

ORDINANCE NO. 92-6730

AN ORDINANCE AMENDING THE CODE OF THE CITY OF NAPLES, FLORIDA, PROVIDING FOR A STORMWATER MANAGEMENT UTILITY SYSTEM AND SPECIFYING TERMS AND PROCEDURES FOR SAID SYSTEM TO PROVIDE A STORMWATER MANAGEMENT UTILITY TO MEET FEDERAL REQUIREMENTS FOR CLEANER WATER IN BAYS, CANALS AND LAKES, TO PROVIDE FOR IMPROVED STREET DRAINAGE, BETTER MAINTENANCE OF STORMWATER FACILITIES AND ENHANCED QUALITY OF LIFE; PROVIDING A REPEALER PROVISION, A SEVERABILITY CLAUSE, AND AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VIII, Section 1, Florida Constitution (1968), and Chapter 166, Florida Statutes, as amended, the City Council of the City of Naples, Florida, has all powers of local self government to perform city functions and to render city services in a manner not inconsistent with general or special law, and such power may be exercised by the enactment of city ordinances; and

WHEREAS, the Federal Clean Water Act, 33 U.S.C. 1251 et seq., requires certain political entities such as the City, to implement stormwater management programs within prescribed time frames; and

WHEREAS, pursuant to the Federal Clean Water Act, 33 U.S.C. 1251 et seq., the United States Environmental Protection Agency has published rules for stormwater outfall permits; and

WHEREAS, the City of Naples, Florida is responsible for the ownership, maintenance and expansion of the existing stormwater system which has been developed over a number of years for the purpose of collection and disposing of stormwater; and

WHEREAS, the City of Naples, Florida is developing a citywide Stormwater Management Plan; and

WHEREAS, the present stormwater system is inadequate to control and manage stormwater run-off within the incorporated City limits; and

WHEREAS, it will be necessary and essential to construct improvements and extensions to the existing stormwater system to ensure that the collection and disposal of stormwater within the incorporated City limits adequately protect the health, safety, and welfare of the citizens of the City of Naples, Florida; and

**WHEREAS,** it is necessary and essential that the City address the various environmental issues that will further impact its infrastructure requirements;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NAPLES, FLORIDA:**

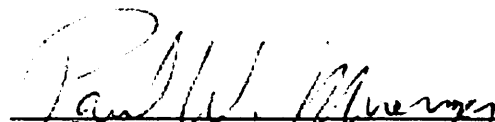
- Section 1. That an ordinance amending the Code of the City of Naples, Florida, providing for a Stormwater Management Utility System and specifying terms and procedures for said system to provide a stormwater management utility to meet federal requirements for cleaner water in bays, canals and lakes, to provide for improved street drainage, better maintenance of stormwater facilities and enhanced quality of life; providing a repealer provision, a severability clause, and an effective date, is hereby adopted pursuant to Exhibit "A", attached hereto.
- Section 2. That the City is authorized by the Florida Constitution and the provisions of Florida Statutes Chapter 166 and Section 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 in 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.
- SECTION 3. It is the intention of the City Council and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of the City of Naples, Florida, and the sections of this ordinance may be renumbered to accomplish such intention.
- SECTION 4. If any word, phrase, clause, subsection or section of this ordinance is for any reason held unconstitutional or invalid, the invalidity thereof shall not affect the validity of any remaining portions of this ordinance.
- SECTION 5. That all sections or parts of sections of the Code of Municipal Ordinances, all ordinances or parts of ordinances, and all resolutions or parts of resolutions in conflict herewith, be and the same are hereby repealed to the extent of such conflict.
- SECTION 6. This ordinance shall take effect immediately upon adoption.

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APPROVED AT FIRST READING THIS 19<sup>th</sup> DAY OF AUGUST, 1992.

PASSED AND ADOPTED AT SECOND READING AND PUBLIC HEARING IN OPEN AND REGULAR SESSION OF THE CITY COUNCIL OF THE CITY OF NAPLES, FLORIDA, THIS 2<sup>nd</sup> DAY OF September 1992.

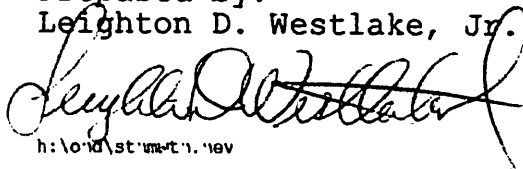
  
Paul W. Muenzer, Mayor

ATTEST:

  
Janet Cason, City Clerk

APPROVED AS TO FORM AND LEGALITY BY Maria J. Chiaro  
Maria J. Chiaro, City Attorney

Prepared by:  
Leighton D. Westlake, Jr., P.E.

