Each application is evaluated against the city's master plan, or where the master plan is incomplete, against the cumulative impacts from the development.

(2) Availability charge is administered on a site-specific basis identical to the fee-in-lieu-of procedure noted above. The only difference is that the capital investment advanced by the city in implementing a stormwater facility is now recovered through an availability charge. The capital charge is determined on a pro-rate share of the capacity used by the new applicant as measured by the cumulative impact from the development upon all impacted facilities applied to the present worth of the original capital expenditure. In the case of a developer constructing stormwater management facilities in excess of the site needs, the city may enter an agreement with that developer to rebate fee-in-lieu of charges paid to the city by other developers utilizing those facilities over a period of time not exceeding seven years from the date of the agreement, and said agreement may be reviewed on an annual basis to insure compliance with state or federal regulations.

(Code 1991, § 26-141; Ord. No. 3032, § 11, 7-20-1993)

Sec. 78-166. Program responsibility.

It shall be the duty of the department of public works to administer the stormwater management utility. The department shall keep an accurate record of all persons using the services and facilities of said stormwater management system of the city and to make changes in accordance with the rates and charges established in this article.

(Code 1991, § 26-142; Ord. No. 3032, § 12, 7-20-1993)

Sec. 78-167. Stormwater management utility trust funds.

There shall be established a stormwater management utility trust fund for the deposit of all fees and charges collected by the stormwater utility. These funds shall be for the exclusive use of the city's stormwater management utility, including but not limited to the following:

- (1) Administrative costs associated with the management of the stormwater management utility.
- (2) Planning and engineering.
- (3) Operation and maintenance of the system.
- (4) Funding of pollution abatement devices constructed on stormwater systems discharging to the surface waters.
- (5) Debt service financing.

(Code 1991, § 26-143; Ord. No. 3032, § 13, 7-20-1993)

Secs. 78-168--78-187. Reserved.