  
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| COUNCIL MEMBERS | MOTION | SECOND | VOTE |    | ABSENT |
|-----------------|--------|--------|------|----|--------|
|                 |        |        | YES  | NO |        |
| Anderson        | X      |        | X    |    |        |
| Herms           |        |        | X    |    |        |
| Korest          |        | X      | X    |    |        |
| Pennington      |        |        | X    |    |        |
| Sullivan        |        |        |      | X  |        |
| VanArsdale      |        |        | X    |    |        |
| Muenzer         |        |        | X    |    |        |
| (6-1)           |        |        |      |    |        |

**EXHIBIT "A"****Establishment of Stormwater Management Utility**

The Stormwater Management Utility is hereby established by the City Council to provide for the general welfare of the City and its residents.

**Definitions**

**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 ("System") facility that had been previously constructed, but which serves such developer or individual resident.

**Average Residential Unit or ARU** means the Average Impervious Area of Residential Developed Property per Dwelling Unit located within the City and is established by City Council as 1934 sq. feet.

**ARU Rate** means a Utility fee charged on each ARU as established by City Council resolution as provided herein.

**Bonds** means revenue bonds, notes, loans or any other debt obligations ("Debt Service") issued or incurred to finance the costs of construction.

**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 therefore,
- (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 sub-contractor in respect to any default under a contract relating to construction,
- (7) principal of and interest on 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) any principal installments on such Bonds during such Fiscal Year.

**Developed Property** means real property which has been altered from "natural" state by the addition of any improvements such as buildings, structures, or impervious surfaces. For new construction, property shall be considered developed pursuant to this Ordinance: (a) upon issuance of a certificate of occupancy, or upon completion of construction or final inspection if no such certificate is issued; or (b) if construction is at least 50 percent complete and construction is halted for a period of three (3) months.

**Director** means the City Manager or his designee who shall be the chief staff member of the Utility.

**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.

**Extension and Replacement** means cost 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 cost 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:

- (1) the costs of construction and debt service on a new stormwater management system facility which serves such developer or individual resident, or

- (2) the extension and replacement costs necessitated by development undertaken by such developer or individual resident.

**Fiscal Year** means a twelve-month period commencing on the first day of October of any year, or such other twelve-month period adopted as the Fiscal Year of the Utility.

**Impervious Area** means roofed or paved areas including, but not limited to, areas covered by roofs, roof extensions, patios, porches, driveways, sidewalks, non-porous parking areas and non-porous athletic courts.

**Non-Residential Developed Property** means any developed lot or parcel not exclusively residential as defined herein, including hotels or motels zoned commercial, or as determined by City utility records or field inspection.

**Operating Budget** means the annual Utility operating budget adopted by the City for the succeeding fiscal year.

**Operations and Maintenance** means the current expenses, paid or accrued, 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, not which are such as may reasonably be expected to be incurred in accordance with sound accounting practice.

**Property Appraiser** means the Office of the Collier County Property Appraiser.

**Residential Developed Property** means developed property that 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, or as determined by City utility records or field inspection.

**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 monies in any fund or account and any accounts contributed by the City, all as calculated in accordance with sound accounting practice.

Stormwater Management System or System means the existing stormwater management facilities or structures of the City and all improvements thereto which by this Ordinance are constituted as the property and responsibility of the Utility, to be operated as an enterprise fund to, among other things, conserve water, control discharges necessitated by rainfall events, 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 otherwise affect the quality and quantity of discharge from such system.

Stormwater Management Utility or Utility means the enterprise fund utility created by this Ordinance to operate, maintain and improve the system.

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

Unoccupied Developed Property means property which has been developed by the placement of impervious structures which are now unoccupied.

Utility Fee means a utility fee authorized by Florida law and this Ordinance which is established to pay Operations and Maintenance, Extension and Replacement and Debt Service.

Vacant lot means vacant property which is part of any subdivision.

### 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.

### Required Levels of Rates for Utility Fees

The City Council shall require that adequate revenues are generated to provide for a balanced Operating Budget by at least annually setting sufficient levels of utility fees.

### Imposition of Utility Fees

The City Council hereby authorizes the imposition of utility fees on all property within the City, as follows:

**SINGLE-FAMILY RESIDENTIAL:** All developed single family residential property shall be charged \$1.43 monthly, billed on a bi-monthly basis. Guest houses shall be billed as an additional single family unit.

**MULTI-FAMILY RESIDENTIAL:** All developed multi-family residential property shall be charged at a rate of \$1.43 monthly per each residential unit; billed on a bi-monthly basis.

**COMMERCIAL:** All developed commercial property shall be charged based on the rate of \$1.43 per average residential unit (ARU) of impervious structure per month; billed on a bi-monthly basis.

#### Rate Schedule

A. Property Classification

For purposes of determining the utility fee, all property within the incorporated City limits shall be classified into one of the following classes:

- (1) Residential Developed Property;
- (2) Non-Residential Developed Property;
- (3) Vacant Improved Property;
- (4) Undisturbed Parcel.

B. Computation of Utility Fee for Residential Developed Property

The utility fee for Residential Developed Property shall be the ARU Rate multiplied by the number of individual dwelling units existing on the property.

C. Computation of Utility Fee for Non-residential Developed Property

The utility fee for Non-Residential Developed Property shall be the ARU Rate multiplied by the numerical factor obtained by dividing the total Impervious Area of a Non-Residential Developed Property by one ARU. The minimum utility fee for any Non-Residential Developed Property shall be equal to one ARU Rate. The computation of the utility fee for multi-story buildings, multi-story parking garages, or other elevated surfaces and structures shall be calculated as per the footprint of the structure only. Multiple story structures shall be calculated as if they were only ground level structures.



D. Computation of Utility Fee for Unoccupied Developed Property

The utility fee for Unoccupied Developed Property shall be based upon the category and classification as if the property were occupied.

E. Computation of Utility Fee for Undisturbed Parcels and Vacant Property

Undisturbed parcels and vacant property shall be exempted from the utility fee provided they are not served by a water meter. Where served by a water meter, then the utility fee shall be based upon a comparison of impervious area with the categories of property classifications shown above.

Billing and Payment, Penalties

The utility fee is to be paid by the owner, tenant, or occupant of each lot or parcel subject to the fee. All properties, except vacant lots and undisturbed parcels, shall be rendered bills or statements for the use of these services and facilities of the System by the City Public Works Department. The bills or statements shall be payable at the same time and in the same manner and subject to the same discontinuance of service by the City Utility as set forth under the terms and conditions of Section 11-1 of the Comprehensive Development Code. Billing for the Stormwater Utility will commence with the first regular utility billing cycle on or after October 1, 1992. Billings will not be prorated.

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 developed parcels and total area of vacant parcels. No credit shall be given for the installation of facilities required by City or County development codes or State or Water Management District 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 which have been paid by an owner shall be made in writing setting 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 (2) 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 (1) 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 (R.P.L.S.) and engineering reports approved by a professional engineer (P.E.). 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.
- B. Upon receipt of the written denial of the adjustment request, the owner who initially requested the adjustment may, within thirty (30) days of receipt of such denial, appeal to the City Council for review of the denial.
- (1) The City Council shall complete their review within thirty (30) days of receipt of said request for review. The City Council's determination on the review shall be in writing and shall set forth in detail, the reasons for their decisions.
  - (2) In reviewing denials of adjustment requests, the City Council shall apply the standards and review criteria contained in this section.

#### Capital Contributions and Credits

- 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. Where the City plans to

construct stormwater facilities which are proposed to be constructed by a developer, the City may grant credit to the extent of the costs avoided by the City by the construction of the stormwater facilities by the developer.

- 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-rated 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.

- C. Credits for developer-installed facilities will be made to each periodic utility bill of the utility fee, as provided in "Billing and Payment, Penalties", provided that the developer-installed facilities reduce the capital costs of construction of projects by the utility. Credits shall only be given for reductions in costs to programmed capital projects adopted in the approved capital improvement program of the utility and no credit shall be given for any improvements required by rule or law of any agency or governmental entity including the

utility. Credits shall be applied to reduce the utility fee for the developer's property or properties to the extent of the proportionate share of the utility fee that represents the extension and replacement and debt service. Said credits shall be made until the sum of all credits granted for all of the developer's property or properties equals the costs avoided by the utility by construction of facilities by the developer after which no further credit will be made to the utility fees paid. In the event that the developer of the property transfers ownership of the property or properties, the remaining credits shall be transferred to the new owner.

#### Program Responsibility

It shall be the duty of the Director to administer the Stormwater Management Utility. The Director shall keep an accurate record of all properties using the services and facilities of said Stormwater Management System of the City and make changes in accordance with the rates and changes established in this Ordinance.

#### 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 Stormwater Management Utility, including the following categories:

- A. Administrative Costs associated with the management of the Stormwater Management Utility.
- B. Planning and Engineering.
- C. Operation and Maintenance of the System.
- D. Funding of pollution abatement devices constructed on stormwater systems discharging to the surface waters.
- E. Debt Service Financing.